City of Woodland

300 First Street
Woodland, CA 95695

Meeting Agenda

City Council

Tuesday, December 16, 2014 | **6:00 PM** | **Council Chambers**

JOINT REGULAR CITY COUNCIL/WOODLAND FINANCE AUTHORITY
DECEMBER 16, 2014
6:00 P.M.

A. CALL TO ORDER

B. ROLL CALL

C. PLEDGE OF ALLEGIANCE

D. COMMUNICATIONS-PUBLIC COMMENT

This is an opportunity for the public to speak to the Council on any item other than those listed for public hearing on this agenda. Speakers are requested to use the microphone in front of the Council and to begin by stating their name, whether they reside in Woodland and the name of the organization they represent if any. The Mayor may impose a time limit on any speaker depending on the number of people wanting to speak and time available for the rest of the agenda. In the event comments are related to an item scheduled on the agenda, speakers may be required to wait to make their comments until that item is considered.

E. COMMUNICATIONS-COUNCIL/STAFF STATEMENTS AND REQUESTS

This is an opportunity for the Council Members and Staff to make comments and announcements, to express concerns, or to request Council's consideration of any items a Council Member would like to have discussed at a future Council meeting.

14-502 SUBJECT: Long Range Calendar

Recommendation for Action: Staff recommends that the City Council receive the Long Range Calendar for informational purposes only.

Attachments: Council Long Range Calendar

F. COMMITTEE REPORTS

14-462 SUBJECT: Planning Commission Meeting Minutes

Recommendation for Action: Staff recommends that the City Council receive the November 6, 2014 Planning Commission Minutes that were approved on November 20, 2014.

Attachments: 11_06_14 Meeting Minutes

14-486 SUBJECT: Parks & Recreation Commission Meeting Minutes for October 27, 2014

Recommendation for Action: Staff recommends that the City Council receive the October 27, 2014 Parks & Recreation Commission Minutes that were approved on November 24, 2014.

Attachments: 102714 PRC Minutes

G. CONSENT CALENDAR

1. 14-496 SUBJECT: Public Works Quarterly Status Report for the period of September through November 2014

Recommendation for Action: Staff recommends that the City Council accept the Public Works Department's Quarterly Status Report

Attachments: Quarterly Report - Sept-Nov

2. 14-475 SUBJECT: Approval of Final Map 4853 Solara Ranch and Related Subdivision Improvement Agreement.

Recommendation for Action: Staff recommends that the City Council adopt Resolution No. _____ a Resolution of the City Council 1) approving Final Map 4853 Solara Ranch, 2) the related Subdivision Improvement Agreement, 3) authorizing City Manager to sign on behalf of the City, and 4) authorizing the City Manager to approve amendments to the Subdivision Improvement Agreement for the extension of time.

Attachments: Location Map

Resolution

Subdivision Improvement Agreement 11042014

3. 14-474 SUBJECT: Adopt Resolution No. _____ amending the City of Woodland Spring Lake Infrastructure Fee Nexus Study.

Recommendation for Action: Staff recommends that the City Council adopt Resolution No. _____, amending the City of Woodland Spring Lake Infrastructure Fee Nexus Study.

Attachments: A - Resolution

B - Proposed Table A2

4. 14-481 SUBJECT: Second Reading of Ordinance No. _____ , an Ordinance of the City Council of the City of Woodland, California, Approving an Amendment to the Development Agreement between the City of Woodland, Centex Homes, and Western Pacific Housing, Inc. for the Beeghly Ranch Subdivision.

Recommendation for Action: Staff recommends that the City Council adopt Ordinance No. _____, an Ordinance of the City Council of the City of Woodland, California, Approving an Amendment to the Development Agreement between the City of Woodland, Centex Homes, and Western Pacific Housing, Inc. for the Beeghly Ranch Subdivision.

Attachments: Location Map

Ordinance

5. 14-485 SUBJECT: Approval to Execute Janitorial Services Agreement

Recommendation for Action: Staff recommends that the City Council approve Resolution No. _____ authorizing the City Manager to execute a Janitorial Services Agreement with Lincoln Training Center to perform janitorial services at six City-owned facilities in the amount of $72,356.20 per year for three years ($217,068.60 total).

Attachments: Final Scores

Resolution

Janitorial Services Agreement (post-attorney review)

6. 14-471 SUBJECT: Accept the AB1600 Development Fees Annual Report for the Fiscal Year Ended June 30, 2014

Recommendation for Action: Staff recommends that the City Council adopt Resolution No. _____ accepting the AB1600 Annual Report for the year ended June 30, 2014

Attachments: AB1600 Resolution

AB 1600 FY 14 Summary by Fund

7. 14-476 SUBJECT: Annual Measure E Report for Fiscal Year Ending June 30, 2014

Recommendation for Action: Staff recommends that the City Council 1.) Approve the Annual Measure E Report for Fiscal Year Ending June 30, 2014 and 2.) Direct staff to publish the required excerpts of the report in the Daily Democrat and on the City's website

8. 14-479 SUBJECT: Annual Measure V Report for Fiscal Year Ending June 30, 2014

Recommendation for Action: Staff recommends that the City Council 1.) Approve the Annual Measure V Report for Fiscal Year Ending June 30, 2014 and 2.) Direct staff to publish the required excerpts of the report in the Daily Democrat and on the City's website

9. 14-498 SUBJECT: Update on the Water Utility Advisory Committee (WUAC)

Recommendation for Action: Staff recommends that the City Council: 1) adopt staff recommendations for Committee membership, consistent with suggestions offered by the WUAC via their 2014 Annual Report,

and
2) affirm the advisory purpose of the Committee consistent with original scope, expanded to encompass water, sewer and storm drainage issues

10. 14-499 SUBJECT: Amendment of the Conflict of Interest Code Pursuant to the Political Reform Act of 1974

Recommendation for Action: Staff recommends that the City Council adopt Resolution No. _____ approving and adopting the amended Conflict of Interest Code pursuant to the Political Reform Act of 1974.

Attachments: ADM - CIC RESOLUTION
ADM - CIC CODE 2014 AMENDED WITH CHANGES
ADM - CIC CODE 2014 FINAL CHANGES ACCEPTED

H. PUBLIC HEARINGS

11. 14-506 SUBJECT: Terra Verde / Solar Project - Approval of Power Purchase Agreement and Site Agreement with Performance Contracting Inc./Hanwha Q Cells for a Solar Photovoltaic Project at Various City Sites, Authorization of a Battery Energy Storage Contract, and Authorization of a Site Lease with Conaway Preservation Group

Recommendation for Action: Staff recommends that the City Council hold a Public Hearing and that, pursuant to Section 4217.10 et seq. of the Government Code, the City Council adopt Resolution No. _____ which:
(1) finds that the cost of the purchase of electricity from the Solar Project at six City facilities under the proposed Power Purchase Agreement (PPA) will be offset and will be less than the anticipated marginal cost to the City of electrical or other energy that would have been consumed by the City if such Solar Project were not completed;
(2) finds that the difference, if any, between the fair rental value for the real property subject to the Site Agreement and the agreed rent is anticipated to be offset by below-market energy purchases; and
(3) authorizes the City Manager to execute the proposed PPA and Site Agreement for the construction of the Solar Project with the special purpose entity formed by Performance Contracting Inc./Hanwha Q Cells, to execute a contract for the Battery Energy Storage component of the Solar Project with Performance Contracting Inc., and
(4) to execute a Site Lease with Conaway Preservation Group.
(5) Resolution No. _____ further finds such approvals exempt under the California Environmental Quality Act.

Attachments: 12-16-14 Exhibit A - Solar Project Pro Forma

12-16-14 Exhibit B - Solar Project Layouts

2014 12-16 Resolution - Solar Project Documents

Reso Exhibit 1 - WOODLAND Power Purchase Agreement

Reso Exhibit 2 - Final Solar Site Agreement

Reso Exhibit 3 - WOODLAND-CPG Site Lease Agreement

I. REPORTS OF THE CITY MANAGER

12. 14-504 SUBJECT: State Theatre - Disposition and Development Agreement and Operating Covenant Acquisition Agreement

Recommendation: Staff recommends the City Council approve Resolution No. _____ authorizing the City Manager to enter into an amended and restated Disposition and Development Agreement with Woodland State Theatre, LLC and to acquire an Operating Covenant in property from the State Theatre Management Group.

Attachments: StateTheatreDDAsigned

Woodland Resolution Approving State Theater AR DDA (Final)

Final Draft - Amended and Restated Woodland State Theater DDA.doc

Final Draft - Woodland_ State Theatre Operating Covenant Acquisition Agreeme

13. 14-493 SUBJECT: Approve Contract with Carollo Engineers for New ASR Wells #29 and #30, CIP 15-02

Recommendation for Action: Staff recommends that the City Council:
1) approve Resolution No. ______ authorizing the City Manager to execute the consultant services agreement with Carollo Engineers (Carollo) for the New Aquifer Storage & Recovery (ASR) Wells #29 and #30, CIP 15-02, for an amount not to exceed $995,355 and,
(2) appropriate $500,000 additional funding for FY2014/15 from the FY2015/16 planned allocation (CIP 15-02) to cover the design contract cost.

Attachments: A - Resolution

B - Scope of Work

C - Map

14. 14-500 SUBJECT: Measure J Spending Plan -
Authorizing Initial FY2014/15 Program Implementation

Recommendation for Action: Staff recommends that the City Council approve specific supplemental FY2014/15 Measure J funding allocations and related actions for expanded program implementation to support:

1) Expanded Youth Sports Activities ($30,000)
2) Aquatics Programming ($36,000)

3) Recreation Programming and Teen Activities ($211,000)
4) Rec2GO Van Purchase ($50,000)
5) School Resource Officer / Gang Prevention Education Program ($50,000)

J. ADJOURN

I declare under penalty of perjury that the foregoing Agenda for the Joint Regular City Council/Woodland Finance Authority Regular Meeting of the City of Woodland scheduled for December 16, 2014 was posted on December 12, 2014 in the outside display case at City Hall, 300 First Street, Woodland, CA, and was available to the public during normal business hours.

____
Ana B. Gonzalez, City Clerk

Upon request, agendas and documents in the agenda packet will be made available in appropriate alternative formats to persons with a disability, as required by law. Any such request must be made in writing to the Office of the City Clerk of the City of Woodland. Requests will be valid for the calendar year in which the request is received, and must be renewed prior to January 1st. Persons needing disability-related modifications or accommodations in order to participate in public meetings, including persons requiring auxiliary aids or services, may request such modifications or accommodations by calling the Office of the City Clerk (530-661-5806) at least 48 hours prior to the meeting.

City of Woodland

300 First Street
Woodland, CA 95695

Legislation Details (With Text)

File #:	14-502 **Version:** 1	**Name:**	Long Range Calendar
Type:	Report of the City Manager	**Status:**	Agenda Ready
File created:	12/10/2014	**In control:**	City Council
On agenda:	12/16/2014	**Final action:**	
Title:	SUBJECT: Long Range Calendar Recommendation for Action: Staff recommends that the City Council receive the Long Range Calendar for informational purposes only.		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	Council Long Range Calendar		

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014
SUBJECT: Long Range Calendar

Recommendation for Action: Staff recommends that the City Council receive the Long Range Calendar for informational purposes only.

Staff Contact

Ana Gonzalez, City Clerk - (530) 661-5806, ana.gonzalez@cityofwoodland.org

Background

This calendar is being provided for planning purposes only and is intended to keep the Council apprised of upcoming agenda items and better plan for upcoming Council items.

Prepared by: Ana Gonzalez, City Clerk

Paul Navazio, City Manager

Attachment

COUNCIL LONG RANGE CALENDAR
Items subject to removal and/or rescheduling

JANUARY 6th — REGULAR MEETING — REPORTS DUE 12/23

Regular Calendar

Council Direction/Action on Implementation of District Elections
Mitigated Neg Dec / Solar Project
Terra Verde Contract Amendment
Award Construction Contract for West Transmission Main, CIP 12-05
Authorize to Bid Water Main Replacement Project, CIP 09-23
Approval of Agreement with Browns Corner LLC
Final Acceptance and NOC for 2014 Road Maintenance Project, CIP #14-14
Final Acceptance and NOC for Southwest Tank Acceptance, CIP 08-33

JANUARY 20th — REGULAR MEETING — REPORTS DUE 1/6__

Regular Calendar

Consideration of Local Tobacco License (Fee/Program)

FUTURE AGENDA ITEMS – DATE TO BE DETERMINED:

Purchase Contract – Recycled Water
Council Direction on Preferred General Plan Land Use Scenario (Feb/Mar)

FUTURE STUDY SESSIONS (TBD):

Lower Cache Creek Flood Control Feasibility Study
Update Economic Development Strategic Plan
Budget Workshop – Long-range Planning (Spring)

Updated 12/11/14

Legislation Details (With Text)

File #:	14-462 Version: 1	Name:	
Type:	Minutes	Status:	Agenda Ready
File created:	11/12/2014	In control:	City Council
On agenda:	12/16/2014	Final action:	
Title:	SUBJECT: Planning Commission Meeting Minutes Recommendation for Action: Staff recommends that the City Council receive the November 6, 2014 Planning Commission Minutes that were approved on November 20, 2014.		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	11_06_14 Meeting Minutes		

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014
SUBJECT: Planning Commission Meeting Minutes

Recommendation for Action: Staff recommends that the City Council receive the November 6, 2014 Planning Commission Minutes that were approved on November 20, 2014.

Staff Contact

Angela Weeks, Administrative Secretary - 530-661-5960, angela.weeks@cityofwoodland.org

Prepared by: Angela Weeks, Administrative Secretary, Community Development

Paul Navazio, City Manager

Attachments: November 6, 2014 Minutes

City of Woodland Planning Commission
c/o Community Development Department
300 First Street
Woodland, CA 95695

530-661-5820

City of Woodland

Meeting Minutes
Planning Commission

Thursday, November 6, 2014 **6:30 PM** **Council Chambers**

A. Call to Order

Meeting was called to order at 6:30 pm
Staff Present:
Cindy Norris, Principal Planner
Erika Bumgardner, Associate Planner

B. Roll Call

Present 6:
Commissioner Marco Lizarraga, Commissioner Fred Lopez, Commissioner Patricia Murray, Commissioner Seth Wurzel, Commissioner John Murphy and Commissioner Kirby Wells.

Absent 1:
Commissioner Chris Holt

C. Approval of Minutes

14-421 SUBJECT: Planning Commission Minutes

RECOMMENDATION: Staff recommends that the Planning Commission adopt the minutes of the Planning Commission meetings of October 2, 2014.

Attachments: 10_02_14 Meeting Minutes.pdf

A motion was made by Murray, seconded by Wells, that they be approved. The motion carried by the following vote:
Ayes: Patricia Murray, Kirby Wells, John Murphy, Marco Lizarraga, Fred Lopez and Seth Wurzel.

D. Directors Report

E. Public Comment

F. Communications

G. Subcommittee Reports

H Public Hearing

14-441 PROJECT TITLE: Spring Lake - Beeghly Ranch Development Agreement

SUBJECT: A request for approval of an Amendment to the Beeghly Development Agreement to specify the obligations of the developers including changes related to the construction of County Road 25A and to clarify timing and amounts for reimbursement of civil infrastructure and landscaping.

Attachments: Tentative Map.pdf

WOODLAND _PC Resolution Recommending CC Approval for Beeghly Ranch Subdivision-c1.docx

Execution Copy of First Amendment to DA (Solara Ranch 10 23).pdf

DA Ordinance Addendum - Beeghly Resolution .docx

The Public Hearing was opened by Commissioner Wurzel. The Hearing was closed and continued to the next Planning Commission Meeting scheduled for November 20, 2014.

14-437 AT&T Cell Tower Conditional Use Permit: Request for a Conditional Use Permit to allow the construction and operation of a 90-foot tall stealth telecommunications cellular tower in the shape of a water tower and the installation of related ground equipment on a 1,305 square foot leased area on an undeveloped parcel located approximately 200 feet south of East Main Street and approximately 300 feet east of Douglas Lane (APN 027-310-061).

Attachments: Att 1 and Ex A_Resolution and Project Conditions of Approval.doc

Ex B to Att 1_Site Plan and Elevations.pdf

Att 2_Project Application, Map, Site Photos.pdf

Att 3_Photo Simulations.pdf

Att 4_Radio Frequency Report.pdf

Att 5_Coverage Maps.pdf

Att 6_Noise Study.pdf

A motion was made by Commissioner Wells in support of staff's recommendation to approve the Conditional Use Permit with modifications to Condition of Approval #18 and #19. Commissioner Wells motion included further amended language to Condition #18, requiring the graphic image/mural design be brought back to the Planning Commission for review and approval prior to final design.

The motion did not carry, with Commissioner Wells and Commissioner Murray voting in support of the motion and Commissioner Lizzaraga, Commissioner Lopez, Commissioner Murphy and Commissioner Wurzel voting No.

A second motion was made by Commissioner Lizarraga and seconded by Commissioner Murphy in support of staff's recommendation to approve the Conditional Use Permit with modifications to Conditions of Approval #18 and #19 as presented by staff, with no additional modified language.

The motion carried with the following vote:
Ayes: Commissioner Lizarraga, Commissioner Murphy, Commissioner Lopez, Commissioner Wurzel.
Nos: Commissioner Murray and Commissioner Wells.

I. New Business

J. Old Business

14-440 SUBJECT: Informational Update Concerning the Comfort Suites Public Art Proposal

Attachments: Close up of elevation with murals.pdf

City Staff brought back the amended mural design for Confort Suites to the Planning Commission as requested at the last meeting. The Planning Commission supported the final design as presented. No further comments were provided.

K. Adjournment

The meeting was adjourned at 7:15 pm

The Planning Commission of the City of Woodland encourages all parties interested in a matter scheduled to be reviewed, discussed and acted on at a meeting, to participate in the public discourse, which may include the submission of written comments and materials. The Planning Commission notifies the public that those materials received less than 24 hours before a meeting date and time may not be able to be considered completely. Further, the Planning Commission encourages interested parties to attend the meeting to discuss any matter of concern and to explain their comments more fully.

300 First Street
Woodland, CA 95695

Legislation Details (With Text)

File #:	14-486	Version:	1	Name:	
Type:	Minutes			Status:	Agenda Ready
File created:	11/25/2014			In control:	City Council
On agenda:	12/16/2014			Final action:	
Title:	SUBJECT: Parks & Recreation Commission Meeting Minutes for October 27, 2014 Recommendation for Action: Staff recommends that the City Council receive the October 27, 2014 Parks & Recreation Commission Minutes that were approved on November 24, 2014.				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	102714 PRC Minutes				

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014

SUBJECT: Parks & Recreation Commission Meeting Minutes for October 27, 2014

Recommendation for Action: Staff recommends that the City Council receive the October 27, 2014 Parks & Recreation Commission Minutes that were approved on November 24, 2014.

Staff Contact

Kris Bain, Community Services Program Manager, 661-2002, krista.bain@cityofwoodland.org

Conclusion

Staff recommends that the City Council receive the October 27, 2014 Parks & Recreation Commission Minutes that were approved on November 24, 2014.

Prepared by: Kris Bain
Community Services Program Manager

Paul Navazio, City Manager

Attachment: October 27, 2014 P&R Commission meeting minutes

Parks & Recreation Commission Minutes

Monday, October 27, 2014

City Hall – 300 First Street – 2nd Floor Council Chambers

Open Session

The Parks & Recreation Commission meeting was called to order by Chair Jesse Salinas at 6:31 p.m. on Monday, October 27, 2014 at the Woodland City Hall Council Chambers.

Roll Call

Commission Members Present:	Chair Jesse Salinas Commissioner Ruben Morales Jr. Commissioner Joe Romero Commissioner Jon-Paul Valcarenghi Commissioner Stephanie Smith
Commission Member Absent:	Commissioner Enrique Fernandez, Vice Chair Carla White-Snyder
Staff Present:	CS Director Christine Engel CSM Kris Bain

Pledge of Allegiance

Communication-Commission/Staff Statements and Requests

Commissioner Morales Jr. attended Movies on Main Street and had a good time. Commissioner Morales stated that there were more Hispanic residents present at this event and was able to talk with them.

Correspondence

Letter received from Senior Center Inc. offering support by way of volunteers for Measure J programming. Commissioner Salinas will reach out to Senior Center, Inc.

Committee Reports

Commissioner Salinas reviewed that Budget and Finance Committee meeting with staff. Highlights were, department has $2.2 million annual budget. Staff has no discretion over 90% (staffing, indirect expenses, etc.) $212,000.00 discretionary for services and supplies.

Consent Calendar (Items)

Adopt the Minutes of the Commission Meeting of September 22, 2014

Action: Morales Jr. Moved/ Valcarenghi seconded
Motion carried by the following roll call vote:
Ayes: Salinas, Romero, Valcarenghi, Morales Jr.,
Noes: 0
Abstain: Miller

Other Business

Update on Outreach to Non-English Speaking Communities

Item held over to November meeting.

Softball Update

Bain stated last softball managers meeting was three weeks ago, Commission White-Snyder attended. Collier discussed issues that had previously been discussed and has started the softball survey (length of season, when season starts, how best to offer program, and fees). Playoffs are starting and season ends in two weeks. Commissioner Salinas stated that he would like to receive the softball surveys and results.

Reports of the Staff

Community Services Report

Engel addressed issues from Woodland Little League at Camarena and Pedroia fields. City staff will resolve the complaints of the homeless at the locations and will continue to be discussed at the City P.O.P. meetings and Little League parents have been directed how to communicate to City staff. Commissioner Miller addressed the same issue at City Park. Commissioner Morales Jr. continued to reiterate to call PD if you see something wrong.

Engel provided the Commission with updates for Measure J, stating that the purchase of the movies screen, reimbursement of player fees to families at $15 per family with over 1,000 families, program at Douglass Middle School will roll out soon. Commissioner Salinas would like a Measure J spreadsheet for the Commission can see the highlights.

Action: Received

Parks Report

Engel stated that staff is waiting to take a resolution to the City Council for adoption for the grant to purchase playground equipment for City Park. City Park and Crawford Park will have a meeting and invite neighbors (and Council and Commission) to help select the equipment for the parks. Salinas requested that outreach for these meetings be in English and Spanish.

Hiddleson Pool update, reviewing feasibility study with City Council subcommittee and determining if City will get second opinion on how to reopen the pool. Commissioner Salinas asked about open work orders attached and unattached. How staff prioritizes work orders and why hasn't been a change in the number of open work orders? Commissioner Valcarenghi asked to have the tree committee meet with Sanders before the November meeting. Commissioner Valcarenghi also asked about the tree planting and Arbor Day plans. Commissioner Salinas had questions about Parks budget snapshot. Salinas requested that the Public Works budget summary conclude at the end of a month and not mid-month.
Action: Received

Next Meeting November 24, 2014

Adjourn 7:29 p.m.
Action: Morales Jr. Moved/ Miller Seconded to adjourn the meeting.
Motion carried by the following roll call vote:
Ayes: Salinas, Miller, Romero, Valcarenghi, Morales Jr.,
Noes: none

Legislation Details (With Text)

1.

File #:	14-496	Version: 1	Name:		
Type:	Consent Item(s)		Status:	Agenda Ready	
File created:	12/4/2014		In control:	City Council	
On agenda:	12/16/2014		Final action:		

Title: SUBJECT: Public Works Quarterly Status Report for the period of September through November 2014

Recommendation for Action: Staff recommends that the City Council accept the Public Works Department's Quarterly Status Report

Sponsors:

Indexes:

Code sections:

Attachments: Quarterly Report - Sept-Nov

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014

SUBJECT: Public Works Quarterly Status Report for the period of September through November 2014

Recommendation for Action: Staff recommends that the City Council accept the Public Works Department's Quarterly Status Report

Staff Contact

Johanna Currie - Senior Management Analyst - 530-661-5902
johanna.currie@cityofwoodland.org

Fiscal Impact

None - for information only.

Background

This quarterly status report covers the period of September through November 2014. The Report presents a summary of Service Requests and Work Orders completed, and also contains a narrative description of major work performed and/or notable Department highlights.

Conclusion

Staff recommends that Council receive the Report and advice staff if they have any questions.

Prepared by: Johanna Currie
Senior Management Analyst

Reviewed by: Gregor G. Meyer
Public Works Director

Paul Navazio, City Manager

Attachment

Public Works Department

Quarterly Status Report

September 2014 through November 2014

For the Months of Sept-Nov 2014		
Division	**Service Requests**	**Work Orders**
Administration	1,131	-
Electrical	99	108
Environmental Services	609	160
Facilities	90	183
Fleet	-	439
Parks	32	371
Pretreatment	0	35
Sewer	55	391
Signs & Markings	12	125
Storm Drain	10	57
Streets	54	253
Urban Forestry	97	203
WPCF	-	120
Water	876	384
Grand Total	**3,065**	**2,829**

Service Requests – Every time a request for Public Works services is made by phone call, written request, emailed request, or an actual one-on-one request to a PW employee, a **'Service Request'** is generated. This builds a computerized record of all requests made.

Work Orders – A **'Work Order'** is created each time a work crew or individual is assigned a task as a result of either service requests, pre-planned maintenance projects, or by other situations as they arise. This produces a database of work accomplished and the time and materials it took to do the work.

Total for <u>Calendar</u> Year 2014 Through 11/30/14	
Service Requests	Work Orders
11,598	**10,160**

61 Working Days This Quarter = 50 Requests for Service per Day

Environmental Services Division

The following were major projects this quarter:

- Solar project – Moved forward value engineering efforts and development of power purchase agreement and other legal documents with BBK, Terra Verde, and the preferred solar project provider. Prepared project CEQA compliance documents and circulated for public review.
- Electric vehicle charging – Established installation schedule and details with PG&E and EV installers.
- Climate Action Plan – Launched 2,400 Trees Campaign with Woodland Tree Foundation. Initiated PG&E-sponsored residential energy efficiency program with Empower Efficiency.
- Water conservation – Continued to publicize Stage One Water Alert requirements. Held public Fix-a-Leak Workshop with presentations by local plumbers.

- Waste programs – Held fifth annual Pharmaceutical Take-Back Event in coordination with PD and wastewater operations. Held semi-annual used oil filter exchange in coordination with other Yolo County jurisdictions.
- Other major efforts included:
  - Submittal of annual MS4 permit compliance report;
  - Advancement of compliance with commercial recycling requirements;
  - Coordinating construction and demolition debris recycling activities; and
  - Promotion of mulch, rain barrel, irrigation controller, and compost bin rebates.

Fleet & Facilities Division

- Facilities Services: Facilities Services currently has a backlog of 46 service requests, up from 29 from the last Council Report. Much of this increase had to do with the Facilities Maintenance Worker taking time off for the holidays as well as vacation and sick leave during this quarter. Facilities Services has previously sought to hire a local handyman service to aid in the effort of keeping our number of service requests to an acceptable level. However, there have been a couple of challenges thus far. One challenge is the availability of the current handyman. We have requested for his service to take care of installing a ladder at City Hall, but he has not been available to perform the task so far (two months). The other challenge is that we have reached out to other local handyman services, but they have not possessed the required license or insurance for the City to hire them. We will continue to search for creative methods of attending to our backlog of work.
- Fleet Services: Fleet Services achieved a 96.7% Fleet Availability rate in the past quarter (exceeding our 95% goal)! What this means is that registered vehicles and equipment were available to the users over 96% of the time. This speaks volumes about Fleet's ability to service vehicles/equipment in a timely and effective fashion so that departments can accomplish their duties with minimal interruption.
- Fleet Services: Fleet Services, in partnership with IT, created a way for vehicle users to request loaner vehicles through the Microsoft Exchange. Now users can view each loaner vehicle's calendar and see ahead for the future use of that vehicle in an automatic fashion, which will significantly streamline the communication process as well as ensure a vehicle is not double-booked. This action satisfies an idea brought forth to Fleet Services staff in a recent Vehicle User's Group meeting.

Right of Way Division

- Electrical: Replacement of Crawford Park Main Distribution Panel – This panel was installed during the original construction of the park over 30 years ago. Over the years it has sustained severe weather and rust damage. Moreover, losing this main component of the parks electrical system would cause a significant downtime of the electricity which is used for pathway and court lighting, irrigation, and the restroom facilities. This equipment is needed to promote the City's ability to provide the General Public with a safe and reliable environment. This project is projected to be completed by February 2015 and is being funded from Measure E.

- Sign & Markings: Retro-Reflectivity Program - Traffic signs provide important information to drivers at all times, both during the day and at night. To be effective, their visibility must be maintained and regulated. The California Manual on Uniform Traffic Code Devices (CAMUTCD) mandates that agencies establish and implement a method to maintain minimum levels of sign retro-reflectivity.

  To meet these standards, staff is currently testing reflectivity of 50% of regulatory signs, 30% of warning signs, and 20% of guide signs from each area of the City. This testing will provide the baseline for maintenance scheduling and budgetary needs.

- Streets: 2015 Seal Project - In preparation for the 2015 seal project in Zone 1, the Street group has started routine maintenance in this area. Zone 1 consists of roads from W. Main St to just north of W. Kentucky Ave between N. West St and County Rd 98.

  The Street Group has crack-sealed approximately 70% of this area to date and performed minor skin paving at multiple locations. Staff has surveyed this area and identified areas that will require base repair and additional skin paving. These projects will begin in the spring of 2015 and completed prior to Zone 1 being sealed.

- Streets: Downtown Request - The Street Group has responded to several requests from CDD for the downtown area. These requests primarily have focused on trash cans, benches, and bike racks. The services requested from the Street Group have included installing, relocating, or totally removing these items from their current locations.

Parks Division

- Urban Forestry: Maintenance
  Council approved the contract for our annual cyclical tree maintenance with West Coast Arborists (WCA); the total amount of the contract is $150K. The funding is broken down as follows:

  General Fund - $133K
  Gibson Ranch Lighting and Landscape District - $10K
  Spring Lake Lighting and Landscape District - $7K

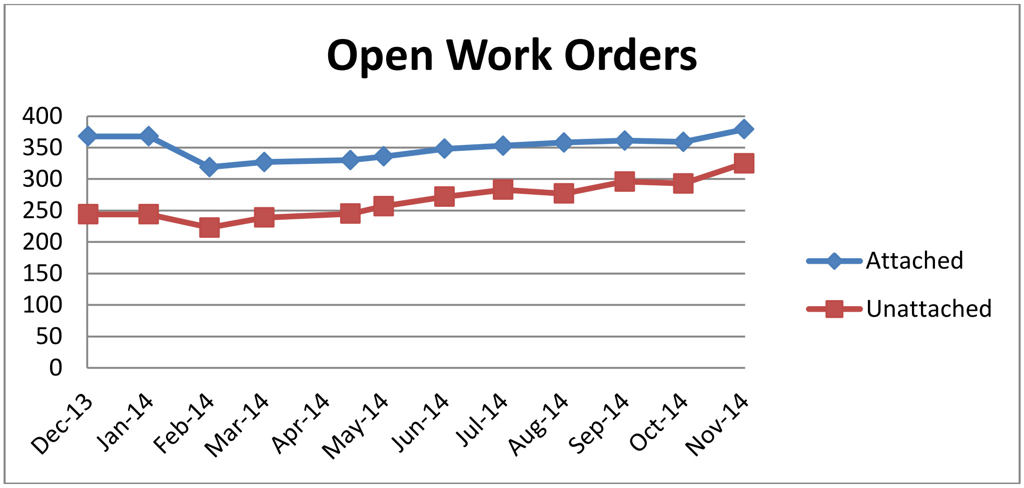
  Staff will be working very closely with WCA to ensure that the City is nearing their goal of a seven year pruning cycle. There are still a few streets left to be pruned in Area #6, and then WCA will be moving into Area #13. This is the beginning of the pruning cycle, thus starting a new 7 year pruning cycle in the City.

- Currently there are 379 attached and 325 unattached work orders that are open and waiting to be processed. This is a total of 704 pending tasks that are currently on the books waiting for staff time and equipment.

  Attached work orders are tasks that are generated by the public (e.g., hazards, requests for pruning and removals, tree evaluations and plantings, etc.).

  Unattached work orders are tasks that are internally created by Public Works staff (e.g., stump and tree removals, small tree care and insecticide treatments, etc.).

Below is a graph depicting the volume of work orders over the last 12 months.



- General Fund Parks – Unfortunately we continue to experience a significant backlog of maintenance in our General Fund parks (GFP). With only one full-time employee responsible for maintenance at 18 parks. While we contract out our landscaping services, we are challenged in meeting ongoing safety inspections, equipment repairs, facility maintenance, and public service requests.

  In addition our deferred maintenance backlog for park facilities continues to grow. The following is a partial list of tasks or projects that need to be addressed:

  a. Resurfacing of basketball courts and tennis courts
  b. Updating restrooms and picnic areas to meet ADA standards
  c. Replacing all barbecue pits that have rusted out.
  d. Continuous painting of all picnic stations and restroom facilities/shops.
  e. Continuous maintenance of 15 playgrounds.
  f. Continuous maintenance of fencing/gates at all parks
  g. Changing all old wood picnic tables and benches to current standards (concrete or steel) to reduce yearly maintenance.

- Various Parks – Woodside, Crawford, Dave Douglas, Pioneer, and Slaven Parks all had dog waste dispensers installed so that citizens can easily clean up after their dogs when frequenting the parks.

- Campbell Park – Extended the block wall to better enhance the privacy for women's rest rooms.

- Everman Park – Ground and epoxy painted the restroom floors for the ease of maintenance and cleaning.

- Camarena Park – Replaced the booster pump and control system, that was set on fire by vandals, is now operational.

Utilities - Sewer and Storm Division

The Collections Group, in conjunction with CDD and Michel's Materials, has recently completed the second phase of a flat-bottom manhole rehabilitation project. Flat-bottom manholes are not channelized; therefore, solid material deposits on the periphery of the flat-bottom floor. This deposited organic matter decays, creating odor issues and contributes to manhole wall corrosion. Currently, the system is flushed on a weekly basis to help minimize these concerns.

As a more permanent and overall less labor intensive measure to resolve these issues, Collections field staff worked in conjunction with Michel's Materials to channelize manhole bottoms by providing system pre-cleaning, in-field technical support, and construction inspection services. Sixty-seven of the ninety-seven flat-bottom manholes have been channelized and another fourteen have received wall repairs. Once the remaining thirty flat-bottom manholes are repaired, all ninety-seven manholes can be moved from their current weekly maintenance schedule to a semi-annual maintenance timetable. This project will extended the useful life of this portion of the Collection system and reduce Collections staff annual workload by approximately 1,200 man hours ($27,000).

Manhole bottom before:

Manhole bottom after:

Utilities - Water Production and Distribution Division

- Well 18 – On November 20th we had a positive "Total Coliform" bacteriological sample. The City is required by the State to take raw water samples at each well site once per month. These samples are **non-compliance**, rather than "indicators" if we were to have a Coliform outback in the system. This information is compiled and used to help us narrow down the source of the problem, if we were to have one. This does, however, create work for the operations staff to conduct a full disinfection process, which takes time and effort.

- With all this rain over the last few days our system water demand has dropped by about 2 MGD (million gallons per day) which puts our current daily demand at 5 MGD. We are now able to keep up with water demand by running 2-3 wells at any given time.

- We now have a fire hydrant meter program in place, but we continue to work out the bugs. Over the last 3 months we have generated approximately $20,000 by charging contractors for the water they use. Many hours of work and a significant number of meetings took place to get this program up and running, but it was worth it, as this program has already become is a huge success that will benefit the City for years to come.

Wastewater Operations Division

The Water Pollution Control Facility's new 5-year NPDES permit went into effect on December 1st and contains fairly similar requirements as the previous permit. As such, we do not anticipate any difficulties in complying with the permit orders.

Work continues on the oxidation ditches with completion of the first ditch projected for March 2015. This retrofit will increase the volume as well as improve the distribution of oxygen in this phase of the treatment process. Once all three of the scheduled oxidation ditch repairs are completed, the plants treatment capacity will increase by approximately 33%, and effluent quality, with regard to nitrate, will be improved.

The wastewater pretreatment program consists of an Environmental Compliance Specialist and an Environmental Compliance Inspector I / II. Both positions have recently become vacant. Interviews have been conducted and an offer of employment has been tendered to Angela Weeks (CDD) for the Environmental Compliance Inspector I / II. The Environmental Compliance Specialist position has been open for applicants for approximately 4 weeks and we have received over 20 applications with only one applicant meeting the minimum qualifications. The position will remain open for roughly another month in an attempt to deepen the candidate pool.

Legislation Details (With Text)

2.

File #:	14-475	Version: 1	Name:		
Type:	Consent Item(s)		Status:	Agenda Ready	
File created:	11/20/2014		In control:	City Council	
On agenda:	12/16/2014		Final action:		

Title: SUBJECT: Approval of Final Map 4853 Solara Ranch and Related Subdivision Improvement Agreement.

Recommendation for Action: Staff recommends that the City Council adopt Resolution No. _____ a Resolution of the City Council 1) approving Final Map 4853 Solara Ranch, 2) the related Subdivision Improvement Agreement, 3) authorizing City Manager to sign on behalf of the City, and 4) authorizing the City Manager to approve amendments to the Subdivision Improvement Agreement for the extension of time.

Sponsors:

Indexes:

Code sections:

Attachments: Location Map
Resolution
Subdivision Improvement Agreement 11042014

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014

SUBJECT: Approval of Final Map 4853 Solara Ranch and Related Subdivision Improvement Agreement.

Recommendation for Action: Staff recommends that the City Council adopt Resolution No. _____ a Resolution of the City Council 1) approving Final Map 4853 Solara Ranch, 2) the related Subdivision Improvement Agreement, 3) authorizing City Manager to sign on behalf of the City, and 4) authorizing the City Manager to approve amendments to the Subdivision Improvement Agreement for the extension of time.

Staff Contact

Bruce D. Pollard, (530) 661-5820, bruce.pollard@cityofwoodland.org

Fiscal Impact

This project's processing costs were covered by fees. In addition, at build-out, the 94 lots are estimated to generate approximately $2,000,000 in Development Impact Fees.

Background

On January 13, 2004, the City Council approved the ±79.8 acre Beeghly Tentative Subdivision Map No. 4793 and Development Agreement, consisting of 309 single-family lots and two multi family lots. The first portion of the map was completed in 2007 by Centex Homes. Western Pacific Housing Inc. is requesting approval of the final 94 single family lots.

The Developer, WPHI, has completed all conditions required by tentative map No. 4793, and the amended development agreement (amendment approved by City Council December 16, 2014). WPHI is requesting that the City approve Final Subdivision Map (SM) No. 4853, Solara Ranch, and the associated Subdivision Improvement Agreement.

Discussion

The map, improvement plans, and related documents have been reviewed by staff and found to be technically correct and consistent with the tentative map, project development agreement, and conditions of approval. This map includes the abandonment and rededication of right of way on Harry Lorenzo Avenue so that the final constructed road is coincidental with the right of way.

The Subdivision Improvement Agreement is provided as an attachment to this report. Under the Subdivision Map Act, the City is required to approve the final map once all conditions have been met and securities have been posted.

Conclusion

Staff recommends that the City Council adopt Resolution No. _____ a Resolution of the City Council 1) approving Final Map 4853 Solara Ranch 2) the related Subdivision Improvement Agreement, 3) authorizing City Manager to sign on behalf of the City, and 4) authorizing the City Manager to approve amendments to the Subdivision Improvement Agreement for the extension of time.

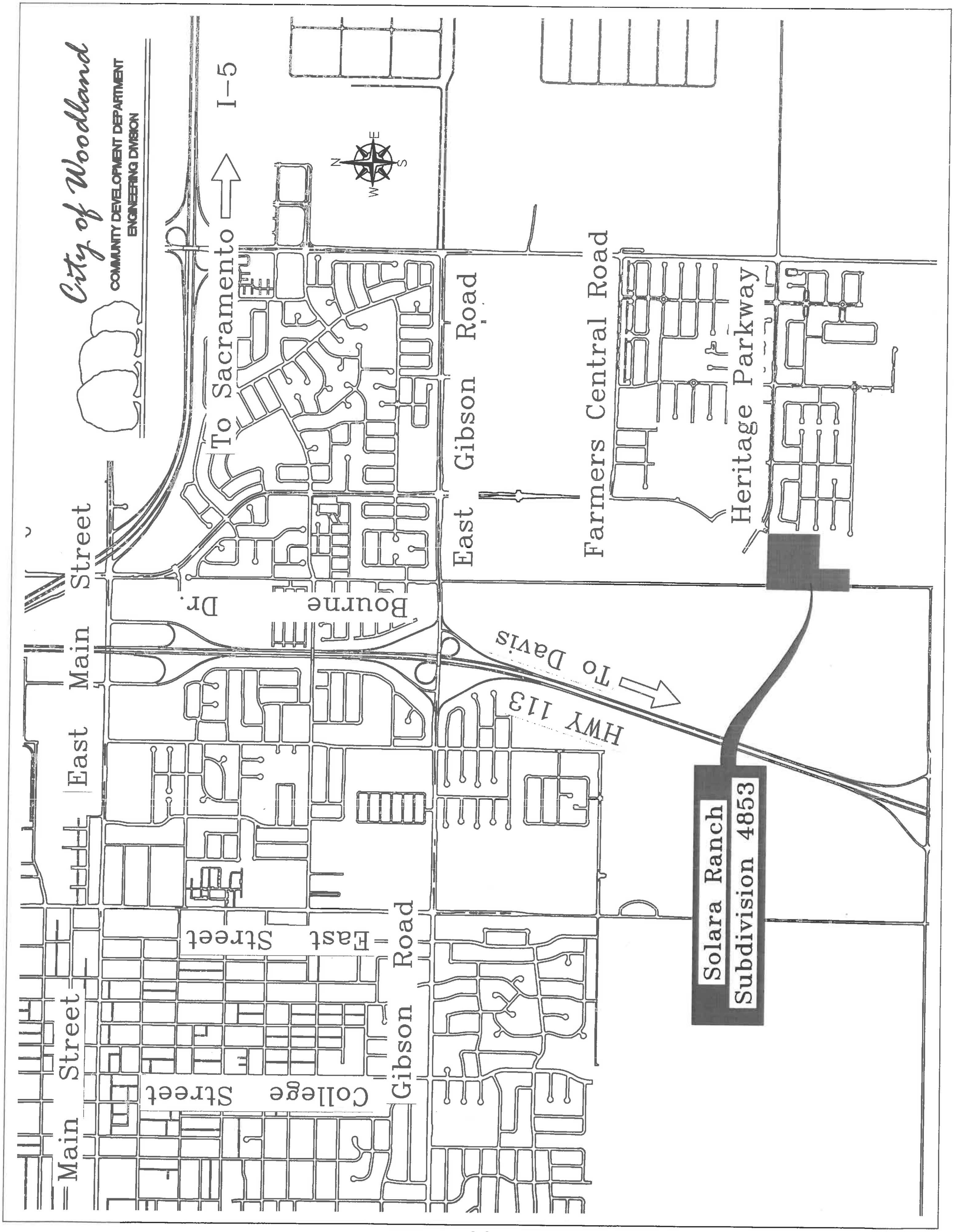
Prepared by: Bruce D. Pollard
Senior Civil Engineer

Reviewed by: Brent Meyer
City Engineer

Reviewed by: Ken Hiatt
Community Development Director

Paul Navazio, City Manager

ATTACHMENTS:
Attachment A - Location Map
Attachment B - Resolution
Attachment C - Subdivision Improvement Agreement


City of Woodland
COMMUNITY DEVELOPMENT DEPARTMENT
ENGINEERING DIVISION
I–5
To Sacramento
East Gibson Road
Farmers Central Road
Heritage Parkway
East Main Street
Bourne Dr.
To Davis
HWY 113
Solara Ranch
Subdivision 4853
East Street
Gibson Road
College Street
Main Street
N
E
S
W

RESOLUTION NO. ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WOODLAND APPROVING FINAL MAP 4853 AND A SUBDIVISION IMPROVEMENT AGREEMENT WITH WESTERN PACIFIC HOUSING INC. FOR CONSTRUCTION OF SUBDIVISION IMPROVEMENTS

WHEREAS, on January 13, 2004 the City of Woodland approved tentative map 4793 "Beeghly" with map conditions of approval and a Development Agreement; and

WHEREAS, on December 16, 2014 the City Council approved a Development Agreement modifying the conditions of approval; and

WHEREAS, Western Pacific Housing has completed the conditions of approval and has filed a final map for 94 lots; and

WHEREAS, the City of Woodland has reviewed the map and determined that it is technically correct and that the conditions of approval have been met; and

WHEREAS, the City Council wishes to approve Final Map 4853, Solara Ranch, a portion of tentative map 4793, and the associated Sub Division Improvement Agreement and authorize its execution through the adoption of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WOODLAND AS FOLLOWS:

Section 1. The City Council hereby approves Final Map 4853, Solara Ranch, and directs the City Clerk to sign the map and for the City Engineer to forward the map to the County Assessor.

Section 2. The City Council hereby approves the Subdivision Improvement Agreement. The City Manager is hereby authorized and directed to execute the Agreement, and is authorized to amend the agreement to grant extensions to the agreement if necessary.

Section 3. A copy of the Subdivision Improvement Agreement is available and on file in the City Clerk's office, and is incorporated herein by reference and made a part of this Resolution.

PASSED AND ADOPTED this ________ day of ___________ 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

____

Tom Stallard, Mayor

ATTEST:

____

Ana B. Gonzalez, City Clerk

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

CITY OF WOODLAND
300 First Street
Woodland, California 95695
ATTN: City Clerk

(Exempt from Filing Fees – Government Code § 6103)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBDIVISION IMPROVEMENT AGREEMENT

FOR COMPLETION OF PUBLIC IMPROVEMENTS

SUBDIVISION MAP NO. 4853

SOLARA RANCH SUBDIVISION

between

THE CITY OF WOODLAND

a California municipal corporation

and

WESTERN PACIFIC HOUSING, INC.

A DELAWARE CORPORATION

82093.00016\3513833.8

SUBDIVISION IMPROVEMENT AGREEMENT
FOR COMPLETION OF PUBLIC IMPROVEMENTS

SUBDIVISION MAP NO. 4853

I. PARTIES AND DATE

This Subdivision Improvement Agreement for the Completion of Public Improvements ("Agreement") is entered into as of this ____ day of _________, 20__, by and between the CITY OF WOODLAND, a California municipal corporation ("City") and WESTERN PACIFIC HOUSING, a Delaware corporation, with its principal office located at 5050 Hopyard Drive, suite 180, Pleasanton, California, 94588 ("Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

II. RECITALS

A. Developer's tentative parcel map for real property located within City, a legal description of which is attached hereto as Exhibit "A" ("Property"), was conditionally approved by the Woodland City Council on March 23, 2004. The tentative subdivision map is identified in City records as Subdivision Map No. 4853 ("Map").

B. Developer is the owner of Property, and Developer proposes to do and perform certain work of improvement thereon as set forth in this Agreement.

C. Developer has submitted and requests approval of Final Map No. 4853, which relates, in whole or in part, to the subdivision proposed by Developer's Map for the Property.

D. Developer has not completed all of the work or made all of the public improvements required by Chapter 21 of the Woodland Municipal Code, the Subdivision Map Act (California Government Code Section 66410, et seq.) ("Map Act"), the conditions of approval for the Map, or other ordinances, resolutions, or policies of City requiring construction of improvements in conjunction with the subdivision of land.

E. Pursuant to Chapter 21 of the Woodland Municipal Code and the applicable provisions of the Map Act, Developer and City enter into this Agreement for the timely construction and completion of the public improvements and the furnishing of the security therefor, acceptable to the City Engineer and City Attorney, for the Map.

F. Developer's execution of this Agreement and the provision of the security are made in consideration of City's approval of the final map for the Property.

G. The development of the Property is also subject to the terms and conditions of a development agreement, recorded at the Yolo County Recorder's Office on March 2, 2004 and subsequent amendments.

III. TERMS

1.0 Effectiveness. This Agreement shall not be effective unless and until all four of the following conditions are satisfied: (a) Developer provides City with security of the type and in the amounts required by this Agreement; (b) Developer executes and records this Agreement in the Recorder's Office of the County of Yolo; (c) the City Council of the City of Woodland ("City Council") approves the final map for the Property; and (d) Developer records the final map for the Property in the Recorder's Office of the County of Yolo. If any of the above described conditions are not satisfied, this Agreement shall automatically terminate without need of further action by either City or Developer, and Developer may not thereafter record the final map for the Property.

1.1 Definitions. For purposes of enforcing this Agreement, the term "City" shall include, but shall not be limited to, City Council, Public Works Director, City Engineer, Community Development Director, Building Official, or any of their authorized representatives. City shall have the sole and absolute discretion to determine which public body, public official, or public employee may act on behalf of City for any particular purpose.

2.0 Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all improvements required by City as part of the approval of the Map, including, but not limited to, all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities as shown in detail on the plans, profiles, and specifications which have been prepared by or on behalf of Developer for the Map ("Public Improvements"). The Public Improvements are more specifically described in Exhibit "B," which is attached hereto and incorporated herein by this reference. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any utility system or public improvement in conflict with the construction or installation of the Public Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such utility system or public improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or required by City to fully and adequately complete the Public Improvements.

2.1 Prior Partial Construction of Public Improvements. Subject to Section 2.3, herein, where construction of any Public Improvements has been partially completed prior to the execution of this Agreement, Developer agrees to complete such Public Improvements or ensure their completion in accordance with this Agreement.

2.2 Permits; Notices; Utility Statements. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer. Prior to commencing any work, Developer shall file a written statement with the City Clerk and the City Engineer, signed by Developer and each utility that will provide utility service to the Property, attesting that Developer has made all deposits legally required by the utility for the extension and provision of utility service to the Property.

2.3 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any Public Improvement until all plans, specifications, estimates, and bonds for such Public Improvement have been submitted to and approved by the City Engineer, or his/her authorized designee. Approval by the City Engineer shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the Public Improvements shall be prepared in accordance with all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements. The Public Improvements shall be completed in accordance with all approved maps, conditions, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required to construct the Public Improvements under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications, and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to Improvements. The Public Improvements in Exhibit "B" are understood to be only a general designation of the work and improvements to be done, and not a binding description thereof. All work shall be done and improvements made and completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation of the Public Improvements it is determined that the public interest requires alterations in the Public Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications and the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.

2.7 Superintendence by Developer. Developer shall require each contractor and subcontractor to have a competent foreperson on the job at all times when that contractor or subcontractor, or any employee or agent thereof, is performing work on the Public Improvements. Before starting work on the Public Improvements, each contractor and subcontractor shall submit in writing the name of the proposed foreperson, who shall be subject to the review and approval of City. Following approval by City, each foreperson shall be present at the work site at all times that any work is in progress and at any time that any employee of the contractor or subcontractor is present at the work site. Should a contractor or subcontractor desire to change its foreperson, it shall provide the information specified above and obtain City's prior written approval. City, in its sole and absolute discretion, may require any contractor or subcontractor to replace its foreperson provided that City gives the contractor or subcontractor at least forty-eight hours written notice.

Developer shall also provide a competent construction manager who is responsible for the entire work. Each contractor or subcontractor shall contractually report to the construction manager, either directly or through a subcontract. At a minimum, the construction manager shall be onsite 2-3 times/week and will be available to attend weekly jobsite meetings with the City. The construction manager shall be immediately available by phone during hours when construction is in progress and shall be available in person within two hours when requested by the City. The construction manager shall coordinate the work such that construction and the associated inspection happen in an efficient manner

Developer shall, at all times, enforce strict discipline and good order among its employees and those of its subcontractors and shall not employ any unfit person or anyone not skilled in the assigned task. If any person employed by a contractor or subcontractor fails or refuses to carry out the directions of the City or appears to the City, in its sole and absolute discretion, to be incompetent or to act in a disorderly or improper manner, such person shall be removed from the project immediately upon request by the City, and such person shall not again be employed on the work. Such removal shall not be the basis for any claim of compensation or damages against the City.

In addition, Developer shall maintain an office with a telephone, and Developer or a person authorized to make decisions and to act on Developer's behalf in Developer's absence shall be available to be on the job within three (3) hours of being called at such office by the City, during the hours of 9:00 a.m. through 5:00 p.m., Monday through Friday, or any other day or time when work is being performed on the Public Improvements. Developer shall also provide City with a telephone number, at which Developer, or its representative, shall be available twenty-four (24) hours a day in the event of an emergency.

3.0 Maintenance of Public Improvements and Landscaping Prior to Acceptance by City. City shall not be responsible or liable for the maintenance or care of the Public Improvements until City approves and accepts them. City shall exercise no control over the Public Improvements until accepted. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to City's acceptance of the Public Improvements. Developer shall maintain all the Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by City, and until the security for the performance of this Agreement is released.

Maintenance shall include, but shall not be limited to: repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. Developer shall cause the sweeping of streets to occur weekly at a minimum. Developer shall perform additional street sweeping work as necessary depending on construction activities or as required by, and at the direction of, the City Engineer. It shall be Developer’s responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this Section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

4.0 Construction Schedule. Unless extended pursuant to this Section of this Agreement, Developer shall fully and adequately complete or have completed the Public Improvements by _____________, 20____ or before any certificates of occupancy are issued for any lots within the Property, whichever is earlier. At least fifteen (15) days prior to the commencement of such work, Developer shall notify the City Engineer in writing of the date fixed by Developer for commencement of the work.

4.1 Extensions. Time is of the essence with regard to this Agreement. The City Council may, in its sole and absolute discretion, provide Developer with additional time within which to complete the Public Improvements. Requests for extension of time shall be in writing and shall be delivered to City in the manner hereinafter specified for service of notices. An extension of time, if any, shall be granted only in writing, and an oral extension shall not be valid or binding on City.

It is understood that by providing the security required by this Agreement, Developer and its surety consent in advance to any extension of time as may be given by City to Developer and waive any and all right to notice of such extension(s). Developer's acceptance of an extension of time granted by City shall constitute a waiver by Developer and its surety of all defenses of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by City following the date on which the Public Improvements were to have been completed hereunder.

In addition, as consideration for granting such extension to Developer, City reserves the right to review the provisions of this Agreement, including, but not limited to, the construction standards, the cost estimates approved by City, and the sufficiency of the improvement security provided by Developer, and to require adjustments thereto when warranted according to City's reasonable discretion.

4.2 Accrual of Limitations Period. Any limitations period provided by law related to breach of this Agreement or the terms thereof shall not accrue until Developer has provided the City Engineer with written notice of Developer’s intent to abandon or otherwise not complete required or agreed upon Public Improvements.

5.0 Grading. Developer agrees that any and all grading done or to be done in conjunction with construction of the Public Improvements or development of the Property shall conform to all federal, state, and local laws, ordinances, regulations, and other requirements including, without limitation, City's grading regulations, the National Pollutant Discharge Elimination Systems (NPDES), and stormwater regulations thereunder as administered by the State Water Resources Control Board and Regional Water Quality Control Boards. In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the time schedule for completion of the Public Improvements established by this Agreement, and prior to City's approval and acceptance of the Public Improvements and release of the Security as set forth in this Agreement. Developer further agrees that the indemnification as set forth in this Agreement shall extend to and include any and all grading contemplated by this Agreement, including but not limited to, any partial or rough grading work.

6.0 Utilities. Developer shall assume all costs for and shall provide utility services, including water, power, gas, and telephone service to serve each parcel, lot, or unit of land within the Property in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the regulations, schedules, and fees of the utilities or agencies providing such services. Except for commercial or industrial properties, Developer shall also provide cable television facilities to serve each parcel, lot, or unit of land in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the requirements of the cable company possessing a valid franchise with City to provide such service within City's jurisdictional limits. All utilities shall be installed underground, unless otherwise approved by the City Council or the Planning Commission of the City of Woodland, or by any other state or federal laws or regulations.

7.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the Public Improvements, including, but not limited to fees for the checking, filing, and processing of improvement plans and specifications and for inspecting the construction of the Public Improvements. These fees must be paid in full prior to approval of the final map and improvement plans. The fees referred to above are not necessarily the only City fees, charges, or other costs that have been or will be imposed on the subdivision and its development, and this Agreement shall in no way exonerate or relieve Developer from paying such other applicable fees, charges, and/or costs.

8.0 City Inspection of Public Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur.

9.0 Default; Notice; Remedies.

9.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within ten (10) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs and expenses.

9.2 Failure to Remedy; City Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to City within the time frame contained in the Notice, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none, of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

9.3 Other Remedies. No action by City pursuant to this Section of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise it rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

9.4 Administrative Costs. If Developer fails to construct and install all or any part of the Public Improvements within the time required by this Agreement, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

10.0 Acceptance of Improvements; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City Council shall be authorized to accept the Public Improvements. The City Council may, in its sole and absolute discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements within the time required by this Agreement. Upon the total or partial acceptance of the Public Improvements by City, the City Clerk shall file with the Recorder's Office of the County of Yolo, a notice of completion for the accepted Public Improvements in accordance with California Civil Code Section 9204, at which time the accepted Public Improvements shall become the sole and exclusive property of City without payment therefor.

Title to and ownership of the Public Improvements constructed under this Agreement shall vest absolutely in City upon completion and acceptance in writing of such Public Improvements by City.

Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any Public Improvements. Notwithstanding the foregoing, City may not accept any Public Improvements unless and until Developer provides one (1) set of “as-built” or record drawings or plans to the City Engineer for all such Public Improvements. The drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

11.0 Security; Surety Bonds. Prior to execution of this Agreement, Developer shall provide City with surety bonds in the amounts and under the terms set forth below (“Security”). Nothing in this Section is intended to prevent City, in its sole discretion, from requiring

Developer to submit, or prevent Developer from submitting, security in a form other than bonds that may be allowed under California Government Code Section 66499, et seq. and Chapter 21 of the Woodland Municipal Code, and acceptable to City. The amount of the Security shall be based on the City Engineer's approximation of the actual cost to construct the Public Improvements, including the replacement cost for all public landscaping ("Estimated Costs"). If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this Section shall in no way limit or modify Developer's indemnification obligation under this Agreement.

11.1 Faithful Performance Bond. To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in Section 9.0, *et seq*., of this Agreement, and to secure Developer's one-year guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City a faithful performance bond in the amount of **Nine Million, Two Hundred Forty-eight Thousand Dollars ($9,248,000.00)**, which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The City may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the Public Improvements are accepted by City, as provided under Section 13.0 herein, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Map, and the total remaining security is not less than twenty-five percent (25%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period (as defined below), or any extension thereof as provided in Section 13.3 of this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Map.

11.2 Labor and Material Bond. To secure payment to the contractors, subcontractors, laborers, material men and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer shall provide City a labor and materials bond in the amount of **Four Million, Six Hundred Twenty-four Thousand Dollars ($4,624,000.00)**, which sum shall not be less than fifty percent (50%) of the Estimated Costs. The security provided under this subsection may be released by written authorization of the City Engineer after one (1) year or within the time limits established in California Government Code section 66499.7 from the date City accepts the final Public Improvements at the discretion of City. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of City's anticipated administrative and legal expenses arising out of such claims.

11.3 Guarantee and Warranty Bond. Developer hereby guarantees and warrants all Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all public landscaping within the Property in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the work and acceptance by City ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Public Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of City, and to the approval of the City Engineer but shall not be responsible for routine maintenance after acceptance by City. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Public Improvements that have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following City's acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this Section shall survive the expiration or termination of this Agreement.

Prior to execution of this Agreement, Developer shall provide City with an irrevocable guarantee and warranty bond in the amount of ten percent (10%) of the Estimated Costs of the Work to guarantee and warrant the Work, for a period of one year following its completion and acceptance, against any defective work or labor done, or defective materials furnished, as required by California Government Code Section 66499.3(d). Any unused portion of the guarantee and warranty security shall be released one year after acceptance of the required improvements by the City Council.

11.4 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best's rating of no less than A:VIII, shall be authorized to do business in the State of California, and shall be satisfactory to City. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer or its surety shall secure the costs and reasonable expenses and fees, including reasonable attorneys' fees and costs, incurred by City in enforcing the obligations of this Agreement. Developer and its surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the plans and specifications for the Public Improvements shall in any way affect its obligation on the Security.

11.5 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "C," unless other forms are deemed acceptable by the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

12.0 Lien. To secure the timely performance of Developer's obligations under this Agreement, including those obligations for which security has been provided pursuant to this Agreement, Developer hereby creates in favor of City a lien against all portions of the Property not dedicated to City or some other governmental agency for a public purpose. As to Developer's default on those obligations for which security has been provided pursuant to this Agreement, City shall first attempt to collect against such security prior to exercising its rights as a contract lienholder under this Section.

13.0 Indemnification. Developer shall defend (with counsel reasonably satisfactory to the City Attorney), indemnify, and hold harmless City, its elected officials, officers, employees, agents, and volunteers from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its personnel, employees, agents, or contractors in connection with or arising out of construction or maintenance of the Public Improvements, or performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the negligence or willful misconduct of City as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Agency, its elected officials, officers, employees, agents, or volunteers.

14.0 Insurance.

14.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors and subcontractors to procure and maintain, during construction of any Public Improvement pursuant to this Agreement, insurance of the types and in the amounts described below ("Required Insurance") and without limiting the indemnity provisions of this Agreement. If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than three times the specified occurrence limit. For purposes of this Section 14.0, et seq., the "indemnified parties" shall mean City, its elected officials, officers, employees, agents, and volunteers, as described in this Agreement. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, agents, and volunteers.

14.1.1 Commercial General Liability. Developer, its contractors and subcontractors shall procure and maintain Commercial General Liability Insurance that affords coverage at least as broad as the latest version of Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least One Million Dollars ($1,000,000.00) per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1) products and completed operations; (2) contractual liability; (3) third party action over claims; (4) cross liability exclusion for claims or suits by one insured against another; or (5) explosion, collapse, or underground hazard (XCU).

14.1.2 Automobile Liability. Developer and its contractors and subcontractors shall procure and maintain automobile liability insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) and minimum limits of One Million Dollars ($1,000,000.000) each accident. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any vehicle owned, leased, hired, or borrowed by the insured or for which the insured is responsible. If Developer does not own any company vehicles and if requested by City, this requirement may be satisfied by providing a non-owned auto endorsement to the Commercial General Liability policy.

14.1.3 Workers' Compensation. Developer, its contractors and subcontractors shall procure and maintain workers' compensation insurance with limits as required by the Labor Code of the State of California and Employers' Liability Insurance of not less than One Million Dollars ($1,000,000.00) per accident for bodily injury and disease.

14.1.4 Professional Liability. If applicable to this Agreement and required by City, for any consultant or other professional who will engineer or design the Public Improvements, professional liability insurance for errors and omissions with limits not less than One Million Dollars ($1,000,000.00) per occurrence, shall be procured and maintained for a period of three (3) years following completion of the Public Improvements and shall specifically include all work to be performed under the Agreement. If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement, and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination of this Agreement.

14.2 Deductibles. Any deductibles or self-insured retentions must be approved by City in writing and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

14.3 Certificates; Verification. Developer and its contractors and subcontractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City prior to the execution of this Agreement and before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all required insurance policies at any time.

14.4 Insurer Rating. Unless approved in writing by City, the insurers for all Required Insurance shall have a current A.M. Best rating of at least A:VIII, shall be authorized to do business in the State of California, and shall be satisfactory to City.

14.5 Endorsements.

14.5.1 The Commercial General Liability, Automobile Liability, and Contractors Pollution Liability policies, if the latter is required by City, shall be endorsed as follows:

Additional Insured: The indemnified parties shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of this Agreement. The "Additional Insured Endorsement" shall be on a form similar to Insurance Services Office's Endorsement form CG 2010 and contain no other modifications to the policy.

Primary Insurance: This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance.

Severability: In the event one insured, whether named or additional, incurs liability to any other of the insureds, whether named or additional, the policy shall cover the insured against whom the claim is made or may be made in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.

Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced, or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon City, except ten (10) days prior written notice shall be allowed for non-payment of premium.

Duties: Any failure by the named insured to comply with report provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the indemnified parties.

Applicability: That the coverage provided therein shall apply to the obligations assumed by Developer, its contractors or subcontractors under the indemnity provisions of this Agreement, unless the policy or policies contain a blanket form of contractual liability coverage.

14.5.2 The Workers' Compensation policy or policies required by this Agreement shall be endorsed as follows:

Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced, or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon City, except ten (10) days prior written notice shall be allowed for non-payment of premium.

14.5.3 The Professional Liability policy or policies required by this Agreement, if required by City, shall be endorsed as follows:

Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced, or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon City, except ten (10) days prior written notice shall be allowed for non-payment of premium.

15.0 Signs and Advertising. Developer understands and agrees to City's ordinances, regulations, and requirements governing signs and advertising structures. Developer hereby agrees with and consents to the removal by City of all signs or other advertising structures erected, placed, or situated in violation of any City ordinance, regulation, or other requirement. Removal shall be at the expense of Developer. Developer shall indemnify and hold City free and harmless from any claim or demand arising out of or incident to signs, advertising structures, or their removal.

16.0 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, any map related to the Property, nor any other related entitlement, permit, or approval issued by City for the Property shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer’s contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer, its contractors, or its subcontractors an agent, contractor, or subcontractor of City.

17.0 General Provisions.

17.1 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

17.2 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

17.3 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and subcontractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

17.4 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

CITY:	**DEVELOPER:**
City of Woodland 300 First Street Woodland, CA 95695 Attn: City Engineer	D.R Horton, America's Builder 5050 Hopyard Road, Suite 180 Pleasanton, California, 94588 Attn: Dean K Mills, Vice President Kristin Schenone, Division Counsel

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of seventy-two (72) hours after deposit in the U.S. Mail.

17.5 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

17.6 Waiver. City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Developer of any of its obligations under this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional. Developer agrees to waive, as a defense, counterclaim or set off, any and all defects, irregularities or deficiencies in the authorization, execution or performance of the Public Improvements or this Agreement, as well as the laws, rules, regulations, ordinances or resolutions of City with regards to the authorization, execution, or performance of the Public Improvements or this Agreement.

17.7 Assignment or Transfer of Agreement. Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City. Any attempt to do so shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in City's written consent, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement. In the event that City consents in writing to such an assignment, any assignee, hypothecatee, or transferee shall expressly assume Developer's obligations hereunder by a written agreement in a form, and containing such security, as is reasonably acceptable to City.

The agreement, hypothecation, or transfer shall be to the satisfaction of the City Attorney and shall include provisions requiring the assignee to post bonds or submit another form of financial security, satisfactory to City and approved by the City Attorney, to guarantee construction of the Public Improvements. The agreement shall survive the recordation of the Final Map and shall be recorded against each of the proposed lots to inform successors and assigns of the required Public Improvements to be constructed and their time frame for construction.

Following any permitted assignment, hypothecation, or transfer of the Public Improvements as set forth in this Section, City shall release Developer from its obligations so assigned and shall release to Developer any bonds or other security posted to secure the Public Improvements so assigned; provided, however, that City shall not release any security or undertakings given to secure the performance of any of the Public Improvements not assigned, hypothecated, or transferred.

17.8 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This Section shall not be construed as an authorization for any Party to assign any right or obligation.

17.9 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

17.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

17.11 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Yolo, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

17.12 Attorneys' Fees and Costs. If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Property, the prevailing party, whether by final judgment or arbitration award, shall be entitled to and recover from the other party all costs and expenses incurred by the prevailing party, including actual attorneys' fees ("Costs"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Costs. This Section shall survive the termination or expiration of this Agreement.

17.13 Acquisition and Dedication of Easements or Rights-of-Way. If any of the Public Improvements required by this Agreement are to be constructed on land not within the subdivision or an already-existing public right-of-way, no construction or installation shall be commenced before:

17.13.1 The irrevocable offer of dedication or conveyance to City of appropriate rights-of-way, easements, or other interests in real property, and appropriate authorization from the property owner to allow construction or installation of the Public Improvements or work; or

17.13.2 The issuance of an order of possession by a court of competent jurisdiction pursuant to California's Eminent Domain Law. Developer shall comply in all respects with any such order of possession.

Nothing in this paragraph 17.13 shall be construed as authorizing or granting an extension of time to Developer for completion of the Public Improvements.

17.14 Prevailing Wages. Developer has been alerted to the requirements of California Labor Code section 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to pay prevailing wages for work required by this Agreement.

17.15 Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

CITY OF WOODLAND

By: ______________________________
Tom Stallard, Mayor

ATTEST:

By: ______________________________
Ana Gonzalez, City Clerk

APPROVED AS TO FORM:

By: ______________________________
Kara Ueda, City Attorney
Best Best & Krieger LLP

WESTERN PACIFIC HOUSING

By: ______________________________
Signature

____
Print Name

____
Title

(Seal)

By: ______________________________
Signature

____
Print Name

____
Title

ACKNOWLEDGMENT

STATE OF CALIFORNIA	**)**	
	)	**ss.**
COUNTY OF	**)**	

On ______________________, before me, ______________________, the undersigned notary public, personally appeared ____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____
NOTARY PUBLIC

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) **ss.**
COUNTY OF)

On ______________________, before me, ______________________, the undersigned notary public, personally appeared _______________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____
NOTARY PUBLIC

EXHIBIT “A”

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Woodland , County of Yolo, State of California, described as follows:

PARCEL 3 AS SHOWN ON PARCEL MAP NO. 4778, BEEGHLY RANCH, RECORDED JUNE 8, 2005, IN BOOK 2005 OF MAPS, PAGES 123 AND 124, YOLO COUNTY RECORDS.

EXCEPTING THEREFROM ALL INTEREST IN AND TO ALL MINERALS, MINERAL DEPOSITS AND NATURAL RESOURCES, INCLUDING ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND BELOW A DEPTH OF FIVE HUNDRED (500) FEET, WITHOUT RIGHT OF SURFACE ENTRY INTO FIVE HUNDRED (500) FEET BELOW THE SURFACE OF THE LAND, AND ALL OF THE RIGHTS OF OWNERSHIP THERETO, AS RESERVED IN THE GRANT DEED FROM TURN OF THE CENTURY, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED MARCH 3, 2005, AS INSTRUMENT NO. 2005-0010069.

APN: 042-580-010-000

EXHIBIT "B"

LIST OF PUBLIC IMPROVEMENTS

PARCEL NO. 042-580-010-000

Developer shall perform all work and furnish all materials necessary, in the opinion of the City Engineer and on his/her order, to complete the following Public Improvements in accordance with the plans and specifications on file with City or with any changes required or ordered by the City Engineer which, in his/her opinion, are necessary or required to complete this work.

Developer is required to perform the following Public Improvements under this Agreement:

Construction of streets, curbs, gutters, sidewalks, street lights, landscaping, water, sewer, and storm drain, utilities, and appurtenances as specified on the plan set for Subdivision 4853 incorporated by reference.

EXHIBIT "C"

SURETY BONDS AND OTHER SECURITY

PARCEL NO. 042-580-010-000

As evidence of understanding the provisions contained in this Agreement, and of Developer's intent to comply with same, Developer has submitted the below described security in the amounts required by this Agreement, and has affixed the appropriate signatures thereto:

FAITHFUL PERFORMANCE BOND: $ ________________
Surety: ____
Attorney-in-fact: ________________________________
Address: _______________________________________
____
____

PAYMENT BOND: $ ________________
Surety: ____
Attorney-in-fact: ________________________________
Address: _______________________________________
____
____

GUARANTEE AND WARRANTY SECURITY BOND: $ ________________
Surety: ____
Attorney-in-fact: ________________________________
Address: _______________________________________
____
____

CITY OF WOODLAND

FAITHFUL PERFORMANCE BOND FOR
SUBDIVISION IMPROVEMENT AGREEMENT

PROJECT: __[INSERT PARCEL MAP NUMBER OR TRACT MAP NUMBER]

WHEREAS, the conditions placed on the tentative/parcel map for Parcel/Tract No. _____ require that the City of Woodland, a municipal corporation of the State of California ("CITY"), by its City Council, and ____________________________("PRINCIPAL") enter into an agreement ("Agreement") whereby the PRINCIPAL agrees to install and complete certain designated public improvements ("Public Improvements"); and

WHEREAS, the PRINCIPAL is required under the terms of the Agreement to furnish a bond, in a form and from a surety acceptable to the CITY, for the faithful performance of the Agreement.

NOW, THEREFORE, PRINCIPAL and ______________________________ ("SURETY"), a corporation organized and existing under the laws of the State of ______________________, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto CITY in the sum of **[INSERT AMOUNT WRITTEN OUT]** DOLLARS ($**[INSERT NUMBERS]**), said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if PRINCIPAL, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless CITY, its officers, employees, and agents, as stipulated in the Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by CITY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

This bond is executed and filed to comply with Section 66499, *et seq.*, of the Government Code of California and Chapter 21 of the Woodland Municipal Code as security for performance of the Agreement and security for the one-year guarantee and warranty of the Public Improvements.

SURETY, by executing this bond, warrants and alleges that it has read the Agreement, or by signing this bond shall be deemed to have read the Agreement, and knows the contents and all provisions contained therein, and shall be bound by each and every term, condition, and provision contained therein.

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY above named, on __________________, 20___.

______________________________	______________________________
Name of Surety	Principal
	By:______________________________
	Title: ____________________________
______________________________	
Mailing Address of Surety	and
______________________________	By:______________________________
Telephone No. of Surety	Title: ____________________________

By: ______________________________
Attorney in Fact

Approved as to form:

____
City Attorney

NOTE: If principal is a partnership, all partners should execute the bond.
IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.
NOTICE: The signature of the Surety on this bond must be acknowledged before a notary public, and this bond must be accompanied by evidence that the appointment as attorney in fact has been recorded in Yolo County.
MANDATORY: The Surety shall be authorized and licensed by the California Insurance Commissioner as an "admitted surety insurer."
REQUEST TO INSURER TO SUBMIT DOCUMENTS: Execution of this document shall constitute the City's formal request to the insurer to provide the City with an original of a certificate from the clerk of Yolo County that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted.

POWER OF ATTORNEY REQUIRED. The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond which it covers.

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On ______________________, before me, ______________________, the undersigned notary public, personally appeared ______________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____
NOTARY PUBLIC

**STATE OF CALIFORNIA) **
) ss.
COUNTY OF)

On ______________________, before me, ______________________, the undersigned notary public, personally appeared ____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____
NOTARY PUBLIC

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, ______________________________________, certify that I am the Secretary of the Corporation named as Principal in the attached bond, that ____, who signed the said bond on behalf of the Principal, was then ______________________________ of said Corporation; that I know his/her signature and his/her signature thereto is genuine; and that said bond was duly signed, sealed and attested for and upon behalf of said Corporation by authority of its governing Board.

Dated:______________________ By:__________________________________

Signature

____

Print Name

CITY OF WOODLAND

LABOR & MATERIAL BOND FOR
SUBDIVISION IMPROVEMENT AGREEMENT

PROJECT: __[INSERT PARCEL OR TRACT MAP NUMBER]

WHEREAS, the conditions placed on the tentative/parcel map for Parcel No. _____ require that the City of Woodland, a municipal corporation of the State of California ("CITY"), by its City Council, and ____________________________("PRINCIPAL") enter into an agreement ("Agreement") whereby the PRINCIPAL agrees to install and complete certain designated public improvements ("Public Improvements"); and

WHEREAS, under the terms of the Agreement, PRINCIPAL is required before entering upon the performance of the work, to file a good and sufficient payment bond with the CITY to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

NOW, THEREFORE, PRINCIPAL and __________________________ ("SURETY"), a corporation organized and existing under the laws of the State of ______________________, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto CITY and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the PRINCIPAL, the sum of **[INSERT AMOUNT WRITTEN OUT]** DOLLARS, ($**[INSERT NUMBERS]**), said sum being not less than 50% of the total cost of the Public Improvements under the terms of the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the PRINCIPAL, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Public Improvements, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development

Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said SURETY will pay the same in or to an amount not exceeding the sum specified herein.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by CITY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

This bond is executed and filed to comply with Section 66499, et seq., of the California Government Code and Chapter 21 of the Woodland Municipal Code as security for payment to contractors, subcontractors, and persons furnishing labor, materials, or equipment for construction of the Public Improvements or performance of the Agreement. It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with section 9000) of Part 6 of Division 4 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY above named, on __________________, 20___.

___________________________________	____________________________________
Name of Surety	Principal
	By:________________________________
	Title: ______________________________
____________________________________	
Mailing Address of Surety	and
____________________________________	By:________________________________
Telephone No. of Surety	Title: ______________________________

By: _________________________________
Attorney in Fact

Approved as to form:

____
City Attorney

NOTE: If principal is a partnership, all partners should execute the bond.
IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.
NOTICE: The signature of the Surety on this bond must be acknowledged before a notary public, and this bond must be accompanied by evidence that the appointment as attorney in fact has been recorded in Yolo County.
MANDATORY: The Surety shall be authorized and licensed by the California Insurance Commissioner as an "admitted surety insurer."
REQUEST TO INSURER TO SUBMIT DOCUMENTS: Execution of this document shall constitute the City's formal request to the insurer to provide the City with an original of a certificate from the clerk of Yolo County that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted.
POWER OF ATTORNEY REQUIRED. The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond which it covers.

STATE OF CALIFORNIA)
) **ss.**
COUNTY OF)

On **______________________**, before me, **______________________**, the undersigned notary public, personally appeared **____**, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____
NOTARY PUBLIC

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On **______________________**, before me, **______________________**, the undersigned notary public, personally appeared **____**, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____
NOTARY PUBLIC

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, ______________________________________, certify that I am the Secretary of the Corporation named as Principal in the attached bond, that ____, who signed the said bond on behalf of the Principal, was then ______________________________ of said Corporation; that I know his/her signature and his/her signature thereto is genuine; and that said bond was duly signed, sealed and attested for and upon behalf of said Corporation by authority of its governing Board.

Dated:______________________ By:___________________________________
Signature

____
Print Name

CITY OF WOODLAND

SUBDIVISION MAINTENANCE BOND
GUARANTEE AND WARRANTY SECURITY

PROJECT: __[INSERT PARCEL MAP NUMBER OR TRACT MAP NUMBER]

WHEREAS, the conditions placed on the tentative/parcel map for Parcel/Tract No. _____ require that the City Council of the City of Woodland, State of California, and ______________________________ ("PRINCIPAL") enter into an agreement by which PRINCIPAL agrees to install and complete certain designated public improvements and to guarantee and warrant the work for a period of one year following its completion and acceptance ("Agreement"); and

WHEREAS, PRINCIPAL is required under the terms of the Agreement to furnish a bond to guarantee and warrant the work for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, to comply with the terms of the Agreement.

NOW, THEREFORE, we, PRINCIPAL and ____________________________________ a ____ ____, admitted and duly authorized to transact business under the laws of the State of California as surety ("SURETY"), are held and firmly bound unto the City of Woodland as obligee ("CITY"), in the penal sum of ____________ ____________ ($__________) dollars lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if PRINCIPAL, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, provisions in the said agreement and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless CITY, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by CITY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations of this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications. The surety waives all rights of subrogation against CITY or any person employed by CITY.

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY above named, on __________________, 20___.

____________________________________ Name of Surety	____________________________________ Principal
	By:________________________________ Title: ______________________________
____________________________________ Mailing Address of Surety	and
____________________________________ Telephone No. of Surety	By:________________________________ Title: ______________________________

By: _________________________________
Attorney in Fact

Approved as to form:

____
City Attorney

NOTE: If principal is a partnership, all partners should execute the bond.
IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.
NOTICE: The signature of the Surety on this bond must be acknowledged before a notary public, and this bond must be accompanied by evidence that the appointment as attorney in fact has been recorded in Yolo County.
MANDATORY: The Surety shall be authorized and licensed by the California Insurance Commissioner as an "admitted surety insurer."
REQUEST TO INSURER TO SUBMIT DOCUMENTS: Execution of this document shall constitute the City's formal request to the insurer to provide the City with an original of a certificate from the clerk of Yolo County that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted.
POWER OF ATTORNEY REQUIRED. The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond which it covers.

STATE OF CALIFORNIA)
) **ss.**
COUNTY OF)

On ______________________, before me, ______________________, the undersigned notary public, personally appeared ______________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____
NOTARY PUBLIC

STATE OF CALIFORNIA)
) **ss.**
COUNTY OF)

On ______________________, before me, ______________________, the undersigned notary public, personally appeared ____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____
NOTARY PUBLIC

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, ______________________________________, certify that I am the Secretary of the Corporation named as Principal in the attached bond, that ____, who signed the said bond on behalf of the Principal, was then ______________________________ of said Corporation; that I know his/her signature and his/her signature thereto is genuine; and that said bond was duly signed, sealed and attested for and upon behalf of said Corporation by authority of its governing Board.

Dated:______________________ By:___________________________________

Signature

____

Print Name

Legislation Details (With Text)

3.

File #:	14-474	Version: 1	Name:	
Type:	Consent Item(s)		Status:	Agenda Ready
File created:	11/20/2014		In control:	City Council
On agenda:	12/16/2014		Final action:	

Title: SUBJECT: Adopt Resolution No. _____ amending the City of Woodland Spring Lake Infrastructure Fee Nexus Study.

Recommendation for Action: Staff recommends that the City Council adopt Resolution No. _____, amending the City of Woodland Spring Lake Infrastructure Fee Nexus Study.

Sponsors:

Indexes:

Code sections:

Attachments: A - Resolution
B - Proposed Table A2

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014
SUBJECT: Adopt Resolution No. _____ amending the City of Woodland Spring Lake Infrastructure Fee Nexus Study.

Recommendation for Action: Staff recommends that the City Council adopt Resolution No. _____, amending the City of Woodland Spring Lake Infrastructure Fee Nexus Study.

Staff Contact

Bruce D. Pollard, (530) 661-5820, bruce.pollard@cityofwoodland.org

Fiscal Impact

The Amendment of the Nexus Study will have no impact on the City operations budget. The Amendment will also have no impact on the amount of the SLIF fee per unit for housing in Spring Lake.

Background

Funding of the backbone infrastructure within the Spring Lake Specific Plan area is managed by using the Spring Lake Infrastructure Fee (SLIF). This fee is charged on a per Dwelling Unit Equivalent (DUE) basis. The amount and categories of the SLIF to be charged per DUE is established in the Spring Lake Infrastructure Fee Nexus Study. The City Council originally adopted the Nexus Study in July 2004. The fee program has been periodically updated since then to adjust the SLIF for inflation and other known changes in land use, backbone infrastructure, cost estimates, and other public facilities costs. The last update to the Nexus Study occurred in January 2010. That update reflected the change in market conditions and the finance market and the need to construct infrastructure, consistent with the City Council's direction, in a pay-as-you-go format. In order to make pay-as-you-go work, certain pieces of offsite common infrastructure were designated to be funded by a set aside fee, with the construction to be managed by the City. The proposed Nexus Study update will substitute the offsite 12" waterline under HWY 113 with the improvement of County Road 25A.

Discussion

The proposed amendment will remove a $480,000 waterline project from the list of offsite common infrastructure to be funded by SLIF fees and will replace the waterline project with a $400,000 contribution to County Road 25A, and an additional $80,000 for drainage. The waterline project has already been funded by a combination of developer deposits and capital improvement funds for the east transmission main project. The exchange of projects will give partial funding to the County Road 25A project.

The impetus for this change is the Development Agreement Amendment with Centex Homes and Western Pacific Housing Inc. for the Beeghly subdivision, as that proposed Amendment to the Development Agreement establishes the timing for construction of an improved County Road 25A and improvements to Road 101, Parkland Avenue and Marston Drive. As part of the agreement reached between City staff and the developers to settle the timing and funding of improvements, staff agreed to recommend to the City Council approval of this amendment to the Nexus Study.

Conclusion

Staff recommends that the City Council adopt Resolution No. _____, amending the City of Woodland Spring Lake Infrastructure Fee Nexus Study.

Prepared by: Bruce D. Pollard
Senior Civil Engineer

Reviewed by: Brent Meyer
City Engineer

Reviewed by: Kim McKinney
Finance Officer

Reviewed by: Ken Hiatt
Community Development Director

Paul Navazio, City Manager

ATTACHMENTS:
Attachment A - Resolution
Attachment B - Proposed Table A2

RESOLUTION NO. ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WOODLAND APPROVING AN AMENDMENT TO THE 2010 SPRINGLAKE INFRASTRUCTURE FEE NEXUS STUDY

WHEREAS, in December 2001, the City of Woodland approved the Spring Lake Specific Plan, which governs development in a the 1,097 acre Master Plan area; and

WHEREAS, the City of Woodland desired to establish a mechanism to fund necessary public facilities fees to pay for the cost of these facilities, consistent with the goals and policies of the General Plan and the Spring Lake Specific Plan; and

WHEREAS, the City previously directed the preparation of a document by Economic and Planning Systems, Inc. ("EPS") entitled the Spring Lake Infrastructure Fee Nexus Study (SLIF-NS) dated June 29, 2004, which established the basis of the facilities fees and which was adopted, along with the Spring Lake Infrastructure Fee itself, by the City Council on July 6, 2004; and

WHEREAS, EPS prepared, and the CITY adopted, a new Spring Lake Infrastructure Fee and Reconciliation Update in January 2010; and

WHEREAS, the January 2010 update included a list of City Constructed SLIF improvements on Table A-2 on Page A-3; and

WHEREAS, the City now desires to update Table A-2 on Page A-3 to replace the twelve inch water line under Highway 113 with County Road 25A reconstruction, which change was precipitated as a result of discussions between the City and developers in the Spring Lake Specific Plan Area; and

WHEREAS, the City Council wishes to approve the new Table A-2, which is attached to this Resolution as Exhibit A, and authorize Table A-2's incorporation to the 2010 Springlake Infrastructure Fee Nexus Study through the adoption of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WOODLAND AS FOLLOWS:

Section 1. The City Council hereby approves the revised Table A-2 to the 2010 Spring Lake Infrastructure Fee Nexus Study, attached hereto as Exhibit A.

PASSED AND ADOPTED this ________ day of ___________ 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

____

Tom Stallard, Mayor

ATTEST:

____

Ana B. Gonzalez, City Clerk

EXHIBIT A

Table A-2
2010 SLIF Nexus Study and SLSP Financing Plan Update
City-Constructed SLIF Improvements

Improvement	Single-Family Units Trigger	Cost	Cumulative Cost
North Storm Drainage Detention Pond -- Phase 1	1,200	**$ 800,000**	**$ 800,000**
Improvements Needed at 2,000 Single-Family Units			
North Storm Drainage Detention Pond -- Phase 2	2,000	$ 1,280,000	
Road 25A reconstruction between HLA and SR 113	2,000	$ 400,000	
50% Remaining Onsite Land Acquisition	2,000	$ 350,000	
Subtotal		**$ 2,030,000**	**$ 2,830,000**
Improvements Needed at 2,500 Single-Family Units			
24" Sewer Line to Plant and Additional Pump to Sewer Pump Station	2,500	$ 795,000	
Balance of Offsite Drainage	2,500	$ 3,625,000	
Road 102 Pavement Widening [1]	2,500	$ 1,400,000	
Subtotal		**$ 5,820,000**	**$ 8,650,000**
TOTAL		**$ 8,650,000**	**$ 8,650,000**

city_impr

[1] Includes SLIF portion of widening, interconnection, and beacon moving (no signal)

Legislation Details (With Text)

4.

File #:	14-481	Version: 1	Name:		
Type:	Consent Item(s)		Status:	Agenda Ready	
File created:	11/21/2014		In control:	City Council	
On agenda:	12/16/2014		Final action:		

Title: SUBJECT: Second Reading of Ordinance No. _____ , an Ordinance of the City Council of the City of Woodland, California, Approving an Amendment to the Development Agreement between the City of Woodland, Centex Homes, and Western Pacific Housing, Inc. for the Beeghly Ranch Subdivision.

Recommendation for Action: Staff recommends that the City Council adopt Ordinance No. _____, an Ordinance of the City Council of the City of Woodland, California, Approving an Amendment to the Development Agreement between the City of Woodland, Centex Homes, and Western Pacific Housing, Inc. for the Beeghly Ranch Subdivision.

Sponsors:

Indexes:

Code sections:

Attachments: Location Map
Ordinance

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014

SUBJECT: Second Reading of Ordinance No. _____ , an Ordinance of the City Council of the City of Woodland, California, Approving an Amendment to the Development Agreement between the City of Woodland, Centex Homes, and Western Pacific Housing, Inc. for the Beeghly Ranch Subdivision.

Recommendation for Action: Staff recommends that the City Council adopt Ordinance No. _____, an Ordinance of the City Council of the City of Woodland, California, Approving an Amendment to the Development Agreement between the City of Woodland, Centex Homes, and Western Pacific Housing, Inc. for the Beeghly Ranch Subdivision.

Staff Contact

Bruce Pollard, Senior Civil Engineer, (530) 661-5820; bruce.pollard@cityofwoodland.org

Fiscal Impact

Processing costs were paid by the Developers and there is no impact to the general fund. If approved the project would result in approximately 94 Dwelling Unit Equivalents (DUEs). This project will pay the citywide Development Impact Fees, in the approximate amount of $2,000,000.

Background

On January 13, 2004, the City Council approved the ±79.8 acre Beeghly Tentative Subdivision Map No. 4793, consisting of 309 single-family lots at an R-4 & R-5 density and two remainder parcels (Lots "D" and “G”) at an R-15 density. The Beeghly Ranch subdivision is located east of and adjacent to Harry Lorenzo Avenue, south of Heritage Parkway, west of Parkland Avenue and north of Marston Drive. The City Council’s 2004 approval included a Spring Lake Specific Plan amendment, a tentative subdivision map, and a development agreement.

Following approval and recordation of Phase I of the map, Centex proceeded to construct single-family homes on a majority of the lots. The City approved the final map for the Beeghly Ranch subdivision in 2007 (Subdivision No. 4793). The City and Centex entered into a subdivision improvement agreement for completion of certain public improvements for the Beeghly Ranch Subdivision.

On December 2, 2014, the City Council considered the proposed project application and introduced the first reading of the Ordinance of the City Council of the City of Woodland Approving a Development Agreement between Centex Homes a Nevada Genera Partnership, and Western Pacific Housing Inc., A Delaware Corporation amending the Beeghly Ranch Development Agreement.

Discussion

The Development Agreement responsibility is shared by two ownership parties, Centex and WPHI. When Centex constructed its single-family units, it did not construct all of the improvements required of it. However, because WPHI is the successor in interest for some of the units, it is also responsible for funding the same improvements in the Beeghly subdivision. Because Centex Homes is in default on approximately 7 million dollars of public improvements, the City, Centex, and WPHI have been engaged in ongoing negotiations to amend the Development Agreement in order to resolve the funding issue.

Consistent with funding approach modifications approved in 2010, the City and development community are now approaching funding of infrastructure on a “pay as you go” basis. This Amendment to the Development Agreement fits within the current infrastructure funding program. There is no change to the underlying requirements of this Development Agreement or the Tentative Map. Neither are there any proposed amendments to the General Plan, Spring Lake Specific Plan, or Zoning Code. The modifications requested are consistent with the Development Agreement and do not grant any new development rights.

A copy of the Amendment to the Development Agreement is attached to the Ordinance.

Commission/Committee Recommendation

At its meeting on November 20, 2014, the City of Woodland Planning Commission held a public hearing and approved Resolution No. PC 14-013, recommending City Council approval of an amendment to the Development Agreement for the Beeghly Ranch Subdivision in Spring Lake.

Conclusion

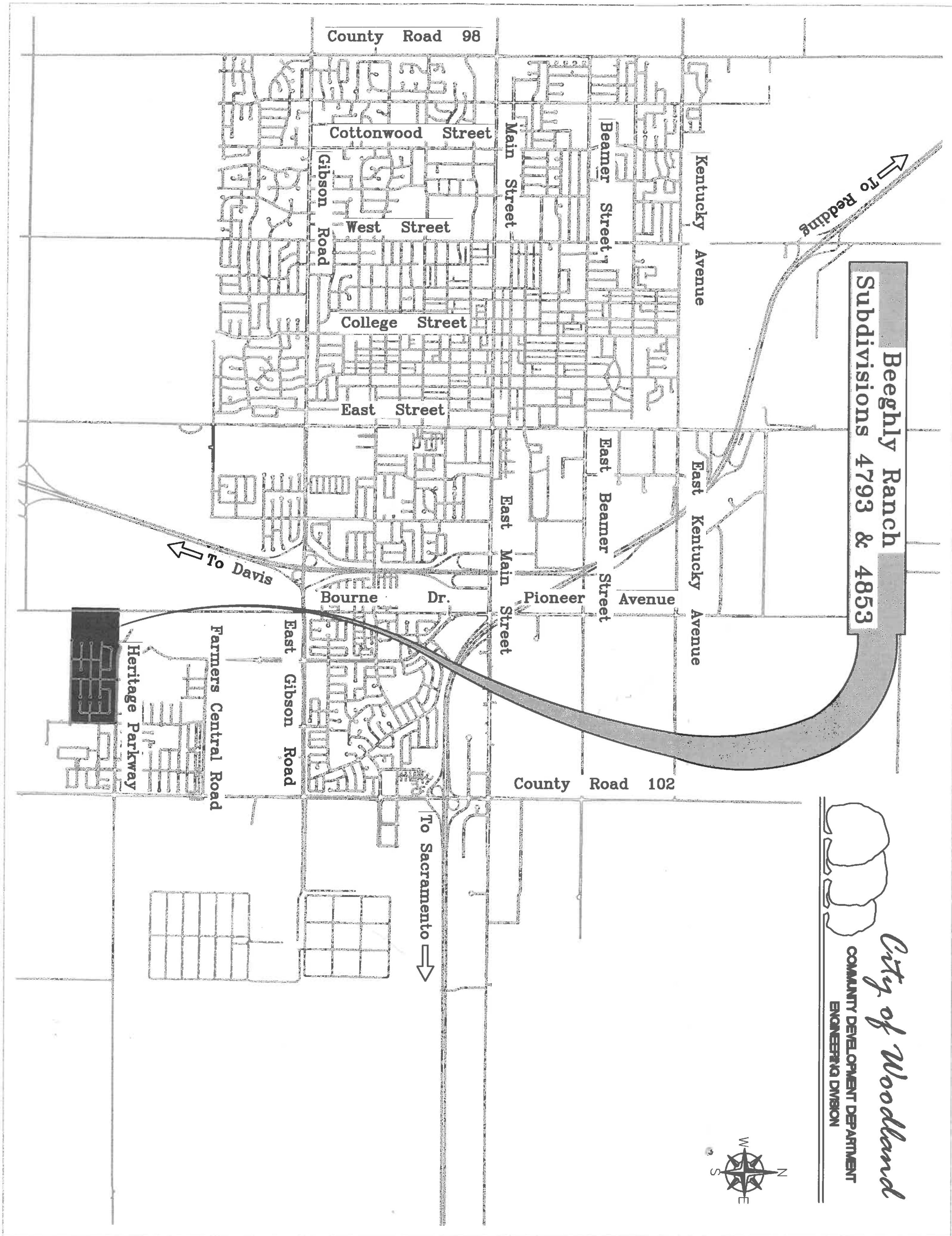
Recommendation for Action: Staff recommends that the City Council adopt Ordinance No. _____, "An Ordinance of the City Council of the City of Woodland to Approving a Development Agreement Between Centex Homes a Nevada Genera Partnership, and Western Pacific Housing Inc., A Delaware Corporation.

Prepared By: Bruce Pollard, Senior Civil Engineer

Reviewed By: Brent Meyer, City Engineer
Ken Hiatt, Community Development Director

Paul Navazio, City Manager

ATTACHMENTS:
Attachment A: Location Map
Attachment B: Ordinance No. _____ and Development Agreement Attachment


County Road 98
Cottonwood Street
Main Street
Beamer Street
Kentucky Avenue
To Redding
Gibson Road
West Street
College Street
East Street
Beeghly Ranch
Subdivisions 4793 & 4853
East Beamer Street
East Kentucky Avenue
East Main Street
To Davis
Bourne Dr.
Pioneer Avenue
East Gibson Road
Farmers Central Road
Heritage Parkway
County Road 102
To Sacramento
City of Woodland
COMMUNITY DEVELOPMENT DEPARTMENT
ENGINEERING DIVISION
W
N
S
E

ORDINANCE NO. ---

AN ORDINANCE OF THE CITY OF WOODLAND APPROVING THE CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP PULTE HOMES (CENTEX), WESTERN PACIFIC HOUSING INC., A DELAWARE CORPORATION (WPHI) – BEEGHLY DEVELOPMENT AGREEMENT (DA) AMENDMENTS RELATIVE TO PROPERTY LOCATED WITHIN THE SPRING LAKE SPECIFIC PLAN AREATHE CITY COUNCIL OF THE CITY OF WOODLAND DOES HEREBY ORDAIN ASFOLLOWS:

Section 1. Purpose. The purpose of this Ordinance is to approve an amendment to Centex Homes, a Nevada general Partnership Pulte Homes (Centex), Western Pacific Housing Inc., a Delaware corporation (WPHI) – Beeghly Development Agreement (DA) Amendments (the "Agreement Amendment") entered into between the City of Woodland and Centex Homes, a Nevada general Partnership Pulte Homes (Centex), Western Pacific Housing Inc., a Delaware corporation (WPHI)– Beeghly Development Agreement (DA) Amendments, relative to the use and development of the property located within the Spring Lake Specific Plan Area, which is more particularly descried in said Agreement.

Section 2. Findings. The City Council hereby finds and declares:

1. The City Council previously certified an Environmental Impact Report for the Spring Lake Specific Plan (Turn of the Century EIR, SCH #99022069; August 15, 2000) and adopted addendums to the Turn of The Century EIR. No additional environmental review of the Agreement is required by law, ordinance, or regulations.

2. The City Council adopted Ordinance No. 1379 January 13, 2004, the City Council approved the ±79.8 acre, Beeghly Tentative Subdivision Map No. 4793 and Development Agreement with Turn of the Century LLC relative to the Beeghly Ranch Subdivision. This Agreement Amendment amends the Development Agreement approved through Ordinance No. 1379 approved on January 13, 2004.

3. Modified Findings of Fact and Conditions of Approval are incorporated into the Agreement Amendment as shown in Attachments "C" & "D."

4. Public hearings on the Agreement Amendment were held by the Planning Commission and City Council and notices of these hearings were given in the form and at the times required by state law and City ordinances and resolutions.

5. The City Council has considered the findings and recommendation of the Woodland Planning Commission. The City Council accepts those findings and recommendation,

and incorporates them herein by this reference.

6. The Agreement Amendment is consistent with the objectives, policies, land uses, and programs specified in the City General Plan and the Spring Lake Specific Plan.

7. The Agreement Amendment satisfies the fiscal policies of the General Plan.

8. The Agreement Amendment is consistent with and conforms to the requirements of Government Code Sections 65864-65869.5.

9. The Agreement Amendment is consistent with the provisions of Resolution No. 3542 of the City Council Establishing Procedures for Consideration of Development Agreements and the provisions of Resolution No. 4330 Approving the Spring Lake Specific Plan.

Section 3. Approvals. The Agreement Amendment is hereby approved and the Mayor and City Clerk are authorized and directed to execute said Agreement Amendment on behalf of the City of Woodland.

The City Clerk shall cause the Agreement Amendment to be recorded in the Official Records of Yolo County upon execution, but in no event prior to the effective date of this ordinance.

Section 4. Effective Date and Notice. This ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City of Woodland.

PASSED, APPROVED, AND ADOPTED this ____ day of _____ , 2014.

AYES:

NOES:

ABSTAIN:

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Legislation Details (With Text)

5.

File #:	14-485	Version: 1	Name:	
Type:	Consent Item(s)		Status:	Agenda Ready
File created:	11/25/2014		In control:	City Council
On agenda:	12/16/2014		Final action:	

Title: SUBJECT: Approval to Execute Janitorial Services Agreement

Recommendation for Action: Staff recommends that the City Council approve Resolution No. _____ authorizing the City Manager to execute a Janitorial Services Agreement with Lincoln Training Center to perform janitorial services at six City-owned facilities in the amount of $72,356.20 per year for three years ($217,068.60 total).

Sponsors:

Indexes:

Code sections:

Attachments: Final Scores
Resolution
Janitorial Services Agreement (post-attorney review)

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014
SUBJECT: Approval to Execute Janitorial Services Agreement

Recommendation for Action: Staff recommends that the City Council approve Resolution No. _____ authorizing the City Manager to execute a Janitorial Services Agreement with Lincoln Training Center to perform janitorial services at six City-owned facilities in the amount of $72,356.20 per year for three years ($217,068.60 total).

Staff Contact

Troy Thompson, Fleet & Facilities Manager, troy.thompson@cityofwoodland.org

Council Goal

Maintain Quality of Life and Infrastructure - Ensure City facilities are adequately sanitized in support of health and environmental requirements and standards, while managing the overall cost consistent with the current budget.

Fiscal Impact

The total cost of the janitorial services under this agreement will be $72,356.20 per year over the course of three years. Per the City's Purchasing Ordinance, all materials, supplies and equipment purchases greater than

$50,000 must be awarded by City Council.

Background

The City is currently under a month-to-month service agreement with Pride Industries since 2010. In October, Staff pursued a formal bid for janitorial services for the purposes of securing long-term pricing as well as surveying the market for industry best practices. Six City facilities will be included in this services agreement: City Hall, Library, Municipal Services Center, Fire Station #3, Charles Brooks Swimming Pool, and the Water Pollution Control Facility. The Police Department, Fire Stations #2 and #3, and the Community and Senior Center were not included in this service agreement; these facilities either have internal staff perform these functions or their respective management wished to retain their current janitorial provider.

Discussion

Six responsive bids were received from janitorial services vendors; none of the vendors were locally based. Proposals were evaluated on a 100-point system based on four scoring criteria: 1) Bid Price, 2) Contractor Qualifications and Financial Stability, 3), Staff Qualifications, Facility and Resources, and 4) Operating Methodology and Practices.

Each proposal was evaluated based on established scoring criteria, with bid prices then being scored proportionate to the lowest bid. Lincoln Training Center (LTC) scored 93.0 points on the evaluation, the highest amount of points among the bidders. The final scores are attached for reference.

LTC is an award winning 501 (c)(3) non-profit corporation that was established in 1964. With 50 years in business, LTC is a highly qualified janitorial services vendor that has the experience and expertise to successfully provide complete janitorial services to the City of Woodland. LTC contracts with over 51 customers that include renewable, long-term service contracts with federal, state, county, and city facilities, as well as private and commercial corporations of various sizes.

LTC is a member of the U.S. Green Building Council (USGBC) and all of their technicians are expertly trained on Green Seal certified product usage and technology to deliver superior, environmentally sustainable janitorial services. LTC maintains certification with honors by the International Sanitary Supply Association (ISSA) in the Cleaning Industry Management Standard (CIMS). This demonstrates the organization's compliance with management best practices which consist of quality systems, service delivery, human resources, health, safety, and environmental stewardship.

Conclusion

Staff recommends that the City Council authorize the City Manager to execute a Professional Services Agreement with Lincoln Training Center in the amount of $72,356.20 per year for three years.

Prepared by: Troy Thompson, Fleet & Facilities Manager

Reviewed by: Greg Meyer, Public Works Director

Paul Navazio, City Manager

Attachments: Final Scores
Resolution
Janitorial Services Agreement

Lincoln	
	Points (0-25)
GRAND TOTAL SCORE	**93.0**
Bid Price	**78,474.45**
Scoring Summary	
Bid Price	**20.7**
Qual/ Financials	**24.3**
Staff/Ops/Fac/ Resources	**24.0**
Ops Method/Practices	**24.0**
Total	**93.0**

Imperial	
	Points (0-25)
GRAND TOTAL SCORE	**86.9**
Bid Price	**72,900.24**
Scoring Summary	
Bid Price	**25.0**
Qual/ Financials	**21.6**
Staff/Ops/Fac/Resources	**19.3**
Ops Method/Practices	**21.0**
Total	**86.9**

Pride	
	Points (0-25)
GRAND TOTAL SCORE	**86.3**
Bid Price	**83,588.50**
Scoring Summary	
Bid Price	**19.7**
Qual/ Financials	**25.0**
Staff/Ops/Fac/Resources	**18.3**
Ops Method/Practices	**23.3**
Total	**86.3**

Aim To Please	
	Points (0-25)
GRAND TOTAL SCORE	**71.3**
Bid Price	90,014.99
Scoring Summary	
Bid Price	**16.0**
Qual/ Financials	**21.0**
Staff/Ops/Fac/Resources	**16.3**
Ops Method/Practices	**18.0**
Total	**71.3**

Tee Janitorial	
	Points (0-25)
GRAND TOTAL SCORE	**55.9**
Bid Price	104,854.24
Scoring Summary	
Bid Price	**0.0**
Qual/ Financials	**21.3**
Staff/Ops/Fac/Resources	**15.3**
Ops Method/Practices	**19.3**
Total	**55.9**

DAD Services	
	Points (0-25)
GRAND TOTAL SCORE	**55.0**
Bid Price	107,449.19
Scoring Summary	
Bid Price	**8.0**
Qual/ Financials	**21.0**
Staff/Ops/Fac/Resources	**13.0**
Ops Method/Practices	**13.0**
Total	**55.0**

RESOLUTION NO. __________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WOODLAND APPROVING THE CITY MANAGER TO EXECUTE A JANITORIAL SERVICES AGREEMENT WITH LINCOLN TRAINING CENTER

WHEREAS, the City of Woodland wishes to enter into a three-year Professional Services Agreement with Lincoln Training Center in the amount of $72,356.20 per year;

WHEREAS, the City Council wishes to authorize the City Manager to execute the Janitorial Services Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WOODLAND: hereby authorizes the City Manager to execute a three-year Professional Services Agreement with Lincoln Training Center for janitorial services in the amount of $72,356.20 per year.

PASSED AND ADOPTED by the City Council on this 16th day of December 2014, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

____
Tom Stallard, Mayor

APPROVED AS TO FORM:

____
Kara K. Ueda, City Attorney

ATTEST:

____
Ana Gonzalez, City Clerk

CITY OF WOODLAND
JANITORIAL SERVCIES AGREEMENT

CM #	

This Agreement is made and entered into this 19th day of December, 2014 by and between the City of Woodland, a California municipal corporation ("City") and Lincoln Training Center, a California not for profit corporation ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. Contractor desires to perform and assume responsibility for the provision of certain professional Contractor services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing janitorial services to public clients, is licensed in the State of California, and is familiar with the plans of City.

B. Contractor agrees that it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Agreement is based on such independent investigation and research.

C. City desires to engage Contractor to render such services for the terms set forth in this Agreement.

AGREEMENT

1. SCOPE OF SERVICES AND TERM.

1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the janitorial services necessary for the janitorial services contract term ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

1.2 Term. The term of this Agreement shall be from January 15th, 2015 to January 14th, 2018, unless earlier terminated as provided herein. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

2. SCHEDULE OF SERVICES.

2.1 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

2.2 Extension of Time. Contractor may, for good cause, request extensions of time to perform the Services required hereunder. Such extensions shall be authorized in advance by the City in writing and shall be incorporated in written amendments to this Agreement.

2.3 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 2.1 above as it may be extended pursuant to Section 2.2 ("Extension of Time"). Contractor shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Contractor ("Performance Milestones"). Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Project Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3. FEES AND PAYMENTS.

3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed seventy-two thousand three hundred fifty six dollars and twenty cents ($72,356.20) without written approval of City's Fleet & Facilities Manager. Contractor shall not be reimbursed for any expenses unless authorized in writing by City. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

4. CHANGES.

4.1 The Parties may, from time to time, request changes in the scope of the Services of Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation and/or changes in the schedule must be authorized in advance by City in writing. Mutually agreed changes shall be incorporated in written amendments to the Agreement.

5. RESPONSIBILITIES OF CONTRACTOR.

5.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

5.2 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

5.3 Substitution of Key Personnel. Contractor has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Contractor at the request of the City. The key personnel for performance of this Agreement are as follows: Gary Griffen from Lincoln Training Center and Troy Thompson from City of Woodland.

5.3.1 City's Representative. The City hereby designates the Fleet & Facilities Manager or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

5.3.2 Contractor's Representative. Contractor hereby designates Gary Griffen, Vice President of Operations, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

5.4 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, Contractors and other staff at all reasonable times.

5.5 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subContractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subContractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-Contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

5.6 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subContractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

6. INSURANCE.

6.1 Time for Compliance. Contractor shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subContractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subContractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

6.2 Types of Required Coverages. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Contractor in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance.

6.2.1 Commercial General Liability. Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least $1,000,000 per occurrence. Defense costs shall be paid in addition to the limits.

The policy shall contain no endorsements or provisions limiting coverage for (1) products and completed operations; (2) contractual liability; (3) third party action over claims; or (4) cross liability exclusion for claims or suits by one insured against another.

6.2.2 Automobile Liability. Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of $1,000,000 each accident.

6.2.3 Workers' Compensation. Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than $1,000,000 per accident for bodily injury and disease.

6.2.4 Professional Liability. Professional Liability insurance for errors and omissions with minimum limits of $1,000,000. Covered Professional Services shall specifically include all work to be performed under the Agreement.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

6.3 Endorsements.

6.3.1 The policy or policies of insurance required by Sections 6.2.1 Commercial General Liability and 6.2.2 Automobile Liability and **Error! Reference source not found.** Contractor's Pollution Liability shall be endorsed to provide the following:

6.3.1.1 Additional Insured. The indemnified parties shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Contractor; or (4) contain any other exclusions contrary to the Agreement.

6.3.1.2 Primary Insurance and Non-Contributing Insurance. This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance.

6.3.1.3 Severability. In the event of one insured, whether named or additional, incurs liability to any other of the insureds, whether named or additional, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.

6.3.1.4 Cancellation. The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon the City except ten (10) days prior written notice shall be allowed for non-payment of premium.

6.3.1.5 Duties. Any failure by the named insured to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the indemnified parties.

6.3.1.6 Applicability. That the coverage provided therein shall apply to the obligations assumed by the Contractor under the indemnity provisions of the Agreement, unless the policy or policies contain a blanket form of contractual liability coverage.

6.3.2 The policy or policies of insurance required by Section 6.2.3 Workers' Compensation shall be endorsed, as follows:

6.3.2.1 Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

6.3.2.2 Cancellation. The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon the City except ten (10) days prior written notice shall be allowed for non-payment of premium.

6.3.3 The policy or policies of insurance required by Section 6.2.4 Professional Liability shall be endorsed, as follows:

6.3.3.1 Cancellation. The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon the City except ten (10) days prior written notice shall be allowed for non-payment of premium.

6.4 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

6.5 Evidence of Insurance. The Contractor, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

6.6 Failure to Maintain Coverage. Contractor agrees to suspend and cease all operations hereunder during such period of time if the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Agreement.

In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

6.7 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

6.8 Insurance for SubContractors. All subContractors shall be included as additional insureds under the Contractor's policies, or the Contractor shall be responsible for causing subContractors to purchase the appropriate insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured to the subContractor's policies.

7. OWNERSHIP OF MATERIALS AND CONFIDENTIALITY.

7.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Contractor on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Contractor shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Contractor is entitled under the termination provisions of this Agreement, Contractor shall provide all Documents & Data to City upon payment of the undisputed amount. Contractor shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Contractor shall retain copies of all Documents & Data on file for a minimum of four (4) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Contractor shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

7.1.1 SubContractors. Contractor shall require all subContractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subContractor prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Contractor or its subContractors, or those provided to Contractor by the City.

7.1.2 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Contractor shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Contractor's seal from the Documents & Data. Contractor shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Contractor shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Contractor, a party for whom the Contractor is legally responsible or liable, or anyone approved by the Contractor, or for the use of Documents & Data on any other project by City.

7.1.3 Electronic Copies. Contractor shall provide electronic copies of the finished products in the original software format at the conclusion of the respective phases of work. Complex documents such as reports that utilize more than one type of software shall also be provided in a common format such as Adobe Acrobat (*.pdf). Files of construction drawings shall be provided in a current version of AutoCAD.

7.2 Confidentiality. All Documents & Data, either created by or provided to Contractor in connection with the performance of this Agreement, shall be held confidential by Contractor. All Documents & Data shall not, without the prior written consent of City or except pursuant to court order, be used or reproduced by Contractor for any purposes other than the performance of the Services. Contractor shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Contractor that is otherwise known to Contractor or is generally known, or has become known, to the related industry shall be deemed confidential. Contractor shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

7.3 Indemnification. Contractor shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

8. ACCOUNTING RECORDS.

8.1 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

9. SUBCONTRACTING.

9.1 Prior Approval Required. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

10. TERMINATION OF AGREEMENT.

10.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those Services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

10.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

10.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

11. GENERAL PROVISIONS

11.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

City:

CITY OF WOODLAND
300 First Street
Woodland, CA 95695
Attn: Troy Thompson, Public Works Department

Contractor:

LINCOLN TRAINING CENTER
8331 Sierra College Blvd, Suite 220
Roseville, CA 95661
Attn: Gary Griffen, Vice President of Operations

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

11.2 Indemnification.

11.2.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, Contractors or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorney's fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.

11.2.2 Additional Indemnity Obligations. Contractor shall defend, with Counsel of City's choosing and at Contractor's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 11.2.1 that may be brought or instituted against City or its directors, officials, officers, employees, volunteers and agents. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, or volunteers.

11.3 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

11.3.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 11.3 or any of its sub-sections.

11.3.2 Employment Eligibility; Subcontractors, Contractors, Sub-subcontractors and SubContractors. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, Contractors, sub-subcontractors and subContractors performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 11.3.1.

11.3.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, Contractors, sub-subcontractors or subContractors to meet any of the requirements provided for in Sections 11.3.1 or 11.3.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 11.3.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

11.3.4 Air Quality. To the extent applicable, Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Yolo-Solano Air Quality Management District (YSAQMD) and/or California Air Resources Board (CARB). Contractor shall indemnify City against any fines or penalties imposed by YSAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subContractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

11.4 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subContractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

11.5 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

11.6 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subContractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

11.7 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

11.8 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

11.9 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

11.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

11.11 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

11.12 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

11.13 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

11.14 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Yolo County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

11.15 Time of Essence. Time is of the essence for each and every provision of this Agreement.

11.16 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subContractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

11.17 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

11.18 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

11.19 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

11.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

11.21 City's Right to Employ Other Contractors. City reserves right to employ other Contractors in connection with this Project.

11.22 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF WOODLAND	LINCOLN TRAINING CENTER
By: ____________________	By: ____________________
Paul Navazio City Manager	Gary Griffen Vice President of Operations
Attest:	*Attest:*
By: ____________________	By: ____________________
Ana Gonzalez City Clerk	[Name] [Title]

Approved as to Form:

By: ____________________

Best Best & Krieger LLP
City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

Contractor will provide janitorial services for six facilities: City Hall, Library, Water Pollution Control Facility, Municipal Service Center, and the Charles Brooks Swimming Pool. Contract will be for one (1) three (3) year term (January 15, 2015 through January 14, 2018).

Services performed under the contract shall be subject to inspection and approval by the Fleet and Facilities Manager. This section outlines the minimum acceptable standards.

A. FLOOR MAINTENANCE

1. General: For all operations where furniture and equipment must be moved, no chairs, wastepaper baskets or other similar items shall be stacked on desks, tables or window sills. Upon completion of work, all furniture and equipment must be returned to its original position.

   Baseboards, walls, stair risers, furniture and equipment shall in no way be splashed disfigured or damaged during these operations.

   Proper precautions shall be taken to advise building occupants of wet and/or slippery floor conditions; this applies during inclement weather as well as during cleaning operations. All tools and equipment shall be maintained in clean conditions at all times and neatly stored each night in the assigned storage areas. All waxed surfaces must be maintained so as to provide safe anti-slip walking conditions.

2. Sweeping and Damp Mopping: After sweeping and damp mopping operations, all floors shall be clean and free of dirt streaks; no dirt shall be left in corners, under furniture, behind doors, on stair landings and treads. Likewise, sidewalks, entrances, garages and other assigned areas shall be swept of all dirt and trash. No dirt shall be left where sweepings were picked up. There shall be no dirt or trash under desks, tables or chairs.
3. Wet mopping and scrubbing: The floors shall be properly prepared; thoroughly swept to remove visible dirt and debris; removal of gum, tar and similar substances from the floor surface is required. On completion of the mopping and scrubbing, the floors shall be clean and free of dirt; water streaks, mop marks, string, etc.; properly rinsed and dry-mopped to present an overall appearance of cleanliness. All surfaces shall be dry and corners and cracks clean after the wet mopping or scrubbing. When scrubbing is designated, it shall be performed by machine or by hand with a brush.

4. Floor Finishing: The job of floor finishing includes the cleaning and applying of finish to asphalt, rubber, vinyl and linoleum floors.

   (a) Sweeping: Sweep floors thoroughly. Remove all gum and adhesive materials.

   (b) Stripping: Remove all old finishes or wax from floors, using a concentrated solution of liquid cleaner. Cleaner is to be applied with a mop, and scrubbed with an electrical polishing machine with scrub brush or a medium grade-scrubbing pad. Extremely stubborn spots, gum, rust, burns, etc. shall be removed by hand with a scouring pad dipped in the cleaning solution. Corners and other areas that the polishing machine cannot reach shall be scrubbed and thoroughly cleaned by hand. Care shall be exercised so that baseboards, walls and furniture shall not be splashed or marred. Cleaning solution shall be taken up with a mop or a water pickup and the floor rinsed twice with clean water to remove all traces of cleaning solution. Do not flood floor with water; use only enough water as required for good rinsing. Floor shall be allowed to dry thoroughly after rinsing.

   (c) Finishing: Apply a minimum of four coats of floor finish, allowing sufficient drying time between each coat. The last coat only should be applied up to but not touching the baseboard. All other coats should be applied to within four inches of the baseboard.

   Note: Should there be more than eight hours delay before applying finish after the floor has been cleaned or between coats, the areas must again be cleaned to remove surface dirt and scuff marks before applying finish.

   (d) Periodic Spray Buffing: Sweep floor thoroughly. Use damp mop to remove any spillage. Spray buff floor, using floor polishing machine, synthetic fiber pad and spray equipment containing 50% water and 50% floor finish of the same type as on the floor. Spray only worn areas, using a fine mist applied 2-3 feet ahead of the floor machine, and buff immediately to blend in.

5. Hard Floor Maintenance: Hard floors such as brick terrazzo, marble, etc., shall receive the same treatment as resilient floors above, with the exception that after the stripping operation, floors shall be sealed with a penetrating water base sealer.

6. Carpet Cleaning: All carpets shall be deep cleaned using wet extraction method, unless otherwise indicated by the City, at the scheduled frequencies, using approved industrial carpet cleaning equipment i.e. Work Master Series E or equal.

7. Miscellaneous:

   (a) Rugs: After each thorough vacuuming, all rugs shall be clean, free from dust balls, dirt and other debris; nap on rugs shall lie in one direction.

   (b) Elevator Floors: Where floors have resilient-type covering, all necessary cleaning operations shall be performed to provide a clean and polished appearance after each cleaning.

   (c) Toilets: Special attention shall be given to floors around urinals and commodes for elimination of odors and stains and to provide a uniformly clean appearance throughout. Buildings with waterless urinal cartridges must be changed at a minimum of 2 months or as needed. If cartridges are not changed within the minimum of 2 months or as specified in instruction sheet, contractor will replace for free.

B. DUSTING:

Dusting shall be removed directly from the areas in which it lies by the most effective means – appropriately treated dusting cloths, vacuum tools, etc. When doing high cleaning, dust shall not be allowed to fall from high areas onto furniture and equipment below. The following conditions shall exist after completion of each dusting task:

1. There shall be no dust streaks.

2. Corners, crevices, molding and ledges shall be free of all dust.

3. There shall be no oils, spots or smudges on dusted surfaces caused by dusting tools.

4. When inspected, there shall be few traces of dust on any surface.

C. DAMP-WIPING:

This task consists of using a clean damp cloth or sponge to remove all dirt, spots, streaks and smudges from walls, glass and other specified surfaces and then drying to provide a polished appearance. The wetting solution shall contain an appropriate cleaning agent. When damp wiping in toilet areas, a multi-purpose (disinfectant-deodorizer) cleaner shall be used.

D. BRIGHT METAL POLISHING:

Bright metal polishing may be performed by damp wiping and drying with a suitable cloth if a polished appearance can be attained.

E. POLICING:

This job includes performance of the following tasks at the stated frequencies: picking up and removing from the areas inside the building, all paper, trash, empty bottles and other discarded materials, maintaining wall-hung and floor receptacles in a neat and presentable condition. This shall include all outside trash and cigar/cigarette ash receptacles. Areas inside the building shall be kept clear of spots of tar and other foreign substances. Tidying up drinking spillage, accidents or inclement weather water on floor surfaces will be included. All entranceways shall be kept free of dirt, dust, trash, cigarettes, etc., and cleaned at the frequencies specified.

F. WINDOW WASHING AND GLASS CLEANING:

After each washing operation, all glass shall be clean and free of dirt, grime, streaks excessive moisture and shall not be cloudy. Sash glass moved during the operation shall be returned to its original position.

Window sashes, sills, woodwork about interior glass and other surroundings shall be thoroughly wiped free of other drippings and other watermarks.

In instances where building occupants would be seriously inconvenienced, the window washing activities shall be scheduled at the discretion of the Fleet and Facilities Manager.

NOTE: Cleaning must be done in conformance with safety and other local laws and regulations.

G. PORCELAIN WARE CLEANING:

Porcelain fixtures (drinking fountains, washbasins, urinals, toilets, etc.) shall be clean and bright; there shall be no dust, spots, stains, rust, green mold, encrustation or excess moisture.

Walls and floors adjacent to fixtures shall be free of spots, drippings and watermarks. Drinking fountains shall be kept free of trash, ink, coffee grounds, etc. and nozzles free from encrustation.

Waterless urinals shall be cleaned accordingly to manufacture's recommendations.

H. SPOT CLEANING:

Following this cleaning operation, smudges, marks or spots shall have been removed from the designated areas without causing unsightly discoloration.

I. TRASH/RECYCLE:

Contractor shall be responsible for removing trash and recycle waste from all bins from within the buildings and dumped into City provided trash and recycle bins located outside each of the buildings or as instructed. Trash and recycling must remain separated and disposed according to the appropriate bins.

J. SUPPLIES:

Contractor shall be responsible for supplying and distributing necessary and adequate supplies to each serviced building storage closet area for Contractor employees to restock facility bathroom and break room areas as needed. For buildings that are supplied by the individual department, Contractor shall be responsible for stocking bathrooms, break rooms, or where needed. Supplies to distribute shall include: toilet paper, paper towels, seat covers, hand soap, plastic can liners, multifold towels, and other required supplies.

The Contractor must include their administrative fee, if any, for ordering and stocking supply items in their proposal.

K. STORAGE OF CHEMICAL CLEANERS:

Only small quantities of less than five gallons may be stored in City buildings, and all containers are to be labeled clearly as to its contents.

L. OUTSIDE/PORCH AREAS:

Where cleaning outside porch areas is specified, such cleaning shall include each entrance/exit to the building, starting at the door and continuing away from the building (including porch areas, steps and walkways) as follows:

1. To ground level for buildings with entrances/exits above or below the ground level. To the edge of the overhang for buildings with entrances/exists at ground level.

2. Such cleaning shall include cleaning entrance door, hardware and glass, emptying of cans and trash receptacles, sweeping walks and steps and removing bird droppings, litter, markings and other unsightly conditions.

1. RESPONSE TIMES

The Contractor shall be available 24/7 via cell phone and shall respond to an emergency situation within two (2) hours of initial contact during the Contractor's regular business hours and within (4) hours after hours and weekends at the rate specified in the cost proposal. Successful Contractor will provide the City with their regular business hours and the emergency phone numbers of contracted staff. All contracted staff must have a cell phone, provided to them by the Contractor, while working at the City of Woodland. The Contractor must inform the City of any contact information changes within 24 hours after the change has taken effect.

EXHIBIT "B"

SCHEDULE OF SERVICES AND PRICING

REGULAR MONTHLY SERVICES

Lincoln Training Center will provide the labor for the overall management of regular monthly custodial services as outlined in the following table:

Facility	Street Address/ Zip Code	Schedule	Cleaning Hours Timespan	Annual Amount
City Hall	300 First Street, 95695	• M,W, F Full Service • T, Th 1st floor main hallway bathrooms only	5:00 pm – 11:00 pm	$ 20,945.40
Library	250 First Street, 95695	• T, Th, S Full Service (including Leake Center) • W, F 1st floor restroom only	5:00 pm – 11:00 pm	$ 23,186.76
Municipal Services Center	655 N. Pioneer Avenue, 95776	T, F Full Service	5:00 pm – 11:00 pm	$ 7,181.28
Water Pollution Control Facility	42927 County Road #24, 95778	T, F Full Service	9:00 am – 11:00 am	$ 4,527.84
Fire Station #3 Training Room and Kitchen Area	1556 Springlake Court, 95776	T, F Full Service	5:00 pm – 11:00 pm	$ 3,826.56
Charles Brooks Swimming Pool	155 N. West Street, 95695	M, T, W, Th, F Male and Female Locker Rooms only T, Th service for auxiliary restrooms,	5:00 pm – 11:00 pm	$ 7,832.04

		auxiliary offices and auxiliary hall Th, service for the training room floor		

M = MONDAY, T = TUESDAY, W = WEDNESDAY, TH = THURSDAY, F = FRIDAY, S = SATURDAY

OTHER SCHEDULED SERVICES

Lincoln Training Center will provide the labor for the overall management of regular monthly custodial services as outlined in the following table:

Facility	Schedule	Annual Amount
City Hall Carpet Extraction	• 1 time annually	$ 601.03
City Hall Floor Scrub	• 4 times annually	$ 1371.88
City Hall Floor Wax	• 2 times annually	$ 997.16
Library Leake Center Carpet Cleaning	• 1 time annually	$ 652.30
Library Interior and Exterior Window Cleaning	• 2 times annually	$ 821.20
Library Pressure Washing	• 2 times annually	$ 412.75

FREQUENCY OF SERVICES
Below are the tables that outline the frequency of janitorial activities according to the Scope of Services (Exhibit "A")

Office Areas

Glass	Spot clean door/entry glass	Daily
Floors	Sweep and spot mop or vacuum if carpet	Daily
Trash	Removal all trash and replace liners	Daily
Doors	Spray wipe doors to remove marks and scuffs	Daily
Low Dust	Detail dust all horizontal surfaces, counters, bookcases, picture frames and other items. Do not move any personal items	Weekly
Detail Vacuum	Detail corners and edges	Weekly
High Dust	High dust beams, vents and ledges	Monthly

Conference/Meeting Rooms

Glass	Spot clean door/entry glass	Daily

Vacuuming	Vacuum carpets	Daily
Wipe down	Tables, chairs and counters	Daily
Trash	Removal all trash and replace liners	Daily
Doors	Spray wipe doors to remove marks and scuffs	Daily
Organize	Push in chairs, straighten materials and leave in a neat appearance	Daily
Detail Vacuum	Detail corners and edges with a vacuum	Weekly
Low Dust	Detail dust all horizontal surfaces, counters, book cases and other items. Do not move any personal Items	Weekly

Break room/Eating Areas

Sinks & Counters	Clean and sanitize	Daily
Cabinets	Spot clean exterior of surfaces	Daily
Tabletops	Wipe down tabletops	Daily
Microwave	Wipe down microwave inside and out.	Daily
Floors	Sweep and mop or vacuum if carpet	Daily
Trash	Removal all trash and replace liners	Daily
Refrigerator	Clean and sanitize	Weekly
Low Dust	Detail dust all horizontal surfaces, counters, bookcases and vents.	Weekly

Restrooms/Showers/Locker Rooms

Sinks & Counters	Clean and sanitize	Daily
Mirrors & Fixtures	All mirrors, fixtures and bright metals shall be cleaned and polished.	Daily
Toilets/Urinals	Clean and sanitize	Daily
Trash Removal	Empty trash and replace liner	Daily
Floors	Sweep and mop with disinfectant	Daily
Showers	Clean and sanitize, and remove grime	Daily
Consumables	Clean dispensers and restock	Daily
Partitions/Dividers	Clean and sanitize	Daily
Dust	Detail dust all horizontal surfaces, vents and other items.	Weekly

Halls/Corridors/Stairs

Floors	Vacuum or sweep	Daily
Stair rails	Wipe and polish	Weekly
Dust	Dust horizontal surfaces/rails	Weekly
Cement Stairs	Sweep	Monthly

Entrances/Outside Areas

Mats	Vacuum Mats	Daily
Outside Trash/Debris	Sweep entry and pick up debris near entrance. This includes the main entrance of the library	Daily

Glass	Spot Clean class doors	Daily
Sweep	Sweep entry area	Daily

Other Tasks

Mr Fix It	Report broken fixtures, doors and other facility issues	On-going
Security	Lock all doors and window	Daily
Carpet Spotting	Remove carpet spots	On-going
Window Cleaning	Clean exterior windows (Library Only)	2 x Annually
Pressure Washing	Pressure wash main walkway and stairs (Library Only) Note: Runoff from pressure washing is not allowed into storm water drains per the City's Municipal Stormwater permit.	2 x Annually
Carpet Cleaning	Extract dirt from carpet (City Hall Only)	1 x Annually
Floors	Scrub Lobby and Restrooms (City Hall Only)	6 x Annually

Definitions:
Daily = On the days of service listed in Exhibit "B"

Legislation Details (With Text)

6.

File #:	14-471 Version: 1	Name:	
Type:	Report of the City Manager	Status:	Agenda Ready
File created:	11/19/2014	In control:	City Council
On agenda:	12/16/2014	Final action:	
Title:	SUBJECT: Accept the AB1600 Development Fees Annual Report for the Fiscal Year Ended June 30, 2014 Recommendation for Action: Staff recommends that the City Council adopt Resolution No. _____ accepting the AB1600 Annual Report for the year ended June 30, 2014		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	AB1600 Resolution AB 1600 FY 14 Summary by Fund		

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014

SUBJECT: Accept the AB1600 Development Fees Annual Report for the Fiscal Year Ended June 30, 2014

Recommendation for Action: Staff recommends that the City Council adopt Resolution No. _____ accepting the AB1600 Annual Report for the year ended June 30, 2014

Staff Contact

Lynn Johnson, Senior Management Analyst - 530-661-5979, lynn.johnson@cityofwoodland.org

Council Goal

This recommendation is consistent with the City's goals for fiscal responsibility and governance. Annual reporting of revenues and expenditures related to development impact fees provides enhanced accountability and transparency to the community.

Fiscal Impact

There is no fiscal impact related to approving the AB1600 Annual Report. All revenues and expenses have been recorded and expended according to Government Code Section 66006.

Report in Brief

Government Code Section 66006 requires local agencies to submit an annual report detailing the status of development impact fees. The annual report must be made available to the public and presented to the public agency (City Council) within 180 days of the close of a fiscal year.

Background

In 1978, following the passage of Proposition 13, many cities began charging fees on new development to fund public improvements and services such as streets, park facilities, sewers and storm drains. These fees are commonly known as development impact fees. In order to ensure that these fees are spent in a timely manner and on projects for which they were collected, the State Legislature passed a bill known as AB1600 (Mitigation Fee Act). This bill applies to developer fees which were increased or imposed on or after January 1, 1989. AB1600 enacts Government Code Sections 66000-66008 which generally contain four requirements:

1. A local jurisdiction must follow the process set forth in the bill and make certain determinations regarding the purpose and use of the fees, and establish a “nexus” or connection between a development project or class of projects and the public improvement that will be financed with the fee.
2. The fee revenue must be segregated from the general fund in order to avoid commingling of public improvement fees and the general fund.
3. If a jurisdiction has had possession of a developer fee for five or more years and has not committed the money to a project or spent the money, then it must make findings describing the continuing need for that money. In addition, an annual report must be made of fees collected, interest earned, projects on which fees were expended, and any transfers for loans from the fee account. This report is to be reviewed by the local agency assessing the fees.
4. If a local jurisdiction cannot make the findings required under paragraph three (3), the City must refund the fees collected.

Discussion

The City of Woodland development fees covered by AB1600, and documented in the attached report, include the following:

- General City impact fee
- Parks and Recreation impact fee
- Police impact fee
- Fire protection impact fee
- Library impact fee
- Surface Water impact fee
- Storm Drainage impact fee
- Road impact fee
- Water impact fee
- Wastewater impact fee

Staff examined each of the funds for the impact fees listed above to determine if any development fees remain unexpended five years or more after receipt and are subject to refund. Based on our analysis, no refunds are due. Unexpended fund balances represent fees collected for respective Council approved projects which will be financed and implemented when financially feasible or practical.

This is the third year of reporting for the Surface Water impact fee which was adopted by Council on June 21, 2011. This new impact fee will not show direct expenditures, but will be used to pay down long-term debt associated with the Surface Water Supply Project. This impact fee allows for the development community to pay their fair share of the capacity designed within the Surface Water Supply project to support future growth in the community. For FY2014, we collected approximately $444,000 from the new impact fee.

The nature of AB1600 funds is such that timing of receipt of revenues and construction of the related capital projects rarely coincide. Ideally, revenues will be collected over time and accumulated until a development related project is needed; in years of construction, accumulated reserves will be used up. For many years it was the City's practice to construct projects in advance of collecting sufficient funds through borrowing from other city funds, or by issuing long term external debt. This practice has resulted in certain of the AB1600 funds operating with very large deficit balances. In response to the financial imbalances, the City adopted a Budget & Fiscal Policy in 2009 that states:

- Discontinue the practice of internal borrowing between enterprise and categorical funds; funding for capital projects must be determined based on the available resources within each fund to meet its cash payment or debt service requirements and strategies to balance each fund and implement fund integrity should be continued.
- Discontinue the practice of issuing bonds or desired capital improvements based on projected development and the collection of impact fees associated with development. This source of revenue is dependent on the level of economic activity within the region and is uncertain and unstable.

While expenditures on major capital projects have been delayed or altogether cancelled in the Capital Improvement Plan, the City is still required to pay continuing annual debt service for debt that was secured by impact fee revenues prior to the adoption of the Budget & Fiscal Policy. In addition, the City's AB1600 impact fee revenues have been very volatile due to the slump in residential and commercial development these past six years. Further complicating the revenue/expenditure imbalance is the significant reduction of the development impact fees that occurred in December 2008.

Development fee revenues for FY 2014 have more than doubled since last year and are five times higher than FY2012. Although we are continuing to see increases in revenue, our on-going expenses for debt service and the current cost of projects continues to exceed revenue. In comparison, six years ago our total development fee revenue was just shy of $11 million. For FY 2014, our total development fee revenue is almost $3.7 million.

For FY 2014, revenues from the AB1600 funds exceeded expenditures by approximately $450,000. This positive balance is due to the refunding of 2002 and 2005 bonds which resulted in a return of some cash to the park and wastewater development funds. This refunding allowed us to make our bond payments related to the Community & Senior Center without borrowing from Measure E. This is a one-time opportunity created from the debt refunding. We still have a large deficit in the park development fund which is a result of previous annual debt service payments that exceeded annual development fee revenue. So far Measure E has loaned this fund $6.3 million to cover debt service related to the construction of the Community & Senior Center. The annual internal loan of up to $2 million from Measure E to the park development fund was approved by Council on March 20, 2012.

The other fund with an on-going imbalance is the wastewater development fund which also has significant on-going expenditures related to debt service payments. Although we continue to track the debt service owed by the wastewater development fund, the sewer rates approved by Council in November 2013 are sufficient to cover this on-going debt service requirement until such time as the development fund can pay its share of debt service and begin repayment to the sewer enterprise fund. With the adopted sewer rates in place, we have been able to refund the outstanding debt to a lower interest rate thus reducing the overall cost of debt service.

We will be reviewing and updating our impact fee program in the near future. It is our intention to better align the development assumptions assumed in the fee program with the growth rates we are currently experiencing and anticipate for the next several years. Once the General Plan is complete, we will embark on a full update of the impact fee program.

Conclusion

Staff recommends that the City Council adopt Resolution No _____ accepting the AB1600 Annual Report for the year ended June 30, 2014.

Prepared by: Lynn Johnson, Senior Management Analyst

Reviewed by: Kim McKinney, Finance Officer

Paul Navazio, City Manager

Attachment: Resolution and AB1600 Annual Report for FY 2014

RESOLUTION NO __________

A RESOLUTION OF THE CITY OF WOODLAND ACCEPTING THE FISCAL YEAR 2013/14 ANNUAL REPORT OF DEVELOPMENT FEES (AB1600 REPORT)

WHEREAS, the City of Woodland imposes fees to mitigate the impact of development pursuant to Government Code sections 66000 et seq.; and

WHEREAS, said fees collected are deposited into a special and separate capital fund for each type of improvement funded by development fees; and

WHEREAS, the City maintains separate funds for general city, parks and recreation, police, fire, library, surface water, storm drainage, roads, water, and wastewater; and

WHEREAS, the City is required within 180 days after the last day of each fiscal year to make available to the public information for the fiscal year regarding these fees under Government Code section 66006; and

WHEREAS, City staff has prepared a report ("AB1600 Report") that contains the information required by Government Code section 66006, a copy which is attached hereto as Exhibit "A"; and

WHEREAS, no interfund transfers or loans were made from any of the accounts identified in the AB1600 Report; and

WHEREAS, there were no refunds of development impact fees collected pursuant to Government Code §66001(e), nor were there any allocations of unexpended revenues collected pursuant to Government Code §66001(f); and

WHEREAS, no interested persons have requested notice of the AB1600 Report; consequently no notices of the availability of the AB1600 Report were mailed.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODLAND DOES RESOLVE AS FOLLOWS:

<u>Section 1. Findings</u>. The City Council of the City of Woodland hereby finds and adopts as follows:

A. In accordance with Government Code section 66006, the City has conducted an annual review of its development impact fees and capital improvement program and the City Council has reviewed the AB1600 Report attached hereto as Exhibit A and incorporated herein by this reference.

B. The funds have been and shall be used for the purposes stated in said reports and are necessary to mitigate impacts resulting from development in the City and further finds that there is a reasonable relationship between the use of the fees and type of development project upon which the fee is imposed.
C. The City Council hereby approves, accepts and adopts the Ab1600 Report.
D. The AB1600 Report is available for public review on the City's website, at the City Clerk's office and upon request.

Section 2. Effective Date. The resolution shall take effect immediately upon adoption.

Section 3. Severability. If a section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution.

The City Council hereby declares that it would have passed this Resolution and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses by declared unconstitutional on their face or as applied.

PASSED AND ADOPTED this 16th day of December 2014, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Tom Stallard, Mayor

ATTEST:

APPROVED AS TO FORM:

Ana B. Gonzalez, City Clerk

Kara K. Ueda, City Attorney

Attachment 1
AB1600 Annual Report
Development Impact Fees
City of Woodland
Fiscal Year Ended June 30, 2013

Government Code Section 66006 requires local agencies to submit an annual report detailing the status of development impact fees. The annual report must be made available to the public and presented to the public agency (City Council) within 180 days of the close of a fiscal year.

This report summarizes the following information for each of the development fee programs:

1. A brief description of the fee program.
2. Schedule of fees.
3. Beginning and ending balances of the fee program.
4. Disbursement information.

ANALYSIS

For the fiscal year ended June 30, 2014, fund revenues (development fees, interest income, bond proceeds, etc.) totaled $4,073,604, while expenditures totaled $4,540,884.

The table below summarizes annual fee revenues directly relating to impact fees and related project expenditures:

Category	Development Fee Revenues	Other Revenues	Total Revenues	Expenditures	Net Difference
General City	$ 109,184	$ 1,234	$ 110,417	$ 412,309	$ (301,892)
Parks & Recreation	$ 647,045	$ 293,314	$ 940,359	$ 940,359	$ -
Police	$ 143,912	$ 102	$ 144,014	$ 72,055	$ 71,959
Fire	$ 166,169	$ 99	$ 166,268	$ 49,161	$ 117,107
Library	$ 6,250	$ 573	$ 6,823	$ 72,996	$ (66,173)
Surface Water	$ 444,400	$ 478	$ 444,879	$ -	$ 444,879
Storm Drainage	$ 60,165	$ 13,397	$ 73,562	$ 201,146	$ (127,584)
Roads	$ 759,986	$ 70,457	$ 830,442	$ 744,433	$ 86,010
Water	$ 69,730	$ 124	$ 69,854	$ 69,799	$ 55
Wastewater	$ 1,286,527	$ 459	$ 1,286,986	$ 1,058,808	$ 228,178
Total	**$ 3,693,369**	**$ 380,236**	**$ 4,073,604**	**$ 3,621,065**	**$ 452,539**

FUND 510 - GENERAL CITY DEVELOPMENT

General City Development Fee Description

General City development fees are used to expand/construct City Hall and other general City facilities (including technology improvements/updates) to meet the needs of the increased residential population and increase in commercial enterprises

General City Development Fee Schedule

Category	Basis	Fee
Single Family Residential- Infill	Unit	$ 815.00
Single Family Residential- Downtown	Unit	$ 815.00
High-Density Single Family	Unit	$ 680.00
Age-Restricted Single Family	Unit	$ 490.00
Multi-family Residential	Unit	$ 680.00
Age-Restricted Multi-family	Unit	$ 490.00
Retail	Sq Ft	$ 0.69
Service	Sq Ft	$ 0.62
Office	Sq Ft	$ 0.78
Industrial	Sq Ft	$ 0.16
Downtown Retail	Sq Ft	$ 0.69

General City Development Fund Collections & Expenditures

			Fiscal Year				
			2010	2011	2012	2013	2014
Beginning Balance			$2,954,575	$2,881,262	$2,469,328	$2,348,216	$1,827,996
REVENUES							
Development Fees			54,563	158,444	44,773	86,158	109,184
Interest Earnings			33,441	14,557	7,592	4,688	1,234
Other Revenue			-	92,048	-	-	-
Total Revenue			**88,004**	**265,050**	**52,365**	**90,846**	**110,417**
EXPENDITURES							
MPFP #	Program	Title					
City 100	0513	SLSP Backbone - Pkg B	794	-	-	-	-
City-103	0706	General Plan Update	-	-	-	319,966	240,699
CITY-102	0711	Tech Enhancements - Enterprise	28,867	-	-	-	-
CITY-102	0713	Tech Enhancements - Website	38	-	-	-	-
CITY-5	0725	MSC Expansion	2,380	-	-	-	-
CITY-106	0837	Resource Management System (EIS)	89,631	139,724	80,519	53,916	51,445
CITY-106	0845	Enterprise GIS Database	7,500	-	-	-	-
CITY-102	0850	Community Development GIS Layers	2,742	-	-	-	-
CITY-102	0851	Specialized Imagery			3,739		
CITY-102	0852	PW GIS Layers	6,150	-	-	-	-
CITY-6	0857	MPFP Update	-	1,200	-	-	-
CITY-102	7849	Debt Service on VOIP	-	16,249	64,995	47,657	64,995
CITY-102	0932	Voice Over Internet Protocol (VOIP)	6,623	478,557	5,997	-	-
CITY-102	1109	Integrated Video Publishing System	-	15,097	-	-	-
	1308	Habitat/Natural Conservation JPA	-	-	-	158,587	39,164
	9000	Force Account	16,593	26,156	18,227	30,940	16,007
Total Expenditures			**161,317**	**676,983**	**173,477**	**611,066**	**412,309**
Excess(deficiency) revenues			(73,313)	(411,933)	(121,112)	(520,220)	(301,892)
Total Available Fund Equity at June 30			**$2,881,262**	**$2,469,328**	**$2,348,216**	**$1,827,996**	**$1,526,105**

Conclusion: No fees have been held unexpended for more than five years; no refunds required
The fund equity as of June 30, 2014 represents collected fees earmarked for future technology enhancement projects and completion of various studies.

Prior year numbers have been adjusted to tie to audited financials. Often timing of the reporting and receipt of final audit will differ.

FUND 540 - PARK & RECREATION DEVELOPMENT

Park Development Fee Description

Park development fees are used to acquire park land, equipment and to construct or expand a variety of recreational facilities such as sports parks, Community Senior Center, tennis courts and swimming pools as related to the impact of growth on the City.

Park Development Fee Schedule

Spring Lake Category		Fee	OTHER CITY Category	Basis	Fee
Single Family Residential- Infill	Unit	$ 3,725	Single Family Residential- Infill	Unit	$ 6,772
Single Family Residential- Downtown	Unit	N/A	Single Family Res- Downtown	Unit	$ 6,772
High-Density Single Family	Unit	$ 3,103	High-Density Single Family	Unit	$ 5,642
Age-Restricted Single Family	Unit	$ 2,234	Age-Restricted Single Family	Unit	$ 4,062
Multi-family Residential	Unit	$ 3,103	Multi-family Residential	Unit	$ 5,642
Age-Restricted Multi-family	Unit	$ 2,234	Age-Restricted Multi-family	Unit	$ 4,062

Park Development Fund Collections & Expenditures

			Fiscal Year 2010	2011	2012	2013	2014
Beginning Balance			$ 934,784	$ (432,604)	$ (2,445,712)	$ (4,646,457)	$ (6,292,520)
REVENUES							
Development Fees			179,506	237,659	55,559	215,573	647,045
Interest Earnings			-	-	-	-	-
Other Revenue			-	-	-	-	293,314
Total Revenue			**179,506**	**237,659**	**55,559**	**215,573**	**940,359**
EXPENDITURES							
MPFP #	Program	Title					
	0801	Community Center Phase II	29,227	-	-	-	-
	7914	2005 Bond Debt Service Pymts	999,955	1,759,343	1,760,566	1,399,799	477,157
	7919	2007 Bond Debt Service Pymts	438,036	439,256	439,943	-	-
	7925	2012 Refunding of 2007 Debt	-	-	-	402,868	407,960
	9000	Force Account	79,677	52,167	55,796	58,969	55,242
Total Expenditures			**1,546,894**	**2,250,766**	**2,256,305**	**1,861,636**	**940,359**
Excess(deficiency) revenues			(1,367,388)	(2,013,107)	(2,200,746)	(1,646,063)	-
Total Available Fund Equity at June 30			**$ (432,604)**	**$ (2,445,712)**	**$ (4,646,457)**	**$ (6,292,520)**	**$ (6,292,520)**

Conclusion: No fees have been held unexpended for more than five years; no refunds required

Council approved loaning this fund up to $2M per year to pay debt service on the bonds since the fund's revenue has not been sufficient to cover debt service. Only the amount needed to supplement annual fee revenue is loaned. To date, a total of $6,292,521 has been loaned from MSE to Park Development.

MSE Loan	2012	$ 4,646,458
	2013	$ 1,646,063
	2014	$ -

Prior year numbers have been adjusted to tie to audited financials. Often timing of the reporting and receipt of final audit will differ.

FUND 550 - POLICE DEVELOPMENT FUND

Police Development Fee Description

Police development fees are used to expand/construct police service facilities and to acquire equipment related to the impact of growth on the City.

Police Development Fee Schedule

Category	Basis	Fee
Single Family Residential- Infill	Unit	$ 1,075
Single Family Residential- Downtown	Unit	$ 1,075
High-Density Single Family	Unit	$ 897
Age-Restricted Single Family	Unit	$ 148
Multi-family Residential	Unit	$ 897
Age-Restricted Multi-family	Unit	$ 148
Retail	Sq Ft	$ 0.89
Service	Sq Ft	$ 0.81
Office	Sq Ft	$ 1.02
Industrial	Sq Ft	$ 0.23
Downtown Retail	Sq Ft	$ 0.89

Police Development Fund Collections & Expenditures

			Fiscal Year 2010	2011	2012	2013	2014
Beginning Balance			$(4,000,891)	$(3,936,494)	$(3,748,239)	$(3,809,135)	$(3,800,288)
REVENUES							
Development Fees			65,555	188,183	39,772	90,066	143,912
Interest Earnings			-	4,027	-	-	102
Total Revenue			**65,555**	**192,210**	**39,772**	**90,066**	**144,014**
EXPENDITURES							
MPFP #	Program	Title					
	0624	Vehicle Purchase	-	-	-	5,000	
	0841	Computer Aided Dispatch	-	-	96,713	63,955	65,217
	9000	Force Account	1,158	3,955	3,955	12,264	6,838
Total Expenditures			**1,158**	**3,955**	**100,668**	**81,219**	**72,055**
Excess(deficiency) revenues			64,397	188,255	(60,896)	8,847	71,959
Total Available Fund Equity at June 30			**$(3,936,494)**	**$(3,748,239)**	**$(3,809,135)**	**$(3,800,288)**	**$(3,728,330)**

Conclusion: No fees have been held unexpended for more than five years; no refunds required

Prior year numbers have been adjusted to tie to audited financials. Often timing of the reporting and receipt of final audit will differ.

FUND 560 - FIRE DEVELOPMENT FUND

Fire Development Fee Description

Fire development fees are used to expand/construct fire service facilities and to acquire equipment

Fire Development Fee Schedule

Category	Basis	Fee
Single Family Residential- Infill	Unit	$ 1,257
Single Family Residential- Downtown	Unit	$ 1,257
High-Density Single Family	Unit	$ 942
Age-Restricted Single Family	Unit	$ 1,037
Multi-family Residential	Unit	$ 942
Age-Restricted Multi-family	Unit	$ 775
Retail	Sq Ft	$ 0.84
Service	Sq Ft	$ 0.78
Office	Sq Ft	$ 0.90
Industrial	Sq Ft	$ 0.43
Downtown Retail	Sq Ft	$ 0.84

Fire Development Fund Collections & Expenditures

			Fiscal Year				
			2010	2011	2012	2013	2014
Beginning Balance			$ 74,749	$ (169,624)	$ (367,501)	$ (680,803)	$ (880,000)
REVENUES							
Development Fees			55,025	136,553	30,385	85,707	166,169
Interest Earnings			-	4,832			99
Total Revenue			**55,025**	**141,385**	**30,385**	**85,707**	**166,268**
EXPENDITURES							
MPFP #	Program	Title					
	0325	Fire Station 4 and Engine	11,981	-	-	-	-
	9000	Force Account	55,003	46,425	49,874	52,684	49,161
	7914	2005 Cap Project Debt Service	232,414	292,837	293,813	232,220	
Total Expenditures			**299,397**	**339,262**	**343,688**	**284,904**	**49,161**
Excess(deficiency) revenues over expenditures			(244,373)	(197,877)	(313,302)	(199,197)	117,107
Total Available Fund Equity at June 30			**$ (169,624)**	**$ (367,501)**	**$ (680,803)**	**$ (880,000)**	**$ (762,893)**

Conclusion: No fees have been held unexpended for more than five years; no refunds required

Prior year numbers have been adjusted to tie to audited financials. Often timing of the reporting and receipt of final audit will differ.

FUND 570 - LIBRARY DEVELOPMENT FUND

Library Development Fee Description

Library development fees are used to expand/construct library facilities and to acquire equipment related to the impact of

Library Development Fee Schedule

Category	Basis	Fee
Single Family Residential- Infill	Unit	$ 50
Single Family Residential- Downtown	Unit	$ 50
High-Density Single Family	Unit	$ 42
Age-Restricted Single Family	Unit	$ 31
Multi-family Residential	Unit	$ 42
Age-Restricted Multi-family	Unit	$ 31
Retail	Sq Ft	$ 0.01
Service	Sq Ft	$ 0.01
Office	Sq Ft	$ 0.01
Industrial	Sq Ft	$ -
Downtown Retail	Sq Ft	$ 0.01

Library Development Fund Collections & Expenditures

			Fiscal Year				
			2010	2011	2012	2013	2014
Beginning Balance			$1,104,873	$1,059,442	$ 992,099	$ 912,754	$ 835,838
REVENUES							
Development Fees			2,440	11,022	12,391	17,175	6,250
Interest Earnings			12,296	6,660	2,966	2,073	573
Total Revenue			**14,736**	**17,682**	**15,357**	**19,248**	**6,823**
EXPENDITURES							
MPFP #	Program	Title					
	9000	Force Account	5,246	5,690	9,188	9,335	2,587
LIB-3	9445	Library Collection Material	54,921	79,335	85,513	86,829	70,409
Total Expenditures			**60,166**	**85,025**	**94,702**	**96,164**	**72,996**
Excess(deficiency) revenues over expenditures			(45,431)	(67,343)	(79,345)	(76,916)	(66,173)
Total Available Fund Equity at June 30			**$1,059,442**	**$ 992,099**	**$ 912,754**	**$ 835,838**	**$ 769,665**

Conclusion: No fees have been held unexpended for more than five years; no refunds required.
The fund equity as of June 30, 2014 represents collected fees that are earmarked for future library projects

Prior year numbers have been adjusted to tie to audited financials. Often timing of the reporting and receipt of final audit will differ.

FUND 580 - SURFACE WATER DEVELOPMENT FUND

Surface Water Development Fee Description

Surface Water Development fees are used to finance part of the capital improvements including surface water rights and treatment facilities needed to provide treated water to the new customer growth in the City.

Surface Water Development Fee Schedule

All Users (by meter size)					
Meter Size	Weight Factor	Calculated Fee		Admin Fee	
1"	1.0	$	2,816	$	21
1 1/2"	2.0	$	5,632	$	42
2"	3.2	$	9,011	$	68
3"	6.0	$	16,896	$	127
4"	10.0	$	28,160	$	211
6"	20.0	$	56,320	$	422
8"	32.0	$	90,112	$	676

Surface Water Development Fund Collections & Expenditures

	Fiscal Year 2012	Fiscal Year 2013	Fiscal Year 2014
Beginning Balance**	$ -	$ 40,255	$ 203,739
REVENUES			
Development Fees	40,125	162,979	444,400
Interest Earnings	130	505	478
Total Revenue	**40,255**	**163,484**	**444,879**
EXPENDITURES			
MPFP # Program Title			
Total Expenditures	**-**	**-**	**-**
Excess(deficiency) revenues over expenditures	40,255	163,484	444,879
Total Available Fund Equity at June 30	**$ 40,255**	**$ 203,739**	**$ 648,618**

**The Surface Water Development Fee was adopted by Council on June 21, 2011. There was no beginning balance as of July, 1, 2011

Conclusion: No fees have been held unexpended for more than five years; no refunds required

Prior year numbers have been adjusted to tie to audited financials. Often timing of the reporting and receipt of final audit will differ.

FUND 581 - STORM DRAIN DEVELOPMENT FUND

Storm Drain Development Fee Description

Storm Drain development fees are used to expand/construct drainage facilities to maintain adequate drainage throughout the City by reducing the impacts of new development. The impact fee for Storm Drain is calculated by "fee area" so that each

Storm Drain Development Fee Schedule

	Residential fee per acre		Non-residential fee per acre	
	Single-Family	**Multifamily**	**Commercial**	**Schools**
Area E1	$8,572	$12,859	$13,716	$10,758
Area E2	$7,343	$11,015	$11,749	$9,216
Area E3	$5,408	$8,112	$8,653	$6,787
Area E4	$5,638	$8,457	$9,021	$7,076
Area E5	$2,110	$3,166	$3,376	$2,649
Area E6	$1,527	$2,291	$2,443	$1,917
Area N1	$41,566	$62,349	$66,505	$52,165
Area N2	$35,798	$53,697	$57,277	$44,927
Area S6a	$11,036	$16,554	$17,658	$13,850
Area S6b	$10,909	$16,363	$17,454	$13,691

Storm Drain Development Fund Collections & Expenditures

			Fiscal Year 2010	2011	2012	2013	2014
Beginning Balance**			$ (25,568)	$(1,042,091)	$(1,116,224)	$(1,254,322)	$(1,395,673)
REVENUES							
Development Fees			12,518	38,083	35,262	46,501	60,165
Interest Earnings			-	-	-	-	904
Other Revenue			-	-	-	-	-
Developer In Lieu			11,089	82,473	22,426	20,959	12,494
Total Revenue			**23,606**	**120,556**	**57,688**	**67,460**	**73,562**
EXPENDITURES							
MPFP #	Program	Title					
SD-212	0607	S. Canal Pump & Bypass	783	-	-	-	-
	0752	Floodplain Mgmt N Area	16,843	-	-	-	-
SD-202	0818	Purchase of Detention Ponds (Dubach)	750,000	-	-	-	-
	0931	Storz Pond	-	9,743	2,791	4,427	5,095
	9000	Force Account	272,504	184,947	192,995	204,384	196,050
Total Expenditures			**1,040,130**	**194,690**	**195,786**	**208,811**	**201,146**
Excess(deficiency) revenues over expenditures			(1,016,523)	(74,133)	(138,098)	(141,351)	(127,584)
Total Available Fund Equity at June 30			**$(1,042,091)**	**$(1,116,224)**	**$(1,254,322)**	**$(1,395,673)**	**$(1,523,257)**

** Beginning balance does not include long-term advance of pre-1991 fungible monies to the Storm Drain Enterprise Fund ($2,101,099). These monies are not subject to the requirements of AB1600 and are not available for spending.

Conclusion: No fees have been held unexpended for more than five years; no refunds required

Prior year numbers have been adjusted to tie to audited financials. Often timing of the reporting and receipt of final audit will differ.

FUND 582 - ROAD DEVELOPMENT FUND

Road Development Fee Description

Road Development fees are used to expand/construct streets, roads, interchanges, studies, signals and other projects related to the impact of expansion on the City.

Road Development Fee Schedule

Category	Basis	Fee
Single Family Residential- Infill	Unit	$ 5,435
Single Family Residential- Downtown	Unit	$ 3,966
High-Density Single Family	Unit	$ 3,966
Age-Restricted Single Family	Unit	$ 1,559
Multi-family Residential	Unit	$ 3,966
Age-Restricted Multi-family	Unit	$ 491
Retail	Sq Ft	$ 6.64
Service	Sq Ft	$ 4.80
Office	Sq Ft	$ 4.67
Industrial	Sq Ft	$ 2.68
Downtown Retail	Sq Ft	$ 4.80

Road Development Fund Collections & Expenditures

			Fiscal Year				
			2010	2011	2012	2013	2014
Beginning Balance			$(1,171,244)	$(1,813,860)	$(2,820,459)	$(3,176,575)	$(3,854,110)
REVENUES							
Development Fees			346,919	1,507,439	173,343	415,596	759,986
Interest Earnings			-	53,232	-	-	610
Other Revenue				890,543	38,028	-	69,847
Total Revenue			**346,919**	**2,451,213**	**211,371**	**415,596**	**830,442**
EXPENDITURES							
MPFP #	Program	Title					
NTS-28	0004	Lemen/North/East Realign	104,151	103,821	90,244	149,486	-
IGS-100	0006	1-5/113 Phase 2	17,775	6,255	10,846	4,362	1,883
UTM-100	0104	Traffic Model Updates	7,261	-	-	-	-
TES-100	0228	Traffic Engineering Serv	3,173	2,465	29,760	8,092	13,660
IGS-1	0301	Signal at I-5/102	-	1,041	-	-	-
SW-1A/B	0407	Widening & Recon Kentucky	-	-	-	-	73
SW-2	0513	SLSP Package B Improvements	83,126	-	-	-	-
BPF-1	0515	E Main St Bikeway	2,687	-	-	-	-
NTS-19	0530	NTS Kentucky/CR 98	-	100	-	-	-
NTS-11	0737	Gibson/Cottonwood Signal	-	299,200	-	-	-
SC-12	0744	2008 Road Rehab	6,191	-	-	-	-
IGS-100	0820	I-5/113 UTILITY RELOCATE	27,435	206	-	-	-
BPF-200	0826	08 SAFE ROUTES TO SCHOOL	69,933	2,860	-	-	-
TSM-202	1127	Main St/Cleveland Signal Intersection	-	-	2,614	702	497
SW-2	1301	Gibson Frontage Improvements	-	-	-	132,157	-
NTS-33	1304	Parkside Reimbursement	-	-	-	338,000	-
NTS-33	1306	Safe Routes to School	-	-	-	6,962	300,274
	9000	Force Account	482,758	468,159	421,578	453,012	427,165
TP-3	9524	Planning/Analysis Studies	8,645	4,774	6,344	304	881
IGS-1	9724	I-5/CR 102 Interchange	176,401	2,531,421	4,955	54	-
NTS-33	9801	NTS E.GUM & MATMOR	-	37,448	1,145	-	-
Total Expenditures			**989,535**	**3,457,813**	**567,487**	**1,093,131**	**744,433**
Excess(deficiency) revenues over expenditures			(642,616)	(1,006,599)	(356,115)	(677,535)	86,010
Total Available Fund Equity at June 30			**$(1,813,860)**	**$(2,820,459)**	**$(3,176,575)**	**$(3,854,110)**	**$(3,768,100)**

Conclusion: No fees have been held unexpended for more than five years; no refunds required

Prior year numbers have been adjusted to tie to audited financials. Often timing of the reporting and receipt of final audit will differ.

FUND 584 - WATER DEVELOPMENT FUND

Water Development Fee Description

Water Development fees are used to build new capacity in the water infrastructure system as related to the

Water Development Fee Schedule

Category	Basis	Fee
Single Family Residential- Infill	Unit	$ 541
Single Family Residential- Downtown	Unit	$ 541
High-Density Single Family	Unit	$ 332
Age-Restricted Single Family	Unit	$ 325
Multi-family Residential	Unit	$ 332
Age-Restricted Multi-family	Unit	$ 265
Retail	Sq Ft	$ 0.14
Service	Sq Ft	$ 0.15
Office	Sq Ft	$ 0.10
Industrial	Sq Ft	$ 0.14
Downtown Retail	Sq Ft	$ 0.14

Water Development Fund Collections & Expenditures

			Fiscal Year 2010	2011	2012	2013	2014
Beginning Balance**			$ 754,917	$ 664,097	$1,083,407	$1,035,430	$1,000,123
REVENUES							
Development Fees			291,209	496,590	18,487	38,736	69,730
Interest Earnings			8,287	2,677	3,509	-	124
Total Revenue			**299,496**	**499,267**	**21,996**	**38,736**	**69,854**
EXPENDITURES							
MPFP #	Program	Title					
WTR-9	0101	County Well Acquisition	470	4,970	-	-	-
WTR-130	0534	New Water Well 25	473	-	-	-	-
WTR-13	0750	Water Focused Study	3,277	-	-	-	-
WTR-139	0807	Surface Water Project	294,716	5,743	-	-	-
	9000	Force Account	91,380	69,244	69,973	74,043	69,799
Total Expenditures			**390,316**	**79,957**	**69,973**	**74,043**	**69,799**
Excess(deficiency) revenues over expenditures			(90,820)	419,310	(47,977)	(35,307)	55
Total Available Fund Equity at June 30			**$ 664,097**	**$1,083,407**	**$1,035,430**	**$1,000,123**	**$1,000,178**

** Beginning balance does not include long-term advance of pre-1991 fungible monies to the Storm Drain Enterprise Fund ($2,286,342). These monies are not subject to the requirements of AB1600 and are not available for spending.

Conclusion: No fees have been held unexpended for more than five years; no refunds required

Prior year numbers have been adjusted to tie to audited financials. Often timing of the reporting and receipt of final audit will differ.

FUND 585 - WASTEWATER DEVELOPMENT FUND

Wastewater Development Fee Description

Wastewater Development fees are used to expand/construct wastewater facilities and to acquire equipment

Wastewater Development Fee Schedule

Category	Basis	Fee
Single Family Residential- Infill	Unit	$ 5,899
Single Family Residential- Downtown	Unit	$ 5,899
High-Density Single Family	Unit	$ 4,917
Age-Restricted Single Family	Unit	$ 3,539
Multi-family Residential	Unit	$ 4,917
Age-Restricted Multi-family	Unit	$ 3,539
Retail	Sq Ft	$ 2.90
Service	Sq Ft	$ 3.63
Office	Sq Ft	$ 2.41
Industrial	Sq Ft	$ 2.70
Downtown Retail	Sq Ft	$ 2.90

Wastewater Development Fund Collections & Expenditures

			Fiscal Year				
			2010	2011	2012	2013	2014
Beginning Balance**			$ (9,383,734)	$ (9,509,717)	$ (9,504,462)	$ (10,713,945)	$ (12,070,426)
REVENUES							
Development Fees			344,235	1,374,953	170,644	423,417	1,286,527
Interest Earnings			-	11,839	-	-	459
Refunds***			-	-	-	-	-
Total Revenue			**344,235**	**1,386,793**	**170,644**	**423,417**	**1,286,986**
EXPENDITURES							
MPFP #	Program	Title					
WSTE-112	0328	WWTP Tertiary Improvement	11,806	-	-	-	-
WSTE-106	0732	Sanitary Sewer Mgmt Plan	922	-	-	-	-
	7908	2002 Refunding Bond	-	953,423	948,023	1,205,435	489,568
	7916	2005 Cap Projects Debt Service	364,428	364,428	364,428	502,886	501,799
	9000	Force Account	93,062	63,687	67,676	71,577	67,441
Total Expenditures			**470,218**	**1,381,537**	**1,380,127**	**1,779,898**	**1,058,808**
Excess(deficiency) revenues over expenditures			(125,983)	5,255	(1,209,482)	(1,356,481)	228,178
Total Available Fund Equity at June 30			**$ (9,509,717)**	**$ (9,504,462)**	**$ (10,713,945)**	**$ (12,070,426)**	**$ (11,842,247)**

** Beginning balance does not include long-term advance of pre-1991 fungible monies to the Storm Drain Enterprise Fund($2,427,320). These monies are not subject to the requirements of AB1600 and are not available for spending.

Conclusion: No fees have been held unexpended for more than five years; no refunds required other than noted above.

Prior year numbers have been adjusted to tie to audited financials. Often timing of the reporting and receipt of final audit will differ.

300 First Street
Woodland, CA 95695

Legislation Details (With Text)

7.

File #:	14-476 Version: 1	Name:	
Type:	Report of the City Manager	Status:	Agenda Ready
File created:	11/20/2014	In control:	City Council
On agenda:	12/16/2014	Final action:	
Title:	SUBJECT: Annual Measure E Report for Fiscal Year Ending June 30, 2014 Recommendation for Action: Staff recommends that the City Council 1.) Approve the Annual Measure E Report for Fiscal Year Ending June 30, 2014 and 2.) Direct staff to publish the required excerpts of the report in the Daily Democrat and on the City's website		
Sponsors:			
Indexes:			
Code sections:			
Attachments:			

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014

SUBJECT: Annual Measure E Report for Fiscal Year Ending June 30, 2014

Recommendation for Action: Staff recommends that the City Council 1.) Approve the Annual Measure E Report for Fiscal Year Ending June 30, 2014 and 2.) Direct staff to publish the required excerpts of the report in the Daily Democrat and on the City's website

Staff Contact

Lynn Johnson, Senior Management Analyst - 530-661-5979, lynn.johnson@cityofwoodland.org

Council Goal

This recommendation is consistent with the City's goals for fiscal responsibility and governance. Annual reporting of revenues and expenditures for a voter approved supplemental sales tax provides enhanced accountability and transparency to the community.

Fiscal Impact

This is an informational report, and therefore does not result in any fiscal impact; however, the report provides an accounting of the Measure E (1/2 cent sales tax) receipts and expenses for the fiscal year ending June 30, 2014. Per City Council direction, the Measure E spending plan is reviewed by Council annually, in advance of the development of the City's capital budget.

Background

On June 6, 2006, the Woodland voters approved Measure E (MSE), which extended the ½ cent supplemental sales tax collected within the boundaries of and for the benefit of the City of Woodland. Additionally, the voters approved three advisory measures outlining the types of projects for which proceeds from MSE would be spent:

- Measure B, approved by 66.8% of voters, allocated a minimum of $30.2 million or 45% of MSE for road rehabilitation;
- Measure C, approved by 69.37% of voters, approved funding for Community and Senior Center Phase II, Sports Park and renovation and improvements of parks, recreation facilities and pools;
- Measure D, approved by 53.4% of voters, approved funding for expansions of the Library, City Hall and the Opera House.

On February 6, 2007, the City Council adopted the initial MSE spending plan, which provided the allocation of total anticipated MSE revenues in a manner consistent with legal restrictions, advisory measures, and Council policy direction. Included with the spending plan was a resolution calling for preparation of an annual financial report and an updated bi-annual spending plan. The first annual financial report was provided to Council in September 2007 and subsequently each year with the most recent financial report presented on December 3, 2013. The Council adopted a revised MSE spending plan at the April 15, 2014 meeting.

Discussion

The following table includes a summary of the budget uses as adopted in the 2014 MSE spending plan, and the FY 2014 expenditures. Final revenues for MSE during FY 2014 were $4,402,515, which is just slightly above what was anticipated.

Project Description	Approved Spending Plan Total Budget	Life to Date Expenditures	FY 2013/14 Expenditures
Rehabilitation, Renovation & Improvements			
Roads	$ 16,978,518	$ 7,581,099	$ 508,491
Parks/Ball Fields/Pool	$ 4,522,473	$ 4,342,410	$ 2,102,466
Library Repair	$ 273,688	$ 273,688	$ -
Opera House/State Theater	$ 856,576	$ 856,715	$ 140
Construction Projects			
Community & Senior Center Ph. II/Sports Park	$ 7,255,099	$ 6,071,547	$ 359,155
Literacy Center	$ 600,000	$ -	$ -
Civic Center Expansion	$ 329,455	$ 329,455	$ -
Reserve	$ 2,000,000	$ -	$ -
Long Term Loan for Debt Servcie on CSC/Sports Park	$ 15,938,584	$ 6,292,521	$ -
TOTAL	$ 48,754,393	$ 25,747,435	$ 2,970,252

Note: Bond proceeds are not included as revenue, nor are the expenditure of those proceeds included in the life to date or FY 2014 expenditure amounts. The expenditure amounts in this table represent the debt service for those bonds, which is the accurate expense of MSE funds for those projects. The project overhead amounts are included in the amount shown for roads.

Conclusion

Staff recommends that the City Council 1.) Approve the Annual Measure E Report for Fiscal Year Ending June 30, 2014 and 2.) Direct staff to publish the required excerpts of the report in the Daily Democrat and on the City's website.
Prepared by: Lynn Johnson, Senior Management Analyst

Reviewed by: Kim McKinney, Finance Officer

Paul Navazio, City Manager

Legislation Details (With Text)

8.

File #:	14-479	Version: 1	Name:		
Type:	Report of the City Manager		Status:	Agenda Ready	
File created:	11/21/2014		In control:	City Council	
On agenda:	12/16/2014		Final action:		

Title: SUBJECT: Annual Measure V Report for Fiscal Year Ending June 30, 2014

Recommendation for Action: Staff recommends that the City Council 1.) Approve the Annual Measure V Report for Fiscal Year Ending June 30, 2014 and 2.) Direct staff to publish the required excerpts of the report in the Daily Democrat and on the City's website

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014

SUBJECT: Annual Measure V Report for Fiscal Year Ending June 30, 2014

Recommendation for Action: Staff recommends that the City Council 1.) Approve the Annual Measure V Report for Fiscal Year Ending June 30, 2014 and 2.) Direct staff to publish the required excerpts of the report in the Daily Democrat and on the City's website

Staff Contact

Lynn Johnson, Senior Management Analyst - 530-661-5979, lynn.johnson@cityofwoodland.org

Council Goal

This recommendation is consistent with the City's goals for fiscal responsibility and governance. Annual reporting of revenues and expenditures for a voter-approved supplemental sales tax provides enhanced accountability and transparency to the community.

Fiscal Impact

This is an informational report, and therefore has no direct fiscal impact. However, the report provides an accounting of the use of approximately $2 million in Measure V (1/4 cent sales tax) revenues collected during fiscal year 2013/14.

Background

In 2010 the City Council authorized placing a ¼ cent sales tax before the voters in order to avoid proposed budget reductions to the City's library, parks & recreation and public safety programs. In the June 8, 2010 election, Measure V (MSV) was approved with 55% of the Woodland vote. Companion advisory measures S, T and U were also approved by overwhelming margins. The companion measures were intended to guide the City Council in the allocation of the resources generated by MSV for the library, public safety and parks & recreation as follows:

- Measure S, approved by 65.5% of voters, provides 30% of the additional sales tax received for the Woodland Public Library to restore educational and literacy programs and maintain operating hours at 54 hours per week;
- Measure T, approved by 64.3% of voters, provides 30% of the additional sales tax for Woodland Parks & Recreation Department to maintain current levels of park and public landscape maintenance and senior citizen programs;
- Measure U, approved by 66.4% of voters, provides 40% of the additional sales tax for Public Safety services within the Woodland Police Department and Woodland Fire Department to maintain the current number of sworn police officers and firefighters.

Discussion

According to the MSV advisory measures, the additional annual income generated by the sales tax measure was to be allocated by the prescribed percentages as approved by voters. It is important to note that the original expenditure reductions associated with the Library, Parks & Recreation, and Police and Fire (for FY 2011) totaled approximately $4.9 million. The sales tax measure by itself with a projection of $1.75-$2.0 million in annual revenue could not make up the entire difference.

Because of this gap and other changes that were made to revenue estimates and expenditures, and the use of one-time funds, it is difficult to determine the exact amount of MSV used in the three categories. This issue was discussed with Council in June 2010 when the FY 2011 Operations & Maintenance budget was approved and has still been the case for the FY 2012, FY 2013, and FY 2014 budgets.

Since the Library was originally proposed for closure, the full amount needed to keep the Library open has come from proceeds from MSV over the past few years consistent with Measure S. For FY2014, the General Fund contributed $344,029 of additional funding for the Library above its MSV allocation. We have also provided public safety with the 40% allocation which is consistent with Measure U. The remaining MSV allocation for Measure T follow the general intent of the advisory measure including funding the position for the Senior Center program, keeping Brooks Pool open during the winter, and funding the administrative support position for the Community and Senior Center.

The table below shows the planned and actual allocation of MSV for FY 2014:

Department	Advisory Measures	Approved MSV Spending for FY 13/14	% of Total Revenue Estimate		Actual MSV Revenue for FY 13/14	% of Actual Revenue		TOTAL MSV Allocation Since Inception	% of Total Since Inception
Library	30%	$ 928,000	43%		$ 928,000	43%		$ 3,604,791	47%
Parks & Rec	30%	$ 376,182	17%		$ 378,693	17%		$ 1,240,351	16%
Police & Fire	40%	$ 869,455	40%		$ 871,128	40%		$ 2,820,378	37%
TOTAL		$2,173,637			$ 2,177,821			$ 7,665,520	

The four -year, ¼ cent supplemental transactions and use tax expired September 30th of this year and has been replaced with a voter-approved eight-year, ¼ cent supplemental transactions and use tax, Measure J (MSJ). There will be one more annual report provided to Council next year to summarize the final MSV revenue received for the first quarter of FY 2015 as well as the first annual report for MSJ for quarters two through four of FY 2015.

Conclusion

Staff recommends that the City Council 1.) Approve the Annual Measure V Report for Fiscal Year Ending June 30, 2014 and 2.) Direct staff to publish the required excerpts of the report in the Daily Democrat and on the City's website.

Prepared by: Lynn Johnson, Senior Management Analyst

Reviewed by: Kimberly McKinney, Finance Officer

Paul Navazio, City Manager

Legislation Details (With Text)

9.

File #:	14-498 Version: 1	Name:	
Type:	Report of the City Manager	Status:	Agenda Ready
File created:	12/8/2014	In control:	City Council
On agenda:	12/16/2014	Final action:	
Title:	SUBJECT: Update on the Water Utility Advisory Committee (WUAC)		

Recommendation for Action: Staff recommends that the City Council:
1) adopt staff recommendations for Committee membership, consistent with suggestions offered by the WUAC via their 2014 Annual Report, and
2) affirm the advisory purpose of the Committee consistent with original scope, expanded to encompass water, sewer and storm drainage issues

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014

SUBJECT: Update on the Water Utility Advisory Committee (WUAC)

Recommendation for Action: Staff recommends that the City Council:
1) adopt staff recommendations for Committee membership, consistent with suggestions offered by the WUAC via their 2014 Annual Report, and
2) affirm the advisory purpose of the Committee consistent with original scope, expanded to encompass water, sewer and storm drainage issues

Staff Contact

Lynn Johnson, Senior Management Analyst - (530)661-5979, lynn.johnson@cityofwoodland.org

Fiscal Impact

There is no fiscal impact from the recommendations related to the Water Utility Advisory Committee.

Background

At the November 3, 2009 meeting, the City Council requested formation of a Water Rate Advisory Committee (WRAC). The committee began meeting in June 2010 and on April 5, 2011, the WRAC presented its first report to Council. Subsequently, the WRAC was renamed as the Water Utility Advisory Committee (WUAC) to better represent the breadth of issues subject to their review and input relating to the City's utility systems.

The committee makeup as directed by Council is intended to include a diverse cross-section of residents and business owners from Woodland so that a variety of interests and perspectives can be considered in review of utility issues and their impact on the community as a whole. Within the WUAC's 2014 Annual Report presented to Council in June, the committee recommended that the City Council modify the process for determining committee membership as well as adopt committee membership standards consistent with other City boards and commissions.

Discussion

The WUAC is facing a major transition this year with at least five vacancies including the departure of the Chairwoman, Christine Casey. There are currently five remaining members assuming four (4) year terms, three of which have been on the Committee since its inception.

Membership

The Committee had a series of suggestions related to Membership included in their annual report provided to Council in June 2014:

- Recommendation is for 11-13 members
- Member should serve 4-year terms (just like City commissions)
- Each member will have the option to return to the Committee for a second term at the end of their 4 years
- Attendance will be monitored and 3 unexcused absences will result in removal from the Committee
- Chair should be selected from the more experienced members
- The process used for member selection should mirror other Boards and Commissions (application, interviews, appointment)
- Membership should attempt to reflect the City's diversity

Given the Committee's suggestions, staff is recommending that the Council:

- Approve an 11-member body for the WUAC, and direct the City Clerk advertise for Committee vacancies and,
- Utilize the current Council subcommittee process to interview applicants and recommend candidates for approval by the full Council,
- Formally establish WUAC Committee meetings on a quarterly basis, and more often, "as needed", to address complex or time sensitive topics.

Purpose of the Committee

The Committee was originally given the following purpose from the City Council in 2009:

- Increase public participation in the functions of City government
- Act as form of public input and feedback on issues related to current and planned water system improvements
- Advise the City on potential challenges and opportunities related to future rate increases
- Promote communitywide education and awareness of water system issues and projects

After the successful adoption of the current water rate adjustments, the WUAC shifted gears and worked with staff to become educated about the wastewater system. They were an integral part in defining a modified structure for the sewer rates including volumetric rates (winter water averaging) and strength based billing for the commercial customers, and assisted in the successful adoption of the current sewer rate adjustments.

Staff is recommending that the WUAC continue on as an advisory committee to the Council with a purpose consistent with the original Committee formation expanded to include issues related to:

- Water quality, supply, infrastructure and financing,
- Explore opportunities for community-scale water conservation, including recycled water,
- Wastewater quality compliance, infrastructure and financing, and
- Storm drainage operations, compliance and financing.

The Committee should provide recommendations to Council after review of facts and key information pertaining to the City's utility systems and infrastructure as required in the rate setting process. Solicitation of community feedback on utility-related decisions is encouraged. The Committee should continue to assist with community outreach and education related to the utility systems. The Committee shall review other utility system issues as directed by the City Council.

Once new membership is secured and a full committee is available, staff can begin working with the Committee on several specific topics outlined in the 2014 WUAC Annual Report including storm water and unfunded mandates, volumetric sewer rates for residential customers, monitoring the impact of water conservation on water and sewer rate revenue, and opportunities for recycled water.

Commission/Committee Recommendation

The recommendations contained within are consistent with those contained in the 2014 WUAC Annual Report.

Conclusion

Staff recommends that the City Council 1) adopt recommendations for Committee membership and 2) establish an updated purpose of Committee consistent with original scope, expanded to encompass water, sewer and storm drainage issues.

Prepared by: Lynn Johnson, Senior Management Analyst

Paul Navazio, City Manager

Legislation Details (With Text)

10.

File #:	14-499	Version: 1	Name:	
Type:	Consent Item(s)		Status:	Agenda Ready
File created:	12/9/2014		In control:	City Council
On agenda:	12/16/2014		Final action:	

Title: SUBJECT: Amendment of the Conflict of Interest Code Pursuant to the Political Reform Act of 1974

Recommendation for Action: Staff recommends that the City Council adopt Resolution No. _____ approving and adopting the amended Conflict of Interest Code pursuant to the Political Reform Act of 1974.

Sponsors:

Indexes:

Code sections:

Attachments: ADM - CIC RESOLUTION
ADM - CIC CODE 2014 AMENDED WITH CHANGES
ADM - CIC CODE 2014 FINAL CHANGES ACCEPTED

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014

SUBJECT: Amendment of the Conflict of Interest Code Pursuant to the Political Reform Act of 1974

Recommendation for Action: Staff recommends that the City Council adopt Resolution No. _____ approving and adopting the amended Conflict of Interest Code pursuant to the Political Reform Act of 1974.

Staff Contact

Ana B. Gonzalez, City Clerk - (530) 661-5806, ana.gonzalez@cityofwoodland.org

Background

Pursuant to the Political Reform Act (the "Act"), the City Council directed staff to: (1) conduct a review of the City's Conflict of Interest Code ("Code") to determine if a change in the Code was necessary; (2) revise the Code as necessary based upon such review; and (3) submit the amended Code to the City Council for adoption and approval, in accordance with Section 87303 of the Act.

During the review process, staff found that updates and amendments to the City's Conflict of Interest Code are necessary. A redlined version of the proposed amended Code is attached.

Discussion

The Political Reform Act of 1974, Government Code Section 81000 et seq. (the "Act"), requires all public agencies to adopt and maintain a Conflict of Interest Code. The Act further requires that agencies regularly review and update their conflict of interest codes as necessary as directed by the code-reviewing body or when change is necessitated by changed circumstances (Sections 87306 and 87306.5). The City Council is the City's code-reviewing body. As the code-reviewing body, the City Council directed that the Code be reviewed and, if a change in the Code was necessary, that a revised Code be prepared and submitted to the City Council for adoption and approval. During this review, staff found that amendments to the Code are necessary.

Attached is a legislative (redlined) version of the proposed amended Code. The proposed revisions are based on the establishment and recognition of new positions that must be designated, the revision of titles of existing positions, the deletion of titles that have been abolished, the revision of disclosure categories, revision of the assignment of disclosure categories based on the duties of various positions, the incorporation of FPPC Reg. 18730 as the provisions of the Code (known as FPPC Standard), and clarifying and declaring of positions to file disclosure statements under Section 87200 of the Act.

Conclusion

Staff recommends that the City Council adopt Resolution No. _____ approving and adopting the amended Conflict of Interest Code pursuant to the Political Reform Act of 1974.

Prepared by: Ana B. Gonzalez
City Clerk

Paul Navazio, City Manager

Attachments: Resolution
Conflict of Interest Code - Redlined Version (shows changes made)
Conflict of Interest Code - Final Version with changes accepted

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WOODLAND, CALIFORNIA, ADOPTING AN AMENDED CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974

WHEREAS, the State of California enacted the Political Reform Act of 1974, Government Code Section 81000 et seq. (the "Act"), which contains provisions relating to conflicts of interest which potentially affect all officers, employees and consultants of the City of Woodland ("City") and requires all public agencies to adopt and promulgate a conflict of interest code; and

WHEREAS, the City Council adopted a Conflict of Interest Code (the "Code") in compliance with the Act; and

WHEREAS, subsequent changed circumstances within the City have made it advisable and necessary pursuant to Sections 87306 and 87307 of the Act to amend and update the City's Code; and

WHEREAS, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in the City being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

WHEREAS, notice of the time and place of a public meeting on, and of consideration by the City Council of, the proposed amended Code was provided each affected designated employee and publicly posted for review at the offices of the City; and

WHEREAS, a public meeting was held upon the proposed amended Code at a regular meeting of the City Council on December 16, 2014, at which all present were given an opportunity to be heard on the proposed amended Code.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Woodland:

SECTION 1. The City Council does hereby adopt the proposed amended Conflict of Interest Code, a copy of which is attached hereto.

SECTION 2. The amended Conflict of Interest Code shall be on file with the City Clerk and available to the public for inspection and copying.

SECTION 3. The amended Code shall become effective 30 days after the City Council adopts and approves the amended Code as submitted.

(CONTINUED ON NEXT PAGE)

PASSED AND ADOPTED by the City Council this 16th day of December, 2014, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

____
Tom Stallard, Mayor

ATTEST:

____
Ana B. Gonzalez, City Clerk

APPROVED AS TO FORM:

____
Kara K. Ueda, City Attorney

City of Woodland

Conflict of Interest Code

<u>CONFLICT OF INTEREST CODE FOR THE</u>

<u>CITY OF WOODLAND</u>

(Amended December 16, 2014)

The Political Reform Act (Gov. Code § 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. § 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This incorporation page, Regulation 18730, and the attached Appendix designating positions and establishing disclosure categories, shall constitute the conflict of interest code of the **City of Woodland (the "City").**

All officials and designated positions required to submit a statement of economic interests shall file their statements with the **City Clerk** as the City's Filing Officer. The **City Clerk** shall make and retain a copy of all statements filed by the Mayor, Members of the City Council and Planning Commission, the City Manager, the City Attorney and the City Treasurer, and forward the originals of such statements to the Fair Political Practices Commission. The **City Clerk** shall retain the originals of the statements filed by all other officials and designated positions and make all statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

APPENDIX

CONFLICT OF INTEREST CODE

OF THE

CITY OF WOODLAND

(Amended December 16, 2014)

EXHIBIT "A"

The Mayor, Members of the City Council and Planning Commission, the City Manager, the City Attorney, the City Treasurer, and all Other City Officials who manage public investments as defined by 2 Cal. Code of Regs. § 18701(b), are NOT subject to the City's Code but must file disclosure statements under Government Code Section 87200 et seq. [Regs. § 18730(b)(3)]

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

It has been determined that the positions listed below are Other City Officials who manage public investments.[1] These positions are listed here for informational purposes only.

Finance Officer
Financial Consultants

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DESIGNATED POSITIONS

GOVERNED BY THE CONFLICT OF INTEREST CODE

DESIGNATED POSITIONS' TITLE OR FUNCTION	DISCLOSURE CATEGORIES ASSIGNED
Accountant I/II	4
Administrative Services Director	4
Assistant City Manager	1, 2
Assistant Engineer	2, 3, 5
Assistant/Associate Civil Engineer	2, 3, 5
Assistant/Associate Planner	2, 3, 5
Building Inspector I/II	2, 3, 6
Chief Building Official	2, 5, 6
Chief Plant Operator	5
Chief Water Systems Operator	1, 2
City Clerk	5
Code Compliance Officer I/II	2, 6
Community Development Director	1, 2
Community Services Director	2, 5
Community Services Program Manager	5
Deputy Director of Community Development	1, 2

<u>DESIGNATED POSITIONS' TITLE OR FUNCTION</u>	<u>DISCLOSURE CATEGORIES ASSIGNED</u>
Deputy Director of Public Works, Operations and Maintenance	1, 2
Economic Development Manager	1
Engineering Assistant/Senior Engineering Assistant	2, 3, 5
Engineering Technician I/II/III	2, 3, 5
Environmental Compliance Specialist	5, 6
Environmental Resource Analyst	2, 5, 6
Fire Battalion Chief	5
Fire Chief	5
Fleet and Facilities Manager	2, 3, 5
Human Resources Analyst	5
Human Resources Manager	5
Information Systems Administrator	5
Information Technology Analyst	5
Infrastructure Operations and Maintenance Superintendent	5
Junior Engineer	2, 3, 5
Laboratory & Environmental Compliance Manager	4
Librarian III	5
Library Services Director	5
Management Analyst II/Sr	5
~~Parks and Recreation Director~~	~~2, 5~~
Police Captain	5

DESIGNATED POSITIONS' TITLE OR FUNCTION	DISCLOSURE CATEGORIES ASSIGNED
Police Chief	5
Police Lieutenant	5
Police Records Manager	5
Principal Civil Engineer	1, 2
Principal Planner	2, 3, 5
Principal Utilities Civil Engineer	2, 3, 5
Public Safety Chief	5
Public Works Director	1, 2
Redevelopment Manager	1, 2
Senior Accountant	1, 2
Senior Application Analyst	5
Senior Systems Analyst	5
Senior Building Inspector	2, 3, 5, 6
Senior Building Plans Examiner	2, 3, 5, 6
Senior Civil Engineer	1, 2
Senior Planner	1, 2
Transportation Engineer	2, 3, 5
Wastewater Systems Administrator	2, 5, 6
Water Pollution Control Facilities Superintendent	2, 5, 6

DESIGNATED POSITIONS' TITLE OR FUNCTION	DISCLOSURE CATEGORIES ASSIGNED
MEMBERS OF BOARDS, COMMITTEES AND COMMISSIONS	
Historical Preservation Commission	2
Library Board	5
Manufactured Homes Fair Practices Commission	1, 2
Oversight Board to Successor Agency	1, 2
Successor Agency	1, 2

Consultants and New Positions[2]

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[2] Individuals serving as a consultant as defined in FPPC Reg 18701 or in a new position created since this Code was last approved that makes or participates in making decisions must file under the broadest disclosure set forth in this Code subject to the following limitation:

The City Manager may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code Sec. 82019; FPPC Regulations 18219 and 18734.). The City Manger's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Sec. 81008.)

EXHIBIT "B"

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of economic interests that the designated position must disclose for each disclosure category to which he or she is assigned.[3]

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are located in, that do business in or own real property within the jurisdiction of the City.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of the City.

Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, which engage in land development, construction, or acquisition or sale of real property within the jurisdiction of the City.

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Category 7: All Investments, business positions and income, including gifts, loans and travel payments, or income from a nonprofit organization, if the source is of the type to receive grants or other monies from or through the City.

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[3] This Conflict of Interest Code does not require the reporting of gifts from outside this agency's jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

City of Woodland

Conflict of Interest Code

<u>CONFLICT OF INTEREST CODE FOR THE</u>

<u>CITY OF WOODLAND</u>

<u>(Amended December 16, 2014)</u>

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Senior Systems Analyst	5
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Senior Building Plans Examiner	2, 3, 5, 6
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Senior Planner	1, 2
Transportation Engineer	2, 3, 5
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Legislation Details (With Text)

11.

File #:	14-506	Version: 1	Name:		
Type:	Public Hearing Item		Status:	Agenda Ready	
File created:	12/11/2014		In control:	City Council	
On agenda:	12/16/2014		Final action:		

Title: SUBJECT: Terra Verde / Solar Project - Approval of Power Purchase Agreement and Site Agreement with Performance Contracting Inc./Hanwha Q Cells for a Solar Photovoltaic Project at Various City Sites, Authorization of a Battery Energy Storage Contract, and Authorization of a Site Lease with Conaway Preservation Group

Recommendation for Action: Staff recommends that the City Council hold a Public Hearing and that, pursuant to Section 4217.10 et seq. of the Government Code, the City Council adopt Resolution No. _____ which:

(1) finds that the cost of the purchase of electricity from the Solar Project at six City facilities under the proposed Power Purchase Agreement (PPA) will be offset and will be less than the anticipated marginal cost to the City of electrical or other energy that would have been consumed by the City if such Solar Project were not completed;

(2) finds that the difference, if any, between the fair rental value for the real property subject to the Site Agreement and the agreed rent is anticipated to be offset by below-market energy purchases; and

(3) authorizes the City Manager to execute the proposed PPA and Site Agreement for the construction of the Solar Project with the special purpose entity formed by Performance Contracting Inc./Hanwha Q Cells, to execute a contract for the Battery Energy Storage component of the Solar Project with Performance Contracting Inc., and

(4) to execute a Site Lease with Conaway Preservation Group.

(5) Resolution No. _____ further finds such approvals exempt under the California Environmental Quality Act.

Sponsors:

Indexes:

Code sections:

Attachments: 12-16-14 Exhibit A - Solar Project Pro Forma
12-16-14 Exhibit B - Solar Project Layouts
2014 12-16 Resolution - Solar Project Documents
Reso Exhibit 1 - WOODLAND Power Purchase Agreement
Reso Exhibit 2 - Final Solar Site Agreement
Reso Exhibit 3 - WOODLAND-CPG Site Lease Agreement

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014

SUBJECT: Terra Verde / Solar Project - Approval of Power Purchase Agreement and Site Agreement with Performance Contracting Inc./Hanwha Q Cells for a Solar Photovoltaic Project at Various City Sites, Authorization of a Battery Energy

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(5) Resolution No. _____ further finds such approvals exempt under the California Environmental Quality Act.

Staff Contact

Roberta Childers, Environmental Resource Analyst
roberta.childers@cityofwoodland.org, 661-2060

Council Goal

This recommendation is consistent with the City’s goals for fiscal responsibility and environmental sustainability.

Fiscal Impact

The City’s savings over the 28-year term of the PPA are estimated at $7.6 million, which yields a net present value savings of just under $4.0 million (2014 dollars), or average annual savings (net present value) of $140,000 per year. These savings are well in excess of the minimum savings thresholds established by the City Council at time of issuance of the Request for Proposals (RFP).

Anticipated City costs related to project implementation would amount to approximately $40,000 across fiscal years 14/15 and 15/16 (for environmental studies, tree plantings, and the energy storage component), which would be paid from the energy projects budget. The related Site Lease with Conaway Preservation Group (CPG) has a nominal cost of $100 per year.

Report in Brief

The City, with the assistance of its energy advisor, Terra Verde Renewable Partners (TerraVerde), issued an RFP on April 28, 2014 for the development of six solar photovoltaic arrays (Solar Project) to provide electricity to the following City facilities: Water Pollution Control Facility (WPCF), Community and Senior Center, Police Station, Municipal Service Center, City Hall, and Library.

The City utilized the procurement process authorized under Government Code section 4217.10 *et seq.* for solar projects, which requires that the Council hold a noticed public hearing and make certain findings related to energy cost savings prior to contract award.

After reviewing the submitted proposals and interviewing four solar teams, the City entered into Scope of Work and Value Engineering reviews with the highest ranked team, Performance Contracting Inc./Hanwha Q Cells (PCI/Hanwha). As a part of this process, the optimal site for the main WPCF array was determined to be a portion of the City's Parcel No. 027-390-022-000, northeast of the WPCF, which is separated from the WPCF property by a canal and farm road owned by CPG.

The proposed PPA specifies the terms pursuant to which PCI/Hanwha would construct, maintain, and operate solar photovoltaic arrays at six City locations and the City would purchase the power produced by the arrays. The proposed Site Lease with CPG facilitates the City's potential use of the PG&E Net Energy Metering Aggregation (NEMA) interconnection option for the main WPCF solar array. The PPA terms assume the use of NEMA interconnections for the main WPCF array and two other arrays.

The Solar Project would help satisfy achievement of the City's Climate Action Plan goals by reducing greenhouse gas (GHG) emissions by 600-900 metric tons of CO2 equivalent per year, or about 30-40% of the goal for GHG reductions from City government operations.

Background

Pursuant to the City's Exclusive Engagement Agreement with TerraVerde dated July 2, 2013, TerraVerde has been advising and assisting the City in the development of an energy management program with the objectives of reducing the City's energy costs and the GHG emissions associated with City energy use. Following examination of energy use of all City facilities, TerraVerde and City staff identified the opportunity to achieve such reductions, at little cost to the City, through a Solar Project consisting of the installation of solar photovoltaic arrays that would provide electricity to the WPCF, the Community and Senior Center, the Police Station, the Municipal Service Center, City Hall, and the Library.

Section 4217.12 of the California Government Code authorizes public agencies, such as the City of Woodland, to enter into energy service contracts and related ground leases on such terms as their governing bodies determine are in the best interests of the city if the determination is made at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, that the anticipated cost to the city for energy services under the energy services contract will be less than the anticipated marginal cost to the city of electrical power that would have otherwise been consumed by the city in the absence of those purchases and that the difference, if any, between the fair rental value for the real property subject to the Site Agreement and the agreed rent, is anticipated to be offset by below-market energy purchases. In lieu of utilizing a competitive hard bid process to select the contractor to construct alternative energy projects, Government Code section 4217.10 *et seq.* authorizes the use of an informal request for proposals process. The State Legislature, in enacting Section 4217.10 *et seq.* of the Government Code, has acknowledged that an informal process is appropriate and necessary to procure energy services contracts because energy services contracts, such as the contract proposed for the solar photovoltaic projects at the City sites, often require performance guarantees and compliance with certain qualitative measures that may not otherwise be obtainable from a contractor selected through a low bid process.

On December 17, 2013, the City Council approved the initiation of an RFP process to seek qualified contractors to construct the Solar Project and meet, through a PPA arrangement, the following minimum savings thresholds:

- $43,658 in Year 1
- $258,642 over Years 1-5
- $2,715,907 in Years 1-25

Consistent with Section 4217.10 *et seq.* of the Government Code, the City, with TerraVerde's assistance, drafted and published a detailed RFP seeking proposals from qualified contractors to construct the Solar Project.

Five consulting teams submitted proposals in response to the RFP. One withdrew from the process before the interviews; consequently, four teams were interviewed. Based on the overall proposed cost of the Solar Projects, cost-savings, and design elements, among other factors, the City determined PCI/Hanwha to be the most responsive to the City's requirements and invited this team to engage in Scope of Work and Value Engineering reviews with the City and TerraVerde toward a goal of designing and constructing the Solar Project pursuant to a PPA and related Site Agreement.

Discussion

Value Engineering and Project Design

The locations, configurations, and sizes of some of the individual arrays were revised and refined during the Value Engineering process from those shown in the RFP. The Solar Project as included in the proposed PPA would total 2.96 megawatts (MW), with an annual production target of 4,492 megawatt-hours per year. Following are the locations and layouts on which the proposed PPA is based:

- WPCF: 1.5-MW ground-mount array on 6.5 acres of Parcel No. 027-390-022-000 northeast of the WPCF
- WPCF screw pump: 39 kilowatt (kW) ground-mount array within the WPCF facility
- Community and Senior Center: 553-kW curved parking structure arrays filling the south-side parking lot
- Police Station: parking structure covering the back lot and a small roof-mount array for a total of 462 kW
- Municipal Service Center: 138-kW parking structure array for Public Works equipment within the corporation yard
- Public parking lot at the northwest corner of College and Court Streets: 216-kW parking structure array for City Hall and the Library combined

Several factors have resulted in the City's Solar Project being more complex and challenging than many other public solar projects. The most important of these are the need to locate the large WPCF array (approximately 6.5 acres) within the designated 100-year floodplain. As a consequence, the solar panels and electrical components must be elevated so as to be situated above the base flood elevation.

In addition, the City specified that the streetside shade trees would be retained on Sixth Street adjacent to the

Police Station solar array site and on College Street adjacent to the parking lot array at the northwest corner of College and Court Streets. Also, a large antenna in the parking lot of the Police Station will cast a shadow on the array in the Police Station parking lot. These shading factors had to be accounted for in the design of the systems, and the retention of the streetside trees restricts the effective area available for installation of panels in these two parking areas. Consequently, both of these arrays are proposed as essentially continuous covers of the parking lots. The compact design of these two arrays has made the inclusion of fire sprinkler systems necessary in the planning for these sites.

A third factor is the City's desire that special consideration be given to the aesthetic qualities of the arrays in the two public parking locations (College/Court Street lot and Community and Senior Center lot) to ensure they will be compatible with their surroundings. The proposed designs for these sites have increased the projected construction costs but will result in attractive structures being constructed in these prominent locations.

Illustrations of the array layouts and the designs of the Community and Senior Center and public parking lot arrays are included as an attachment to this report.

The Value Engineering process also resulted in the identification of a cost-saving approach to PG&E interconnections for the arrays for the Community and Senior Center, the City Hall and Library, and the WPCF. This approach, Net Energy Metering Aggregation (NEMA), allows a single customer with multiple meters on the same property, or on the customer's adjacent or contiguous property, to use renewable generation and net energy metering to serve their aggregated load behind all eligible meters. The terms of the PPA assume that NEMA interconnections will be used at these sites.

Because the CPG canal separates the City property where the WPCF array would be located from the interconnection point on a second City property, the City must establish a connection between the two City-owned properties in the form of a lease of a small segment of the CPG property over which the electrical distribution line would extend. Included with this Council agenda item is the approval of a Site Lease agreement with CPG.

Power Purchase Agreement and Site Agreement

The City was presented with 25-year and 28-year options for the PPA. Under the PPA contract structure, the City would have no up-front capital construction costs for the Solar Project. PCI/Hanwha would own, operate, and maintain the systems for the duration of the PPA term and would bill the City for all the electricity generated by the systems at a contractually agreed upon price per kilowatt-hour (kWh) and price escalation factor. In addition to the term of the PPA, the options varied as to starting cost per kWh and rate escalation. Staff identified the option with a 28-year term, an escalation rate of 3.1%, and a starting price of $0.1462/kWh as the most favorable for the City in the long term. Further negotiation resulted in the starting price for this selected option being reduced to $0.1372/kWh.

The City would have options to purchase the Solar Project on the 6th, 10th and 15th, and 20th anniversaries of the PPA as well as upon the expiration of the PPA. Additionally, should the City cease to conduct operations at or vacate a project site on or after the seventh anniversary of commercial operation of the Solar Project, the City may terminate the PPA for that site upon payment of the Termination Value per Watt specified in the PPA. Relocation of a solar facility to another site is also an option on or after the seventh anniversary, with the City required to pay reasonable costs of the relocation and compensating PCI/Hanwha for lost output.

The City also has the option to purchase the project at the end of the PPA term. In accordance with Internal Revenue Service requirements, the purchase price must be the fair market value of the project.

Because PCI/Hanwha would continue to own, operate, and maintain the Solar Project for the duration of the PPA, it must have the authority to conduct these activities on City property. Approval of the Site Agreement for the Solar Project sites is also being sought in conjunction with the PPA.

Greenhouse Gas Emission Reductions

The target production of the Solar Project is approximately 4,500 megawatt-hours (MWh) of electricity per year. To calculate the GHG emissions reduction attributable to the Solar Project, the reduction in the use of PG&E-produced electricity (4,500 MWh) is multiplied by the emissions associated with PG&E electricity production. Because the emissions associated with PG&E electricity depend on the mix of PG&E's power sources in any year, the GHG emissions reduction associated with project implementation will vary by year. Based on PG&E's projected emissions factors to 2020, it is estimated that implementation of the Solar Project would reduce the City's GHG emissions by 600-900 metric tons of CO_2 per year, or about 30-40% of the Climate Action Plan goal for GHG reductions from City government operations.

Cost Considerations and Government Code 4217.10 *et seq.*

Anticipated City costs related to project implementation would amount to approximately $40,000 across fiscal years 14/15 and 15/16 ($10,000 for environmental studies, $10,000 for replacement tree plantings, and a net cost of $20,000 for related energy storage equipment), which would be paid from the energy projects budget. The related Site Lease with CPG has a nominal cost of $100 per year.

The projected energy cost savings exceed the minimum savings thresholds included in the RFP and shown in the "Background" section above. Future energy cost savings that would result from the Solar Project depend on the PPA rate and annual cost escalator, which are both specified in the PPA, and on future PG&E rates and future discount rates, which must be assumed. Using a future discount rate of 4% and a range of potential annual PG&E rate escalations, with a very conservative low of 3% and a high of 7%, the City's savings over the 28-year term of the PPA are estimated to fall in the range of $1.8 million to $12.8 million. At the assumed 4% annual escalation in PG&E rates, the net present value savings would be $3.90 million.

The Solar Project includes installation of a battery energy storage system at the Community and Senior Center. Installation of this system will ensure that the building demand profile will not exceed 499 kW. As a result, the City will be able to switch from the current PG&E electric rate schedule of E19, which includes demand charges, to a more solar-friendly electric rate schedule of A6, which does not include any demand charges. Switching from the E19 electricity rate schedule to the A6 schedule will increase the solar savings by approximately 21%.

Based on the energy cost savings information provided above and during the meeting, the cost of purchasing energy under the PPA for the Solar Project constructed at the City sites will be offset and will be less than the anticipated marginal cost to the City of electrical or other energy that would have been consumed by the City if the Solar Project were not completed.

In accordance with the Government Code, on November 29, 2014, the City published the following notice of a public hearing in the Woodland Daily Democrat:

> Notice is hereby given pursuant to Government Code section 4217.10 *et seq.* that the City of Woodland ("City") Council will hold a public hearing at 6:00 p.m. on December 16, 2014, at its Council chambers located at 300 First Street, Woodland, CA, to consider the adoption of a resolution making findings that

the cost of the proposed City of Woodland Solar Project ("Project") to be installed by Performance Contracting Inc./Hanwha Q Cells under a Power Purchase Agreement at the following City facilities will be offset and will be less than the anticipated marginal cost to the City of electrical or other energy that would have been consumed by the City if such Project was not completed:

- Water Pollution Control Facility, 42929 County Road 24, Woodland, CA 95776
- Parcel No. 027-390-022-000 northeast of 42929 County Road 24 (vacant City land) in Woodland, CA
- Community and Senior Center, 2001 East Street, Woodland, CA 95776
- Police Station, 1000 Lincoln Avenue, Woodland, CA 95695
- Municipal Service Center, 655 North Pioneer Avenue, Woodland, CA 95776
- Public parking lot, 435 Court Street/204 College Street, Woodland, CA 95695

Compliance with the California Environmental Quality Act

The City's approvals of the PPA, Site Agreement, Site Lease, and Battery Energy Storage Contract are not subject to environmental review under the California Environmental Quality Act, Public Resources Code section 21000 *et seq*. (CEQA), because such approvals would not result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore are not considered a "project" subject to CEQA review. (Public Resources Code, § 21065; 14 C.C.R. § 15378.) Further, such approvals do not have the potential to cause a significant effect on the environment. (14 C.C.R. § 15061(b)(3).)

As set forth in Section 4.B.(iv) of the PPA, the City's future approval of the Solar Project, and any obligations of the City associated with the Solar Project under the PPA, are conditioned upon the City's future compliance with CEQA, including, but not limited to, a determination that any potentially significant environmental impacts of the Solar Project have been adequately considered and mitigated in compliance with CEQA and any and all applicable environmental laws. The City's approval of the PPA does not limit the ability of the City to consider alternatives to the Solar Project pursuant to CEQA. Further, the City may terminate the PPA if the results of the environmental review process, environmental compliance measures, or unforeseen site conditions render the Solar Project environmentally or economically disadvantageous for City. The City may also terminate the Site Agreement, Site Lease, and Battery Storage Contract if the PPA is terminated.

The City will file a Notice of Determination under Title 14 of the California Code of Regulations, sections 15075 or 15094, or a Notice of Exemption under section 15062, as applicable, following adoption of any environmental document or environmental determination for the Solar Project.

Commission/Committee Recommendation

Details of the proposed Solar Project were presented to the City Council Sustainability Committee at the November 12, 2013 and November 12, 2014 meetings and to the City Council members of the committee on December 5, 2014. The committee is supportive of the project and the PPA.

Conclusion

Staff recommends that the City Council hold a Public Hearing and that, pursuant to Section 4217.10 *et seq.* of the Government Code, the City Council adopt Resolution No. _____ which: (1) finds that the cost of the purchase of electricity from the Solar Project at six City facilities under the proposed PPA will be offset and will be less than the anticipated marginal cost to the City of electrical or other energy that would have been consumed by the City if such Solar Project were not completed; (2) finds that the difference, if any, between the fair rental value for the real property subject to the Site Agreement and the agreed rent is anticipated to be offset by below-market energy purchases; and (3) authorizes the City Manager to execute the proposed PPA and Site Agreement for the construction of the Solar Project with the special purpose entity formed by Performance Contracting Inc./Hanwha Q Cells, to execute a contract for Battery Energy Storage Contract with Performance Contracting, Inc., and (4) to execute a Site Lease with CPG. (5) Resolution No. _____ further finds such approvals exempt under CEQA.

Prepared by: Roberta Childers, Environmental Resource Analyst

Reviewed by: Gregor G. Meyer, Public Works Director

Paul Navazio, City Manager

Attachments:

Exhibit A: TerraVerde Solar Project Pro Forma
Exhibit B: Illustrations of Solar Array Sites and Designs
Resolution and attachments:

- Power Purchase Agreement
- Site Agreement (for Power Purchase Agreement)
- Site Lease with CPG
- Battery Energy Storage Contract *(to be delivered)*

City of Woodland

Solar Project Pro Forma:

Exhibit A: 4217 Finding

12/11/2014

Project Qualification Model

Project Name: City of Woodland

Scenario: PPA - 28 Year Term; 3.1% Escalation Rate

TerraVerde Renewable Partners

Exhibit A: 4217 Finding

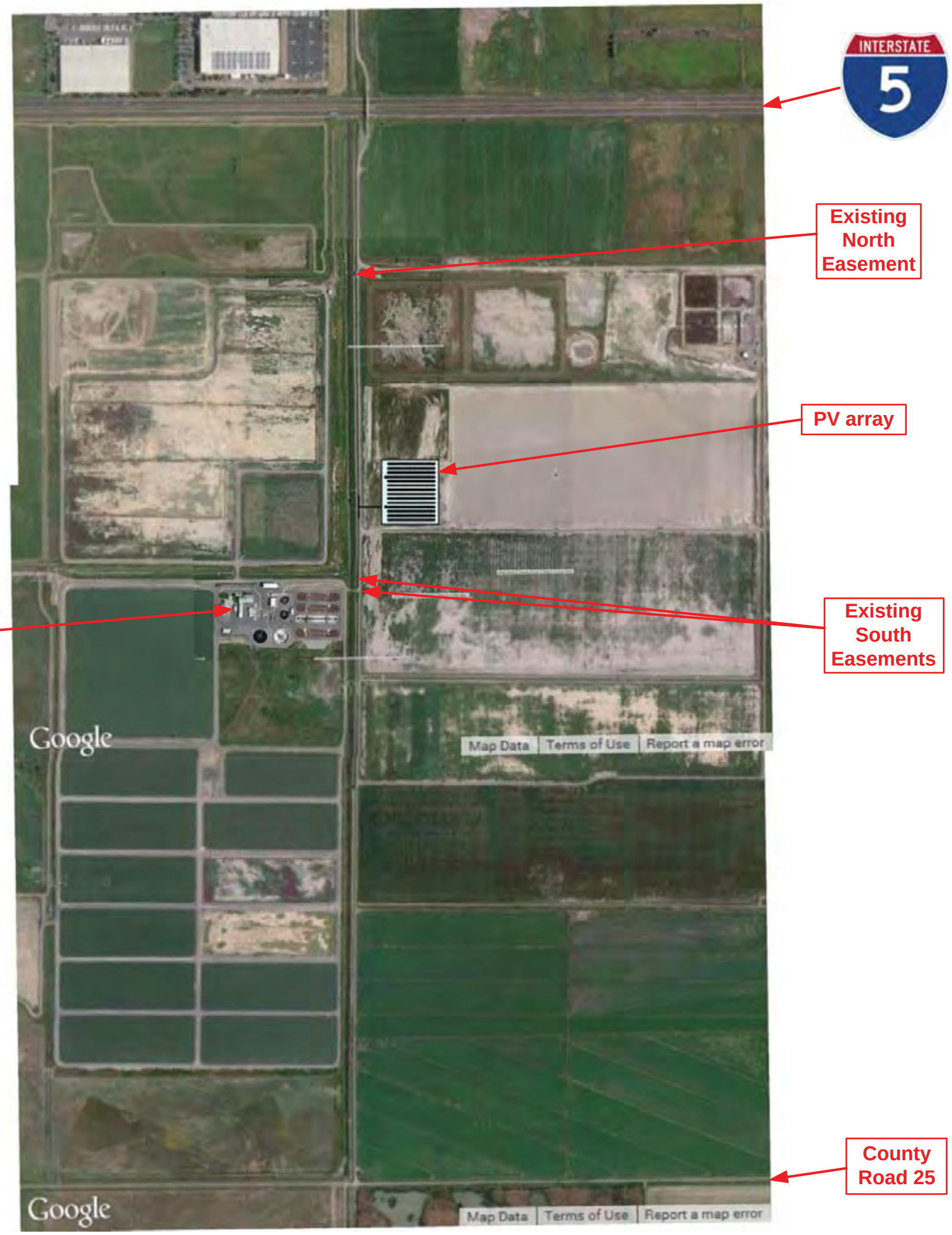
	Electricity Assumptions		Avoided Cost		Financing and Reporting Outflows			Results	
Year	Annual Solar Production (kWh)	Savings Per kWh Produced	Avoided Cost from Solar Generation	**Subtotal: Annual Solar Benefit**	PPA Payments	Asset Management Services	**Subtotal: Operations Payments**	Net Operating Cost Savings	**Cumulative Net Operating Cost Savings**
1	4,491,992	$0.1688	$758,274	$758,274	($616,301)	($44,920)	($661,221)	$97,053	**$97,053**
2	4,458,302	$0.1756	$782,690	$782,690	($630,641)	($46,492)	($677,133)	$105,557	**$202,610**
3	4,424,865	$0.1826	$807,893	$807,893	($645,315)	($48,119)	($693,434)	$114,459	**$317,069**
4	4,391,678	$0.1899	$833,907	$833,907	($660,329)	($49,804)	($710,133)	$123,774	**$440,844**
5	4,358,741	$0.1975	$860,759	$860,759	($675,694)	($51,547)	($727,240)	$133,519	**$574,363**
6	4,326,050	$0.2054	$888,476	$888,476	($691,415)	($53,351)	($744,766)	$143,709	**$718,072**
7	4,293,605	$0.2136	$917,084	$917,084	($707,503)	($55,218)	($762,721)	$154,364	**$872,436**
8	4,261,403	$0.2221	$946,615	$946,615	($723,965)	($57,151)	($781,115)	$165,499	**$1,037,935**
9	4,229,442	$0.2310	$977,096	$977,096	($740,809)	($59,151)	($799,960)	$177,135	**$1,215,070**
10	4,197,721	$0.2403	$1,008,558	$1,008,558	($758,046)	($61,221)	($819,267)	$189,291	**$1,404,361**
11	4,166,238	$0.2499	$1,041,034	$1,041,034	($775,684)	($63,364)	($839,048)	$201,986	**$1,606,346**
12	4,134,992	$0.2599	$1,074,555	$1,074,555	($793,732)	($65,582)	($859,314)	$215,241	**$1,821,587**
13	4,103,979	$0.2703	$1,109,156	$1,109,156	($812,200)	($67,877)	($880,078)	$229,078	**$2,050,665**
14	4,073,199	$0.2811	$1,144,870	$1,144,870	($831,098)	($70,253)	($901,351)	$243,519	**$2,294,184**
15	4,042,650	$0.2923	$1,181,735	$1,181,735	($850,436)	($72,712)	($923,148)	$258,588	**$2,552,772**
16	4,012,330	$0.3040	$1,219,787	$1,219,787	($870,223)	($75,257)	($945,480)	$274,307	**$2,827,079**
17	3,982,238	$0.3162	$1,259,064	$1,259,064	($890,471)	($77,891)	($968,362)	$290,702	**$3,117,781**
18	3,952,371	$0.3288	$1,299,606	$1,299,606	($911,190)	($80,617)	($991,807)	$307,799	**$3,425,580**
19	3,922,728	$0.3420	$1,341,453	$1,341,453	($932,392)	($83,438)	($1,015,830)	$325,624	**$3,751,204**
20	3,893,308	$0.3556	$1,384,648	$1,384,648	($954,086)	($86,359)	($1,040,445)	$344,204	**$4,095,407**
21	3,864,108	$0.3699	$1,429,234	$1,429,234	($976,285)	($89,381)	($1,065,666)	$363,568	**$4,458,975**
22	3,835,127	$0.3847	$1,475,255	$1,475,255	($999,001)	($92,509)	($1,091,510)	$383,745	**$4,842,720**
23	3,806,364	$0.4001	$1,522,758	$1,522,758	($1,022,245)	($95,747)	($1,117,992)	$404,766	**$5,247,485**
24	3,777,816	$0.4161	$1,571,791	$1,571,791	($1,046,030)	($99,098)	($1,145,129)	$426,663	**$5,674,148**
25	3,749,483	$0.4327	$1,622,403	$1,622,403	($1,070,369)	($102,567)	($1,172,936)	$449,467	**$6,123,615**
26	3,721,361	$0.4500	$1,674,644	$1,674,644	($1,095,274)	($106,157)	($1,201,430)	$473,214	**$6,596,829**
27	3,693,451	$0.4680	$1,728,568	$1,728,568	($1,120,758)	($109,872)	($1,230,630)	$497,938	**$7,094,767**
28	3,665,750	$0.4867	$1,784,228	$1,784,228	($1,146,835)	($113,718)	($1,260,553)	$523,675	**$7,618,442**
Totals	**113,831,293**	n/a	$33,646,141	**$33,646,141**	($23,948,329)	($2,079,371)	**($26,027,700)**	$7,618,442	**$7,618,442**

Key Project Assumptions	
Total Project Size (MW, DC)	**2.96 MW**
Estimated Utility Cost Escalator (%)	4.00%
PPA Rate	$0.1372
PPA Annual Escalator (%)	3.10%
Asset Management Services ($/kWh)	$0.0100
Asset Management Services Escalator (%)	3.50%

Exhibit B

Solar Project Site Layouts and Designs

Regional Plan of proposed PV array relative to WPCF and existing Easements between City of Woodland Properties



Scale |← 3000 feet →|

N

Rev	Revision	Date	Designer
B	Regional Plan	10/13/14	dsm
A	Power Routing	9/10/14	dsm

REVIEW

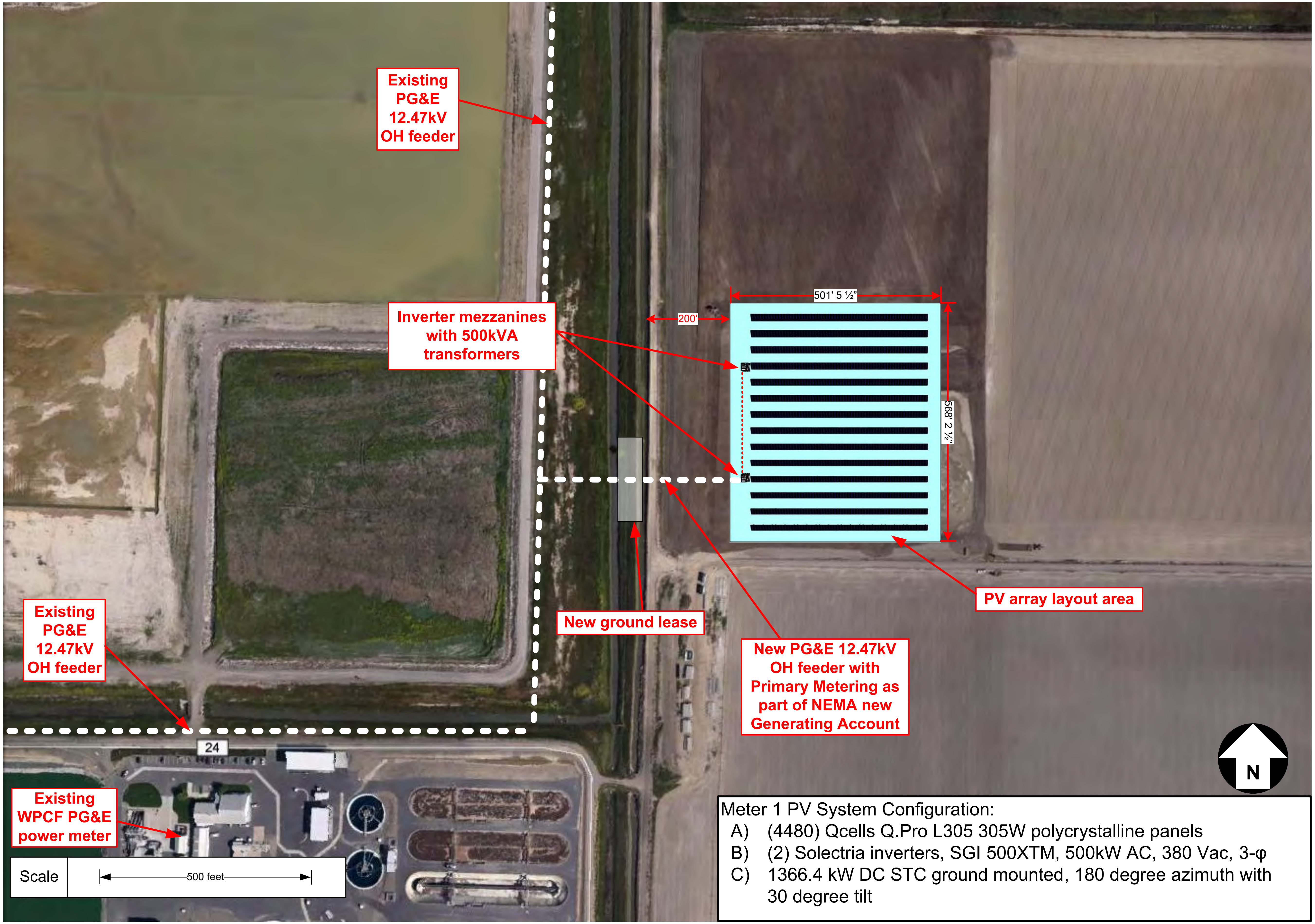
PCI PERFORMANCE CONTRACTING INC
SOLAR ENERGY
4401 Freidrich Lane #306
Austin, TX 78744
www.PCISolar.com

Woodland Meter 1: WPCF
42929 C.R. 24
Woodland, CA
Solar Electric System
1366.4 kW DC STC Rating
Regional Plan

WOODLAND

EP-001

Site Plan, 1366.4kW DC STC Photovoltaic Power System Water Pollution Control Facility, City of Woodland, CA



Meter 1 PV System Configuration:
- A) (4480) Qcells Q.Pro L305 305W polycrystalline panels
- B) (2) Solectria inverters, SGI 500XTM, 500kW AC, 380 Vac, 3-φ
- C) 1366.4 kW DC STC ground mounted, 180 degree azimuth with 30 degree tilt

Rev	Revision	Date	Designer
A	Proposal	5/19/14	grg/dsm
B	VE Proposal	8/21/14	gsg
C	NEMA IC	9/16/14	dsm

PROPOSAL

PCI PERFORMANCE CONTRACTING INC
SOLAR ENERGY
4401 Freidrich Lane #306
Austin, TX 78744
www.PCISolar.com

Woodland Meter 1: WPCF
42929 C.R. 24
Woodland, CA

Solar Electric System
1366.4 kW DC STC Rating

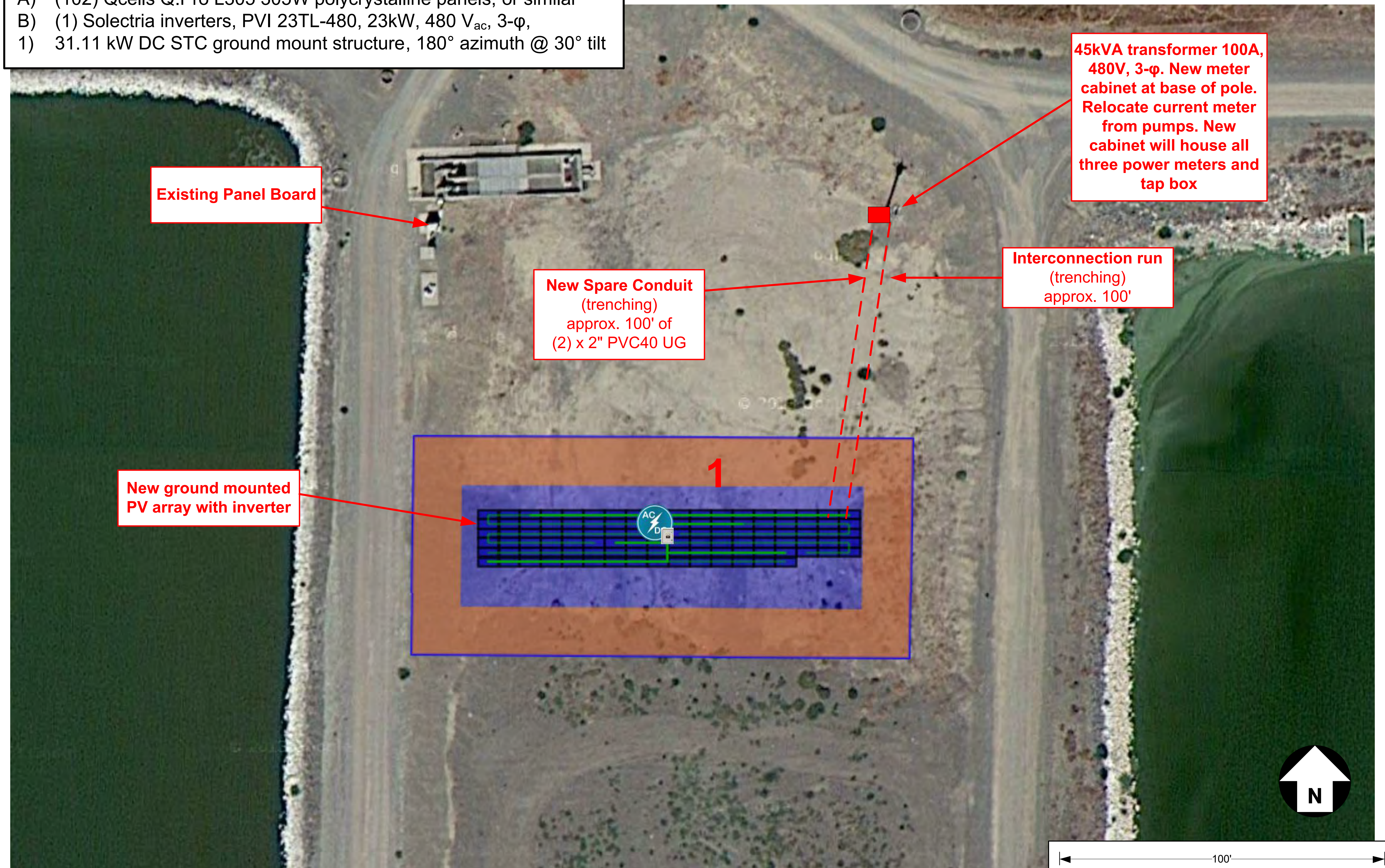
Site Plan

WOODLAND

EP-001

Site Plan, 31.11kW DC STC Photovoltaic Power System
Screw Pump, City of Woodland, CA

Meter 2 System Configuration:
- A) (102) Qcells Q.Pro L305 305W polycrystalline panels, or similar
- B) (1) Solectria inverters, PVI 23TL-480, 23kW, 480 V_{ac}, 3-φ,
- 1) 31.11 kW DC STC ground mount structure, 180° azimuth @ 30° tilt



Rev	Revision	Date	Designer
A	Proposal	603/14	grg/dsm
B	VE Proposal	7/28/14	grg

PROPOSAL

PCI PERFORMANCE CONTRACTING INC
SOLAR ENERGY
4401 Freidrich Lane #306
Austin, TX 78744
www.PCISolar.com

Woodland Meter 2: Screw Pump
Woodland, CA
WPFC Pond Screw Pumps
Solar Electric System
31.11 kW DC STC Rating
Site Plan

WOODLAND

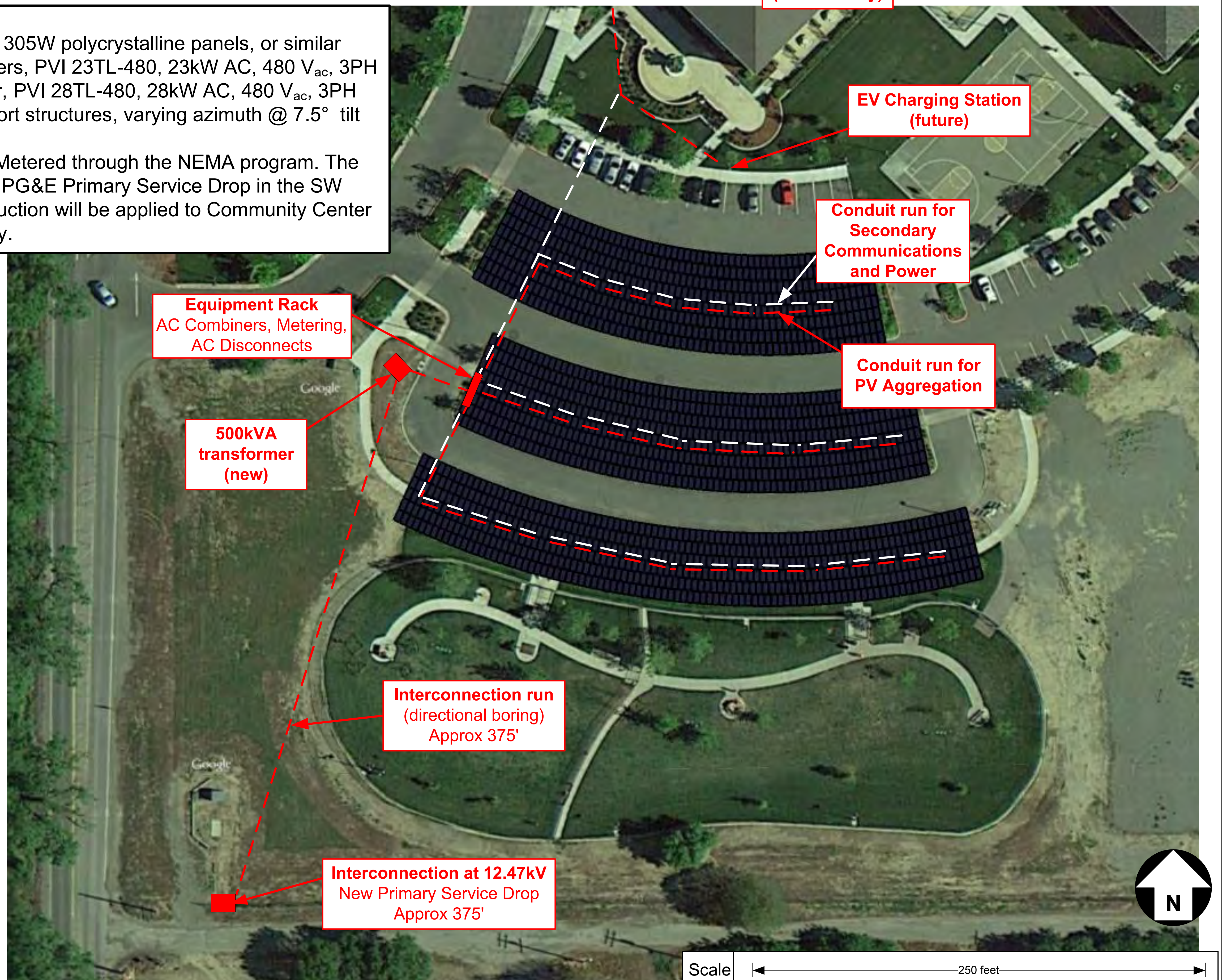
EP-001

Site Plan, 502.945kW DC STC Photovoltaic Power System
Community Center, City of Woodland, CA

Meter 3 System Configuration:

A) (1,649) Qcells Q.Pro L305 305W polycrystalline panels, or similar
B) (15) Solectria 23kW inverters, PVI 23TL-480, 23kW AC, 480 V_{ac}, 3PH
C) (1) Solectria 28kW inverter, PVI 28TL-480, 28kW AC, 480 V_{ac}, 3PH
D) 502.945 kW DC STC carport structures, varying azimuth @ 7.5° tilt

NOTE: This array is Virtual Net Metered through the NEMA program. The kWh production will enter a new PG&E Primary Service Drop in the SW corner of the property. The production will be applied to Community Center meter due to contiguous property.



Rev	Revision	Date	Designer
B	VE Proposal	07/29/14	grg
A	Proposal	6/03/14	grg/dsm

PROPOSAL

PCI PERFORMANCE CONTRACTING INC
SOLAR ENERGY
4401 Freidrich Lane #306
Austin, TX 78744
www.PCISolar.com

Woodland Meter 3: Community Center
2001 East Street
Woodland, CA

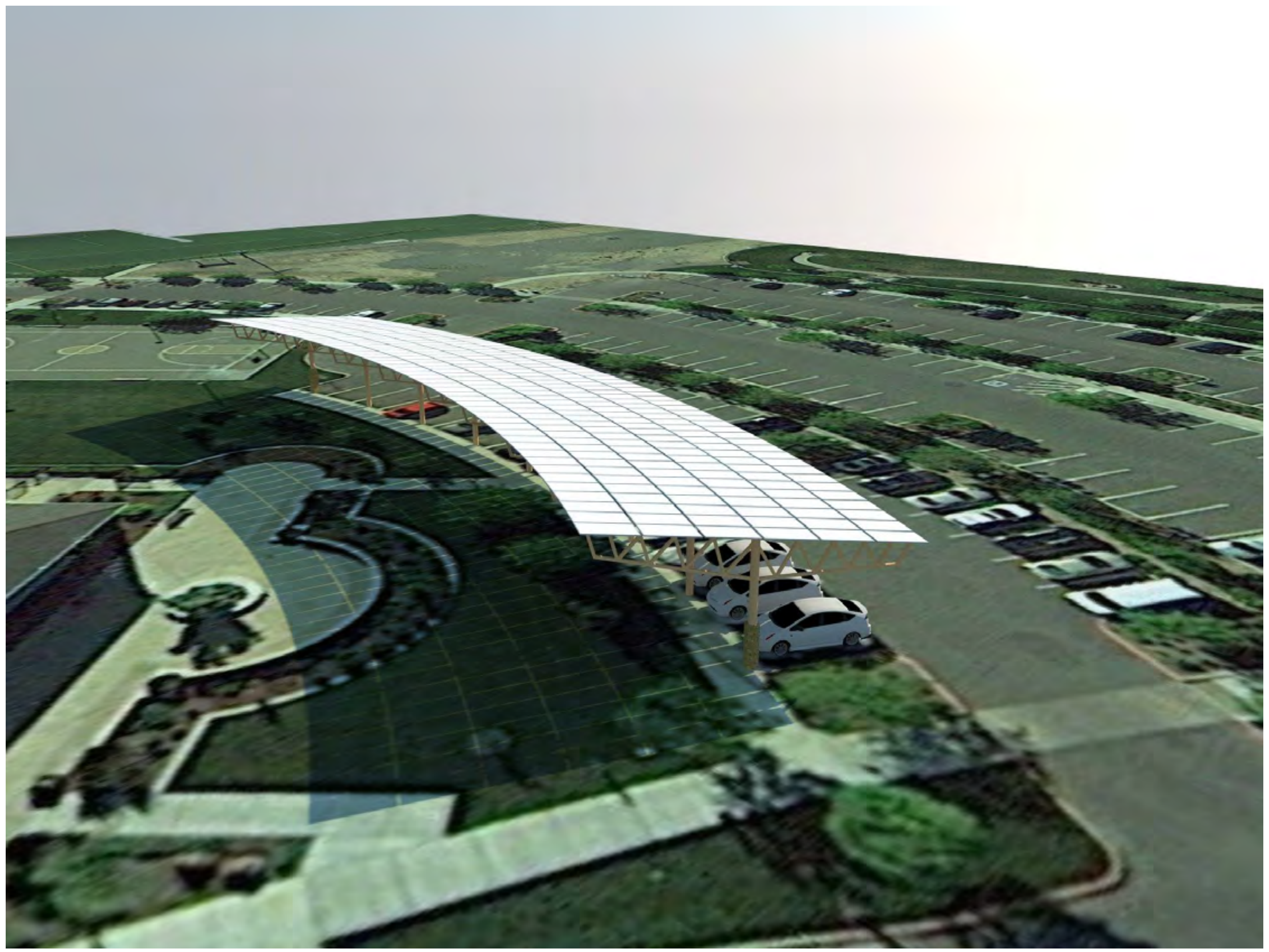
Solar Electric System
502.945 kW DC STC Rating

Site Plan

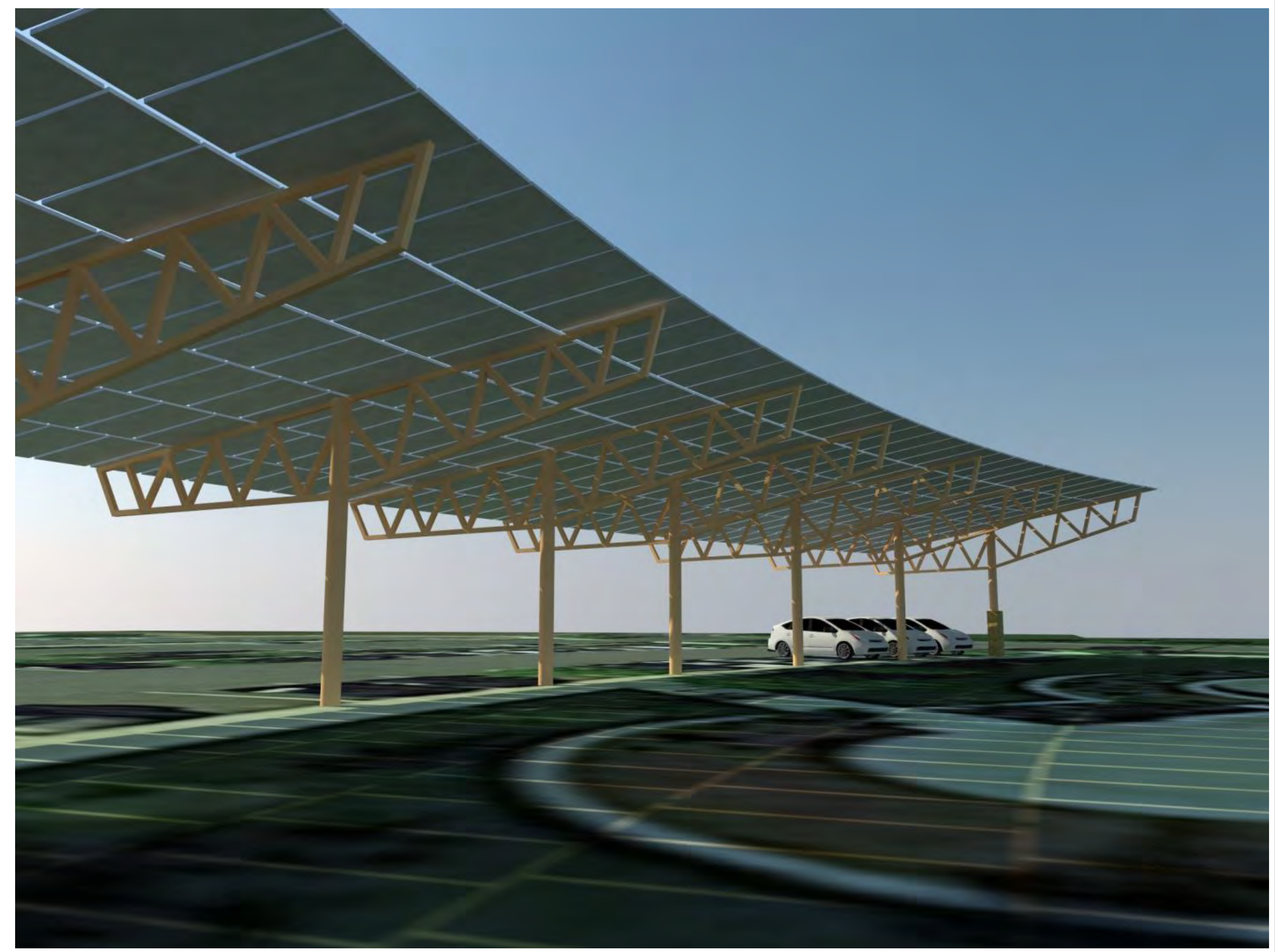
WOODLAND

EP-001

Meter 3 VE Renderings



Perspective of curved shade structure



Undershade view of curved shade structure

For Illustrative Purposes, design subject to change based on final engineering

Rev	Revision	Date	Designer
B	VE Proposal	07/29/14	grg
A	Proposal	6/03/14	grg/dsm

PROPOSAL

PCI
PERFORMANCE CONTRACTING INC
SOLAR ENERGY

4401 Freidrich Lane #306
Austin, TX 78744
www.PCISolar.com

Woodland Meter 3: Community Center
2001 East Street
Woodland, CA

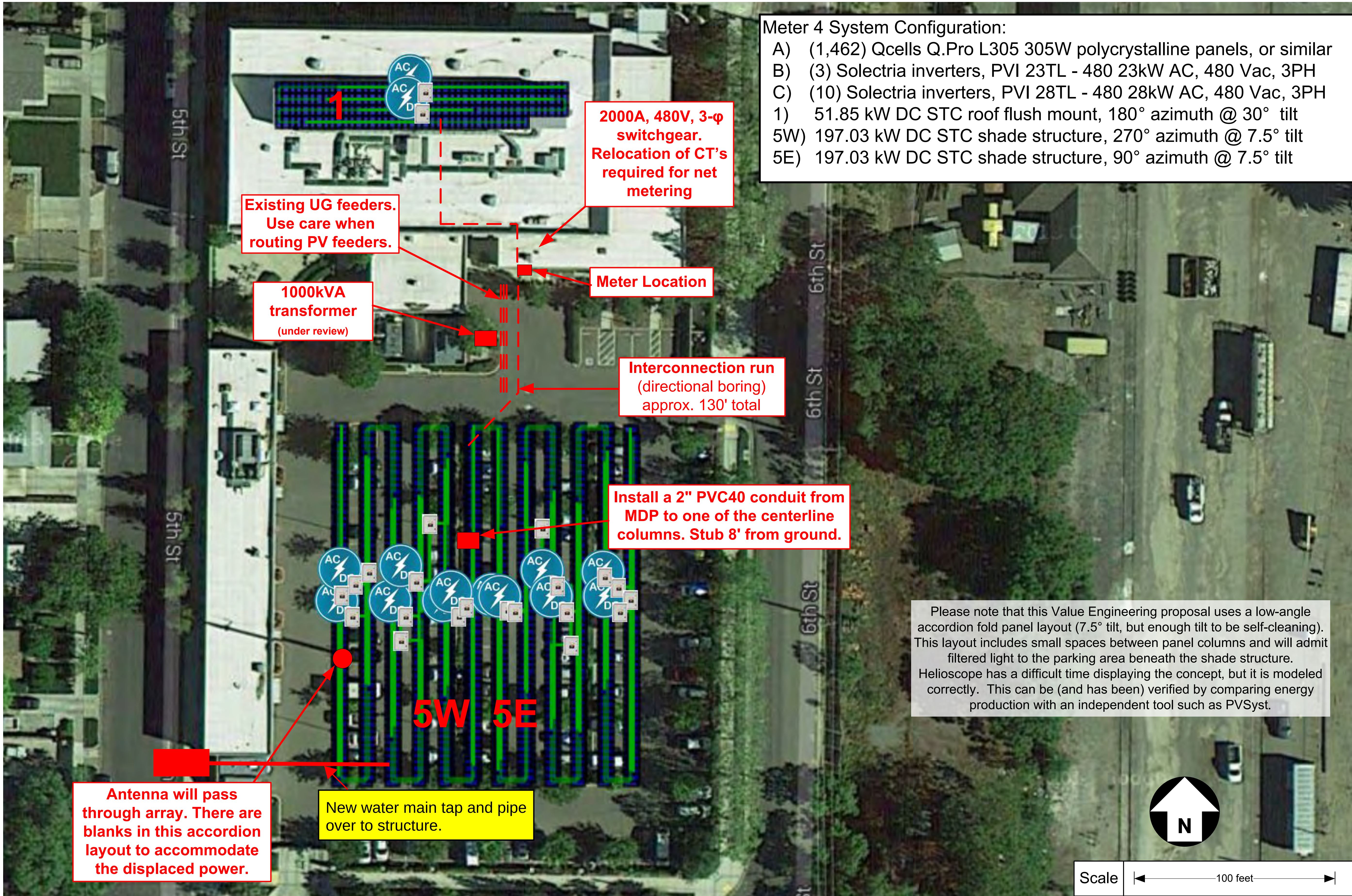
Solar Electric System
502.945 kW DC STC Rating

Rendering

WOODLAND

R-001

Site Plan, 445.91kW DC STC Photovoltaic Power System
Police Station, City of Woodland, CA



Rev	Revision	Date	Designer
B	VE Proposal	7/30/14	grg
A	Proposal	6/05/14	grg/dsm

PROPOSAL

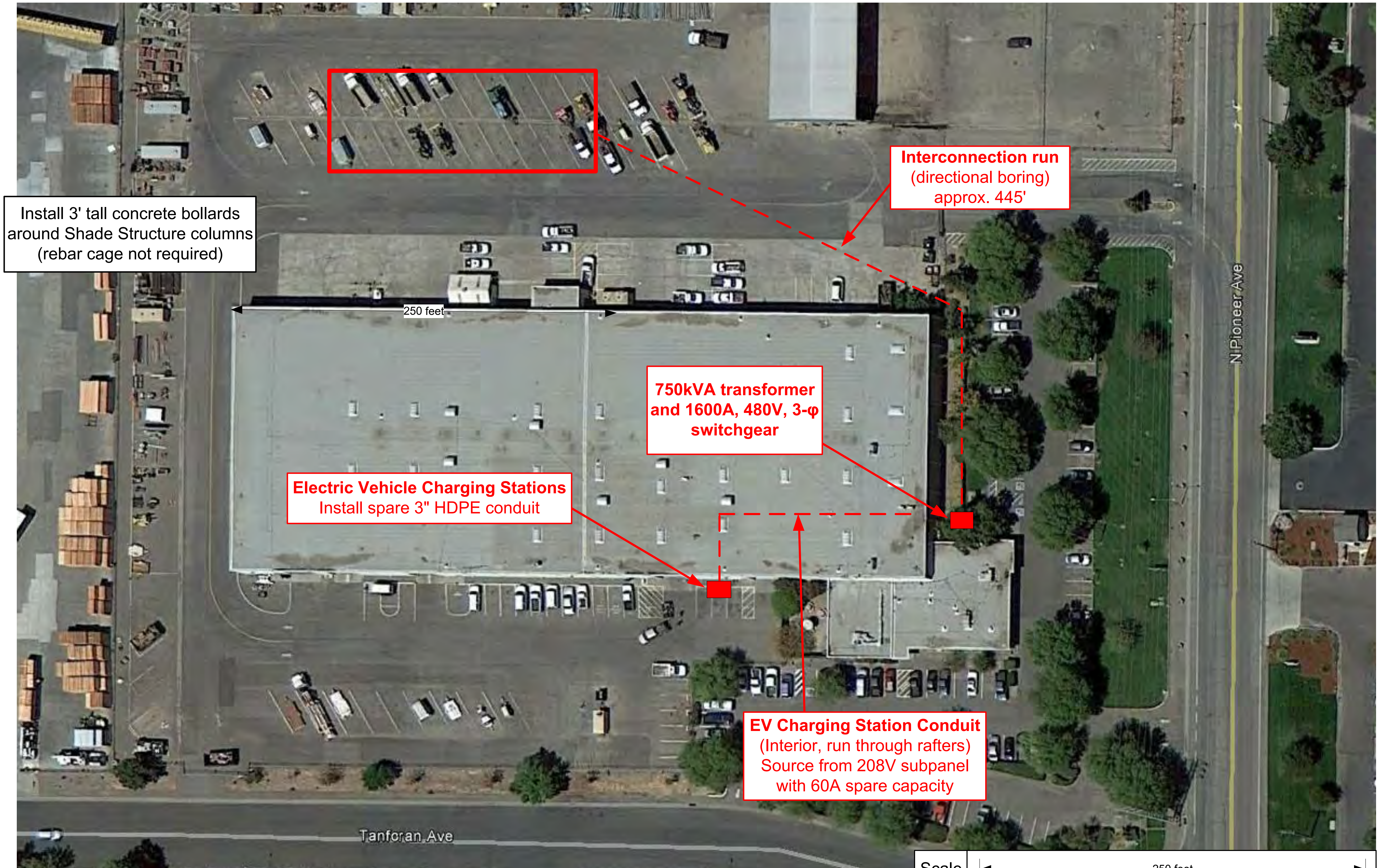
PCI PERFORMANCE CONTRACTING INC
SOLAR ENERGY
4401 Freidrich Lane #306
Austin, TX 78744
www.PCISolar.com

Woodland Meter 4: Police Station
2001 East Street
Woodland, CA
Solar Electric System
445.91 kW DC STC Rating
Site Plan

WOODLAND

EP-001

Site Plan, 129.625kW DC STC Photovoltaic Power System
Municipal Services, City of Woodland, CA



N

Scale 250 feet

Rev	Revision	Date	Designer
A	Proposal	5/30/14	grg/dsm
B	VE Proposal	7/31/14	grg

PROPOSAL

PCI PERFORMANCE CONTRACTING INC
SOLAR ENERGY
4401 Freidrich Lane #306
Austin, TX 78744
www.PCISolar.com

Woodland Meter 5: Municipal Services
655 N Pioneer Ave Woodland, CA
Solar Electric System
129.625 kW DC STC Rating
Site Plan (EV Charging)

WOODLAND

EP-002

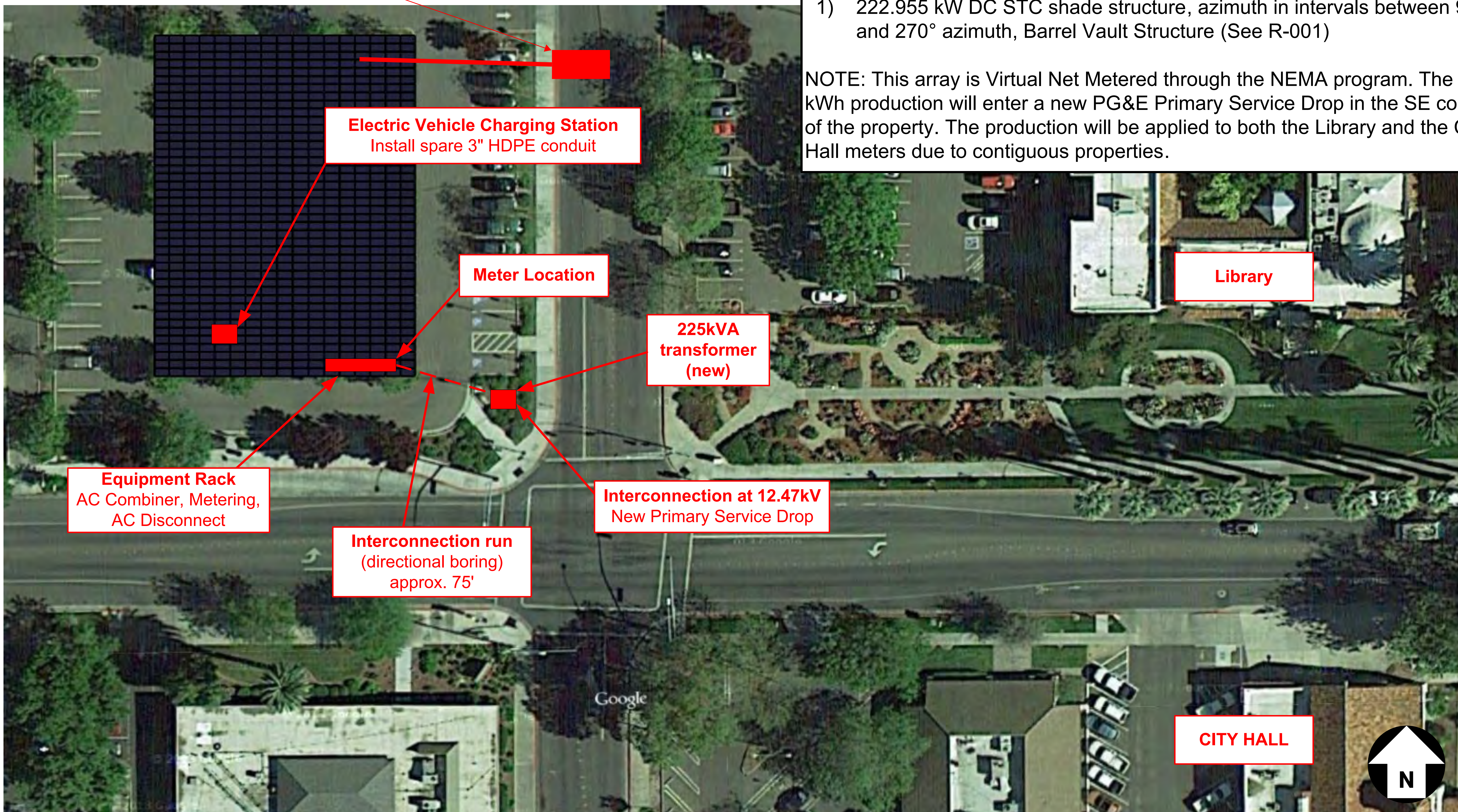
Site Plan, 222.96kW DC STC Photovoltaic Power System
City Hall & Library, City of Woodland, CA

New Water Main Tap and Pipe over to structure

Install concrete wheel stops on each side of the Shade Structure columns

NEMA System Configuration:
- A) (731) Qcells Q.Pro L305 305W polycrystalline panels, or similar
- B) (3) Solectria 23kW inverters, PVI 23TL-480, 480 Vac, 3-φ
- C) (4) Solectria 28kW inverter, PVI 28TL-480, 480 Vac, 3-φ
- 1) 222.955 kW DC STC shade structure, azimuth in intervals between 90° and 270° azimuth, Barrel Vault Structure (See R-001)

NOTE: This array is Virtual Net Metered through the NEMA program. The kWh production will enter a new PG&E Primary Service Drop in the SE corner of the property. The production will be applied to both the Library and the City Hall meters due to contiguous properties.



Scale 250 feet

Rev	Revision	Date	Designer
B	VE Proposal	7/29/14	grg
A	Proposal	6/04/14	grg/dsm

PROPOSAL

PCI PERFORMANCE CONTRACTING INC SOLAR ENERGY
4401 Freidrich Lane #306
Austin, TX 78744
www.PCISolar.com

Woodland: City Hall and Library NEMA
300 1st Street
Woodland, CA

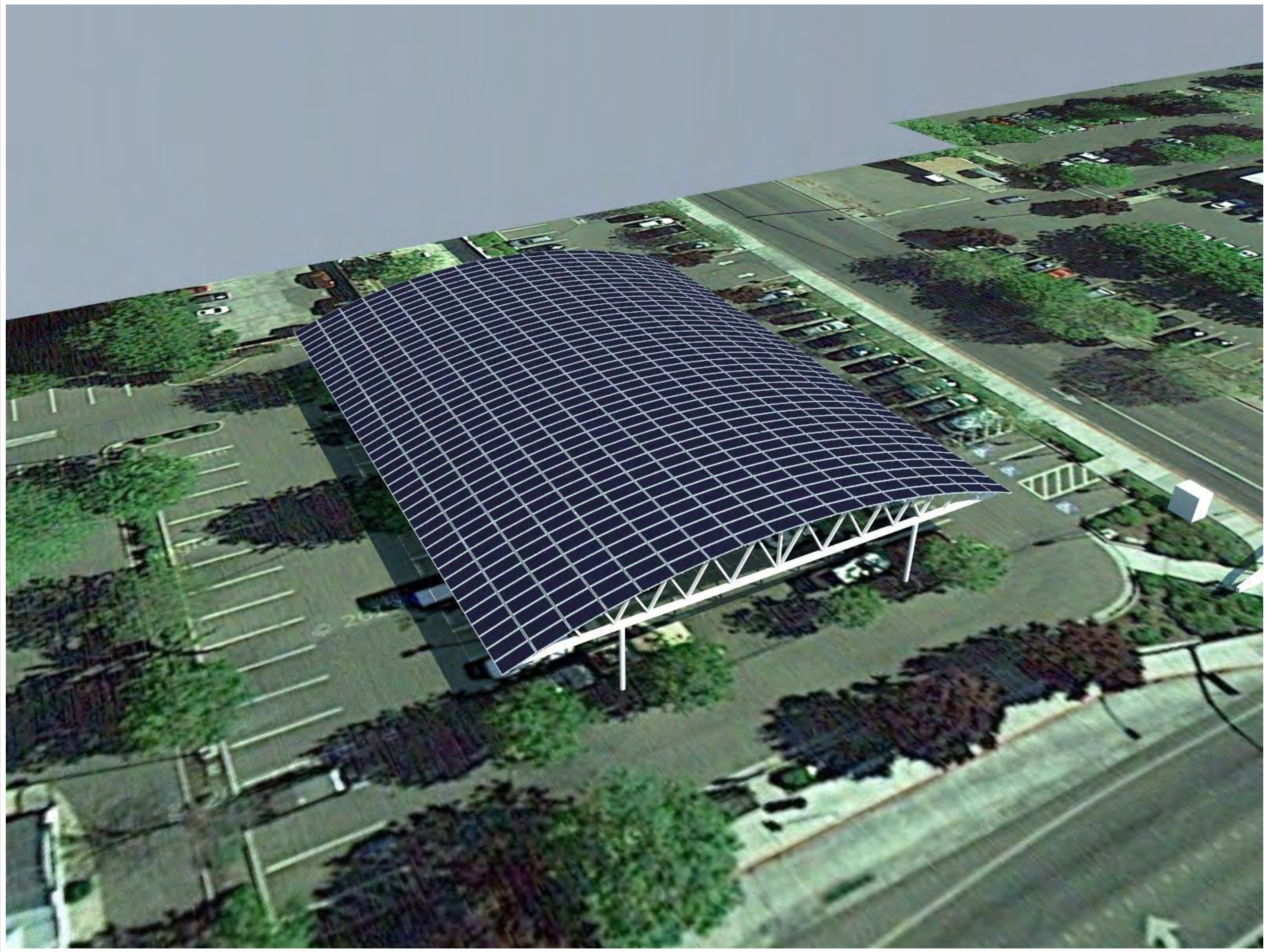
Solar Electric System
222.96 kW DC STC Rating

Site Plan

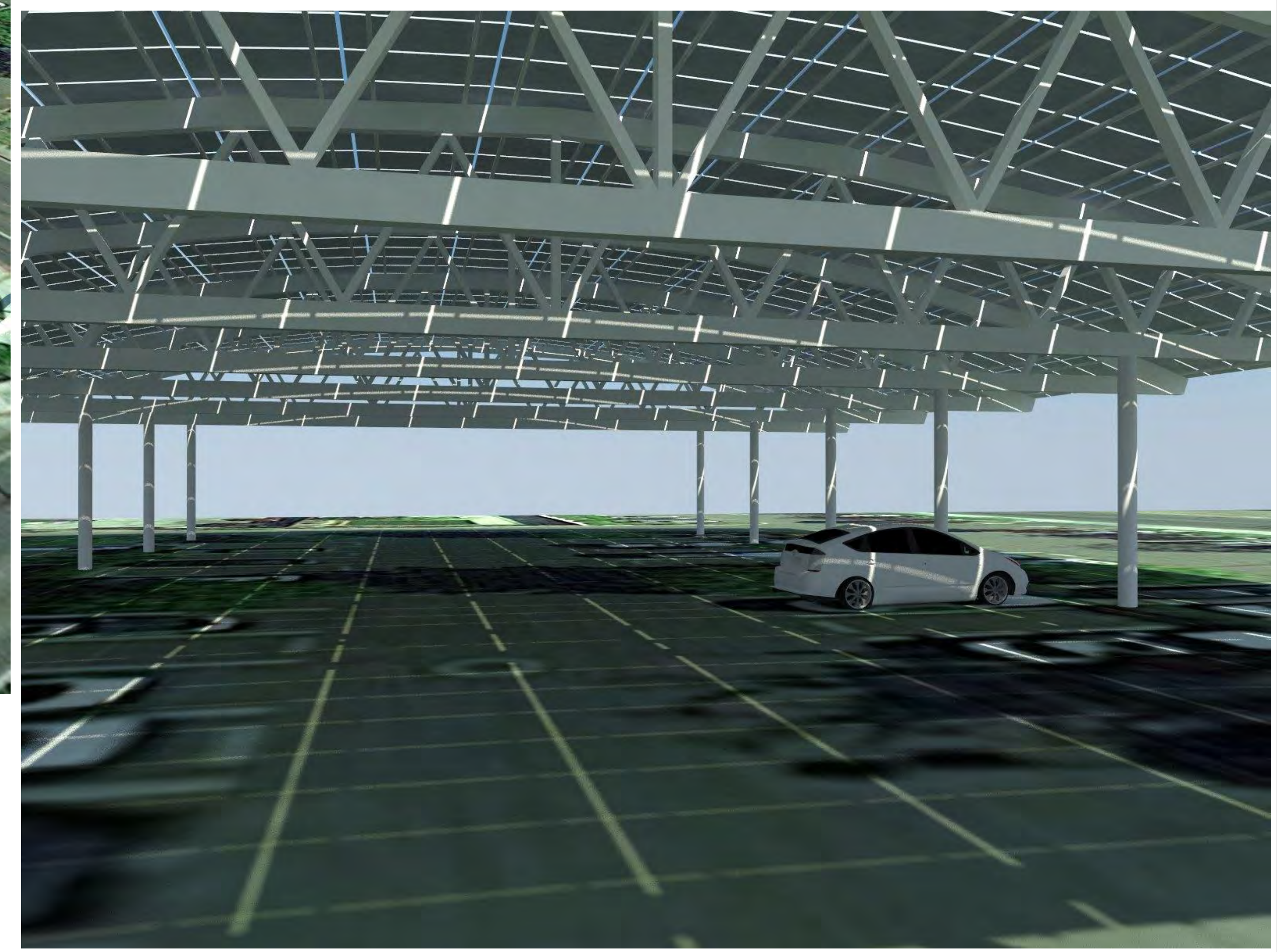
WOODLAND

EP-001

Meter 6 Baseline Renderings



Perspective from SSW



View from under the canopy

For Illustrative Purposes, design subject to change based on final engineering

Rev	Revision	Date	Designer
B	VE Proposal	7/29/14	grg
A	Proposal	6/04/14	grg/dsm

PROPOSAL

PCI PERFORMANCE CONTRACTING INC SOLAR ENERGY
4401 Freidrich Lane #306
Austin, TX 78744
www.PCISolar.com

Woodland: City Hall and Library NEMA
300 1st Street Woodland, CA
Solar Electric System
222.96 kW DC STC Rating
Rendering

WOODLAND

R-001

RESOLUTION NO. _______

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WOODLAND MAKING FINDINGS UNDER THE GOVERNMENT CODE AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; APPROVING THE POWER PURCHASE AGREEMENT AND SITE AGREEMENT WITH PERFORMANCE CONTRACTING INC./HANWHA Q CELLS FOR A SOLAR PHOTOVOLTAIC PROJECT AT VARIOUS CITY SITES; AUTHORIZING A BATTERY ENERGY STORAGE CONTRACT WITH PERFORMANCE CONTRACTING INC.; AND AUTHORIZING A SITE LEASE WITH CONAWAY PRESERVATION GROUP

WHEREAS, the City of Woodland ("City") owns and controls undeveloped Parcel No. 027-390-022-000 and the sites located at 42929 County Road 24, 2001 East Street, 1000 Lincoln Avenue, 655 North Pioneer Avenue, and 435 Court Street/204 College Street in Woodland, California upon which the City desires to contract with the special purpose entity formed by Performance Contracting Inc. / Hanwha Q Cells ("Contractor") under a Power Purchase Agreement ("PPA") (Exhibit 1) and related Site Agreement (Exhibit 2) to install, operate, and maintain in good repair a solar photovoltaic project ("Solar Project"); and

WHEREAS, the City desires to lease a portion of property owned by the Conaway Preservation Group, LLC, ("CPG") for the purpose of constructing overhead transmission lines as more particularly described in Exhibit 3, attached hereto, ("Site Lease") (Exhibit 3) for the transmission of electricity from the Solar Project to other real property owned by the City, and for the purpose of qualifying under PG&E's net-energy metering aggregation program; and

WHEREAS, the City desires to enter a Battery Energy Storage Contract (Exhibit 4) for the purpose of enabling the City to use a PG&E electric rate schedule at the Community and Senior Center at 2001 East Street that is compatible with the proposed solar energy production for that facility, thereby increasing the savings to accrue from the Solar Project; and

WHEREAS, California Government Code Section 4217.10 *et seq.* authorizes public agencies to contract for energy services if its governing body determines, after holding a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, that the anticipated cost to the City for the energy services contract will be less than the anticipated marginal cost to the City of electrical energy that would have been consumed by the City in the absence of the energy services contract and that the difference, if any, between the fair rental value for the real property subject to the Site Agreement and the agreed rent, is anticipated to be offset by below-market energy purchases; and

WHEREAS, the City has been working with Contractor and the City's energy advisor, Terre Verde Renewable Partners, to scope the Solar Project and based on the overall project proposal and energy cost-savings, among other factors, desires to enter into the PPA and related Site Agreement with Contractor to design, finance, construct and maintain the Solar Project; and

WHEREAS, in accordance with Government Code section 4217.12, on November 29, 2014, the City published a notice of a public hearing at which the City's Council would consider the Solar Project contract documents; and

WHEREAS, in accordance with California Government Code section 4217.10 *et seq.*, based on the energy cost savings to be generated by the proposed Solar Project, the cost of the energy purchases contemplated under the PPA will be offset and will be less than the anticipated marginal cost to the City of electrical energy that would have been expended by the City if such Solar Project was not completed; and

WHEREAS, the difference, if any, between the fair rental value for the real property subject to the Site Agreement and the agreed rent, is anticipated to be offset by below-market energy purchases or other benefits provided under the PPA; and

WHEREAS, the City, as the lead agency under the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA"), has determined that the City's approval of the PPA, Site Agreement, Site Lease, and Battery Energy Storage Contract is not subject to environmental review under Public Resources Code section 21065 and State CEQA Guidelines sections 15378 and 15061, subsection (b)(3) (14 C.C.R. §§ 15378, 15061(b)(3)); and

WHEREAS; the City has considered all comments received at the public meeting on December 16, 2014, prior to adoption of this Resolution; and

WHEREAS, the determination that the City's approval of the PPA, Site Agreement, Site Lease, and Battery Energy Storage Contract is not subject to CEQA review reflects the City Council's independent judgment and analysis.

NOW, THEREFORE, the City Council of the City of Woodland does hereby resolve, determine and order as follows:

Section 1. Recitals. The Council hereby finds and determines that all of the recitals set forth above are true and correct.

Section 2. CEQA Findings. The City Council hereby finds that the City's approval of the Site Agreement, Site Lease, Battery Storage Contract and PPA, which sets forth the terms and conditions of the future purchase and sale of solar generated electric energy from the Solar Project to be installed on City-owned sites, is not subject to environmental review. Such approvals would not result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and therefore are not considered "projects" subject to CEQA review. (Public Resources Code, § 21065; State CEQA Guidelines, § 15378.) Further, such approvals do not have the potential to cause a significant effect on the environment pursuant to State CEQA Guidelines section 15061, subsection (b)(3).

The City's future approval of the Solar Project, and any obligations of the City associated with the Solar Project under the PPA, are conditioned upon the City's future compliance with CEQA, including, but not limited to, a determination that any potentially significant environmental impacts of the Solar Project have been adequately considered and mitigated in compliance with CEQA and any and all applicable environmental laws. The City's approval of the PPA does not limit the ability of the City to consider alternatives to the Solar Project pursuant to CEQA. Further, the City may terminate the PPA if the results of the environmental review process, environmental compliance measures, or unforeseen site conditions render the Solar Project environmentally or economically disadvantageous for the City. The City may also terminate the Site Agreement, Site Lease, and Battery Storage Contract if the PPA is terminated.

The City will file a Notice of Determination under Title 14 of the California Code of Regulations, sections 15075 or 15094, or a Notice of Exemption under section 15062, as applicable, following adoption of any environmental document or environmental determination for the Solar Project.

Section 3. Notice of Exemption. The City Council hereby authorizes and directs staff to prepare, execute and file with the County Clerk a Notice of Exemption for approval of the PPA, Site Agreement, Site Lease, and Battery Energy Storage Contract.

Section 4. Custodian of Records. The administrative record for the City's approval of the PPA, Site Agreement, Site Lease, and Battery Energy Storage Contract is maintained at the Community Development Department at City Hall located at 300 First Street, Woodland, California, 95695.

Section 5. Government Code Findings. This Resolution is adopted following a meeting at which a public hearing was held at a regularly scheduled meeting of the Council for which a minimum of two weeks' public notice was duly given. The Council hereby finds that, pursuant to Government Code section 4217.12, the anticipated cost to the City for electrical energy services to be purchased by the City under the Power Purchase Agreement will be less than the anticipated marginal cost to the City of electrical or other energy that would have been consumed by the City if purchased from the local utility. The Council also hereby finds that the difference, if any, between the fair rental value for the real property subject to the Site Agreement and the agreed rent, is anticipated to be offset by below-market energy purchases or other benefits provided under the PPA.

Section 6. Authorization to Execute Proposed Power Purchase Agreement, Site Agreement, Site Lease, and Battery Energy Storage Contract. Based on the findings herein, the City Council hereby authorizes the City Manager or designee to execute the proposed PPA in substantially the same form as Exhibit 1, the Site Agreement in substantially the same form as Exhibit 2, the Site Lease in substantially the same form as Exhibit 3, and the Battery Energy Storage contract in substantially the same form as Exhibit 4, and hereby authorizes the City Attorney to make clarifying and conforming changes to the agreement, provided that the dollar amounts do not change from the amounts provided in the exhibits.

PASSED AND ADOPTED this ________ day of ___________ 2014, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

____
Tom Stallard, Mayor

APPROVED AS TO FORM:

____
Kara Ueda, City Attorney

ATTEST:

____
Ana B. Gonzalez, City Clerk

EXHIBIT 1

[POWER PURCHASE AGREEMENT BEHIND THIS PAGE]

EXHIBIT 2

[SITE AGREEMENT BEHIND THIS PAGE]

EXHIBIT 3

[SITE LEASE BEHIND THIS PAGE]

EXHIBIT 4

[BATTERY ENERGY STORAGE CONTRACT BEHIND THIS PAGE]

SOLAR POWER PURCHASE AGREEMENT

by and between

HANWHA Q CELLS USA CORP.

and

CITY OF WOODLAND

dated

____________, 2014

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SOLAR POWER PURCHASE AGREEMENT

This Solar Power Purchase Agreement ("Agreement" or "PPA") is made and entered into as of this 16th day of December, 2014, ("Execution Date"), between Hanwha Q CELLS USA Corp. ("Provider"), and the City of Woodland ("City"). City and Provider are collectively referred to herein as "Parties" and individually as "Party."

RECITALS

WHEREAS, Provider is in the business of installing and operating solar power facilities and selling electric energy generated from such facilities;

WHEREAS, Government Code section 4217.10 *et seq.* provides that public agencies may enter into agreements, including but not limited to, lease agreements, for real property upon which alternative energy facilities may be constructed so that the public agency may purchase the energy generated from the facilities constructed on the real property under a power purchase agreement; and

WHEREAS, City desires to reduce its energy costs as well as its dependence on fossil fuel electric generating resources and to promote the generation of electricity from solar photovoltaic facilities; and

WHEREAS, the governing body of City has made those findings required by Section 4217.12 of the Government Code that: (1) the anticipated cost to the City for electrical energy services provided by the solar panel system under this Agreement will be less than the anticipated marginal cost to the City of electrical energy that would have been consumed by the City in the absence of those purchases, and (2) the difference, if any, between the fair market value of the Site Agreement to access and occupy the real property subject to this Agreement and related payments under this Agreement, if any, is anticipated to be offset by below-market energy purchases or other benefits provided under this Agreement; and

WHEREAS, Provider desires to design, install, and operate each of the Solar Facilities, as defined herein, to be constructed on the Sites (collectively, the "Project") and cause output from the Project to be sold to City under the utility's net-energy metering and net-energy metering aggregation program and at those rates set forth herein; and

WHEREAS, Provider has developed an ownership and financing structure for the Project, that makes use of Environmental Financial Incentives, as defined herein, tax benefits, accelerated depreciation, and construction financing arrangements to offer a competitive Power Price that benefits City, as defined herein; and

WHEREAS, no later than ten (10) days after the Effective Date, City desires to provide Provider a separate agreement for the Project, for the sole purpose of installing, operating, maintaining and repairing each of the Solar Facilities (the "Site Agreement"); and

WHEREAS, as part of this PPA and in consideration of the Site Agreement, Provider and City intend that Provider will retain (1) title to and ownership of all Environmental Financial

Incentives, as defined herein, and (2) the right to claim all tax benefits associated with the Project; and

NOW, THEREFORE, in consideration of the promises and the mutual benefits from the covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Provider and City hereby agree as follows:

AGREEMENT

1. Definitions.

Capitalized terms used in this Agreement shall have the meanings ascribed to them herein or in the attached Exhibit A.

2. Term.

A. Term. The "Term" of this Agreement shall commence upon the Execution Date and terminate automatically on the Expiration Date. The Parties may agree, in a writing signed by both Parties, to renew this Agreement for up to two (2) five (5)-year renewal terms. This Agreement shall terminate automatically and concurrently with any termination of the Site Agreement.

B. Removal of Solar Facilities. Within one hundred eighty (180) days of the expiration or any termination of this Agreement (unless City has (i) purchased the Project or any portion thereof under the terms of this Agreement, or (ii) Provider is in default of this Agreement or otherwise required to remove the Solar Facilities) City shall, in coordination with Provider and at City's sole cost and expense, remove the Solar Facilities and reasonably store the Solar Facilities for collection by Provider for up to ninety (90) days. Provider shall pay for the storage of the Solar Facilities if storage is required beyond ninety (90) days following City's notice to Provider that the Solar Facilities or any portion thereof, have been removed. The Parties shall reasonably coordinate all such removal and pick-up activities.

C. Removal of Solar Facilities by Provider. To the extent Provider is required by this Agreement to remove the Solar Facilities and restore the Site(s), such removal shall occur within one hundred eighty (180) days of the termination or other event requiring Provider to remove the Solar Facilities. Removal of the Solar Facilities shall include all installed equipment, including, but not limited to, the Solar Facilities and all tangible and structural support materials, as well as all appurtenant equipment, above and below ground (except for empty conduits). Provider shall additionally restore the Sites to a condition substantially similar to the pre-installation condition of the Sites, excluding ordinary wear and tear, through reasonable efforts. Provider's restoration of the Site(s) shall include, but is not limited to, any refinishing, landscaping, hard-scaping, painting or other finish work, and cleaning. Provider shall undertake any repairs necessary as a result of such removal and restoration, including, but not limited to, any required roof restoration to prevent leaking and to secure structural integrity. City shall designate reasonable dates and times for such removal and restoration.

If Provider fails to comply with this Section within such one hundred and eighty (180) day period, City shall have the right, but not the obligation, to remove the Solar Facilities and restore the Sites and charge Provider for the cost incurred by City, which cost shall include a twenty percent (20%) administrative fee. The Parties shall reasonably coordinate all such removal and pick-up activities. In the event that the Provider does not remove the Solar Facilities as specified herein, City shall also have the option of continuing to receive Output from the Solar Facilities at no cost to City until the Solar Facilities are moved by either Provider or City. Except for amounts owed as a part of the Early Termination Fee payable to Provider, City shall have no obligation to pay for Output delivered after the expiration date of this Agreement or the early termination thereof.

3. Purchase and Sale of Output.

A. Purchase and Sale of Output. Beginning on the Commercial Operation Date of the first Solar Facility to achieve Commercial Operation and through the remainder of the Term, City agrees to buy Output from the Project at the applicable Power Price. Beginning on the date on which the Project achieves the Minimum COD Output, Provider agrees to sell Output to City from the Project at the applicable Power Price; *provided* that, pursuant to Section 5(F), Provider may elect to sell Output to City from one or more Solar Facilities that have achieved Commercial Operation prior to the date on which the Project achieves Minimum COD Output at the rate equal to the "Power Price," as defined in Section 3(B) below, for the first CO Year.

B. Power Price. The "Power Price" is set forth in Exhibit B. The Power Price shall be escalated on the first day of each CO Year at the Annual Escalation Rate as set forth in Exhibit B.

C. Future Demand Reductions. If at any time during the term of this Agreement, City reduces its demand load requirements for Output, City and Provider will work together to find an alternative buyer to purchase Output not needed to meet City's demand at no less than the applicable CO Year Power Price; *provided* that Provider is not obligated to sell Output to another buyer unless the terms of such power purchase agreement are acceptable to Provider in its sole discretion.

D. Output Guarantee. Beginning as of the conclusion of CO Year 2, Provider guarantees that the Project shall produce and deliver to City, as measured by the Meters, at least eighty-five percent (85%) of its projected annual Output as set forth in Exhibit E over any two (2) consecutive years of the Term (the "Output Guarantee"); *provided* that any electrical power that the Project cannot produce as a result of (i) a City-requested relocation of one or more Solar Facilities pursuant to Section 10(C), (ii) a temporary suspension in accordance with Sections 10(D) or 10(E) or (iii) an Excuse Event. In the event of any failure to meet the Output Guarantee, Provider shall owe City liquidated damages, not as a penalty, for every kWh shortfall in meeting the Output Guarantee ("Output LDs") at the amount per kWh as set forth in Exhibit B. Provider shall credit any Output LDs it owes to City against future invoices submitted to City. Except as otherwise provided for in Sections 5 and 10(E), Output LDs shall be City's sole and exclusive remedy, and Provider's sole and exclusive liability to City for the failure of the Project to deliver Output during the CO Term.

E. Force Majeure.

(i) Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partially unable to timely perform its obligations under this

Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; *provided* that (a) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (b) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (c) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Commercial Operation Deadlines set forth herein as well as the Expiration Date of this PPA shall be extended day for day for each day performance is suspended due to a Force Majeure event.

(ii) If a Force Majeure event continues for a period of one hundred eighty (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

4. Construction, Operation & Maintenance.

A. Provider's Contractor. Provider shall ensure that any party contracting with Provider for any engineering, procurement, design, installation or construction of the Project shall possess sufficient knowledge, experience, expertise and financial capacity and creditworthiness necessary for satisfactory completion of Provider's obligations under this Agreement. The contractor performing the construction work on the Project shall possess a Class B or C-10 California Contractor State License prior to performing any work on the Project. Provider represents and warrants that it has the financial capacity, creditworthiness and bonding sufficient to satisfy all of Provider's obligations under this Agreement, including, but not limited to, any instance of default or other failure by Provider's contractor to complete the work required to satisfy Provider's obligations in this Agreement. Prior to contracting with any such Party, Provider shall obtain and review the qualification of such Party.

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B. Permits.

(i) Provider shall be solely responsible for ensuring that the Project is constructed in compliance with all applicable laws, regulations and Permits, and in accordance with the standards set by any governmental program providing funding for the Project, including, but not limited to, all improvements, conditions, and mitigation measures required for compliance with the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.*, and the Americans with Disabilities Act.

(ii) Except as provided with regard to CEQA in Section 4(B)(iv) below, Provider shall, at Provider's sole cost and expense, obtain from authorities having jurisdiction ("AHJ") over the Project, all necessary governmental approvals and other Permits and approvals required for the installation and operation of the Project, including, but not limited to fire safety, California Occupational Safety and Health Administration, utility interconnection, right-of-way permits, easement agreements and other codes and best practices. To the extent action is required by City, City shall, upon the request of Provider, use reasonable efforts to assist Provider in obtaining and retaining Permits, licenses, releases and other approvals necessary for the design, construction, engineering, installation, operation and maintenance of the Project except that as a permitting authority, City shall not be required to afford Provider with special or expedited services that would otherwise be provided to a private project. Provider shall reimburse City for costs reasonably incurred by City in assisting the Provider under this Section.

(iii) Provider shall be responsible for all costs, expenses and improvements to the extent required to obtain or comply with any permits, government approvals or other requirement under state or federal law made necessary as a result of the Project's installation, operation and maintenance. Specifically, the Provider is required to obtain and submit all documents to close out the Project with the AHJ over the Project. In addition to stamped and approved plans, Provider is required to provide the installation compliance confirmation letter from AHJ.

(iv) City is a 'public entity' and/or a 'public agency' as defined under applicable California law. Therefore, City must satisfy the requirements of certain California statutes relating to the actions of public entities, including, without limitation, CEQA. City shall be the lead agency for the purposes of environmental review, filing any and all required documents, and obtaining the relevant environmental approvals for the Project. City shall bear its own costs incurred for compliance with CEQA and other environmental laws pursuant to this Section 4(B)(iv).

City's approval of the Project, and any obligations of City associated with the Project under this Agreement, are conditioned upon City's future compliance with CEQA within forty-five (45) days from the Execution Date, including, but not limited to, a determination that the environmental impacts of the Project have been adequately considered and mitigated in compliance with CEQA and any and all applicable environmental laws. City's approval of this Agreement does not limit the ability of City to consider alternatives to the Project pursuant to CEQA. City will file a Notice of Determination under Title 14 of the California Code of Regulations, sections 15075 or 15094, or a Notice of Exemption under section 15062, as applicable, following adoption of any environmental document or environmental determination for the Project.

City may terminate this Agreement by written notice to Provider of City's intent to terminate this Agreement within forty-five (45) days from the Execution Date if the results of the environmental review process, environmental compliance measures, or unforeseen site conditions render the Project environmentally or economically disadvantageous for City, or the time required to implement any environmental compliance measures, mitigation, or remediation exceed City's reasonable expecations; *provided* that, prior to the expiration of such forty-five (45) day period, City and Provider will use good faith efforts to negotiate mutually agreeable means to implement compliance measures, mitigation, or remediation to preserve City's reasonable expecations of envirnomental and economic benefits from this Agreement. Nothing set forth herein shall be intepreted to require City to undertake environmental mitigation or remediation at any of the Solar Facilities if mandated by law, regulation or as a condition of regulatory approval prior to the construction of the Project.

C. Notice of Output Interruptions. Each Party shall notify the other Party as soon as reasonably practicable following its discovery of any material malfunction of any Solar Facility or interruption in the supply of electricity from any Solar Facility. Each Party shall designate and advise the other Party of personnel to be notified in the event of such a malfunction or interruption. Provider shall correct, or cause to be corrected, the conditions that caused the malfunction or interruption as soon as reasonably practicable in light of the circumstances following receipt of notice or upon discovery of such malfunction or interruption.

D. Scheduling. Provider shall accommodate City's scheduling requests for purposes of all activities conducted on the Sites pursuant to this Agreement, in order to prevent any unreasonable disturbance or interruption of City's activities.

E. Operation and Maintenance of Project. Provider shall be responsible for performing all operations, maintenance and repairs of the Project, and shall bear responsibility for all costs and expenses associated with operations, maintenance and repairs of the Project; *provided* that City shall promptly reimburse Provider for the reasonable costs of any maintenance or repairs caused by or related to the negligent acts or omissions or willful misconduct of City or its agents or personnel. All operations, maintenance and repairs shall be conducted in the manner set forth in this Agreement, and Provider shall reasonably accommodate and cooperate with the City to ensure the City's activities, facility uses, and scheduling requirements are not unreasonably impeded.

F. Prevailing Wages. This Project is subject to compliance with the prevailing wage provisions of the California Labor Code and the prevailing wage rate determinations of the Department of Industrial Relations. These rates may be obtained online at http//www.dir.ca.gov/dlsr. A copy of these rates shall be posted at the job site. Provider and all contractors and subcontractor(s) under it, shall comply with all applicable Labor Code provisions, which include, but are not limited to the payment of not less than the required prevailing rates to all workers employed by them in the execution of this PPA and the employment of apprentices. Provider hereby agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with any applicable Labor Code provisions arising out of or in connection with the Project.

5. Commercial Operation Date; Conditions Precedent; Notice to Proceed.

A. Conditions Precedent to Construction. Provider shall complete pre-construction activities relating to the Project as of the dates below ("Construction Conditions Precedent"):

(i) No later than ten (10) days after the Effective Date, Provider shall secure the right to access and utilize the Sites pursuant to an executed Site Agreement; *provided* that both Parties acknowledge that the terms of such Site Agreement must be mutually acceptable and hereby expressly agree to negotiate in good faith and to exercise commercially reasonable efforts to achieve mutually agreeable terms within the time period provided by this Agreement.

(ii) No later than ten (10) days following the Effective Date, Contractor will deliver to City a fully-executed parent guaranty in the form attached as Exhibit F guaranteeing payment of up to One Hundred Thousand Dollars ($100,000) of Contractor's obligations under this Agreement to reimburse the City's Fixed Costs (as defined below) (the "Parent Guaranty")

(iii) Within ninety (90) days after the Effective Date, Provider shall submit to City evidence that Provider has obtained and secured sufficient financing to fund Provider's obligations under this Agreement.

(iv) Within seventy-five (75) days after the Effective Date, Provider shall submit to City a fully-executed copy of any and all contracts entered into for the engineering, procurement and/or construction of the Project.

(v) Within ninety (90) days after the Effective Date, Provider shall obtain City approval, which shall not be unreasonably withheld, of a completed design of the Project and a construction and installation schedule, completed documentation of which shall be provided to City. Provider's construction and installation schedule shall include start and completion dates for all categories of work on the Sites, including but not limited to installation of major equipment and anticipated Sites deliveries and all required submittal and procurement documentation.

(vi) Within ninety (90) days after the Effective Date, as may be extended due to delays outside of the Provider's control which could not have been reasonably anticipated or mitigated, Provider shall obtain or cause to be obtained all necessary Permits, entitlements, contracts and agreements required for the installation of the Project and the sale and delivery of Output to City.

(vii) Within ninety (90) days after the Effective Date, Provider shall undertake all commercially reasonable efforts to assess the capacity of the Distribution Utility facilities, including, but not limited to, the applicable transformer(s) and conductor(s) and provide a written assessment of such to the City.

B. Construction Start Deadline. If Provider is unable to timely complete any of the Construction Conditions Precedent by the Construction Start Deadline, City may, but is not required to, either (i) waive or extend such requirements and thereby extend the Construction Start Deadline in a written notice to Provider, or (ii) terminate this Agreement without triggering the default provisions of this Agreement or any other City liability; *provided* that if there is a delay in execution of the Site Agreement notwithstanding the Parties' good faith and commercially reasonable efforts to achieve mutually agreeable terms within the time period provided by this Agreement, City will extend the Construction Start Deadline by a period not to exceed thirty (30) days. If City extends the Construction Start Deadline for any reason, then the Commercial Operation Deadline will be deemed extended day for day.

C. Notice to Proceed. Upon Provider's timely satisfaction of all Construction Conditions Precedent, City shall issue a notice to proceed to Provider ("Notice to Proceed"), informing Provider that it may commence the construction of the Project on the Sites. Provider shall not proceed with construction of the Project until it has received the Notice to Proceed. Provider shall promptly provide City with copies of all forms, documents and communications received or generated by Provider in connection with this Agreement.

D. Commercial Operation Requirements. Promptly upon receipt of the Notice to Proceed from City, Provider shall commence construction of the Project and shall

(i) cause such Solar Facilities to achieve Commercial Operation as are necessary for the Project to produce no less than eighty-five percent (85%) of the projected annual Output as set forth in Exhibit E for CO Year 1 (the "Minimum COD Output") on or before the date that is seven (7) months following the Effective Date (the "Commercial Operation Deadline"), as the same may be extended pursuant to Section 5(B) above or Sections 5(E)(i) or (iv) below; and

(ii) execute, in coordination with the City, all agreements required for interconnection of the Solar Facilities with the Distribution Utility's distribution system, including, without limitation, the interconnection agreement(s) and net metering agreement(s), if applicable, prior to the Commercial Operation Deadline.

E. Extension of Commercial Operation Deadline; Delay Liquidated Damages.

(i) Subject to the requirements of Section 5(E)(iv) below, City shall grant a day-for-day extension of the Commercial Operation Deadline equal to the total duration of each Excuse Event; *provided* that if any Excuse Event extends beyond the one hundred-eightieth (180^{th}) day following the original Commercial Operation Deadline, on the one hundred eighty-first (181^{st}) day, Provider shall have thirty (30) days to exercise its option to terminate this Agreement solely as to the Site(s) affected by such Excuse Event. Only in the event that Provider terminates this Agreement due to an Excuse Event comprised of the negligence of the City or its personnel, City shall pay to Provider the Termination Value per Watt per Exhibit C-1 for such Site and pay the reasonable decommissioning and removal costs for any partially constructed portions of the Solar Facility located on each such Site in accordance with the payment procedures set forth in Article 7. City shall not otherwise be liable to Provider for termination and removal costs in the event that Provider terminates this Agreement pursuant to this Section due to Force Majeure or the acts or omissions of the Distribution Utility.

(ii) If the Minimum COD Output is not being produced on or before the Commercial Operation Deadline, Provider shall pay to City liquidated damages, not as a penalty, of one hundred sixty-seven dollars ($167.00) per day (the "Delay Liquidated Damages"), in accordance with the payment procedures set forth in Article 7, until the Minimum COD Output has achieved Commercial Operation. The maximum amount of Delay Liquidated Damages payable by Provider under this Agreement shall not exceed fifteen thousand dollars ($15,000.00).

(iii) If Commercial Operation of the entire Project has not commenced on or before the ninety-first (91^{st}) day following the Commercial Operation Deadline, City may, but shall not be required to, terminate this Agreement without triggering the default provisions of this Agreement as to City or incurring any other City liability within thirty (30) days. Upon any such termination of this Agreement pursuant to this Section, Provider, at Provider's sole cost and expense, shall decommission and remove the Solar Facilities and restore the Sites in accordance with Section 2(B) and removal of such Solar Facilities shall be the sole and exclusive remedy of City.

(iv) Provider may request an extension of the Commercial Operation Deadline upon ten (10) days' prior written notice that it will not meet the Commercial Operation Deadline. Such request must be accompanied by the reason therefor, as well as evidence demonstrating that the delay in achieving the Commercial Operation Deadline could not have been reasonably avoided by Provider, and Provider's application must also state the date on which Provider reasonably believes Commercial Operation for the Minimum COD Output will be achieved following such extension. In the event that the City extends the Commercial Operation Deadline for a reason other than an Excuse Event, Provider shall, within thirty (30) days following the extended Commercial Operation Deadline, pay to City a non-refundable extension fee of five thousand dollars ($5,000) for each thirty (30) day period of extended time, prorated on a daily basis, as needed. For the avoidance of doubt, Provider shall not be required to pay an extension fee for extension requests that arise from Excuse Events.

F. Commercial Operation of Individual Sites. Upon the Commercial Operation Date of each respective Solar Facility but prior to the date upon which the Project achieves the Minimum COD Output, Provider may, but shall not be obligated to, deliver and sell the applicable Solar Facility's Output to the City through the Site's Delivery Point utilizing the applicable CO Year Power Price outlined in Exhibit B.

G. Fixed Costs. Provider shall provide for the payment of City's up-front fixed costs of entering into this Agreement, including, but not limited to, those costs incurred in connection with the Project and the preparation and negotiation of this Agreement, and shall timely make such non-refundable payments to City in the amounts and in the manner set forth below:

(i) On the date on which City issues to Provider a Notice to Proceed, Provider shall pay to City ninety-eight thousand five hundred dollars ($98,500), including the legal expenses incurred by City; and

(ii) On or before the Commercial Operation Date (as the same may be extended pursuant to Sections 5(B), 5(E)(i) or 5(E)(iv) above), Provider shall pay to City eight hundred eighty-six thousand five hundred dollars ($886,500).

H. Guaranty Release. Within five (5) days following receipt of Provider's payment pursuant to Section 5(G)(ii), City shall return the Parent Guaranty to Provider; *provided* that upon receipt of such payment from Provider, the Guaranteed Obligations (as defined in the Parent Guaranty) shall be deemed fully performed, paid and discharged, and the Guarantor (as defined in the Parent Guaranty) shall be released from its obligations under the Parent Guaranty.

6. Ownership of Project, Output, Green Attributes and Environmental Financial Incentives.

A. Ownership of Project. Title to the Solar Facilities shall remain with Provider during the Term unless and until City exercises its option to purchase the Project as set forth herein. None of the Project or the Solar Facilities, including, but not limited to any components thereof, may be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by City. City shall not cause or permit the Project or any of the Solar Facilities, including, but not limited to any components thereof, to become subject to any lien, encumbrance, pledge, levy or attachment arising by, under or through City. Provider shall bear all risk of loss with respect to the Project, except for losses caused by or arising from negligent acts or omissions or willful misconduct by City or its agents or personnel. Provider shall be solely responsible for the Project's operation and maintenance in compliance with all applicable laws, regulations and Permits. Provider shall not be responsible for the cost or expense of any maintenance required due to, caused by or arising from negligent acts or omissions or willful misconduct by City or its agents or personnel.

B. Ownership of Output, Green Attributes and Environmental Financial Incentives. Provider is the exclusive owner of the Environmental Financial Incentives associated with the construction, ownership and operation of the Project. City will assign its interest (if any) in all such credits and other financial incentives to the Provider. City is the exclusive owner of, and may assign or sell in its sole discretion, all Green Attributes, including, but not limited to, Renewable Energy Certificates, and REC Reporting Rights, attributable to the Project and the Output therefrom, whether existing now or created in the future. The Parties agree to subsequently negotiate in good faith the ownership of any additional benefit or incentive associate with this Agreement which did not exist at the time this Agreement was entered into.

C. No Impairment. Neither Party shall take any action or knowingly suffer any omission that would have the effect of impairing the value of the Green Attributes, RECs, REC Reporting Rights, tax benefits, or Environmental Financial Incentives, including, without limitation, claiming ownership or claiming any grant of assignment of the Green Attributes or Environmental Financial Incentives, without notice to and consultation with the other Party as necessary to prevent impairment of the value of Green Attributes and Environmental Financial Incentives.

7. Payment.

A. Invoices. Provider shall provide a consolidated invoice to City on a monthly basis, by the fifteenth (15th) Business Day of each calendar month following the Commercial Operation Date. The invoice will set forth (i) the Output delivered to City in the preceding month, (ii) the Power Price for such month, (iii) the total amount to be paid by City to Provider for Output delivered in the preceding month, (iv) an indication of the date and time, when the next increase in the Power Price due to the Annual Escalation Rate will become effective, and (v) a credit equal to any Output LDs due to City.

B. Due Date. The Power Price and all other payments shall be in U.S. Dollars and paid by wire transfer, check, or automated check handling ("ACH") payment delivered to Provider at the address specified herein within forty-five (45) days of the date the invoice is received by the City ("Due Date"). If the Due Date is a weekend or a bank holiday, payment will be due the next Business Day. Late payments shall accrue interest at a per annum rate equal to the lesser of eight percent (8%) or the maximum rate permissible under applicable law.

C. Payment Disputes. In the event a Party disputes all or a portion of an invoice, or any other claim or adjustment arises, such disputes shall be resolved pursuant to Section 14.

8. Purchase Option.

A. Purchase of Project. Unless City is in default of its obligations under this Agreement, City shall have the option to purchase all of Provider's right, title, and interest in and to the Project on the sixth (6th), tenth (10th), fifteenth (15th) and twentieth (20th) anniversaries of the commencement of the CO Term or upon the Expiration Date ("Purchase Option"). If City wishes to exercise its Purchase Option, it must provide notice to Provider at least ninety (90) days in advance of any such anniversary or the Expiration Date. If the Purchase Option is exercised on the sixth (6th), tenth (10th) fifteenth (15th) or twentieth (20th) anniversary of commencement of the CO Term, the purchase price shall be the greater of (i) the Fair Market Value of the Project as of the applicable anniversary date or the expiration of the Term or (ii) the applicable Purchase Option Price indicated in Exhibit D. If the City exercises its Purchase Option upon the expiration of the Term, the purchase price shall be the Fair Market Value, as defined under this Agreement, upon the Expiration Date. Upon the exercise of the Purchase Option and Provider's receipt of all amounts then owing by City under this Agreement, the Parties will execute all documents necessary for the purchase and sale of the Project, including but not limited to, the delivery of the purchase price, the transfer of title to the Project, and to the extent transferable, the remaining period, if any, on all warranties and Environmental Financial Incentives and Green Attributes for the Project to City. Provider shall remove any encumbrances placed or allowed on the Project by Provider. On the date on which Provider transfers title to the Project to City in accordance with this Section, this Agreement and Site Agreement shall terminate without default or penalty to City. On the tenth (10th) and twentieth (20th) anniversaries of the commencement of the CO Term, City may purchase, separately, the Solar Facilities at the City Hall/Library site for the Purchase Option Price set forth in Exhibit D. Except for the City Hall/Library site, nothing set forth herein shall otherwise grant City the right to purchase less than the entire Project, unless the Parties mutually agree in writing to permit City to purchase the Solar Facilities at one or more, but not all, Sites.

B. Fair Market Value. The "Fair Market Value" of the Project shall be the value thereof as determined by a nationally recognized independent appraiser selected by the Parties, with experience and expertise in the solar photovoltaic industry to value such equipment. The Fair Market Value of the Project shall be based upon its fair market value in continued use, and including the costs of removal, shipping and reinstallation, as a cost credit against the value of the Project. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be selected by the two appraiser firms proposed by each Party.

9. Early Termination.

A. Provider's Early Termination Rights. In addition to its termination rights under Section 13(C) for a City Event of Default, Provider shall have the right, but not the obligation, to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement prior to expiration of its Term if:

(i) Provider determines, in its sole discretion, that an unstayed order of a court or administrative agency, or a change in state or federal law or regulation, imposing a cost, regulation or other requirement upon the sale of Output that precludes the Provider from providing Output pursuant to this Agreement in a financially viable manner or that results in a violation of a substantive term or condition of Provider's financing arrangement for the Project. Such termination shall be conditioned upon Provider's proof of the financial impossibility and violation of Provider's Project financing terms to the reasonable satisfaction of the City;

(ii) condemnation, destruction or other material damage to the Sites results in the termination of the Site Agreement;

(iii) Provider determines, in its sole discretion, that subsequent upgrades to the Distribution Utility's facilities required to be performed by Provider at its sole cost and expense pursuant to Section 10(B) below preclude Provider from providing Output pursuant to this Agreement in a financially viable manner; or

(iv) a third-party files a legal action under CEQA challenging City's approval of this Agreement, the Project or any portion thereof, or any approvals related to the Project, on or before the Effective Date.

In the event Provider exercises its right under this Section, City may elect to either (x) purchase the Project at Fair Market Value as of the time of Provider's notice; or (y) require Provider to remove the Solar Facilities within one hundred eighty (180) days at Provider's sole cost and expense and restore the Site as required in Sections 2(B).

B. City's Early Termination Rights. Except as provided in Section 10(C), if City ceases to conduct operations at or vacates a Site on or before the seventh (7th) anniversary of the commencement of the CO Term, Provider may, but shall not be required to, deem City in default of this Agreement. If, on or after the seventh (7th) anniversary of the commencement of the CO Term, City ceases to conduct operations at or vacates any Site, City may, upon payment to Provider of the Termination Value per Watt per Exhibit C for such Site and without further penalty hereunder, terminate this Agreement solely as to the Site affected. Provider shall remove the Solar Facility at the affected Site in accordance with Section 2(C).

City shall also have the right, but not the obligation, to terminate this Agreement without triggering the default provisions of this Agreement, any liability, penalty, or Termination Value under this Agreement prior to expiration of its Term if a third-party files a legal action under CEQA challenging City's approval of this Agreement, the Project or any portion thereof, or any approvals related to the Project, on or before the Effective Date. Nothing contained in this Section 9(B) shall be deemed or construed to be an express or implied admission that City is or could be liable for any alleged or established failure of City to comply with any local, state, or federal laws, including, without limitation, CEQA.

C. Party Costs. Should either of the Parties terminate this Agreement due to a third-party filed lawsuit under CEQA challenging City's approval of this Agreement or the Project, each Party shall bear its own costs up to the date of termination and shall not be liable to the other Party for any costs or fees that may have been incurred prior to termination.

10. Delivery; Risk of Loss.

A. Output Specifications. Provider shall ensure that all energy generated by the Solar Facilities conforms to Distribution Utility specifications for energy being generated and delivered to the Sites' electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of Distribution Utility testing and verification, and all related costs.

B. Transfer of Output. Provider shall be responsible for the delivery of Output to the Delivery Points. Provider shall undertake all commercially reasonable efforts to assess the capacity of the Distribution Utility transformer(s) and conductor(s). To the extent any subsequent upgrade to such facilities is required and not performed and funded by the Distribution Utility, the Provider shall perform such upgrades at its sole cost and expense subject to its rights to terminate this Agreement pursuant to Section 9(B) above; *provided* that City shall bear the costs and expenses of any subsequent upgrades required due to the relocation of any Solar Facility pursuant to Section 10(C) below. Title and risk of loss of the Output shall pass from Provider to City upon delivery of the Output from the Delivery Points to City. City shall be responsible for arranging delivery of Output from the Delivery Points to City and any installation and operation of equipment on City's side of any Delivery Point necessary for acceptance and use of the Output. Prior to the start of construction of the Project, Provider shall use commercially reasonable efforts to assist City in its selection of equipment installations on City's side of any Delivery Point. It is expressly agreed that the Power Price has been calculated to include the installation of equipment that may be necessary for Provider to deliver Output to the Delivery Points.

C. Relocation.

(i) On or after the seventh (7th) anniversary of the commencement of the CO Term, City may, at its option, require that one or more of the Solar Facilities be permanently relocated, either on an existing Site or to another site owned and operated by City, at a location with at least equal insolation to the existing Site and reasonably acceptable to both Parties (the "Relocation Site"). City shall give Provider at least sixty (60) days' notice of City's need to move or relocate one or more of the Solar Facilities. Following agreement on a Relocation Site, the Parties will amend this Agreement and the Site Agreement to memorialize the required changes in the definition of "Sites."

(ii) City shall pay the reasonable costs arising in connection with the relocation of any of the Solar Facilities, including removal costs, necessary storage costs, re-installation, re-commissioning costs, and any applicable interconnection fees. City shall additionally compensate Provider, in accordance with the payment provisions of Section 7, an amount equal to (i) the average amount of power purchased pursuant to this Agreement for the preceding twelve (12) months, or for the entire period the Project has been in Commercial Operation if less than twelve (12) months, (ii) prorated, if necessary, to reflect the portion of the Project that is not providing Output, (iii) multiplied by the applicable Power Price(s) for the period of time during which the Project or any of the Solar Facilities are not providing Output due to City's relocation request. City shall also execute such consents or releases reasonably required by Provider or Provider's financing Parties in connection with the relocation. Within thirty (30) days of agreement on a Relocation Site, Provider will provide City with a calculation of the estimated time required for such relocation, and the total anticipated amount of lost revenues and additional costs to be incurred by Provider as a result of such relocation. City will have twenty (20) days to review the calculation and make, in writing, any objections to the calculation.

(iii) If an acceptable Relocation Site cannot be located, this Agreement shall terminate with respect to the applicable Site or Sites for which an acceptable Relocation Site cannot be located, upon Provider's thirty (30) days' written notice. In the event that an acceptable Relocation Site cannot be agreed upon, City shall pay Provider an amount equal to the Termination Value per Watt per Exhibit C. In the event of a termination occurring under this Section, Provider shall remove the Solar Facilities by a mutually convenient date, but in no case later than one hundred eighty (180) days after the date of termination. Provider's costs of removal shall be covered by the Termination Value and City shall incur no additional charges for removal and restoration of the Site.

D. Temporary Suspension by City. Notwithstanding any other provision of this Agreement, City shall have the right, upon written notice to Provider, to temporarily suspend operations and facility Output for any reason. If City requires temporary suspension of the Project or any of the Solar Facilities, City shall pay to Provider, in accordance with the payment provisions of Section 7, an amount equal to (i) the average amount of power purchased pursuant to this Agreement for the preceding twelve (12) months, or for the entire period the Project has been in Commercial Operation if less than twelve (12) months, (ii) prorated, if necessary, to reflect the portion of the Project that is not providing Output, (iii) multiplied by the applicable Power Price(s) for the period of time during which the Project or any of the Solar Facilities are not providing Output due to the temporary suspension by City.

E. Temporary Suspension by Provider. Provider shall have the right, upon written notice to City, to temporarily render any of the Solar Facilities non-operational for up to five (5) days per year without penalty or charge by City. If Provider renders any Solar Facilities non-operational for a period in excess of five (5) days, Provider shall pay to City a monthly payment (prorated as needed) equal to (i) the difference between (x) the cost to City of purchasing energy from the Distribution Utility for the period of time during which the Solar Facilities are non-operational and (y) the average monthly cost of power purchased under this Agreement for the preceding twelve (12) months, or for the entire period the Solar Facility has been in Commercial Operation if less than twelve (12) months, (ii) multiplied by the aggregate capacity of the Solar Facilities that were non-operational.

F. Change in Conditions. If City requests an increase in the Output delivered to the Sites, the Parties agree to use good faith efforts to increase such capacity. If Provider and City are not able to reach an agreement for such additional Output, City may, at its sole discretion, obtain the services of a third party for such purposes, provided that such additional third party provided services and any associated site use agreement shall not interfere with Provider's right, title and interest in the Project under this Agreement.

11. Metering.

A. Meter. Provider shall provide and maintain a standard revenue grade metering and electronic data acquisition system at each Solar Facility constituting the Project (each a "Meter," collectively "Meters") to measure the actual amount of electricity supplied to the City by the Solar Facilities on a continuous basis. Meters shall be installed and maintained at Provider's sole expense and shall be located within no more than ten (10) feet from the point of delivery.

B. Meter Testing.

(i) Provider shall arrange for all Meters to be tested once per year, at least three (3) months prior to the end of City's fiscal year. The tests shall be conducted by independent third Parties who are qualified to conduct such tests. Provider shall bear all costs and expenses associated with annual Meter testing. City shall be notified ten (10) days in advance of such tests and shall have a right to be present during such tests. Provider shall provide City with the detailed results of all Meter tests.

(ii) In addition, the Meters shall be inspected and tested for accuracy at such other times as City may reasonably request, but in no event more than once every six (6) month period. City shall bear the cost of the additionally requested Meter testing, unless such test shows that a Meter was inaccurate by more than two percent (2%), in which case the Provider shall bear the Meter testing costs.

C. Cost of Meter Repair. If the Meter testing demonstrates that a Meter was operating outside of its allowable calibration of +/- two percent (2%), then the Provider will pay for the cost of the repairs, or replacement, necessary to restore a Meter to proper working order. If a Meter is found to be inaccurate by more than two percent (2%), Invoices from the prior six (6) months, or from the last time such Meter was registering accurately, whichever is less, shall be adjusted in accordance with Section 7, except that City shall not be obligated to pay interest on any amount found to be due because Meter was operating outside of its allowable calibration +/- two percent (2%). Provider shall submit any request for an adjustment in a fiscal year to City no later than two (2) months prior to the end of City's fiscal year on June 30, and City shall not be obligated to pay any adjustment for a prior fiscal year that was not submitted to City within two months of the end of such prior fiscal year on June 30. City may withhold payments to Provider if a Meter has registered production in excess of 2% of the Output delivered to City and Provider fails to provide City with the appropriate payment pursuant to Section 7 for the amount which the City overpaid to Provider as a result of the Meter mis-calibration.

D. Meter Data. Provider shall gather and maintain the data from a Meter, including but not limited to interval data registered at least once every fifteen (15) minutes (the "Meter Data") and shall make such Meter Data available to City or maintain the Meter Data such that the City can access the Meter Data remotely through a secure internet site or such other remote access as the Parties mutually agree to.

E. Meter Data Audit. City shall have the right to audit the Invoices and/or the Meter Data once per calendar year for each of the Solar Facilities; *provided* that audits of multiple Solar Facilities shall be conducted simultaneously. If the audit reveals that City has been overcharged by more than two percent (2%), Provider shall bear the cost of such audit, but in all other cases City shall bear the cost of such audit.

F. Maintenance of Meter Data. The Parties shall maintain all records related to Invoices and Meter Data for a period of the greater of (i) forty-eight (48) months from the date of such Invoice or Meter Data, or (ii) as otherwise required by law. Such records shall be available for audit as described in above.

12. Representations, Warranties and Covenants.

A. Authorization and Enforceability. Each Party represents to the other Party as of the Effective Date that: (i) such Party is duly organized, validly existing and in good standing under the laws of the state of its formation; (ii) the execution and delivery by such Party of, and the performance of its obligations under, this Agreement has been duly authorized by all necessary action, does not and will not require any further consent or approval of any other Person, and does not contravene any provision of, or constitute a default under such Party's organizational documents, any indenture, mortgage or other material agreement binding on such Party or any valid order of any court, or regulatory agency or other body having authority to which such Party is subject; and (iii) this Agreement constitutes the legal and valid obligation of such Party, enforceable against such Party in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or similar laws relating to or affecting creditors' rights generally and general principles of equity, whether such enforceability is considered in a proceeding in equity or at law.

B. Insolation. As set forth in Section 8(F) of the Site Agreement, the City acknowledges and agrees that access to sunlight is essential to the value to Provider of the leasehold interest granted hereunder and is a material inducement to Provider in entering into this Agreement. Accordingly, City shall comply with Section 8(F) of the Site Agreement, which by this reference in incorporated herein

C. Notice of Damage. Either Parties shall promptly notify the other Party of any matters it is aware of pertaining to any damage to or loss of the use of any Solar Facilities or that could reasonably be expected to adversely affect any Solar Facilities.

D. Distribution Utility Electric Service. City may take parallel service from Distribution Utility at each Site.

13. Default and Remedies.

A. Events of Default. In the event of a Party's breach of any performance obligation hereunder or breach of any representation, warranty, covenant or term of this Agreement or the Site Agreement, the non-defaulting Party shall provide the defaulting Party with written notice of the default, which notice shall describe the default in reasonable detail. Following the date of receipt of written notice of default, the defaulting Party shall have thirty (30) days to cure any payment default and forty-five (45) days to cure any other breach or default described in this Agreement; provided, however, that with respect to non-payment defaults, the cure period shall be extended by the number of days (not to exceed an additional ninety (90) day period) during which the defaulting Party has begun corrective action and continues to diligently pursue, using commercially reasonable efforts, the completion of such corrective action.

B. Event of Default. In addition to the foregoing, with respect to a Party, there shall be an event of default (each an "Event of Default") if:

(i) such Party fails to timely pay any amount due;

(ii) such Party concedes in writing to its inability to pay its debts generally as they become due;

(iii) such Party files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof;

(iv) such Party makes an assignment for the benefit of creditors in connection with bankrupcty proceedings;

(v) such Party consents to the appointment of a receiver of the whole or any substantial part of its assets;

(vi) such Party has a petition in bankruptcy filed against it, and such petition is not dismissed within sixty (60) days after the filing thereof;

(vii) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of such Party's assets, and such order, judgment or decree is not vacated or set aside or stayed within sixty (60) days from the date of entry thereof;

(viii) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of such Party's assets and such custody or control is not terminated or stayed within sixty (60) days from the date of assumption of such custody or control;

(ix) such Party ceased its legal existence or ceases doing business or otherwise dissolves;

(x) such Party breaches a material term of this Agreement; or

(xi) such Party breaches a material term of the Site Agreement.

C. Provider Remedies. If an event of default by City under Sections 13(A) or 13(B) has occurred and is continuing, then following the expiration of any applicable cure period, Provider may at its discretion: (i) suspend performance under this Agreement, (ii) seek specific performance from a court of appropriate jurisdiction pursuant, and/or (iii) terminate this Agreement, and as Provider's sole and exclusive remedy in connection with such termination, require City to pay to Provider as liquidated damages, and not as a penalty, the Termination Value for the Project, and any and all amounts then owed Provider for Output delivered to City as of the date of such termination pursuant to this Agreement. In the event of such termination, Provider shall remove the Solar Facilities in accordance with Section 2(B), at Provider's sole cost and expense.

D. City Remedies. If an event of default by Provider under Sections 13(A) or 13(B) has occurred and is continuing, then following the expiration of any applicable cure period, City may at its discretion: (i) suspend performance under this Agreement, (ii) seek damages or specific performance from a court of appropriate jurisdiction, and/or (iii) terminate this Agreement. In the event that City terminates this Agreement pursuant to this Section, as City's sole and exclusive remedy in connection with such termination, Provider shall promptly remove the Solar Facilities in accordance with Section 2(C), at Provider's sole cost and expense. In the event that Provider fails to remove the Solar Facilities and restore the Site(s) as required, City may undertake such removal, storage and restoration and seek recovery of the reasonable cost of such from Provider in accordance with Section 2(B).

14. Dispute Resolution. The Parties agree to make a good faith attempt to resolve any and all controversies, claims, disagreements, or disputes between the Parties arising out of or related to this Agreement ("Dispute"). In the event of any Dispute, either Party may give notice of the Dispute to the other Party. In the event a Party Disputes all or a portion of an invoice or other payment, the disputing Party shall timely pay any undisputed portion of such amount due. The Parties shall first use good faith, reasonable, diligent efforts to resolve the Dispute within ninety (90) days from the date of such notice. If the Parties do not resolve their Dispute within ninety (90) days of notice, then the Parties may, upon mutual agreement, submit to mediation before a mutually agreed upon mediator. In the event the Dispute is not resolved through mediation, the Parties may pursue their legal rights through any other legally permissible means.

15. Taxes; Liens.

A. Taxes. Provider shall pay any income taxes imposed on Provider due to the sale of energy under this Agreement. City shall pay all real property taxes and assessments applicable to the Sites. This Agreement may result in the creation of a possessory interest (Rev. & Tax. Code § 107.6). If such a possessory interest is vested in Provider, Provider may be subjected to the payment of personal property taxes levied on such interest. Provider shall be responsible for the payment of, and shall pay before becoming delinquent, all taxes, assessments, fees, or other charges assessed or levied upon Provider, the Project or the Solar Facilities. Provider further agrees to prevent such taxes, assessments, fees, or other charges from giving rise to any lien against the Site(s) or any improvement located on or within the Site(s). Nothing herein contained shall be deemed to prevent or prohibit Provider from contesting the validity or amount of any such tax, assessment, or fee in the manner authorized by law. Provider shall be responsible for payment of any personal property taxes, possessory interest taxes, permit fees, business license fees and any and all fees and charges of any nature levied against Provider, the Project or the Solar Facilities and operations of Provider at any time. If bills for taxes on Provider, the Project or the Solar Facilities are received by the City, City shall remit such bills to Provider.

B. Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the Site(s) or City's interest therein. If Provider breaches its obligations under this Section, it shall immediately notify the City in writing, shall promptly cause such lien to be discharged and released of record without cost to City, and shall defend and indemnify City against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such lien. City shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the Project or the Solar Facilities or any interest therein. City shall immediately notify Provider in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Provider, and shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.

16. Liability and Indemnity; Insurance.

A. Indemnity.

(i) To the fullest extent provided for by law, each Party ("Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party, its directors, officers, employees, and agents (each, an "Indemnified Party") from and against any and all claims, whether or not involving a third-party claim, including demands, actions, damages, loss, costs, expenses, and attorney's fees (collectively, "Indemnity Claims"), arising out of or resulting from any breach, negligent act, error or omission or intentional misconduct by the Indemnifying Party or its trustees, directors, officers, employees, contractors, subcontractors or agents under the terms of this Agreement or the Site Agreement; *provided*, however, that the Indemnifying Party will not have any obligation to indemnify the Indemnified Party from or against any Indemnity Claims to the extent caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of an Indemnified Party or any of its directors, officers, employees or agents.

(ii) If an Indemnified Party determines that it is entitled to defense and indemnification under this Section, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the Indemnity Claim and provide all reasonably necessary or useful information, and authority to settle and/or defend Indemnity Claim. Defense and indemnification provided by the Indemnifying Party under this Section shall be provided with legal counsel of the Identified Party's choosing. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's written consent.

(iii) If an Indemnified Party determines that it is entitled to defense and indemnification under this Section, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the Indemnity Claim and provide all reasonably necessary or useful information, and authority to settle and/or defend Indemnity Claim. Defense and indemnification provided by the Indemnifying Party under this Section shall be provided with legal counsel of the Identified Party's choosing. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's written consent.

B. Insurance.

(i) *Provider Insurance.* At all times during the term of the PPA, and any necessary extension thereof for removal of the Solar Facilities from the Property, Provider shall obtain, maintain and keep in full force and effect the following insurance for coverage of all obligations and associated activities under the PPA, including but not limited to the use and occupancy of the Sites, the business operated by the City thereon, and the construction, installation, operation, maintenance and repair of the Solar Facilities, in the amounts, and with the conditions required, as set forth herein. Each policy required below shall include an additional insured endorsement in favor of the City for ongoing and completed operations, which endorsement shall specify that such additional insured coverage is primary and non-contributory as to any other coverage available to the additional insured. Provider shall, within thirty (30) days of the Effective Date of the PPA and annually thereafter, provide certificates of insurance and endorsements demonstrating compliance with the requirements of this Section.

(a) Workers' Compensation Insurance for Provider's employees to the extent of statutory limits and Occupational Disease and Employer's Liability Insurance for not less than one million dollars ($1,000,000).

(b) Commercial General Liability Insurance, or its equivalent, including but not limited to Products and Completed Operations and Contractual Liability, as applicable to Provider's obligations under this License and the PPA, with limits not less than:

(1) Personal Injury coverage at one million dollars ($1,000,000) per occurrence, and

(2) Property Damage coverage at one million dollars ($1,000,000) per occurrence.

(c) Automobile Liability Insurance with limits not less than: Bodily Injury coverage at one million dollars ($1,000,000) each accident, and Property Damage coverage at one million dollars ($1,000,000) each accident.

(d) Excess Liability Insurance with an aggregate limit of not less than five million dollars ($5,000,000).

(ii) *City Insurance*. The City represents that it maintains and covenants that it shall maintain during the Term (i) insurance sufficient to insure it against loss or destruction of the Sites, including losses occasioned by operation of the Solar Facilities, and (ii) general liability insurance including bodily injury, property damage, contractual and personal injury. Notwithstanding the foregoing, City reserves the right to self insure.

C. Waiver of Subrogation. The City and Provider shall cause each insurance policy obtained by them to include a waiver of subrogation or waiver of the transfer of rights of recovery against the other Party to the insurer in connection with any damage covered by any policy.

17. Limitation of Liability.

FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE RIGHTS OF THE NON-DEFAULTING PARTY AND THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN THIS AGREEMENT, AS THE SOLE AND EXCLUSIVE FULL, AGREED-UPON AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, AND ALL OTHER DAMAGES OR REMEDIES ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, OR IF A REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY NONEXCLUSIVE, THE NON-DEFAULTING PARTY SHALL HAVE THE RIGHT TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, PROVIDED, HOWEVER, THAT THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED; AND PROVIDED FURTHER THAT SUCH DIRECT, ACTUAL DAMAGES DUE FROM PROVIDER TO CITY SHALL NOT EXCEED THE TERMINATION VALUE SET FORTH IN EXHIBIT C-2 FOR THE CO YEAR IN WHICH SUCH DIRECT, ACTUAL DAMAGES WERE INCURRED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE, EXCEPT THAT (I) THE FOREGOING LIMITATION SHALL NOT AFFECT OR LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS IN RESPECT OF THIRD PARTY CLAIMS OR (II) TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES SET FORTH IN THIS PPA OR THE SITE AGREEMENT. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO AMOUNTS FOR LIQUIDATED DAMAGES AND THE OUTPUT GUARANTEE SET FORTH HEREIN, CITY'S COST OF REPLACEMENT POWER IN THE EVENT THAT THIS AGREEMENT IS TERMINATED PRIOR TO THE EXPIRATION DATE SHALL BE CONSIDERED CONSEQUENTIAL DAMAGES.

18. Assignment

A. Assignment by Parties. Except as provided in Section 18(B) below, neither Party may assign this Agreement and its rights and obligations hereunder without the prior written consent of the other Party (which consent shall not be unreasonably withheld, conditioned or delayed); *provided* that either Party may assign outright this Agreement and its rights and obligations hereunder without the consent of the other Party to any Person who:

(i) has credit ratings that are equal to or better than the assigning Party; and

(ii) has the legal power and authority, licenses and technical ability to perform and satisfy the obligations of the assigning Party under this Agreement (an "Eligible Assignee").

The assigning Party will notify the other Party in writing prior to any assignment with respect to which consent is not required hereunder. No assignment by a Party of this Agreement or its rights or obligations hereunder shall relieve the assigning Party of liability for its obligations under this Agreement unless the assignee shall assume in writing all of the obligations of the assigning Party under this Agreement. A direct sale of the equity interests in Provider (but not any other affiliate of Provider) shall be deemed to be an assignment subject to the foregoing restrictions of this Section 18(A).

B. Collateral Assignment by Provider for Financing Purposes. In the event Provider assigns its rights under this Agreement as security in connection with any financing transaction entered into by Provider, Provider may mortgage or grant a security interest in this Agreement and the Project, and may collaterally assign this Agreement and the Project to any mortgagees or holders of security interests, including their successors or assigns (hereinafter collectively referred to as "Secured Parties"), provided that any such collateral assignment of this Agreement by Provider shall not release Provider from its obligations or liabilities under this Agreement. City agrees to not unreasonably withhold, condition or delay its compliance with any reasonable request that City execute any consent, estoppel agreement or other documents related to such financing transaction as may reasonably be required by such Secured Parties.

19. Confidentiality; Publicity.

A. Confidential Information. Any financial, statistical, personal, technical and other data and information relating to a Party's operations which are made available to the other Party in order to carry out this Agreement shall be reasonably protected by such other Party from unauthorized use, except to the extent that disclosure thereof is required to comply with applicable law, including but not limited to the California Public Records Act. The disclosing Party shall identify all confidential data and information at the time it is provided. Confidentiality does not apply to information, which is known to a receiving Party from other sources, which is otherwise publicly available or which is required to be disclosed pursuant to an order or requirements of a regulatory body or a court.

B. Disclosure. Other than under the REC Reporting Rights and except as may be required by applicable law, including but not limited to, the California Public Records Act, or as otherwise identified above, neither Party shall make any disclosure of any confidential information related to this Agreement without the specific prior written approval from the other of the content to be disclosed and the form in which it is disclosed, except for such disclosures to the Parties' financing sources, creditors, beneficiaries, partners, members, officers, employees, agents, consultants, attorneys, accountants and exchange facilitators as may be necessary to permit each Party to perform its obligations hereunder and as required to comply with applicable laws or rules of any exchange upon which a Party's shares may be traded. Notwithstanding the foregoing, nothing contained herein shall be deemed to restrict or prohibit City from complying with applicable law regarding disclosure of information, including but not limited to the California Public Records Act.

C. Publicity. The Parties share a common desire to generate favorable publicity regarding the Project and their association with it. The Parties agree that they may, from time to time, issue press releases regarding the Project and that they shall reasonably cooperate with each other in connection with the issuance of such releases. Each Party agrees that it shall not issue any press release regarding the Project without the prior written approval from the other of the content to be disclosed and the form in which it is disclosed, and each Party agrees not to unduly withhold, condition or delay any such approval. In addition, the Parties hereby agree that (i) the City may publicize that it is serving as a "solar host" for the Project; (ii) Provider may publicize that it is serving as the developer, owner and/or operator of the Project; and (iii) each Party may display photographs of the Project or any Solar Facility and disclose the nameplate capacity rating of the as-built Project in its advertising and promotional materials, provided that any such materials identify City as the solar host and Provider as the owner, operator and developer, of the Project and all information shall be consistent with this Agreement. Without limitation of the foregoing, Provider agrees to share with City, in digital format, any photographs and other schematics taken by Provider of the Sites and the Solar Facilities, and further agrees that City may use such photographs and other schematics for the purpose of marketing and promoting City's operations.

20. Legal Effect and Status of Agreement.

A. City Not Operator. Notwithstanding any provision to the contrary under this Agreement, this Agreement shall be interpreted consistent with the intention of the parties that neither City nor any party related to City shall have the right or be deemed to operate the Project for purposes of Section 7701(e)(4)(A)(i) of the Internal Revenue Code.

B. Burdens/Benefits of Project Ownership. Notwithstanding any provision to the contrary under this Agreement, this Agreement shall be interpreted consistent with the intention of the parties that neither City nor any Party related to City shall (a) bear or be deemed to bear any significant financial burden if there is nonperformance by Provider under this Agreement, as the phrase "any significant financial burden if there is nonperformance" is used in Section 7701(e)(4)(A)(ii) of the Internal Revenue Code; or (b) be deemed to receive any significant financial benefit if the operating costs of the Project are less than the standard of performance and/or operation set forth in this Agreement, as the phrase "significant financial benefit if the operating costs of such facility are less than the standards of performance or operation" is used in Section 7701(e)(4)(A)(iii) of the Internal Revenue Code.

C. No Capital Lease; Forward Contract. The Parties acknowledge and agree that for accounting or tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be treated by each Party as a service contract for the sale to the City of electric energy produced at alternative energy Solar Facilities. Each of the Parties agrees that it will not dispute that (i) the transaction contemplated by this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code and (ii) each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

21. [RESERVED]

22. Miscellaneous.

A. Amendments. This Agreement may be amended only in a writing signed by both Provider and City or their respective successors in interest.

B. Notices. Any notice required or permitted to be given in writing under this Agreement shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight courier service, or personally delivered to a representative of the receiving Party, or sent by facsimile or email (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section). All such communications shall be mailed, sent or delivered, addressed to the Party for whom it is intended, at its address set forth below. A Party may change its address by providing written notice to the other Party in accordance with this Section.

If to City:	If to Provider:
City of Woodland Woodland City Hall 300 First Street Woodland, CA 95695 Attn: City Manager Facsimile No.: (530) 661-5813 E-mail: paul.navazio@cityofwoodland.org	Hanwha Q CELLS USA Corp. 8001 Irvine Center Drive Suite 1250 Irvine, CA 92618 Attention: Carolyn Byun / Geoffrey S. Underwood Facsimile: N/A E-mail: carolyn.byun@us.q-cells.com / geoffrey.underwood@us.q-cells.com

C. Non-Waiver. The failure, delay or forbearance by either Party to exercise any of its rights or remedies under this Agreement or to provide written notice of any default to a defaulting Party, will not constitute a waiver of such rights or remedies. No Party will be deemed to have waived any right or remedy unless it has made such waiver specifically in writing. The waiver by either Party of any default or breach of any term, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same term, condition or provision, or any other term, condition or provision contained herein.

D. No Set-Off. Except as otherwise set forth herein and in the Site Agreement, each Party hereby waives all rights to set-offs of amounts due hereunder. The Parties agree that all amounts due hereunder are independent obligations and shall be made without set-off for other amounts due or owed hereunder.

E. Intellectual Property. Nothing in this Agreement shall be construed to convey to City a license or other right to trademarks, copyrights, technology or other intellectual property of Provider.

F. Severability. Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in full force and effect as if this Agreement had been executed without the invalid portion.

G. Survival. Any provision of this Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

H. Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement.

I. Choice of Law. This Agreement shall be construed in accordance with the laws of the State of California (without regard to its conflict of laws principles). The venue for any dispute arising out of or relating to this Agreement shall be in the California county in which the Solar Facilities are located.

J. Binding Effect. This Agreement and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties hereto, together with their respective successors and permitted assigns.

K. No Partnership. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

L. No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a party hereto, other than the Indemnitees and any Secured Parties.

M. Counterparts. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement.

N. Further Assurances. Upon the receipt of a written request from a Party, each Party shall execute such additional documents, instruments, estoppels and assurances, and take such additional actions, as are reasonably necessary and desirable to carry out the terms and intent hereof, including but not limited to an interconnection agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

O. Entire Agreement. This instrument and the documents referenced herein represent the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between said Parties with respect to said subject matter.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement on Execution Date.

CITY:
CITY OF WOODLAND

By: ______________________________
Name:
Title:

PROVIDER:
HANWHA Q CELLS USA CORP.

By: ______________________________
Name:
Title:

Exhibit A

Definitions

1. "ACH" has the meaning set forth in Section 7(B) of this Agreement.

2. "AHJ" has the meaning set forth in Section 4(B) of this Agreement.

3. "Agreement" has the meaning set forth in the introduction to this Agreement.

4. "Annual Escalation Rate" shall mean the rate(s) at which the Base Price shall escalate as set forth on Exhibit B.

5. "Base Price" shall mean the per kWhac rate(s) as set forth on Exhibit B.

6. "Business Day" means any day other than (a) Saturday or Sunday or (b) any other day on which national banks in New York, New York are generally permitted or required to be closed.

7. "CEQA" has the meaning set forth in Section 4(B) of this Agreement.

8. "City" has the meaning set forth in the introduction to this Agreement.

9. "CO Term" means the twenty (20) year term of Commercial Operation of the Project, which will commence as of the Commercial Operation Date of the last Solar Facility to achieve Commercial Operation and conclude as of Expiration Date.

10. "CO Year" means each annual period of the CO Term. CO Year 1 will commence as of the Commercial Operation Date of the last Solar Facility to achieve Commercial Operation and conclude as of the day prior to the first anniversary of the Commercial Operation Date of the last Solar Facility to achieve Commercial Operation. Each succeeding CO Year will commence as of the anniversary of the Commercial Operation Date of the last Solar Facility to achieve Commercial Operation.

11. "Commercial Operation" means that a Solar Facility is mechanically complete and satisfies all conditions precedent to commercial operation as applicable to such Site, including, but not limited to, obtaining approval from the Distribution Utility to operate the respective Solar Facility and operating and providing Output through the Solar Facility's Meter to the Site's Delivery Point under an executed Distribution Utility interconnection agreement.

12. "Commercial Operation Date" means, for each Solar Facility, on the date on which Provider notifies City that such Solar Facility has achieved Commercial Operation.

13. "Construction Start Deadline" means the date that is sixty (60) days after the Effective Date, as may be extended by mutual agreement of the Parties.

14. "Delay Liquidated Damages" has the meaning set forth in Section 5(E)(ii) of this Agreement.

15. "Delivery Point" means each energy delivery point within each Site's electrical system on City's side of the Site's Distribution Utility meter, as designated in the applicable Distribution Utility interconnection agreement.

16. "Distribution Utility" shall be Pacific Gas & Electric.

17. "Due Date" has the meaning set forth in Section 7(B) of this Agreement.

18. "Effective Date" means the date that is five (5) Business Days following the date on which the limitations period in Public Resources Code section 21167 for challenges to the CEQA approvals for all of the Solar Facilities comprising the Project have expired and such CEQA approvals are final and no longer subject to timely challenge.

19. "Environmental Financial Incentives" means each of the following financial rebates and incentives that is in effect as of the Execution Date or may come into effect in the future: (1) production, energy, or investment tax credits associated with the development, construction, ownership or operation of the Project, accelerated depreciation, and other financial incentives in the form of credits, reductions or allowances associated with the Project or the Green Attributes that may be applied to reduce any state or federal income taxation obligation, (2) performance-based incentives under applicable state or federal law or utility programs, including without limitation the federal investment tax credit and any payments made to City or its affiliates or any feed-in tariffs that may come into effect in the future; and (3) all other rights, credits, rebates, benefits, and entitlements of any kind, howsoever entitled or named, whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the Project or the Output or otherwise from the development, installation or ownership of the Project or the production, sale, purchase, consumption or use of the Output. Without limiting the foregoing, "Environmental Financial Incentives" includes the right to apply for (and entitlement to receive) incentives under any demand-side management, distributed generation, or energy efficiency programs offered by a utility company, a third-Party provider or the state in which the Project is located, any incentive offered pursuant to a renewable energy program, or any other incentive programs offered by or in the State in which the Project is located, the right to receive a grant under Section 1603 of the American Recovery and Reinvestment Act of 2009, and the right to claim federal income tax credits under Sections 45 or 48 of the Internal Revenue Code or any state tax law or income tax deductions with respect to the Project under the Internal Revenue Code or any state tax law. Environmental Financial Incentives do not include Green Attributes.

20. "Excuse Event" means an event that interrupts or prevents construction or operation of any Solar Facility that is caused by or results from (a) Force Majeure, (b) the acts or omissions of the Distribution Utility or its personnel (so long as Provider is diligent in seeking Distribution Utility interconnection and approvals), or (c) the negligence of City or its personnel, including City's failure to procure and effectively install all necessary equipment to enable delivery of Output from the Delivery Points to City's facilities.

21. "Execution Date" has the meaning set forth in the introduction to this Agreement.

22. "Expiration Date" means the last day of the month that follows the twenty-eighth (28th) annual anniversary of the Commercial Operation Date for the last Solar Facility to achieve Commercial Operation.

23. "Force Majeure" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been protested in good faith by all reasonable, legal means); the failure to act on the part of any Governmental Authority, (provided that such action has been timely requested and diligently pursued by the Party responsible for seeking such action); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such unavailability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); failure of the systems operated by the Distribution Utility; and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

24. "Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the California Public Utilities Commission), or any arbitrator with authority to bind a party at law. "Governmental Authority" shall not mean the City.

25. "Green Attributes" shall mean any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, attributable to the generation of Output from the Project, and its displacement of conventional energy generation, that is in effect as of the Execution Date or may come into effect in the future. Green Attributes include but are not limited to Renewable Energy Certificates, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions, such as REC Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) Environmental Financial Incentives, (iii) fuel-related subsidies or "tipping fees" that may be paid to Provider to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state or federal operating and/or air quality Permits.

26. “Internal Revenue Code” shall mean the Internal Revenue Code of 1986, as amended.

27. “kWac” means kilowatt alternating current.

28. “kWdc” means kilowatt direct current.

29. “kWhac” means kilowatt-hour alternating current.

30. “Meter” and “Meters” have the meaning set forth in Section 11(A) of this Agreement.

31. “Minimum COD Output” has the meaning set forth in Section 5(D) of this Agreement.

32. “Output” means the total quantity of all actual electrical power generated by the Project as measured by a Meter at each Delivery Point measured in kWhac. Output does not include the Green Attributes, Environmental Financial Incentives, RECs or REC Reporting Rights.

33. “Output Guarantee” has the meaning set forth in Section 3(D) of this Agreement.

34. “Output LDs” has the meaning set forth in Section 3(D) of this Agreement.

35. “Parent Guaranty” has the meaning set forth in Section 5(A)(ii) of this Agreement.

36. “Permits” means all government permits and approvals, regulatory or otherwise required for the construction, installation, completion and operation of the Project.

37. “Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

38. “PPA” has the meaning set forth in the introduction to this Agreement.

39. “Project” has the meaning set forth in the Recitals of this Agreement.

40. “Provider” has the meaning set forth in the introduction to this Agreement.

41. “RECs” or “Renewable Energy Certificates” means renewable energy certificates related to and representing Green Attributes (also known as green tags, renewable energy credits, or tradable renewable certificates), which are tradable environmental commodities in the United States and represent 1 megawatt-hour (MWh) of electricity generated from an eligible renewable energy resource. These certificates can be sold and traded and the owner of the REC can claim to have purchased renewable energy.

42. “REC Reporting Rights” shall mean the right of a REC purchaser to report the ownership of accumulated RECs in compliance with federal or state law, if applicable, and to a federal or state agency or any other Party at the REC purchaser’s discretion, and include without limitation those REC Reporting Rights accruing under Section 1605(b) of the Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

43. "Site" or "Sites" means the portion of City's real property on which a Solar Facility is to be located pursuant to this Agreement, an as further described in the Site Agreement.

44. "Site Agreement" has the meaning set forth in the Recitals of this Agreement.

45. "Solar Facility" or "Solar Facilities" means the solar photovoltaic generation plant, together with all necessary inverters, ancillary plant components and equipment, with a target installation size expressed in kWdc to be installed at the Sites, but expressly excluding any battery energy storage system installed by City.

46. "Term" has the meaning set forth in Section 2(A) of this Agreement.

47. "Termination Value" shall equal the product of (i) the capacity in Watts DC of the system at the Site(s) and (ii) the value per Watt due in a year or, at any point within such year as set forth in Exhibit C.

Exhibit B

Power Price

CO Term, in Years	Base Price		Annual Escalation Rate	Output LDs
From Commercial Operation of First Solar Facility through CO Year 1	$0.1362	/kWhac	n/a	0.0200/kWhac
CO Year 2	$0.1405	/kWhac	3.1%	0.0206/kWhac
CO Year 3	$0.1448	/kWhac	3.1%	0.0212/kWhac
CO Year 4	$0.1493	/kWhac	3.1%	0.0219/kWhac
CO Year 5	$0.1539	/kWhac	3.1%	0.0225/kWhac
CO Year 6	$0.1587	/kWhac	3.1%	0.0232/kWhac
CO Year 7	$0.1636	/kWhac	3.1%	0.0240/kWhac
CO Year 8	$0.1687	/kWhac	3.1%	0.0247/kWhac
CO Year 9	$0.1739	/kWhac	3.1%	0.0255/kWhac
CO Year 10	$0.1793	/kWhac	3.1%	0.0263/kWhac
CO Year 11	$0.1849	/kWhac	3.1%	0.0271/kWhac
CO Year 12	$0.1906	/kWhac	3.1%	0.0279/kWhac
CO Year 13	$0.1965	/kWhac	3.1%	0.0288/kWhac
CO Year 14	$0.2026	/kWhac	3.1%	0.0297/kWhac
CO Year 15	$0.2089	/kWhac	3.1%	0.0306/kWhac
CO Year 16	$0.2154	/kWhac	3.1%	0.0316/kWhac
CO Year 17	$0.2220	/kWhac	3.1%	0.0325/kWhac
CO Year 18	$0.2289	/kWhac	3.1%	0.0336/kWhac
CO Year 19	$0.2360	/kWhac	3.1%	0.0346/kWhac
CO Year 20	$0.2433	/kWhac	3.1%	0.0357/kWhac
CO Year 21	$0.2509	/kWhac	3.1%	0.0368/kWhac
CO Year 22	$0.2586	/kWhac	3.1%	0.0379/kWhac
CO Year 23	$0.2667	/kWhac	3.1%	0.0391/kWhac
CO Year 24	$0.2749	/kWhac	3.1%	0.0403/kWhac
CO Year 25	$0.2835	/kWhac	3.1%	0.0416/kWhac
CO Year 26	$0.2922	/kWhac	3.1%	0.0429/kWhac
CO Year 27	$0.3013	/kWhac	3.1%	0.0442/kWhac
CO Year 28	$0.3106	/kWhac	3.1%	0.0456/kWhac

Exhibit C-1

Termination Value Due to Provider

CO Term, in Years	Termination Value per Watt	Termination Value per Watt for City Hall/Library Purchase	Termination Value for per Watt for Project if City Hall/Library Purchased by City
From Commercial Operation of First Solar Facility through CO Year 1	$4.95	N/A	N/A
CO Year 2	$4.75	N/A	N/A
CO Year 3	$4.55	N/A	N/A
CO Year 4	$4.34	N/A	N/A
CO Year 5	$4.13	N/A	N/A
CO Year 6	$4.11	N/A	N/A
CO Year 7	$4.09	N/A	N/A
CO Year 8	$4.06	N/A	N/A
CO Year 9	$4.01	N/A	N/A
CO Year 10	$3.96	N/A	N/A
CO Year 11	$3.90	*To Be Confirmed*	N/A
CO Year 12	$3.83	*To Be Confirmed*	N/A
CO Year 13	$3.75	*To Be Confirmed*	N/A
CO Year 14	$3.66	*To Be Confirmed*	N/A
CO Year 15	$3.55	*To Be Confirmed*	N/A
CO Year 16	$3.43	*To Be Confirmed*	N/A
CO Year 17	$3.29	*To Be Confirmed*	N/A
CO Year 18	$3.13	*To Be Confirmed*	N/A
CO Year 19	$2.96	*To Be Confirmed*	N/A
CO Year 20	$2.77	*To Be Confirmed*	N/A
CO Year 21	$2.56	*To Be Confirmed*	*To Be Confirmed*
CO Year 22	$2.33	*To Be Confirmed*	*To Be Confirmed*
CO Year 23	$2.07	*To Be Confirmed*	*To Be Confirmed*
CO Year 24	$1.79	*To Be Confirmed*	*To Be Confirmed*
CO Year 25	$1.48	*To Be Confirmed*	*To Be Confirmed*
CO Year 26	$1.14	*To Be Confirmed*	*To Be Confirmed*
CO Year 27	$0.77	*To Be Confirmed*	*To Be Confirmed*
CO Year 28	$0.00	*To Be Confirmed*	*To Be Confirmed*

Exhibit C-2

Termination Value Due to City

CO Term, in Years	**Termination Value per Watt**	**Termination Value Credit per Watt if City Hall/Library Purchased by City**
From Commercial Operation of First Solar Facility through CO Year 1	$ 0.00	N/A
CO Year 2	$ 0.00	N/A
CO Year 3	$ 0.00	N/A
CO Year 4	$ 0.00	N/A
CO Year 5	$ 0.00	N/A
CO Year 6	$ 0.00	N/A
CO Year 7	$ 0.00	N/A
CO Year 8	$ 0.00	N/A
CO Year 9	$ 0.00	N/A
CO Year 10	$ 0.00	N/A
CO Year 11	$ 0.00	To Be *Confirmed*
CO Year 12	$ 0.00	*To Be Confirmed*
CO Year 13	$ 0.00	*To Be Confirmed*
CO Year 14	$ 0.00	*To Be Confirmed*
CO Year 15	$ 0.00	*To Be Confirmed*
CO Year 16	$ 0.00	*To Be Confirmed*
CO Year 17	$ 0.00	*To Be Confirmed*
CO Year 18	$ 0.00	*To Be Confirmed*
CO Year 19	$ 0.00	*To Be Confirmed*
CO Year 20	$ 0.00	*To Be Confirmed*
CO Year 21	$ 0.00	*To Be Confirmed*
CO Year 22	$ 0.00	*To Be Confirmed*
CO Year 23	$ 0.00	*To Be Confirmed*
CO Year 24	$ 0.00	*To Be Confirmed*
CO Year 25	$ 0.00	*To Be Confirmed*
CO Year 26	$ 0.00	*To Be Confirmed*
CO Year 27	$ 0.00	*To Be Confirmed*
CO Year 28	$ 0.00	*To Be Confirmed*

Exhibit D

Purchase Option Price

Purchase Date	**Project**	**City Hall/Library only**
End of Year 6:	$11,097,699	N/A
End of Year 10:	$10,700,278	*To Be Confirmed*
End of Year 15:	$9,578,754	N/A
End of Year 20:	$7,478,281	
End of Year 25:	$3,986,564	$
End of Year 28:	FMV	*To Be Confirmed*

Exhibit E

Projected Annual Output

CO Term, in Years	Projected Output, in kWhac	Projected Output in kWhac if City Hall/Library Purchased
CO Year 1	4,096,016	N/A
CO Year 2	4,075,536	N/A
CO Year 3	4,055,158	N/A
CO Year 4	4,034,882	N/A
CO Year 5	4,014,708	N/A
CO Year 6	3,994,634	N/A
CO Year 7	3,974,661	N/A
CO Year 8	3,954,788	N/A
CO Year 9	3,935,014	N/A
CO Year 10	3,915,339	N/A
CO Year 11	3,895,762	*To Be Confirmed*
CO Year 12	3,876,284	*To Be Confirmed*
CO Year 13	3,856,902	*To Be Confirmed*
CO Year 14	3,837,618	*To Be Confirmed*
CO Year 15	3,818,429	*To Be Confirmed*
CO Year 16	3,799,337	*To Be Confirmed*
CO Year 17	3,780,341	*To Be Confirmed*
CO Year 18	3,761,439	*To Be Confirmed*
CO Year 19	3,742,632	*To Be Confirmed*
CO Year 20	3,723,919	*To Be Confirmed*
CO Year 21	3,705,299	*To Be Confirmed*
CO Year 22	3,686,773	*To Be Confirmed*
CO Year 23	3,668,339	*To Be Confirmed*
CO Year 24	3,649,997	*To Be Confirmed*
CO Year 25	3,631,747	*To Be Confirmed*
CO Year 26	3,613,588	*To Be Confirmed*
CO Year 27	3,595,520	*To Be Confirmed*
CO Year 28	3,577,543	*To Be Confirmed*

Exhibit F

[FORM OF PARENT GUARANTY]

SITE AGREEMENT

by and between

HANWHA Q CELLS USA CORP.

and

CITY OF WOODLAND

dated

_______, 2014

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SITE AGREEMENT FOR SOLAR FACILITIES

This Site Agreement for Solar Facilities ("License") is made and entered into as of this __ day of ___________, 2014, ("Effective Date"), between HANWHA Q CELLS USA CORP. ("Grantee"), and the CITY OF WOODLAND, ("Grantor"). Grantor and Grantee are collectively referred to herein as "Parties" and individually as "Party."

RECITALS

WHEREAS, Grantor owns certain real properties located at (1) 42929 County Road 24, Woodland, CA 95776 (Water Pollution Control Facility), (2) Parcel No. 027-390-022-000 northeast of 42929 County Road 24 (vacant City land) in Woodland, CA, (3) Community and Senior Center, 2001 East Street, Woodland, CA 95776, (4) Police Station, 1000 Lincoln Avenue, Woodland, CA 95695, (5) Municipal Service Center, 655 North Pioneer Avenue, Woodland, CA 95776, and (6) Public parking lot, 435 Court Street/204 College Street, Woodland, CA 95695 ("Property");

WHEREAS, the Property is located within an agricultural community, which may, during certain times of the year, because of tractor and other agricultural vehicular uses, create excessive dust and other particulate matter;

WHEREAS, Grantee is in the business of installing and operating solar power facilities and selling electric energy generated from such facilities;

WHEREAS, concurrently herewith, Grantee and Grantor have entered into a Solar Power Purchase Agreement calling for (i) the installation by Grantee of a photovoltaic energy generating system ("Solar Facilities") on Grantor's Property, the location of which is set forth in Exhibit A, and (ii) the sale by Grantee to Grantor of electric energy generated by the Solar Facilities ("PPA" or "Agreement");

WHEREAS, Grantor will be leasing property under a separate site lease agreement from an agricultural firm, the Conaway Preservation Group ("CPG"), to lease property adjacent to Parcel No. 027-390-022-000, where the largest array would be installed in order to qualify for the net-energy metering aggregation program offered by the utility, Pacific Gas & Electric;

WHEREAS, the property leased by CPG to Grantor will continue to be utilized by CPG for its agricultural purposes, which agricultural uses are paramount to Grantor's uses and which may include, but are not limited to, heavy tractor and vehicle activity adjacent to Parcel No. 027-390-022-000 and create heavy dust and other particulate matter;

WHEREAS, Grantee desires the right to access over, under and along a portion of the Property, as described on Exhibit A ("Sites"), in order to install and operate the Solar Facilities in furtherance of Grantee's obligations under the PPA but which uses shall not interfere with CPG's property uses at its site adjacent to the Parcel No. 027-390-022-000;

WHEREAS, Grantor is willing to grant such access in the form of a license on the terms and conditions set forth herein for the purpose of enabling Grantee to fulfill its obligations under the PPA; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, the Parties hereby agree as follows:

1. License Premises and Rights.

A. License Premises. Grantor, pursuant to the terms and conditions set forth herein, does hereby grant, convey and transfer an exclusive and irrevocable License to the License Premises and a non-exclusive and irrevocable license (collectively, "License") to Grantee over, under and along the Sites and additional areas of the Property, as geographically illustrated in Exhibit A, to which such access is otherwise reasonably required by Grantee to perform its obligations under the PPA, including, but not limited to, pathways for ingress and egress access, and maintenance and operation of Solar Facilities, as well as temporary use of areas for construction staging activities, provided Grantee receives prior written approval from Grantor for such temporary construction staging activities ("License Premises").

B. Access to License Premises. Within fifteen (15) days of the Effective Date, Grantee shall provide suggested terms consistent with the PPA governing Grantee's access and use of the Property in order to access the License Premises, including, but not limited to, matters such as work days, hours, holidays, and foreseen conflicts, as well as any other reasonable restrictions or coordinative efforts required to facilitate Grantee's satisfactory performance of its obligations under the PPA. Within fifteen (15) days of Grantor's receipt of Grantee's suggested terms, Grantor will make such reasonable adjustments, additions, deletions and other amendments to Grantee's suggested terms, as may be required for Grantor's ongoing use of the Site(s), and provide Grantee with the final terms ("Sites Access Requirements"). Grantee's access to the Property shall be subject to the reasonable access requirements that may be imposed by Grantor except for emergency access which is required to safeguard against immediate threats to public health and safety. For the purposes of this Agreement, any unplanned outage or interruption of the normal operation of the Solar Facilities shall be deemed an "emergency" warranting immediate and reasonable, unlimited access by Grantee.

All rights of access and use under the License are restricted to Grantee's officers, employees, agents and/or contractors retained by Grantee and approved in writing by Grantor, and such Parties shall be required to show identification prior to the requested access to any buildings or gated premises. In the event of emergency, and at Grantee's sole risk, Grantee is permitted reasonable access to the License Premises twenty-four (24) hours per day, seven (7) days per week. Access to the Property by Grantee, its construction workers, material providers, vendors, or agents shall be conducted so as to minimize interference with the operations and activities of Grantor. Grantee shall comply with all applicable law regarding access to Grantor's premises, including but not limited to any required inspections of the Solar Facilities or related work, or background checks or fingerprinting of any Grantee employee, agent, or contractor. Grantor reserves the right to revoke access privileges to any person employed or contracted by Grantee that the Grantor deems to be disruptive, intemperate, unsafe, or who violates any law or unreasonably disobeys any Grantor directive or policy.

2. **Term**. The term of this License ("Term") shall commence as of the Effective Date, and shall automatically terminate upon the earliest date of any expiration or termination of the PPA, regardless of the cause thereof, but not prior to the end of any period of time provided in the PPA for Grantee's elected or required removal of the Solar Facilities.

3. **License Fee**. Grantee shall pay Grantor $1.00 per year for the Term payable in advance on the first day of the Term, and which may be offset against Grantor payments due under the PPA.

4. **Installation of the Solar Facilities**.

A. Grantor Consent. Grantor hereby consents to Grantee's construction, installation, operation, maintenance, repair and replacement of the Solar Facilities on the License Premises, any fencing to secure the Solar Facilities, and any supporting equipment on the Property, pursuant to the terms and conditions of the PPA, including, but not limited to, all required equipment, materials and structures according to specifications attached as Exhibit B. During construction and installation, Grantor, upon reasonable request from Grantee, will provide adequate additional space within the Property on a temporary basis for lay down areas. Grantor acknowledges and agrees that the installation of the Solar Facilities will require physically mounting and adhering the Solar Facilities to the Sites and other portions of the License Premises and the Property.

B. Schedule and Access to License Premises. Grantee shall, in accordance with the PPA, submit a construction schedule to the Grantor for Grantor's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Grantee will coordinate construction and installation with Grantor so as to minimize disruption to occupants of, and Grantor's activities on, the Property. Unless immediate access to the License Premises is reasonably required due to an emergency, Grantee shall provide Grantor with reasonable telephonic, electronic, or written notice of, but not less than twenty-four (24) hours prior to, Grantee's access to any buildings or gated areas on the Property necessary to access the License Premises when such access will occur on days or at times not provided for in (i) the approved schedule required pursuant to this Section, or (ii) any additionally agreed upon scheduling terms set forth in the Sites Access Requirements.

5. **Use of License Premises**. Grantee shall have the right during the term hereof to use the License Premises for the construction, installation, operation, maintenance, repair, removal and replacement of the Solar Facilities. Grantee's use of the License Premises for the above limited purpose, subject to all terms, conditions and restrictions contained in this License, the PPA and the Sites Access Requirements includes, but is not strictly limited to: (i) activities related to the operation, monitoring, maintenance, cleaning, repairing, replacing and disposing of all or part of the Solar Facilities; (ii) addition and/or removal of equipment required for the repair, replacement or removal of the Solar Facilities; (iii) site visits of the License Premises with Grantee's guests for promotional purposes with prior oral or written (including email) approval of Grantor during times reasonably acceptable to Grantor; and (iv) performance, through its own employees or through other agents or contractors, of any and all tasks necessary or convenient to carry out the above activities.

6. Compliance with Laws. Grantee shall perform its obligations under this License in accordance with all applicable laws, rules, regulations, codes, ordinances, and Grantor policies.

7. Default. Defaults regarding the timing of the construction of the Solar Facilities shall be determined and resolved solely pursuant to the terms and provisions of the PPA and not the provisions of this Section 7. In the event a Party breaches any obligation, representation, warranty, covenant or term of this License, the non-defaulting Party shall provide written notification to the defaulting Party, indicating that they are in default of this License, and describing the default in reasonable detail. The defaulting Party, upon receipt of written notice of default, shall have thirty (30) days to cure any payment default, and forty-five (45) days to cure any other breach or default. Except for non-payment related defaults, the cure period may be extended for up to 90 days where the defaulting Party has begun and continues to diligently pursue reasonable curative action, or where force majeure is occurring and preventing curative action. If an event of default has occurred and is continuing, then following the expiration of any applicable cure period, the non-defaulting Party may, at its discretion, (a) seek damages or specific performance from a court of appropriate jurisdiction and/or (b) terminate this License.

8. Representations, Warranties and Covenants of Grantor.

A. Authorization and Enforceability. Upon approval or ratification by Grantor's governing body and the execution and delivery by Grantor, this License, including the performance of its obligations thereunder shall have been duly authorized by all necessary action and no further consent or approval of any other person is required. Grantor represents and warrants that its entering and executing this License does not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Grantor or any valid order of any court, or regulatory agency or other body having authority to which Grantor is subject. Grantor represents and warrants that this License constitutes a valid and legal obligation of Grantor, enforceable against Grantor in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or similar laws relating to or affecting creditors' rights generally and general principles of equity, whether such enforceability is considered in a proceeding in equity or at law.

B. Title to Property. Grantor represents and warrants that Grantor holds lawful fee title to the Property and the License Premises and the right to enter into this License. Grantor represents and warrants to Grantee that, as of the date hereof, there are no known monetary liens or leases encumbering the Property or other encumbrances on the Property that limit Grantor's ability to enter into this License and that there are no existing conditions or use restrictions that prevent the construction, installation, operation, fencing, security, or maintenance of the Solar Facilities within the License Premises.

C. Station Power. Grantor shall provide Grantee with access to utilities, including water and electric energy, distinct from the Solar Facilities Output, at the License Premises for Grantee's reasonable consumption in the start-up and operation of the Solar Facilities ("Station Power"). Grantee shall reimburse Grantor for the cost of all such utilities in excess of one hundred fifteen percent (115%) of the cost of the same utility at the Site or comparable Site used in the same month during the prior year, where Station Power is the probable causes of such excess.

D. No Interference with and Protection of Solar Facilities. Grantor will not conduct activities on, in or about the Property that have a reasonable likelihood of damaging, impairing or otherwise adversely affecting the Solar Facilities. Grantor shall take all reasonable steps to limit third Party access to the License Premises in order to minimize risk of damage or destruction of the Solar Facilities. Grantor shall implement and maintain reasonable and appropriate security measures on the Property to prevent Grantor's employees, invitees, agents and representatives, and other unrelated third-parties from having access to the License Premises or the Solar Facilities, and to prevent from occurring any theft, vandalism or other actions that have a reasonable likelihood of causing damage or impairment to the Solar Facilities, and from unreasonably impairing Grantee's performance of its obligations under this License and the PPA on the License Premises otherwise adversely affecting the Solar Facilities. Grantee has reviewed Grantor's existing security measures at the Sites and affirms that such measures satisfy Grantor's obligations under this Section. Grantee shall be solely responsible for fencing and securing Grantee's work, storage and staging areas on the License Premises as well as fencing and securing the Solar Facilities and providing such additional security measures as are required by the PPA.

E. Hazardous Materials. To the best of Grantor's knowledge, there are no substances, chemicals or wastes, identified as hazardous, toxic or dangerous materials in any applicable law or regulation, present on, in or under the Property in violation of any applicable law or regulation. Grantor shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the Property in violation of any applicable law or regulation. If Grantor becomes aware of any such hazardous, toxic or dangerous materials, Grantor shall promptly notify Grantee in writing, of the type and location of such materials. Grantor assumes responsibility for any liability or cleanup obligations for any contamination or pollution or breach of environmental laws related to the use of any hazardous, toxic or dangerous materials on, in or under the Property, including the License Premises, unless directly attributable to the Solar Facilities or the acts or omissions of Grantee in which case Grantee shall be liable and responsible as set forth in Section 9(b) below.

F. Insolation. Grantor acknowledges and agrees that access to sunlight ("insolation") is essential to the value to Grantee of the leasehold interest granted hereunder and is a material inducement to Grantee in entering into this License. Accordingly, Grantor shall not permit any interference with insolation on and at the License Premises. Without limiting the foregoing, Grantor shall not construct or permit to be constructed any structure on the License Premises that could adversely affect insolation levels, permit the growth of foliage that could adversely affect insolation levels, or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to insolation. If Grantor becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the insolation to the License Premises, Grantor shall advise Grantee of such information and reasonably cooperate with Grantee in measures to preserve existing levels of insolation at the License Premises. Grantee acknowledges that due to the location of the Licensed Premises and the Property within an agricultural community, certain times of the year may have more agricultural traffic and, hence, more dust. Nothing set forth herein shall be deemed to require CPG, as defined in the recitals, or its successors and assigns, to limit or otherwise modify its agricultural activities in order to reduce dust or particulate matter. Notwithstanding any other provision of this License, the parties agree that (i) Grantee would be irreparably harmed by a breach of the provisions of this Section 8.F, (ii) an award of damages would be inadequate to remedy such a breach, and (iii) Grantee shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 8.F.

9. Representations, Warranties and Covenants of Grantee.

A. Authorization and Enforceability. The execution and delivery by Grantee of, and the performance of its obligations under, this License have been duly authorized by all necessary action and no further consent or approval of any other person is required. Grantee represents and warrants that its entering and executing this License does not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Grantee or any valid order of any court, or regulatory agency or other body having authority to which Grantee is subject. Grantee represents and warrants that this License constitutes the legal and valid obligation of Grantee, enforceable against Grantee in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or similar laws relating to or affecting creditors' rights generally and general principles of equity, whether such enforceability is considered in a proceeding in equity or at law.

B. Hazardous Materials. Grantee shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the Property in violation of any applicable law or regulation. If Grantee becomes aware of any such hazardous, toxic or dangerous materials, Grantee shall promptly notify Grantor in writing, of the type and location of such materials. Grantee assumes responsibility for any liability or cleanup obligations for any contamination or pollution or breach of environmental laws related to the use of any hazardous, toxic or dangerous materials on, in or under the Property, the Sites or the License Premises attributable to the Solar Facilities or the acts or omissions of Grantee unless directly attributable to the acts or omissions of Grantor, in which case Grantor shall be liable and responsible as set forth in Section 8(E) above.

10. Taxes.

A. Grantee Taxes. Grantee shall pay all personal property taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority against Grantee in connection with Grantee's occupancy and use of the License Premises or the construction, installation, operation, maintenance, repair or replacement of the Solar Facilities.

B. Grantor Taxes. Grantor shall be responsible for all real property taxes relating to the Property, all taxes computed upon the basis of the net income of Grantor or payments derived from the License Premises by Grantor, and all business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority against Grantor in connection with Grantor's grant of the License Premises to Grantee.

11. Insurance.

A. Grantee Insurance. At all times during the Term of this License, the term of the PPA, and any necessary extension thereof for removal of the Solar Facilities from the Property, Grantee shall obtain, maintain and keep in full force and effect the following insurance for coverage of all obligations and associated activities under this License and the PPA, including but not limited to the use and occupancy of the License Premises, the business operated by Grantor thereon, and the construction, installation, operation, maintenance and repair of the Solar Facilities, in the amounts, and with the conditions required, as set forth herein. Each policy required below shall include an additional insured endorsement in favor of Grantor for ongoing and completed operations, which endorsement shall specify that such additional insured coverage is primary and non-contributory as to any other coverage available to the additional insured. Grantee shall, within thirty (30) days of the Effective Date of this License and annually thereafter, provide certificates of insurance and endorsements demonstrating compliance with the requirements of this Section.

(1) Workers' Compensation Insurance for Grantee's employees to the extent of statutory limits and Occupational Disease and Employer's Liability Insurance for not less than $1,000,000.

(2) Commercial General Liability Insurance, or its equivalent, including but not limited to Products and Completed Operations and Contractual Liability, as applicable to Grantee's obligations under this License and the PPA, with limits not less than:

(i) Personal Injury coverage at $1,000,000 per occurrence, and

(ii) Property Damage coverage at $1,000,000 per occurrence.

(3) Automobile Liability Insurance with limits not less than: Bodily Injury coverage at $1,000,000 each accident, and Property Damage coverage at $1,000,000 each accident.

(4) Excess Liability Insurance with an aggregate limit of not less than $5,000,000.

B. Grantor Insurance. Grantor represents that it maintains and covenants that it shall maintain during the Term (i) insurance sufficient to insure it against loss or destruction of the License Premises, including losses occasioned by operation of the Solar Facilities, and (ii) general liability insurance including bodily injury, property damage, contractual and personal injury. Notwithstanding the foregoing, Grantor reserves the right to self insure.

C. Waiver of Subrogation. Grantor and Grantee shall cause each insurance policy obtained by them to include a waiver of subrogation or waiver of the transfer of rights of recovery against the other Party to the insurer in connection with any damage covered by any policy.

12. Insurance.

To the fullest extent provided for by law, each Party ("Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party, its directors, officers, employees, and agents (each, an "Indemnified Party") from and against any and all claims, whether or not involving a third-Party claim, including demands, actions, damages, loss, costs, expenses, and attorney's fees (collectively, "Indemnity Claims"), arising out of or resulting from any breach, negligent act, error or omission or intentional misconduct by the Indemnifying Party or its trustees, directors, officers, employees, contractors, subcontractors or agents under the terms of this Agreement or the Site Agreement; provided, however, that the Indemnifying Party will not have any obligation to indemnify the Indemnified Party from or against any Indemnity Claims to the extent caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of an Indemnified Party or any of its directors, officers, employees or agents.

If an Indemnified Party determines that it is entitled to defense and indemnification under this Section, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the Indemnity Claim and provide all reasonably necessary or useful information, and authority to settle and/or defend Indemnity Claim. Defense and indemnification provided by the Indemnifying Party under this Section shall be provided with legal counsel of the Identified Party's choosing. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's written consent.

If an Indemnified Party determines that it is entitled to defense and indemnification under this Section, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the Indemnity Claim and provide all reasonably necessary or useful information, and authority to settle and/or defend Indemnity Claim. Defense and indemnification provided by the Indemnifying Party under this Section shall be provided with legal counsel of the Identified Party's choosing. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's written consent.

13. Casualty or Condemnation. In the event any Site or Sites is condemned, damaged or destroyed so as to (i) make the use of the License Premises impractical as determined by a qualified engineering consultant retained by Grantor and reasonably acceptable to Grantee, and (ii) with respect to any damage or destruction of the License Premises, qualify as a "constructive total loss" under applicable insurance policies, then Grantee may elect to terminate this License with respect to such Site or Sites, including the PPA with respect thereto, on not less than thirty (30) days' prior notice to Grantor effective as of a date specified in such notice. If more than fifty percent (50%) of the Leased Premises is affected by such condemnation, damage or destruction, Grantee may terminate the entire License, and the PPA with respect thereto, on not less than thirty (30) days' prior notice to Grantor effective as of a date specified in such notice. If Grantee does not elect to terminate this License pursuant to the previous sentences, Grantor shall exercise commercially reasonable efforts to repair the damage to the Site or Sites and return the License Premises to its condition prior to such damage or destruction, except that Grantor shall in no event be required to repair, replace or restore any property of Grantee, including, but not limited to, the Solar Facilities, which replacement or restoration shall be Grantee's responsibility. In the event of an award related to eminent domain or condemnation of all or part of the Site or Sites, each party shall be entitled to take from such award that portion as allowed by law for its respective property interest appropriated as well as any damages suffered thereby.

14. Ownership of the Solar Facilities. As further provided in the PPA, the Solar Facilities shall be and remain Grantee's personal property at all times. Grantor acknowledges that Grantee is the exclusive owner of all electric energy generated by the Solar Facilities and associated environmental attributes, subject to Grantee's obligation to sell such electric energy and associated environmental attributes to Grantor pursuant to the PPA.

15. Assignment. The Parties may assign the rights and obligations incurred under this License in accordance with the terms and conditions of the PPA.

16. Removal of Solar Facilities. Upon the expiration or other termination of this License, the removal of the Solar Facilities shall be governed by the terms set forth in the PPA, and the Term of this License shall not be extended to allow additional time for such removal, unless the PPA expressly permits such additional time.

17. Quiet Enjoyment. Grantee shall, so long as it performs it obligations hereunder, have quiet and peaceful possession of the License Premises throughout the term of this License.

18. Force Majeure. Neither Party hereto shall be liable for any failure of performance due to causes beyond its reasonable control, the occurrence of which could not have been prevented by the exercise of due diligence, such as acts of God, acts of the other Party, acts of civil or military authority, earthquakes, volcanic activity, fires, floods, epidemics, windstorms, explosions, natural disasters, sabotage, wars, riots, regulations, tariffs mandated or approved by federal, state or other governmental or regulatory entities, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party as soon as possible after the event or occurrence (but in no event more than thirty (30) days thereafter) ("Force Majeure"). The ability of either party to obtain a better price shall not constitute an event of Force Majeure hereunder.

19. Miscellaneous.

A. Amendments. This License may be amended only by a duly authorized writing, signed by both Grantee and Grantor or their respective successors in interest.

B. Notices. Any notice required or permitted to be given in writing under this License shall be provided in accordance with the terms and conditions of the PPA.

C. Waiver. The failure, delay or forbearance by either Party to exercise any of its rights or remedies under this License or to provide written notice of any default to a defaulting Party, will not constitute a waiver of such rights or remedies. No Party will be deemed to have waived any right or remedy resulting unless it has made such waiver specifically in writing. The waiver by either Party of any default or breach of any term, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same term, condition or provision, or any other term, condition, or provision contained herein.

D. Remedies Cumulative. No remedy herein conferred upon or reserved to Grantee or Grantor shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

E. Dispute Resolution. The Parties agree to resolve Disputes in accordance with Section 14 of the PPA.

F. Headings. The headings in this License are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this License.

G. Survival. Any provision of this License that expressly or by implication comes into or remains in full force following the termination or expiration of this License shall survive the termination or expiration of this License.

H. Severability. Should any provision of this License for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in full force and effect as if this License had been executed without the invalid portion.

I. Defined Terms. Capitalized Terms used but not defined herein shall have the meaning given to them in the PPA.

J. Choice of Law. This License shall be construed in accordance with the laws of the State of California (without regard to its conflict of laws principles). The venue for any dispute arising out of or relating to this License shall be in the California county in which the Property is located.

K. Binding Effect. This License and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties hereto, together with their respective successors and permitted assigns.

L. No Third Party Beneficiaries. This License is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a Party hereto, other than the Grantor Indemnitees, the Grantee Indemnitees and any Mortgagees.

M. Counterparts. This License may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile and email signatures shall have the same effect as original signatures and each party consents to the admission in evidence of a facsimile, email, or photocopy of this License in any court or arbitration proceedings between the parties.

N. Further Assurances. Upon the receipt of a written request from the other Party, each Party shall make reasonable efforts to execute such additional documents, instruments and assurances, and take such additional actions, as are reasonably necessary and desirable, to carry out the terms and intent of this License. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

O. Entire Agreement. This instrument in conjunction with the PPA represents the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between said Parties with respect to said subject matter.

P. Memorandum. Grantor consents to and hereby appoints Grantee as its attorney in fact for the purpose of recording a memorandum of this License in the land registry or title records of the county where the License Premises are located or other applicable government office so that public notice of the identities and addresses of the parties hereto, and the Term of the License hereof be given.

Q. Estoppel. From time to time, upon written request by Grantee (or its lenders), Grantor shall provide within thirty (30) days thereafter an estoppel certificate attesting, to the knowledge of Grantor, of Grantee's compliance with the terms of this License or detailing any known issues of noncompliance.

[SIGNATURES CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have duly executed this License on the Effective Date.

GRANTOR:

CITY OF WOODLAND

By: ______________________________
Name: ____________________________
Title: ____________________________

GRANTEE:

HANWHA Q CELLS USA CORP.

By: ______________________________
Name: ____________________________
Title: ____________________________

Exhibit A

The Sites, Solar Facilities and License Premises

(Property address and Property Map indicating License Premises)

Exhibit B

Solar Facilities Specifications

(Equipment and Location)

LEASE AGREEMENT

THIS LEASE AGREEMENT (**"Agreement"**) is made this 16th day of December 2014 (**"Effective Date"**), by and between the CITY OF WOODLAND, a public agency (**"Lessee"**) and CONAWAY PRESERVATION GROUP, LLC, a California limited liability company (**"Lessor"**). Lessor and Lessee are collectively referred to herein as **"Parties"** and singularly as **"Party."**

RECITALS

A. Lessor owns certain real property located in Yolo County, California, consisting of approximately ___ acres, as more particularly described and/or depicted on Exhibit "A" attached hereto ("**Lessor Overall Property**").

B. Lessee owns certain real property located in Yolo County, California, consisting of approximately 900 acres, as more particularly described and/or depicted on Exhibit "B" attached hereto ("**Lessee Overall Property**").

C. Concurrently herewith, Lessee is entering into that certain Power Purchase Agreement (the "**PPA**") **and a Site Lease Agreement** (the "**Site Lease**") with the special purpose entity to be formed by Performance Contracting Inc. / Hanwha Q Cells (the "**Power Provider**") pursuant to which Lessee is authorizing Power Provider to utilize approximately seven (7) acres of the Lessee Overall Property as more particularly described and/or depicted on Exhibit "C" attached hereto (the "**Solar Facility Site**") for the installation, maintenance and operation of certain solar energy collection equipment, including, without limitation photovoltaic panels and related facilities, appliances, machinery and equipment (collectively, the "**Solar Power Facilities**").

D. Lessee desires to solely lease a portion of the Lessor Overall Property consisting of approximately ___ acres, as more particularly described and/or depicted on Exhibit "D" attached hereto (the "**Premises**"), for the purpose of constructing overhead transmission lines (the "**Transmission Improvements**") through the Premises for the transmission of electricity from the Solar Facility Site to other real property owned by Lessee, and for the purpose of qualifying under PG&E's net-energy metering aggregation program.

E. Lessor is willing to lease to Lessee the Premises upon the terms and conditions set forth herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I

TERM

1.01 Term. This Agreement shall commence on the Effective Date and end at midnight twenty-eight (28) years after the Commencement Date ("**Expiration Date**"), unless sooner terminated as provided in this Agreement (the "**Term**").

1.02 Termination of Agreement. In the event that the Lessee is unable to obtain the net-metering aggregation (NEMA) tariff through PG&E or, in the event that the Power Purchase Agreement between Lessee and the Power Provider is terminated, the Lessee may terminate this Lease without further obligation or liability. This Agreement may be terminated for default under this Agreement which default remains uncured for sixty (60) days following written notice thereof to the defaulting party. In the event that the default is not capable of being cured within said sixty (60)-day time period, the defaulting party shall not be deemed to be in default so long as it makes material progress towards curing said default within the sixty (60)-day period and thereafter diligently prosecutes such cure to completion.

1.03 Memorandum of Lease. This Lease shall be deemed to be a covenant running with the land, and the Parties shall execute, upon request, a Memorandum of Lease to be recorded against the Premises. The Memorandum shall reflect the terms and conditions of this Lease.

ARTICLE II

RENT; TAXES; UTILITIES; ADDITIONAL CONSIDERATION

2.01 Rent.

(a) Lessee shall pay to Lessor annual rent payments of One Hundred Dollars ($100) (the "**Annual Rent**"), subject to adjustment pursuant to Section 2.01(b) below. The first Annual Rent payment shall be payable on the execution of this Agreement by Lessee. Annual Rent shall thereafter be paid annually in advance, beginning twelve (12) months after the Effective Date. The term "**Rent**" as used herein shall mean Annual Rent and all other consideration, rights and benefits to be provided to or for the benefit of Lessee hereunder.

(b) The Annual Rent shall be increased on the second (2nd) anniversary of the Commencement Date of this Agreement and on each successive year anniversary thereafter (each, an **"Adjustment Date"**), by the percentage change in the Consumer Price Index, All Urban Consumer, Sacramento Area (**"Index"**) for the twelve (12)-month period ending three (3) months prior to the applicable Adjustment Date. In no event will application of this subsection (b) result in a change in the Annual Rent that is lower than the previous Annual Rent. If the application of this subsection (b) results in an adjusted rent lower than the previous Annual Rent, then the new Annual Rent shall be the amount of the previous Annual Rent. If the Index ceases to be published and no similar index is published by the Department of Labor, another index generally recognized by authorities may be substituted by the Parties.

2.02 Late Payment. If Annual Rent is not received by Lessor within fifteen (15) days from due date, Lessee shall pay to Lessor an additional five percent (5%) for each payment due as an administrative processing charge. The Parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that Lessor will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount or prevent Lessor from exercising any of the other rights and remedies available to Lessor. Payments of Annual Rent or any other payments due hereunder that are not received when due shall bear simple interest from the date due, at the rate of ten percent (10%) per annum, provided such amount shall not exceed the maximum rate allowed under California law (**"Interest Rate"**).

2.03 Taxes. Lessee is a public agency and is therefore not assessed a possessory interest tax (or equivalent) for the Premises. Since Lessor is not a public agency, a property tax or other tax or fee may be assessed against Lessor or the Premises. Lessor shall be solely responsible for all such property taxes, assessments or similar charges levied or assessed against the Premises as a result of or arising out of Lessor's rights under this Agreement. Lessor shall pay all tax payments directly to the charging authority prior to delinquency and prior to the date upon which any fine, interest, or penalty shall become due or be imposed by operation of law. If, however, the law expressly permits the payment of all or any of the above taxes in installments (whether or not interest accrues on the unpaid balance), Lessor may utilize the permitted installment method, but shall pay each installment with any interest before delinquency.

2.04 Utilities. Lessee shall be responsible for timely payment of all charges with respect to utility services, if any, utilized by Lessee at the Premises.

ARTICLE III

USE

3.01 Purposes. Lessee shall have the right to use the Premises during the Term of this Agreement for the installation, maintenance, replacement and operation of the Transmission Improvements (**"Permitted Use"**) and for no other purpose, without the express written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion. Lessee shall have the right to grant to the local utility (Pacific Gas & Electric or "PG&E") a utility easement, subject to the same Term as set forth in Section 1.01 above, in order to effectuate the Permitted Uses set forth herein and subject to the terms and conditions applicable to Lessee herein. In no event shall the utility easement or right of access granted to PG&E by Lessee exceed the rights granted to Lessee by Lessor pursuant to this Agreement. The utility easement granted to PG&E pursuant to this subsection 3.01 by Lessee shall terminate upon the expiration or earlier termination of this Agreement.

3.02 Permits/Compliance with Regulations. Lessee shall, at its own cost and expense, apply for, obtain and maintain during the Term of this Agreement all necessary consents, approvals, zoning changes or variances, permits, authority, licenses, or entitlements, if any, from all appropriate governmental authorities to use the Premises for the Permitted Use. Lessee shall comply with and conform to all laws and all requirements and orders of any local, municipal, state, or federal board or authority, present and future, in any way relating to the use of the Premises by Lessee throughout the entire Term of this Agreement.

3.03 Reservation by Lessor. Lessee acknowledges and understands that Lessor is currently utilizing the Premises for agricultural purposes. Lessor would not have entered into this Agreement without Lessee's understanding and agreement that during the Term of this Agreement, Lessor reserves the right to continue the use of the Premises in such manner as shall be determined by Lessor in its sole and absolute discretion so long as such use is consistent with agricultural purposes or is not otherwise disruptive or materially interferes with Lessee's use of the Premises for the Permitted Use.

Lessee acknowledges, understands and agrees that Lessor may construct facilities or improvements or place personal property on the Premises that Lessor considers necessary, in its sole and absolute discretion. In the event Lessor constructs facilities or improvements or places any personal property on the Premises which adversely affects the Permitted Use of the Premises by the Lessee, Lessee may, as Lessee's sole and exclusive remedy, terminate this Agreement on sixty (60) days prior written notice to Lessor.

Lessee agrees that the use of the Premises for the Permitted Use by Lessee is subordinate and secondary to Lessor's use of the Premises. Lessee's use of the Premises for the Permitted Use shall not interfere (which determination shall be in Lessor's sole discretion) in any way with Lessor's operations and in this regard Lessee acknowledges and agrees that Lessee's use of the Premises shall not in any way interfere with or impact the flow of farm traffic on the road or the water canal capacity. In the event use of the Premises for the Permitted Use by Lessee interferes with Lessor's operations, Lessee shall immediately cease using the Premises upon receiving written notification to do so, and shall only commence use of the Premises again when said interference has been eliminated.

3.04 Building Restrictions.

(a) So long as Lessee is not in default hereunder, Lessee may install, construct, maintain and operate the Transmission Improvements on the Premises consistent with the locations and configurations depicted on Exhibit E attached hereto (the "Plans"). If the Lessee is successful in obtaining PG&E approval for a Net Energy Metering Aggregation tariff for its Water Pollution Control Facility solar facility, the Transmission Improvements, consisting of an east-west electrical transmission line would be installed by Lessee across the middle of the 200-foot Premises between the array on the east side of the canal and PG&E's existing overhead feeder west of the canal as more particularly depicted on the Plans attached hereto as "Exhibit E." The Lessee shall maintain the east-west electrical transmission line at a minimum of 30 feet vertical clearance at the center point of the road. Lessee shall install the Transmission Improvements in strict compliance with the Plans. Lessee shall provide Lessor with at least ten (10) calendar days' prior written notice before Lessee commences any installation or construction of the Transmission Improvements within the Premises.

(b) Lessee may not construct any other improvements (exclusive of the Transmission Improvements) or any other permanent or semi-permanent structures or improvements or any personal property on the Premises during the Term of this Agreement without the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion. In the event Lessor consents to the placement of such other improvements or personal property on the Premises and for those Transmission Improvements approved pursuant to Section 3.04(a), Lessee shall remove all such improvements (inclusive of the Transmission Improvements) or personal property on or before the end of the Term or the termination of this Agreement and restore the Premises to their prior condition, unless Lessor provides prior written notice to the contrary.

3.05 Condition of Premises. The Premises are made available to Lessee in their "as is" condition, with all faults. The use of the Premises shall be granted to Lessee "as is" and with all faults. Lessee covenants and agrees: (l) there are no representations or warranties of any kind whatsoever, expressed or implied, made by Lessor, except as set forth in this Agreement, including, without limitation, any representations or warranties concerning the condition or status of the land, land use controls, building restrictions, the purposes for which the Premises are suited, access to public roads or the availability of requisite governmental permits and/or approval; (2) Lessee is entering into the Agreement relying entirely on its own investigations of the Premises; and (3) Lessee further acknowledges that at the beginning of the Term of this Agreement, it shall be aware of all regulations, other governmental requirements, site and physical conditions, and other matters affecting the use and condition of the Premises, and Lessee agrees to accept the Premises in the condition that it is on the Effective Date. Lessor makes no covenants, representations or warranties respecting the condition of the soil or subsoil or any other condition of the Premises. Upon the execution of this Agreement by Lessee the Premises shall conclusively be deemed to be fit and proper for the Permitted Use.

Lessee is under no duty to inspect the Premises or to warn any person of any latent or patent defect, condition or risk that may exist in or around the Premises or that might be incurred in the exercise of the rights granted herein.

ARTICLE IV

MAINTENANCE; REPAIRS; ALTERATIONS; RECONSTRUCTION

4.01 Lessee's Representatives. The term **"Representatives"** shall mean members of the Lessee, employees, invitees, representatives, agents, contractors or subcontractors, or any other persons directly or indirectly employed by anyone of the foregoing or Lessee or under the control of Lessee or any one of the foregoing or for whose acts any of the foregoing may be liable.

4.02 Lessee Maintenance Obligations. Lessee shall, at its sole cost and expense, maintain and cause its Representatives to maintain the Premises in order to use the Premises for the Permitted Use. Except in the event of an emergency which poses an immediate threat to public health and safety, Lessee shall provide Lessor with reasonable advance prior written notice (of at least twenty-four (24) hours in all cases) before Lessee performs, or causes any Lessee Representative(s) to perform, any maintenance activity or work upon the Premises. Notwithstanding the foregoing, Lessee acknowledges and agrees that no such maintenance activity or work performed upon the Premises by Lessee or any Lessee Representative(s) shall in any event interfere with or impact the flow of farm traffic on the road or the water canal capacity, except as may be authorized by Lessor in writing.

4.03 Lessor Maintenance Obligations. Lessor shall, at its sole cost and expense, maintain and cause its Representatives to maintain the Premises in order to use the Premises for Lessor's reserved purposes as set forth in Section 3.03. To the extent that maintenance serves both the Permitted Use and Lessor's reserved uses of the Premises, the Parties shall reasonably allocate the costs.

ARTICLE V

ASSIGNMENT AND SUBLETTING

5.01 Assignment.

(a) Lessee shall have no right to assign, sublet, encumber or otherwise transfer this Agreement or any right granted hereunder, either voluntarily or by operation of law, in whole or in part, nor to otherwise permit use of the Premises by any party other than Lessor or its members of all or any part of the Premises without the prior written consent of Lessor in each instance, which consent may be withheld in Lessor's sole and absolute discretion.

ARTICLE VI

INSURANCE

6.01 Insurance. Lessee shall comply with and provide the insurance coverage in favor of Lessor as set forth in the "Insurance Requirements" attached hereto as Exhibit "F".

6.02 Indemnity. Lessee shall indemnify and hold harmless Lessor and its members, directors, officers, agents, employees, representatives, consultants and their respective successors and assigns (collectively, **"Lessor Indemnitees"**) from and against any and all claims, proceedings, actions, causes of action, orders, liabilities, costs (including attorneys' fees and court costs) or damages of whatever kind or nature (collectively, **"Claims"**), including, without limitation, Claims arising from or in connection with or under: (a) this Agreement; (b) the use or misuse of the Premises by Lessee or its members or Representatives, including, without limitation, diminution of property value or loss of potential rent to third parties; (c) any activity, work or thing done, permitted or suffered in and about the Premises or elsewhere by Lessee or its Representatives; (d) any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Agreement; and (e) any death, bodily injury, property or economic damage, accident or casualty on the Premises caused by the Lessee or its Representatives or its or their property or animals; provided, however, the foregoing indemnity shall not apply if any such Claim is ultimately established by a court of competent jurisdiction to have been caused by the negligence or willful misconduct of the Lessor Indemnitees, or any of them. Lessee's indemnity obligations under this Section 6.02 shall survive the expiration or earlier termination of this Agreement.

ARTICLE VII

DEFAULT AND REMEDIES

7.01 Default. Lessee shall be deemed to be in default under the terms of this Agreement as follows:

(a) If Lessee shall fail to pay Rent or other amounts due hereunder within fifteen (15) days of the due date.

(b) If Lessee shall fail to promptly perform or observe any covenant, condition or agreement to be performed by Lessee under this Agreement within thirty (30) days after written notice from Lessee.

(c) If Lessee shall abandon the Premises and such vacation or abandonment shall continue for thirty (30) days after written notice.

7.02 Lessor Cure Rights; Remedies. Lessor, at any time after Lessee commits a default but after at least ten (10) calendar days' notice of default and opportunity to cure, can cure the default at Lessee's cost. If Lessor at any time, by reason of Lessee's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Lessor shall be due immediately from Lessee to Lessor at the time the sum is paid, and if paid at a later date shall bear simple interest at the Interest Rate from the date the sum is paid by Lessor until Lessor is reimbursed by Lessee. The sum, together with interest on it, shall be additional Rent. In the event of a default by Lessee, Lessor, without further notice to Lessee, may exercise any right or remedy provided by law or equity.

ARTICLE VIII

GENERAL PROVISIONS

8.01 Notices. Any communication, notice or demand of any kind whatsoever which any party may be required or may desire to give to or serve upon the other shall be in writing and delivered by personal deliver (including express or courier service), by facsimile transmission (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

Lessor: Conaway Preservation Group
7700 College Town Drive, Suite 101
Sacramento, CA 95826
Attention: Robert Thomas
Facsimile No.: (916) 383-0552
E-mail: rthomas@surewest.net

Lessee: City of Woodland
Woodland City Hall
300 First Street
Woodland, CA 95695
Attn: City Manager
Facsimile No.: (530) 661-5813
E-mail: paul.navazio@cityofwoodland.org

Any party may change its address for notice by written notice given to the other in the manner provided in this Section. Any such communication, notice or demand shall be deemed to have been duly given or served on the date personally served, if by personal service, one (1) day after the date of confirmed dispatch, if by electronic communication, or three (3) days after being placed in the U.S. mail, if mailed.

8.02 Lessor's Liability. Notwithstanding any other term or provision of this Agreement, the liability of Lessor for its obligations under this Agreement is limited solely to Lessor's interest in the Premises as the same may from time to time be encumbered, and no personal liability shall at any time be asserted or enforceable against any other assets of Lessor or against Lessor's members or its or their respective partners, trustees, shareholders, members, directors, officers or managers on account of any of Lessor's obligations or actions under this Agreement.

8.03 Entire Agreement. This Agreement contains all agreements, promises and understandings between Lessor and Lessee, and no verbal or oral agreements, promises or understandings will be binding upon either Lessor or Lessee, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the parties hereto.

8.04 Successors. Subject to the provisions of this Agreement on assignment and subletting, the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.

8.05 Attorneys' Fees. In the event that either party becomes involved in litigation arising out of this Agreement or the performance thereof, the Court in such litigation, or in the separate suit, shall award attorneys' fees and costs to the justly entitled party.

8.06 Severability. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be disregarded and this Agreement shall continue in effect unless enforcement of this Agreement without the invalidated provision would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. If any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a party hereof of an essential benefit of its bargain hereunder, then such party so deprived shall have the option to terminate this entire Agreement from and after such determination.

8.07 Further Assurances. Either party, at any time upon reasonable request of the other, will at requesting party's cost and expense, execute, acknowledge and deliver all such additional documents and instruments and all such further assurances, and will do or cause to be done all further acts and things, in each case, as may be proper or reasonably necessary to carry out the purposes hereof.

8.08 Governing Law. This Agreement and performance hereof shall be governed, interpreted, construed and regulated by the laws of the State of California. Venue shall be Yolo County.

8.09 Counterparts. This Agreement may be executed in counterparts and when so executed by the parties, each such counterpart will constitute an original document.

8.10 Memorandum. No Memorandum or other evidence of this Agreement shall be recorded and the recording of any such Memorandum or other document will constitute a breach of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first above written.

LESSOR:

CONAWAY PRESERVATION GROUP, LLC,
a California limited liability company

By: Tri-City Investors, LLC,
a Delaware limited liability company,
Manager

By: AKT Investors, Inc.,
a California corporation,
Manager

By: ____________________________
Kyriakos Tsakopoulos,
President and CEO

LESSEE:

CITY OF WOODLAND

By: ________________________________
Its:

EXHIBIT "A"

TO

LEASE AGREEMENT

DESCRIPTION OF LESSOR OVERALL PROPERTY

EXHIBIT "B"

TO

LEASE AGREEMENT

DESCRIPTION OF LESSEE OVERALL PROPERTY

EXHIBIT "C"

TO

LEASE AGREEMENT

DESCRIPTION OF SOLAR FACILITY SITE

EXHIBIT "D"

TO

LEASE AGREEMENT

DESCRIPTION OF PREMISES

EXHIBIT “E”

TO

LEASE AGREEMENT

PLANS FOR TRANSMISSION IMPROVEMENTS

EXHIBIT "F"

TO

LEASE AGREEMENT

INSURANCE REQUIREMENTS

Legislation Details (With Text)

12.

File #:	14-504 Version: 1	Name:	
Type:	Report of the City Manager	Status:	Agenda Ready
File created:	12/11/2014	In control:	City Council
On agenda:	12/16/2014	Final action:	
Title:	SUBJECT: State Theatre - Disposition and Development Agreement and Operating Covenant Acquisition Agreement Recommendation: Staff recommends the City Council approve Resolution No. _____ authorizing the City Manager to enter into an amended and restated Disposition and Development Agreement with Woodland State Theatre, LLC and to acquire an Operating Covenant in property from the State Theatre Management Group.		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	StateTheatreDDAsigned Woodland Resolution Approving State Theater AR DDA (Final) Final Draft - Amended and Restated Woodland State Theater DDA.pdf Final Draft - Woodland _ State Theatre Operating Covenant Acquisition Agreement city and STMG		

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014

SUBJECT: State Theatre - Disposition and Development Agreement and Operating Covenant Acquisition Agreement

Recommendation: Staff recommends the City Council approve Resolution No. _____ authorizing the City Manager to enter into an amended and restated Disposition and Development Agreement with Woodland State Theatre, LLC and to acquire an Operating Covenant in property from the State Theatre Management Group.

Staff Contact
Ken Hiatt, Community Development Director, (530) 661-5930, ken.hiatt@cityofwoodland.org

Fiscal Impact
The proposed agreements, if executed, will result in $250,000 in savings to the City over the existing Disposition and Development Agreement (DDA). The prior DDA committed $2,750,000 of former Redevelopment Agency bond proceeds towards construction costs for the project. Under the proposed agreements, the city's financial contribution to the project would be reduced to $2,500,000. Additionally, the DDA retains the provision for the sale of the State Theatre for $275,000. Upon close of escrow, the sale

proceeds will be deposited into the City's Measure E funding account and reprogrammed to go toward the recently approved City Hall Annex renovation project in support of the Woodland Opera House educational programming.

The FY 2014/15 budget includes $40,000 of remaining unspent General Fund dollars that were appropriated as part of the FY 2013/14 budget to cover costs associated with the city's ownership and stabilization of the building. These funds will remain in the budget until close of escrow to cover any routine maintenance during this period as well as escrow closing costs.

The total theater project value is estimated to be $9,000,000. The project will generate one-time revenues in the form of development impact fees and permit fees. Upon completion, the project will generate an estimated $27,000 in net new property taxes annually. Sales of food and beverage from the concessions and café portions of the project will generate sales taxes. Furthermore, the project is expected to stimulate additional economic activity for existing downtown businesses and generate demand for new businesses that will result in reinvestment in downtown properties translating to further increases in property and sales tax revenues for the city.

Background and Discussion

On June 17, 2014, the City Council approved the Disposition and Development Agreement (DDA) with the Woodland State Theatre, LLC for the sale, renovation, and expansion of the State Theatre as part of a first class, state-of-the-art, 10-screen multiplex theater project. The following is a summary of the key terms of the Agreement. A full copy of the Agreement is attached to this report as Attachment 1.

Summary of Terms

- Developer agrees to purchase the State Theatre in as-is condition for $275,000
- Developer to pay any costs associated with further site/building assessments during due diligence period
- Developer agrees to complete a full renovation of the State Theatre and construct with an expansion on the adjoining property, a 10-screen, state-of-the-art first run multiplex theatre project
- Developer to pay all development and construction costs including entitlement, permit, and impact fees
- Developer agrees to sell the City an Operating Covenant that ensures that the project is developed and continues to operate in accordance with the terms and conditions of the agreement for not less than 10 years
- As compensation for the purchase of this Operating Covenant, the city shall provide $2,750,000 to assist in the development costs of the project. City's Covenant purchase payments shall be paid in ten equal installments of $275,000 with first payment due at close of escrow and annually thereafter until paid in full

Since execution of the Agreement, the city and developer have progressed in accordance with the terms and schedule outlined in the agreement. Escrow for sale of the State Theatre and developer's acquisition of the adjoining property has been opened. Developer has completed due diligence of the property and provided evidence of financing. Plans have been submitted and approved for design review and building permit plans are being finalized and expected to be submitted in the coming week.

In working with the lender for the project the developer identified an alternative approach to the city's financial assistance to the project that would reduce the project financing costs and result in reduced funding assistance needed for the project. The City, under the current DDA, is to provide $2,750,000 to the project through an upfront payment that would be disbursed by the project lender in ten equal installments over a 10 year period. In exchange, the developer will provide the city a 10 year operating covenant to ensure the continuous operation of the theatre during this time.

Under the proposed agreements the local non-profit group, State Theatre Management Group (STMG), would provide Woodland State Theatre LLC a $2,5000,000 loan and as a condition of the loan, require the developer to grant a 15 year operating covenant. This loan would be forgivable and amortized over the 15 year operating covenant period. The City would purchase the operating covenant from the STMG for the amount of the loan on the condition that the operating covenant purchase funds be used solely and exclusively to assist in the construction of the project. This approach is consistent with the tax and financing objectives of the developer and reduces the financial assistance the project requires from the city. The agreements would also extend the operating covenant from 10 years to 15 years to coincide with the term of the project's financing.

Draft copies of the Amended and Restated Disposition and Development Agreement between the City and Woodland State Theatre LLC as well as the Operating Covenant Acquisition Agreement between the City and State Theatre Management Group are attached to this report.

State Theatre Management Group

Shortly after the purchase of the Theatre by the city, a group of individuals in the community established a 501 (c)(3) nonprofit organization called the State Theatre Management Group (STMG) to raise funds for the rehabilitation and reuse of the facility for the potential use by the Woodland Opera House. The STMG was approached recently to see if they would consider participating in the project to reduce project financing costs and city assistance needed. The Group has agreed to enter into agreements with the developer and City pending City Council approval and final review of the language.

Project Status/Schedule

The project has progressed substantially on schedule and is anticipated to commence construction in February 2015. Prior to construction commencing, escrow is required to close on the property. Escrow will close upon completion of the building permits and execution of the agreements anticipated in January. Construction is expected to take 10 months with the theater opening in December 2015.

CEQA Determination

On June 17, 2014, the City Council approved the Disposition and Development Agreement with Woodland State Theater, LLC. In doing so, the City Council determined that the DDA qualified for a categorical exemption under the California Environmental Quality Act (CEQA) as a Class 32 exemption. This exemption consists of projects characterized as in-fill development. 14 Cal. Code Regs., § 15332. Additionally, the project satisfied the exemption set forth in section 15305 of the CEQA Guidelines for minor alterations in land use limitations. The City Council also considered an assessment of the project's compliance with these exemptions.

The Amended and Restated Disposition and Development Agreement and Operating Covenant Acquisition Agreement modify the financial terms and extend the operational obligation of the developer but will not cause any different or additional physical changes to the environment. Therefore, the exemptions previously found to apply continue to apply to this agreement.

Prior to taking action to approve the agreements as recommended, the City Council is required to confirm this environmental determination in conjunction with its action. If the agreements are approved, staff will file a Notice of Exemption with the Yolo County Clerk's office in conformance with Article 5, Section 15062 (a) of the CEQA guidelines.

Conclusion

Staff recommends the City Council approve Resolution No. _____ authorizing the City Manager to enter into an amended and restated Disposition and Development Agreement with Woodland State Theatre, LLC and to acquire an Operating Covenant in property from the State Theatre Management Group.

Paul Navazio, City Manager

Attachments:

1. Existing DDA
2. Resolution
3. Amended and Restated DDA
4. Operating Covenant Acquisition Agreement

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

THE CITY OF WOODLAND, a municipal corporation

and

Woodland State Theatre, LLC a California limited liability company

Dated: JUNE 18, 2014

82093.00006\887493
6.3

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT is entered into as of the date executed by City, by and between the City of Woodland ("City"), and Woodland State Theatre, LLC ("Developer").

RECITALS

A. City is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the laws of the State of California.

B. City is the owner of real property located at 322 Main Street, in the City of Woodland, County of Yolo, State of California ("Property") and which is more fully described in Attachment No. 1, attached hereto and incorporated herein by this reference.

C. Developer is a limited liability company formed in order to pursue the development of the Project, with the involvement and consent of RCI Development, a California corporation, pursuant to that certain Agreement to Negotiate Exclusively, entered into by and between the City and RCI Development.

D. As described in this Agreement, City desires sell the Property to Developer, subject to the terms and conditions set forth in this Agreement, and for the purposes set forth herein. At its sole cost, Developer shall obtain and provide City with all engineering information necessary, to the satisfaction of City, for City to prepare and submit the parcel map necessary to create the Site as a single legal lot.

E. City desires to further implement the Woodland Downtown Specific Plan through the sale of the Property, which is located within the area covered by the Specific Plan, to Developer for the construction of the "Project," as that term is defined below.

F. Developer is prepared to develop the Site in accordance with the terms and conditions set forth in this Agreement.

Therefore, City and Developer agree as follows:

I (§100) PURPOSE OF THE AGREEMENT.

1. (§101) Purpose of the Agreement.

This Agreement and the Attachments hereto are intended to provide for the disposition that certain real property designated herein as the "Property" and the development of the "Project" on that certain real property designated herein as the "Site," which includes the Property. The development of the Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Woodland and the welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.

Through this Agreement, City desires to facilitate Developer's development of the Project, which is intended to include the construction of a 10-screen, approximately 30,400 square-foot movie theater and restaurant. It is anticipated that the Project will also create a minimum of 20 new jobs. Moreover, the operation of a movie theater on the Site will generate sales tax revenue, which funds will further assist in the implementation of the goals of the Woodland Downtown Specific Plan.

This Agreement is entered into by City pursuant to its authority under California law, which authorizes City to make agreements with owners, purchasers and lessees of property in the Project Area provided that City retains controls and establishes restrictions or covenants running with the land to ensure that the Site is developed, operated, and used in conformity with this Agreement and the Woodland Downtown Specific Plan.

II (§200) DEFINITIONS.

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

2. (§201) Agreement.

The term "Agreement" shall mean this entire Disposition and Development Agreement, including all Attachments, which Attachments are a part hereof and incorporated herein in their entirety, and all other documents incorporated herein by reference.

3. (§203) Certificate of Completion.

The term "Certificate of Completion" shall mean that document prepared in accordance with Section 513 of this Agreement, in the form attached as Attachment No. 6, which shall evidence that the construction and development of the improvements required by this Agreement have been satisfactorily completed.

4. (§204) City.

The term "City" shall mean the City of Woodland.

5. **(§205) Closing.**

The term "Closing" shall mean the closing of Escrow by the Escrow Agent's distribution of funds and documents received through Escrow to the party entitled thereto as provided herein, which Closing shall occur on or before the date established in the Schedule of Performance.

6. **(§206) Completion.**

The term "Completion" shall mean the Completion of the Project as evidenced by the City's issuance of a Certificate of Completion for the Project. Upon Completion, the Developer's obligations under this Agreement shall terminate and the parties' rights and obligations toward each other shall be as set forth in the Declaration of Covenants, Conditions and Restrictions.

7. **(§207) Covenants, Conditions and Restrictions.**

The term "CC&Rs" or "Declaration of Covenants, Conditions and Restrictions" shall mean that Declaration of Covenants, Conditions and Restrictions running with the land and providing for the proper maintenance of the facilities and improvements and marketing of the movie theater. Prior to the Closing, Developer shall execute and record the CC&Rs, in the form attached hereto as Attachment No. 7, as further described in Section 601.

8. **(§208) Days.**

The term "days" shall mean calendar days and the statement of any time period herein shall be calendar days, and not working days, unless otherwise specified.

9. **(§209) Deed.**

The term "Deed" shall mean the Grant Deed conveying the Property to Developer, which Deed shall be in the form attached hereto as Attachment No. 5.

10. **(§210) Deposit.**

The term "Deposit" shall mean the funds required to be deposited into Escrow by Developer within three (3) days of the Opening of Escrow, which funds shall be credited toward the Purchase Price at the close of escrow, as further detailed in Section 401.

11. **(§ 211) Due Diligence Period.**

The term "Due Diligence Period" shall mean the thirty (30) day period in which Developer shall determine whether the physical condition of the Site is suitable for Developer's intended use, as described in Section 411(1).

12. **(§212) Effective Date.**

The Effective Date of this Agreement shall be the date that this Agreement is executed on behalf of City, after consideration at and approval of the Agreement by the City Council.

13. **(§213) <u>Escrow</u>.**

The term "Escrow" shall mean the Escrow established pursuant to this Agreement for the conveyance of the Site from City to Developer.

14. **(§214) <u>Escrow Agent</u>.**

The term "Escrow Agent" shall mean (Name and address of title company), which is empowered hereunder to act as the Escrow Agent for this transaction.

15. **(§215) <u>Force Majeure</u>.**

The term "Force Majeure" shall mean any delay described in Section 803 caused without fault and beyond the reasonable control of a party, which delay shall justify an extension of time to perform as provided in Section 803.

16. **(§217) <u>Project</u>.**

The term "Project" shall mean all of the improvements to be constructed by Developer on the Site, including, but not limited to, construction of buildings, glass and concrete work, landscaping, signage and related support structure. The Project is a first class state-of-the-art 10 screen, approximately 30,400 square foot movie theater and restaurant, which has a capacity of approximately 1,100 seats in total, and shall be known as "State Theatre and Multiplex", or such other name to be designated by Developer. The movie theater will include various amenities found in other first class state-of-the-art movie theaters located in the greater Sacramento region. The Project is more particularly described in the Scope of Development, attached hereto as <u>Attachment No. 4</u>, which includes a conceptual site plan.

17. **(§218) <u>Project Entitlements</u>.**

The term "Project Entitlements" shall mean all of the entitlements necessary for the development of the Project including, but not limited to, the approval of Site Plan Review, architectural and design review and a parcel map and similar non-ministerial approvals.

18. **(§ 219) <u>Property</u>.**

The term "Property" shall mean the totality of the real property and improvements, known as the State Theatre, consisting of approximately 11,550 first floor square feet, owned by City, as more particularly described in <u>Attachment No. 1</u>.

19. **(§ 221)** **Purchase Price.**

The term "Purchase Price" shall mean that amount agreed upon by the parties as the payment by Developer to City for the purchase of the Property, which shall be Two Hundred Seventy Five Thousand Dollars ($275,000).

20. **(§223) Schedule of Performance.**

The term "Schedule of Performance" shall mean that certain Schedule of Performance attached hereto as Attachment No. 3.

21. **(§224) Scope of Development.**

The term "Scope of Development" shall mean that certain Scope of Development attached hereto as Attachment No. 4

22. **(§225) Site; Site Map.**

The term "Site" shall mean that portion of the Site consisting of approximately 30,400 square feet in the City of Woodland, as generally shown in the "Site Map" and legally described in the legal description of the Site attached hereto as Attachment No. 2. The exact boundaries and area of the Site shall be determined by the parcel map for the Site, which must be approved and recorded prior to the conveyance of title to the Site to Developer.

23. **(§226) Title.**

The term "Title" shall mean the fee interest in the Site to be obtained by Developer.

24. **(§227) Title Company.**

The term "Title Company" shall mean (Name and address of title company), which shall be empowered hereunder to act as the Title Company for this transaction.

III (§ 300) PARTIES TO THE AGREEMENT.

25. (§301) City. City is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the laws of the State of California. The office of City is located at 300 First Street, Woodland, CA. The term "City," as used in this Agreement, includes the City of Woodland and any assignee of, or successor to, its rights, powers and responsibilities.

26. (§302) Developer.

1. **Identification of Developer.**

Developer is Woodland State Theatre, LLC, a California limited liability company. For purposes of this Agreement, the principal office of Developer is 515 East

Washington Street, Petaluma, California, 94952. Developer warrants and represents to City that Developer is duly qualified to do business in good standing under the laws of the State of California and has all requisite power and authority to carry out Developer's business as now and whenever conducted and to enter into and perform Developer's obligations under this Agreement.

Except as may be expressly provided herein, all of the terms, covenants and conditions of this Agreement shall be binding on, and shall inure to the benefit of, Developer, and the permitted successors, assigns and nominees of Developer. Wherever the term "Developer" is used herein, such term shall include any permitted successors and assigns of Developer as herein provided.

2. **Qualifications.**

Subject to the provisions of Section 303, the qualifications and identity of Developer are of particular concern to City, and it is because of such qualifications and identities that City has entered into this Agreement with the Developer. City has considered the experience, financial capability, and product being marketed by Developer, the Site location and characteristics, the public costs of acquiring and developing the Site and return on investment, and the product mix necessary to produce a successful movie theater. Based upon these considerations, City has imposed those restrictions on transfer set forth in this Agreement.

27. (§ 303) Restrictions on Transfer.

1. **Transfer Defined.**

As used in this section, the term "transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon. A transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Developer in the aggregate taking all transfers into account on a cumulative basis. In the event Developer or the applicable successor is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of Developer or of beneficial interests of such trust. In the event that Developer is a limited or general partnership, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the limited or general partnership interest. In the event that Developer is a joint venture, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all transfers into account on a cumulative basis.

2. **Restrictions Prior to Completion.**

Prior to issuance of the Certificate of Completion, Developer shall not transfer this Agreement or any of Developer's rights hereunder, or any interest in the Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, in City's sole discretion, and if so purported to be transferred, the same shall be null and void. The City's decision to approve or disapprove a transfer shall be final. In considering whether it will grant approval to any transfer by Developer of its interest in the Site before the issuance of the Certificate of Completion, which transfer requires City approval, City shall consider factors such as (i) whether the completion of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Developer's obligations hereunder; and (iii) the proposed assignee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of specific written agreement by City, prior to the issuance of a Certificate of Completion, no assignment or transfer by Developer of all or any portion of its interest in the Site or this Agreement (including without limitation an assignment or transfer not requiring City approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Site which is so transferred. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form approved by City assuming such obligations.

3. **Exceptions.**

The foregoing prohibition shall not apply to any of the following:

(i) Any mortgage, deed of trust, or other form of conveyance for financing, including but not limited to construction financing, as provided in Section 512 and permitted by this Agreement, but Developer shall notify City in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Site. It is expressly agreed that City's rights, pursuant to Section 512, including the right to cure or repurchase, are subject to the holder's rights to cure.

(ii) Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the improvements on the Site, including any additional costs of construction, whether direct or indirect, unless additional loan funds are needed by Developer to complete the Project, in which event such restructuring or refinancing loan(s) may exceed said outstanding balance; provided, however, all such additional funds shall be used by Developer solely for the purposes of completing the Project, and such restructuring or refinancing shall comply with City's subordination policy.

(iii) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate the development of the Site.

(iv) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(v) A sale or transfer of fifty percent (50%) or more of ownership or control interest between members of the same family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of members of the trustor's family, transfers to a corporation or partnership or other legal entity in which the members of the transferor's family have a controlling majority interest of fifty-one percent (51%) or more.

(vi) A conveyance of the Site to any entity which controls, is controlled by, or is under common control with Developer, or to a partnership or other legal entity of which Developer is the managing general partner or equivalent.

4. **Restrictions After Completion.**

It is hereby acknowledged by Developer and City that the Property is being conveyed to the Developer by City to carry out the purposes of the Woodland Downtown Specific Plan. Therefore, subsequent to the issuance of the Certificate of Completion for the Project, and prior to the date on which the loan described in Section 607 below is fully forgiven as provided therein, Developer may not sell, transfer, convey, hypothecate, assign or sublease all or any portion of its interest in the Site without complying with the transfer restrictions contained in the Operating Covenant.

IV (§ 400) CONDITION OF THE SITE; DISPOSITION OF THE SITE.

28. (§401) Deposit.

Within three (3) business days of the opening of Escrow, Developer shall deposit Ten Thousand Dollars ($10,000) ("Deposit") into the Escrow. Should Developer terminate this Agreement for any purpose during the Due Diligence Period, Developer shall be entitled to a refund of the Deposit, less reasonable Escrow fees. Upon completion of the Due Diligence Period, the Deposit shall become non-refundable and credited to the Purchase Price. Should Escrow terminate after expiration of the Due Diligence Period as the result of any Developer default, the Deposit shall be paid to City as liquidated damages and as a remedy for said default and to compensate City for lost opportunities to develop the Site.

29. **(§402) Purchase Price.**

The purchase price for the Site shall be Two Hundred Seventy Five Thousand Dollars ($275,000.00) ("Purchase Price").

Developer agrees that there are no financial or appraisal contingencies to this Agreement or Developer's agreement to pay the Purchase Price.

30. **(§ 403) Conveyance of the Site; Purpose of Agreement.**

In accordance with and subject to all of the terms, covenants and conditions of this Agreement, City agrees to convey the Property to Developer subject to the terms of the Deed, and CC&Rs, and Developer agrees to accept the Property and develop the Site with a 10 screen, 30,400 square foot movie theater and restaurant, consistent with the Scope of Development and the permissible uses as further described in Section 601.

31. **(§ 404) Acquisition of Operating Covenant.** In order to ensure that the Project is developed and continues to operate in accordance with the terms and conditions of this Agreement, City shall purchase from Developer an Operating Covenant in the form attached hereto as Attachment No. 7 (the "Operating Covenant") for the amount of Two Million Seven Hundred Fifty Thousand Dollars ($2,750,000), subject to the terms and conditions as set forth in this Agreement and the Operating Covenant.

The Operating Covenant shall ensure that the Project shall remain in operation for not less than ten (10) years following recordation of a Certificate of Completion for the Project, and all sales and property tax revenues apportioned to City from the Project shall be retained by City. Further, Developer shall be responsible for paying all fees and charges typically required by the City for similar development projects.

The Developer's responsibility for all construction and development costs to construct the Project on the Site shall include the costs for: compliance with CEQA; grading and Site preparation; building construction; Site development and infrastructure; design; building permit and development fees; and financing. The minimum investment in land, soft costs and construction is Seven Million Dollars ($7,000,000.00).

Notwithstanding the foregoing, as described in Sections 606 and 607 of this Agreement, Developer shall execute an Operating Covenant, should Developer construct and operate the Project contemplated herein.

32. **(§ 405) Opening and Closing of Escrow.**

Escrow shall be opened within thirty (30) days of approval of this Agreement by the City Council ("Opening of Escrow"). This Agreement shall constitute the joint Escrow instructions of City and Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of Escrow. Escrow Agent is empowered to act under these instructions. City and Developer shall promptly prepare, execute, and deliver to the Escrow Agent such additional Escrow instructions consistent with the terms herein as shall be reasonably necessary. No provision of any additional Escrow instructions shall modify this document without specific written approval of the modification(s) by both Developer and City.

The parties desire that the Escrow close no later than one hundred eighty (180) days after the opening of escrow ("Close of Escrow"), subject to the requirements and conditions set forth in the Schedule of Performance (Attachment No. 3).

33. **(§ 406) Conditions to Close of Escrow.**

Both parties specifically understand that time is of the essence and City and Developer specifically agree to strictly comply with and perform their obligations herein in the time and manner specified, and further waive any and all right to claim such compliance by mere substantial compliance with the terms of this Agreement.

1. **Developer's Conditions to Closing.**

Developer's obligation to acquire the Property and to close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of Developer, be conditional and contingent upon the satisfaction, or waiver by Developer, of each and all of the following conditions (collectively the "Developer's Conditions to Closing") within the time provided in the Schedule of Performance:

(i) Developer has approved in writing all Due Diligence matters on or before the expiration of the Due Diligence Period.

(ii) Developer shall have acquired, or shall be in a position to simultaneously acquire the other properties that, together with the Property, comprise the Site.

(iii) Developer shall have received approval for an be in a position to record a parcel map shall be recorded, legally merging the Property into the Site to create a single legal lot.

(iv) Marketable Title shall be conveyed in a good condition subject only to those exceptions recited in the Deed and those exceptions to title approved pursuant to Section 409.

(v) Developer shall have obtained evidence of financing commitments on terms and conditions satisfactory to both parties for the acquisition, construction and development of the entire Site in accordance with Section 410, and City shall have approved such commitments. City shall have deposited into Escrow the executed Deed.

(vi) Developer shall have approved (or waived) in accordance with Section 411 the physical condition of the entire Site.

(vii) As of the Closing, City shall not be in default hereunder, nor shall there be any event or occurrence which with the passage of time or giving of notice or both would constitute such a default by City.

Any waiver of the foregoing conditions must be express and in writing. Timely notice of disapproval or failure to waive based upon the foregoing conditions shall entitle Developer to terminate Escrow pursuant to Section 407 herein without further liability of one party to the other.

2. **City's Conditions to Closing.** City's obligation to deliver the Property and to close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of City, be conditional and contingent upon the satisfaction, or waiver by City, of each and all of the following conditions (collectively the "City's Conditions to Closing") within the time provided in the Schedule of Performance:

(viii) Developer shall not have made or attempted to make a transfer in violation of Section 303.

(ix) Developer shall have deposited into Escrow, within three (3) days of Developer's receipt of City's written request that the deposit be made, the Purchase Price in "good funds." "Good Funds" shall mean a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California, or cash.

(x) City shall have deposited into Escrow executed copies of the CC&Rs and the Operating Covenant.

(xi) Marketable Title shall be conveyed in a good condition subject only to those exceptions recited in the Deed and those exceptions to title approved pursuant to Section 409.

(xii) Developer shall have received approval for and shall be in a position to record a parcel map shall be recorded, legally creating the Site by combining the Property to create a single legal lot.

(xiii) Developer shall have taken all necessary steps, other than payment of required fees, to secure all necessary permits and approvals necessary to commence construction of the Project and shall be in a position to commence construction of the Project within thirty (30) days of Close of Escrow.

(xiv) Developer shall have obtained evidence of financing commitments for the acquisition, construction and development of the entire Site in accordance with Section 410, and City shall have approved such commitments.

(xv) Developer shall have provided proof of all necessary insurance to City, to the satisfaction of City.

(xvi) As of the Closing, Developer shall not be in default hereunder, nor shall there be any event or occurrence which with the passage of time or giving of notice or both would constitute such a default by Developer.

(xvii) Developer has agreed to assume the obligation for the remaining principal balance and annual assessments for all assessment districts within which the Property is located, to reflect the creation of the Site as a separate legal lot.

Any waiver of the foregoing conditions must be express and in writing. In the event that Developer fails to satisfy City's foregoing conditions or defaults in the performance of its obligations hereunder, City may terminate, in its sole and absolute discretion, this Escrow pursuant to Section 407 without any liability to Developer.

34. **(§ 407) <u>Procedure in Event of Failure of Conditions(s) to Closing; Termination</u>.**

In the event one or more of the Developer's Conditions to Closing or City's Conditions to Closing is not timely satisfied or waived by the benefited party, that party shall have the right to terminate the Escrow and this Agreement. In such event, the terminating party may, in writing, demand return of its money, papers, or documents from Escrow, and shall concurrently deliver a copy of such demand to the non-terminating party, which notice shall state the condition that has not been satisfied. No demand shall be recognized by the Escrow Agent until ten (10) days after the Escrow Agent has mailed copies of such demand to the non-terminating party. If no objections are raised in writing to the terminating party and the Escrow Agent by the non-terminating party within the ten (10) day period, the Escrow Agent shall comply with the terminating party's request. In the event the non-terminating party timely objects, an additional thirty (30) day opportunity to cure or otherwise satisfy the unperformed conditions shall be provided and, only if the unperformed condition remains unsatisfied to the terminating party at the end of said 30-day period, shall the termination occur.

35. (§ 408) <u>Conveyance of the Property</u>.

1. **<u>Time for Conveyance</u>.**

Escrow shall close after satisfaction (or waiver by the benefited party) of all conditions to closing of Escrow, and within three (3) days of Developer's deposit of the Purchase Price into Escrow, unless extended by the mutual agreement of the parties. Accordingly, the Purchase Price shall not be released until the transfer of title to and possession of the Site to Developer.

2. **Escrow Agent to Advise of Costs.**

On or before the date set in the Schedule of Performance, the Escrow Agent shall advise City and Developer in writing of the fees, charges, and costs necessary to issue the title policy and close Escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing.

3. **Deposits By City and Developer Prior to Closing.**

On or before, but not later than 1:00 p.m. of the date set for the Closing in the Schedule of Performance, City shall deposit into Escrow (i) the Deed for the Property, executed and acknowledged by City; (ii) letter or other instrument acceptable to Developer that will guarantee Developer that the Site is buildable; (iii) payment to Escrow Agent of City's share of costs as determined by the Escrow Agent pursuant to Section 412 and (iv) the first payment of the City financial assistance as set forth in the Operating Covenant attached hereto as Attachment No. 8.

On or before, but not later than 1:00 p.m. of the date set for the Closing in the Schedule of Performance, Developer shall deposit into Escrow (i) an estoppel certificate certifying that City has completed all acts, other than as specified, necessary to conveyance, if such be the fact; (ii) the executed and acknowledged CC&Rs; (iii) the executed and acknowledged Operating Covenant and (iii) payment to Escrow Agent of Developer's share of costs as determined by the Escrow Agent pursuant to Section 412.

Prior to the Close of Escrow, Developer and City shall execute and deliver a certificate ("Taxpayer ID Certificate") in such form as may be required by the IRS pursuant to Section 6045 of the Internal Revenue Code, or the regulations issued pursuant thereto, certifying as to the description of the Site, date of Closing, gross price, and the taxpayer identification numbers for Developer and City. Prior to the Closing, Developer and City shall cause to be delivered to the Escrow Agent such other items, instruments and documents, and the parties shall take such further actions, as may be necessary or desirable in order to complete the Closing. At the Closing neither party shall be in breach of its obligations hereunder.

4. **Recordation and Disbursement of Funds.**

Upon the completion by City and Developer of the deliveries and actions specified in these Escrow instructions as a condition precedent to Closing, the Escrow Agent shall be authorized to buy, affix and cancel any documentary stamps and pay any transfer tax and recording fees, if required by law, and thereafter cause to be recorded in the appropriate records of Yolo County, California, the Deed, the CC&Rs, the Operating Covenant and any other appropriate instruments delivered through this Escrow. Concurrent with recordation, Escrow Agent shall deliver the Title Policy to Developer insuring title and conforming to the requirements of Section 409. Following recordation, the Escrow Agent shall deliver copies of said instruments to Developer and City. In addition, after deducting any sums specified in this Agreement, the Escrow Agent shall disburse funds to the party entitled thereto, including delivery of the Deposit and Purchase Price to City.

36. **(§ 409) Title Matters.**

1. **Condition of Title.**

At Close of Escrow, City shall convey to Developer fee simple title to the Property, subject only to: (i) the Redevelopment Plan, this Agreement, the Deed, the CC&Rs and the Operating Covenant; (ii) current taxes, a lien not yet payable; (iii) quasi-public utility, public alley and public street easements of record or as generally described in the Attachments hereto; and (iv) covenants, conditions and restrictions and other encumbrances and title exceptions approved by Developer under this Section. City shall convey title pursuant to the Deed in the form set forth in Attachment No. 5 hereto.

2. **City Not to Encumber Property.** City hereby warrants to Developer that it has not and will not, from the time of Developer's review of the Preliminary Title Report to Close of Escrow, transfer, sell, hypothecate, pledge, or otherwise encumber the Property without the express written permission of Developer.

3. **Approval of Title Exceptions.**

Promptly following execution of this Agreement, but in no event later than ten (10) days following Opening of Escrow, Developer shall obtain a preliminary title report describing the state of title of the Property, together with copies of all exceptions specified therein and a map plotting all easements specified therein ("Preliminary Title Report"). Developer shall notify City in writing ("Developer's Title Notice") of Developer's approval of all matters contained in the Preliminary Title Report or of any objections Developer may have to title exceptions or other matters ("Disapproved Exceptions") contained in the Preliminary Title Report within fifteen (15) days after Developer's receipt of the Preliminary Title Report. If Developer fails to deliver Developer's Title Notice within said fifteen (15) day period, Developer shall be conclusively deemed to have approved the Preliminary Title Report and all matters shown therein.

In the event Developer delivers Developer's Title Notice within said period, City shall have a period of ten (10) days after receipt of Developer's Title Notice in which to notify Developer of City's election to either (i) agree to attempt to remove the Disapproved Exceptions prior to the Close of Escrow; or (ii) decline to remove any such Disapproved Exceptions ("Developer's Notice"). The City's failure to deliver City's Notice within said ten (10) day period shall be deemed City's election to decline to remove the Disapproved Exceptions. If City notifies Developer of its election to decline to remove the Disapproved Exceptions, if City is deemed to have elected to decline to remove the Disapproved Exceptions, or if City is unable to remove the Disapproved Exceptions, Developer may elect either to terminate this Agreement and the Escrow or to accept title to the Property subject to the Disapproved Exception(s). Developer shall exercise such election by delivery of written notice to City and Escrow Holder within five (5) days following the earlier of (i) the date of written advice from City that such Disapproved

Exception(s) cannot be removed; or (ii) the date City declines or is deemed to have declined to remove such Disapproved Exception(s).

Upon the issuance of any amendment or supplement to the Preliminary Title Report which adds additional exceptions, the foregoing right of review and approval shall also apply to said amendment or supplement, provided, however, that Developer's initial period of review and approval or disapproval of any such additional exceptions shall be limited to ten (10) days following receipt of notice of such additional exceptions.

4. **Title Policy.**

At the Close of Escrow, Escrow Agent shall furnish Developer with a standard CLTA Owner's Policy of Title Insurance ("Title Policy") for the Developer's fee interest, wherein the Title Company shall insure that title to the Site shall be vested in Developer, containing no exception to such title which has not been approved or waived by Developer in accordance with this Section. The Title Policy shall include any available additional title insurance, extended coverage or endorsements that Developer has reasonably requested. City shall pay only for that portion of the title insurance premium attributable to the standard coverage for a CLTA policy and a natural hazard zone disclosure report to be prepared by a consultant that is selected by the Developer. Developer shall pay the premium for any additional title insurance, extended coverage or special endorsements, if any.

37. (§ 410) Developer Financing.

1. **Developer's Financial Statements.**

By the time specified in the Schedule of Performance, Developer agrees to deliver to City, for City's approval, financial statements that, in the opinion of City, demonstrate the Developer has the financial capability to undertake the development provided herein. Such financial statements shall include statements from financial institutions with which Developer conducts business evidencing their willingness to provide the financing required hereunder. Developer shall also grant City authorization to obtain reports, including credit reports, and other financial documents from third parties and shall expressly authorize any financial institutions providing financing for any aspect of the Project to release information to City.

2. **Obtaining Construction and Permanent Loans.**

By the time specified in the Schedule of Performance, Developer agrees to deliver to City and obtain the approval from City of written commitments from financial institutions licensed to do business in California and acceptable to City ("Lender(s)") agreeing to make a construction loan and a permanent loan to Developer and secured by a First Deed of Trust (said commitment and loan are sometimes referred to collectively as the "Loan"). The amount of the commitment shall not be less than the amount of the construction contract, plus all consultant and loan fees, "points," commissions, charges, furnishings, fixtures, taxes, interest, start-up and other costs and expenses of developing the Site, less the amount of Developer's equity contribution, if any, to the cost of construction. The construction commitment shall be on said Lender's usual and customary commercial terms and conditions.

3. **Covenants of Parties.** City covenants to take all reasonable actions necessary to assist Developer in obtaining financing, including preparation, to the best of its ability and to the extent of its knowledge, of an environmental questionnaire and disclosure statement. Developer covenants and agrees to take all action, furnish all information, give all consents and pay all sums required to keep said commitment and Loan in full force and effect and shall comply with all conditions thereof, and shall promptly execute, acknowledge and deliver all Loan applications, credit applications and data, financial statements, and Loan documents in connection therewith, and shall actually draw upon and utilize the full amount of said Loan only for financing the cost of the Project.

4. **City Approval of Lender.**

Developer shall not enter into any conveyance for financing without the prior written approval of City. City's written approval or disapproval shall be given by the time provided in the Schedule of Performance. City's review of the Lender shall be limited to the question of whether or not said Lender is a qualified and responsible financial or lending institution or other acceptable entity or person capable of performing its obligations under the Loan.

38. (§ 411) Scope of Due Diligence; Site Assessment.

1. **Due Diligence.**

The environmental condition of the Property is unknown. Developer acknowledges that City makes no representations regarding the condition of the Property or the Site or the Site's fitness for use as a movie theater and related uses. Accordingly, for a period of thirty (30) days following the date of Opening of Escrow ("Due Diligence Period"), Developer shall have the right to make an analysis of the Site including such engineering, feasibility studies, soils tests, environmental studies and other investigations as Developer, in its sole discretion, may desire, to permit Developer to determine the suitability of the Site for Developer's contemplated uses and to conduct such other review and investigation which Developer deems appropriate to satisfy itself to acquire the Site. Developer shall further have the right to make an examination of all permits, approvals and governmental regulations which affect the Site, including zoning and land use issues and conditions imposed upon the Site by governmental agencies. In the event that City or Developer determine that a level of contaminants exists that will prevent Developer from obtaining the referenced loans, then City will either assume the Environmental Cleanup Liability, or allow Developer to terminate this Agreement.

2. **Entry for Investigation.**

Subject to the conditions hereafter stated, during the Due Diligence Period, City grants to Developer, its agents and employees a limited license to enter upon the Property for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Property, which studies, surveys, investigations and tests shall be done at Developer's sole cost and expense. Developer shall indemnify, defend, and hold City harmless from any injury or property damage caused or liability arising out of Developer's exercise of this right of access.

As a condition to Developer's entry, inspection or testing, Developer shall keep the Property free and clear of all materialmen's liens, lis pendens, and other liens arising out of the entry and work performed under this Agreement.

3. **Approval of Due Diligence Matters.**

Developer shall notify City in writing ("Developer's Due Diligence Notice") on or before the expiration of the Due Diligence Period of Developer's approval or disapproval of the condition of the Property and Developer's investigations with respect thereto (excluding title matters), which approval may be withheld in Developer's sole and absolute discretion. Developer's failure to deliver Developer's Due Diligence Notice on or before the expiration of the Due Diligence Period shall be conclusively deemed Developer's approval thereof. Developer's disapproval of said matters shall automatically terminate this Agreement.

4. **Disclaimer of Warranties.**

Upon the Closing, Developer shall acquire the Property in its "AS-IS" condition and shall be responsible for any defects in the Property, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Property, and the existence of any contamination, Hazardous Materials, vaults, debris, pipelines, or other structures located on, under or about the Property, and City makes no other representation or warranty concerning the physical, environmental, geotechnical or other condition of the Property, the suitability of the Property for the Project, or the proposed use of the Property, and City specifically disclaims all representations or warranties of any nature concerning the Property made by it, the City and their respective employees, agents and representatives. The foregoing disclaimer includes, without limitation, topography, climate, air, water rights, utilities, soil, subsoil, existence of Hazardous Materials or similar substances, the purpose for which the Property is suited, or drainage. City makes no representation or warranty concerning the compaction of soil upon the Property, nor of the suitability of the soil for construction.

5. **Hazardous Materials.**

Developer understands and agrees that, in the event Developer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or underground storage tanks whether attributable to events occurring prior to or following the Closing, then Developer may look to other prior owners of the Property, but in no event shall Developer look to City for any liability or indemnification regarding Hazardous Materials and/or underground storage tanks. Developer, and each of the entities constituting Developer, if any, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges City, their directors, officers, shareholders, employees, and agents, and their heirs, successors, personal representatives and assigns, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Property, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of City, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Developer, its successors, assigns or any affiliated entity of Developer, against City, arising by virtue of the physical or environmental condition of the Property, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, whether existing prior to, at or after the Closing, are by this release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release. In connection therewith, Developer and each of the entities constituting Developer, expressly agree to waive any and all rights which said party may have with respect to such released claims under Section 1542 of the California Civil Code which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

DEVELOPER'S INITIALS: ______ CITY'S INITIALS: ______

Developer and each of the entities constituting Developer, shall, from and after the Closing, defend, indemnify and hold harmless City and their officers, directors, employees, agents and representatives (collectively, the "Indemnified Parties") from and against any and all Environmental Claims, Environmental Cleanup Liability, Environmental Compliance Costs, and any other claims, actions, suits, legal or administrative orders or proceedings, demands or other liabilities resulting at any time from the physical and/or environmental conditions of the Property whether before or after the Closing or from the existence of any Hazardous Materials or the release or threatened release of any Hazardous Materials of any kind whatsoever, in, on or under the Property occurring at any time whether before or after the Closing, including, but not limited to, all foreseeable and unforeseeable damages, fees, costs, losses and expenses, including any and all attorneys' fees and environmental consultant fees and investigation costs and expenses, directly or indirectly arising therefrom, and including fines and penalties of any nature whatsoever, assessed, levied or asserted against any Indemnified Parties to the extent that the fines and/or penalties are the result of a violation or an alleged violation of any Environmental Law. Developer further agrees that in the event Developer obtains, from former or present owners of the Property or any other persons or entities, releases from liability, indemnities, or other forms of hold harmless relating to the subject matter of this section, Developer shall use its diligent efforts to obtain for City the same releases, indemnities and other comparable provisions.

For purposes of this Section 411, the following terms shall have the following meanings:

"Environmental Claim" means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Property or its operations and arising or alleged to arise under any Environmental Law.

"Environmental Cleanup Liability" means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Property, including the ground water thereunder, including, without limitation, (i) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (ii) any cost, expense, loss or damage incurred with respect to the Property or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

"Environmental Compliance Cost" means any cost or expense of any nature whatsoever necessary to enable the Property to comply with all applicable Environmental Laws in effect. "Environmental Compliance Cost" shall include all costs necessary to demonstrate that the Property is capable of such compliance.

"Environmental Law" means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical sub-stances from industrial or commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

"Hazardous Material" is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code; (iii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code; (iv) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(o) and (p) and 25501.1 of the California Health and Safety Code (Hazardous Materials Release Response Plans and Inventory); (v) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code (Underground Storage of Hazardous Substances); (vi) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 1 of Title 22 of the California Code of Regulations, Division 4, Chapter 30; (ix) defined as "waste" or a "hazardous substance" pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (xi) defined as a "hazardous waste" pursuant to the Federal

Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (42 U.S.C. § 6903); (xii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. (42 App. U.S.C. § 9601); (xiii) defined as "Hazardous Material" or a "Hazardous Substance" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; or (xiv) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials, oil wells, underground storage tanks, and/or pipelines, as now, or at any time hereafter, in effect.

Notwithstanding any other provision of this Agreement, Developer's release and indemnification as set forth in the provisions of this Section 411, as well as all other provisions of this Section 411, shall survive the termination of this Agreement and shall continue in perpetuity.

Notwithstanding anything to the contrary in this Section, Developer's limited release and indemnification of City and the Indemnified Parties from liability pursuant to this Section shall not extend to Hazardous Materials brought onto the Property by City or their respective contractors, agents or employees.

39. (§ 412) Costs of Escrow.

1. **Allocation of Costs.**

The Escrow Agent is authorized to allocate costs as follows: City shall pay the cost of the Title Policy as well as the natural hazard zone disclosure report, as provided above, while Developer shall pay the premiums for any additional insurance, extended coverage, any endorsements and a flyover survey of the Property. City shall pay the documentary transfer tax as well as all recording fees. Developer and City shall each pay one-half of all Escrow and similar fees, provided that if one party defaults under this Agreement or cancels the Escrow through no fault of the other, the defaulting party shall pay all Escrow fees and charges. Each party shall pay its own attorneys' fees.

2. **Prorations and Adjustments.**

Ad valorem taxes and assessments on the Property, and insurance for the current year shall be prorated by the Escrow Agent as of the date of Closing with City responsible for those levied, assessed or imposed prior to Closing and Developer responsible for those after Closing. If the actual taxes are not known at the date of Closing, the proration shall be based upon the most current tax figures. When the actual taxes for the year of Closing become known, Developer and City shall, within thirty days thereafter, re-prorate the taxes in cash between the parties. The Developer understands that the Property is currently not subject to *ad valorem* taxes; however, the contemplated transfer will result in the placement of the Property on the tax rolls and the subsequent levy of *ad valorem* taxes.

3. **Extraordinary Services of Escrow Agent.**

It is understood that Escrow fees and charges contemplated by this Agreement incorporate only the ordinary services of the Escrow Agent as listed in these instructions. In the event that the Escrow Agent renders any service not provided for in this Agreement, or that the Escrow Agent is made a party to, or reasonably intervenes in, any litigation pertaining to this Escrow or the subject matter thereof, then the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses occasioned by such default, controversy or litigation.

4. **Escrow Agent's Right to Retain Documents.**

Escrow Agent shall have the right to retain all documents and/or other things of value at any time held by it hereunder until such compensation, fees, costs and expenses shall be paid.

40. (§ 413) Responsibility of Escrow Agent.

1. **Deposit of Funds.**

All funds received in Escrow shall be deposited by the Escrow Agent in a special Escrow account with any state or national bank doing business in the State of California and may not be combined with other Escrow funds of Escrow Agent or transferred to any other general Escrow account or accounts.

2. **Notices.**

All communications from the Escrow Agent shall be directed to the addresses and in the manner provided in Section 801 of this Agreement for notices, demands, and communications between City and Developer.

3. **Sufficiency of Documents.**

The Escrow Agent is not to be concerned with the sufficiency, validity, correctness of form, or content of any document prepared outside of Escrow and delivered to Escrow. The sole duty of the Escrow Agent is to accept such documents and follow Developer's and City's instructions for their use.

4. **Exculpation of Escrow Agent.**

The Escrow Agent in no case or event shall be liable for the failure of any of the Conditions to Closing of this Escrow, or for forgeries or false impersonation, unless such liability or damage is the result of negligence or willful misconduct by the Escrow Agent.

5. **Responsibilities in the Event of Controversies.**

If any controversy documented in writing arises between Developer and City or with any third party with respect to the subject matter of this Escrow or its terms or conditions, the Escrow Agent shall not be required to determine the same, to return any money, papers or documents, or take any action regarding the Property prior to settlement of the controversy by a final decision by an arbitrator, by a court of competent jurisdiction, or by written agreement of the parties to the controversy, as the case may be. However, the Escrow Agent shall be responsible for timely notifying Developer and City of the controversy. In the event of such a controversy, the Escrow Agent shall not be liable for interest or damage costs resulting from failure to timely close Escrow or take any other action unless such controversy has been caused by the failure of the Escrow Agent to perform its responsibilities hereunder.

V (§ 500) DEVELOPMENT OF THE SITE.

41. (§ 501) Scope of Development.

1. **Developer's Development of Site.**

The Site shall be developed by Developer as provided in the Scope of Development attached hereto as Attachment No. 4. Notwithstanding any other provision set forth in this Agreement to the contrary, in the event of any conflict between the narrative description of the Project in this Agreement (including the Scope of Development) and the approved plans and permits, when obtained, the approved plans and permits shall govern.

42. (§ 502) Development Plans; Final Building Plans; Environmental Review.

1. **Other Approvals Required.**

It is expressly understood by the parties hereto that City makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City, City reserving full police power authority over the Project. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items nor a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions. Notwithstanding the foregoing, Developer anticipates that the Project will require 200 public parking spaces that are allowed for not less than a three hour period. As of the date of this approval there is sufficient public parking within a six block radius of the Site to serve the Project. In the event that in the future City considers revisions to parking restrictions in the Downtown Specific Plan Area, the City shall consider and account for the Project's need for such parking spaces in the vicinity of the Project.

2. **Evolution of Development Plan.**

On or before the date set forth in the Schedule of Performance, Developer shall submit to City its application for development of the Project and any necessary entitlements, and shall obtain entitlement approval. Thereafter, on or before the date set forth in the Schedule of Performance, Developer shall submit to the City all necessary drawings and specifications for development of the Site in accordance with the Scope of Development and all in accordance with the City's requirements. The term drawings shall be deemed to include site plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, material pallets, a description of structural, mechanical, and electrical systems, and all other plans, drawings and specifications pertaining to the Project. Final drawings shall be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Scope of Development and the various development approvals referenced herein, except as such items may be amended by City (if applicable) and by mutual consent of City and Developer. Plans (concept, preliminary and construction) shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications are submitted.

3. **Developer Best Efforts to Obtain Approvals.**

Developer shall exercise its best efforts to timely submit all documents and information necessary to obtain all development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Developer shall comply with all applicable development standards in City's Municipal Code and shall comply with all building requirements, except as may be permitted through approved variances and modifications.

4. **City Approvals.**

Subject to Developer's compliance with (i) the applicable City development standards for the Site, and (ii) all applicable laws and regulations governing such matters as public hearings, site plan review and environmental review, City agrees to provide reasonable assistance to Developer in the expeditious processing of Developer's submittals required under this Section in order that Developer can obtain a final City action on such matters within the time set forth in the Schedule of Performance.

5. **Disapproval.**

Unless noted otherwise in the Schedule of Performance, City shall approve or disapprove any submittal for building plan approval made by Developer pursuant to this Section within forty-five (45) days after such submittal. All submittals made by Developer shall note the 45-day time limit, and specifically reference this Agreement and this Section. Any disapproval shall state in writing the reason for the disapproval and the changes which City requests be made. Developer shall make the required changes and revisions and resubmit for approval as soon as is reasonably practicable but no more than thirty (30) days of the date of disapproval. Thereafter, City shall have an additional thirty (30) days for review of the resubmittal. If City disapproves the resubmittal, the cycle shall repeat until City approval has been obtained.

6. **CEQA.**

The City has determined that the Project is categorically exempt under the California Environmental Quality Act (Public Resources Code Sections 21000 *et seq.*) ("CEQA") in accordance with the Class 32 categorical exemption as in infill project. This determination was reviewed and approved by the City Council of the City on June 17, 2014 and has served as the environmental documentation pursuant to CEQA for the activities proposed to be undertaken under this Agreement.

43. **(§ 503) Cost of Construction.**

The cost of developing the Site and constructing all of the on-site and off-site improvements at or about the Site required to be constructed in connection with the development of the movie theater and related facilities, shall be borne by Developer. Developer acknowledges and agrees that the Project is a public work subject to the requirements of California Labor Code Section 1720 *et seq.* (the "Prevailing Wage Law"), and Developer shall require its contractors and subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under the Prevailing Wage Law for all construction work conducted as part of the Project. Developer shall indemnify, defend, and hold City harmless from any determinations or actions (whether legal, equitable or administrative in nature) or other proceedings that Developer, its contractors, or subcontractors failed to comply with the Prevailing Wage Law, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law.

44. **(§ 504) Schedule of Performance; Progress Reports.**

The Parties shall begin and complete all plans, reviews, construction and development specified in the Scope of Development within the times specified in the Schedule of Performance attached hereto as Attachment No. 3 or such reasonable extensions of said dates as may be mutually approved in writing by the parties.

Once construction has commenced, it shall be diligently pursued to completion and shall not be abandoned for more than thirty (30) consecutive days, except when due to a Force Majeure. Developer shall keep City informed of the progress of construction and submit to City written reports of the progress of the construction when and in the form requested by City.

Developer agrees that construction of the Project shall be completed no later than December 31, 2015 or this Agreement and Operating Covenant will automatically terminate and Developer shall be obligated to repay all amounts paid to Developer for the Operating Covenant prior to such termination.

45. **(§ 505) Indemnification During Construction.**

During the periods of construction on the Site and until such time as City has issued a Certificate of Completion for the Project with respect to the construction of the improvements thereon, Developer agrees to and shall indemnify and hold City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on the Site and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of the Developer or its agents, servants, employees, or contractors. Developer shall not be responsible for (and such indemnity shall not apply to) any acts, errors, or omissions of City, or their respective agents, servants, employees or contractors.

46. (§ 506) Bodily Injury, Property Damage and Workers' Compensation Insurance.

1. **Types of Insurance.**

Prior to the entry of Developer or any of its agents, consultants, representatives or employees on the Property and the commencement of any Property investigation, as authorized in Section 411, or construction by or on behalf of Developer, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of such entry or construction, the following policies of insurance:

(i) Commercial General Liability Insurance. Developer shall keep or cause to be kept in force for the mutual benefit of City, and Developer comprehensive broad form commercial general liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Site, improvements or adjourning areas or ways, affected by such use of the Site or for property damage. Such insurance policy shall have (a) a combined single limit for both bodily injury or death in an amount not less than Three Million Dollars ($3,000,000), and (b) a limit for both bodily injury or death in one accident or occurrence or for property damage in an amount not less than One Million Dollars ($1,000,000), which amount shall be increased from time to time as commercially reasonably required by City.

(ii) Builder's Risk Insurance. Developer shall procure and shall maintain in force "all risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits in accordance with subsection (a) above.

(iii) Worker's Compensation. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Developer, City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or persons retained by Developer in the course of carrying out the work or services contemplated in this Agreement. Developer shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries workers' compensation insurance as required by law.

(iv) Automobile Insurance. A policy of comprehensive automobile liability insurance to include all autos owned, hired, and non-owned, in an amount not less than One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage.

(v) Other Insurance. Developer may procure and maintain additional policies of insurance not required by this Agreement.

2. **Insurance Policy Form, Content and Insurer.**

All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, the Key Rating Guide or in the Federal Register, and only if they are of a financial category Class IX or better. All such policies shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of City or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them, or with certificates evidencing the insurance. City shall be named as additional insureds on all policies of insurance required to be procured by the terms of this Agreement.

3. **Failure to Maintain Insurance and Proof of Compliance.**

Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits:

(i) For insurance required above, prior to entry of Developer on the Site for Site investigation purposes or for the commencement of any construction by or on behalf of Developer.

(ii) For any renewal or replacement of a policy already in existence, at least ten (10) days before expiration or termination of the existing policy.

If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and paid for, such failure or refusal shall be a default hereunder, subject to the applicable cure period. Alternatively, without limiting City's rights hereunder, City shall have the right to immediately secure and place force insurance on the Site. City shall immediately notify Developer of placement of force insurance and Developer shall be solely responsible for all premium costs of coverage(s) bound. Developer shall, within fifteen (15) days of receipt of invoice City, cause the timely payment of said coverage(s) to City. City shall also be entitled to a service fee of the greater of 10% or $500 of the force insurance premium which shall be borne by Developer.

47. **(§ 507) <u>City and Other Governmental Agency Permits</u>.**

Before commencement of construction or development of any buildings, structures, or other works of improvement upon the Site which are Developer's responsibility under the Scope of Development, Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by City or any other governmental agency affected by such construction, development or work. Developer shall not be obligated to commence construction if any such permit is not issued despite good faith effort by Developer. If there is delay beyond the usual time for obtaining any such permits due to no fault of Developer, the Schedule of Performance shall be extended to the extent such delay prevents any action which could not legally or would not in accordance with good business practices be expected to occur before such permit was obtained. Developer shall pay all normal and customary fees and charges applicable to such permits and any fees or charges hereafter imposed by City which are standard for and uniformly applied to similar projects in the City.

48. **(§ 508) <u>Rights of Access</u>.**

Representatives of City shall have the reasonable right of access to the Site without charges or fees, at any time during normal construction hours during the period of construction, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of the construction work being performed by or on behalf of Developer. Such representatives of City shall be those who are so identified in writing by City. Each such representative of City shall identify himself or herself at the job site office upon his or her entrance to the Site, and shall provide Developer, or the construction superintendent or similar person in charge on the Site, a reasonable opportunity to have a representative accompany him or her during the inspection. City shall indemnify, defend, and hold Developer harmless from any injury or property damage caused or liability arising out of City's exercise of this right of access.

49. **(§ 509) <u>Applicable Laws</u>.**

Developer shall carry out the construction of the improvements to be constructed by Developer in conformity with all applicable laws and codes, including all applicable federal and state labor laws.

50. **(§ 510) <u>Anti-discrimination During Construction</u>.**

Developer for himself and his successors and assigns agrees that, in the construction of the improvements to be constructed by Developer, Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, gender, ancestry or national origin.

51. **(§ 511) Encumbrances and Liens.**

Subject to Section 512 below, until the date of issuance by City of a Certificate of Completion, Developer shall not place or allow to be placed on the Site any mortgage, trust deed, encumbrance or lien (except mechanic's liens prior to suit to foreclose the same being filed). Developer shall remove or have removed any levy or attachment made on the Site, or assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amounts of any encumbrance or lien, nor to limit the remedies available to Developer in respect thereto.

52. **(§ 512) Rights of Holders of Approved Security Interests in Site.**

1. **Definitions.**

As used in this Section, the term "mortgage" shall include any mortgage, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "holder" shall include the holder of any such mortgage, deed of trust, or other security interest, the lessor under a lease-back or the grantee under any other conveyance for financing.

2. **No Encumbrances Except Mortgages to Finance the Project.**

Notwithstanding the restrictions on transfer in Section 303, mortgages required for any reasonable method of financing of the construction of the improvements are permitted before issuance of a Certificate of Completion but only for the purpose of securing loans of funds used or to be used for financing the acquisition of the Site, for the construction of improvements thereon, and for any other expenditures necessary and appropriate to develop the Site under this Agreement, or for restructuring or refinancing any of same, so long as the refinancing does not exceed the then-outstanding balance of the existing financing, unless additional loan funds are needed by Developer to complete the Project, in which event such restructuring or refinancing loan(s) may exceed said outstanding balance; provided, however, all such additional funds shall be used by Developer solely for the purposes of completing the Project, and such restructuring or refinancing shall comply with City's subordination policy. The Developer (or any entity permitted to acquire title under this Section) shall notify City in advance of any mortgage if the Developer or such entity proposes to enter into the same before issuance of the Certificate of Completion. The Developer or such entity shall not enter into any such conveyance for financing without the prior written approval of City as provided in Section 410, which shall not be unreasonably withheld, conditioned or delayed. Any lender approved by City pursuant to Section 410 shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, the Developer shall promptly notify City of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Certificate of Completion, whether by voluntary act of the Developer or otherwise.

3. **<u>Developer's Breach Shall Not Defeat Mortgage Lien</u>.**

Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Site, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage of the Site whose interest is acquired by foreclosure, trustee's sale or otherwise.

4. **<u>Holder Not Obligated to Construct or Complete Improvements</u>.**

The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

5. **<u>Notice of Default to Mortgagee, Deed of Trust or Other Security Interest Holders</u>.**

Whenever City shall deliver any notice or demand to Developer with respect to any breach or default by Developer hereunder, City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to City therefore, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

6. **<u>Right to Cure</u>.**

Each holder (insofar as the rights of City are concerned) shall have the right, at its option, within sixty (60) days after the receipt of the notice, to:

(i) Obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed; and

(ii) Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that in the case of a default which cannot with diligence be remedied or cured within such sixty (60) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of Developer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to City by written agreement satisfactory to City with respect to the Site or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligations. Any holder properly completing such improvements shall be entitled, upon written request made to City, to a Certificate of Completion from City.

7. **City's Rights upon Failure of Holder to Complete Improvements.**

In any case where one hundred eighty (180) days after default by Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Site or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, City may, after sixty (60) days' notice to such holder and if such holder has not exercised such option to construct within said sixty (60) day period, purchase the mortgage (or the fee interest if the holder has foreclosed), upon payment to the holder of an amount equal to the sum of the following:

(i) The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

(ii) All expenses incurred by the holder with respect to foreclosure, if any;

(iii) The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Site, such as insurance premiums or real estate taxes, if any;

(iv) The costs of any improvements made by such holder, if any; and

(v) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by City.

In the event that the holder does not exercise its option to construct afforded in this Section, and City elects not to purchase the mortgage of holder, and, upon written request by the holder to City, City agrees to use reasonable efforts to assist the holder in selling the holder's interest to a qualified and responsible party or parties (as determined by City), such party or parties shall assume the obligations of making or completing the improvements required to be constructed by Developer, or such other improvements in their stead as shall be satisfactory to City. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs (i) through (v) above, and any balance remaining thereafter shall be applied as follows:

(i) First, to reimburse City, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by City, including but not limited to, payroll expenses, management expenses, legal expenses, and other expenses.

(ii) Second, to reimburse City, on its own behalf and on behalf of the City, for all payments made by City to discharge any other encumbrances or liens on the Site or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due, to obligations, defaults, or acts of Developer, its successors or transferees.

(iii) Third, to reimburse City, on its own behalf and on behalf of the City, for all payments made by City in connection with efforts to assist the holder in selling the holder's interest in accordance with this Section.

(iv) Fourth, any balance remaining thereafter shall be paid to Developer.

8. **Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default.**

In the event of a default or breach by Developer (or an entity permitted to acquire title under this Section) of a mortgage prior to the issuance by City of a Certificate of Completion for the Site or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, City may cure the default prior to completion of any foreclosure. In such event, City shall be entitled to reimbursement from Developer or other entity of all costs and expenses incurred by City in curing the default, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to:

(i) Any mortgage for financing permitted by this Agreement; and

(ii) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided that nothing herein shall be deemed to impose upon City any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Site in the event of its enforcement of its lien.

9. **Right of City to Satisfy Other Liens on the Site After Conveyance of Title.**

After the conveyance of title and prior to the recordation of a Certificate of Completion for construction and development, and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale.

10. **Minor Amendments**. City's designated representative(s) shall be authorized to approve and execute minor non-substantive amendments to this Agreement as may be requested by Developer's lender in relation to the protection of such lender's security interest in the Site, without formal approval of City's governing body.

53. **(§ 513) Certificate of Completion.**

Upon the completion of all construction by Developer on the Site, City shall furnish Developer with the Certificate of Completion in the form attached hereto as Attachment No. 6, upon written request therefore by Developer. The Certificate of Completion shall be executed and notarized so as to permit it to be recorded in the Office of the Recorder of Yolo County.

The executed Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site and of full compliance with the terms of this Agreement with respect thereto. A partial Certificate of Completion, applicable to less than the entire Project as defined in the Scope of Development, shall not be permitted.

After the issuance of the Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed, CC&Rs, and Operating Covenant. After issuance of a Certificate of Completion, City shall not have any rights or remedies under this Agreement, except as otherwise set forth in the Deed, CC&Rs, and Operating Covenant.City shall not unreasonably withhold condition or delay the Certificate of Completion. If City refuses or fails to furnish the Certificate of Completion within thirty (30) days after written request from Developer or any entity entitled thereto, City shall provide a written statement of the reasons City refused or failed to furnish the Certificate of Completion. The statement shall also contain City's opinion of the action Developer must take to obtain the Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, City will issue its Certificate of Completion upon the posting of a bond in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed or other assurance reasonably satisfactory to City.

A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not notice of completion as referred to in California Civil Code

Section 3093. Nothing herein shall prevent or affect Developer's right to obtain a Certificate of Occupancy from the City before a Certificate of Completion is issued.

54. **(§ 514) Estoppels.**

At the request of Developer or any holder of a mortgage or deed of trust, City shall, from time to time and upon the request of such holder, timely execute and deliver to Developer or such holder a written statement of City that no default or breach exists (or would exist with the passage of time, or giving of notice or both) by Developer under this Agreement, if such be the fact, and certifying as to whether or not Developer has, at the date of such certification, complied with any obligation of Developer hereunder as to which Developer or such holder may inquire. The form of any estoppel letter shall be prepared by the holder or Developer and shall be at no cost to City

VI (§ 600) USE AND OPERATION OF THE SITE.

55. **(§ 601) Use as a Movie Theater.**

Developer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter during the term of the Operating Covenant, Developer, or such successors and assigns, shall devote the Site to the uses specified in the Woodland Downtown Specific Plan and in this Agreement. Developer further agrees to use, devote, and maintain the Site and each part thereof only for movie theater and attendant uses, subject to the restrictions contained in the CC&Rs. If at any time the Site is not used as a movie theater for a period of six (6) consecutive months, City shall have the right, at its option, to reenter and take possession of the Site, with all improvements thereon, and to terminate and re-vest in City the estate conveyed to Developer.

56. **(§ 602) Obligation to Refrain from Discrimination.**

There shall be no discrimination against, or segregation of, any person, or group of persons, on account of race, color, creed, religion, sex, marital status, gender, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Site, or any portion thereof, nor shall Developer, or any person claiming under or through Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or any portion thereof. The nondiscrimination and nonsegregation covenants contained herein shall remain in effect in perpetuity.

57. **(§ 603) Form of Nondiscrimination and Nonsegregation Clauses.**

Developer shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, ancestry, gender or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. Deeds. In Deeds the following language shall appear: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, gender, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee, or any persons claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

2. Leases. In Leases the following language shall appear: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, gender, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased."

3. Contracts. Any contracts which Developer or Developer's heirs, executors, administrators or assigns propose to enter into for the sale, transfer, or leasing of the Site shall contain a nondiscrimination and nonsegregation clause substantially as set forth in Section 602 and in this Section. Such clause shall bind the contracting party and subcontracting party or transferee under the instrument.

58. **(§ 604) Maintenance of Improvements.**

Developer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Site or any part thereof, that, after City's issuance of its Certificate of Completion, Developer shall be responsible for maintenance of all improvements made for the Project, as well as maintenance of the lighting, signs, and walls in first-class condition and repair, and shall keep the Site and adjacent alleyway and sidewalk frontage from any accumulation of debris or waste materials created by the theater business. Developer shall also maintain all landscaping required pursuant to Developer's approved landscaping plan for the Site, in a healthy condition, including replacement of any dead or diseased plants with plants of a maturity similar to those being replaced. The foregoing maintenance obligations shall run with the land and thereby become the obligations of any transferee of the Site or any portion thereof. Developer's further obligations to maintain the Site, and City's remedies in the event of Developer's default in performing such obligations are set forth in the Deed and the CC&Rs.

59. (§ 605) **Effect of Covenants.** City is deemed a beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land for and in its own right for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of City shall run without regard to whether City has been, remains or is an owner of any land or interest therein in the Site or in the Project Area. City shall have the right, if any of the covenants set forth in this Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. With the exception of the City, no other person or entity shall have any right to enforce the terms of this Agreement under a theory of third-party beneficiary or otherwise. The covenants running with the land and their duration are set forth in the Deed, the Operating Covenant and the CC&Rs.

60. **(§ 606) Operating Covenant.**

Subject to Section 607 below, Developer covenants and agrees for itself, its lessees, successors and assigns and any successor-in-interest to the Site or part thereof, that for a period of not less than ten (10) years from and after Completion of the Project, Developer shall operate the Project as a movie theater on the Site. As used in this Article, "Developer" shall include itself and any tenants, lessees, subtenants, sublessees, or vendees and/or any successor-in-interest to the Site or part thereof.

Developer covenants and agrees for itself, its successors and assigns, and any successor-in-interest to the Site or part thereof, that during the term of the Operating Covenant, Developer shall only use the Site for the Project and such ancillary and related uses as may be approved by City. If at any time the Site is not used as a movie theater for a period of six (6) consecutive months, City shall have the right, at its option, to reenter and take possession of the Site, with all improvements thereon, and to terminate and re-vest in City the estate conveyed to Developer.

61. **(§ 607) Compensation for the Operating Covenant.**

Upon Closing of Developer's purchase of the Property, City agrees to purchase the Operating Covenant from Developer for a purchase price of Two Million Seven Hundred Fifty Thousand Dollars ($2,750,000). The term of the Operating Covenant shall ten (10) years. Except as provided herein, on the ten (10) year anniversary of the recordation of the Certificate of Completion of the Project, the Operating Covenant shall expire and be of no further force or effect. City at the request of Developer shall within thirty (30) days thereof execute a document in recordable form removing the Operating Covenant from title and deliver the document to Developer. Developer agrees to record the document at Developer's cost. All documents to be recorded as herein provided shall be prepared by the Developer and its counsel at Developer's cost, and their form and content shall be subject to City's reasonable approval.

1. Security for Financial Assistance. Developer shall make and give City the following types of security for the financial assistance being provided by City under the Operating Covenant.

a. Reimbursement. Developer covenants and agrees that in the event Developer is in Default of the Operating Covenant, and such Default remains uncured after the period provided in the Operating Covenant for cure, Developer shall repay to City the sum required pursuant to the terms and conditions of the Operating Covenant..

2. Conditions on Compensation for the Operating Covenant. The following are conditions upon City's obligation to compensate Developer for the Operating Covenant:

a. Limit on Assistance. City shall have no obligation to provide Developer with additional financial assistance, to make any other contribution toward the Project, to pay any development cost or development fee, or to carry out or complete the Project or any phase thereof. Nothing in this Agreement or the Operating Covenant shall be construed to be a pledge or commitment by City of any specific tax revenue, grant funds, or other specific monies, funds or revenues to which City is in possession of or may become entitled to receive. City, in its sole discretion, may use any revenue, funds, or monies available to City, as may be allowed for by law, to provide the loan described in this Section.

b. Project Occupancy. City shall purchase the Operating Covenant from Developer pursuant to the terms and conditions as set forth in the Operating Covenant upon issuance of a Certificate of Completion by the City.

c. Use of the Site. Developer's compliance with this Agreement and execution, recordation, and compliance with the CC&Rs as described in Section 601 and maintenance of the Site as described in Section 604.

d. Payment of Taxes. Developer's payment, when due, of all *ad valorem* property taxes levied against the Site, as well as any special assessments or special taxes levied against the Site, payment of all taxes payable under the California Bradley-Burns Uniform Local Sales & Use Tax Laws, Revenue and Taxation Code § 7200, *et seq.,* and all other taxes, any portion of which is allocated to or received by City. Developer acknowledges that City is relying on the receipt of *ad valorem* taxes to fund the payment for the Operating Covenant. Should Developer fail to pay all *ad valorem* taxes when due, or if Developer causes a substantial reduction in the amount of *ad valorem* taxes levied against the Site, then the term of the Operating Covenant will be extended accordingly.

VII (§ 700) DEFAULTS, REMEDIES AND TERMINATION.

62. (§ 701) Defaults, Right to Cure, Waivers, and Termination.

Subject to any Force Majeure, failure or delay by either party to timely perform any covenant of this Agreement constitutes a default under this Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a notice specifying such failure or delay ("Notice of Default"), and does not thereafter prosecute such cure, correction or remedy with diligence to completion.

The injured party shall give written Notice of Default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

Upon the occurrence of two Notices of Default by an injured party to the party in default within a six (6) month period, the injured party shall have the right to terminate this Agreement, regardless of whether such defaults were timely cured or not by the party in default, and pursue its rights or remedies as provided in this Agreement.

63. **(§ 702) Legal Actions.**

1. Institution of Legal Actions.

In addition to any other rights or remedies, and subject to the requirements of Section 701, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Legal actions must be instituted and maintained in the Superior Court of the County of Yolo, State of California, in any other appropriate court in that county.

2. Applicable Law and Forum.

The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

3. Acceptance of Service of Process.

In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City, or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made in such manner as may be provided by law and shall be valid whether made within or without the State of California.

64. **(§ 703) <u>Rights and Remedies are Cumulative</u>.**

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

65. **(§ 704) <u>Specific Performance</u>.**

In addition to any other remedies permitted by this Agreement, if either party defaults hereunder by failing to perform any of its obligations herein, each party agrees that the other shall be entitled to the judicial remedy of specific performance, and each party agrees (subject to its reserved right to contest whether in fact a default does exist) not to challenge or contest the appropriateness of such remedy. In this regard, Developer specifically acknowledges that City is entering into this Agreement for the purpose of assisting in the redevelopment of the Site and not for the purpose of enabling Developer to speculate with land.

66. **(§ 705) <u>Right of Reverter</u>.** City shall have the right, at its option, to reenter and take possession of the Site with all improvements thereon and to terminate and re-vest in City the estate conveyed to Developer, if, after Closing and prior to the recordation of the Certificate of Completion, Developer (or his successors-in-interest) shall:

1. Fail to commence construction of the improvements for a period of ninety (90) days after issuance of building or other applicable permits and after written notice to proceed from City, provided that Developer shall not have obtained an extension or postponement to which the Developer may be entitled pursuant to this Agreement; or

2. Abandon or substantially suspend construction of the improvements for a period of thirty (30) consecutive days after written notice of such abandonment or suspension from City, provided that Developer shall not have obtained an extension of time to which Developer may be entitled to pursuant to this Agreement; or

3. Assign or attempt to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of, the Site, or any part thereof, in violation of this Agreement, and such violation shall not be cured within thirty (30) days after the date of receipt of written notice thereof by City to Developer.City shall also have the right, at its option, to reenter and take possession of the Site with all improvements thereon and to terminate and re-vest in City the estate conveyed to Developer, if, after the recordation of the Certificate of Completion, Developer (or his successors-in-interest) shall fail to use the Site as a movie theater for a period of six (6) consecutive months.

The right to re-enter, repossess, terminate, and re-vest shall be subject to and be limited by and shall not defeat, render invalid, or limit:

1. Any mortgage, deed of trust, or other security interests permitted by this Agreement.

2. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust or other security interests.

Upon the re-vesting in City of possession to the Site, or any part thereof, as provided in this Section, City shall, pursuant to its responsibilities under state law, use its best efforts to re-convey the Site, or any part thereof, as soon and in such manner as City shall find feasible and consistent with the objectives of such law and of the Woodland Downtown Specific Plan to a qualified and responsible party or parties (as determined by City), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to City and in accordance with the uses specified for the Site, or any part thereof, in the Woodland Downtown Specific Plan.

In the event of a resale, the proceeds thereof shall be applied after payment of all sums described in Section 512, Paragraph 7(i) through (v) due to Developer's lender(s) as follows:

(i) First, to reimburse City on its own behalf or on behalf of the City for all costs and expenses incurred by City, including but not limited to, salaries to personnel, legal costs and attorneys' fees, and all other contractual expenses in connection with the recapture, management, and resale of the Site (but less any income derived by City from the Site or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the Site (or, in the event that the Site is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments, or charges, as determined by the City, as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Site or part thereof; and amounts otherwise owing City by the Developer, its successors, or transferees; and

(ii) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to (i) the amount of the Purchase Price paid to City by Developer for the Site, (ii) costs actually incurred for the development of the Site, Due Diligence, and for the agreed improvements existing on the Site at the time of the re-entry and repossession, less (iii) any gains or income withdrawn or made by Developer from the Site or the improvements thereon; and

(iii) Any balance remaining after such reimbursements shall be retained by City as its property.

To the extent that the right established in this Section involves a forfeiture, it must be strictly interpreted against City, the party for whose benefit it is created. The rights established in this Section are to be interpreted in light of the fact that City will sell the Site to Developer for development and not for speculation in undeveloped land.

67. **(§ 706) Attorneys' Fees.**

If either party to this Agreement is required to initiate or defend any action or proceeding in any way arising out of the parties' agreement to or performance of this Agreement, or is made a party to any action or proceeding by the Escrow Agent or other third party, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees from the other. As used herein, the "prevailing party" shall be the party determined as such by a court of law pursuant to the definition in Code of Civil Procedure Section 1032(a)(4), as it may be subsequently amended. Attorneys' fees shall include attorneys' fees on any appeal. In addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

VIII (§ 800) GENERAL PROVISIONS.

68. **(§ 801) Notices, Demands and Communications Between the Parties.**

Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt; in either case, delivered to the addresses and persons as each party may from time to time by written notice designate to the other and who initially are:

If to Developer:	Woodland State Theatre, LLC Attn: David Corkill 515 E Washington St. Petaluma, California 94952 Fax:707-762-3969
If to City:	City of Woodland Attn: City Manager 300 First Street Woodland, California 95695

A copy to: Kara K. Ueda
Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, California 95814

69. (§ 802) **Nonliability of City Officials and Employees; Conflicts of Interest; Commissions.**

1. **Personal Liability.**

No member, official, employee, agent or contractor of City shall be personally liable to Developer in the event of any default or breach by City or for any amount which may become due to Developer or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section is intended to limit City's liability.

2. **Financial Interest.**

No member, official, employee or agent of City shall have any financial interest, direct or indirect, in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

3. **Commissions.** City has not retained any broker or finder or paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement. City shall not be liable for any real estate commissions, brokerage fees or finders' fees which may arise from this Agreement, and Developer agrees to hold City harmless from any claim by any broker, agent, or finder retained by Developer. City agrees to hold Developer harmless from any claim by any broker, agent, or finder retained by City.

70. (§ 803) **Force Majeure: Extension of Times of Performance.**

In the event that Developer is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of Developer ("Force Majeure"), including, but not limited to, acts of God, labor disputes, sudden actions of the elements, or actions of non-participating federal or state agencies or local jurisdictions, Developer shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected and such failure to perform shall not be considered a material violation or breach, and provided further that:

1. The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;

2. Within fifteen (15) days after the occurrence of the Force Majeure, Developer shall give City written notice describing the particulars of the occurrence;

3. Developer shall use its best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or

other labor dispute on terms which, in the sole judgment of Developer, are contrary to their interest); and

4. When Developer is able to resume performance of its obligations, Developer shall give City written notice to that effect.

5. The following shall not be considered as events or causes beyond the control of Developer, and shall not entitle Developer to an extension of time to perform: (i) Developer's failure to obtain financing for the Project, and (ii) Developer's failure to negotiate agreements with prospective users for the Project or the alleged absence of favorable market conditions for such uses.

6. Times of performance under this Agreement may also be extended by mutual written agreement by City and Developer. The City's appointed representative, shall have the authority on behalf of City to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site.

71. (§ 804) Books and Records.

1. **Developer to Keep Records.**

Developer shall prepare and maintain all books, records and reports necessary to substantiate Developer's compliance with the terms of this Agreement or reasonably required by City.

2. **Right to Inspect.**

Either party shall have the right, upon not less than seventy-two (72) hours notice, at all reasonable times, to inspect the books and records of the other party pertaining to the Site as pertinent to the purposes of this Agreement.

3. **Ownership of Documents.**

Copies of all drawings, specifications, reports, records, documents and other materials prepared by Developer, its employees, agents and subcontractors, in the performance of this Agreement, which documents are in the possession of Developer and are not confidential shall be delivered to City upon request in the event of a termination of this Agreement, and Developer shall have no claim for additional compensation as a result of the exercise by City of its rights hereunder. City shall have an unrestricted right to use such documents and materials as if it were in all respects the owner of the same. Developer makes no warranty or representation regarding the accuracy or sufficiency of such documents for any future use by City, and Developer shall have no liability therefore. Notwithstanding the foregoing, City shall not have any right to sell, license, convey or transfer the documents and materials to any third party, or to use the documents and materials for any other site, except in the case of a termination of this Agreement due to default of Developer.

72. (§ 805) **Assurances to Act in Good Faith**. City and Developer agree to execute all documents and instruments and to take all actions, including the deposit of funds in addition to such funds as may be specifically provided for herein, as may be required in order to consummate conveyance and development of the Site as herein contemplated, and shall use their best efforts to accomplish the closing and subsequent development of the Site in accordance with the provisions hereof. City and Developer shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies set forth in this Agreement, subject to their approval.

73. (§ 806) **Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only and shall not be construed to limit or extend the meaning of this Agreement. This Agreement includes all Attachments hereto, which include the: (1) Legal Description of Property, (2) Site Map and Legal Description of the Site, (3) Schedule of Performance, (4) Scope of Development, (5) Grant Deed, (6) Certificate of Completion, (7) Declaration of Covenants, Conditions and Restrictions and (8) Operating Covenant, which are by this reference incorporated in this Agreement in their entirety. This Agreement also includes the Woodland Downtown Specific Plan and any other documents incorporated herein by reference, as though fully set forth herein.

74. (§ 807) **Entire Agreement, Waivers and Amendments.**

This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Agreement supersedes all negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of City or Developer, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of City and Developer.

75. (§ 808) **Severability.**

In the event any term, covenant, condition, provision or agreement contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any other term, covenant, condition, provision or agreement contained herein.

76. (§ 809) **Time for Acceptance of Agreement by City.**

This Agreement, when executed by Developer and delivered to City, must be authorized, executed and delivered by City, not later than the time set forth in the Schedule of Performance or this instrument shall be void, except to the extent that Developer shall consent in writing to further extensions of time for the authorization, execution, and delivery of this Agreement. After execution by Developer, this Agreement shall be considered an irrevocable offer until such time as such offer shall become void due to the failure of City to authorize, execute and deliver the Agreement in accordance with this Section.

77. **(§ 810) <u>Execution</u>.**

1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.City represents and warrants that: (i) it is organized and existing under the laws of the State of California; (ii) by proper action of City, City has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized representatives; and (iii) the entering into this Agreement by City does not violate any provision of any other agreement to which City is a party.

2. Developer represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Developer, Developer has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Developer does not violate any provision of any other agreement to which Developer is a party.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by City.

"CITY": CITY OF WOODLAND

Date: 6/20/2014

By: ______________________
City Manager

ATTEST:

By: ______________________
City Clerk

APPROVED AS TO FORM:

By: ______________________
City Attorney

"DEVELOPER": WOODLAND STATE THEATRE, LLC, A California limited liability company

Date: JUNE 18, 2014

By: ______________________
Its: MANAGING MEMBER

[END OF SIGNATURES]

Attachment No. 1:	Legal Description of Property
Attachment No. 2:	Site Map and Legal Description of Site
Attachment No. 3:	Schedule of Performance
Attachment No. 4:	Scope of Development
Attachment No. 5:	Grant Deed to Site
Attachment No. 6:	Certificate of Completion
Attachment No. 7:	CC&Rs
Attachment No. 8:	Operating Covenant

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF PROPERTY

[To Be Inserted]

ATTACHMENT NO. 2

SITE MAP AND LEGAL DESCRIPTION OF SITE

[To Be Inserted]

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

	Item To Be Performed	Time For Performance	Agreement Reference
1.	City considers and approves or disapproves DDA	June 17, 2014	
2.	Developer executes and delivers DDA to City	Prior to Opening of Escrow	
3.	Developer provides City with the legal description for the Site	Prior to Opening of Escrow	
4.	Opening of Escrow	As specified in Section 405	405
5.	Developer makes the Deposit of Purchase Price into Escrow	Within 3 business days of Event 4	401
6.	City delivers to Developer Preliminary Title Report	Concurrent with Event 4	409.4
7.	Developer approves or disapproves title exceptions and public easements	Within 15 days of Event 4	409.4
8.	City notifies Developer whether City will cure any disapproved exceptions or public easements	Within 15 days after receipt from Developer of disapproved exceptions	409.4
9.	Developer provides City with evidence of financial capability	Within 30 days of Event 4	410.1
10.	City approves or disapproves evidence of financial capability	Within 15 days of Event 9	410.1
11.	Expiration of the Due Diligence Period	Within 30 days of Event 4	411.1
12.	Developer submits to City application for project entitlements	Within 90 days of Event 11	
13.	City accepts application as complete or advises Developer of deficiencies	Within 45 days after submittal	

14.	City processes project entitlements with City assistance and obtains approval	Within 120 days after acceptance of application by City	
15.	Developer prepares and submits to City any required plans, drawings and specifications	Within 90 days after approval of project entitlements (Event 14)	502.2
16.	City approves (or disapproves) plans, and specifications, drawings	Within 45 days after submittal by Developer	502.5
17.	Developer revises and resubmits plans, drawings, and specifications, if necessary	Within 30 days after disapproval	502.5
18.	Developer submits proof of all necessary insurance, satisfactory to City	Prior to Developer's entry on the Site	506
19.	City reviews and approves or disapproves resubmitted plans, drawings, and specifications, if necessary	Within 15 days after resubmittal	502.5
20.	Developer obtains all necessary permits and approvals, and commences construction of improvements	On or before the date that is 10 days after the date City notifies Developer that City is prepared to issue building permits for the Project	507
21.	Escrow Agent gives notice of fees, charges, costs and documents to close Escrow	One week prior to Closing	408
22.	Deposits into Escrow by City:		
	a) Executed Deed	On or before 1:00 p.m. on the last business date preceding the Close of Escrow	408.3
	b) Estoppel Certificate, if requested in writing by Developer	On or before 1:00 p.m. on the last business date preceding the Close of Escrow	408.3
	c) Payment of City's share of Escrow Costs and funding of the first payment of the City financial assistance under the Operating Covenant	On or before 1:00 p.m. on the last business day preceding the Close of Escrow	408.3

	d) Taxpayer ID Certificate and Subordination Agreement (if any)	Prior to Close of Escrow	408.3
23.	Deposits into Escrow by Developer:		
	a) The balance of the Purchase Price	3 days after request by City	408.3
	b) Estoppel Certificate	On or before 1:00 p.m. on the last business day preceding the Closing date	408.3
	c) Executed copies of CC&Rs and Operating Covenant	On or before 1:00 p.m. on the last business date preceding the Close of Escrow	408.3
	d) Payment of Developer's Share of Escrow Costs	On or before 1:00 p.m. on the last business date preceding the Close of Escrow	408.3
	e) Taxpayer ID Certificate	Prior to Close of Escrow	408.3
24.	City or Developer, as the case may be, may cure any condition to closing disapproved or waived; or may cure any default	Within 30 days after date established therefore, or the date of breach, as the case may be	701
25.	Close of Escrow for Site; recordation and delivery of documents		408.4

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text. In the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Developer and City. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The designated representative of City shall have the authority to approve extensions of time without governing body action not to exceed a cumulative total of 180 days as provided in Section 803.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

A. General

The Developer agrees that the Site shall be developed and improved in accordance with the provisions of this Attachment and the Disposition and Development Agreement ("DDA") including all attachments, and the plans, drawings, and related documents approved by City pursuant hereto. The Developer, its supervising architect, engineers, and contractor shall work with City staff to coordinate the overall design, architecture, site layout, open areas and landscaping with regards to mass, scale, bulk, color and materials. Any questions or issues regarding the Scope of Development not included or addressed in herein or in the DDA shall be resolved in accordance with the Woodland Municipal Code and the Project Entitlements.

B. Design Criteria

The Developer shall be responsible for construction and installation of all Site improvements. The Site will be developed with a 10 screen, 30,000 square foot movie theater which can seat a total of approximately 1,100 people. The movie theater will consist of amenities such as stadium seating and state of the art digital projectors and screens, as well as a stage for live performances in one of the screen rooms. The design and size of the building(s) and related facilities shall be appropriate for the intended use, as approved in the Project Entitlements, and shall meet or exceed the quality of style and architecture standards as identified in the attached conceptual site plan and elevation.

C. Applicable Codes

All improvements shall be constructed in accordance with the California Building Code (with Woodland modifications) and the California Fire Code (with Woodland modifications), the Woodland Municipal Code and current City standards.

ATTACHMENT NO. 5
GRANT DEED

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
City of Woodland
300 First Street
Woodland, CA 95695
Attn: City Clerk

(Exempt from Recording Fee per Gov. Code § 6103)

(Space Above This Line for Recorder's Office Use Only)

GRANT DEED

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, CITY OF WOODLAND, a municipal corporation ("Grantor") acting under the laws of the State of California, hereby grants to WOODLAND STATE THEATRE, LLC, a California limited liability company ("Grantee"), the real property, hereinafter referred to as the "Site," in the City of Woodland, County of Yolo, State of California, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

As conditions of this conveyance, Grantee covenants by and for itself and any successors-in-interest for the benefit of Grantor and the City of Woodland, a municipal corporation, as follows:

1. Governing Documents. The Site is being conveyed: (i) pursuant to a Disposition and Development Agreement ("DDA") entered into by and between Grantor and Grantee dated JUNE 18, 2014; and (ii) subject to the terms of the DDA, this Deed, the CC&Rs, and the Operating Covenant, as those terms are defined in the DDA. The DDA and the Woodland Downtown Specific Plan are public records on file in the office of the City Clerk of the City of Woodland, located at 300 First Street, Woodland, CA, and are incorporated herein by this reference. Any capitalized terms not defined herein shall have the meanings ascribed to them in the DDA. Grantee covenants and agrees for itself and its successors and assigns to develop the Site in accordance with the DDA and thereafter to use, operate and maintain the Site in accordance with the Woodland Downtown Specific Plan, this Deed, the Operating Covenant, and the CC&Rs. The Site is also conveyed subject to easements and rights-of-way of record and other matters of record. In the event of any conflict between this Deed and the DDA, the provisions of the DDA shall control.

2. Uses. Developer may only use the Site for a movie theater, related purposes, and other uses consistent with the zoning of the Site and the terms, covenants and conditions as set forth in the DDA, the Operating Covenant and the CC&Rs. Grantee shall have no right to subdivide, separate, or partition the Site, except upon prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed. Breach of the terms,

covenants, conditions, and provisions of the DDA, the Operating Covenant and CC&Rs shall be a material breach of this Deed. In general, Grantee, shall operate the business on the Site in a prudent manner, exercising customary business practices and hours of operation, to maximize sales and enhance the reputation and attractiveness of the business.

3. Term of Restriction. Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor-in-interest to the Site that Grantee, its successors and such assigns, shall not develop, operate, maintain or use the Site in violation of the terms and conditions of the DDA, this Deed, the CC&Rs, and the Operating Covenant (unless expressly waived in writing by Grantor) during the term of the Operating Covenant; provided that, however, the covenants contained in Sections 7 and 8 shall remain in effect in perpetuity.

4. Right of Re-Entry. Grantee covenants by and for itself and any successors-in-interest that Grantor shall have the right, at its option, to reenter and take possession of the Site hereby conveyed, with all improvements thereon, and re-vest in Grantor the estate conveyed to the Grantee if Grantee or its successor-in-interest commits a material default as described in Section 705 of the DDA. Pursuant to Section 705 of the DDA, Grantor's right to re-enter, repossess, terminate, and re-vest shall be subordinate to and subject to and be limited by, and shall not defeat, render invalid, or limit (1) any mortgage, deed of trust, or other security interests permitted by the DDA, or (2) any rights or interest provided in the DDA for the protection of holders of such mortgages, deeds of trust, or other security interests.

5. Reservation of Existing Streets. Grantor excepts and reserves any existing street, proposed street, or portion of any street or proposed street lying outside the boundaries of the Site which might otherwise pass with a conveyance of the Site.

6. Transfer Restrictions. Grantee covenants that, prior to the recordation of the Certificate of Completion, Grantee shall not transfer the DDA, the Site or any of its interests therein except as provided in Section 303 of the DDA. After the recordation of the Certificate of Completion, Grantee shall not transfer the Sites or any of its interests therein except as provided in the Operating Covenant.

7. Non-Discrimination. Grantee covenants that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Site, or any portion thereof, nor shall Grantee, or any person claiming under or through Grantee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site or any portion thereof. The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

8. Form of Nondiscrimination Clauses in Agreements. Grantee shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, age, ancestry, gender or national origin of any person. All such

deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non segregation clauses:

(a) Deeds: In deeds the following language shall appear: "The grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, gender or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself, or any persons claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) Leases: In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, gender or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(c) Contracts: In contracts pertaining to conveyance of realty the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, gender or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

The foregoing covenants shall remain in effect in perpetuity.

9. Mortgage Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by and approved by Grantor pursuant to the DDA; provided, however, that any successor of Grantee to the Site shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise. The foregoing shall limit any rights of holders of any mortgage, deed of trust, or other financing or security instrument set forth in the DDA.

10. Covenants Run With the Land. The covenants contained in this Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, and shall be binding upon Grantee, its heirs, successors and assigns to the Site, whether their interest shall be fee, easement, leasehold, beneficial or otherwise.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers or agents hereunto as of the date first above written.

"CITY": CITY OF WOODLAND

Date: 6/19/14

By: ______________________
City Manager

ATTEST:

By: ______________________
City Clerk

APPROVED AS TO FORM:

By: ______________________
City Attorney

By its acceptance of this Deed, Grantee hereby agrees as follows:

1. Grantee expressly understands and agrees that the terms of this Deed shall be deemed to be covenants running with the land and shall apply to all of the Grantee's successors and assigns (except as specifically set forth in the Deed).

2. The provisions of this Deed are hereby approved and accepted.

"GRANTEE"

WOODLAND STATE THEATRE, LLC, a California limited liability company

Date: JUNE 18, 2014

By: ______________________
Its: MANAGING MEMBER

By: ______________________
Its: ______________________

Attachment No. 5
Cinema West DDA

82093.00006\887493
6.3

STATE OF CALIFORNIA)
) ss.
COUNTY OF ~~YOLO~~ Sonoma)

On 6/18/14, before me, David J. Adams, personally appeared David Joseph Corkill personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he~~/she/they~~ executed the same in his~~/her/their~~ authorized capacity~~(ies)~~, and that by his~~/her/their~~ signature~~(s)~~ on the instrument the person(~~s~~) or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

DAVID J. ADAMS
COMMISSION # 2003648
NOTARY PUBLIC CALIFORNIA
SONOMA COUNTY
MY COMM. EXP JAN. 29, 2017

STATE OF CALIFORNIA)
) ss.
COUNTY OF YOLO)

On June 23, 2014, before me, Jennifer Robinson, personally appeared Paul Navazio personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

JENNIFER ROBINSON
Commission # 2004918
Notary Public - California
Yolo County
My Comm. Expires Jan 21, 2017

Attachment No. 5
Cinema West DDA

82093.00006\887493
6.3

EXHIBIT "A"

TO ATTACHMENT NO. 5

LEGAL DESCRIPTION OF SITE

[To Be Inserted]

ATTACHMENT NO. 6

CERTIFICATE OF COMPLETION

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Woodland
300 First Street
Woodland, CA 95695
Attn: ________________

(Space Above This Line for Recorder's Office Use Only)

CERTIFICATE OF COMPLETION

WHEREAS, by that certain Disposition and Development Agreement ("Agreement") dated June 17, 2014, by and between CITY OF WOODLAND, a public body, corporate and politic ("City"), and WOODLAND STATE THEATRE, LLC, a California limited liability company, ("Developer"), Developer has agreed to develop that certain real property ("Project") situated in the City of Woodland, California, described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, as referenced in the Agreement, City shall furnish Developer with a Certificate of Completion upon completion of construction and development of the Project, which certificate shall be in such form as to permit it to be recorded in the Official Records of the County Recorder of the County of Yolo, California; and

WHEREAS, the Agreement provided for certain covenants to run with the land, which covenants were incorporated in the Deed (as defined in the Agreement), Operating Covenant (as defined in the Agreement), or in that certain Declaration of Covenants, Conditions and Restrictions recorded as Instrument No. ________ of the Official Records of the County of Yolo Recorder ("Declaration"); and

WHEREAS, this Certificate of Completion shall constitute a conclusive determination by City of the satisfactory completion by Developer of the construction and development required by the Agreement and of Developer's full compliance with the terms of the Agreement with respect to the construction and development of the Project, but not of the Deed, the Declaration nor the Operating Agreement (as defined in the Agreement), the provisions of which shall continue to run with the land pursuant to their terms; and

WHEREAS, Cityy has conclusively determined that the construction and development of the Project on the real property described in Exhibit "A" required by the Agreement has been satisfactorily completed by Developer in full compliance with the terms of the Agreement.

NOW, THEREFORE,

1. The improvements required to be constructed as the Project have been satisfactorily completed in accordance with the provisions of said Agreement.

2. This Certificate of Completion shall constitute a conclusive determination of satisfaction of the agreements and covenants contained in the Agreement with respect to the obligations of the Developer for the Project, and its successors and assigns, to construct the improvements and the dates for the beginning and completion thereof. After the date hereof, City shall not have any rights or remedies under the Agreement, except as otherwise set forth in the Deed, the Operating Covenant and the Declaration.

3. This Certificate of Completion, except as expressly provided otherwise herein, shall not constitute evidence of Developer's compliance with the Deed, the Operating Covenant or the Declaration, the provisions of which shall continue to run with the land.

4. This Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof.

5. This Certificate of Completion is not a Notice of Completion as referred to in California Civil Code Section 3093.

6. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the Agreement or any other provisions of the documents incorporated therein.

IN WITNESS WHEREOF, City has executed this Certificate of Completion this ____ day of ________________, _______.

"CITY": CITY OF WOODLAND

Date: _________________________

By: _________________________
City Manager

ATTEST:

By: _________________________
City Clerk

APPROVED AS TO FORM:

By: _________________________
City Attorney

CONSENT TO RECORDATION

WOODLAND STATE THEATRE, LLC, a California limited liability company, ("Developer") defined herein and the owner of the fee title to the real property legally described herein, hereby consents to the recordation of this Certificate of Completion against the real property legally described herein.

"DEVELOPER": WOODLAND STATE THEATRE, LLC, a California limited liability company

Date: JUNE 18, 2014

By: ______________________
Its: MANAGING MEMBER

By: ______________________
Its: ______________________

STATE OF CALIFORNIA)
) ss.
COUNTY OF ~~YOLO~~ Sonoma)

On the 18 day of June, 20~~10~~14, before me, the undersigned, a Notary Public, in and for said State and County, personally appeared David Joseph Corkill, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument Certification of Completion, a public body, corporate and politic therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature of Notary

(SEAL)

DAVID J. ADAMS
COMMISSION # 2003648
NOTARY PUBLIC CALIFORNIA
SONOMA COUNTY
MY COMM. EXP JAN. 29, 2017

STATE OF CALIFORNIA)
) ss.
COUNTY OF YOLO)

On __________, 2010, before me, ________________________, personally appeared ______________________________ personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____
Signature of Notary

[SEAL]

EXHIBIT "A"

TO ATTACHMENT NO. 6

LEGAL DESCRIPTION OF SITE

[To Be Inserted]

ATTACHMENT NO. 7

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Woodland
300 First Street
Woodland, California 95695
Attn: ________________

(Space Above This Line for Recorder's Office Use Only)

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 18TH day of JUNE, 2014 by and among WOODLAND STATE THEATRE, LLC, a California limited liability company ("Declarant") and THE CITY OF WOODLAND, a municipal corporation ("City").

RECITALS:

1. Declarant is the fee owner of that certain real property located in the City of Woodland, County of Yolo, State of California more particularly described on Exhibit "1" attached hereto and incorporated herein by reference ("Site").

2. Declarant has entered into a Disposition and Development Agreement ("Agreement") with City which Agreement places certain restrictions on the Site. Pursuant to the City's development requirements, the City has approved or will approve a site plan for the development of the Site ("Site Plan"), which plan places certain restrictions on the Site. The Agreement and Site Plan (i) are on file and may be reviewed in the office of the Community Development Director in Woodland City Hall, 300 First Street, Woodland California, 95695 and (ii) are each incorporated herein by this reference and made a part hereof as though fully set forth herein.

3. Declarant and City intend, in exchange for entering into the Agreement by City and the approval of the Site Plan by City, that the Declarant, its successors and assigns hold, sell, and convey the Site subject to the covenants, conditions, restrictions, and reservations set forth in this Declaration and that City shall have the right and power to enforce the covenants, conditions, restrictions, and reservations as provided herein.

6. Declarant desires to establish and grant certain covenants, conditions and restrictions upon the Site for the purpose of enhancing and protecting the value, desirability and attractiveness of the Site and effectuating the Woodland Downtown Specific Plan. Such covenants, conditions and restrictions shall bind the Site, the Declarant and its successors and assigns.

NOW, THEREFORE, the Declarant covenants and agrees, for itself, its heirs, executors and assigns, and all persons claiming under or through it, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants and restrictions hereinafter set forth.

TERMS AND CONDITIONS

ARTICLE 1
COVENANTS, CONDITIONS AND RESTRICTIONS

a) General. The Site shall be developed and used only as permitted by the restrictions contained in the Site Plan, Woodland Downtown Specific Plan and the Agreement.

b) Use. Developer acknowledges and agrees it may only use the Site for a movie theater, related purposes, and other uses consistent with the zoning of the Site and the terms, covenants and conditions as set forth in the Agreement, the Operating Covenant and this Declaration. In general, Developer shall operate the business conducted by it on the Site in a prudent manner, exercising customary business practices and hours of operation, to maximize sales and enhance the reputation and attractiveness of the Site.

c) Maintenance Agreement. Declarant, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:

i) Maintenance and repair of the Site and all related on-site improvements and landscaping thereon at its sole cost and expense, including, without limitation, buildings, lighting, signs and walls, in a first class condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction over the Site. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal, and (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition, or the replacement of damaged or dying landscaping with equivalent landscaping materials of then-comparable size and maturity.

ii) Maintenance of the Site in such a manner as to avoid (i) the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare or (ii) a condition of deterioration or disrepair which causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Site.

d) Compliance With Ordinances. Declarant shall comply with all ordinances, regulations and standards of the City applicable to the Site. Declarant shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.

e) Outside Storage. Other than the storage of trash or other storage in any outside storage areas approved by City or as required by law, no storage of any kind shall be permitted outside the building(s) located on the Site. Adequate trash enclosures shall be provided and screened. Locations of such areas and types of screening must be approved by the City. Gates for trash storage areas shall be kept closed at all times except when in actual use.

f) Buildings and Equipment. Any construction, repair, modification or alteration of any buildings, equipment, structures or improvements on the Site shall be subject to the following restrictions:

i) All mechanical and electrical fixtures and equipment to be installed on the roof or on the ground shall be adequately and decoratively screened. The screening must blend with the architectural design of the building(s). Equipment on the roof must be at least six (6) inches lower than the parapet line and adequately screened. All details and materials of said screening shall be approved by the City prior to installation.

ii) The texture, materials and colors used on the buildings, as well as the design, height, texture and color of fences and walls shall be subject to the approval of the City.

iii) Signs on the Site shall conform to the standards and ordinances of the City and to a uniform design theme approved by the City. Any signs installed on the Site shall conform to said design scheme and shall be approved by the City prior to installation.

iv) Lights installed on the building shall be a decorative design. No lights shall be permitted which may create any glare or have a negative impact on the residential areas, if any, existing around the Site. No light stand on any portion of the Site shall be higher than fifteen (15) feet. The design and location of any lights shall be subject to the approval of the City.

v) No fences, signs, gas pumps, or any other similar facilities shall be constructed or provided on the Site without the prior approval of the City.

g) Public Agency Rights of Access. Developer hereby grants to the City and other public agencies the right, at their sole risk and expense, to enter the Site or any part thereof at all reasonable times with as little interference as possible for the purpose of construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the Site. Any damage or injury to the Site or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry.

ARTICLE 2
ENFORCEMENT

a) Termination. No breach of this Declaration shall entitle any party to cancel, rescind or otherwise terminate this Declaration, or excuse the performance of such party's obligations hereunder; provided that, however, this limitation shall not affect in any manner any other rights or remedies which the parties may have by reason of such breach.

b) Injunction. Notwithstanding anything contained herein to the contrary, in the event of any violation or threatened violation of any of the terms, covenants, restrictions and conditions contained herein, in addition to the other remedies herein provided, the parties hereto shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

c) Failure to Perform; Lien. If any owner of the Site defaults on the performance of any of its obligations hereunder, City, its employees, contractors and agents may, at their sole option, and after making reasonable demand of the owner of the Site that it cure said default, enter onto the Site for the purpose of curing the default. In making an entry, City shall give the owners of the Site, or their representative, reasonable notice of the time and manner of said entry, and said entry shall only be at such times and in such manners as is reasonably necessary to carry out this Agreement. In such event, the owner of the Site shall reimburse City for all costs and expenses related to the curing of said default. If City is not reimbursed for such costs by the owner of the Site within 30 days after giving notice thereof, the same shall be deemed delinquent, and the amount thereof shall bear interest at the legal rate until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorneys' fees shall be a personal obligation of the owner of the Site and City may record a lien, with power of sale, upon the Site. City may bring an action at law against the owner of the Site to pay any such sums.

Upon the timely curing of any default for which a lien was recorded, City shall record an appropriate release of such lien, and sign any other documents reasonably necessary to satisfy title insurance requirements, upon payment by the owner of the Site of a reasonable fee to cover the costs of preparing and recording such release, together with the payment of such other costs, including without limitation, reasonable attorneys' fees, court costs, interest or other fees which have been incurred.

ARTICLE 3
ENCUMBRANCES, MORTGAGE PROTECTION AND TAXES

a) Developer's Breach Not to Default Mortgage Lien. Declarant's breach of any of the covenants or restrictions contained in this Declaration or the Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Site or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Declaration or the Agreement; but, unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservations of this Declaration and the Agreement shall be binding and effective against the holder of any such mortgage or deed of trust and any owner of any of the Site or any part thereof whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

b) Amendments or Modifications to Declaration. No purported rule, regulation, modification, amendment and/or termination of this Declaration or the Agreement shall be binding upon or affect the rights of any mortgagee holding a mortgage or deed of trust upon the Site that is recorded in the Office of the County of Yolo Recorder prior to the date any such rule, regulation, modification, amendment or termination is recorded in such office, without the prior written consent of such mortgagee.

c) Liens Subordinate. Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership interest or leasehold or subleasehold estate in and to the Site and any purchaser at any foreclosure or trustee's sale (as well as any by deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such monetary lien, but otherwise subject to the provisions hereof; provided that, after the foreclosure of any such mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure, assessed hereunder to the purchaser at the foreclosure sale, as owner of the Site after the date of such foreclosure sale, shall become a lien upon the Site and may be perfected and foreclosed as provided in Section 2(c).

d) Payment of Taxes and Assessments. Declarant shall pay, when due, all real estate taxes and assessments levied against the Site. Nothing herein contained shall be deemed to prohibit Declarant from contesting the validity or amounts of any tax or assessments nor to limit the remedies available to Declarant with respect thereto. Declarant acknowledges that City is relying on the receipt of *ad valorem* taxes to fund the payment for the Operating Covenant. Should Declarant fail to pay all *ad valorem* taxes when due, or if Declarant causes a substantial reduction in the amount of *ad valorem* taxes levied against the Site, then either the term of the Operating Covenant will be extended accordingly.

ARTICLE 4
COVENANTS TO RUN WITH THE LAND

This Declaration is designed to create equitable servitudes and covenants running with the Site. Declarant hereby declares that all of the Site shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to these covenants, conditions, restrictions and equitable servitudes, all of which are for the purposes of uniformly enhancing or protecting the value, attractiveness and desirability of the Site and effectuating the Woodland Downtown Specific Plan. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall: (i) run with the Site, (ii) be binding upon all persons having any right, title or interest in the Site, or any part thereof, their heirs, successive owners and assigns, and (iii) shall be binding upon Declarant, its successors and assigns and successors in interest.

ARTICLE 5
TERM

The covenants, conditions and restrictions contained in this Declaration shall remain in effect during the term of the Operating Covenant, notwithstanding anything to the contrary herein. Upon expiration of the term of this Declaration, the covenants, conditions and restrictions described herein shall cease to be of binding effect and the City shall, after written request of the Declarant, execute and record such instruments as the Declarant reasonably requires to release and relinquish this Declaration. In addition, Declarant shall have the right to execute and record such instruments as may be reasonably required to release and relinquish this Declaration and any amendment thereto.

ARTICLE 6
MISCELLANEOUS

a) Modification. This Declaration may not be modified, terminated or rescinded, in whole or in part, except by a written instrument duly executed and acknowledged by the parties hereto, their successors or assigns, and duly recorded in the Office of the County Recorder, County of Yolo.

b) Amendments. The amendment of any provision of this Declaration enforceable by City shall require the prior written consent of City.

c) Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of California.

d) Severability. The invalidity or unenforceability of any provision of this Declaration with respect to a particular party or set of circumstances shall not in any way affect the validity and enforceability of any other provision hereof, or the same provision when implied to another party or to a different set of circumstances.

e) Notices. Any notice to be given under this Declaration shall be given by personal delivery or by depositing the same in the United States Mail, certified or registered, postage prepaid, at the following address:

City:	City of Woodland 300 First Street Woodland, CA 95965 Attn: City Manager
With Copy to:	Kara K. Ueda Best Best & Krieger LLP 500 Capitol Mall, Suite 1700 Woodland, CA 95814
Declarant:	Woodland State Theatre, LLC Attn: David Corkill 515 E Washington St. Petaluma, California 94952

Any notice delivered personally shall be effective upon delivery. Any notice given by mail as above provided shall be effective forty-eight (48) hours after deposit in the mail. Any party may change address for notice by giving written notice of such change to the other party.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

"Declarant"

"DEVELOPER": WOODLAND STATE THEATRE, LLC, a California limited liability company

By: ______________________________
Its: MANAGING MEMBER

By: ______________________________
Its: ______________________________

EXHIBIT "A"

TO ATTACHMENT NO. 7

LEGAL DESCRIPTION OF SITE

[To Be Inserted]

STATE OF CALIFORNIA)
) ss.
COUNTY OF ~~YOLO~~ Sonoma)

On 6/18/14, before me, David J. Adams notary personally appeared David Joseph Cartell personally known to me (or proved to me on the basis of satisfactory evidence) to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~ or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

DAVID J. ADAMS
COMMISSION # 2003648
NOTARY PUBLIC CALIFORNIA
SONOMA COUNTY
MY COMM. EXP JAN. 29, 2017

STATE OF CALIFORNIA)
) ss.
COUNTY OF YOLO)

On ____________, before me, ____________________, personally appeared ______________________________ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

ATTACHMENT NO. 8
OPERATING COVENANT

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Woodland
300 First Street
Woodland, California 95695
Attn: City Manager

(Exempt from Recording Fee per Gov. Code § 6103)

(Space Above This Line for Recorder's Office Use Only)

OPERATING COVENANT

THIS OPERATING COVENANT ("Covenant") is made this 18TH day of JUNE, 2014 by and among WOODLAND STATE THEATRE, LLC, a California limited liability company ("Developer") and THE CITY OF WOODLAND, a municipal corporation ("City").

1. **Project.** Pursuant to a Disposition and Development Agreement by and between City and Developer dated JUNE 18, 2014 ("DDA"), City agreed to sell the Property, as described on Exhibit A attached hereto and incorporated herein, to Developer for Developer to develop and operate a movie theater and related facilities (collectively, "Project"). Developer covenants and agrees for itself, its successors and assigns, and any successor-in-interest to the Site, or part thereof, that during the term of this Covenant, Developer shall only use the Site for the Project and such ancillary and related uses as may be approved by the City. If at any time the Site is not used as a movie theater for a period of six (6) consecutive months, City shall have the right, at its option, and in addition to any other remedy available to City, to reenter and take possession of the Site, with all improvements thereon, and to terminate and re-vest in City the estate conveyed to Developer.

2. **Operating Covenant.** In exchange for the compensation described in Section 4 of this Covenant, Developer covenants and agrees for itself, its lessees, successors and assigns and any successor-in-interest to the Site, or part thereof, that Developer shall continuously operate the Project on the Site and comply with all provisions of the Declaration of Covenants, Conditions & Restrictions ("CC&Rs") for the Project as required by the DDA.

3. **Term.** This Covenant shall and all obligations contained herein shall be enforceable by the City against Developer for a period of not less than ten (10) years from and after issuance of a Certificate of Completion for the Project. Except as provided in Section 4 below, and provided Developer is not in Default hereunder and remains in reasonable compliance with the material terms and conditions of this Covenant and the CC&Rs, on the date that is ten (10) years following issuance of a Certificate of Completion of the Project, this Covenant shall expire and be of no further force or effect, and City at the request of Developer

shall within thirty (30) days thereof execute a document in recordable form removing this Covenant from title and deliver the document to Developer. Developer agrees to record the document at Developer's cost. All documents to be recorded as herein provided shall be prepared by the Developer at Developer's cost, and their form and content shall be subject to City's reasonable approval.

4. **Compensation for Operating Covenant.** Upon Closing of Developer's purchase of the Property and, in consideration of Developer's operation of the Project on the Site in a manner consistent with the use and maintenance covenants contained in the CC&Rs, City shall purchase this Covenant for the Project for consideration in the amount of Two Million Seven Hundred Fifty Thousand Dollars ($2,750,000). The consideration for this Covenant shall be paid by City to Developer in ten equal payments of Two Hundred Seventy Five Thousand Dollars ($275,000), which payments shall be made in a manner and through a structure as agreed upon between City, Developer, and Developer's construction and/or permanent lender for the Project. The first payment required hereunder shall be made upon Close of Escrow for the Property (which shall occur simultaneously with the recordation of this Covenant) and each subsequent payment shall be made annually on the anniversary date of Close of Escrow.

Nothing in this Covenant shall be construed to be a pledge or commitment by City of any specific tax revenue, grant funds, or other specific monies, funds or revenues to which City is in possession of or may become entitled to receive. City, in its sole discretion, may use any revenue, funds, or monies available to City, as may be allowed for by law, to provide the loan described in this Section.

5. **Repayment.** In the event Developer is in Default of this Covenant and such Default remains uncured after the period provided to cure in the applicable document, Developer shall repay to City the full amount that has been disbursed to Developer as of the date of the event giving rise to such default, less Two Hundred Seventy Five Thousand Dollars ($275,000) for each full year following issuance of a Certificate of Completion during which Developer was not in Default of this Covenant.

7. **Taxes.** Developer shall pay, when due, (a) all *ad valorem* property taxes levied against the Site, (b) any special assessments or special taxes levied against the Site, (c) all taxes payable under the California Bradley-Burns Uniform Local Sales & Use Tax Laws, Revenue and Taxation Code § 7200, *et seq.,* (d) all temporary occupancy taxes, and (e) all other taxes, any portion of which is allocated to, or received by City.

8. **Default.** Any failure or delay by either party to timely perform any covenant of this Covenant or the CC&Rs for the Site shall constitute a Default under this Covenant, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion. The injured party shall give written notice of Default to the party in Default, specifying the Default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default. Any Default of this Covenant or

the CC&Rs by Developer which remains uncured after the cure period shall be a breach of the Promissory Note, in which event the entire outstanding unearned principal balance of the Promissory Note plus all accrued interest shall become due and payable by Developer on demand by City.

9. **Restrictions on Transfer.**

a. **Transfer Defined.**

As used in this section, the term "transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Covenant, the Site, or the improvements thereon. A transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Developer in the aggregate taking all transfers into account on a cumulative basis. In the event Developer or the applicable successor is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of Developer or of beneficial interests of such trust. In the event that Developer is a limited or general partnership, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the limited or general partnership interest. In the event that Developer is a joint venture, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all transfers into account on a cumulative basis.

b. **Restrictions Prior to Expiration of Covenant.**

Prior to expiration of this Covenant, Developer shall not transfer this Covenant or any of Developer's rights hereunder, or any interest in the Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, which shall not be unreasonably withheld, conditioned or delayed, and if so purported to be transferred, the same shall be null and void. The City's decision to approve or disapprove a transfer shall be final. In considering whether it will grant approval to any transfer by Developer of its interest in the Site, City shall consider factors such as (i) whether the continued operation of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Developer's obligations hereunder; and (iii) the proposed assignee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of specific written agreement by City, prior to the expiration of this Covenant, no assignment or transfer by Developer of all or any portion of its interest in the Site or this Covenant (including without limitation an assignment or transfer not requiring City approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the operation of the Project with respect to that portion of the Site which is so transferred. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form approved by City assuming such obligations. Upon City's approval of a transfer and the execution of an assumption agreement, Developer shall be released from all further obligations under this Covenant, the Deed, and the CC&Rs.

c. **Exceptions.**

The foregoing prohibition shall not apply to any of the following:

(1) Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 512 of the DDA, but Developer shall notify City in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Site.

(2) Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the improvements on the Site, including any additional costs of construction, whether direct or indirect, unless additional loan funds are needed by Developer to complete the Project, in which event such restructuring or refinancing loan(s) may exceed said outstanding balance; provided, however, all such additional funds shall be used by Developer solely for the purposes of completing the Project, and such restructuring or refinancing shall comply with City's subordination policy.

(3) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate the development of the Site.

(4) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(5) A sale or transfer of fifty percent (50%) or more of ownership or control interest between members of the same family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of members of the trustor's family, transfers to a corporation or partnership or other legal entity in which the members of the transferor's family have a controlling majority interest of fifty-one percent (51%) or more.

(6) A conveyance of the Site to any entity which controls, is controlled by or is under common control with Developer, or to a partnership or other legal entity of which Developer is the managing general partner or equivalent.

IN WITNESS WHEREOF, the undersigned have executed this Covenant as of the date first written above.

"CITY": CITY OF WOODLAND

By: ______________________
City Manager

Date: 6/20/2014

ATTEST:

By: ______________________
City Clerk

APPROVED AS TO FORM:

By: ______________________
City Attorney

By: ____________(Name and Title)

"DEVELOPER"

STATE THEATRE, LLC, a California limited liability company

By: ______________________
Its: MANAGING MEMBER

By: ______________________
Its: ______________________

EXHIBIT "A"

TO ATTACHMENT NO. 8

LEGAL DESCRIPTION OF SITE

[To Be Inserted]

STATE OF CALIFORNIA)

) ss.

COUNTY OF ~~YOLO~~ Sonoma)

On 6/18/14, before me, David J. Adams, notary, personally appeared David Joseph Clark, II

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(~~s~~) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/her/their signature(~~s~~) on the instrument the person(~~s~~) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

DAVID J. ADAMS
COMMISSION # 2003648
NOTARY PUBLIC CALIFORNIA
SONOMA COUNTY
MY COMM. EXP JAN. 29, 2017

STATE OF CALIFORNIA)

) ss.

COUNTY OF YOLO)

On June 23, 2014, before me, Jennifer Robinson, personally appeared Paul Navazio

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

JENNIFER ROBINSON
Commission # 2004018
Notary Public - California
Yolo County
My Comm. Expires Jan 21, 2017

Attachment No. 8
Cinema West DDA

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[SEAL]

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RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WOODLAND AUTHORIZING THE THE CITY MANAGER TO ENTER INTO AN AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH WOODLAND STATE THEATRE, LLC AND TO ACQUIRE AN OPERATING COVENANT IN PROPERTY FROM THE STATE THEATRE MANAGEMENT GROUP

WHEREAS, the City of Woodland ("City") is the owner of certain property located at 322 Main Street in the City of Woodland, County of Yolo, State of California (the "Property"), which Property is known as the State Theatre; and

WHEREAS, the City wishes to sell the Property to Woodland State Theatre, a California limited liability company ("Developer"), and Developer wishes to purchase the Property; and

WHEREAS, Developer desires to redevelop the Property and adjacent property as a ten screen, approximately 30,400 square-foot movie theater and restaurant which will include amenities found in other first-class state of the art movie theaters located in the greater Sacramento region ("Project"); and

WHEREAS, on June 17, 2014, the City and Developer entered into a Disposition and Development Agreement (the "Original DDA") for the sale of the Property for the Project subject to the terms and conditions as set forth in the Original DDA; and

WHEREAS, the development of the Project will allow the Property to be utilized in a manner that benefits and serves the needs of the community, will create up to twenty new jobs in the City, and is in furtherance of the Woodland Downtown Specific Plan and the goals set forth in the former Redevelopment Plan of the Redevelopment Agency of the City of Woodland; and

WHEREAS, the City and Developer desire to enter into an Amended and Restated DDA to remove from the terms of the DDA the requirement to pay $2,750,000.00 by the City to Developer in exchange for an operating covenant that would ensure the continued operation of the Project on the Property; and

WHEREAS, the City entered into that certain Agreement Regarding Expenditure of Bond Proceeds with the Successor Agency to the Redevelopment Agency of the City of Woodland (the "Successor Agency"), pursuant to which the Successor Agency agreed to transfer the remaining proceeds from Series 2007A and Series 2007B Bonds previously issued by the Redevelopment Agency of the City of Woodland (the "Bond Proceeds"), and the City agreed that it shall use the Bond Proceeds solely and exclusively with the covenants of the Bonds and the provisions of the Community Redevelopment Law (Health & Safety Code Section 33000 *et seq.*) (the "CRL") that apply to the expenditure of redevelopment funds; and

WHEREAS, Developer is concurrently seeking loan assistance from the State Theatre Management Group, a California non-profit corporation, in exchange for which Developer has agreed to provide an operating covenant for the continued operation of the Project for not less than fifteen (15) years; and

WHEREAS, in order to ensure the development of the Project and the continued operation of a movie theater and restaurant as contemplated by Developer, the City desires to use $2,500,000.00 of the Bond Proceeds to acquire the operating covenant from the State Theatre Management Group, in order to ensure the continued operation of the Project for not less than ten years; and

WHEREAS, the acquisition of any interest in real property in furtherance of the redevelopment of a redevelopment project area is an allowable use of redevelopment funds under CRL Section 33390, the operating covenant is an interest in real property and the redevelopment of the Property with the Project is consistent with and would further the goals of the former Redevelopment Plan of the Redevelopment Agency of the City of Woodland, and therefore the use of Bond Proceeds to acquire the operating covenant is an allowable use under the Agreement Regarding Expenditure of Bond Proceeds; and

WHEREAS, for the purpose of transferring the Property to Developer, setting forth the terms and conditions by which Developer will construction the Project on the Property and acquiring the operating covenant, Developer and City have negotiated that certain Amended and Restated Disposition and Development Agreement by and between the City of Woodland and Woodland State Theatre, LLC ("Amended DDA") attached hereto as Exhibit 1; and

WHEREAS, for the purpose of acquiring the operating covenant for the Property from the State Theatre Management Group, City and State Theatre Management Group are negotiating the terms of that certain Operating Covenant Acquisition Agreement ("Operating Covenant Agreement") attached hereto as Exhibit 2; and

WHEREAS, the City desires to enter into the Amended DDA and the Operating Covenant Agreement, provided that Developer can secure loan assistance from the State Theatre Management Group and enter into agreements with the State Theatre Management Group pursuant to which it agrees to provide an operating covenant for the continued operation of the Project for a period of not less than ten (10) years; and

WHEREAS, approval of the Amended DDA, the Operating Covenant Agreement and the conveyance are categorically exempt from the California Environmental Quality Act ("CEQA") because the Agreement and conveyance are part of an in-fill development project as described in State CEQA Guidelines Section 15332 and involves a minor alteration of land as described under Section 15305; and

WHEREAS, pursuant to the foregoing, the City Council has determined that a Notice of exemption for sale of the Property should be filed pursuant to CEQA, the State CEQA Guidelines and the Agency's Local CEQA Guidelines.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODLAND DOES HEREBY RESOLVE AND FIND AS FOLLOWS:

Section 1. **Recitals.** The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. **Approval of Amended and Restated Disposition and Development Agreement.** The City Council hereby approves the Amended DDA, in substantially the form on file with the City Clerk of the City of Woodland together with non-substantive changes and amendments as may be approved by both the City Manager and City Attorney, and authorizes the City to enter into such Amended DDA provided that the Developer and State Theatre Management Group enter into agreements as necessary for the State Theatre Management Group to provide loan assistance to Developer, and the Developer to provide an operating covenant for the continued operation of the Project. Unless and until the City enters into the Amended DDA with Developer, the Original DDA shall remain in full force and effect.

Section 3. **Approval of Operating Covenant Acquisition Agreement.** The City Council hereby approves the Operating Covenant Acquisition Agreement, in substantially the form on file with the City Clerk of the City of Woodland together with non-substantive changes and amendments as may be approved by both the City Manager and City Attorney, and changes as necessary to conform this Agreement with the agreements entered into by and between the Developer and State Theatre Management Group. The City Council authorizes the City to enter into such Operating Covenant Acquisition Agreement provided that the Developer and State Theatre Management Group enter into agreements as necessary for the State Theatre Management Group to provide loan assistance to Developer, and the Developer to provide an operating covenant for the continued operation of the Project. City shall not enter into the Operating Covenant Acquisition Agreement unless and until the City enters into the Amended DDA with Developer.

Section 4. **Appropriation of Bond Proceeds.** The City Council hereby authorizes the appropriation of the former Redevelopment Agency Bond proceeds in accordance with the Agreement Regarding the Expenditure of Bond Proceeds between the Successor Agency and the City in an amount sufficient to satisfy the City's obligations under the Operating Covenant Acquisition Agreement by and between the City of Woodland and State Theatre Management Group.

Section 5. **Severability.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Oversight Board declares that the Oversight Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 4. **Implementation of Agreement.** The City Manager is hereby authorized and directed to take any actions and execute any and all necessary documents to implement the Agreement and this Resolution.

<u>Section 5.</u> **<u>Notice of Exemption</u>.** The City Council hereby directs City staff to file a Notice of Exemption within five (5) days following the approval of this Resolution.

<u>Section 6</u>. **<u>Effective Date</u>.** This Resolution shall take effect immediately upon its adoption.

[Continued on next page]

APPROVED AND ADOPTED THIS 16th day of December, 2014.

____
Tom Stallard, Mayor
City of Woodland

ATTEST:

____
Ana Gonzalez, City Clerk
City of Woodland

AMENDED AND RESTATED

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

THE CITY OF WOODLAND, a municipal corporation

and

Woodland State Theatre, LLC a California limited liability company

Dated: _______________

AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of the date executed by City, by and between the City of Woodland ("City"), and Woodland State Theatre, LLC ("Developer").

RECITALS

A. City is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the laws of the State of California.

B. City is the owner of real property located at 322 Main Street, in the City of Woodland, County of Yolo, State of California ("Property") and which is more fully described in Attachment No. 1, attached hereto and incorporated herein by this reference.

C. Developer is a limited liability company formed in order to pursue the development of the Project, with the involvement and consent of RCI Development, a California corporation, pursuant to that certain Agreement to Negotiate Exclusively, entered into by and between the City and RCI Development.

D. On June 17, 2014, the City and Developer entered into that certain Disposition and Development Agreement (the "Original Agreement") pursuant to which City would sell the Property to Developer pursuant to certain terms and conditions as set forth therein.

E. In order to facilitate the ultimate development of the Property, City and Developer desire to amend the terms and conditions pursuant to which the City will sell the Property to Developer, as more specifically set forth in this Agreement, which, upon execution by both the City and Developer, shall replace and supersede the Original Agreement in its entirety.

F. As described in this Agreement, City desires sell the Property to Developer, subject to the terms and conditions set forth in this Agreement, and for the purposes set forth herein. At its sole cost, Developer shall obtain and provide City with all engineering information necessary, to the satisfaction of City, for City to prepare and submit the parcel map necessary to create the Site as a single legal lot.

E. City desires to further implement the Woodland Downtown Specific Plan through the sale of the Property, which is located within the area covered by the Specific Plan, to Developer for the construction of the "Project," as that term is defined below.

F. Developer is prepared to develop the Site in accordance with the terms and conditions set forth in this Agreement.

Therefore, City and Developer agree as follows:

I (§100) PURPOSE OF THE AGREEMENT.

1. **(§101) Purpose of the Agreement.**

This Agreement shall replace and supersede the Original Agreement in its entirety. Upon execution of this Agreement by both parties, the Original Agreement shall be of no further force and effect. This Agreement and the Attachments hereto are intended to provide for the disposition that certain real property designated herein as the "Property" and the development of the "Project" on that certain real property designated herein as the "Site," which includes the Property. The development of the Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Woodland and the welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.

Through this Agreement, City desires to facilitate Developer's development of the Project, which is intended to include the construction of a 10-screen, 30,400 square-foot movie theater and restaurant. It is anticipated that the Project will also create a minimum of 20 new jobs. Moreover, the operation of a movie theater on the Site will generate sales tax revenue, which funds will further assist in the implementation of the goals of the Woodland Downtown Specific Plan.

II (§200) DEFINITIONS.

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

2. **(§201) Agreement.**

The term "Agreement" shall mean this entire Disposition and Development Agreement, including all Attachments, which Attachments are a part hereof and incorporated herein in their entirety, and all other documents incorporated herein by reference.

3. **(§203) Certificate of Completion.**

The term "Certificate of Completion" shall mean that document prepared in accordance with Section 513 of this Agreement, in the form attached as Attachment No. 6, which shall evidence that the construction and development of the improvements required by this Agreement have been satisfactorily completed.

4. **(§204) City.**

The term "City" shall mean the City of Woodland.

5. **(§205) Closing.**

The term "Closing" shall mean the closing of Escrow by the Escrow Agent's distribution of funds and documents received through Escrow to the party entitled thereto as provided herein, which Closing shall occur on or before the date established in the Schedule of Performance.

6. **(§206) Completion.**

The term "Completion" shall mean the Completion of the Project as evidenced by the City's issuance of a Certificate of Completion for the Project. Upon Completion, the Developer's obligations under this Agreement shall terminate and the parties' rights and obligations toward each other shall be as set forth in the Declaration of Covenants, Conditions and Restrictions.

7. **(§207) Covenants, Conditions and Restrictions.**

The term "CC&Rs" or "Declaration of Covenants, Conditions and Restrictions" shall mean that Declaration of Covenants, Conditions and Restrictions running with the land and providing for the proper maintenance of the facilities and improvements and marketing of the movie theater. Prior to the Closing, Developer shall execute and record the CC&Rs, in the form attached hereto as Attachment No. 7, as further described in Section 601.

8. **(§208) Days.**

The term "days" shall mean calendar days and the statement of any time period herein shall be calendar days, and not working days, unless otherwise specified.

9. **(§209) Deed.**

The term "Deed" shall mean the Grant Deed conveying the Property to Developer, which Deed shall be in the form attached hereto as Attachment No. 5.

10. **(§210) Deposit.**

The term "Deposit" shall mean the funds required to be deposited into Escrow by Developer within three (3) days of the Opening of Escrow, which funds shall be credited toward the Purchase Price at the close of escrow, as further detailed in Section 401.

11. **(§ 211) Due Diligence Period.**

The term "Due Diligence Period" shall mean the thirty (30) day period in which Developer shall determine whether the physical condition of the Site is suitable for Developer's intended use, as described in Section 411(1) which has been completed.

12. **(§212) Effective Date.**

The Effective Date of this Agreement shall be the date that this Agreement is executed on behalf of City, after consideration at and approval of the Agreement by the City Council.

13. **(§213) Escrow.**

The term "Escrow" shall mean the Escrow established pursuant to this Agreement for the conveyance of the Site from City to Developer.

14. **(§214) Escrow Agent.**

The term "Escrow Agent" shall mean (Name and address of title company), which is empowered hereunder to act as the Escrow Agent for this transaction.

15. **(§215) Force Majeure.**

The term "Force Majeure" shall mean any delay described in Section 803 caused without fault and beyond the reasonable control of a party, which delay shall justify an extension of time to perform as provided in Section 803.

16. **(§217) Project.**

The term "Project" shall mean all of the improvements to be constructed by Developer on the Site, including, but not limited to, construction of buildings, glass and concrete work, landscaping, signage and related support structure.. The Project is a first class state of the art 10 screen, 30,400 square foot movie theater and restaurant, which has a capacity of approximately 1,100 seats in total, and shall be known as "State Theatre and Multiplex", or such other name to be designated by Developer. The movie theater will include various amenities found in other first class state of the art movie theaters located in the greater Sacramento region. The Project is more particularly described in the Scope of Development, attached hereto as Attachment No. 4, which includes a conceptual site plan.

17. **(§218) Project Entitlements.**

The term "Project Entitlements" shall mean all of the entitlements necessary for the development of the Project including, but not limited to, the approval of Site Plan Review, architectural and design review and a parcel map and similar non-ministerial approvals.

18. **(§ 219) Property.**

The term "Property" shall mean the totality of the real property and improvements, known as the State Theatre, consisting of approximately 11,550 first floor square feet, owned by City, as more particularly described in Attachment No. 1.

19. **(§ 221) Purchase Price.**

The term "Purchase Price" shall mean that amount agreed upon by the parties as the payment by Developer to City for the purchase of the Property, which shall be Two Hundred Seventy Five Thousand Dollars ($275,000)..

20. **(§223) Schedule of Performance.**

The term "Schedule of Performance" shall mean that certain Schedule of Performance attached hereto as Attachment No. 3.

21. **(§224) Scope of Development**.

The term "Scope of Development" shall mean that certain Scope of Development attached hereto as Attachment No. 4

22. **(§225) Site; Site Map.**

The term "Site" shall mean that portion of the Site consisting of approximately 30,400 square feet in the City of Woodland, as generally shown in the "Site Map" and legally described in the legal description of the Site attached hereto as Attachment No. 2. The exact boundaries and area of the Site shall be determined by the parcel map for the Site, which must be approved and recorded prior to the conveyance of title to the Site to Developer.

23. **(§226) Title.**

The term "Title" shall mean the fee interest in the Site to be obtained by Developer.

24. **(§227) Title Company.**

The term "Title Company" shall mean (Name and address of title company), which shall be empowered hereunder to act as the Title Company for this transaction.

III (§ 300) PARTIES TO THE AGREEMENT.

25. (§301) City. City is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the laws of the State of California. The office of City is located at 300 First Street, Woodland, CA. The term "City," as used in this Agreement, includes the City of Woodland and any assignee of, or successor to, its rights, powers and responsibilities.

26. (§302) Developer.

1. **Identification of Developer.**

Developer is Woodland State Theatre, LLC, a California limited liability company. For purposes of this Agreement, the principal office of Developer is 515 East Washington Street, Petaluma, California, 94952. Developer warrants and represents to City that Developer is duly qualified to do business in good standing under the laws of the State of California and has all requisite power and authority to carry out Developer's business as now and whenever conducted and to enter into and perform Developer's obligations under this Agreement.

Except as may be expressly provided herein, all of the terms, covenants and conditions of this Agreement shall be binding on, and shall inure to the benefit of, Developer, and the permitted successors, assigns and nominees of Developer. Wherever the term "Developer" is used herein, such term shall include any permitted successors and assigns of Developer as herein provided.

2. **Qualifications.**

Subject to the provisions of Section 303, the qualifications and identity of Developer are of particular concern to City, and it is because of such qualifications and identities that City has entered into this Agreement with the Developer. City has considered the experience, financial capability, and product being marketed by Developer, the Site location and characteristics, the public costs of acquiring and developing the Site and return on investment, and the product mix necessary to produce a successful movie theater. Based upon these considerations, City has imposed those restrictions on transfer set forth in this Agreement.

27. (§ 303) Restrictions on Transfer.

1. **Transfer Defined.**

As used in this section, the term "transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon. A transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Developer in the aggregate taking all transfers into account on a cumulative basis. In the event Developer or the applicable successor is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of Developer or of beneficial interests of such trust. In the event that Developer is a limited or general partnership, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the limited or general partnership interest. In the event that Developer is a joint venture, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all transfers into account on a cumulative basis.

2. **Restrictions Prior to Completion.**

Prior to issuance of the Certificate of Completion, Developer shall not transfer this Agreement or any of Developer's rights hereunder, or any interest in the Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, in City's sole discretion, and if so purported to be transferred, the same shall be null and void. The City's decision to approve or disapprove a transfer shall be final. In considering whether it will grant approval to any transfer by Developer of its interest in the Site before the issuance of the Certificate of Completion, which transfer requires City approval, City shall consider factors such as (i) whether the completion of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Developer's obligations hereunder; and (iii) the proposed assignee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of specific written agreement by City, prior to the issuance of a Certificate of Completion, no assignment or transfer by Developer of all or any portion of its interest in the Site or this Agreement (including without limitation an assignment or transfer not requiring City approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Site which is so transferred. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form approved by City assuming such obligations.

3. **Exceptions.**

The foregoing prohibition shall not apply to any of the following:

(i) Any mortgage, deed of trust, or other form of conveyance for financing, including but not limited to construction financing, as provided in Section 512 and permitted by this Agreement, but Developer shall notify City in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Site. It is expressly agreed that City's rights, pursuant to Section 512, including the right to cure or repurchase, are subject to the holder's rights to cure.

(ii) Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the improvements on the Site, including any additional costs of construction, whether direct or indirect, unless additional loan funds are needed by Developer to complete the Project, in which event such restructuring or refinancing loan(s) may exceed said outstanding balance; provided, however, all such additional funds shall be used by Developer solely for the purposes of completing the Project, and such restructuring or refinancing shall comply with City's subordination policy.

(iii) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate the development of the Site.

(iv) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(v) A sale or transfer of fifty percent (50%) or more of ownership or control interest between members of the same family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of members of the trustor's family, transfers to a corporation or partnership or other legal entity in which the members of the transferor's family have a controlling majority interest of fifty-one percent (51%) or more.

(vi) A conveyance of the Site to any entity which controls, is controlled by, or is under common control with Developer, or to a partnership or other legal entity of which Developer is the managing general partner or equivalent.

IV (§ 400) CONDITION OF THE SITE; DISPOSITION OF THE SITE.

28. (§401) Deposit.

Within three (3) business days of the opening of Escrow, Developer shall deposit Ten Thousand Dollars ($10,000) ("Deposit") into the Escrow. The Deposit is non-refundable and credited to the Purchase Price. Should Escrow terminate after expiration of the Due Diligence Period as the result of any Developer default, the Deposit shall be paid to City as liquidated damages and as a remedy for said default and to compensate City for lost opportunities to develop the Site.

29. (§402) Purchase Price.

The purchase price for the Site shall be Two Hundred Seventy Five Thousand Dollars ($275,000.00) ("Purchase Price").

Developer agrees that there are no financial or appraisal contingencies to this Agreement or Developer's agreement to pay the Purchase Price.

30. (§ 403) Conveyance of the Site; Purpose of Agreement.

In accordance with and subject to all of the terms, covenants and conditions of this Agreement, City agrees to convey the Property to Developer subject to the terms of the Deed and the CC&Rs, and Developer agrees to accept the Property and develop the Site with a 10 screen, 30,400 square foot movie theater and restaurant, consistent with the Scope of Development and the permissible uses as further described in Section 601.

31. **(§ 404)** **Opening and Closing of Escrow.**

Escrow was opened within thirty (30) days of approval of the Original Agreement by the City Council ("Opening of Escrow"). This Agreement shall constitute the joint Escrow instructions of City and Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of Escrow. Escrow Agent is empowered to act under these instructions. City and Developer shall promptly prepare, execute, and deliver to the Escrow Agent such additional Escrow instructions consistent with the terms herein as shall be reasonably necessary. No provision of any additional Escrow instructions shall modify this document without specific written approval of the modification(s) by both Developer and City.

The parties desire that the Escrow close no later than one hundred eighty (180) days after the opening of escrow ("Close of Escrow"), subject to the requirements and conditions set forth in the Schedule of Performance (Attachment No. 3).

32. **(§ 405)** **Conditions to Close of Escrow.**

Both parties specifically understand that time is of the essence and City and Developer specifically agree to strictly comply with and perform their obligations herein in the time and manner specified, and further waive any and all right to claim such compliance by mere substantial compliance with the terms of this Agreement.

1. **Developer's Conditions to Closing.**

Developer's obligation to acquire the Property and to close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of Developer, be conditional and contingent upon the satisfaction, or waiver by Developer, of each and all of the following conditions (collectively the "Developer's Conditions to Closing") within the time provided in the Schedule of Performance:

(i) Developer has approved in writing all Due Diligence matters on or before the expiration of the Due Diligence Period, which has expired prior to entering into this Agreement.

(ii) Developer shall have acquired, or shall be in a position to simultaneously acquire the other properties that, together with the Property, comprise the Site.

(iii) Developer shall have received approval for an be in a position to record a parcel map shall be recorded, legally merging the Property into the Site to create a single legal lot.

(iv) Marketable Title shall be conveyed in a good condition subject only to those exceptions recited in the Deed and those exceptions to title approved pursuant to Section 409.

(v) Developer shall have obtained evidence of financing commitments on terms and conditions satisfactory to both parties for the acquisition, construction and development of the entire Site in accordance with Section 410, and City shall have approved such commitments. City shall have deposited into Escrow the executed Deed.

(vi) Developer shall have approved (or waived) in accordance with Section 411 the physical condition of the entire Site.

(vii) As of the Closing, City shall not be in default hereunder, nor shall there be any event or occurrence which with the passage of time or giving of notice or both would constitute such a default by City.

Any waiver of the foregoing conditions must be express and in writing. Timely notice of disapproval or failure to waive based upon the foregoing conditions shall entitle Developer to terminate Escrow pursuant to Section 407 herein without further liability of one party to the other**.**

2. **City's Conditions to Closing.** City's obligation to deliver the Property and to close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of City, be conditional and contingent upon the satisfaction, or waiver by City, of each and all of the following conditions (collectively the "City's Conditions to Closing") within the time provided in the Schedule of Performance

(i) Developer shall not have made or attempted to make a transfer in violation of Section 303.

(ii) Developer shall have deposited into Escrow, within three (3) days of Developer's receipt of City's written request that the deposit be made, the Purchase Price in "good funds." "Good Funds" shall mean a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California, or cash.

(iii) Developer shall have deposited into Escrow an executed copy of the CC&Rs.

(iv) Marketable Title shall be conveyed in a good condition subject only to those exceptions recited in the Deed and those exceptions to title approved pursuant to Section 409.

(v) Developer shall have received approval for and shall be in a position to record a parcel map shall be recorded, legally creating the Site by combining the Property to create a single legal lot.

(vi) Developer shall have taken all necessary steps, other than payment of required fees, to secure all necessary permits and approvals necessary to commence construction of the Project and shall be in a position to commence construction of the Project within thirty (30) days of Close of Escrow.

(vii) Developer shall have obtained evidence of financing commitments for the acquisition, construction and development of the entire Site in accordance with Section 410, and City shall have approved such commitments.

(viii) Developer shall have provided proof of all necessary insurance to City, to the satisfaction of City.

(ix) As of the Closing, Developer shall not be in default hereunder, nor shall there be any event or occurrence which with the passage of time or giving of notice or both would constitute such a default by Developer.

(x) Developer has agreed to assume the obligation for the remaining principal balance and annual assessments for all assessment districts within which the Property is located, to reflect the creation of the Site as a separate legal lot.

Any waiver of the foregoing conditions must be express and in writing. In the event that Developer fails to satisfy City's foregoing conditions or defaults in the performance of its obligations hereunder, City may terminate, in its sole and absolute discretion, this Escrow pursuant to Section 407 without any liability to Developer.

33. **(§ 407) <u>Procedure in Event of Failure of Conditions(s) to Closing; Termination</u>.**

In the event one or more of the Developer's Conditions to Closing or City's Conditions to Closing is not timely satisfied or waived by the benefited party, that party shall have the right to terminate the Escrow and this Agreement. In such event, the terminating party may, in writing, demand return of its money, papers, or documents from Escrow, and shall concurrently deliver a copy of such demand to the non-terminating party, which notice shall state the condition that has not been satisfied. No demand shall be recognized by the Escrow Agent until ten (10) days after the Escrow Agent has mailed copies of such demand to the non-terminating party. If no objections are raised in writing to the terminating party and the Escrow Agent by the non-terminating party within the ten (10) day period, the Escrow Agent shall comply with the terminating party's request. In the event the non-terminating party timely objects, an additional thirty (30) day opportunity to cure or otherwise satisfy the unperformed conditions shall be provided and, only if the unperformed condition remains unsatisfied to the terminating party at the end of said 30-day period, shall the termination occur.

34. (§ 408) Conveyance of the Property.

1. **Time for Conveyance.**

Escrow shall close after satisfaction (or waiver by the benefited party) of all conditions to closing of Escrow, and within three (3) days of Developer's deposit of the Purchase Price into Escrow, unless extended by the mutual agreement of the parties. Accordingly, the Purchase Price shall not be released until the transfer of title to and possession of the Site to Developer.

2. **Escrow Agent to Advise of Costs.**

On or before the date set in the Schedule of Performance, the Escrow Agent shall advise City and Developer in writing of the fees, charges, and costs necessary to issue the title policy and close Escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing.

3. **Deposits By City and Developer Prior to Closing.**

On or before, but not later than 1:00 p.m. of the date set for the Closing in the Schedule of Performance, City shall deposit into Escrow (i) the Deed for the Property, executed and acknowledged by City; (ii) letter or other instrument acceptable to Developer that will guarantee Developer that the Site is buildable; (iii) payment to Escrow Agent of City's share of costs as determined by the Escrow Agent pursuant to Section 412 and (iv) the first payment of the City financial assistance as set forth in the Operating Covenant attached hereto as Attachment No. 8.

On or before, but not later than 1:00 p.m. of the date set for the Closing in the Schedule of Performance, Developer shall deposit into Escrow (i) an estoppel certificate certifying that City has completed all acts, other than as specified, necessary to conveyance, if such be the fact; (ii) the executed and acknowledged CC&Rs; and (iii) payment to Escrow Agent of Developer's share of costs as determined by the Escrow Agent pursuant to Section 412.

Prior to the Close of Escrow, Developer and City shall execute and deliver a certificate ("Taxpayer ID Certificate") in such form as may be required by the IRS pursuant to Section 6045 of the Internal Revenue Code, or the regulations issued pursuant thereto, certifying as to the description of the Site, date of Closing, gross price, and the taxpayer identification numbers for Developer and City. Prior to the Closing, Developer and City shall cause to be delivered to the Escrow Agent such other items, instruments and documents, and the parties shall take such further actions, as may be necessary or desirable in order to complete the Closing. At the Closing neither party shall be in breach of its obligations hereunder.

4. **Recordation and Disbursement of Funds.**

Upon the completion by City and Developer of the deliveries and actions specified in these Escrow instructions as a condition precedent to Closing, the Escrow Agent shall be authorized to buy, affix and cancel any documentary stamps and pay any transfer tax and recording fees, if required by law, and thereafter cause to be recorded in the appropriate records of Yolo County, California, the Deed, the CC&Rs, and any other appropriate instruments delivered through this Escrow. Concurrent with recordation, Escrow Agent shall deliver the Title Policy to Developer insuring title and conforming to the requirements of Section 409. Following recordation, the Escrow Agent shall deliver copies of said instruments to Developer and City. In addition, after deducting any sums specified in this Agreement, the Escrow Agent shall disburse funds to the party entitled thereto, including delivery of the Deposit and Purchase Price to City.

35. (§ 409) Title Matters.

1. **Condition of Title.**

At Close of Escrow, City shall convey to Developer fee simple title to the Property, subject only to: (i) the Redevelopment Plan, this Agreement, the Deed, and the CC&Rs; (ii) current taxes, a lien not yet payable; (iii) quasi-public utility, public alley and public street easements of record or as generally described in the Attachments hereto; and (iv) covenants, conditions and restrictions and other encumbrances and title exceptions approved by Developer under this Section. City shall convey title pursuant to the Deed in the form set forth in Attachment No. 5 hereto.

2. **City Not to Encumber Property.** City hereby warrants to Developer that it has not and will not, from the time of Developer's review of the Preliminary Title Report to Close of Escrow, transfer, sell, hypothecate, pledge, or otherwise encumber the Property without the express written permission of Developer.

3. **Approval of Title Exceptions.**

Promptly following execution of the Original Agreement, but in no event later than ten (10) days following Opening of Escrow, Developer obtained a preliminary title report describing the state of title of the Property, together with copies of all exceptions specified therein and a map plotting all easements specified therein ("Preliminary Title Report"). Developer shall notify City in writing ("Developer's Title Notice") of Developer's approval of all matters contained in the Preliminary Title Report or of any objections Developer may have to title exceptions or other matters ("Disapproved Exceptions") contained in the Preliminary Title Report within fifteen (15) days after Developer's receipt of the Preliminary Title Report. Developer did not deliver Developer's Title Notice within said fifteen (15) day period, and Developer is conclusively deemed to have approved the Preliminary Title Report and all matters shown therein.

Upon the issuance of any amendment or supplement to the Preliminary Title Report which adds additional exceptions, the foregoing right of review and approval shall also apply to said amendment or supplement, provided, however, that Developer's initial period of review and approval or disapproval of any such additional exceptions shall be limited to ten (10) days following receipt of notice of such additional exceptions.

4. **Title Policy.**

At the Close of Escrow, Escrow Agent shall furnish Developer with a standard CLTA Owner's Policy of Title Insurance ("Title Policy") for the Developer's fee interest, wherein the Title Company shall insure that title to the Site shall be vested in Developer, containing no exception to such title which has not been approved or waived by Developer in accordance with this Section. The Title Policy shall include any available additional title insurance, extended coverage or endorsements that Developer has reasonably requested. City shall pay only for that portion of the title insurance premium attributable to the standard coverage for a CLTA policy and a natural hazard zone disclosure report to be prepared by a consultant that is selected by the Developer. Developer shall pay the premium for any additional title insurance, extended coverage or special endorsements, if any.

36. (§ 410) Developer Financing.

1. **Developer's Financial Statements.**

By the time specified in the Schedule of Performance, Developer agrees to deliver to City, for City's approval, financial statements that, in the opinion of City, demonstrate the Developer has the financial capability to undertake the development provided herein. Such financial statements shall include statements from financial institutions with which Developer conducts business evidencing their willingness to provide the financing required hereunder. Developer shall also grant City authorization to obtain reports, including credit reports, and other financial documents from third parties and shall expressly authorize any financial institutions providing financing for any aspect of the Project to release information to City. As of the date of this Agreement, Developer has provided such financial statements and satisfied this requirement.

2. **Obtaining Construction and Permanent Loans.**

By the time specified in the Schedule of Performance, Developer agrees to deliver to City and obtain the approval from City of written commitments from financial institutions licensed to do business in California and acceptable to City ("Lender(s)") agreeing to make a construction loan and a permanent loan to Developer and secured by a First Deed of Trust (said commitment and loan are sometimes referred to collectively as the "Loan"). The amount of the commitment shall not be less than the amount of the construction contract, plus all consultant and loan fees, "points," commissions, charges, furnishings, fixtures, taxes, interest, start-up and other costs and expenses of developing the Site, less the amount of Developer's equity contribution, if any, to the cost of construction. The construction commitment shall be on said Lender's usual and customary commercial terms and conditions. As of the date of this Agreement, Developer has provided City with such written commitments from a Lender and satisfied this requirement.

3. **Covenants of Parties.** City covenants to take all reasonable actions necessary to assist Developer in obtaining financing, including preparation, to the best of its ability and to the extent of its knowledge, of an environmental questionnaire and disclosure statement. Developer covenants and agrees to take all action, furnish all information, give all

consents and pay all sums required to keep said commitment and Loan in full force and effect and shall comply with all conditions thereof, and shall promptly execute, acknowledge and deliver all Loan applications, credit applications and data, financial statements, and Loan documents in connection therewith, and shall actually draw upon and utilize the full amount of said Loan only for financing the cost of the Project.

4. **City Approval of Lender.**

Developer shall not enter into any conveyance for financing without the prior written approval of City. City's written approval or disapproval shall be given by the time provided in the Schedule of Performance. City's review of the Lender shall be limited to the question of whether or not said Lender is a qualified and responsible financial or lending institution or other acceptable entity or person capable of performing its obligations under the Loan. As of the date of this Agreement, City has approved the Lender that has provided Developer with a written commitment for construction financing.

37. (§ 411) Scope of Due Diligence; Site Assessment.

1. **Due Diligence.**

The environmental condition of the Property is unknown. Developer acknowledges that City makes no representations regarding the condition of the Property or the Site or the Site's fitness for use as a movie theater and related uses. Accordingly, for a period of thirty (30) days following the date of Opening of Escrow ("Due Diligence Period"), Developer shall have the right to make an analysis of the Site including such engineering, feasibility studies, soils tests, environmental studies and other investigations as Developer, in its sole discretion, may desire, to permit Developer to determine the suitability of the Site for Developer's contemplated uses and to conduct such other review and investigation which Developer deems appropriate to satisfy itself to acquire the Site. Developer shall further have the right to make an examination of all permits, approvals and governmental regulations which affect the Site, including zoning and land use issues and conditions imposed upon the Site by governmental agencies. In the event that City or Developer determine that a level of contaminants exists that will prevent Developer from obtaining the referenced loans, then City will either assume the Environmental Cleanup Liability, or allow Developer to terminate this Agreement. As of the date of this Agreement, Developer has completed such due diligence has allowed under this Agreement.

2. **Entry for Investigation.**

Subject to the conditions hereafter stated, during the Due Diligence Period, City grants to Developer, its agents and employees a limited license to enter upon the Property for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Property, which studies, surveys, investigations and tests shall be done at Developer's sole cost and expense. Developer shall indemnify, defend, and hold City harmless from any injury or property damage caused or liability arising out of Developer's exercise of this right of access.

As a condition to Developer's entry, inspection or testing, Developer shall keep the Property free and clear of all materialmen's liens, lis pendens, and other liens arising out of the entry and work performed under this Agreement.

3. **Approval of Due Diligence Matters.**

Developer shall notify City in writing ("Developer's Due Diligence Notice") on or before the expiration of the Due Diligence Period of Developer's approval or disapproval of the condition of the Property and Developer's investigations with respect thereto (excluding title matters), which approval may be withheld in Developer's sole and absolute discretion. Developer's failure to deliver Developer's Due Diligence Notice on or before the expiration of the Due Diligence Period shall be conclusively deemed Developer's approval thereof. Developer's disapproval of said matters shall automatically terminate this Agreement.

4. **Disclaimer of Warranties.**

Upon the Closing, Developer shall acquire the Property in its "AS-IS" condition and shall be responsible for any defects in the Property, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Property, and the existence of any contamination, Hazardous Materials, vaults, debris, pipelines, or other structures located on, under or about the Property, and City makes no other representation or warranty concerning the physical, environmental, geotechnical or other condition of the Property, the suitability of the Property for the Project, or the proposed use of the Property, and City specifically disclaims all representations or warranties of any nature concerning the Property made by it, the City and their respective employees, agents and representatives. The foregoing disclaimer includes, without limitation, topography, climate, air, water rights, utilities, soil, subsoil, existence of Hazardous Materials or similar substances, the purpose for which the Property is suited, or drainage. City makes no representation or warranty concerning the compaction of soil upon the Property, nor of the suitability of the soil for construction.

5. **Hazardous Materials.**

Developer understands and agrees that, in the event Developer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or underground storage tanks whether attributable to events occurring prior to or following the Closing, then Developer may look to other prior owners of the Property, but in no event shall Developer look to City for any liability or indemnification regarding Hazardous Materials and/or underground storage tanks. Developer, and each of the entities constituting Developer, if any, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges City, their directors, officers, shareholders, employees, and agents, and their heirs, successors, personal representatives and assigns, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Property, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of City, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Developer, its successors, assigns or any affiliated entity of Developer, against City, arising by virtue of the physical or environmental condition of the Property, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, whether existing prior to, at or after the Closing, are by this release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release. In connection therewith, Developer and each of the entities constituting Developer, expressly agree to waive any and all rights which said party may have with respect to such released claims under Section 1542 of the California Civil Code which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

DEVELOPER'S INITIALS: ______ CITY'S INITIALS: ______

Developer and each of the entities constituting Developer, shall, from and after the Closing, defend, indemnify and hold harmless City and their officers, directors, employees, agents and representatives (collectively, the "Indemnified Parties") from and against any and all Environmental Claims, Environmental Cleanup Liability, Environmental Compliance Costs, and any other claims, actions, suits, legal or administrative orders or proceedings, demands or other liabilities resulting at any time from the physical and/or environmental conditions of the Property whether before or after the Closing or from the existence of any Hazardous Materials or the release or threatened release of any Hazardous Materials of any kind whatsoever, in, on or under the Property occurring at any time whether before or after the Closing, including, but not limited to, all foreseeable and unforeseeable damages, fees, costs, losses and expenses, including any and all attorneys' fees and environmental consultant fees and investigation costs and expenses, directly or indirectly arising therefrom, and including fines and penalties of any nature whatsoever, assessed, levied or asserted against any Indemnified Parties to the extent that the fines and/or penalties are the result of a violation or an alleged violation of any Environmental Law. Developer further agrees that in the event Developer obtains, from former or present owners of the Property or any other persons or entities, releases from liability, indemnities, or other forms of hold harmless relating to the subject matter of this section, Developer shall use its diligent efforts to obtain for City the same releases, indemnities and other comparable provisions.

For purposes of this Section 411, the following terms shall have the following meanings:

"Environmental Claim" means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Property or its operations and arising or alleged to arise under any Environmental Law.

“Environmental Cleanup Liability” means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Property, including the ground water thereunder, including, without limitation, (i) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (ii) any cost, expense, loss or damage incurred with respect to the Property or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

“Environmental Compliance Cost” means any cost or expense of any nature whatsoever necessary to enable the Property to comply with all applicable Environmental Laws in effect. “Environmental Compliance Cost” shall include all costs necessary to demonstrate that the Property is capable of such compliance.

“Environmental Law” means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical sub-stances from industrial or commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

“Hazardous Material” is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code; (iii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code; (iv) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(o) and (p) and 25501.1 of the California Health and Safety Code (Hazardous Materials Release Response Plans and Inventory); (v) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code (Underground Storage of Hazardous Substances); (vi) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 1 of Title 22 of the California Code of Regulations, Division 4, Chapter 30; (ix) defined as "waste" or a "hazardous substance" pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (xi) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (42 U.S.C. § 6903); (xii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. (42 App. U.S.C. § 9601); (xiii) defined as "Hazardous Material" or a "Hazardous Substance" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; or (xiv) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials, oil wells, underground storage tanks, and/or pipelines, as now, or at any time hereafter, in effect.

Notwithstanding any other provision of this Agreement, Developer's release and indemnification as set forth in the provisions of this Section 411, as well as all other provisions of this Section 411, shall survive the termination of this Agreement and shall continue in perpetuity.

Notwithstanding anything to the contrary in this Section, Developer's limited release and indemnification of City and the Indemnified Parties from liability pursuant to this Section shall not extend to Hazardous Materials brought onto the Property by City or their respective contractors, agents or employees.

38. (§ 412) Costs of Escrow.

1. **Allocation of Costs.**

The Escrow Agent is authorized to allocate costs as follows: City shall pay the cost of the Title Policy as well as the natural hazard zone disclosure report, as provided above, while Developer shall pay the premiums for any additional insurance, extended coverage, any endorsements and a flyover survey of the Property. City shall pay the documentary transfer tax as well as all recording fees. Developer and City shall each pay one-half of all Escrow and similar fees, provided that if one party defaults under this Agreement or cancels the Escrow through no fault of the other, the defaulting party shall pay all Escrow fees and charges. Each party shall pay its own attorneys' fees.

2. **Prorations and Adjustments.**

Ad valorem taxes and assessments on the Property, and insurance for the current year shall be prorated by the Escrow Agent as of the date of Closing with City responsible for those levied, assessed or imposed prior to Closing and Developer responsible for those after Closing. If the actual taxes are not known at the date of Closing, the proration shall be based upon the most current tax figures. When the actual taxes for the year of Closing become known, Developer and City shall, within thirty days thereafter, re-prorate the taxes in cash between the parties. The Developer understands that the Property is currently not subject to *ad valorem* taxes; however, the contemplated transfer will result in the placement of the Property on the tax rolls and the subsequent levy of *ad valorem* taxes.

3. **Extraordinary Services of Escrow Agent.**

It is understood that Escrow fees and charges contemplated by this Agreement incorporate only the ordinary services of the Escrow Agent as listed in these instructions. In the event that the Escrow Agent renders any service not provided for in this Agreement, or that the

Escrow Agent is made a party to, or reasonably intervenes in, any litigation pertaining to this Escrow or the subject matter thereof, then the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses occasioned by such default, controversy or litigation.

4. **Escrow Agent's Right to Retain Documents.**

Escrow Agent shall have the right to retain all documents and/or other things of value at any time held by it hereunder until such compensation, fees, costs and expenses shall be paid.

39. (§ 413) Responsibility of Escrow Agent.

1. **Deposit of Funds.**

All funds received in Escrow shall be deposited by the Escrow Agent in a special Escrow account with any state or national bank doing business in the State of California and may not be combined with other Escrow funds of Escrow Agent or transferred to any other general Escrow account or accounts.

2. **Notices.**

All communications from the Escrow Agent shall be directed to the addresses and in the manner provided in Section 801 of this Agreement for notices, demands, and communications between City and Developer.

3. **Sufficiency of Documents.**

The Escrow Agent is not to be concerned with the sufficiency, validity, correctness of form, or content of any document prepared outside of Escrow and delivered to Escrow. The sole duty of the Escrow Agent is to accept such documents and follow Developer's and City's instructions for their use.

4. **Exculpation of Escrow Agent.**

The Escrow Agent in no case or event shall be liable for the failure of any of the Conditions to Closing of this Escrow, or for forgeries or false impersonation, unless such liability or damage is the result of negligence or willful misconduct by the Escrow Agent.

5. **Responsibilities in the Event of Controversies.**

If any controversy documented in writing arises between Developer and City or with any third party with respect to the subject matter of this Escrow or its terms or conditions, the Escrow Agent shall not be required to determine the same, to return any money, papers or documents, or take any action regarding the Property prior to settlement of the controversy by a final decision by an arbitrator, by a court of competent jurisdiction, or by written agreement of the parties to the controversy, as the case may be. However, the Escrow Agent shall be responsible for timely notifying Developer and City of the controversy. In the event of such a controversy, the Escrow Agent shall not be liable for interest or damage costs resulting from failure to timely close Escrow or take any other action unless such controversy has been caused by the failure of the Escrow Agent to perform its responsibilities hereunder.

V (§ 500) <u>DEVELOPMENT OF THE SITE</u>.

40. (§ 501) <u>Scope of Development</u>.

1. **<u>Developer's Development of Site</u>.**

The Site shall be developed by Developer as provided in the Scope of Development attached hereto as <u>Attachment No. 4</u>. Notwithstanding any other provision set forth in this Agreement to the contrary, in the event of any conflict between the narrative description of the Project in this Agreement (including the Scope of Development) and the approved plans and permits, when obtained, the approved plans and permits shall govern.

41. (§ 502) <u>Development Plans; Final Building Plans; Environmental Review</u>.

1. **<u>Other Approvals Required</u>.**

It is expressly understood by the parties hereto that City makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City, City reserving full police power authority over the Project. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items nor a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions. Notwithstanding the foregoing, Developer anticipates that the Project will require 200 public parking spaces that are allowed for not less than a three hour period. As of the date of this approval there is sufficient public parking within a six block radius of the Site to serve the Project. In the event that in the future City considers revisions to parking restrictions in the Downtown Specific Plan Area, the City shall consider and account for the Project's need for such parking spaces in the vicinity of the Project.

2. **<u>Evolution of Development Plan.</u>**

On or before the date set forth in the Schedule of Performance, Developer shall submit to City its application for development of the Project and any necessary entitlements, and shall obtain entitlement approval. Thereafter, on or before the date set forth in the Schedule of Performance, Developer shall submit to the City all necessary drawings and specifications for development of the Site in accordance with the Scope of Development and all in accordance with the City's requirements. The term drawings shall be deemed to include site plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, material pallets, a description of structural, mechanical, and electrical systems, and all other plans, drawings and specifications pertaining to the Project. Final drawings shall be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Scope of Development and the various development approvals referenced herein, except as such items may be amended by City (if applicable) and by mutual consent of City and Developer. Plans (concept, preliminary and construction) shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications are submitted.

3. **Developer Best Efforts to Obtain Approvals.**

Developer shall exercise its best efforts to timely submit all documents and information necessary to obtain all development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Developer shall comply with all applicable development standards in City's Municipal Code and shall comply with all building requirements, except as may be permitted through approved variances and modifications.

4. **City Approvals.**

Subject to Developer's compliance with (i) the applicable City development standards for the Site, and (ii) all applicable laws and regulations governing such matters as public hearings, site plan review and environmental review, City agrees to provide reasonable assistance to Developer in the expeditious processing of Developer's submittals required under this Section in order that Developer can obtain a final City action on such matters within the time set forth in the Schedule of Performance.

5. **Disapproval.**

Unless noted otherwise in the Schedule of Performance, City shall approve or disapprove any submittal for building plan approval made by Developer pursuant to this Section within forty-five (45) days after such submittal. All submittals made by Developer shall note the 45-day time limit, and specifically reference this Agreement and this Section. Any disapproval shall state in writing the reason for the disapproval and the changes which City requests be made. Developer shall make the required changes and revisions and resubmit for approval as soon as is reasonably practicable but no more than thirty (30) days of the date of disapproval. Thereafter, City shall have an additional thirty (30) days for review of the resubmittal. If City disapproves the resubmittal, the cycle shall repeat until City approval has been obtained.

6. **CEQA.**

The City has determined that the Project is categorically exempt under the California Environmental Quality Act (Public Resources Code Sections 21000 *et seq.*) ("CEQA") in accordance with the Class 32 categorical exemption as in infill project. This determination was reviewed and approved by the City Council of the City on June 17, 2014 and reaffirmed on December 16, 2014 and has served as the environmental documentation pursuant to CEQA for the activities proposed to be undertaken under this Agreement.

42. **(§ 503) Cost of Construction.**

The cost of developing the Site and constructing all of the on-site and off-site improvements at or about the Site required to be constructed in connection with the development of the movie theater and related facilities, shall be borne by Developer. Developer acknowledges and agrees that the Project is a public work subject to the requirements of California Labor Code Section 1720 *et seq.* (the "Prevailing Wage Law"), and Developer shall require its contractors and subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under the Prevailing Wage Law for all construction work conducted as part of the Project. Developer shall indemnify, defend, and hold City harmless from any determinations or actions (whether legal, equitable or administrative in nature) or other proceedings that Developer, its contractors, or subcontractors failed to comply with the Prevailing Wage Law, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law.

43. **(§ 504) <u>Schedule of Performance; Progress Reports</u>.**

The Parties shall begin and complete all plans, reviews, construction and development specified in the Scope of Development within the times specified in the Schedule of Performance attached hereto as <u>Attachment No. 3</u> or such reasonable extensions of said dates as may be mutually approved in writing by the parties.

Once construction has commenced, it shall be diligently pursued to completion and shall not be abandoned for more than thirty (30) consecutive days, except when due to a Force Majeure. Developer shall keep City informed of the progress of construction and submit to City written reports of the progress of the construction when and in the form requested by City.

44. **(§ 505) <u>Indemnification During Construction</u>.**

During the periods of construction on the Site and until such time as City has issued a Certificate of Completion for the Project with respect to the construction of the improvements thereon, Developer agrees to and shall indemnify and hold City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on the Site and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of the Developer or its agents, servants, employees, or contractors. Developer shall not be responsible for (and such indemnity shall not apply to) any acts, errors, or omissions of City, or their respective agents, servants, employees or contractors.

45. (§ 506) <u>Bodily Injury, Property Damage and Workers' Compensation Insurance</u>.

1. **<u>Types of Insurance</u>.**

Prior to the entry of Developer or any of its agents, consultants, representatives or employees on the Property and the commencement of any Property investigation, as authorized in Section 411, or construction by or on behalf of Developer, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of such entry or construction, the following policies of insurance:

(i) Commercial General Liability Insurance. Developer shall keep or cause to be kept in force for the mutual benefit of City, and Developer comprehensive broad form commercial general liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Site, improvements or adjourning areas or ways, affected by such use of the Site or for property damage. Such insurance policy shall have (a) a combined single limit for both bodily injury or death in an amount not less than Three Million Dollars ($3,000,000), and (b) a limit for both bodily injury or death in one accident or occurrence or for property damage in an amount not less than One Million Dollars ($1,000,000), which amount shall be increased from time to time as commercially reasonably required by City.

(ii) Builder's Risk Insurance. Developer shall procure and shall maintain in force "all risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits in accordance with subsection (a) above.

(iii) Worker's Compensation. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Developer, City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or persons retained by Developer in the course of carrying out the work or services contemplated in this Agreement. Developer shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries workers' compensation insurance as required by law.

(iv) Automobile Insurance. A policy of comprehensive automobile liability insurance to include all autos owned, hired, and non-owned, in an amount not less than One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage.

(v) Other Insurance. Developer may procure and maintain additional policies of insurance not required by this Agreement.

2. **Insurance Policy Form, Content and Insurer.**

All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed to do business by California, rated “A” or better in the most recent edition of Best Rating Guide, the Key Rating Guide or in the Federal Register, and only if they are of a financial category Class IX or better. All such policies shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of City or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them, or with certificates evidencing the insurance. City shall be named as additional insureds on all policies of insurance required to be procured by the terms of this Agreement.

3. **<u>Failure to Maintain Insurance and Proof of Compliance.</u>**

Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits:

(i) For insurance required above, prior to entry of Developer on the Site for Site investigation purposes or for the commencement of any construction by or on behalf of Developer.

(ii) For any renewal or replacement of a policy already in existence, at least ten (10) days before expiration or termination of the existing policy.

If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and paid for, such failure or refusal shall be a default hereunder, subject to the applicable cure period. Alternatively, without limiting City's rights hereunder, City shall have the right to immediately secure and place force insurance on the Site. City shall immediately notify Developer of placement of force insurance and Developer shall be solely responsible for all premium costs of coverage(s) bound. Developer shall, within fifteen (15) days of receipt of invoice City, cause the timely payment of said coverage(s) to City. City shall also be entitled to a service fee of the greater of 10% or $500 of the force insurance premium which shall be borne by Developer.

46. **(§ 507) <u>City and Other Governmental Agency Permits</u>.**

Before commencement of construction or development of any buildings, structures, or other works of improvement upon the Site which are Developer's responsibility under the Scope of Development, Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by City or any other governmental agency affected by such construction, development or work. Developer shall not be obligated to commence construction if any such permit is not issued despite good faith effort by Developer. If there is delay beyond the usual time for obtaining any such permits due to no fault of Developer, the Schedule of Performance shall be extended to the extent such delay prevents any action which could not legally or would not in accordance with good business practices be expected to occur before such permit was obtained. Developer shall pay all normal and customary fees and charges applicable to such permits and any fees or charges hereafter imposed by City which are standard for and uniformly applied to similar projects in the City.

47. **(§ 508) Rights of Access.**

Representatives of City shall have the reasonable right of access to the Site without charges or fees, at any time during normal construction hours during the period of construction, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of the construction work being performed by or on behalf of Developer. Such representatives of City shall be those who are so identified in writing by City. Each such representative of City shall identify himself or herself at the job site office upon his or her entrance to the Site, and shall provide Developer, or the construction superintendent or similar person in charge on the Site, a reasonable opportunity to have a representative accompany him or her during the inspection. City shall indemnify, defend, and hold Developer harmless from any injury or property damage caused or liability arising out of City's exercise of this right of access.

48. **(§ 509) Applicable Laws.**

Developer shall carry out the construction of the improvements to be constructed by Developer in conformity with all applicable laws and codes, including all applicable federal and state labor laws.

49. **(§ 510) Anti-discrimination During Construction.**

Developer for himself and his successors and assigns agrees that, in the construction of the improvements to be constructed by Developer, Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, gender, ancestry or national origin.

50. **(§ 511) Encumbrances and Liens.**

Subject to Section 512 below, until the date of issuance by City of a Certificate of Completion, Developer shall not place or allow to be placed on the Site any mortgage, trust deed, encumbrance or lien (except mechanic's liens prior to suit to foreclose the same being filed). Developer shall remove or have removed any levy or attachment made on the Site, or assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amounts of any encumbrance or lien, nor to limit the remedies available to Developer in respect thereto.

51. (§ 512) **Rights of Holders of Approved Security Interests in Site.**

1. **Definitions.**

As used in this Section, the term "mortgage" shall include any mortgage, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "holder" shall include the holder of any such mortgage, deed of trust, or other security interest, the lessor under a lease-back or the grantee under any other conveyance for financing.

2. **No Encumbrances Except Mortgages to Finance the Project.**

Notwithstanding the restrictions on transfer in Section 303, mortgages required for any reasonable method of financing of the construction of the improvements are permitted before issuance of a Certificate of Completion but only for the purpose of securing loans of funds used or to be used for financing the acquisition of the Site, for the construction of improvements thereon, and for any other expenditures necessary and appropriate to develop the Site under this Agreement, or for restructuring or refinancing any of same, so long as the refinancing does not exceed the then-outstanding balance of the existing financing, unless additional loan funds are needed by Developer to complete the Project, in which event such restructuring or refinancing loan(s) may exceed said outstanding balance; provided, however, all such additional funds shall be used by Developer solely for the purposes of completing the Project, and such restructuring or refinancing shall comply with City's subordination policy. The Developer (or any entity permitted to acquire title under this Section) shall notify City in advance of any mortgage if the Developer or such entity proposes to enter into the same before issuance of the Certificate of Completion. The Developer or such entity shall not enter into any such conveyance for financing without the prior written approval of City as provided in Section 410, which shall not be unreasonably withheld, conditioned or delayed. Any lender approved by City pursuant to Section 410 shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, the Developer shall promptly notify City of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Certificate of Completion, whether by voluntary act of the Developer or otherwise.

3. **Developer's Breach Shall Not Defeat Mortgage Lien.**

Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Site, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage of the Site whose interest is acquired by foreclosure, trustee's sale or otherwise.

4. **Holder Not Obligated to Construct or Complete Improvements.**

The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

5. **Notice of Default to Mortgagee, Deed of Trust or Other Security Interest Holders.**

Whenever City shall deliver any notice or demand to Developer with respect to any breach or default by Developer hereunder, City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to City therefore, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

6. **Right to Cure.**

Each holder (insofar as the rights of City are concerned) shall have the right, at its option, within sixty (60) days after the receipt of the notice, to:

(i) Obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed; and

(ii) Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that in the case of a default which cannot with diligence be remedied or cured within such sixty (60) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of Developer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to City by written agreement satisfactory to City with respect to the Site or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligations. Any holder properly completing such improvements shall be entitled, upon written request made to City, to a Certificate of Completion from City.

7. **<u>City's Rights upon Failure of Holder to Complete Improvements.</u>**

In any case where one hundred eighty (180) days after default by Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Site or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, City may, after sixty (60) days' notice to such holder and if such holder has not exercised such option to construct within said sixty (60) day period, purchase the mortgage (or the fee interest if the holder has foreclosed), upon payment to the holder of an amount equal to the sum of the following:

(i) The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

(ii) All expenses incurred by the holder with respect to foreclosure, if any;

(iii) The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Site, such as insurance premiums or real estate taxes, if any;

(iv) The costs of any improvements made by such holder, if any; and

(v) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by City.

In the event that the holder does not exercise its option to construct afforded in this Section, and City elects not to purchase the mortgage of holder, and, upon written request by the holder to City, City agrees to use reasonable efforts to assist the holder in selling the holder's interest to a qualified and responsible party or parties (as determined by City), such party or parties shall assume the obligations of making or completing the improvements required to be constructed by Developer, or such other improvements in their stead as shall be satisfactory to City. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs (i) through (v) above, and any balance remaining thereafter shall be applied as follows:

(i) First, to reimburse City, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by City, including but not limited to, payroll expenses, management expenses, legal expenses, and other expenses.

(ii) Second, to reimburse City, on its own behalf and on behalf of the City, for all payments made by City to discharge any other encumbrances or liens on the Site or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due, to obligations, defaults, or acts of Developer, its successors or transferees.

(iii) Third, to reimburse City, on its own behalf and on behalf of the City, for all payments made by City in connection with efforts to assist the holder in selling the holder's interest in accordance with this Section.

(iv) Fourth, any balance remaining thereafter shall be paid to Developer.

8. **Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default.**

In the event of a default or breach by Developer (or an entity permitted to acquire title under this Section) of a mortgage prior to the issuance by City of a Certificate of Completion for the Site or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, City may cure the default prior to completion of any foreclosure. In such event, City shall be entitled to reimbursement from Developer or other entity of all costs and expenses incurred by City in curing the default, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to:

(i) Any mortgage for financing permitted by this Agreement; and

(ii) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided that nothing herein shall be deemed to impose upon City any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Site in the event of its enforcement of its lien.

9. **Right of City to Satisfy Other Liens on the Site After Conveyance of Title**.

After the conveyance of title and prior to the recordation of a Certificate of Completion for construction and development, and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale.

10. **Minor Amendments**. City's designated representative(s) shall be authorized to approve and execute minor non-substantive amendments to this Agreement as may

be requested by Developer's lender in relation to the protection of such lender's security interest in the Site, without formal approval of City's governing body.

52. **(§ 513) Certificate of Completion.**

Upon the completion of all construction by Developer on the Site, City shall furnish Developer with the Certificate of Completion in the form attached hereto as Attachment No. 6, upon written request therefore by Developer. The Certificate of Completion shall be executed and notarized so as to permit it to be recorded in the Office of the Recorder of Yolo County.

The executed Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site and of full compliance with the terms of this Agreement with respect thereto. A partial Certificate of Completion, applicable to less than the entire Project as defined in the Scope of Development, shall not be permitted.

After the issuance of the Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed and CC&Rs. After issuance of a Certificate of Completion, City shall not have any rights or remedies under this Agreement, except as otherwise set forth in the Deed and CC&Rs. City shall not unreasonably withhold condition or delay the Certificate of Completion. If City refuses or fails to furnish the Certificate of Completion within thirty (30) days after written request from Developer or any entity entitled thereto, City shall provide a written statement of the reasons City refused or failed to furnish the Certificate of Completion. The statement shall also contain City's opinion of the action Developer must take to obtain the Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, City will issue its Certificate of Completion upon the posting of a bond in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed or other assurance reasonably satisfactory to City.

A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093. Nothing herein shall prevent or affect Developer's right to obtain a Certificate of Occupancy from the City before a Certificate of Completion is issued.

53. **(§ 5l4) Estoppels.**

At the request of Developer or any holder of a mortgage or deed of trust, City shall, from time to time and upon the request of such holder, timely execute and deliver to Developer or such holder a written statement of City that no default or breach exists (or would exist with the passage of time, or giving of notice or both) by Developer under this Agreement, if such be the fact, and certifying as to whether or not Developer has, at the date of such certification, complied with any obligation of Developer hereunder as to which Developer or such holder may inquire. The form of any estoppel letter shall be prepared by the holder or Developer and shall be at no cost to City

VI (§ 600) USE AND OPERATION OF THE SITE.

54. (§ 601) Compliance with CC&Rs

Developer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter shall use, devote, and maintain the Site in a manner consistent with the restrictions contained in the CC&Rs, which shall be entered into and recorded against the Property upon conveyance of the Property to Developer.

55. (§ 602) Obligation to Refrain from Discrimination.

There shall be no discrimination against, or segregation of, any person, or group of persons, on account of race, color, creed, religion, sex, marital status, gender, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Site, or any portion thereof, nor shall Developer, or any person claiming under or through Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or any portion thereof. The nondiscrimination and nonsegregation covenants contained herein shall remain in effect in perpetuity.

56. (§ 603) Form of Nondiscrimination and Nonsegregation Clauses.

Developer shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, ancestry, gender or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

> **1.** Deeds. In Deeds the following language shall appear: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, gender, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee, or any persons claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."
>
> **2.** Leases. In Leases the following language shall appear: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and

accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, gender, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased."

3. Contracts. Any contracts which Developer or Developer's heirs, executors, administrators or assigns propose to enter into for the sale, transfer, or leasing of the Site shall contain a nondiscrimination and nonsegregation clause substantially as set forth in Section 602 and in this Section. Such clause shall bind the contracting party and subcontracting party or transferee under the instrument.

57. **(§ 604) Maintenance of Improvements.**

Developer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Site or any part thereof, that, after City's issuance of its Certificate of Completion, Developer shall be responsible for maintenance of all improvements made for the Project, as well as maintenance of the lighting, signs, and walls in first-class condition and repair, and shall keep the Site and adjacent alleyway and sidewalk frontage from any accumulation of debris or waste materials created by the theater business. Developer shall also maintain all landscaping required pursuant to Developer's approved landscaping plan for the Site, in a healthy condition, including replacement of any dead or diseased plants with plants of a maturity similar to those being replaced. The foregoing maintenance obligations shall run with the land and thereby become the obligations of any transferee of the Site or any portion thereof. Developer's further obligations to maintain the Site, and City's remedies in the event of Developer's default in performing such obligations are set forth in the Deed and the CC&Rs.

58. (§ 605) Effect of Covenants. City is deemed a beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land for and in its own right for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of City shall run without regard to whether City has been, remains or is an owner of any land or interest therein in the Site or in the Project Area. City shall have the right, if any of the covenants set forth in this Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. With the exception of the City, no other person or entity shall have any right to enforce the terms of this Agreement under a theory of third-party beneficiary or otherwise. The covenants running with the land and their duration are set forth in the Deed and the CC&Rs.

VII (§ 700) DEFAULTS, REMEDIES AND TERMINATION.

59. (§ 701) Defaults, Right to Cure, Waivers, and Termination.

Subject to any Force Majeure, failure or delay by either party to timely perform any covenant of this Agreement constitutes a default under this Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a notice specifying such failure or delay ("Notice of Default"), and does not thereafter prosecute such cure, correction or remedy with diligence to completion.

The injured party shall give written Notice of Default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

Upon the occurrence of two Notices of Default by an injured party to the party in default within a six (6) month period, the injured party shall have the right to terminate this Agreement, regardless of whether such defaults were timely cured or not by the party in default, and pursue its rights or remedies as provided in this Agreement.

60. (§ 702) Legal Actions.

1. Institution of Legal Actions.

In addition to any other rights or remedies, and subject to the requirements of Section 701, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Legal actions must be instituted and maintained in the Superior Court of the County of Yolo, State of California, in any other appropriate court in that county.

2. Applicable Law and Forum.

The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

3. Acceptance of Service of Process.

In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City, or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made in such manner as may be provided by law and shall be valid whether made within or without the State of California.

61. **(§ 703) Rights and Remedies are Cumulative.**

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

62. **(§ 704) Specific Performance.**

In addition to any other remedies permitted by this Agreement, if either party defaults hereunder by failing to perform any of its obligations herein, each party agrees that the other shall be entitled to the judicial remedy of specific performance, and each party agrees (subject to its reserved right to contest whether in fact a default does exist) not to challenge or contest the appropriateness of such remedy. In this regard, Developer specifically acknowledges that City is entering into this Agreement for the purpose of assisting in the redevelopment of the Site and not for the purpose of enabling Developer to speculate with land.

63. **(§ 705) Right of Reverter.** City shall have the right, at its option, to reenter and take possession of the Site with all improvements thereon and to terminate and re-vest in City the estate conveyed to Developer, if, after Closing and prior to the recordation of the Certificate of Completion, Developer (or his successors-in-interest) shall:

1. Fail to commence construction of the improvements for a period of ninety (90) days after issuance of building or other applicable permits and after written notice to proceed from City, provided that Developer shall not have obtained an extension or postponement to which the Developer may be entitled pursuant to this Agreement; or

2. Abandon or substantially suspend construction of the improvements for a period of thirty (30) consecutive days after written notice of such abandonment or suspension from City, provided that Developer shall not have obtained an extension of time to which Developer may be entitled to pursuant to this Agreement; or

3. Assign or attempt to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of, the Site, or any part thereof, in violation of this Agreement, and such violation shall not be cured within thirty (30) days after the date of receipt of written notice thereof by City to Developer.City shall also have the right, at its option, to reenter and take possession of the Site with all improvements thereon and to terminate and re-vest in City the estate conveyed to Developer, if, after the recordation of the Certificate of

Completion, Developer (or his successors-in-interest) shall fail to use the Site as a movie theater for a period of six (6) consecutive months.

The right to re-enter, repossess, terminate, and re-vest shall be subject to and be limited by and shall not defeat, render invalid, or limit:

1. Any mortgage, deed of trust, or other security interests permitted by this Agreement.

2. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust or other security interests.

Upon the re-vesting in City of possession to the Site, or any part thereof, as provided in this Section, City shall, pursuant to its responsibilities under state law, use its best efforts to re-convey the Site, or any part thereof, as soon and in such manner as City shall find feasible and consistent with the objectives of such law and of the Woodland Downtown Specific Plan to a qualified and responsible party or parties (as determined by City), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to City and in accordance with the uses specified for the Site, or any part thereof, in the Woodland Downtown Specific Plan.

In the event of a resale, the proceeds thereof shall be applied after payment of all sums described in Section 512, Paragraph 7(i) through (v) due to Developer's lender(s) as follows:

(i) First, to reimburse City on its own behalf or on behalf of the City for all costs and expenses incurred by City, including but not limited to, salaries to personnel, legal costs and attorneys' fees, and all other contractual expenses in connection with the recapture, management, and resale of the Site (but less any income derived by City from the Site or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the Site (or, in the event that the Site is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments, or charges, as determined by the City, as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Site or part thereof; and amounts otherwise owing City by the Developer, its successors, or transferees; and

(ii) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to (i) the amount of the Purchase Price paid to City by Developer for the Site, (ii) costs actually incurred for the development of the Site, Due Diligence, and for the agreed improvements existing on the Site at the time of the re-entry and repossession, less (iii) any gains or income withdrawn or made by Developer from the Site or the improvements thereon; and

(iii) Any balance remaining after such reimbursements shall be retained by City as its property.

To the extent that the right established in this Section involves a forfeiture, it must be strictly interpreted against City, the party for whose benefit it is created. The rights established in this Section are to be interpreted in light of the fact that City will sell the Site to Developer for development and not for speculation in undeveloped land.

64. **(§ 706) Attorneys' Fees.**

If either party to this Agreement is required to initiate or defend any action or proceeding in any way arising out of the parties' agreement to or performance of this Agreement, or is made a party to any action or proceeding by the Escrow Agent or other third party, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees from the other. As used herein, the "prevailing party" shall be the party determined as such by a court of law pursuant to the definition in Code of Civil Procedure Section 1032(a)(4), as it may be subsequently amended. Attorneys' fees shall include attorneys' fees on any appeal. In addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

VIII (§ 800) GENERAL PROVISIONS.

65. **(§ 801) Notices, Demands and Communications Between the Parties.**

Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt; in either case, delivered to the addresses and persons as each party may from time to time by written notice designate to the other and who initially are:

If to Developer: Woodland State Theatre, LLC
Attn: David Corkill
515 E Washington St.
Petaluma, California 94952
Fax:707-762-3969

If to City: City of Woodland
Attn: City Manager
300 First Street
Woodland, California 95695

A copy to: Kara K. Ueda
Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, California 95814

66. (§ 802) <u>Nonliability of City Officials and Employees; Conflicts of Interest; Commissions</u>.

1. **<u>Personal Liability</u>.**

No member, official, employee, agent or contractor of City shall be personally liable to Developer in the event of any default or breach by City or for any amount which may become due to Developer or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section is intended to limit City's liability.

2. **<u>Financial Interest</u>.**

No member, official, employee or agent of City shall have any financial interest, direct or indirect, in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

3. **<u>Commissions</u>.** City has not retained any broker or finder or paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement. City shall not be liable for any real estate commissions, brokerage fees or finders' fees which may arise from this Agreement, and Developer agrees to hold City harmless from any claim by any broker, agent, or finder retained by Developer. City agrees to hold Developer harmless from any claim by any broker, agent, or finder retained by City.

67. **(§ 803) <u>Force Majeure: Extension of Times of Performance</u>.**

In the event that Developer is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of Developer ("Force Majeure"), including, but not limited to, acts of God, labor disputes, sudden actions of the elements, or actions of non-participating federal or state agencies or local jurisdictions, Developer shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected and such failure to perform shall not be considered a material violation or breach, and provided further that:

1. The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;

2. Within fifteen (15) days after the occurrence of the Force Majeure, Developer shall give City written notice describing the particulars of the occurrence;

3. Developer shall use its best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which, in the sole judgment of Developer, are contrary to their interest); and

4. When Developer is able to resume performance of its obligations, Developer shall give City written notice to that effect.

5. The following shall not be considered as events or causes beyond the control of Developer, and shall not entitle Developer to an extension of time to perform: (i) Developer's failure to obtain financing for the Project, and (ii) Developer's failure to negotiate agreements with prospective users for the Project or the alleged absence of favorable market conditions for such uses.

6. Times of performance under this Agreement may also be extended by mutual written agreement by City and Developer. The City's appointed representative, shall have the authority on behalf of City to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site.

68. (§ 804) Books and Records.

1. **Developer to Keep Records.**

Developer shall prepare and maintain all books, records and reports necessary to substantiate Developer's compliance with the terms of this Agreement or reasonably required by City.

2. **Right to Inspect.**

Either party shall have the right, upon not less than seventy-two (72) hours notice, at all reasonable times, to inspect the books and records of the other party pertaining to the Site as pertinent to the purposes of this Agreement.

3. **Ownership of Documents.**

Copies of all drawings, specifications, reports, records, documents and other materials prepared by Developer, its employees, agents and subcontractors, in the performance of this Agreement, which documents are in the possession of Developer and are not confidential shall be delivered to City upon request in the event of a termination of this Agreement, and Developer shall have no claim for additional compensation as a result of the exercise by City of its rights hereunder. City shall have an unrestricted right to use such documents and materials as if it were in all respects the owner of the same. Developer makes no warranty or representation regarding the accuracy or sufficiency of such documents for any future use by City, and Developer shall have no liability therefore. Notwithstanding the foregoing, City shall not have any right to sell, license, convey or transfer the documents and materials to any third party, or to use the documents and materials for any other site, except in the case of a termination of this Agreement due to default of Developer.

69. (§ 805) Assurances to Act in Good Faith. City and Developer agree to execute all documents and instruments and to take all actions, including the deposit of funds in addition to such funds as may be specifically provided for herein, as may be required in order to consummate conveyance and development of the Site as herein contemplated, and shall use their best efforts to accomplish the closing and subsequent development of the Site in accordance with the provisions hereof. City and Developer shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies set forth in this Agreement, subject to their approval.

70. **(§ 806) Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only and shall not be construed to limit or extend the meaning of this Agreement. This Agreement includes all Attachments hereto, which include the: (1) Legal Description of Property, (2) Site Map and Legal Description of the Site, (3) Schedule of Performance, (4) Scope of Development, (5) Grant Deed, (6) Certificate of Completion, (7) Declaration of Covenants, Conditions and Restrictions and (8) Operating Covenant, which are by this reference incorporated in this Agreement in their entirety. This Agreement also includes the Woodland Downtown Specific Plan and any other documents incorporated herein by reference, as though fully set forth herein.

71. **(§ 807) Entire Agreement, Waivers and Amendments.**

This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Agreement supersedes all negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of City or Developer, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of City and Developer.

72. **(§ 808) Severability.**

In the event any term, covenant, condition, provision or agreement contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any other term, covenant, condition, provision or agreement contained herein.

73. **(§ 809) <u>Time for Acceptance of Agreement by City</u>.**

This Agreement, when executed by Developer and delivered to City, must be authorized, executed and delivered by City, not later than the time set forth in the Schedule of Performance or this instrument shall be void, except to the extent that Developer shall consent in writing to further extensions of time for the authorization, execution, and delivery of this Agreement. After execution by Developer, this Agreement shall be considered an irrevocable offer until such time as such offer shall become void due to the failure of City to authorize, execute and deliver the Agreement in accordance with this Section.

74. **(§ 810) <u>Execution</u>.**

1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.City represents and warrants that: (i) it is organized and existing under the laws of the State of California; (ii) by proper action of City, City has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized representatives; and (iii) the entering into this Agreement by City does not violate any provision of any other agreement to which City is a party.

2. Developer represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Developer, Developer has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Developer does not violate any provision of any other agreement to which Developer is a party.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by City.

"CITY": CITY OF WOODLAND

Date: ______________________

By: ______________________
City Manager

ATTEST:

By: ______________________
City Clerk

APPROVED AS TO FORM:

By: ______________________
City Attorney

"DEVELOPER": WOODLAND STATE THEATRE, LLC, A California limited liability company

Date: ______________________

By: ______________________
Its: ______________________

[END OF SIGNATURES]

Attachment No. 1: Legal Description of Property
Attachment No. 2: Site Map and Legal Description of Site
Attachment No. 3: Schedule of Performance
Attachment No. 4: Scope of Development
Attachment No. 5: Grant Deed to Site
Attachment No. 6: Certificate of Completion
Attachment No. 7: CC&Rs

ATTACHMENT NO. 1
LEGAL DESCRIPTION OF PROPERTY

[To Be Inserted]

ATTACHMENT NO. 2

SITE MAP AND LEGAL DESCRIPTION OF SITE

[To Be Inserted]

ATTACHMENT NO. 3
SCHEDULE OF PERFORMANCE

	Item To Be Performed	Time For Performance	Agreement Reference
1.	Developer provides City with the legal description for the Site	Completed	
2.	Developer executes and delivers Original DDA to City	Completed	
3.	City considers and approves Original DDA	Completed--June 17, 2014	
4.	Opening of Escrow	As specified in Section 405	405
5.	Developer makes the Deposit of Purchase Price into Escrow	Within 3 business days of Event 4	401
6.	City delivers to Developer Preliminary Title Report	Concurrent with Event 4	409.4
7.	Developer approves or disapproves title exceptions and public easements	Within 15 days of Event 4	409.4
8.	City notifies Developer whether City will cure any disapproved exceptions or public easements	Within 15 days after receipt from Developer of disapproved exceptions	409.4
9.	Developer provides City with evidence of financial capability	Within 30 days of Event 4	410.1
10.	City approves or disapproves evidence of financial capability	Within 15 days of Event 9	410.1
11.	Expiration of the Due Diligence Period	Within 30 days of Event 4	411.1
12.	Developer submits to City application for project entitlements	Within 90 days of Event 11	
13.	City accepts application as complete or advises Developer of deficiencies	Within 45 days after submittal	

14.	City processes project entitlements with City assistance and obtains approval	Within 120 days after acceptance of application by City	
15.	Developer prepares and submits to City any required plans, drawings and specifications	Within 90 days after approval of project entitlements (Event 14)	502.2
16.	City approves (or disapproves) plans, and specifications, drawings	Within 45 days after submittal by Developer	502.5
17.	Developer revises and resubmits plans, drawings, and specifications, if necessary	Within 30 days after disapproval	502.5
18.	Developer submits proof of all necessary insurance, satisfactory to City	Prior to Developer's entry on the Site	506
19.	City reviews and approves or disapproves resubmitted plans, drawings, and specifications, if necessary	Within 15 days after resubmittal	502.5
20.	Developer obtains all necessary permits and approvals, and commences construction of improvements	On or before the date that is 10 days after the date City notifies Developer that City is prepared to issue building permits for the Project	507
21.	Escrow Agent gives notice of fees, charges, costs and documents to close Escrow	One week prior to Closing	408
22.	Deposits into Escrow by City:		
	a) Executed Deed	On or before 1:00 p.m. on the last business date preceding the Close of Escrow	408.3
	b) Estoppel Certificate, if requested in writing by Developer	On or before 1:00 p.m. on the last business date preceding the Close of Escrow	408.3
	c) Payment of City's share of Escrow Costs and funding of the first payment of the City financial assistance under the Operating Covenant	On or before 1:00 p.m. on the last business day preceding the Close of Escrow	408.3

	d) Taxpayer ID Certificate and Subordination Agreement (if any)	Prior to Close of Escrow	408.3
23.	Deposits into Escrow by Developer:		
	a) The balance of the Purchase Price	3 days after request by City	408.3
	b) Estoppel Certificate	On or before 1:00 p.m. on the last business day preceding the Closing date	408.3
	c) Executed copies of CC&Rs and Operating Covenant	On or before 1:00 p.m. on the last business date preceding the Close of Escrow	408.3
	d) Payment of Developer's Share of Escrow Costs	On or before 1:00 p.m. on the last business date preceding the Close of Escrow	408.3
	e) Taxpayer ID Certificate	Prior to Close of Escrow	408.3
24.	City or Developer, as the case may be, may cure any condition to closing disapproved or waived; or may cure any default	Within 30 days after date established therefore, or the date of breach, as the case may be	701
25.	Close of Escrow for Site; recordation and delivery of documents		408.4

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text. In the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Developer and City. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The designated representative of City shall have the authority to approve extensions of time without governing body action not to exceed a cumulative total of 180 days as provided in Section 803.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

A. General

The Developer agrees that the Site shall be developed and improved in accordance with the provisions of this Attachment and the Disposition and Development Agreement ("DDA") including all attachments, and the plans, drawings, and related documents approved by City pursuant hereto. The Developer, its supervising architect, engineers, and contractor shall work with City staff to coordinate the overall design, architecture, site layout, open areas and landscaping with regards to mass, scale, bulk, color and materials. Any questions or issues regarding the Scope of Development not included or addressed in herein or in the DDA shall be resolved in accordance with the Woodland Municipal Code and the Project Entitlements.

B. Design Criteria

The Developer shall be responsible for construction and installation of all Site improvements. The Site will be developed with a 10 screen, 30,000 square foot movie theater which can seat a total of approximately 1,100 people. The movie theater will consist of amenities such as stadium seating and state of the art digital projectors and screens, as well as a stage for live performances in one of the screen rooms. The design and size of the building(s) and related facilities shall be appropriate for the intended use, as approved in the Project Entitlements, and shall meet or exceed the quality of style and architecture standards as identified in the attached conceptual site plan and elevation.

C. Applicable Codes

All improvements shall be constructed in accordance with the California Building Code (with Woodland modifications) and the California Fire Code (with Woodland modifications), the Woodland Municipal Code and current City standards.

ATTACHMENT NO. 5

GRANT DEED

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
City of Woodland
300 First Street
Woodland, CA 95695
Attn: City Clerk

(Exempt from Recording Fee per Gov. Code § 6103)

(Space Above This Line for Recorder's Office Use Only)

GRANT DEED

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, CITY OF WOODLAND, a municipal corporation ("Grantor") acting under the laws of the State of California, hereby grants to WOODLAND STATE THEATRE, LLC, a California limited liability company ("Grantee"), the real property, hereinafter referred to as the "Site," in the City of Woodland, County of Yolo, State of California, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

As conditions of this conveyance, Grantee covenants by and for itself and any successors-in-interest for the benefit of Grantor and the City of Woodland, a municipal corporation, as follows:

1. Governing Documents. The Site is being conveyed: (i) pursuant to an Amended and Restated Disposition and Development Agreement ("DDA") entered into by and between Grantor and Grantee dated _________________; and (ii) subject to the terms of the DDA, this Deed and the CC&Rs, as those terms are defined in the DDA. The DDA and the Woodland Downtown Specific Plan are public records on file in the office of the City Clerk of the City of Woodland, located at 300 First Street, Woodland, CA, and are incorporated herein by this reference. Any capitalized terms not defined herein shall have the meanings ascribed to them in the DDA. Grantee covenants and agrees for itself and its successors and assigns to develop the Site in accordance with the DDA and thereafter to use, operate and maintain the Site in accordance with the Woodland Downtown Specific Plan, this Deed, and the CC&Rs. The Site is also conveyed subject to easements and rights-of-way of record and other matters of record. In the event of any conflict between this Deed and the DDA, the provisions of the DDA shall control.

2. Uses. Developer may only use the Site for a movie theater, related purposes, and other uses consistent with the zoning of the Site and the terms, covenants and conditions as set forth in the DDA, and the CC&Rs. Grantee shall have no right to subdivide, separate, or partition the Site, except upon prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed. Breach of the terms, covenants, conditions, and

provisions of the DDA, and CC&Rs shall be a material breach of this Deed. In general, Grantee, shall operate the business on the Site in a prudent manner, exercising customary business practices and hours of operation, to maximize sales and enhance the reputation and attractiveness of the business.

3. Term of Restriction. Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor-in-interest to the Site that Grantee, its successors and such assigns, shall not develop, operate, maintain or use the Site in violation of the terms and conditions of the DDA, this Deed and the CC&Rs (unless expressly waived in writing by Grantor).

4. Right of Re-Entry. Grantee covenants by and for itself and any successors-in-interest that Grantor shall have the right, at its option, to reenter and take possession of the Site hereby conveyed, with all improvements thereon, and re-vest in Grantor the estate conveyed to the Grantee if Grantee or its successor-in-interest commits a material default as described in Section 705 of the DDA. Pursuant to Section 705 of the DDA, Grantor's right to re-enter, repossess, terminate, and re-vest shall be subordinate to and subject to and be limited by, and shall not defeat, render invalid, or limit (1) any mortgage, deed of trust, or other security interests permitted by the DDA, or (2) any rights or interest provided in the DDA for the protection of holders of such mortgages, deeds of trust, or other security interests.

5. Reservation of Existing Streets. Grantor excepts and reserves any existing street, proposed street, or portion of any street or proposed street lying outside the boundaries of the Site which might otherwise pass with a conveyance of the Site.

6. Transfer Restrictions. Grantee covenants that, prior to the recordation of the Certificate of Completion, Grantee shall not transfer the DDA, the Site or any of its interests therein except as provided in Section 303 of the DDA. After the recordation of the Certificate of Completion, Grantee shall not transfer the Sites or any of its interests therein except as provided in the Operating Covenant.

7. Non-Discrimination. Grantee covenants that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Site, or any portion thereof, nor shall Grantee, or any person claiming under or through Grantee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site or any portion thereof. The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

8. Form of Nondiscrimination Clauses in Agreements. Grantee shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, age, ancestry, gender or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non segregation clauses:

(a) Deeds: In deeds the following language shall appear: "The grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, gender or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself, or any persons claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) Leases: In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, gender or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(c) Contracts: In contracts pertaining to conveyance of realty the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, gender or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

The foregoing covenants shall remain in effect in perpetuity.

9. Mortgage Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by and approved by Grantor pursuant to the DDA; provided, however, that any successor of Grantee to the Site shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise. The foregoing shall limit any rights of holders of any mortgage, deed of trust, or other financing or security instrument set forth in the DDA.

10. Covenants Run With the Land. The covenants contained in this Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, and shall be binding upon Grantee, its heirs, successors and assigns to the Site, whether their interest shall be fee, easement, leasehold, beneficial or otherwise.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers or agents hereunto as of the date first above written.

"CITY": CITY OF WOODLAND

Date: ______________________

By: ______________________
City Manager

ATTEST:

By: ______________________
City Clerk

APPROVED AS TO FORM:

By: ______________________
City Attorney

By its acceptance of this Deed, Grantee hereby agrees as follows:

1. Grantee expressly understands and agrees that the terms of this Deed shall be deemed to be covenants running with the land and shall apply to all of the Grantee's successors and assigns (except as specifically set forth in the Deed).

2. The provisions of this Deed are hereby approved and accepted.

"GRANTEE"

WOODLAND STATE THEATRE, LLC, a California limited liability company

Date:______________________

By: ______________________
Its: ______________________

By: ______________________
Its: ______________________

STATE OF CALIFORNIA)
) ss.
COUNTY OF YOLO)

On ____________________, before me, _________________________, personally appeared ____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

____
Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF YOLO)

On ____________________, before me, _________________________, personally appeared ____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

____
Notary Public

[SEAL]

EXHIBIT "A"

TO ATTACHMENT NO. 5

LEGAL DESCRIPTION OF SITE

[To Be Inserted]

ATTACHMENT NO. 6
CERTIFICATE OF COMPLETION

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Woodland
300 First Street
Woodland, CA 95695
Attn: __________________

(Space Above This Line for Recorder's Office Use Only)

CERTIFICATE OF COMPLETION

WHEREAS, by that certain Amended and Restated Disposition and Development Agreement ("Agreement") dated January __, 2015, by and between CITY OF WOODLAND, a public body, corporate and politic ("City"), and WOODLAND STATE THEATRE, LLC, a California limited liability company, ("Developer"), Developer has agreed to develop that certain real property ("Project") situated in the City of Woodland, California, described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, as referenced in the Agreement, City shall furnish Developer with a Certificate of Completion upon completion of construction and development of the Project, which certificate shall be in such form as to permit it to be recorded in the Official Records of the County Recorder of the County of Yolo, California; and

WHEREAS, the Agreement provided for certain covenants to run with the land, which covenants were incorporated in the Deed (as defined in the Agreement), Operating Covenant (as defined in the Agreement), or in that certain Declaration of Covenants, Conditions and Restrictions recorded as Instrument No. ________ of the Official Records of the County of Yolo Recorder ("Declaration"); and

WHEREAS, this Certificate of Completion shall constitute a conclusive determination by City of the satisfactory completion by Developer of the construction and development required by the Agreement and of Developer's full compliance with the terms of the Agreement with respect to the construction and development of the Project, but not of the Deed, the Declaration nor the Operating Agreement (as defined in the Agreement), the provisions of which shall continue to run with the land pursuant to their terms; and

WHEREAS, Cityy has conclusively determined that the construction and development of the Project on the real property described in Exhibit "A" required by the Agreement has been satisfactorily completed by Developer in full compliance with the terms of the Agreement.

NOW, THEREFORE,

1. The improvements required to be constructed as the Project have been satisfactorily completed in accordance with the provisions of said Agreement.

2. This Certificate of Completion shall constitute a conclusive determination of satisfaction of the agreements and covenants contained in the Agreement with respect to the obligations of the Developer for the Project, and its successors and assigns, to construct the improvements and the dates for the beginning and completion thereof. After the date hereof, City shall not have any rights or remedies under the Agreement, except as otherwise set forth in the Deed, the Operating Covenant and the Declaration.

3. This Certificate of Completion, except as expressly provided otherwise herein, shall not constitute evidence of Developer's compliance with the Deed, the Operating Covenant or the Declaration, the provisions of which shall continue to run with the land.

4. This Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof.

5. This Certificate of Completion is not a Notice of Completion as referred to in California Civil Code Section 3093.

6. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the Agreement or any other provisions of the documents incorporated therein.

IN WITNESS WHEREOF, City has executed this Certificate of Completion this ____ day of ________________, _______.

"CITY": CITY OF WOODLAND

Date: __________________________

By: ___________________________
City Manager

ATTEST:

By: __________________________
City Clerk

APPROVED AS TO FORM:

By: ____________________________
City Attorney

CONSENT TO RECORDATION

WOODLAND STATE THEATRE, LLC, a California limited liability company, ("Developer") defined herein and the owner of the fee title to the real property legally described herein, hereby consents to the recordation of this Certificate of Completion against the real property legally described herein.

"DEVELOPER": WOODLAND STATE THEATRE, LLC, a California limited liability company

Date:_______________________________

By: ________________________________
Its:______________________________

By: ________________________________
Its:______________________________

STATE OF CALIFORNIA)
) ss.
COUNTY OF YOLO)

On the _____ day of ______________________, 2010, before me, the undersigned, a Notary Public, in and for said State and County, personally appeared ______________________ ______________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument____, a public body, corporate and politic therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

____
Signature of Notary

(SEAL)

STATE OF CALIFORNIA)
) ss.
COUNTY OF YOLO)

On __________, 2010, before me, ________________________, personally appeared _______________________________ personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____
Signature of Notary

[SEAL]

EXHIBIT "A"

TO ATTACHMENT NO. 6

LEGAL DESCRIPTION OF SITE

[To Be Inserted]

ATTACHMENT NO. 7
DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Woodland
300 First Street
Woodland, California 95695
Attn: ________________

(Space Above This Line for Recorder's Office Use Only)

DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this ___ day of _________, 2015 by and among WOODLAND STATE THEATRE, LLC, a California limited liability company ("Declarant") and THE CITY OF WOODLAND, a municipal corporation ("City").

R E C I T A L S:

1. Declarant is the fee owner of that certain real property located in the City of Woodland, County of Yolo, State of California more particularly described on Exhibit "1" attached hereto and incorporated herein by reference ("Site").

2. Declarant has entered into an Amended and Restated Disposition and Development Agreement ("Agreement") with City which Agreement places certain restrictions on the Site. Pursuant to the City's development requirements, the City has approved or will approve a site plan for the development of the Site ("Site Plan"), which plan places certain restrictions on the Site. The Agreement and Site Plan (i) are on file and may be reviewed in the office of the Community Development Director in Woodland City Hall, 300 First Street, Woodland California, 95695 and (ii) are each incorporated herein by this reference and made a part hereof as though fully set forth herein.

3. Declarant and City intend, in exchange for entering into the Agreement by City and the approval of the Site Plan by City, that the Declarant, its successors and assigns hold, sell, and convey the Site subject to the covenants, conditions, restrictions, and reservations set forth in this Declaration and that City shall have the right and power to enforce the covenants, conditions, restrictions, and reservations as provided herein.

6. Declarant desires to establish and grant certain covenants, conditions and restrictions upon the Site for the purpose of enhancing and protecting the value, desirability and attractiveness of the Site and effectuating the Woodland Downtown Specific Plan. Such covenants, conditions and restrictions shall bind the Site, the Declarant and its successors and assigns.

NOW, THEREFORE, the Declarant covenants and agrees, for itself, its heirs, executors and assigns, and all persons claiming under or through it, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants and restrictions hereinafter set forth.

TERMS AND CONDITIONS

ARTICLE 1
COVENANTS, CONDITIONS AND RESTRICTIONS

a) General. The Site shall be developed and used only as permitted by the restrictions contained in the Site Plan, Woodland Downtown Specific Plan and the Agreement.

b) Use. Developer acknowledges and agrees it may only use the Site for a movie theater, related purposes, and other uses consistent with the zoning of the Site and the terms, covenants and conditions as set forth in the Agreement, and this Declaration. In general, Developer shall operate the business conducted by it on the Site in a prudent manner, exercising customary business practices and hours of operation, to maximize sales and enhance the reputation and attractiveness of the Site.

c) Maintenance Agreement. Declarant, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:

i) Maintenance and repair of the Site and all related on-site improvements and landscaping thereon at its sole cost and expense, including, without limitation, buildings, lighting, signs and walls, in a first class condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction over the Site. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal, and (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition, or the replacement of damaged or dying landscaping with equivalent landscaping materials of then-comparable size and maturity.

ii) Maintenance of the Site in such a manner as to avoid (i) the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare or (ii) a condition of deterioration or disrepair which causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Site.

d) Compliance With Ordinances. Declarant shall comply with all ordinances, regulations and standards of the City applicable to the Site. Declarant shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.

e) Outside Storage. Other than the storage of trash or other storage in any outside storage areas approved by City or as required by law, no storage of any kind shall be permitted outside the building(s) located on the Site. Adequate trash enclosures shall be provided and screened. Locations of such areas and types of screening must be approved by the City. Gates for trash storage areas shall be kept closed at all times except when in actual use.

f) Buildings and Equipment. Any construction, repair, modification or alteration of any buildings, equipment, structures or improvements on the Site shall be subject to the following restrictions:

i) All mechanical and electrical fixtures and equipment to be installed on the roof or on the ground shall be adequately and decoratively screened. The screening must blend with the architectural design of the building(s). Equipment on the roof must be at least six (6) inches lower than the parapet line and adequately screened. All details and materials of said screening shall be approved by the City prior to installation.

ii) The texture, materials and colors used on the buildings, as well as the design, height, texture and color of fences and walls shall be subject to the approval of the City.

iii) Signs on the Site shall conform to the standards and ordinances of the City and to a uniform design theme approved by the City. Any signs installed on the Site shall conform to said design scheme and shall be approved by the City prior to installation.

iv) Lights installed on the building shall be a decorative design. No lights shall be permitted which may create any glare or have a negative impact on the residential areas, if any, existing around the Site. No light stand on any portion of the Site shall be higher than fifteen (15) feet. The design and location of any lights shall be subject to the approval of the City.

v) No fences, signs, gas pumps, or any other similar facilities shall be constructed or provided on the Site without the prior approval of the City.

g) Public Agency Rights of Access. Developer hereby grants to the City and other public agencies the right, at their sole risk and expense, to enter the Site or any part thereof at all reasonable times with as little interference as possible for the purpose of construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the Site. Any damage or injury to the Site or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry.

ARTICLE 2
ENFORCEMENT

a) Termination. No breach of this Declaration shall entitle any party to cancel, rescind or otherwise terminate this Declaration, or excuse the performance of such party's obligations hereunder; provided that, however, this limitation shall not affect in any manner any other rights or remedies which the parties may have by reason of such breach.

b) Injunction. Notwithstanding anything contained herein to the contrary, in the event of any violation or threatened violation of any of the terms, covenants, restrictions and conditions contained herein, in addition to the other remedies herein provided, the parties hereto shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

c) Failure to Perform; Lien. If any owner of the Site defaults on the performance of any of its obligations hereunder, City, its employees, contractors and agents may, at their sole option, and after making reasonable demand of the owner of the Site that it cure said default, enter onto the Site for the purpose of curing the default. In making an entry, City shall give the owners of the Site, or their representative, reasonable notice of the time and manner of said entry, and said entry shall only be at such times and in such manners as is reasonably necessary to carry out this Agreement. In such event, the owner of the Site shall reimburse City for all costs and expenses related to the curing of said default. If City is not reimbursed for such costs by the owner of the Site within 30 days after giving notice thereof, the same shall be deemed delinquent, and the amount thereof shall bear interest at the legal rate until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorneys' fees shall be a personal obligation of the owner of the Site and City may record a lien, with power of sale, upon the Site. City may bring an action at law against the owner of the Site to pay any such sums.

Upon the timely curing of any default for which a lien was recorded, City shall record an appropriate release of such lien, and sign any other documents reasonably necessary to satisfy title insurance requirements, upon payment by the owner of the Site of a reasonable fee to cover the costs of preparing and recording such release, together with the payment of such other costs, including without limitation, reasonable attorneys' fees, court costs, interest or other fees which have been incurred.

ARTICLE 3
ENCUMBRANCES, MORTGAGE PROTECTION AND TAXES

a) Developer's Breach Not to Default Mortgage Lien. Declarant's breach of any of the covenants or restrictions contained in this Declaration or the Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Site or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Declaration or the Agreement; but, unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservations of this Declaration and the Agreement shall be binding and effective against the holder of any such mortgage or deed of trust and any owner of any of the Site or any part thereof whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

b) Amendments or Modifications to Declaration. No purported rule, regulation, modification, amendment and/or termination of this Declaration or the Agreement shall be binding upon or affect the rights of any mortgagee holding a mortgage or deed of trust upon the Site that is recorded in the Office of the County of Yolo Recorder prior to the date any such rule, regulation, modification, amendment or termination is recorded in such office, without the prior written consent of such mortgagee.

c) Liens Subordinate. Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership interest or leasehold or subleasehold estate in and to the Site and any purchaser at any foreclosure or trustee's sale (as well as any by deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such monetary lien, but otherwise subject to the provisions hereof; provided that, after the foreclosure of any such mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure, assessed hereunder to the purchaser at the foreclosure sale, as owner of the Site after the date of such foreclosure sale, shall become a lien upon the Site and may be perfected and foreclosed as provided in Section 2(c).

d) Payment of Taxes and Assessments. Declarant shall pay, when due, all real estate taxes and assessments levied against the Site. Nothing herein contained shall be deemed to prohibit Declarant from contesting the validity or amounts of any tax or assessments nor to limit the remedies available to Declarant with respect thereto. Declarant acknowledges that City is relying on the receipt of *ad valorem* taxes to fund the payment for the Operating Covenant. Should Declarant fail to pay all *ad valorem* taxes when due, or if Declarant causes a substantial reduction in the amount of *ad valorem* taxes levied against the Site, then either the term of the Operating Covenant will be extended accordingly.

ARTICLE 4
COVENANTS TO RUN WITH THE LAND

This Declaration is designed to create equitable servitudes and covenants running with the Site. Declarant hereby declares that all of the Site shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to these covenants, conditions, restrictions and equitable servitudes, all of which are for the purposes of uniformly enhancing or protecting the value, attractiveness and desirability of the Site and effectuating the Woodland Downtown Specific Plan. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall: (i) run with the Site, (ii) be binding upon all persons having any right, title or interest in the Site, or any part thereof, their heirs, successive owners and assigns, and (iii) shall be binding upon Declarant, its successors and assigns and successors in interest.

ARTICLE 5
TERM

The covenants, conditions and restrictions contained in this Declaration shall remain in effect during the term of the Operating Covenant, notwithstanding anything to the contrary herein. Upon expiration of the term of this Declaration, the covenants, conditions and restrictions described herein shall cease to be of binding effect and the City shall, after written request of the Declarant, execute and record such instruments as the Declarant reasonably requires to release and relinquish this Declaration. In addition, Declarant shall have the right to execute and record such instruments as may be reasonably required to release and relinquish this Declaration and any amendment thereto.

ARTICLE 6
MISCELLANEOUS

a) Modification. This Declaration may not be modified, terminated or rescinded, in whole or in part, except by a written instrument duly executed and acknowledged by the parties hereto, their successors or assigns, and duly recorded in the Office of the County Recorder, County of Yolo.

b) Amendments. The amendment of any provision of this Declaration enforceable by City shall require the prior written consent of City.

c) Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of California.

d) Severability. The invalidity or unenforceability of any provision of this Declaration with respect to a particular party or set of circumstances shall not in any way affect the validity and enforceability of any other provision hereof, or the same provision when implied to another party or to a different set of circumstances.

e) Notices. Any notice to be given under this Declaration shall be given by personal delivery or by depositing the same in the United States Mail, certified or registered, postage prepaid, at the following address:

City: City of Woodland
300 First Street
Woodland, CA 95965
Attn: City Manager

With Copy to: Kara K. Ueda
Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Woodland, CA 95814

Declarant: Woodland State Theatre, LLC
Attn: David Corkill
515 E Washington St.
Petaluma, California 94952

Any notice delivered personally shall be effective upon delivery. Any notice given by mail as above provided shall be effective forty-eight (48) hours after deposit in the mail. Any party may change address for notice by giving written notice of such change to the other party.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

"Declarant"

"DEVELOPER": WOODLAND STATE THEATRE, LLC, a California limited liability company

By: ________________________________
Its:_____________________________

By: ________________________________
Its:_____________________________

EXHIBIT "A"

TO ATTACHMENT NO. 7

LEGAL DESCRIPTION OF SITE

[To Be Inserted]

STATE OF CALIFORNIA)
) ss.
COUNTY OF YOLO)

On ____________________, before me, _________________________, personally appeared ____ ____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

____
Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF YOLO)

On ____________________, before me, _________________________, personally appeared ____ ____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

____
Notary Public

[SEAL]

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TABLE OF CONTENTS (cont.)

OPERATING COVENANT ACQUISITION AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2014, by and between the CITY OF WOODLAND, a California municipal corporation (the "City"), and STATE THEATRE MANAGEMENT GROUP, a California non-profit corporation ("State Theatre Management Group") The City and State Theatre Management Group are sometimes referred to individually as a “Party” or collectively as the “Parties”.

Recitals

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.) (“CRL”), the former Redevelopment Agency of the City of Woodland (“Redevelopment Agency”) had responsibility to implement the Redevelopment Plan for the Woodland Redevelopment Project (the “Redevelopment Plan”) by Ordinance No. 1129, enacted by the City Council of the City of Woodland (the “City Council”).

B. Pursuant to an Indenture of Trust dated as of July 1 2007, and executed by and between the Redevelopment Agency and U.S. Bank, National Association, as Trustee (the “Indenture”), the Agency issued Series 2007A Bonds, in an aggregate principal amount of $7,295,000 and Series 2007B Bonds in the aggregate principal amount of $1,680,000 (collectively, the “Bonds”) pursuant to the Redevelopment Plan. Pursuant to Section 3.7 of the Indenture, the Bonds are required to be used in the manner provided by the CRL solely for the purpose of aiding in financing the Redevelopment Project.

C. Pursuant to Resolution No. 6043, adopted by the City Council on January 10, 2012, the City agreed to serve as the Successor Agency to the Redevelopment Agency commencing upon dissolution of the Redevelopment Agency on February 1, 2012, pursuant to Assembly Bill 1X 26 (“AB 26”).

D. Health and Safety Code Section 34191.4(c) provides that once a Finding of Completion has been issued by the Department of Finance, the Successor Agency is authorized to use bond proceeds for the purposes for which the bonds were sold. Further, the Successor Agency may designate the use of and commit indebtedness obligation proceeds that were derived the indebtedness issued for redevelopment purposes on or before December 31, 2010, and that remain available after the satisfaction of enforceable obligations that have been approved on a Recognized Obligation Payment Schedule (“ROPS”) and that are consistent with the indebtedness obligation covenants (“Bond Proceeds”).

E. On February 18, 2014, the City and the Successor Agency entered into that certain Agreement Regarding Expenditure of Bond Proceeds, pursuant to which the City agreed that it would use the Bond Proceeds solely and exclusively for purposes and projects consistent with the Bond covenants, associated Bond documents and provisions of the CRL that apply to the expenditure of redevelopment funds.

F. The City has entered into that certain Amended and Restated Disposition and Development Agreement (the "DDA") with Woodland State Theatre, LLC (the "Developer"), pursuant to which the City is selling that certain property described in Exhibit A attached hereto (the "Property") to the Developer for the construction of a 10-screen, 30,400 square-foot movie theatre and restaurant (the "Project"). It is anticipated that the Project will also create a minimum of 20 new jobs. Moreover, the operation of a movie theatre on the Site will generate sales tax revenue, which funds will further assist in the implementation of the goals of the Woodland Downtown Specific Plan.

G. The State Theatre Management Group also desires to facilitate the Project and ensure that it is developed in a manner that is consistent with the goals and objectives of the State Theatre Management Group for the Property and the downtown area surrounding the Property. To that end, the State Theatre Management Group and the Developer have entered into a loan agreement pursuant to which the State Theatre Management Group has agreed to make a loan to the Developer to assist in the development of the Project (the "State Theatre Management Group Loan"). As partial consideration for the State Theatre Management Group Loan, the Developer has offered to convey an operating covenant (the "Operating Covenant") that will ensure continued operation of the Project on the Property for a term of not less than fifteen (15) years.

H. In order to ensure the construction and continued operation of the Project in accordance with the terms of the DDA, and to ensure that the City has the ability to require Developer to operate the as a movie theater and restaurant as contemplated by the DDA, the City desires to use a portion of the Bond Proceeds to acquire the Operating Covenant from the State Theatre Management Group, and State Theatre Management Group has consequently directed the Developer to convey such Operating Covenant directly to the City. The City Council hereby finds that the Operating Covenant is an interest in real property and the acquisition of the Operating Covenant is an appropriate use of the Bund Funds under CRL Section 33391 and the terms and conditions of the Bond covenants and associated Bond documents.

Agreements

NOW, THEREFORE, THE CITY AND STATE THEATRE MANAGEMENT GROUP HEREBY AGREE AS FOLLOWS:

Section 1. The State Theatre Management Group agrees to sell, assign and transfer, and the City agrees to purchase, the Operating Covenant in the form attached hereto as Exhibit B and incorporated herein by reference, for the amount of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ($2,500,000) (the "Covenant Purchase Price"), subject to the terms and conditions as set forth in this Agreement.

Section 2. Concurrently with the closing of the Developer's purchase of the Property in accordance with the terms and conditions of the DDA and closing of the State

Theatre Management Group Loan, the State Theater Management Group shall require the Developer to execute the Operating Covenant in the form attached hereto as Exhibit B and incorporated herein by this reference. The City shall thereafter deposit the Covenant Purchase Price on behalf of the State Theatre Management Group into an escrow account established by _____________ **[Bank]**, to be disbursed for the construction of the Project in accordance with the terms of the State Theatre Management Group Loan documents.

Section 3. City is acquiring the Operating Covenant on the condition that the Covenant Purchase Price will be used to assist in the construction of the Project, to ensure that the Developer can comply with the terms and conditions of the Operating Covenant. City would not purchase the Operating Covenant if the funds used to purchase such covenant were used for any other purpose. The State Theatre Management Group hereby represents and covenants that the amount paid by the City for the Covenant Purchase Price shall be used solely and exclusively for the construction of the Project in accordance with the terms and conditions of the DDA and the State Theatre Management Group Loan Documents.

Section 4. State Theatre Management Group covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that it shall require, through its agreements with the Developer, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall Owner or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Site. The foregoing covenants shall run with the land.

Section 5. State Theatre Management Group shall require that Developer acknowledge and agree that the Project is a public work subject to the requirements of California Labor Code Section 1720 *et seq.* (the "Prevailing Wage Law"), and Developer shall require its contractors and subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under the Prevailing Wage Law for all construction work conducted as part of the Project. Developer shall indemnify, defend, and hold City harmless from any determinations or actions (whether legal, equitable or administrative in nature) or other proceedings that Developer, its contractors, or subcontractors failed to comply with the Prevailing Wage Law, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law.

Section 6. Each of the following shall constitute an "Event of Default" under this Agreement:

A. Failure by a Party to comply with and observe any of the conditions, terms, or covenants set forth in this Agreement, if such failure remains uncured within thirty (30) days after written notice of such failure from the other Party in the manner provided herein or, with respect to a default that cannot be cured within thirty (30) days, if the Party in default fails to commence such cure within such thirty (30) day period or thereafter fails to diligently and continuously proceed with such cure to completion. However, if a different period, notice requirement, or remedy is specified under any other section of this Agreement, then the specific provision shall control.

B. Any representation or warranty contained in this Agreement or in any application, financial statement invoice, certificate, or report submitted by one Party to the other Party proves to have been intentionally incorrect in any material respect when made.

Section 7. In addition to all other rights and remedies granted to the Parties under this Agreement or available to them in equity or at law, either Party may terminate this Agreement and all of its rights and obligations hereunder without cost or liability upon the other Party's Event of Default

Section 8. Upon an Event of Default, the defaulting Party shall be liable to the other Party for any damages caused by such default. At its option, the non-defaulting Party may also institute an action for specific performance of the terms of this Agreement.

Section 9. Unless prohibited by law or otherwise provided by a specific term of this Agreement, the rights and remedies of the City and State Theatre Management Group under this Agreement are nonexclusive, and all remedies hereunder and thereunder may be exercised individually or cumulatively. In addition to those remedies expressly granted herein, the Parties may exercise any right of remedy available to it pursuant to any other agreement between the Parties. The Parties shall also have the right to seek all other available legal and equitable remedies, including, without implied limitation, general and consequential damages, unless otherwise prohibited by a specific term of this Agreement.

Section 10. Formal notices, demands, and communications between the parties shall be deemed sufficiently given if sent by certified mail, postage prepaid, return receipt requested, or sent by express delivery service with a delivery receipt, to the principal office of the City and State Theatre Management Group as follows:

City: City of Woodland
300 First Street
Woodland, CA 95695
Attn: City Manager

State Theatre Management Group: ______________________
____

____
Attention: ____________

Section 13. This Agreement and the covenants contained herein shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

Section 14. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 15. This Agreement may only be amended in writing signed by the parties.

Section 16. In the event of litigation arising from this Agreement, the non-prevailing party promises to pay all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in such litigation.

Section 17. Time is of the essence of each and every provision of this Agreement.

[Signatures on the following page]

SIGNATURE PAGE TO

OPERATING COVENANT ACQUISITION AGREEMENT

IN WITNESS WHEREOF, the City and State Theatre have executed this Agreement as of the date first above written.

CITY OF WOODLAND

By: ________________________________

Title: __________________________

"CITY"

APPROVED AS TO FORM:

____
City Attorney

ATTEST:

____
City Clerk

____

By: ________________________________

Title: ______________________________

"STATE THEATRE MANAGEMENT GROUP"

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

[Insert legal description from title report.]

EXHIBIT B

OPERATING COVENANT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Woodland
300 First Street
Woodland, California 95695
Attn: City Manager

(Exempt from Recording Fee per Gov. Code § 6103)

(Space Above This Line for Recorder's Office Use Only)

OPERATING COVENANT

THIS OPERATING COVENANT ("Covenant") is made this ____ day of _____________, 2015 by and among WOODLAND STATE THEATRE, LLC, a California limited liability company ("Developer") and CITY OF WOODLAND ("City").

1. Project. Developer covenants and agrees for itself, its successors and assigns, and any successor-in-interest to the Site, which is described in Exhibit A attached hereto and incorporated herein by reference, or part thereof, that during the term of this Covenant, Developer shall only use the Site for the operation of a movie theater and related facilities and such ancillary and related uses as may be approved by the City. If at any time the Site is not used as a movie theater for a period of six (6) consecutive months, City shall have the right, at its option, and in addition to any other remedy available to City, to reenter and take possession of the Site, with all improvements thereon, and to terminate and re-vest in City the estate currently owned by the Developer.

2. Operating Covenant. In exchange for consideration provided to Developer by the State Theatre Management Group, in exchange for which Developer agreed to enter into this Operating Covenant, Developer covenants and agrees for itself, its lessees, successors and assigns and any successor-in-interest to the Site, or part thereof, that Developer shall continuously operate the Project on the Site and comply with all provisions of the Declaration of Covenants, Conditions & Restrictions ("CC&Rs") for the Project as entered into by and between the City and Developer and recorded against the Property.

3. Term. This Covenant shall and all obligations contained herein shall be enforceable by the City against Developer for a period of not less than fifteen (15) years from and after issuance of a Certificate of Completion for the Project. Provided Developer is not in Default hereunder and remains in reasonable compliance with the material terms and conditions of this Covenant and the CC&Rs, on the date that is fifteen (15) years following issuance of a Certificate of Completion of the Project, this Covenant shall expire and be of no further force or effect, and City at the request of Developer shall within thirty (30) days thereof execute a document in recordable form removing this Covenant from title and deliver the document to Developer. Developer agrees to record the document at Developer's cost. All documents to be recorded as herein provided shall be prepared by the Developer at Developer's cost, and their form and content shall be subject to City's reasonable approval.

4. Taxes. Developer shall pay, when due, (a) all *ad valorem* property taxes levied against the Site, (b) any special assessments or special taxes levied against the Site, (c) all taxes payable under the California Bradley-Burns Uniform Local Sales & Use Tax Laws, Revenue and Taxation Code § 7200, *et seq.,* (d) all temporary occupancy taxes, and (e) all other taxes, any portion of which is allocated to, or received by City.

5. Default. Any failure or delay by either party to timely perform any covenant of this Covenant or the CC&Rs for the Site shall constitute a Default under this Covenant, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion. The injured party shall give written notice of Default to the party in Default, specifying the Default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default. In the event of a Default, the injured party shall have all remedies available to it in law or equity, including but not limited to specific performance.

6. Restrictions on Transfer.

a. Transfer Defined.

As used in this section, the term "transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Covenant, the Site, or the improvements thereon. A transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Developer in the aggregate taking all transfers into account on a cumulative basis. In the event Developer or the applicable successor is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of Developer or of beneficial interests of such trust. In the event that Developer is a limited or general partnership, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the limited or general partnership interest. In the event that Developer is a joint venture, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all transfers into account on a cumulative basis.

b. Restrictions Prior to Expiration of Covenant.

Prior to expiration of this Covenant, Developer shall not transfer this Covenant or any of Developer's rights hereunder, or any interest in the Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, which shall not be unreasonably withheld, conditioned or delayed, and if so purported to be transferred, the same shall be null and void. The City's decision to approve or disapprove a transfer shall be final. In considering whether it will grant approval to any transfer by Developer of its interest in the Site, City shall consider factors such as (i) whether the continued operation of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Developer's obligations hereunder; and (iii) the proposed assignee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of specific written agreement by City, prior to the expiration of this Covenant, no assignment or transfer by Developer of all or any portion of its interest in the Site or this Covenant (including without limitation an assignment or transfer not requiring City approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the operation of the Project with respect to that portion of the Site which is so transferred. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form approved by City assuming such obligations. Upon City's approval of a transfer and the execution of an assumption agreement, Developer shall be released from all further obligations under this Covenant, the Deed, and the CC&Rs.

c. <u>Exceptions</u>.

The foregoing prohibition shall not apply to any of the following:

(1) Any mortgage, deed of trust, or other form of conveyance for financing, but Developer shall notify City in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Site.

(2) Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the improvements on the Site, including any additional costs of construction, whether direct or indirect, unless additional loan funds are needed by Developer to complete the Project, in which event such restructuring or refinancing loan(s) may exceed said outstanding balance; provided, however, all such additional funds shall be used by Developer solely for the purposes of completing the Project, and such restructuring or refinancing shall comply with City's subordination policy.

(3) The conveyance or dedication of any portion of the Property to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate the development of the Site.

(4) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(5) A sale or transfer of fifty percent (50%) or more of ownership or control interest between members of the same family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of members of the trustor's family, transfers to a corporation or partnership or other legal entity in which the members of the transferor's family have a controlling majority interest of fifty-one percent (51%) or more.

(6) A conveyance of the Site to any entity which controls, is controlled by or is under common control with Developer, or to a partnership or other legal entity of which Developer is the managing general partner or equivalent.

[Signatures on the following page]

SIGNATURE PAGE TO

OPERATING COVENANT

IN WITNESS WHEREOF, the undersigned have executed this Covenant as of the date first written above.

"CITY": CITY OF WOODLAND

Date: ____________________________

By: ____________________________
City Manager

ATTEST:

By: ____________________________
City Clerk

APPROVED AS TO FORM:

By: ____________________________
City Attorney

By: _____________(Name and Title)

"DEVELOPER"

STATE THEATRE, LLC, a California limited liability company

By:____________________________
Its:____________________________

By:____________________________
Its:____________________________

[Insert description]

EXHIBIT A

LEGAL DESCRIPTION OF SITE

[attached behind this cover page]

City of Woodland

Legislation Details (With Text)

13.

File #:	14-493 Version: 1	Name:	
Type:	Report of the City Manager	Status:	Agenda Ready
File created:	12/2/2014	In control:	City Council
On agenda:	12/16/2014	Final action:	

Title: SUBJECT: Approve Contract with Carollo Engineers for New ASR Wells #29 and #30, CIP 15-02

Recommendation for Action: Staff recommends that the City Council:
1) approve Resolution No. ______ authorizing the City Manager to execute the consultant services agreement with Carollo Engineers (Carollo) for the New Aquifer Storage & Recovery (ASR) Wells #29 and #30, CIP 15-02, for an amount not to exceed $995,355 and,
(2) appropriate $500,000 additional funding for FY2014/15 from the FY2015/16 planned allocation (CIP 15-02) to cover the design contract cost.

Sponsors:

Indexes:

Code sections:

Attachments: A - Resolution
B - Scope of Work
C - Map

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014
SUBJECT: Approve Contract with Carollo Engineers for New ASR Wells #29 and #30, CIP 15-02

Recommendation for Action: Staff recommends that the City Council:
1) approve Resolution No. ______ authorizing the City Manager to execute the consultant services agreement with Carollo Engineers (Carollo) for the New Aquifer Storage & Recovery (ASR) Wells #29 and #30, CIP 15-02, for an amount not to exceed $995,355 and,
(2) appropriate $500,000 additional funding for FY2014/15 from the FY2015/16 planned allocation (CIP 15-02) to cover the design contract cost.

Staff Contact

Tim Busch, Principal Utilities Civil Engineer, 530-661-5963, tim.busch@cityofwoodland.org

Fiscal Impact

This project is included in the approved Capital Improvement Program Budget with a total project budget of $3,908,750, funded from the Water Enterprise Fund. The project is also included in the State Revolving Fund (SRF) loan secured by the City for the local improvements to bring treated surface water into the City's water distribution system. The California Department of Public Health (CDPH) SRF loan was approved by Council on May 13, 2014 for an amount of $31,503,088. The ASR wells are one of the five identified projects covered by the SRF loan, including the Southwest Tank, Well #28, East Transmission Main, and West Transmission Main.

The ASR project was appropriated $500,000 in the FY 2014/15 budget. The staff recommendation would advance appropriation of an additional $500,000 from FY 2015/16 to FY 2014/15 in order execute the full design contract and allow the project to remain on schedule.
The typical schedule for design and construction of this type of project is two years. There would not be sufficient time to complete the project by 2016 if the design contract were delayed to the next fiscal year. The Woodland-Davis Clean Water Agency (WDCWA) is expected to begin delivering surface water in June 2016 and the ASR wells are needed to begin injection of water in Winter 2016/2017 to meet chromium VI compliance requirements and peak summer demands in 2017.

There is no impact to the General Fund.

Background

The City of Woodland has planned several projects as part of the improvements to the City's water supply portfolio, including participation in the WDCWA Regional Water Treatment Facility. The local projects include: 3.0 million gallon southwest tank, Well #28, East Transmission Main, West Transmission Main, and ASR Wells.

The project involves the design and construction of two new municipal aquifer storage and recovery (ASR) capable wells near the site of the existing Well #4 and Well #11 on City owned property. The attached Figure 1 shows the location of the two new wells. The new ASR wells will facilitate groundwater recharge by injecting treated surface water into the gravel layer approximately 400 feet down from the surface when surplus Sacramento River water is available during winter. The stored water would be pumped from the ASR well to supplement surface water during drought conditions and to meet peak demands.

The WDCWA has been modeling the City's ground water aquifers to investigate the feasibility for ASR in the City of Woodland. The modeling and subsequent field testing has shown that ASR is feasible. The modeling also indicated which well sites would be ideal to minimize loss of stored water, which included these sites. The existing wells #4 and #11 are also aging, exceed the new chromium VI Maximum Contaminant Limit, and experience elevated nitrates, and would need to be retired upon startup of the RWTF.

The intent is to inject water into the ASR well each winter and build a large reservoir of treated surface water beneath the well and utilize the water primarily to meet peak summer demands and during drought years. The project also removes two aging groundwater wells from the regional aquifer and replaces them with wells that will promote groundwater recharge and sustainability while improving Woodland's water supply reliability during a drought.

Staff recently completed full scale ASR feasibility testing at Well 28. The feasibility testing was a success and indicates that ASR technology would be successful in Woodland. The new ASR wells would include the ability to inject treated surface water at a rate of approximately 1,000 gpm and extract water at a rate of approximately 2,000 gpm. The existing wells #4 and #11 will be properly destroyed or converted to monitoring wells.

Discussion

Carollo was selected for the project through a competitive process. Staff issued a Request for Proposals for the project and received six proposals. The proposals were reviewed and ranked and the top three firms were interviewed. Carollo received the highest ranking in both the proposal and interview stages of the selection process. The Carollo team includes a national expert in ASR well design, construction, and operation with decades of experience. The Carollo team has cumulatively overseen construction of over 100 ASR wells across the United States.

The engineering design contract with Carollo includes the engineering design services required to prepare final plans and specifications and provide assistance during construction of the "down-hole" portion of the project. The two new wells are planned to be two separate bid packages and two construction projects. The first construction project is to construct the new wells, the down-hole work, at both Well #29 and #30. The second construction project is the construction of the pump station and well equipping (above ground work) at both Well #29 and #30 and will include demolition of the existing Wells #4 and #11. The design services generally include:

- Project Management which includes coordination with City Staff and other City consultants and quality assurance and control.
- Preparation of a Preliminary Design Report.
- Well drilling and installation which includes preparation of technical specifications, drilling inspection, ASR well design, post construction well testing, cycle testing, and permitting services.
- Well equipping design which includes 50%, 90%, and final design documents, construction cost estimating, construction schedule, and field survey work.
- Assistance with permitting and regulatory compliance.

Conclusion

Staff recommends that the City Council: 1) approve Resolution No. ______ authorizing the City Manager to execute the consultant services agreement with Carollo Engineers (Carollo) for the New Aquifer Storage & Recovery (ASR) Wells #29 and #30, CIP 15-02, for an amount not to exceed $995,355 and, (2) appropriate $500,000 additional funding for FY2014/15 from the FY2015/16 planned allocation (CIP 15-02) to cover the design contract cost.

Prepared by: Tim Busch, Principal Utilities Civil Engineer

Reviewed by: Brent Meyer, City Engineer

Ken Hiatt, Community Development Director

Paul Navazio, City Manager

ATTACHMENTS:
Attachment A - Resolution
Attachment B - Scope of work
Attachment C - Map

RESOLUTION NO. ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WOODLAND APPROVING AN AGREEMENT WITH CAROLLO ENGINEERS. FOR ENGINEERING CONSULTING SERVICES

WHEREAS, the City of Woodland wishes to enter into an engineering consulting services agreement with Carollo Engineers. (Carollo) for the New Aquifer Storage & Recovery (ASR) Wells #29 and #30 Design, CIP 15-02 ("Agreement"); and

WHEREAS, Carollo was selected through a competitive process; and

WHEREAS, Carollo is experienced in the design and construction of ASR wells and

WHEREAS, Carollo will complete the design including: project management, preliminary design report, construction services for the well drilling at both locations, ASR well design, and , assistance with regulatory compliance, project plans and specifications, and bidding assistance.

WHEREAS, the City Council wishes to approve an advanced appropriation of funds from FY 15/16 to FY 14/15 in the amount of $500,000 through the adoption of this Resolution.

WHEREAS, the City Council wishes to approve the Agreement and authorize its execution through the adoption of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WOODLAND AS FOLLOWS:

Section 1. The City Council hereby approves the Agreement and the advanced appropriation of funds from FY 15/16 to FY 14/15. The Mayor is hereby authorized and directed to execute the Agreement, subject to City Attorney approval. The City Attorney is hereby authorized to make clarifying and confirming changes so long as the total dollar amount authorized in the Agreement does not change.

Section 2. A copy of the Agreement is available and on file in the City Clerk's office, and is incorporated herein by reference and made a part of this Resolution.

PASSED AND ADOPTED this 16th day of December 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

____

Tom Stallard, Mayor

ATTEST:

____

Ana B. Gonzalez, City Clerk

City of Woodland ASR Wells #29 and #30 Project

SCOPE OF WORK

The City currently relies on 19 wells for its water supply. The City is part of the Woodland-Davis Clean Water Agency (WDCWA) which is constructing a new surface water treatment plant. The City will utilize surface water from the Sacramento River as the primary water supply source beginning in summer of 2016. The City will retain some existing wells as backup and blending wells after surface water is available. The City has also planned for the use of ASR wells to allow for storage of unused surface water in winter months and extraction of the water for potable use to meet peak summer demands and during drought years.

Under this project the City will construct two new ASR wells (#29 and #30) at identified locations within the City. The City has recently constructed Well #28 in Freeman Park as an ASR capable well. The aquifer targeted for injection/extraction in this project will be the same as Well #28. The new well facilities will be constructed with the capability for groundwater extraction and surface water injection.

The following scope of work covers services up to and including bid phase services. Services during construction will be developed at a later phase of project implementation.

Task 1 – Project Management

Task 1.1 General Project Management

Carollo will provide project management for the duration of the project. This includes monitoring progress, preparing status reports, managing subcontractors, tracking the budget, consulting with and advising the City during design and construction, conducting meetings, and coordinating with other City consultants on behalf of project objectives.

Task 1.2 Coordination with Subconsultants

Carollo will provide oversight and coordination with project team subconsultants throughout the duration of the project. This task includes reviewing subconsultant's work, keeping them on schedule, reviewing pay applications, and implementing their work and design with the overall project design.

Task 2 – Well Drilling & Installation

Our project team will identify a cost-effective combination of drilling and completion techniques that will optimize well performance. Our goal will be to employ a combination that reduces the risk of operational problems for ASR wells completed in unconsolidated formations (e.g., clogging), enhances their productivity, and achieves high recovery efficiency.

Task 2.1 Technical Specifications

Our subconsultant, GSI Water Solutions (GSI), will prepare detailed technical specifications for well installation, including requirements for drilling, well construction materials, construction methods, well development and testing, and well disinfection final testing. The documents will include conceptual well design schematics for bidding purposes and will specify requirements for site security, water management, erosion control, and site reclamation.

Our conceptual well designs will consider specialized ASR well construction materials that are intended to (1) maximize energy efficiency, (2) minimize potentially damaging effects from corrosion, reactivity, and/or biofouling, and (3) maintain optimum long-term well performance. Our designs will also consider elements intended for monitoring ASR operations and to minimize long-term maintenance costs.

Task 2.2 Drilling Inspection Services

GSI field staff, with experience in ASR well drilling oversight, will supervise and document well drilling activities at each well. GSI will prepare a detailed lithologic log of the cuttings to identify those portions of the aquifer with the greatest potential for ASR storage zone development. Laboratory results of cuttings will be used to design the screen assembly, well screen slot size, and filter pack gradation necessary to prevent sand invasion during well pumping.

Task 2.3 Borehole Geophysical Logging

Borehole geophysical logging will be conducted to obtain additional hydrogeologic information to identify target storage zones and better design the screen assembly and slot sizing.

Task 2.4 ASR Well Design

Though design considerations will be based on findings from the drilling program and borehole geophysical surveys, we anticipate that the ASR wells would be constructed with at least a 16- or 18-inch casing to accommodate an injection/pumping system capable of rates of up to 2,000 gpm. Careful selection of non-reactive materials for ASR well casings, screens, and filter pack material (e.g., glass beads as opposed to silica sand) can be a key component of an ASR program if subsurface conditions suggest that corrosion, reactivity, and/or biofouling are issues. Preliminary data we have reviewed indicates this will be the case.

Task 2.5 Construction Inspection Services

During the well construction phase, a GSI field geologist will be onsite at key times during well construction. On average, the field geologist will be on site 50% of the time. . Continuous oversight during installation of the screen assembly and filter pack material will verify that each well is completed to design depths and specified intervals. GSI will provide inspection services during well development operations to ensure that each well is developed in compliance with the specified standards and in a manner that establishes a proper hydraulic connection with the aquifer. In addition, GSI will provide inspection services for the final well video survey and the plumbness and alignment test. We will attempt to coordinate field activities so that our field geologist is onsite when critical installation activities are occurring (e.g. screen installation, etc.).

Task 2.6 Post-Construction Well Testing

Prior to test pumping each new well, GSI will coordinate with the City and Carollo to identify an appropriate water discharge area and coordinate efforts to minimize potential public relations problems that may result from the discharge of large volumes of water.

GSI will design and supervise an aquifer testing program. GSI will monitor the water level and water quality field parameters during testing and evaluate the test results. The hydraulic response observed in the pumping and observation wells will be used to evaluate regional hydraulic properties and aquifer boundary conditions that could affect aquifer storage efficacy. These results can be used to assess pre-feasibility for ASR with regard to water quality compatibility, recharge and pumping rates, and aquifer storage volume capacity.

GSI will collect a groundwater quality sample and submit it to an accredited laboratory for Safe Drinking Water Act Phase II/Phase V (New Source Approval) analysis. Special consideration will be given to constituents known to be present in the City's groundwater that exceed water quality standards that may require treatment or blending.

Task 2.7 Well Installation Reports

GSI will prepare a Well Installation Report for each well that summarizes all work conducted during well installation. Each Well Installation Report will include all documentation collected during drilling and construction of that well and will present recommendations for the optimum pumping rate, injection rate, and pump setting, along with detailed as-built drawings.

Task 2.8 Permitting Services

Project-related elements that require permit acquisition include construction and testing of the two municipal water wells (#29 and #30) and destruction of the two existing wells (#4 and #11). Primary permitting requirements for well construction and abandonment activities include:

- Obtain Well Installation Permits from Yolo County Environmental Health Department.
- Submit amendment to the State Board for the City's Domestic Water Supply Permit.
- If well testing requires discharge to waste that ultimately flows to Waters of the U.S. (or is discharged to land), an NPDES permit (or WDR, if to land) is required.
- Submit County form for well abandonment.

Many of the required permit applications also require documentation that CEQA compliance has been achieved. As stated in the RFP, we understand that the well installation and abandonment work has been included in a Supplemental EIR that is scheduled for completion by June 2015. Compliance with CEQA for the well drilling and testing has been assumed to be accomplished under a categorical exemption.

We also understand that the City of Woodland obtained waste discharge permit approval in January 2014 for the Well #28 pilot ASR testing from CVRWQCB under order 2012-0010-DWQ-RB5S-0003. Because additional ASR testing is planned at Wells #29 and #30, we have included scope and budget to amend the waste discharge permit to include ASR testing at these new wells. We will also register the new wells with EPA as Class V injection wells.

Task 2.9 Well Abandonments

Well 4 and Well 11 have been identified by the City as needing abandonment. GSI will coordinate proper abandonment procedures in accordance with DWR Guidelines for Well Destruction (Bulletin 74-90, Chapter II. Standards Part III. Sections 20-23) GSI will include specifications for well abandonments in the technical specifications and bid document for the well drilling task and GSI will prepare a well abandonment report.

Task 2.10 Monitoring Well Installation

Two new monitoring wells will be installed (one at each ASR site) to track water quality and water level changes in the aquifer at a distance away from each ASR wells. This subtask includes review of available hydrogeological information that will inform the design, working with the City to locate each monitoring well, and preparation of a design that includes technical specifications and a drawing that illustrates the planned design in accordance with DWR Guidelines (Monitoring Well Standards Bulletin 74-90). Specifications for monitoring well installation will be included with the technical specifications and bid document for the well drilling task. This subtask also includes on-site inspection during drilling and installation. We assume that this on-site inspection work will be done contemporaneously with other well drilling and installation activities.

Task 3 – Well Equipping Design

This task prescribes submittals the Carollo team will prepare for City review as progress is made on project design and preparation of construction drawings and specifications. Deliverables from the Carollo team will be reviewed by the City and others during design development. Construction drawings and technical specifications will be done in accordance with Carollo drafting standards, standard specifications, and applicable City standard details.

Carollo will prepare progress submittal packages when design, drawings, and specifications are considered 50%, 90%, and 100% (final) complete. All submittals will be made electronically to the City in pdf format. No hard copies will be provided. Carollo CAD standards will be used for creation of drawings.

Task 3.1 Conduct Meetings

Carollo will conduct meetings and workshops with City staff to discuss technical aspects of the design; progress in development of design, drawings, and specifications; and related issues that may affect project results.

Task 3.2 Preliminary Design

Preliminary design will include defining project components required to meet specific project objectives; determining the basis of design; verifying site conditions to understand opportunities and constraints that may be imposed upon the project and its design; preparing schematic drawings to determine general scope, preliminary design, scale, and relationships among project components; preparing an opinion of probable construction cost; and preparing the PDR. It has been assumed that the well building at each site will be of similar layout, which will minimize design efforts.

This task also includes surveying of both proposed well sites to identify existing conditions, grading, major aboveground elements, and indicators of below-ground utilities. A geotechnical investigation will be performed at both sites to develop civil and structural design criteria. Significant geotechnical work has been done at the proposed Well 29 site. It is anticipated that no additional borings will be required to develop criteria at this site. Up to three borings have been included at the proposed Well 30 site.

Task 3.3 50% Progress Submittal

Drawings and specifications for each discipline will be coordinated and progressed to where the design intent is established. The work will be shown in sufficient detail that a contractor can recognize general building elements and requirements for construction. All comments from the PDR will be satisfactorily addressed.

Task 3.4 90% Progress Submittal

Drawings and details in all disciplines will be complete. Specifications will be essentially complete. Design calculations in all disciplines will be essentially complete and checked. Preparation of the City's construction “front-end” contract documents will be started. Comments on design, drawings, and specifications from previous reviews will have appropriate responses before the 90% progress submittal is submitted.

Task 3.5 Final Progress Submittal

Drawings and specifications will be complete and accepted by the City. All construction documents will be complete and ready for construction pricing of the work.

Task 3.6 Opinions of Construction Cost

Carollo will prepare an opinion of probable construction cost at the 50%, 90%, and final progress submittals.

Task 3.7 Process Control Descriptions

Carollo's SUBCONSULTANT, A-TEEM, will write control descriptions to be configured in the City's computer control system. Carollo will obtain information from a combination of process design personnel, contract documents, preliminary equipment supplier schematics, and details and examples of past descriptions. Control descriptions will be coordinated with P&IDs and process design intent. The control descriptions will be guidelines for the computer control system configuration.

Task 4 – Permit, Regulatory, & Safety Considerations

Task 4.1 Building Code Compliance

The City requires that design and construction of new Water Services site facilities be reviewed and inspected by the Building Department for building code compliance.

Task 4.2 Central Valley Regional Water Quality Control Board

In an effort to obtain permits with CVRWQCB, Carollo will conduct a preliminary review meeting with a CVRWQCB representative and submit pre-final drawings and specifications for review and comment.

Task 4.3 Division of Drinking Water

The Division of Drinking Water will review and approve pre-final drawings and specifications. Carollo will submit this review package at the same time the CVRWQCB review package is submitted.

Task 5 – Construction Bidding

Task 5.1 Pre-Bid & Pre-Construction Services

The Carollo team will support the City with soliciting quotes from qualified drilling contractors for well drilling, construction, and testing. Our support services will include assisting the City with (1) defining drilling contractor qualifications, (2) preparing responses to bidder inquiries and bid addenda, and (3) reviewing bid submittals. The Carollo team will provide a letter recommending which drilling firms are best qualified based on those definitions to be included in the competitive bidding package.

Task 5.2 Bidding Assistance for Site Construction

Carollo will support the City with soliciting bids from qualified contractors, attending a pre-bid conference, assisting the City with preparing responses to bidder inquiries and up to two bid addenda, and reviewing bid submittals.

City of Woodland Wells #29 and #30
Cost Proposal

TASK / DESCRIPTION	CAROLLO LABOR HOURS								SUBS				DIRECT EXPENSE			TOTAL
	Sr Prof	Proj Prof	Prof	Sr Tech	Tech	Doc Prcss	CAROLLO HOURS	CAROLLO LABOR COST	ASR SYSTEMS	GSI	ATEEM	Total Subs	Other Direct Charges	PECE @ $11.70/hr	Total Direct Charges	Total Direct Charges
Task 1 - Project Management	**100**	**0**	**100**	**0**	**0**	**0**	**200**	**$ 45,300**	**$ 17,514**	**$ -**	**$ -**	**$ 17,514**	**$ -**	**$ 2,340**	**$ 2,340**	**$ 65,154**
Project Management	100	-	100	-	-	-	200	$ 45,300	$ 17,514	$ -	$ -	$ 17,514		$ 2,340	$ 2,340	$ 65,154
Task 2 - Well Drilling and Installation	**2**	**0**	**16**	**0**	**0**	**0**	**18**	**$ 3,538**	**$ 26,712**	**$ 344,586**	**$ -**	**$ 371,298**	**$ -**	**$ 211**	**$ 211**	**$ 375,046**
Task 2.1 - Technical Specification Preparation	2	-	8	-	-	-	10	$ 2,034	$ 4,032	$ 23,615	$ -	$ 27,647		$ 117	$ 117	$ 29,798
Task 2.2 - Drilling Oversight	-	-	-	-	-	-	-	$ -	$ 1,008	$ 51,104	$ -	$ 52,112		$ -	$ -	$ 52,112
Task 2.3 - Geophysical Logging	-	-	-	-	-	-	-	$ -	$ 5,040	$ 12,947	$ -	$ 17,987		$ -	$ -	$ 17,987
Task 2.4 - ASR Well Design	-	-	4	-	-	-	4	$ 752	$ 6,048	$ 9,912	$ -	$ 15,960		$ 47	$ 47	$ 16,759
Task 2.5 - Construction Oversight	-	-	-	-	-	-	-	$ -	$ 1,008	$ 100,498	$ -	$ 101,506		$ -	$ -	$ 101,506
Task 2.6 - Post-Construction Well Testing and Analysis	-	-	4	-	-	-	4	$ 752	$ 6,048	$ 45,575	$ -	$ 51,623		$ 47	$ 47	$ 52,422
Task 2.7 - Well Installation Reports	-	-	-	-	-	-	-	$ -	$ 504	$ 34,157	$ -	$ 34,661		$ -	$ -	$ 34,661
Task 2.8 - Permitting Services	-	-	-	-	-	-	-	$ -	$ 1,008	$ 38,241	$ -	$ 39,249		$ -	$ -	$ 39,249
Task 2.9 - Well Abandonments	-	-	-	-	-	-	-	$ -	$ -	$ 6,531	$ -	$ 6,531		$ -	$ -	$ 6,531
Task 2.10 - Monitoring Well Installation	-	-	-	-	-	-	-	$ -	$ 2,016	$ 22,008	$ -	$ 24,024		$ -	$ -	$ 24,024
Task 3 - Well Equipping Design	**78**	**292**	**560**	**48**	**340**	**48**	**1,366**	**$ 242,838**	**$ 121,202**	**$ -**	**$ 69,174**	**$ 190,376**	**$ 60,775**	**$ 15,982**	**$ 76,757**	**$ 509,971**
Task 3.1 - Conduct Meetings	40	16	80	-	-	-	136	$ 29,208	$ 38,850	$ -	$ 2,730	$ 41,580	$ 2,500	$ 1,591	$ 4,091	$ 74,879
Task 3.2 - Preliminary Design	12	80	140	16	100	8	356	$ 62,248	$ 15,372	$ -	$ 4,872	$ 20,244	$ 58,275	$ 4,165	$ 62,440	$ 144,932
Task 3.3 - Fifty Percent (50%) Progress Submittal	12	100	160	16	120	16	424	$ 73,584	$ 21,231	$ -	$ 26,250	$ 47,481		$ 4,961	$ 4,961	$ 126,026
Task 3.4 - Ninety Percent (90%) Progress Submittal	8	60	80	8	80	16	252	$ 42,668	$ 11,256	$ -	$ 15,750	$ 27,006		$ 2,948	$ 2,948	$ 72,622
Task 3.5 - Final Progress Submittal	4	32	40	8	40	8	132	$ 22,428	$ 4,851	$ -	$ 11,214	$ 16,065		$ 1,544	$ 1,544	$ 40,037
Task 3.6 - Opinions of Construction Cost	2	4	32	-	-	-	38	$ 7,438	$ 2,237	$ -	$ 2,541	$ 4,778		$ 445	$ 445	$ 12,660
Task 3.7 - Develop Process Control Descriptions	-	-	28	-	-	-	28	$ 5,264	$ 27,405	$ -	$ 5,817	$ 33,222		$ 328	$ 328	$ 38,814
Task 4 - Permit, Regulatory and Safety Considerations	**12**	**0**	**66**	**0**	**0**	**0**	**78**	**$ 15,588**	**$ 2,016**	**$ -**	**$ 966**	**$ 2,982**	**$ -**	**$ 913**	**$ 913**	**$ 19,483**
Task 4.1 - Building Code Compliance	2	-	18	-	-	-	20	$ 3,914	$ -	$ -	$ -	$ -		$ 234	$ 234	$ 4,148
Task 4.2 - Central Valley Regional Water Quality Control Board (CVRWQCB)	2	-	24	-	-	-	26	$ 5,042	$ 1,008	$ -	$ -	$ 1,008		$ 304	$ 304	$ 6,354
Task 4.3 - Division of Drinking Water	8	-	24	-	-	-	32	$ 6,632	$ 1,008	$ -	$ 966	$ 1,974		$ 374	$ 374	$ 8,980
Task 5 -Assist in Bidding and Contractor Selection	**6**	**0**	**32**	**0**	**0**	**0**	**38**	**$ 7,606**	**$ 914**	**$ 14,553**	**$ 2,184**	**$ 17,651**	**$ -**	**$ 445**	**$ 445**	**$ 25,701**
Task 5.1 - Bidding Assistance for Drilling	2	-	4	-	-	-	6	$ 1,282	$ -	$ 14,553	$ -	$ 14,553		$ 70	$ 70	$ 15,905
Task 5.2 - Bidding Assistance for Site Construction	4	-	28	-	-	-	32	$ 6,324	$ 914	$ -	$ 2,184	$ 3,098		$ 374	$ 374	$ 9,796
TOTAL	**198**	**292**	**774**	**48**	**340**	**48**	**1,700**	**$ 314,870**	**$ 168,357**	**$ 359,139**	**$ 72,324**	**$ 599,820**	**$ 60,775**	**$ 19,890**	**$ 80,665**	**$ 995,355**

CAROLLO ENGINEERS, INC.
FEE SCHEDULE

As of January 1, 2014
California

	Hourly Rate
Engineers/Scientists	
Assistant Professional	$154.00
Professional	188.00
Project Professional	223.00
Lead Project Professional	244.00
Senior Professional	265.00
Technicians	
Technicians	115.00
Senior Technicians	162.00
Support Staff	
Document Processing / Clerical	102.00
Project Equipment Communication Expense (PECE) Per DL Hour	**11.70**
Other Direct Expenses	
Travel and Subsistence	at cost
Mileage at IRS Reimbursement Rate Effective January 1, 2014	$.56 per mile
Subconsultant	cost + 10%
Other Direct Cost	cost + 10%
Expert Witness	Rate x 2.0

This fee schedule is subject to annual revisions due to labor adjustments.

N:\Clients\376 Davis Woodland Water Supply Project JPA\00-14-09 Task Order 8\GIS\Figures\Fig1_Woodland_Planned_ASR_20140916.mxd

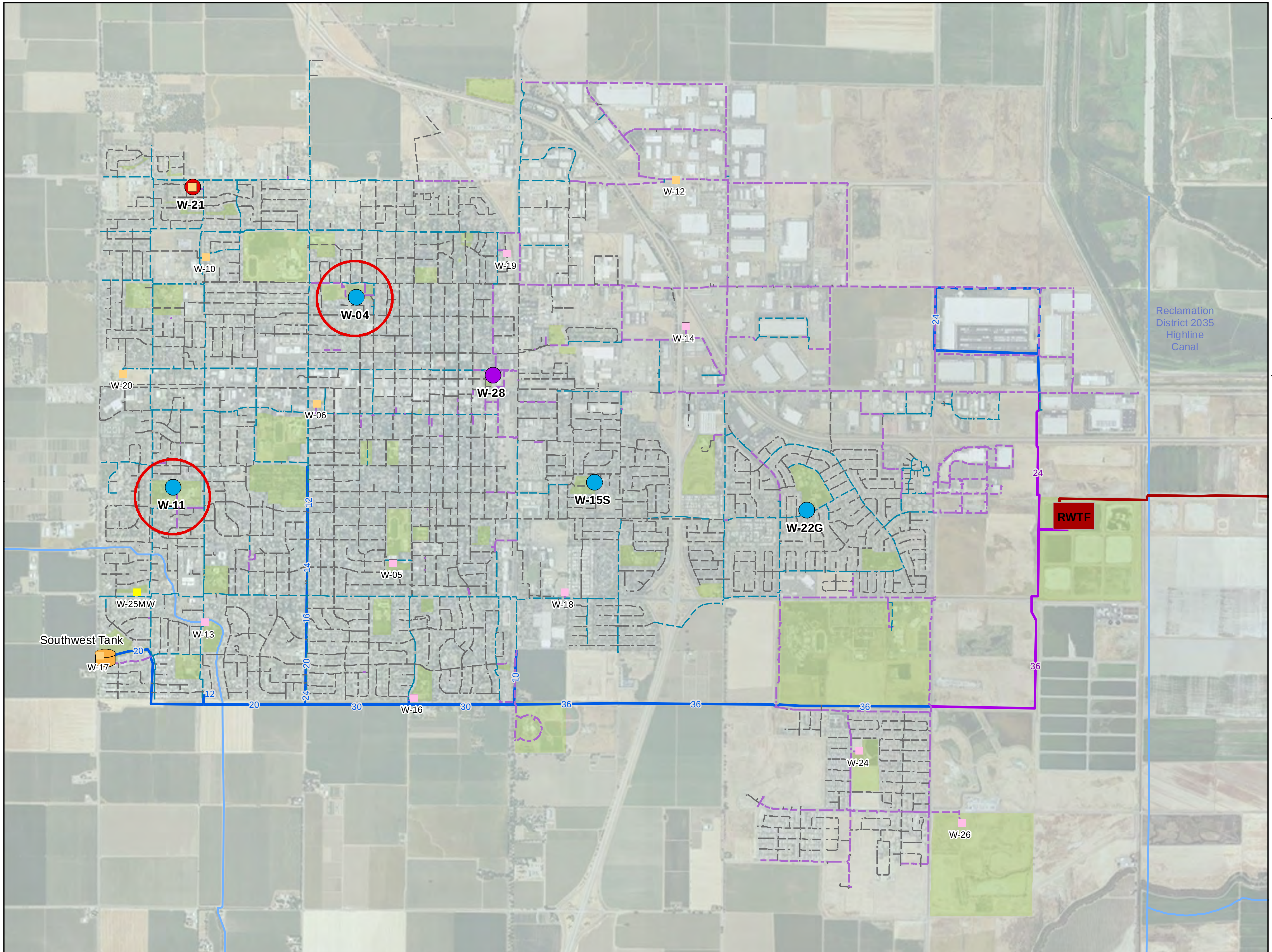

FIGURE 1

City of Woodland Aquifer Storage and Recovery Work Plan

PLANNED ASR INFRASTRUCTURE

N

0 1,200 2,400

Scale in Feet

NOTE:
1. Wells W-15 and W-22 may be re-equipped as ASR wells.

LEGEND

- Retire End of Life Well
- Inactive Well After SWTP
- Inactive Well
- Monitoring Well
- ASR Well
- Planned ASR Well
- Planned Future ASR Well / Interactive Well after SWTP
- Future Pumped Storage Tanks
- Regional Water Treatment Facility
- Parks and Public Facilities

Existing Pipeline

- 8" Diameter and Less
- 10" Diameter
- 12" Diameter

Planned Pipeline

- Raw Water Pipeline
- Regional Pipeline
- Local Pipeline
- Alternative Local Pipeline

WOODLAND City of Trees CALIFORNIA

WEST YOST ASSOCIATES

Legislation Details (With Text)

14.

File #:	14-500	Version: 1	Name:		
Type:	Report of the City Manager		Status:	Agenda Ready	
File created:	12/10/2014		In control:	City Council	
On agenda:	12/16/2014		Final action:		

Title: SUBJECT: Measure J Spending Plan -
Authorizing Initial FY2014/15 Program Implementation

Recommendation for Action: Staff recommends that the City Council approve specific supplemental FY2014/15 Measure J funding allocations and related actions for expanded program implementation to support:
1) Expanded Youth Sports Activities ($30,000)
2) Aquatics Programming ($36,000)
3) Recreation Programming and Teen Activities ($211,000)
4) Rec2GO Van Purchase ($50,000)
5) School Resource Officer / Gang Prevention Education Program ($50,000)

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: December 16, 2014

SUBJECT: Measure J Spending Plan -
Authorizing Initial FY2014/15 Program Implementation

Recommendation for Action: Staff recommends that the City Council approve specific supplemental FY2014/15 Measure J funding allocations and related actions for expanded program implementation to support:
1) Expanded Youth Sports Activities ($30,000)
2) Aquatics Programming ($36,000)
3) Recreation Programming and Teen Activities ($211,000)
4) Rec2GO Van Purchase ($50,000)
5) School Resource Officer / Gang Prevention Education Program ($50,000)

Council Goal

Quality of Life - Maintain and enhance Woodland's quality of life by ensuring the highest level of public safety, promoting a wide range of parks and recreation facilities and structures, and provision of exceptional public services, consistent with community expectations.

Fiscal Impact

Measure J, passed by the voters at the June 2014 election, extends an existing ¼ cent local sales tax through 2022, and is expected to generate approximately $2 million per year. Revenues generated by Measure J will commence being collected on October 1st - coinciding with the expiration of Measure V - resulting in approximately $1.7 million expected to be collected in the current fiscal year. Earlier this year, the Council approved initial funding allocations totaling $745,000 in support of Measure J programming. The recommendations contained in this staff report would authorize an additional $377,000 for the current fiscal year, resulting in total FY14/15 Measure J approved funding of $1,122,000.

Discussion

At the Council meeting of September 16, 2014, staff presented a preliminary spending plan for implementation of Measure J funding across an array of program areas, consistent with the intent of Measure J and its accompanying advisory measures. At the October 21st meeting, Council authorized initial funding in support of specific Measure J programs. Staff is currently recommending Council approval of the remaining FY14/15 Measure J funding recommendations, as summarized in the following section of this report:

Measure J Funding Recommendations

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CATEGORY	PROGRAM / Description	Funding One-Time	Funding Recurring	FY 2014/15 One-Time	FY 2014/15 Recurring	FY 2015/16 One-Time	FY 2015/16 Recurring
Sports and Activities							
	After-School Sports Activities		$ 220,000		$ 206,000		$ 220,0
	Summer-time Sports Activities		$ 90,000		$ 73,000		$ 90,0
	Youth Sports Player Fee Fall		$ 40,000		$ 20,000		$ 40,0
	Spring				$ 20,000		
	Expand Swim Lesson Season		$ 12,000		$ 6,000		$ 12,0
	Expand Public Swim		$ 60,000		$ 30,000		$ 60,0
	Expand Boxing Program		$ 20,000		$ 10,000		$ 20,0
Summer Programming							
	Outdoor Adventures		$ 100,000		$ 90,000		$ 100,0
	Teen Summer Camps		$ 180,000		$ 90,000		$ 180,0
	Summertime Fun Club Scholarships				$ 6,000		$ 6,00
Community Service							
	Youth Services Committee		$ 65,000				$ 65,0
Enrichment Opportunities							
	Career Skills		$ 50,000				$ 50,0
	New Programming		Contract				
Teen Activities			$ 105,000		$ 25,000		$ 105,0
Hiddleson Pool - Support							
	Capital Project Costs	$ 250,000				$ 250,000	
	Ongoing Operations		$ 40,000				$ 40,0
Rec Van		$ 50,000		$ 50,000			
Movie Screen / Projector		$ 20,000		$ 20,000			
		$ 320,000	$ 982,000	$ 70,000	$ 576,000	$ 250,000	$ 988,0
Expansion of Library Hours			$ 200,000	$ -	$ 100,000		$ 200,0
Children / Teen Programming			155,000	-	77,500		155,0
Children / Teen Collections			45,000	-	22,500		45,0
One-time Costs (Circulation, Computers)		$ 100,000		$ 100,000			
		$ 100,000	$ 400,000	$ 100,000	$ 200,000		$ 400,0
					$ 300,000		*$ 400,0*
Crime Prevention							
	Restore Crime Prevention Program		$ 100,000		$ 50,000		$ 100,0
	Enhance Crime Analysis Program		$ 100,000		$ 50,000		$ 100,0
At-Risk Youth							
	Restore Youth Diversion Program		$ 50,000		$ 25,000		$ 50,0
	YGRIP Support		$ 30,000				$ 30,0
	Enhance School Resource Officer Program		CalGRIP				
	GREAT PROGRAM		$ 100,000		$ 50,000		$ 100,0
			$ 280,000		$ 125,000		$ 280,0
Meas N							
	Utility Rate-Payer Assistance Program		$ 100,000		$ 75,000		$ 100,0

Supplemental Recommended Funding Allocations	December
Previously approved FY2014/15 Funding Allocations	October
	July

Supplemental FY2014/15 Measure J Recommendations

<u>Youth Recreation Programs Recommended for Approval</u>

Waiver of Player Fees

Status: Fall 2014 Fees are being credited to user groups.
Funding: **$20,000** for Spring 2015 fees

Expansion of Boxing Center Hours

Anticipated Implementation: January/February 2015
Status: Currently seeking contractor and proposed programming. Meetings with potential contractors in progress.
Funding: Council consideration in December 2014 (**$10,000** - for 6 months)
Target Audience: youth ages 10-18
Program Goal: 25 students participating in afterschool program

Teen/Family Events

Anticipated Implementation: February 2015 (First event on February 20, 2015, movie at CSC)
Status: Monthly movies nights and dances have been planned at various locations.
Funding: **$25,000**
Target Audience: teens, families, all-ages of residents
Program Goal: monthly event with 100-500 participants (either movie or teen dance/event)

Recreation Van "Rec2Go"

Anticipated Implementation: December 2014
Status: Working with PW on purchasing van. Purchase of equipment for Rec2Go will begin in December 2014. Equipment to include balls, parachutes, games, jump ropes, art supplies, and other sports and recreation equipment). Use of van to start in February 2015. Summer programming to occur at 3-4 parks/events each week.
Funding: Council consideration in December 2014 (**$50,000** van/equipment) (deployment approved with "summer activities programming in October 2014)
Target Audience: youth and families
Program Goal: each event will have at least 25 participants

Expansion of Swim Lessons

Anticipated Implementation: April 2015 (offered during the months of April, May, September, and October)
Status: Staff is coordinating existing and anticipated usage of the pool to assure ample pool time is available for all users of the pool during the expanded programming. The small pool will be available for lessons..
Funding: Council consideration in December 2014 (**$6,000**)
Target Audience: under 6 years old (using small pool only)
Program Goal: 100 youth

Fund Current Free Public Swim

Anticipated Implementation: June - August
Status: Public swim is currently funded through the aquatics budget but has grown substantially in the last few years, requiring staff resources beyond the existing budget. Staff recommends shifting the cost for public swim to Measure J (each month is currently 14% of the temporary staff budget).
Funding: Council consideration in December 2014 (**$12,000** - June)
Target Audience: youth and families
Program Goal: minimum of 400 participants each day

Expansion of Public Swim to Include Weekends

Anticipated Implementation: April 2015 (offered during the months of April through October)
Status: Staff is coordinating existing and anticipated usage of the pool to assure ample pool time is available for all users of the pool during the expanded programming; some weekends would not be available due to rentals.
Funding: Council consideration in December 2014 (**$18,000** - April through June)
Target Audience: youth and families
Program Goal: 200-500 participants each day

Teen Summer Camps "Summer Teen Pack"

Anticipated Implementation: June 2015
Status: Program to be offered 10-weeks during the summer June 8-August 14. A general day-to-day schedule has been created. The Community & Senior Center (Youth Center) will be designated at the "home base" for the program, however the participants will be off-site 2-3 days a week on local and out of town field trips. The field trips are being finalized for availability, price, and transportation. The Summer Teen Pack (STP) dates and trips will be finalized by January 2015 for release in the Summer Activity Guide.
Funding: Council consideration in December 2014 - $50 scholarships for 190 participants ($75/week) and $100 scholarships for 200 participants based on income needs ($25/week) (equivalent programs in other city's $140.00/week) - **$90,000** (includes planning and implementation)
Target Audience: Youth entering grades 6-8
Program Goal: 39 youth each week, 390 participants for the summer

Summer Time Fun Club Scholarships:

Anticipated Implementation: April - June 2015
Status: Scholarships were previously provided for this elementary school summer camp through the Community Development Block Grant. It was assumed that Measure J would provide this scholarship in subsequent years. The scholarship amount of $6000 (same as previous years) will award 50 partial scholarships.
Funding: Council consideration in December 2014 **$6,000**
Target Audience: Youth entering grades 1-6

Outdoor Adventures (Camp)

Anticipated Implementation: June 2015
Status: Staff is working to identify organizations to contract in the delivery of the program. Program dates and trips will be finalized by January 2015 for release in the Summer Activity Guide. This program will be offered for 6 weeks during the summer. Tentative trips include a backpacking trip to Point Reyes with Ted Wimberg, camping at Yosemite, an overnight ropes course in Coloma, and rafting trips and outdoor survival trips with Tuleyome.
Funding: Council consideration in December 2014 -42 participants would receive scholarships to reduce the program cost to $75 ($275 scholarship) and 42 participants receive a Measure J price reduction to reduce the program cost to $250 ($100 price reduction). The average program cost is $350 for a three day trip. **$90,000** (includes planning and implementation)
Target Audience: 4^{th}- 6^{th} grade and 7^{th}-9^{th} grade
Program Goal: 84 participants

Staffing needs: Costs referenced for the above programming includes support for a new Recreation Supervisor and Recreation Program Coordinator (estimated at $176,000)

Crime Prevention / At-Risk Youth

School Resource Officer / G.R.E.A.T. Program

The City of Woodland has partnered with the Woodland Joint Unified School District in excess of fifteen years to provide School Resource Officers (SROs) to address issues occurring on school campuses or at school events. This program also provided the opportunity for the SROs to interact with students in a non-enforcement role. Over the years, the demand on the two SROs has increased to where they spend the bulk of their time at the two High Schools and the two Junior High Schools in an enforcement role. The ability for the officers to interact with students and establish mentoring relationships addressing education and prevention has diminished significantly. Further, the SROs are unable to interact with the students or address school issues at the elementary schools.

A third School Resource Officer will enable the police department to provide an appropriate presence at all of our school campuses as well as enable the officers to once again establish mentoring relationships with our students. Additionally, a third SRO will support the police department's attempt to begin the implementation of a Gang Resistance Education and Training (G.R.E.A.T.) program. GREAT is an evidence based program and is an effective approach in impacting the gang culture. Initially, the program is being developed for introduction at the 4th-grade level (approximately 250 students), with expansion to the middle schools and high schools to follow - contingent on the success of the program and potential funding through future grant applications.

The City's desire to implement the G.R.E.A.T. program within its schools is intended to assist youth, and their families change the course of their life choices. The program will provide these youth with the skills necessary to deal with the stresses that set the stage for gang involvement, including skills to handle conflicts peacefully. The program will also educate them about the true and very real nature of gang life. The Department is confident that this preventative approach would be the best use of our limited resources and would be the most beneficial to our community. The Police Department will train one police officer as a School Resource Officer. All three SROs will be trained as G.R.E.A.T. program instructors. Associated costs include full time salary and benefits for a police officer (estimated at $104,445) and training for all program components (estimated at $6,988).

Conclusion

Staff recommends that the City Council authorizing re-programming of $377,000 in funding already provided in the FY2014/15 approved budget for implementation of specific FY14/15 Measure J programming, as outlined in this report.

Paul Navazio, City Manager

Attachment - Summary of Previously Approved Measure J Funding Allocations

SUMMARY OF PREVIOUSLY APPROVED MEASURE J FUNDING ALLOCATIONS

Youth Programming - Advisory Measure K

Afterschool Programs: clubs/leagues for middle-school youth (intramural sports, yoga, zumba, garage band, art), Monday - Thursday afterschool at multiple locations in the community, beginning with Douglass Middle School. Hire teen/college temporary employees to run the program along with an adult temp employee (one coordinator) and full-time staff oversight. Some programming may also occur during lunch at each of the middle schools. Contractors/stipends would be used for running programs such as ropes course, woodshop, art studio.

Summertime Sports & Activities: clubs/leagues for middle school youth during the summer. Utilize city parks, Woodland Sports Park, and Community & Senior Center gym. Hire teen/college temporary employees to run the program, with an adult temp employee and full-time staff oversight. Deploy a "Rec Van" to area parks for games and activities.

Waive Per-Player Fees for Youth Sports

Staffing for After-School Programming and Summertime Sports Activities

- Community Services Program Manager
- Recreation Coordinator

SUMMARY OF PREVIOUSLY APPROVED MEASURE J FUNDING ALLOCATIONS

Library Programming - Advisory Measure L

Open Hours and Access

Beginning January 2015 the library will increase hours from 44 hours a week to 51 hours per week. The library is currently open 9-7 four days a week. Peak library usage times are weekdays, with Mondays being the highest tapering down towards the end of the week. Peak library usage hours are between 10:00am and 5:00pm. The library is open when the public uses it the most, and the increase in hours will add Friday afternoons and Saturday mornings. The current Library hours use a permanent staff of 5 for a 40 hour work week Mon-Thu and temporary help is used to keep Saturdays open. Saturdays have minimal programming. Two days with a full complement of programming results in the necessity of additional permanent staffing.

Proposed Hours Schedule: *Mon-Thu 9am-7pm *Fri 12pm-4pm *Sat 9am-4pm

Children and Teen Programming

The library anticipates increasing children and teen programming using Measure J Funding. Programming may include and is not limited to family and early literacy support for parents and day care providers, books clubs, city-wide Kid's Read programs, library card campaigns, Teen Advisory Board, SAT and ACT test prep courses, one-on-one online homework help, and research databases to support school curriculum and Common Core. The intention of the children and teen programming increases at the Library are to get Library staff and volunteers out into the community working directly with children, teens, and to support those who work with children and teens.

Children and Teen Collection
Youth need access to current print and electronic materials. The Library will focus on creating a collection that includes databases and a larger non-fiction collection. Additionally a "Moving Up" collection will be created for children transitioning from easy readers to chapter books. Teens need a collection that is dynamic and full of popular fiction. The increase and development of the youth collection is an on-going process.

One-time Costs
In order to prepare for increased hours and usage, the library has identified some one-time costs that would be beneficial to the children, teens, and all patrons using the Library. For example: Modern circulation and service desks, Afterschool Edge Computers, and computers with Word Processing in the children's area.

Additional Staffing to support increased hours and programming

- Teen Services Librarian
- Library Tech Assistant III (Youth)
- Library Tech Assistant I (Circulation)
- Literacy Coordinator
- Increase temporary seasonal staffing to provide pages for open hours and temp to support outreach programs

SUMMARY OF PREVIOUSLY APPROVED MEASURE J FUNDING ALLOCATIONS

<u>**Crime Prevention - Advisory Measure M**</u>

Restore Crime Prevention Program

- Increase participation in Neighborhood Watch Program with the goal of increasing the number of neighborhoods participating in the program and the Department's outreach and support of those neighborhoods. This will improve the communication between the Police Department and the community and will strengthen the community's involvement in crime prevention efforts.
- Launch Police Department Nextdoor.com website with the goal of enabling department communication with community members utilizing Nextdoor.com as a virtual Neighborhood Watch improving the community's crime prevention efforts.
- Partner with officers addressing complex P.O.P. issues by working with community members to address CPTED (Crime Prevention Through Environmental Design) concerns.

- Oversight of Volunteer Program with the goal of providing regular and consistent management of the volunteer program and increasing the number of our volunteers and the diversity of opportunities for volunteers to assist the department’s efforts in our community.

Staffing in Support of Crime Prevention and Volunteer Initiatives

- Crime Prevention Community Services Officer