

City Council Meeting

COUNCIL CHAMBERS, 33 SOUTH MAIN STREET, COLFAX, CA

Mayor Trinity Burruss · Mayor Pro Tem Kim Douglass
Councilmembers Caroline McCully · Larry Hillberg · Sean Lomen

REGULAR MEETING AGENDA

July 26, 2023

Closed Session 6:00 PM

Regular Session to Follow

You may access the meeting and address the Council by any of the following means:

ZOOM at

<https://us02web.zoom.us/j/82350881348>

Dial in by calling one of the numbers listed below and enter the Webinar ID:

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Facebook Live on our City of Colfax page: City of Colfax, California. You may also submit written comments to the City Clerk via email at city.clerk@colfax-ca.gov, via regular mail to P.O. Box 702, Colfax CA 95713, or by dropping them off at City Hall, 33 S. Main Street, Colfax CA 95713. Comments received will be submitted to Council and made a part of the record.

1 CLOSED SESSION

1A. Call Closed Session to Order

1B. Roll Call

1C. Public Comment (On Closed Session Item)

1D. Public Employment Pursuant to Government Code Section 54957. Position to be Filled: City Manager.

1E. Conference with legal counsel – existing pursuant to Government Code Section 54956.9(d)(1): People of the State of California, ex rel Alfred Cabral, City Attorney of the City of Colfax, a Municipal Corporation vs Snapdragon Provisions et al, Placer County Superior Court Case Number SCV0050502

2 OPEN SESSION

2A. Call Open Session to Order

2B. Report from Closed Session

2C. Pledge of Allegiance



Colfax City Council Meetings are ADA compliant. If you need disability-related modification or accommodation including auxiliary aids or services to participate in this meeting, please contact the City Clerk at (530) 346-2313 at least 72 hours prior to make arrangements for ensuring your accessibility.

July 26, 2023

2D. Roll Call

2E. Approval of Agenda Order

This is the time for changes to the agenda to be considered including removal, postponement, or change to the agenda sequence.

Recommended Action: By motion, accept the agenda as presented or amended.

3 CONSENT CALENDAR

Matters on the Consent Calendar are routine in nature and will be approved by one blanket motion with a Council vote. No discussion of these items ensues unless specific items are pulled for discussion and separate action. If you wish to have an item pulled from the Consent Agenda for discussion, please notify the Mayor.

Recommended Action: Approve Consent Calendar

3A. Minutes (Pages 5-8)

Recommendation: By Motion, approve the Colfax City Council minutes of 6/28/2023.

3B. Minutes (Pages 9-11)

Recommendation: By Motion, approve the Colfax City Council minutes of 7/12/2023.

3C. Reimbursement Agreement with PCWA – I&I Mitigation Project (Pages 12-29)

Recommendation: Adopt Resolution __-2023 authorizing the City Manager to execute a Consulting Services Agreement for \$11,500 with a contingency of \$11,500 with GEOCON Consulting for geotechnical services to support construction of the I&I Mitigation Project and the Algae Reduction Project.

3D. Reimbursement Agreement with PCWA – I&I Mitigation Project (Pages 30-42)

Recommendation: Adopt Resolution __-223 authorizing the City Manager to execute an agreement with Placer County Water Agency for reimbursement of water mains constructed with the I&I Mitigation Project.

3E. Rainbow Music Lease Extension (Page 43)

Recommendation: Authorize a 60-day lease extension with Rainbow Music for 99 Railroad Street Suite 4 to allow for the completion of window replacements.

3F. SB1383 Compliance – Greenleaf/Desert View Power LLC (Pages 44-75)

Recommendation: Authorize the City Manager to execute an agreement with Greenleaf/Desert View Power LLC purchase and sale of certain biomass electricity compliance attributes to satisfy the City’s “Procurement of Recycled Organic Products by Local Jurisdictions” requirement of SB1383.

*** End of Consent Calendar ***

4 AGENCY REPORTS

4A. Placer County Sheriff’s Office

4B. California Highway Patrol

4C. Placer County Fire Department/CALFIRE

4D. Non-Profits



5 **PRESENTATION (None)**

6 **PUBLIC HEARING (None)**

7 **PUBLIC COMMENT**

Members of the public are permitted to address the Council orally or in writing on matters of concern to the public within the subject matter jurisdiction of the City that are not listed on this agenda. Please make your comments as succinct as possible. Oral comments made at the meeting may not exceed five (5) minutes per speaker. Written comments should not exceed 800 words. Written comments received before the close of an agenda item may be read into the record, with a maximum allowance of five (5) minutes in length. Council cannot act on items not listed on this agenda but may briefly respond to statements made or questions posed, request clarification, refer the matter to staff, or place the matter on a future agenda.

8 **COUNCIL AND STAFF**

The purpose of these reports is to provide information to the Council and public on projects, programs, and issues discussed at committee meetings and other items of Colfax related information. No decisions will be made on these issues. If a member of the Council prefers formal action be taken on any committee reports or other information, the issue will be placed on a future Council meeting agenda.

8A. **Committee Reports and Colfax Informational Items – All Councilmembers**

8B. **City Operations Update – City Manager**

9 **COUNCIL BUSINESS**

9A. **Creation of Ad Hoc Committees:**

A. Revitalization of Historic Downtown Colfax

B. Shady Glen Sewer Integration Project (Page 76)

Recommendation: Establish two (2) Ad Hoc Committees and appoint two councilmembers for each committee for the Revitalization of Historic Downtown Colfax and for the Shady Glen Sewer Integration Project.

Discussion on the following item will be limited so that every member of the public will be permitted to address the Council. Please make your comments as succinct as possible. Oral comments may not exceed one (1) minute per speaker. Written comments should not exceed 150 words. Written comments received before the close of the item may be read into the record, with a maximum allowance of one (1) minute in length.

9B. **Review Colfax Municipal Code Chapter 5.32 (Commercial Cannabis Activity), consider potential changes, and provide direction to staff.** (Pages 77-83)

Recommendation: Review the current commercial cannabis ordinance, discuss potential changes, and provide staff direction.

10 **GOOD OF THE ORDER**

Informal statements, observation reports and inquiries regarding the business of the City may be presented by Councilmembers under this agenda item or requests for placement of items of interest on a future agenda. No action will be taken.



11 **ADJOURNMENT**

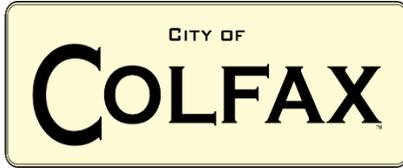
I, Marguerite Bailey, City Clerk for the City of Colfax, declare that this agenda was posted in accordance with the Brown Act at Colfax City Hall and Colfax Post Office. The agenda is also available on the City website at <http://colfax-ca.gov/>

Marguerite Bailey

Marguerite Bailey, City Clerk

Administrative Remedies must be exhausted prior to action being initiated in a court of law. If you challenge City Council action in court, you may be limited to raising only those issues you or someone else raised at a public hearing described in this notice/agenda, or in written correspondence delivered to the City Clerk of the City of Colfax at, or prior to, said public hearing.





City Council Minutes

Regular Meeting of Colfax City Council

Wednesday, June 28, 2023

City Hall Council Chambers, 33 S Main Street,

Colfax CA and attended via Teleconference through ZOOM

1 CLOSED SESSION

1A. **The meeting was called to order at 6:03 pm.**

1B. **Roll Call**

Present: Councilmember Lomen, Mayor Pro Tem Douglass, and Mayor Burruss

1C. **Public Comment (On Closed Session Item)** Tom Parnham provided public comment recommending an emphasis on the retention of employees.

1D. **Public Employment Pursuant to Government Code Section 54957. Position to be Filled: City Manager.**

By **MOTION**, bypass the Closed Session.

MOTION made by Mayor Pro Tem Douglass and seconded by Councilmember Lomen, and unanimously approved.

2A. **Call Open Session to Order – N/A**

2B. **Report from Closed Session (No Closed Session)**

2C. **Pledge of Allegiance**

2D. **Roll Call – N/A**

2E. **Approval of Agenda Order**

By **MOTION**, accept the agenda as presented.

MOTION made by Mayor Pro Tem Douglass and seconded by Councilmember Lomen, and unanimously approved.

CONSENT CALENDAR

3A. **Quarterly Sales Tax Analysis – Quarter Ended**

Recommendation: Accept and File.

3B. **Minutes**

Recommendation: By Motion, approve the Colfax City Council minutes of 6/8/2023.

3C. **Rainbow Music Lease Extension**

Recommendation: Authorizing the Interim City Manager to sign a lease extension until July 30, 2023 with Rainbow Music for 99 Railroad Street Suite 4 to allow for completion of window replacements.

End of Consent Calendar

By **MOTION**, approve the consent calendar.

MOTION made by Councilmember Lomen and seconded by Mayor Pro Tem Douglass, and unanimously approved.

4 AGENCY REPORTS

- 4A. **Placer County Sheriff's Office** – Deputy Ahlberg provided statistics for the month of May. He also reiterated that fireworks were illegal.
- 4B. **CHP** – Not Present
- 4C. **Placer County Fire/CALFIRE** – Placer County Fire/CALFIRE Assistant Chief Counts explained the renewed peak staffing including crews from the California Department of Corrections, Conservation Corps, California National Guard Crew, Forestry Crews, and are use of helicopters.
- 4D. **Non-Profits** – None

5 **PRESENTATION (None)**

6 **PUBLIC HEARING (None)**

7 **PUBLIC COMMENT** Jim Dion from Golden State Patient Care spoke about the implementation fee for his Business License and asked to make incremental payments. Tim Dion spoke about delivery regulations on cannabis. Tom Parnham suggested adding public comment at the end of the Good of the Order. He also stated he was opposed to having an elected Mayor position.

8 **COUNCIL AND STAFF**

8A. **Committee Reports and Colfax Informational Items – All Councilmembers** Councilmember Lomen explained that the Placer Sierra Fire Safe Council approved a letter of support for a fuel and forest resiliency project between Alta to Blue Canyon and Nyack. Mayor Pro Tem Douglass shared that the Pioneer Community Energy Board discussed marketing and associated costs at their last meeting. He passed along that the Placer County Economic Board wants to help small business owners and is offering their assistance. He explained meeting with Congressman Kevin Kiley's representative Ed Heidig and discussing pursuing USDA grants.

8B. **City Operations Update –City Manager**

Interim City Manager Luken described a preconstruction meeting that was held with the I&I mitigation sewer project stakeholders and a preplanning meeting with the sewer solar project stakeholders. He provided an update on the status of the CDBG grant and described a SACOG regional meeting he attended.

Resident, Luanna Robinson asked about decision-making in the Main Street Connectivity Project. Mayor Burruss and Interim City Manager Luken clarified the process and project objectives.

9 **COUNCIL BUSINESS**

9A. **3rd of July Event Coordinator Funding Request 2023**

Recommendation: Discuss and consider Colfax Green Machine's request of \$13,500 to fund the 3rd of July fireworks and general event costs.

Suzanne Roberts spoke about the importance of fundraising and asked if there was a financial report from the Green Machine. Tim Ryan spoke about the costs of fireworks and explained that the non-profit entities have provided financial reports previously. Council discussed the item. Mayor Burruss proposed funding \$12,500 cost of fireworks and withholding the City's traditional \$1,000 donation. Sharon Conners spoke about the fundraising efforts of the non-profits. Andy Cave spoke about the popularity of 3rd of July versus Winterfest, because of the weather. Dia Divine described the Green Machines' objective to fundraise for youth programs and thanked the City for its support.

By **MOTION**, approve the funding request from the Green Machine for fireworks cost of \$12,500.

MOTION made by Councilmember Lomen and seconded by Mayor Pro Tem Douglass, and unanimously approved.

9B. Introduce and interview candidates for appointment to fill the city Council vacancies created by the resignations of Councilmembers Mendoza and Ackerman; discuss and possibly take action to fill either or both offices by appointment or call a special election to fill either or both vacancies.

Recommendation: Introduce and interview candidates for appointment to fill the City Council vacancies created by the resignations of Councilmembers Mendoza and Ackerman; discuss and possibly take action to fill either or both offices by appointment or call a special election to fill either or both vacancies.

Diane Greene asked the candidates for their thoughts on recreational marijuana. Tim Ryan asked what the candidate's primary 2 goals were.

Prospective City Council applicants: John Andrew Browning III "Andy" Cave, Suzanne Roberts, Larry Hillberg, Takoda Houck and Caroline McCully were each asked the same questions from the Council. Applicant Trivaris Butler provided information before that meeting that he could not attend due to a conflicting work schedule. The Council narrowed down the finalists to Caroline McCully, Larry Hillberg and Suzanne Roberts. City Attorney Cabral explained the urgency of filling the Mendoza vacancy and expressed that it would take a vote of two members of the Council consisting of a quorum.

By **MOTION**, appoint a member to the Colfax City Council.

MOTION made by Mayor Burruss to appoint Caroline McCully to the Colfax City Council and seconded by Councilmember Lomen, and approved by the following roll call vote:

AYES: Lomen, Burruss

NOES: Douglass

ABSTAIN:

ABSENT:

By **MOTION**, to appoint a member to the Colfax City Council.

MOTION made by Mayor Pro Tem Douglass to appoint Larry Hillberg to the Colfax City Council and seconded by Mayor Burruss, and approved by the following roll call vote:

AYES: Douglass, Burruss

NOES: Lomen

ABSTAIN:

ABSENT:

City Clerk Bailey administered Oaths of Office of members of the Colfax City Council to Caroline McCully and Larry Hillberg. Councilmembers McCully and Hillberg both took their seats.

9C. Filling Vacant Committee Assignments

Recommendation: Discuss and approve filling vacant committee assignments. Council discussed the various openings on the Committees.

Councilmember Hillberg to be appointed as the Alternate for the Placer County Economic Development Board. Councilmember Hillberg also to be appointed to the primary delegate for the Weimar, Applegate, Colfax/Municipal Advisory Council (WAC/MAC). Councilmember McCully to be appointed as the Alternate to the Sacramento Area Council of Governments (SACOG) Board of Directors. Councilmember Hillberg to be appointed as the Alternate to the Placer Mosquito and Vector Control District. Councilmember McCully to be appointed as the alternate for the Bianchini Advisory Board. Councilmember Hillberg to be appointed the primary delegate for the Sierra Vista Community Center Liaison. Councilmember Lomen to be appointed as the primary for the Pioneer Community Energy Board. Councilmember McCully to be appointed as the Alternate to the Placer County Flood Control and Water Conservation District Board of Directors. Councilmember Lomen to be appointed to the Placer Regional Homelessness Action Plan Ad hoc committee. Councilmember McCully to be appointed to the Colfax Skate Park Ad Hoc. Councilmember McCully to be appointed to the Council Policy Ad Hoc.

Public Comment was received by Diane Greene who asked about the process to participate in the

Colfax Youth Commission.

By **MOTION**, to approve the Committee appointments.

MOTION made by Mayor Pro Tem Douglass and seconded by Councilmember Hillberg, and approved unanimously.

10

GOOD OF THE ORDER

Councilmember Lomen offered congratulations to the new Councilmembers and to Interim City Manager Luken. Mayor Pro Tem Douglass proposed the City's purchase of drones instead of fireworks. Councilmember Hillberg stated he'd like to focus on spreading funding for non-profits and rehabilitation of the downtown area. Councilmember McCully thanked the Council for the opportunity to serve. Mayor Burruss thanked all the applicants for their participation in the process. The Mayor also described the possibility to participate in some low-cost and meaningful Brown Act Training. Mayor Burruss shared direction to staff to work with Jim Dion on a payment deferment plan. Interim City Manager Luken stated he would be attending a leadership event with Placer County Water Agency (PCWA). City Treasurer Tim Ryan thanked the Council for the time they commit to the City.

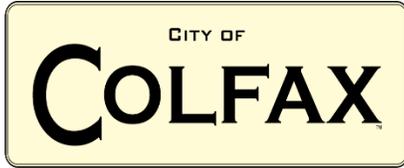
11

ADJOURNMENT

As there was no further business on the agenda, Mayor Burruss adjourned the meeting, by motion and without objection at 9:06 pm. Respectfully submitted to City Council this 26th day of July, 2023.



Marguerite Bailey, City Clerk



City Council Minutes

Regular Meeting of Colfax City Council

Wednesday, July 12, 2023

City Hall Council Chambers, 33 S Main Street,

Colfax CA and attended via Teleconference through ZOOM

1 CLOSED SESSION

1A. **Call Closed Session to Order** - Mayor Pro Tem Douglass called the open session to order at 6:04 pm

1B. **Roll Call**

Present: Councilmember Lomen, Mayor Pro Tem Douglass, Councilmember Hillberg, Councilmember McCully and Mayor Burruss, who used a just cause exemption due to illness to participate in the meeting from home.

1C. **Public Comment (On Closed Session Item)**

1D. **Public Employment Pursuant to Government Code Section 54957. Position to be Filled: City Manager.**

1E. **Conference with legal counsel – existing pursuant to Government Code Section 54956.9(d)(1): People of the State of California, ex rel Alfred Cabral, City Attorney of the City of Colfax, a Municipal Corporation vs Snapdragon Provisions et al, Placer County Superior Court Case Number SCV0050502**

Jane Gallagher asked for an update on Snapdragon. City Attorney, Mick Cabral provided a brief public update

2 OPEN SESSION

2A. **Call Open Session to Order** – Mayor Pro Tem Douglass called the Open Session to order at 6:42 pm.

2B. **Report from Closed Session** – No reportable action from the Closed Session.

2C. **Pledge of Allegiance** – Councilmember McCully led the pledge.

2D. **Roll Call**

Present: Councilmember Lomen, Mayor Pro Tem Douglass, Councilmember Hillberg, Councilmember McCully and Mayor Burruss, who used a just cause exemption due to illness to participate in the meeting from home.

2E. **Approval of Agenda Order as presented.**

MOTION made by Councilmember Lomen and seconded by Councilmember McCully, and approved by the following vote:

AYES: Lomen, Douglass, Hillberg, McCully, Burruss

NOES:

ABSTAIN:

ABSENT:

CONSENT CALENDAR

3A. **Minutes**

Recommendation: By Motion, approve the Colfax City Council minutes of 06/14/2023.

3B. Conveyance of Six (6) Sewer Easements

Recommendation: Adopt Resolution_-2023 authorizing the City Manager to execute all necessary documents and take all actions to complete conveyance to the City of Colfax, granting six (6) sewer easements located at:

- 110 W Church St, Colfax, California / APN 006-080-023
- 120 W. Church St, Colfax, California / APN 006-080-048
- 121 Quinn Ln, Colfax, California /APN 006-080-047
- 101 Culver St, Colfax, California / APN 006-080-022
- 24099 Fowler St, Colfax, California / APN 101-092-033
- 650 Canyon Wy, Colfax California / APN 101-092-033

End of Consent Calendar

MOTION made by Councilmember Lomen and seconded by Councilmember Hillberg, and approved by the following vote:

AYES: Lomen, Douglass, Hillberg, McCully, Burruss

NOES:

ABSTAIN:

ABSENT:

4

AGENCY REPORTS

- 4A. **Placer County Sheriff's Office** –Station Commander Sgt Griffith provided statistical updates and sadly reported that the mutual aid search for a 5-year-old had a grim outcome. He stated that his office had a message of holding accountability within the department and maintaining transparency. He also provided an overview of the July 3rd event.
- 4B. **CHP** – Public Information Officer Jason Lyman provided information about accidents and Councilmember Hillberg asked about break check fires.
- 4C. **Placer County Fire/CALFIRE** – Placer County Fire/CALFIRE Battalion Chief Jeff Loveless provided an operational update and statistics for June. He provided a response from the 3rd of July.
- 4D. **Non-Profits** –None

5

PRESENTATION

- 5A. **Presentation by Meagan Luevano, Public Information Officer at Placer Mosquito and Vector Control District**

2023 Annual Mosquito and Vector Update.

Meagan Luevano, Public Information Officer provided a community presentation about the status of vectors in the County.

6

PUBLIC HEARING (None)

7

PUBLIC COMMENT

Jim Dion wanted to inform the community that he was offering Narcan Nasal spray and Fentanyl testing kits for free at his business, he also passed out the products. Tim Dion spoke about cannabis licensing.

8

COUNCIL AND STAFF

- 8A. **Committee Reports and Colfax Informational Items – All Councilmembers** Councilmember Lomen said the 3rd of July went well and thanked the Green Machine Mayor Pro Tem Douglass explained that there was progress with Arco obtaining restaurant parking spots.
- 8B. **City Operations Update** –Interim City Manager Mike Luken explained that the Water Board approved the final budget approval (FBA) on the first part of the sewer project and explained that Council William Jessup University in August would be donating their time for the Council training session to be scheduled in August. City Clerk Bailey will be coordinating the scheduling of this

training with WJU and Councilmembers

9 **COUNCIL BUSINESS**

9A. **Grass Valley Street Pedestrian Crossing and No Parking**

Recommendation: Discuss options for improving public safety on Grass Valley Street and Kneeland street which could include installing signage, restripe the crosswalk, and prohibit parking on westbound Grass Valley Street adjacent to the crosswalk. Council discussed opinions. City Engineer Carl Moore provided a report on conditions and staff recommendations. Dr. Kurtis Fox provided comments on his opinion about the public safety issue. Sara Perez provided her input as a parent. Mary George spoke about tight parking and bright lights. Helen Hillberg provided a comment about children crossing. Jane Gallagher provided her thoughts on neighboring streets. Council directed staff to look into more options to move forward.

9B. **Proposal of Cancellation of the August 9, 2023 City Council Meeting**

Recommendation: Discuss the possibility of canceling the first City Council Meeting in August 2023. Public input was taken from Jim Dion who stressed changing the cannabis ordinance.

MOTION made by Mayor Pro Tem Douglass and seconded by Councilmember Lomen, and approved by the following vote:

AYES: Lomen, Douglass, Hillberg, McCully, Burruss

NOES:

ABSTAIN:

ABSENT:

10 **GOOD OF THE ORDER**

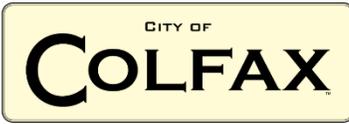
Councilmember Lomen welcomed the two new Councilmembers and thanked staff who worked to clean up after 3rd of July. Councilmember McCully stated there was a lot of community praise of how the clean up went after the event. Councilmember Hillberg stated that he wanted to focus his efforts on the rehabilitation of downtown. Mayor Burruss thanked the efforts of all of the volunteers who worked during and after 3rd of July.

11 **ADJOURNMENT**

As there was no further business on the agenda, Mayor Pro Tem Douglass adjourned the meeting, by motion and without objection at 8:27 pm. Respectfully submitted to City Council this 12th day of July, 2023.

Marguerite Bailey

Marguerite Bailey, City Clerk



Staff Report to City Council

FOR THE JULY 26, 2023 REGULAR CITY COUNCIL MEETING

From: Mike Luken, Interim City Manager
Prepared by: Mike Luken, Interim City Manager
Subject: Reimbursement Agreement with PCWA – I&I Mitigation Project

Budget Impact Overview:

| | | | | |
|-------------|------------------|-------------------|-------------------------|---------------------|
| N/A: | Funded: √ | Un-funded: | Amount: \$11,500 | Fund(s): 575 |
|-------------|------------------|-------------------|-------------------------|---------------------|

RECOMMENDED ACTION: Adopt Resolution __-2023 authorizing the City Manager to execute a Consulting Services Agreement for \$11,500 with a contingency of \$11,500 with GEOCON Consulting for geotechnical services to support construction of the I&I Mitigation Project and the Algae Reduction Project.

Summary/Background

On May 3, 2022, staff solicited proposals from three Geotechnical Engineering firms to provide materials testing and compaction to support construction of the State Water Resources Control Board (SWRCB) Clean Water State Revolving Fund (CWSRF) Grant for the I&I Mitigation and Solar System Projects. One firm, GEOCON Consulting (GEOCON), submitted two proposals, one for each project. GEOCON's proposal for the Solar System was \$3,000, so the City Manager used his authority provided by City Council to enter into a contract for that work, since the contract was less than \$5,000.

The second proposal from GEOCON for the I&I Mitigation work was \$11,500, but a contract was not presented to Council since the work would not begin for another year. Construction of the I&I Mitigation work will begin this August, so staff is requesting that City Council authorize a contract with GEOCON for their proposed scope in the provided attachment.

The CWSRF grant project also includes the Algae Reduction Project that will construction an algae treatment system at the City's wastewater treatment plant. Materials testing and compaction inspection is not anticipated to be extensive; costing around \$3,000. Therefore, staff is requesting use of the same contract for the I&I Mitigation with the Algae Reduction Project. The geotechnical scope of the Algae Reduction Project is provided in the schedule of services and costs listed in GEOCON's proposal. The Algae Reduction Project, while City Council award a contract to WM Lyles on June 8, 2023, will not begin construction until at least April 2024.

The attached Consultant Agreement has been modified from the City's standard agreement based on comments provided by GEOCON in 2022 that were reviewed and approved by the City Attorney. Since GEOCON provided their scope and cost for the I&I Mitigation work, the final improvement plans and funding for the project expanded substantially; therefore, it is unlikely that the work can be completed within the proposed amount. For this reason, Staff is requesting a higher than usual contingency in the attached Resolution.

Conclusions and Findings

City staff solicited proposals from three qualified Geotechnical Engineering firm to support construction of the I&I Mitigation Project. One proposal was received from GEOCON on June 9, 2022 in the amount of \$11,500 based on a preliminary set of plan. The final set of plan includes significantly more work than the original proposal provided for, and the Algae Reduction Project will add around \$3,000; therefore, City staff

recommends that City Council authorize a contingency up to \$23,000, which is a 100% contingency. All work will be on a time and material basis so the consultant will be compensated for work authorized by City staff or its authorized representatives.

Fiscal Impacts

This consulting work is approved by the SWRCB for 100% reimbursement with the CWSRF grant funds; therefore, cost of this work will have no long term fiscal impact to the City.

Attachments:

1. Resolution __-2023
2. Geocon Consulting Agreement
3. Geocon Proposal

City of Colfax

City Council

Resolution No. __-2023

AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSULTANT SERVICES AGREEMENT WITH GEOCON CONSULTING FOR \$11,500.

WHEREAS, The City of Colfax solicited three professional services proposals from geotechnical engineer firms to provide materials testing and compaction inspection during construction of the I&I Mitigation Project; and,

WHEREAS, One geotechnical firm, GEOCON Consulting, provided a proposal on June 6, 2022 for \$11,500; and,

WHEREAS, GEOCON’s proposal was based upon preliminary improvement plans that were significantly expanded when construction bids were solicited in January 2023; and,

WHEREAS, GEOCON will provide these same services for the Algae Reduction Project.

NOW THEREFORE, BE IT RESOLVED the City Manager is authorized to enter the City into a Consultant Services Agreement with GEOCON Consulting at their proposal cost of \$11,500; and,

BE IT FURTHER RESOLVED that City Council authorizes the GEOCON’s scope to include materials testing and compaction inspection for the Algae Reduction Project; and,

BE IT FURTHER RESOLVED that the City Manager is authorized to expend up to \$23,000, and expenditures shall not exceed this amount for this contract without prior approval by City Council.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED at the Regular Meeting of the City Council of the City of Colfax held on the 26th day of July 2023 by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

Trinity Burruss, Mayor

ATTEST:

Marguerite Bailey, City Clerk

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on this **day of** , **2023** by and between the City of Colfax, a municipal corporation of the State of California ("City") and **Geocon Consulting, Inc.** ("Consultant").

RECITALS

- A. The City desires to retain Consultant to provide the Services set forth in detail in Exhibit A hereto (the "Services") subject to the terms and conditions of this Agreement.
- B. Consultant is duly licensed and sufficiently experienced to undertake and perform the Services in a skilled and workmanlike manner and desires to do so in accordance with the terms and conditions of this Agreement.

Now, therefore, in consideration of the mutual covenants, promises and conditions set forth in this Agreement, the City and Consultant agree as follows:

Section 1. Services

Subject to the terms and conditions set forth in this Agreement, Consultant shall furnish and perform all of the Services described in detail in Exhibit A hereto and incorporated herein by this reference (the "Services") to the satisfaction of the City. Consultant shall not perform any work exceeding the scope of the Services described in Exhibit A without prior written authorization from the City.

Section 2. Time of Completion.

Consultant's schedule for performance of the Services is set forth in Exhibit A hereto which is incorporated herein by this reference. Consultant shall commence performance of the Services promptly upon receipt of written notice from the City to proceed. Performance of the Services shall progress and conclude in accordance with the schedule set forth in Exhibit A. During the performance of the Services, Consultant shall provide the City with written progress reports at least once each month and at such additional intervals as City may from time to time request.

Section 3. Compensation.

- A. Except as may otherwise be provided in Exhibit A or elsewhere in this Agreement or its exhibits, Consultant shall invoice City once each month for the Services performed during the preceding month. Such invoices shall itemize all charges in such detail as may reasonably be required by City in the usual course of City business but shall include at least:
 - i. the date of performance of each of the Services,

- ii. identification of the person who performed the Services,
- iii. a detailed description of the Services performed on each date,
- iv. the hourly rate at which the Services on each date are charged,
- v. an itemization of all costs incurred and
- vi. the total charges for the Services for the month invoiced.

As long as the Consultant performs the Services to the satisfaction of the City, the City shall pay the Consultant an all-inclusive compensation that shall not exceed the amount as detailed in Exhibit A except pursuant to an authorized written change order issued pursuant to Section 15 of this Agreement before the Services requiring additional compensation are performed. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City's staff.

- B. The Consultant's compensation for the Services shall be full compensation for all indirect and direct personnel, materials, supplies, equipment, and services incurred by the Consultant and used in carrying out or completing the Services. Payments shall be in accordance with the payment schedule established in Exhibit A or elsewhere in this Agreement or its exhibits.
- C. The City shall have the right to receive, upon request, documentation substantiating charges billed to the City pursuant to this Agreement. The City shall have the right to perform an audit of the Consultant's relevant records pertaining to the charges.
- D. Any Services performed more than sixty (60) days prior to the date upon which they are invoiced to the City shall not be compensable.

Section 4. Professional Ability; Standard of Quality.

City has relied upon the professional training and ability of Consultant to perform the Services described in Exhibit A as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all Services under this Agreement. All Services performed by Consultant under this Agreement shall be in a skillful, workmanlike manner in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

Section 5. Indemnification.

Consultant shall hold harmless and indemnify, including without limitation the cost to defend, the City and its officers, officials, employees, and volunteers from and against any and all claims, demands, damages, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, any sub-consultant, anyone directly or indirectly employed by them, or anyone they control in the performance of the Services. This indemnity does not apply to liability for damages or loss, arising from the sole negligence, active negligence, or willful misconduct or material defects in design by

the City or its agents, servants, employees or independent contractors other than Consultant who are directly responsible to the City, or arising from the passive negligence of the City, its officers, agents, employees or volunteers, unless caused in part by Consultant. City agrees that in no event shall the cost to defend charged to Consultant exceed Consultant's proportionate percentage of fault unless otherwise allowed by California Civil Code Section 2782.8, as amended.

Section 6. Insurance.

Without limiting Consultant's indemnification obligations provided for above, Consultant shall take out before beginning performance of the Services and maintain at all times during the life of this Agreement policies of insurance at least as broad as the following, with insurers possessing a Best rating of not less than A. Consultant shall not allow any subcontractor, professional or otherwise, to commence work on any subcontract until all insurance required of the Consultant has also been obtained by the subcontractor.

- A. Workers' Compensation Coverage. Workers' Compensation insurance as required by the State of California, with statutory limits, and Employer's Liability Insurance with limits of no less than \$1,000,000.00 per accident for bodily injury or disease. In the alternative, Consultant may rely on a self-insurance program to meet its legal requirements as long as the program of self-insurance complies fully with the provisions of the California Labor Code. Consultant shall also require all subcontractors, if such are authorized by the City, to similarly provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the subcontractor's employees. All Workers' Compensation policies shall be endorsed with the provision that the insurance shall not be suspended, voided, or cancelled until thirty (30) days prior written notice has been provided to City by the insurer. The Workers' Compensation insurance shall also contain a provision whereby the insurance company agrees to waive all rights of subrogation against the City and its elected or appointed officials, officers, agents, and employees for losses paid under the terms of such policy which arise from the Services performed by the insured for the City.
- B. Commercial General Liability Coverage (CGL). Commercial general liability insurance covering CGL on an "occurrence" basis, including products and completed operations, bodily injury, personal injury and advertising injury, and property damage insurance for all activities of the Consultant and its subcontractors, if such are authorized by the City, arising out of or in connection with the Services. The insurance shall be written on the most recent Insurance Services Office (ISO) form and include a broad form comprehensive general liability endorsement. The insurance shall be in an amount of not less than \$1,000,000.00 per occurrence. General liability coverage written on a claims-made basis shall not be acceptable absent prior written authorization from the City.
- C. Automobile Liability Coverage. Automobile liability insurance written on the most

recent Insurance Services Office (ISO) form covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than \$1,000,000.00 combined single limit for each occurrence.

D. Policy Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following provisions:

1. The City, and its elected or appointed officials, employees and agents shall be named as insureds or additional insureds with regard to damages and defenses of claims arising from activities performed by or on behalf of the Consultant.
2. The insurance afforded by each policy shall apply separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer's limits of liability.
3. The insurance shall be primary insurance as respects the City and its elected or appointed officers, officials, employees and agents. Any other insurance maintained by the City or its elected or appointed officers, officials, employees, agents or volunteers shall be in excess of this insurance and shall not contribute with it.
4. The insurance shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been provided to the City.
5. Any failure to comply with the reporting requirements of any policy shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, or agents.

E. Professional Liability Coverage. If required by the City, Consultant shall also take out and maintain professional liability, errors and omissions insurance in an amount not less than \$1,000,000.00. The professional liability insurance policy shall be endorsed with a provision stating that it shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days written notice has been provided to the City.

F. Insurance Certificates and Endorsements. Prior to commencing the Services under this Agreement, Consultant shall submit to the City documentation evidencing the required insurance signed by the insurance agent and the companies named. This documentation shall be on forms which are acceptable to the City and shall include all required endorsements and verify that coverage is actually in effect. This Agreement shall not be effective until the required insurance forms and endorsements are submitted to and approved by the City. Failure to provide these forms within the time period specified by City may result in the award of this

Agreement to another Consultant should the City, in its sole discretion, decide to do so. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

- G. Deductible and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City.
- H. Termination of Insurance. If the City receives notification that Consultant's insurance will be suspended, voided, cancelled or reduced in coverage or in limits, and if the Consultant does not provide for either the reinstatement of that insurance or for the furnishing of alternate insurance containing all of the terms and provisions specified above prior to the termination of that insurance, City may either terminate this Agreement for that breach, or City may secure the required insurance to satisfy the conditions of this Agreement and deduct the cost thereof from compensation which would otherwise be due and payable to the Consultant for Services rendered under the terms of this Agreement.

Section 7. Subcontracts.

Consultant may not subcontract any portion of the Services without the written authorization of City. If City consents to a subcontract, Consultant shall be fully responsible to the City and third parties for all acts or omissions of the subcontractor to which the Services or any portion thereof are subcontracted. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor, nor shall it create any obligation on the part of the City to pay or cause the payment of any monies due to any such subcontractor except as otherwise is required by law.

Section 8. Assignment.

Consultant shall not assign any right or obligation under this Agreement without the City's prior written consent. Any attempted assignment of any right or obligation under this Agreement without the City's prior written consent shall be void.

Section 9. Entire Agreement.

This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing signed by both parties.

Section 10. Jurisdiction.

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction over any litigation arising from this Agreement shall be in the

Superior Court of the State of California with venue in Placer County, California.

Section 11. Suspension of Services.

Upon written request by Consultant, City may suspend, in writing, all or any portion of the Services if unforeseen circumstances beyond the control of the City and Consultant make normal progress of the Services impossible, impractical, or infeasible. Upon written City approval to suspend performance of the Services, the time for completion of the Services shall be extended by the number of days performance of the Services is suspended.

Section 12. Termination of Services.

City may at any time, at its sole discretion, terminate all or any portion of the Services and this Agreement upon seven (7) days written notice to Consultant. Upon receipt of notice of termination, Consultant shall stop performance of the Services at the stage directed by City. Consultant shall be entitled to payment within thirty (30) days for Services performed up to the effective date of termination. Consultant shall not be entitled to payment for any Services performed after the receipt of the notice of termination unless such payment is authorized in advance in writing by the City.

Should Consultant fail to perform any of the obligations required of Consultant within the time and in the manner provided for under the terms of this Agreement, or should Consultant violate any of the terms and conditions of this Agreement, City may terminate this Agreement by providing Consultant with seven (7) days written notice of such termination. The Consultant shall be compensated for all Services performed prior to the date of receipt of the notice of termination. However, the City may deduct from the compensation which may be owed to Consultant the amount of damage sustained or estimated by City resulting from Consultant's breach of this Agreement.

Consultant's obligations pursuant to Sections 5 and 6 of this Agreement shall survive termination and continue in effect for as long as necessary to fulfill the purposes of Sections 5 and 6.

Section 13. Independent Contractor.

Consultant shall in all respects be an independent contractor and not an agent or employee of City. Consultant has and shall retain the right to exercise full control and supervision of the means and methods of performing the Services. Consultant shall receive no premium or enhanced pay for Services normally understood as overtime; nor shall Consultant receive holiday pay, sick leave, administrative leave or pay for any other time not actually expended in the performance of the Services. It is intended by the parties that Consultant shall not be eligible for benefits and shall receive no compensation from the City, except as expressly set forth in this Agreement. Consultant shall submit completed W-9 and Report of Independent Contractor forms upon execution of this Agreement and prior to the payment of any compensation hereunder.

Section 14. Ownership of Documents.

Within thirty (30) days after the Consultant substantially completes performance of the Services, or within thirty (30) days after the termination of this Agreement, the Consultant shall deliver to the City all files, records, materials and documents drafted or prepared by Consultant's in the performance of the Services. It is expressly understood and agreed that all such files, records, materials, and documents are the property of the City and not the property of the Consultant. All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of performing the Services shall become the sole property of the City upon payment to Consultant for the Services, and the City shall have the exclusive right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and writings to City or any party the City may designate, upon written request. Consultant may keep file copies of all documents prepared for City. Use of any such documents by the City for projects that are not the subject of this Agreement or for purposes beyond the scope of the Services shall be at the City's sole risk without legal liability or expense to Consultant.

Section 15. Changes and/or Extra Work.

Only the City Council may authorize extra and/or changed Services, modification of the time of completion of the Services, or additional compensation for the tasks to be performed by Consultant. Consultant expressly recognizes that other City personnel are without authorization to order extra and/or changed Services or to obligate the City to the payment of additional compensation. The failure of Consultant to secure the prior written authorization for such extra and/or changed Services shall constitute a waiver of any and all right to adjustment in the contract price due to such unauthorized Services, and Consultant thereafter shall not be entitled to any compensation whatsoever for the performance of such extra or changed Services. In the event Consultant and City agree that extra and/or changed Services are required, or that additional compensation shall be awarded to Consultant for performance of the Services under this Agreement, a supplemental agreement providing for such compensation shall be prepared and shall be executed by the Consultant and the necessary City officials before the extra and/or changed Services are provided.

Section 16. Compliance with Federal, State and Local Laws.

Consultant shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations affecting the Services, including without limitation laws requiring licensing and prohibiting discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases. City shall not be responsible or liable for Consultant's failure to comply with applicable laws, statutes, ordinances, rules, or regulations.

Section 17. Retention of Records.

Consultant and any subconsultants authorized by the terms of this Agreement shall keep and maintain full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to the Services, and Consultant shall make such documents available for review and/or audit by City and City's representatives at all reasonable times during performance of the Services and for at least four (4) years after completion of the Services and/or termination of this Agreement.

Section 18. Alternative Dispute Resolution

- A. Before resorting to mediation, arbitration or other legal process, the primary contacts of the parties shall meet and confer and attempt to amicably resolve any dispute arising from or relating to this Agreement subject to the following provisions. Any party desiring to meet and confer shall so advise the other party pursuant to a written notice. Within 15 days after provision of that written notice by the party desiring to meet and confer, the primary contacts for each party shall meet in person and attempt to amicably resolve their dispute. Each primary contact, or the person acting in their absence with full authority to resolve the dispute, shall attend the meeting and shall be prepared to devote an entire day thereto. If any dispute remains unresolved at the end of the meeting, any party to this Agreement shall have the right to invoke the mediation process provided for in the subparagraph B below.
- B. Subject to the provisions of subparagraph A, any dispute that remains unresolved after the meet and confer shall immediately be submitted to non-binding neutral mediation, before a mutually acceptable, neutral retired judge or justice at the Sacramento Office of the Judicial Arbitration and Mediation Service ("JAMS"). If within five days after the meet and confer the parties are unable to agree upon the selection of a neutral mediator, then the first available retired judge or justice at the Sacramento office of JAMS shall serve as the neutral mediator. The parties agree to commit to at least one full day to the mediation process. Additionally, to expedite the resolution of any dispute that is not resolved by mediation, the parties agree to each bring to the neutral mediation a list of at least five neutral arbitrators, including their resumes, whose availability for an arbitration hearing within 30 days after the mediation has been confirmed.
- C. If mediation is unsuccessful, before the mediation concludes, the parties shall mediate the selection of a neutral arbitrator to assist in the resolution of their dispute. If the parties are unable to agree on an arbitrator, the parties agree to submit selection of an arbitrator to the mediator, whose decision shall be binding on the parties. In that case, the mediator shall select a neutral arbitrator from the then

Colfax, CA 95713

If to Consultant: Geocon Consultants, Inc.
3160 Gold Valley Drive, Suite 800
Rancho Cordova, CA 95742

Section 23. Execution.

This Agreement may be executed in original counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one original counterpart is signed by both parties hereto. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart. In accordance with applicable law, the Parties may execute this Agreement by electronic signature and, if they do so, an electronic signature and this Agreement will have same legal validity and enforceability as a manually executed signature and agreement.

Section 24. Successors.

This Agreement shall be binding on and inure to the benefit of the respective parties hereto except to the extent of any contrary provision in this Agreement.

Section 25. Attorney's Fees.

If any party to this Agreement commences legal proceedings to enforce any of its terms or to recover damages for its breach, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs, and the expenses of expert witnesses, including any such fees costs and expenses incurred on appeal.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the day first above written:

CITY

CONSULTANT

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney



Proposal No. LS-22-172
June 9, 2022

VIA ELECTRONIC MAIL

Wes Heathcock
City Manager
33 S. Main Street
Colfax, CA 95713

Subject: PROPOSAL FOR GEOTECHNICAL TESTING & OBSERVATION SERVICES
CITY OF COLFAX I & I MITIGATION
SEWER LINE CONSTRUCTION AND REPLACEMENT PROJECT
COLFAX, CALIFORNIA

Reference: *Improvement Plans for City of Colfax I & I Mitigation, Colfax, California, Wood
Rodgers, Inc., April 2022.*

Mr. Heathcock:

We are pleased to present this proposal to provide geotechnical testing and observation services for the City of Colfax I & I Mitigation Sewer Replacement and Construction project located in Colfax, California.

The project consists of replacing approximately 2,874 linear feet of existing sewer line with 6-inch and 8-inch-diameter vitrified clay pipe (VCP) sewer line, and installing approximately 719 linear feet of new 6-inch-diameter VCP sewer line, at various locations in Colfax, California. The sewer lines will be installed using conventional excavation and backfill techniques. We understand that native soil may be used for trench backfill in unpaved areas and that ¾ inch aggregate base will be used for trench backfill within paved roadways. A project schedule was not available for our use.

To aid in preparing our proposal, we reviewed the referenced project plans. We based our scope of services and proposed fees on our review of the referenced project documents, our prior experience with similar projects, and email correspondence with Mr. Jim Fletter of Wood Rodgers, Inc. To demonstrate our dedication to this project, we will not charge hourly minimums. In addition, our technician hourly rates include vehicle and standard testing equipment at no extra charge.

SCOPE OF SERVICES

We anticipate the following scope of services:

- Sample soil and aggregate base (AB) backfill materials.
- Perform laboratory compaction curves for each material sampled (ASTM D1557).

- Periodically test and observe compaction of sewer line backfill operations. Testing of pipe zone sand will not be required. The purpose of these visits will be to establish the contractor's means and methods of trench backfill compaction and periodically confirm that compaction requirements continue to be met. It is our understanding that the once the means and methods of trench backfill compaction are established the majority of the work will be observed by the construction manager. We assume that the backfill materials will be tested using ASTM test procedures (ASTM D6938).
- Provide final compaction testing of the trench backfill at finished AB elevation prior to hot mix asphalt (HMA) paving.
- Provide geotechnical engineering consultation during construction as needed.

Upon completion of our services, we will provide copies of our field and lab testing reports. Our services will be provided on a call-out, periodic basis. This will require your representative to provide sufficient notification when these portions of construction are beginning so that we can be present to provide services.

ESTIMATED FEE

We propose to perform the scope of services described herein on a time-and-materials basis for and estimated fee of \$11,500. Our fees are based on our *2022 Schedule of Fees/Terms and Conditions*, which is incorporated into and made a part of this proposal, and current subcontractor rates. If we encounter unforeseen conditions, or if we experience delays or circumstances beyond our control, we will notify you immediately to discuss modifications to the scope of services and/or project fees.

CONTRACT EXECUTION

Please carefully review the contents of this proposal and the enclosed *Terms and Conditions for Performance of Services* (Terms), which is incorporated into and made a part of this proposal. If they meet with your approval, execute two copies of the Terms and return both copies to our office. We will then endorse the documents and return one fully executed copy to you. We will commence with the scope of services outlined herein upon receipt of your written authorization; however, services provided by Geocon will be pursuant to the Terms and *2022 Schedule of Fees* until or unless a mutually agreed upon, negotiated contract is finalized. Please note that it is necessary to indicate your project representative agent on the first sheet of the Terms and the address where all Client notices and communications should be sent. If you do not have an in-house representative agent, please indicate a designated agent.

The California Legislature enacted Business & Professions Code §6749, effective January 1, 2001, which requires that all contracts with private entities be set forth in writing, contain certain terms, including a description of the services to be provided, the basis of compensation, the name, address and certificate number of the professional engineer and be signed by the parties before commencement of any work by the engineer. Therefore, the enclosed Terms or the waiver of Business & Professions Code §6749 letter must be signed by Client prior to Geocon's commencement of any work, whatsoever, on the project. For your convenience, a copy of the Business & Professions Code §6749 waiver letter with the actual code text printed on the back is attached to this proposal.

It is mutually agreed between Client and Geocon that all services afforded and work performed by Geocon are provided pursuant to Civil Code Section 2782 and such agreement is expressly integrated into and made a part of any and all contracts or agreements entered into between the parties.

We look forward to providing services on this project. Please contact us if you have any questions regarding this proposal or if we may be of further service.

Respectfully Submitted,

GEOCON CONSULTANTS, INC.



Richard C. Church, PE
Senior Project Engineer



Victor M. Guardado, PE
Project Engineer

Attachment: Fee Estimate Worksheet
 2022 Schedule of Fees
 Terms and Conditions for Performance of Services
 Business & Professions Code §6749 Waiver Letter

FEE ESTIMATE WORKSHEET

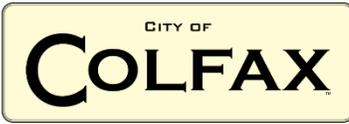
Project Name: **City of Colfax I & I Mitigation**

Project Scope: Quality Assurance (QA) Geotechnical and Materials Testing
 Assumptions: Normal working hours Monday through Friday, 8-hour work days, Prevailing Wage.
 Field vehicle, density testing, and other field tests/testing equipment included in **Prevailing Wage** hourly rate.

Geocon Fee Schedule: **2022 Schedule of Fees¹**

| Labor/Service | Activity | No. of Visits | Units per Visit | UNITS | QUANTITY | RATE | AMOUNT |
|--|---|---------------|-----------------|-------|----------|-------------------------|---------------------|
| <u>Sewer Construction</u> | | | | | | | |
| Engr. Field Technician I | Periodic Compaction Testing | 6 | 5 | hrs | 30 | \$ 125.00 | \$ 3,750.00 |
| Engr. Field Technician I | FAB Compaction Testing | 8 | 5 | hrs | 40 | \$ 125.00 | \$ 5,000.00 |
| Laboratory (Soil) | Compaction Curves - ASTM D1557 | | | each | 4 | \$ 225.00 | \$ 900.00 |
| Laboratory (3/4 inch AB) | Compaction Curves - ASTM D1557 | | | each | 2 | \$ 225.00 | \$ 450.00 |
| | | | | | | Subtotal: | \$ 10,100.00 |
| <u>Pipeline Tie-ins</u> | | | | | | | |
| Engr. Field Technician I | Field Testing and Observation | 0 | 8 | hrs | 0 | \$ 125.00 | \$ - |
| | | | | | | Subtotal: | \$ - |
| <u>HMA Testing</u> | | | | | | | |
| Engr. Field Technician I | Field Testing and Observation | 0 | 8 | hrs | 0 | \$ 125.00 | \$ - |
| Laboratory (HMA) | Rice Density (ASTM D2041) | | | each | 0 | \$ 175.00 | \$ - |
| | | | | | | Subtotal: | \$ - |
| <u>Geotechnical Consultation / Project Mgmt. / Submittal Review / Coordination / Admin / Meetings / Reports</u> | | | | | | | |
| Field Services Manager | Coordination, Dispatch | | | hrs | 2 | \$ 105.00 | \$ 210.00 |
| Project Engineer | Field Report Review / Consultation / Project Management | | | hrs | 4 | \$ 145.00 | \$ 580.00 |
| Senior Engineer | QA Senior Review | | | hrs | 3 | \$ 175.00 | \$ 525.00 |
| Admin Staff | Word Processing/Drafting | | | | 1 | \$ 85.00 | \$ 85.00 |
| | | | | | | Subtotal: | 1,400.00 |
| | | | | | | ESTIMATED TOTAL: | \$ 11,500.00 |

1. Noted Fee Schedule is incorporated into and made a part of this Estimate.



Staff Report to City Council

FOR THE JULY 26, 2023 REGULAR CITY COUNCIL MEETING

From: Mike Luken, Interim City Manager
Prepared by: Mike Luken, Interim City Manager
Subject: Reimbursement Agreement with PCWA – I&I Mitigation Project

Budget Impact Overview:

| | | | | |
|-------------|------------------|-------------------|--------------------|---------------------|
| N/A: | Funded: √ | Un-funded: | Amount: \$0 | Fund(s): 575 |
|-------------|------------------|-------------------|--------------------|---------------------|

RECOMMENDED ACTION: Adopt Resolution __-2023 authorizing the City Manager to execute an agreement with Placer County Water Agency for reimbursement of water mains constructed with the I&I Mitigation Project.

Summary/Background

The proposed resolution, if adopted, authorizes the City Manager to execute the attached reimbursement agreement between Placer County Water Agency (PCWA) and the City. On June 8, 2023, City Council authorized award and construction of the I&I Mitigation Project (Project) which is wholly funded by a Clean Water State Revolving Funds (CWSRF) grant. The Project will likely begin construction in August 2023. The Project will replace, rehabilitate and construct new sewer mains within numerous City streets. A few construction sites require relocation and upgrades to PCWA's water mains and services.

The State Water Resources Control Board (SWRCB) will reimburse the City for reconstruction of water mains and services that must be relocated because the mains do not meet minimum sewer separation regulations. PCWA reviewed the Project and identified additional water mains and services that they would like the City to reconstruct; however, SWRCB staff concluded that the additional work does not qualify for grant reimbursement. For this reason, PCWA staff agreed to reimburse the City for this additional work.

Conclusions and Findings

PCWA has requested that the City replace PCWA owned water mains while the City is reconstructing sewer mains within the various Project roadways. While some of that water main work will be funded with the City's SWRCB grant; other portions are not reimbursable by the grant, hence will be reimbursed by PCWA. The attached agreement establishes the reimbursement mechanism and terms.

Fiscal Impacts

There is no fiscal impact to the City since all water related work that is not reimbursed by the CWSRF grant will be reimbursed by PCWA.

Attachments:

1. Resolution __-2023
2. PCWA Agreement

City of Colfax

City Council

Resolution No. ___-2023

AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH PLACER COUNTY WATER AGENCY FOR REIMBURSEMENT OF WATER MAIN REPLACEMENT WORK.

WHEREAS, The City of Colfax will replace Placer County Water Agency (PCWA) owned water mains and services when the City replaces the sewer main with the I&I Mitigation Project starting construction in August 2023; and,

WHEREAS, A portion of the water main work will be reimbursed with the City’s Clean Water State Revolving Fund (CWSRF) grant under the State Water Resources Control Board grant agreement, No. D2101007; and,

WHEREAS, PCWA has requested and agreed to reimburse the City for additional water main and services replacements that are not reimbursable through the said grant.

NOW THEREFORE, BE IT RESOLVED the City Manager is authorized to enter the City into a reimbursement agreement with PCWA for water main and service replacement work completed with the I&I Mitigation Project; and,

BE IT FURTHER RESOLVED the value of the replacement work shall not exceed the funding limit established by the reimbursement agreement terms.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED at the Regular Meeting of the City Council of the City of Colfax held on the 26th day of July 2023 by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

Trinity Burruss, Mayor

ATTEST:

Marguerite Bailey, City Clerk

FACILITIES AGREEMENT NO. 2823
CONSTRUCTION COOPERATION AND REIMBURSEMENT AGREEMENT
PLACER COUNTY WATER AGENCY – CITY OF COLFAX
WATERLINE REPLACEMENTS WITHIN THE CITY OF COLFAX - I & I MITIGATION PROJECT

This agreement, by and between the PLACER COUNTY WATER AGENCY, hereinafter called “AGENCY”, and the CITY OF COLFAX, an incorporated city within Placer County, herein called “CITY”, shall be effective on the later of the dates executed by both the AGENCY and the CITY.

RECITALS

WHEREAS, the CITY is undertaking a sewer replacement project in various locations within the City, hereinafter referred to as “Project,” as shown on Exhibit “A” attached hereto and incorporated herein by reference and on a set of plans entitled “City of Colfax - I & I mitigation Project”, prepared by Wood Rodgers, 3301 C Street, Building 100-B, Sacramento, CA 95816; and

WHEREAS, the Project will need to relocate the AGENCY facilities to provide adequate separation from new sewer lines installed with the Project, as required by the California Waterworks Standards; and

WHEREAS, the AGENCY has requested modifications to these facilities to mitigate future impacts to the area; and

WHEREAS, the CITY and the AGENCY agree that it would be advantageous to install the AGENCY’s facilities concurrently with the Project; and

WHEREAS, the Project will require the installation of Agency facilities which include the relocation of 200 linear feet of 2-inch pipe and replacing it with 400 linear feet of 4-inch pipe, and relocation and replacement of multiple water services and associated appurtenances described more fully in the plans prepared by the CITY, and which are hereinafter referred to as the "Agency

Facilities"; and

WHEREAS, the CITY received a grant for \$5,596,191 through the Clean Water State Revolving Fund (CWSRF) related to sewer improvements throughout the City and has applied for all Agency Facilities construction costs to be covered through the grant; and

WHEREAS, the CITY opened bids on March 9, 2023, and the amount of the lowest responsive, responsible bid exceeded the said grant resulting in the CITY requesting additional grant fund from the CWSRF; and

WHEREAS, the CITY intends to engage a qualified contractor and has agreed to bear all expense to furnish and install the Facilities as required; and

WHEREAS, the Agency agrees to reimburse the CITY for construction of such Agency Facilities that are not funded by the grant; and

WHEREAS, the AGENCY is willing to accept the Agency Facilities in accordance with the provisions of this Agreement, the Agency's Personnel and Administrative Manual, Improvement Standards, Technical Provisions and Standard Drawings.

AGREEMENT

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN PROVIDED, it is agreed as follows:

1. The CITY will expand the scope of the Project to include the installation of the Agency Facilities. The CITY will incorporate the appropriate plans and technical specifications for the Agency Facilities into the Project plans and specifications in a form mutually acceptable to the CITY and the AGENCY.

2. The CITY prepared and provided the construction documents (plans and specifications) to the AGENCY such that the AGENCY can use these documents as a basis for reviewing and approving the material and appurtenances required for the Agency Facilities before the CITY issues the construction documents for the Project for bids.

3. The parties agree and acknowledge that the CITY competitively bid and awarded the contract to the lowest responsive and responsible bidder for the entire Project. "Responsible bidder" includes the requirement that the selected contractor, or its subcontractor performing the AGENCY work, meet the AGENCY's and CITY's minimum requirements for installation of water facilities, including possessing and maintaining a California State Class A or C-34 Contractor's License. CITY shall be the lead agency for the Project and will manage the construction contract and be responsible for all payments to the contractor. The AGENCY will reimburse the CITY for costs paid to the contractor to install the Agency Facilities in accordance with this Agreement. The procedure for such reimbursement shall be as described in Section 8 below. The total reimbursement shall not exceed \$386,000 (Item B in Exhibit B). Upon award of the construction contract, the AGENCY and the CITY may agree to revise Exhibit B if the "Total Reimbursement Not to Exceed" (Item B in Exhibit B) is determined to be insufficient for the awarded bid, and the AGENCY will reimburse the CITY for construction costs based on the award in accordance with the revised not to exceed limit of the revised Exhibit B.

4. The CITY may cancel work in the Project that includes Agency Facilities due to insufficient grant funds with no recourse from the AGENCY, barring approval from the State and Agency for meeting separation requirements.

5. The CITY shall provide contract administration, inspection and construction management for the Project, and shall, at its own expense, pay any charges for any consultant it has retained or may retain for any design or testing services in connection with the Project. The AGENCY shall, at its own expense, provide its own inspection for the installation of the AGENCY's Facilities as part of the Project.

6. The CITY and the AGENCY shall mutually agree on a method to coordinate construction administration, construction engineering, construction surveying, shop drawing review, communications and meetings, traffic control, scheduling, inspection and testing of the work that pertain to construction of the Agency Facilities.

7. During construction of the Agency Facilities, the AGENCY shall determine whether construction of the Agency Facilities is satisfactorily performed in accordance with the construction contract and AGENCY requirements and shall notify the CITY in writing of approval and acceptance of the completed Agency Facilities. AGENCY shall coordinate with the CITY to bring the completed Agency Facilities into service. After AGENCY acceptance of the completed Agency Facilities, the AGENCY shall own and be responsible for the operation and maintenance of the completed Agency Facilities pursuant to any encroachment permits obtained from the CITY at the time of construction of the Project. Such acceptance of the completed work shall not relieve the contractor of any liability or modify the contractor's guarantee.

8. The AGENCY shall reimburse the CITY for costs paid to the CITY's contractor(s) to install the Agency Facilities not funded by the grant in accordance with the following procedure:

- a. The CITY shall require the contractor to submit with each monthly payment application an itemization indicating progress on these unit price line items.

Upon payment to the Contractor for any of the Agency Facilities line items, CITY may submit an invoice to AGENCY for reimbursement hereunder of the amounts paid. AGENCY shall pay said invoice within thirty (30) days of receipt.

- b. The AGENCY shall be responsible to reimburse CITY for all payments to the contractor for AGENCY approved change orders for extra work performed on the Agency Facilities. CITY will be responsible for all other Project-related change orders, delays, and extra work incurred by the contractor. The AGENCY and CITY will jointly work to negotiate change order requests and claims by the contractor to resolve any claims directly related to the Agency Facilities in a timely manner, provided that neither the CITY nor the AGENCY shall agree to the resolution of any such change order request or claim without the other's approval. In the event an agreement cannot be reached related to active ongoing work within one (1) working day of presentation of a request for change order, or claim, the CITY shall have the right to direct the contractor to proceed on a force account basis.
- c. The AGENCY shall be responsible to reimburse CITY for all payments to the contractor(s) for work performed relating to the installation of the Agency Facilities.

9. The AGENCY will not unnecessarily delay progress of work or hold up final contract acceptance of the Project during the period of closeout. The AGENCY shall bear no responsibility for contractor or CITY caused delays on work other than those directly related to only the Agency Facilities. The AGENCY shall have no obligation under this Agreement to make any direct payment

to the CITY's contractor or to any subcontractor (of any tier) or material supplier or equipment supplier for materials, equipment or labor supplied on the Project.

10. Performance by either party under this Agreement shall not be deemed to be in default where delays or default are due to Force Majeure when a party gives notice, in writing, with details of particulars to the other party as soon as possible. Force Majeure as used in this contract shall mean acts of nature, wars, insurrections, riots, epidemics, major landslides, earthquakes, fires, floods, and civil disturbances, which are not within the control for the party claiming suspension, which by the exercise of due diligence, such party may not have been able to avoid or overcome.

11. Except as otherwise provided by Section 12, costs arising from claims or lawsuits for personal injury or property damage which are alleged to have resulted from construction of the Agency Facilities only, including the payment of damages pursuant to a final judgment in favor of a claimant, shall be the AGENCY's responsibility. In the event of disagreement concerning the responsibility of any claim resolution costs related to the affected items of work, the parties each expressly reserve the right to seek a judicial determination of the responsibility of each party with respect to any claim or lawsuit arising out of their performance under this agreement.

12. INDEMNITY:

- a. AGENCY agrees to save harmless and indemnify CITY from any liability, claim or demand which may be made by any person resulting from the negligence of AGENCY in the performance of its responsibilities under this Agreement, and further agrees, at its own cost and expense, to defend any action which may be brought against CITY resulting from such negligence of AGENCY, and further agrees to pay or satisfy any judgment which may result from such action. The

foregoing provisions shall not be applicable to claims or actions that arise from the negligence of CITY in its performance of the terms of this Agreement.

- b. The CITY agrees to save harmless and indemnify AGENCY from any liability, claim or demand which may be made by any person resulting from the negligence of CITY in the performance of its responsibilities under this Agreement, and further agrees, at its own costs and expense, to defend any action which may be brought against AGENCY resulting from such negligence of CITY, and further agrees to pay or satisfy any judgment which may result from such action. The foregoing provisions shall not be applicable to claims or actions that arise from the negligence of AGENCY in its performance of the terms of this Agreement.

13. INSURANCE: The CITY's Contractor shall carry Automobile Liability insurance in the amount of at least \$1,000,000, and Commercial General Liability in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate with a maximum \$5,000 deductible, which insurance shall be primary and underlying to the AGENCY's insurance and Commercial General Liability and shall specifically name the AGENCY as an additional insured and certificate holder. Before work is commenced, the CITY's Contractor shall furnish the AGENCY with a certificate(s) of insurance and Additional Insured Endorsement (ISO CG 2010) or equivalent as satisfactory proof that the CITY's Contractor carries the insurance required by the Agreement and Worker's Compensation Insurance in compliance with the laws of the State of California. The CITY's Contractor's insurance shall be primary and any insurance or self-insurance maintained by the AGENCY shall be excess and not contribute to it. The insurance carriers will have a Best Rating of

no less than A:-VII or equivalent or as otherwise approved by the AGENCY.

14. PERFORMANCE AND PAYMENT BONDS: The estimated cost of the Facilities is \$386,000. Prior to construction of any of the Facilities and during all such construction, the CITY or CITY's Contractor shall provide a Performance Bond with a penal sum of 100% of the estimated cost of the Facilities. The performance bond shall be in a form acceptable to the AGENCY. The AGENCY may formally waive the requirement for a performance bond if the CITY's Contractor demonstrates that it has provided a comparable performance bond to the CITY pursuant to Government Code Section 66499.1, which bond encompasses the installation of the Agency Facilities and names the AGENCY as co-obligee. The CITY shall maintain the Performance Bond at all times during the life of this agreement and for a period one (1) year after the completion and acceptance of the Facilities by the AGENCY.

In addition, prior to construction, the CITY or CITY's Contractor shall provide a Public Works Payment Bond with a penal sum of 100% of the estimated cost of the Agency Facilities. The payment bond shall be in a form that is acceptable to the AGENCY. The AGENCY may waive the requirement for a payment bond if the CITY's Contractor demonstrates that it has provided a comparable payment bond to the CITY pursuant to Government Code Section 66499.2, which bond encompasses the installation of the Facilities. The CITY shall maintain the Payment Bond at all times until the AGENCY accepts the Agency Facilities.

All bonds shall be issued by California admitted surety insurers.

15. WARRANTIES AND REPAIRS: The CITY hereby agrees that the AGENCY may enforce all warranties provided by CITY's contractor with respect to AGENCY's Facilities, and the CITY shall require its contractor to provide a warranty against any defects in materials or workmanship in the

installed Agency Facilities for a period of one year following final acceptance of the Project. This Agreement shall cover defects which shall be in existence during such one year period but which shall not become apparent until thereafter. As to any equipment which bears a guarantee or warranty in writing or by law for a period longer than one year, the CITY hereby stipulates and agrees that such guarantee shall inure to the benefit of the AGENCY for such longer period.

16. This Agreement shall terminate after the Agency Facilities have been completed and accepted by the AGENCY and final payment has been made to the CITY. However, such termination shall not relieve the contractor of any liability or modify contractor’s guarantee or prohibit either the CITY or the AGENCY from enforcing any rights against, or seeking damages from the contractor.

17. This Agreement shall not inure to the benefit of or create any rights in any third party not a signatory hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the later of the dates executed by both the AGENCY and the CITY below.

“AGENCY”

PLACER COUNTY WATER AGENCY

CITY OF COLFAX, An incorporated City
within the County of Placer

By _____
CHAIR, BOARD OF DIRECTORS

Signature

Date: _____

Print name

ATTEST

Title

Clerk to the Board

Date: _____

Exhibit A



FA 2823

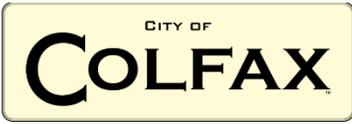
City of Colfax & Mitigation Project - Waterline Replacements

EXHIBIT B

**PLACER COUNTY WATER AGENCY - CITY OF COLFAX
I & I MITIGATION PROJECT
Waterline Relocations/Replacements**

COST ESTIMATE

| Item No. | Item Description | Qty | Unit | Unit Cost | Total |
|-----------------|--|------------|-------------|------------------|------------------|
| A | | | | | |
| 1 | 4-inch Waterline Replacement/Relocation- Northstar | 1 | LS | \$75,000 | \$75,000 |
| 2 | Gillen (Hotel) Alley Waterline replacement | 1 | LS | \$44,000.00 | \$44,000 |
| 3 | Water Servcie Repacements/Relocations | 20 | EA | \$8,000 | \$160,000 |
| | | | | Subtotal | \$279,000 |
| | | | Contingency | 15% | \$41,850 |
| | | | | TOTAL | \$320,850 |
| B | Total Reimbursement not to exceed (Includes additional 20% Contingency) | | | | \$386,000 |



Staff Report to City Council

FOR THE JULY 26, 2023 REGULAR CITY COUNCIL MEETING

From: Mike Luken, Interim City Manager
Prepared by: Marguerite Bailey, City Clerk
Subject: Rainbow Music Lease Extension

Budget Impact Overview:

| | | | | |
|---------------|----------------|-------------------|----------------|-----------------|
| N/A: ✓ | Funded: | Un-funded: | Amount: | Fund(s): |
|---------------|----------------|-------------------|----------------|-----------------|

RECOMMENDED ACTION: Authorize a 60-day lease extension with Rainbow Music for 99 Railroad Street Suite 4 to allow for the completion of window replacements.

Summary/Background

Rainbow Music located at 99 Railroad Street Suite 4 (Pullman Car) is a City of Colfax tenant current lease that expires July 30, 2023.

The Colfax City Council previously agreed to a rent amount of \$500/month with the ability to reduce that by \$150/month with a defined activity that qualifies as a credit for the rent reduction. Rainbow Music’s proposal included the repair/replacement of 14 custom made windows on the railcar.

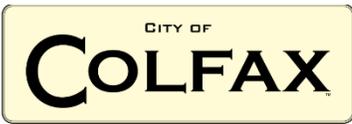
Staff is recommending a sixty (60) day extension to the current lease to accommodate completion of repairs and the City of Colfax Building Inspector’s approval.

Fiscal Impacts

N/A

Attachments:

N/A



Staff Report to City Council

FOR THE JULY 26, 2023, REGULAR CITY COUNCIL MEETING

From: Mike Luken, Interim City Manager
Prepared by: Mike Luken, Interim City Manager
Subject: SB1383 Compliance – Greenleaf/Desert View Power LLC

Budget Impact Overview:

| | | | | |
|-------------|------------------|-------------------|--------------------------|---------------------|
| N/A: | Funded: X | Un-funded: | Amount: See Below | Fund(s): 290 |
|-------------|------------------|-------------------|--------------------------|---------------------|

RECOMMENDED ACTION: Authorize the City Manager to execute an agreement with Greenleaf/Desert View Power LLC purchase and sale of certain biomass electricity compliance attributes to satisfy the City’s “Procurement of Recycled Organic Products by Local Jurisdictions” requirement of SB1383

Summary/Background

SB1383 was enacted to reduce emissions of short-lived climate pollutants (SLCP’s), which may contribute to global warming and affect human health. SLCPs remain in the atmosphere for less time than carbon dioxide, but potentially cause more damage. These pollutants, which include black carbon, methane, tropospheric ozone, and hydrofluorocarbons, may be responsible for up to 45% of greenhouse gases that impact global warming.

One of the components of the bill Senate Bill 1383 requires local jurisdictions to purchase recycled organic products to support this effort. In the case of Colfax, this would require the city to purchase many tons of organic waste in the form of mulch. This mulch is not needed in Colfax and in fact would be problematic in the city’s efforts to reduce risk of forest fires.

Pioneer Energy has taken the lead in organizing a cost-effective substitute program for purchase of energy credits as opposed to actual mulch. A presentation was made to the Council on April 12 on this program and over the course of the past three months a model agreement has been developed by Pioneer Energy, Desert View Power LLC and staff from Placer jurisdictions. A copy of this model agreement and PowerPoint are attached to this report. Staff recommends the Council authorize the City Manager to execute this agreement as a cost-conscious method to comply with SB1383 and not increase fire risk for Colfax.

The City Attorney has reviewed the proposed sales agreement and has approved it to form. This is a three-year agreement with provisions for exiting the agreement should the Desert View Power LLC fall out of compliance and these credits not satisfy the requirements of SB1383.

Fiscal Impacts

The estimated cost for Colfax is as follows for a three-year agreement:

- 2023 - \$1,690
- 2024 - \$3,676
- 2025 - \$5,655

The cost of this SB1383 program would be paid through funds received from Cal-Recycle for SB1383 implementation.

Attachments:

- Powerpoint Presentation
- PCA Sales Agreement

Organic Waste Procurement Compliance for SB 1383



SB 1383 Organic Waste Products Procurement Requirements

Beginning January 1, 2022, SB 1383 requires cities and counties to procure annually a quantity of organic waste products to meet their annual procurement target

- Jurisdictions are required to procure 30% of their organic waste targets in 2023
- 65% of their organic waste targets in 2024
- 100% of their organic waste targets in 2025 and thereafter

There are 4 types of organic waste products that comply with SB 1383:

- Compost
- Mulch
- Renewable energy from anaerobic digestion
- **Electricity produced from biomass compliant feedstock**



Procurement of Biomass Attributes (Greenleaf) Model

- Greenleaf is collecting SB 1383 biomass eligible material from local transfer stations and offering to sell the eligible “attributes” to local jurisdictions to comply with their procurement requirements
- Greenleaf believes it can sell approximately 200,000 tons of SB 1383 compliant biomass material annually
- Greenleaf is selling 1 ton of SB 1383 compliant biomass that will be burned for the purposes of producing biomass energy for approximately \$32.50 (the equivalent of 650 kwh of biomass energy)



Proposal for Pioneer's Assistance

Representative Role

Pioneer facilitated and negotiated the price and draft agreement with Greenleaf on behalf of its participating members and also answered questions for each member agency throughout this process. Benefits include:

- Pioneer had greater bargaining strength representing multiple jurisdictions and quite possibly better terms than jurisdictions on their own
- Pioneer saved member agencies significant staff time by negotiating the draft agreement on behalf of multiple parties
 - The terms and conditions of the final agreement are up to the individual jurisdiction's counsel to negotiate and approve
- This approach allowed Pioneer to assist its members without any liability for compliance
 - Compliance would be largely handled by Greenleaf except for reporting that requires direct input from the jurisdictions, wherein Greenleaf would provide that data to submit

2023 Estimated Targets and Costs

| | 2022 Energy | | Max. Tons | 2023 Target | | Cost |
|---------------------|-------------|-------------|-------------|-------------|---------------|-----------|
| | Usage kwh | kwh Per Ton | Procurable* | in Tons | Price Per Ton | 2023 |
| Placerville | 2,612,315 | 650 | 4,019 | 261 | \$ 32.50 | \$8,483 |
| E.D. County | 4,281,309 | 650 | 6,587 | 3,866 | \$ 32.50 | \$125,645 |
| Auburn | 1,214,993 | 650 | 1,869 | 347 | \$ 32.50 | \$11,278 |
| Colfax | 876,129 | 650 | 1,348 | 52 | \$ 32.50 | \$1,690 |
| Lincoln | 3,821,239 | 650 | 5,879 | 1,191 | \$ 32.50 | \$38,708 |
| Loomis | 218,204 | 650 | 336 | 164 | \$ 32.50 | \$5,330 |
| Grass Valley | Unknown | 650 | Unknown | 306 | \$ 32.50 | \$9,945 |
| Nevada City | Unknown | 650 | Unknown | 74 | \$ 32.50 | \$2,405 |
| | | | | | | \$347,828 |

2024 Estimated Targets and Costs

| | 2022 Energy | | Max. Tons | 2024 Target | | Cost | Unmet Target |
|----------------------|-------------|-------------|------------|-------------|---------------|-----------|--------------|
| | Usage kwh | kwh Per Ton | Procurable | in Tons | Price Per Ton | 2024 | in Tons |
| Placerville | 2,612,315 | 650 | 4,019 | 566 | \$ 32.50 | \$18,400 | |
| E.D. County * | 4,281,309 | 650 | 6,587 | 8,376 | \$ 32.50 | \$214,065 | 1,789 |
| Auburn | 1,214,993 | 650 | 1,869 | 751 | \$ 32.50 | \$24,399 | |
| Colfax | 876,129 | 650 | 1,348 | 113 | \$ 32.50 | \$3,676 | |
| Lincoln | 3,821,239 | 650 | 5,879 | 2,581 | \$ 32.50 | \$83,883 | |
| Loomis * | 218,204 | 650 | 336 | 354 | \$ 32.50 | \$10,910 | 18 |
| Grass Valley | Unknown | 650 | Unknown | 664 | \$ 32.50 | \$21,580 | |
| Nevada City | Unknown | 650 | Unknown | 159 | \$ 32.50 | \$5,168 | |
| | | | | | | \$694,879 | |

2025 Estimated Targets and Costs

| | 2022 Energy | | Max. Tons | 2025 Target | | Cost | Unmet Target |
|----------------------|-------------|-------------|------------|-------------|---------------|-----------|--------------|
| | Usage kwh | kwh Per Ton | Procurable | in Tons | Price Per Ton | 2025 | in Tons |
| Placerville | 2,612,315 | 650 | 4,019 | 871 | \$ 32.50 | \$28,308 | |
| E.D. County * | 4,281,309 | 650 | 6,587 | 12,886 | \$ 32.50 | \$214,065 | 6,299 |
| Auburn | 1,214,993 | 650 | 1,869 | 1,155 | \$ 32.50 | \$37,538 | |
| Colfax | 876,129 | 650 | 1,348 | 174 | \$ 32.50 | \$5,655 | |
| Lincoln | 3,821,239 | 650 | 5,879 | 3,970 | \$ 32.50 | \$129,025 | |
| Loomis * | 218,204 | 650 | 336 | 545 | \$ 32.50 | \$10,910 | 209 |
| Grass Valley | Unknown | 650 | Unknown | 1,021 | \$ 32.50 | \$33,183 | |
| Nevada City | Unknown | 650 | Unknown | 246 | \$ 32.50 | \$7,995 | |
| | | | | | | \$947,906 | |

Costs

Purchase Biomass Attributes

- Greenleaf Power is offering SB 1383 compliant biomass attributes for approximately \$32.50 per ton
- Auburn's estimated 2023 target is 52 tons
- Total estimated cost for Colfax is **\$1,690**
- General Counsel has estimated costs to negotiate the draft contract at \$10,000. This cost will be divided equally amongst participating jurisdictions.

What Does 50 Tons of Compost Look Like?

Item 3F



Considerations

- The price of compost and mulch vary wildly, and Greenleaf acknowledges that their product is not for everyone
- Prices range from 25% cheaper to 4 times more expensive for mulch and compost depending upon proximity to product, the hauler, and operational costs
- Beginning January 1, 2027, jurisdictions' procurement targets will be recalculated to reflect population changes
- If jurisdictions have SB 1383 local assistance grant money, they should contact their grant manager regarding using the funds to pay for the organic waste procurement
- **EACH JURISDICTION SHOULD CONDUCT THEIR OWN FISCAL ANALYSIS AND DETERMINE THE BEST OPTION FOR COMPLIANCE BEFORE SIGNING CONTRACT**

Notice of Violation

- Pioneer first learned of a possible Notice of Violation (NOV) from the Environmental Protection Agency (EPA) on May 10
- Pioneer contacted Greenleaf, CalRecycle, and our Board members
- The NOV is for alleged violations for hourly exceedances and stack tests during a period covering 2016-2021
- Greenleaf believes strongly that the ongoing discussions with the EPA will significantly reduce or eliminate the alleged exceedances
- CalRecycle will conduct compliance evaluation of jurisdictions which will require written certification from the biomass conversion facility certifying the feedstock came from eligible and permitted facilities, documentation that there are no duplicate sales, and the quantity procured does not exceed the amount used for municipal operations
- CalRecycle does not have regulatory oversight on the biomass plant regarding this type of NOV and the NOV, even if it results in a fine, will not impact this solution of applying the attributes for compliance
- With this information, staff resumed talks with Greenleaf to amend the contract to extend the original June 30th deadline until July 31, 2023, and include notification requirements and remedies regarding the outcome of the pending NOV and all other related violations.

Negotiated Provisions in the Contract

- The contract delivery term is up to you, but Greenleaf expects a minimum of 3 years, and prefers 5 years (through 2027)
- Whatever term you choose, you will have the option to terminate the contract with 60 days notice in the event there is any change in law making the agreement impossible or impracticable
- Pricing is improved as more Pioneer members join – there are 3 tiers of volumetric pricing listed in Schedule 1, and the cutoff date for calculating enlisted volumes (using total 2025 volumes)
- The attorney's fees for assistance in negotiating this contract (\$10,000) will be shared equally amongst all participants
- It is up to each jurisdiction to negotiate any final provisions in the contract
- Jurisdictions will need to enter into a contract with Greenleaf by July 31, 2023 to secure attributes and pricing

PROCUREMENT COMPLIANCE ATTRIBUTE PURCHASE AGREEMENT

This PROCUREMENT COMPLIANCE ATTRIBUTE PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of [*date*] (the “Effective Date”) by and between DESERT VIEW POWER LLC, a Delaware limited liability company (“Seller”), and [*FULL LEGAL NAME*], a [*jurisdiction of organization*] [*entity type*] (“Buyer”). Seller and Buyer are sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Parties desire to enter into this Agreement in order to set forth the terms and conditions relating to the purchase and sale of certain biomass electricity compliance attributes for Buyer to satisfy its “Procurement of Recycled Organic Products by Local Jurisdictions” requirement of SB1383.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1
DEFINITIONS

As used in this Agreement, the following defined terms have the meanings set forth below:

“Annual Report” means, with respect to any Contract Year, a report in the form attached hereto as Exhibit A setting forth the Facility, the number of Contract PCAs delivered in the Contract Year, the number of kWh produced by the Facility with Feedstock during such Contract Year, the amount of Buyer Energy Consumption during such Contract Year, information with respect to the receipt of and compliance with any Notice of Violation (as defined below), and other terms applicable to such Contract PCAs.

“Applicable Standard” means the Recovered Organic Waste Product procurement standards enacted by the State of California and set forth in Health and Safety Code Sections 39730 et seq., 42652, 42652.5, and 42653, and the rules and regulations promulgated by CalRecycle thereunder, including those regulations set forth in 14 Cal. Code Regs. Sections 18993.1 and 18993.2, all as may be amended from time to time.

“Business Day” means a day on which Federal Reserve member banks in San Francisco, California, are open for business.

“Buyer Energy Consumption” means, with respect to any period, the number of kWh of electricity that is consumed by municipal operations of Buyer or another eligible direct service provider to Buyer permitted by 14 Cal. Code Regs. Sections 18993.1(e)(2) during such period (either from the grid or directly), as certified in writing by Buyer to Seller from time to time at Seller’s reasonable request.

“CalRecycle” means the California Department of Resources Recycling and Recovery, or a successor governmental authority responsible for implementing and/or promulgating the Applicable Standards and overseeing the qualification and use of PCAs in California.

“Contract Year” means each twelve (12) calendar month period during the Term beginning on January 1 and ending on December 31.

“Contract Year-to-Date” means, as of any date in any Contract Year, the period from January 1 of such Contract Year through such date.

“Event of Default” means, with respect to a Party, any of the following events:

(a) The failure of such Party to pay any amount when due in full as and when required under this Agreement, and such amount is not paid in full within five (5) Business Days after receiving Notice thereof;

(b) With respect to Seller, the failure of Seller to satisfy its Contract PCA delivery obligations under this Agreement (other than following a payment default by Buyer), and such failure is not cured within five (5) Business Days of the date that it receives Notice from Buyer of such failure;

(c) With respect to Buyer, the failure of Buyer to purchase Contract PCAs when required under this Agreement, and such failure is not cured within five (5) Business Days of the date that it receives Notice from Seller of such failure;

(d) If any representation or warranty made by such Party in Section 5.1 or Section 5.2, as applicable, proves to have been materially misleading or false in any material respect when made and such Party does not cure the underlying facts so as to make such representation and warranty materially correct and not misleading in any material respect within thirty (30) calendar days of receipt of Notice from the other Party setting forth in reasonable detail the circumstances underlying such materially false or misleading representation or warranty;

(e) With respect to Seller, the failure to provide Buyer with Notice as required under Section 2.3 that qualifying electricity generated at the Facility and sold into the grid during such period is not sufficient to produce the number of PCAs required to be delivered during such period and that therefore Seller’s obligation to deliver PCAs to Buyer during that period is excused to the extent qualifying electricity is insufficient.

(f) With respect to Seller, the failure to provide Buyer with Notice of a Notice of Violation received by Seller after the Effective Date from a Governmental Authority with respect to the Biomass Facility (as defined below) within the period provided in Section 4.7(a), and such failure is not cured within twenty (20) Business Days of the date that Seller receives the Notice of Violation;

(g) With respect to Seller, the receipt by Seller of a written determination from the applicable Governmental Authority not disputed or being negotiated in good faith by Seller that Seller has failed to be in material compliance with the material terms of any mitigation, settlement, restitution and other requirements agreed to between Seller and such Governmental Authority to resolve a Notice of Violation, and such failure is not cured within twenty (20) Business Days of the date of Seller’s receipt of such written determination from the applicable Governmental Authority not disputed or being negotiated in good faith by Seller;

(h) Any other failure of performance by such Party of its material obligations under this Agreement not otherwise specified as a separate Event of Default hereunder, and such failure is not cured within thirty (30) calendar days of receipt of Notice of Event of Default; or

(i) Such Party (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other

similar law affecting creditors' rights that is not dismissed within sixty (60) days; or (iv) has a secured party take possession of all or substantially all of its assets or has a distress, execution, receivership, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter;

provided, that a Final Determination that any PCAs are Disallowed PCAs shall not be an Event of Default.

“Facility” means the biomass fueled electricity generation facility operated by Seller and located at 62300 Gene Welmas Way, Mecca, California 92254 or another biomass fueled electricity generation facility identified by Seller receiving Feedstock in compliance with Cal. Code Regs. Tit. 14, § 18993.1 (i) which may from time to time produce PCAs on the Seller's behalf.

“Feedstock” means biomass feedstock received directly from one or more eligible solid waste facilities described in 14 Cal. Code Regs. Section 18993.1(i).

“Final Determination” means a determination by CalRecycle that any Contract PCAs are Disallowed PCAs, which determination is either (a) challenged in a court of competent jurisdiction and upheld in a final, non-appealable order by a court of competent jurisdiction; or (b) not challenged in any court prior to expiration of the period allowed for any court challenge. The order of a court will be deemed a “Final Determination” when the time for appeal, if any, will have expired and no appeal will have been taken or when all appeals taken will have been finally determined.

“Interest Rate” means a rate equal to two percent (2%) over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the Wall Street Journal under “Money Rates”; provided such interest rate shall never exceed the maximum lawful rate permitted by applicable law.

“kWh” means kilowatt-hours.

“Notice” means the process described in Section 7.2.

“Procurement Compliance Attribute” or “PCA” means an attribute associated with Recovered Organic Waste Products generated by the Facility with Feedstock that may be used by an eligible jurisdiction toward its SB 1383 Recovered Organic Waste Product procurement target, together with all associated Reporting Rights. For the avoidance of doubt, Procurement Attributes do not include any energy generated, or any other attributes, including renewable energy credits, capacity, avoided greenhouse gas emissions, avoided pollutant emissions, or any other credit, benefit, emission reduction, offset, or allowances, howsoever entitled, whether currently identified or identified any time in the future, attributable from a biomass conversion facility and/or its avoided emission of pollutants. A quantity of PCAs (including Contract PCAs) shall be expressed in kWh, and shall be converted into equivalent tons using the conversion ratio of one ton for every 650 kWh or such other conversion ratio required by the Applicable Standard.

“PCA Certificate” means, with respect to any Contract PCAs, a certificate required by 14 Cal. Code Regs. Section 18993.2(a)(6) in the form attached hereto as Exhibit B relating to such Contract PCAs.

“Quarterly Certificate” means, with respect to any Quarterly Period, a certificate in the form attached hereto as Exhibit C setting forth the number of Contract PCAs (a) delivered in such Quarterly Period, the Purchase Price to be paid for such Contract PCAs, Buyer Energy Consumption during such Quarterly Period, and other terms applicable to such Contract PCAs; and (b) delivered in the applicable Contract Year through the end of such Quarterly Period, the Purchase Price paid (or to be paid) for such

Contract PCAs for the Contract Year through the end of such Quarterly Period, Buyer Energy Consumption during the Contract Year through the end of such Quarterly Period, and other terms applicable to such Contract PCAs.

“Quarterly Period” means each three (3) calendar month period during the Term ending on each March 31, June 30, September 30, and December 31; provided that the first and last Quarterly Periods of the Term shall be pro-rated based on the start date or end date of the Term, as applicable.

“Recovered Organic Waste Products” has the meaning set forth in 14 Cal. Code Regs. Section 18982(60) and that meets the requirements set forth in 14 Cal. Code Regs. Section 18993.1.

“Reporting Rights” means, with respect to any PCA, the right of Buyer to report that it owns such PCA to CalRecycle for purposes of applying such PCA to its SB 1383 Recovered Organic Waste Product procurement target.

“Unit Contingent” means that Seller’s obligation to deliver PCAs to Buyer during any period shall be excused to the extent qualifying electricity generated at the Facility and sold into the grid during such period is not sufficient to produce the number of PCAs required to be delivered during such period.

“Vintage Year” means, with respect to any PCAs, the calendar year or years during which such PCAs were generated, as set forth in the applicable Quarterly Certificate or Annual Report.

“SB 1383” means California’s Short-Lived Climate Pollutant Reduction law.

“Term” means the period defined in Section 6.1.

ARTICLE 2 PURCHASE AND SALE OF PCAS

2.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller shall sell to Buyer, and Buyer shall purchase from Seller:

(a) Contract Years. During each Contract Year, a number of PCAs equal to the lesser of the following (“Total Annual Generated PCAs”): (i) the number of PCAs allocated to Buyer on Schedule I attached hereto for such Contract Year; (ii) if Seller determines that the total PCA generation from the Facility for a Contract Year (“Total Facility Generation”) is or will be insufficient for any reason to produce enough PCAs for Seller to meet its delivery obligations under this Agreement and all other PCA sales agreements for such Contract Year (“Seller’s Total Delivery Obligation”), the number of PCAs allocated to Buyer by Seller on a pro-rata basis based on Total Facility Generation and Seller’s Total Delivery Obligation; and (iii) the number of PCAs corresponding to the total aggregate Buyer Energy Consumption during such Contract Year; provided, that Seller shall not be obligated to sell to Buyer in any Contract Year PCAs in excess of the percentage of generation allocated to Buyer on Schedule I attached hereto for such Contract Year; and

(b) Quarterly Periods. During each Quarterly Period within a Contract Year, (i) a number of PCAs (if positive) equal to the lesser of (1) Total Annual Generated PCAs allocated to Buyer for such Contract Year-to-Date through the end of such Quarterly Period; and (2) the number of PCAs corresponding to the total aggregate Buyer Energy Consumption during such Contract Year-to-Date through the end of such Quarterly Period; minus (ii) the total aggregate number of PCAs purchased and sold under this Agreement during the applicable Contract Year prior to the first day of such Quarterly

Period; provided, that Seller shall not be obligated to sell to Buyer in any Quarterly Period PCAs in excess of the percentage of generation allocated to Buyer on Schedule I attached hereto.

The PCAs required to be purchased and sold pursuant to this Section 2.1 are referred to herein as the “Contract PCAs”. Buyer shall not directly or indirectly sell or transfer any Contract PCAs to any person or entity without Seller’s prior written consent in each instance.

2.2 Pricing. Subject to the terms and conditions of this Agreement, Buyer shall purchase the Contract PCAs at a price per Contract PCA set forth in Schedule I (the “Per PCA Price”). The total aggregate amount due for all Contract PCAs in any period (calculated by multiplying the number of Contract PCAs during such period by the Per PCA Price) is referred to herein as the “Purchase Price”.

2.3 Delivery Obligation. Notwithstanding anything to the contrary in this Agreement, the obligation of Seller to sell and deliver Contract PCAs, and of Buyer to purchase and accept the Contract PCAs, is Unit Contingent. Within five (5) Business Days of Seller making a final determination that qualifying electricity generated at the Facility and sold into the grid during an applicable period is not sufficient to produce the number of PCAs required by this Agreement to be delivered during such period, Seller shall provide Buyer with Notice of such final determination.

2.4 Fulfillment of Obligations. Buyer covenants and agrees that during the Term, Buyer shall accurately and completely report all Buyer Energy Consumption and will not seek to circumvent its obligation to purchase all of the Contract PCAs required to be purchased by Buyer under this Agreement. Seller covenants and agrees that during the Term, Seller shall not reduce the number of Contract PCAs in order for Seller to sell such Contract PCAs to another purchaser at a higher Per PCA Price, except to the extent Seller is permitted to do so by this Agreement.

ARTICLE 3 TRANSFERS

3.1 Delivery. The Contract PCAs set forth on each PCA Certificate shall become usable by Buyer towards Buyer’s SB 1383 Recovered Organic Waste Products procurement target upon Seller’s receipt of payment in full for such Contract PCAs in accordance with Article 4.

3.2 Further Assurances. The Parties shall cooperate fully and assist each other to obtain any and all required approvals and/or forms which may reasonably be required to effectuate the transfer of the Contract PCAs to Buyer in accordance with this Agreement, and to comply with the Applicable Standard and any and all other regulatory obligations relating to SB 1383 Recovered Organic Waste Products procurement as required by CalRecycle.

3.3 Responsibility. Each Party shall be responsible for all costs, fees, brokerage commissions, taxes, and charges of whatever kind and amount that such Party incurs in connection with the performance of its respective obligations under this Agreement.

3.4 Cooperation. Upon notification that any transfer contemplated by this Agreement will not be completed, the Parties shall promptly confer within five (5) days and shall cooperate in taking reasonable actions necessary to cure any defects in the proposed transfer, so that the transfer can be completed.

3.5 Maximums.

(a) Energy Usage Maximum. Notwithstanding anything in this Agreement to the contrary, Buyer covenants and agrees that Buyer shall not apply (or seek to apply) Contract PCAs toward

Buyer's SB 1383 Recovered Organic Waste Product procurement target in any Contract Year to the extent the number of kWh of energy covered by such Contract PCAs, on an as converted to kWh basis, exceeds the amount of Buyer Energy Consumption.

(b) Maximum PCAs. Notwithstanding anything in this Agreement to the contrary, but subject in all respects to Article 2, Buyer shall not be required to purchase PCAs in any Contract Year, on an as converted to kWh basis, in excess of the number of PCAs corresponding to the Buyer Energy Consumption during such Contract Year. In the event Buyer Energy Consumption during any Contract Year is not sufficient to support the purchase and sale of all Contract PCAs, then Seller shall, in addition to any other rights or remedies available to Seller under this Agreement, at law or in equity, have the right (but not the obligation) to sell such excess PCAs to any purchaser other than Buyer at any price negotiated by Seller, and Seller shall be permitted to retain all proceeds of such sales.

ARTICLE 4 REPORTS; BILLING; PAYMENT

4.1 Monthly Energy Usage. Within ten (10) calendar days after the last day of each calendar month, Buyer shall provide Seller with a statement of the Buyer Energy Consumption during such calendar month, together with true, accurate and complete copies of all bills, invoices and other documentation reasonably requested by Seller for energy purchased and consumed by Buyer for its own municipal operations, and energy purchased and consumed by each eligible direct service provider to Buyer allowable by the Applicable Standard (if any) for its own operations, during such calendar month ("Consumption Documents").

4.2 Reporting.

(a) Quarterly Certificates. Within thirty (30) calendar days after the last day of each Quarterly Period, Seller shall provide to Buyer a Quarterly Certificate, together with an invoice relating to such Quarterly Period (each, a "Quarterly Invoice").

(b) Annual Reports. Within thirty (30) calendar days after the last day of each Contract Year, Seller shall provide to Buyer an Annual Report, together with an invoice relating to such Contract Year (each, an "Annual Invoice"; Quarterly Invoices and Annual Invoices are referred to herein as "Invoices") and a PCA Certificate for such Contract Year. For the avoidance of doubt, each Annual Invoice will include a netting of all Purchase Price invoiced in respect of the applicable Contract Year against all Purchase Price paid in respect of the applicable Contract Year, with a statement of the resulting payment or credit due.

(c) Other Information. Each Party shall provide such other information relevant to the performance of such Party's obligations under this Agreement, or to confirm compliance by such Party with its obligations under this Agreement, as may be reasonably requested by the other Party.

(d) Extension; Deemed Purchase. If Buyer fails to deliver all Consumption Documents relating to any applicable period within the period provided in Section 4.1, the deadline for Seller to deliver a Quarterly Certificate or Annual Report shall be automatically extended to the thirtieth (30th) calendar day from and after the date that Seller receives all Consumption Documents for such period. If Buyer fails to deliver all Consumption Documents relating to any Contract Year or Quarterly Period, as applicable, within twenty-five (25) calendar days after the last day of such Contract Year or Quarterly Period, as applicable, then Seller shall provide Buyer with Notice and ten (10) days opportunity to deliver the Consumption Documents. If Buyer fails to provide all Consumption Documents during such ten (10) day period, the Seller have the right, but not the obligation, to Invoice Buyer for one hundred percent (100%) of the

Contract PCAs required to be purchased and sold for such Contract Year or Quarterly Period, as applicable, pursuant to Section 2.1, regardless of the amount of Buyer Energy Consumption, and Buyer shall be obligated to pay the full Purchase Price for such PCAs. Buyer shall be solely responsible for any and all matters resulting from any delay or failure to provide Consumption Documents, including any refusal by CalRecycle to accept or apply any PCAs towards Buyer's SB 1383 Recovered Organic Waste Product procurement target.

4.3 Review.

(a) Quarterly Invoices. Buyer shall have thirty (30) days from the date of a Quarterly Invoice (the "Quarterly Invoice Review Period") to review and confirm the calculation of the Purchase Price set forth in the Quarterly Invoice in accordance with this Agreement. If Buyer has a good faith dispute that the Purchase Price in the Quarterly Invoice has not been calculated in accordance with this Agreement, Buyer shall deliver Seller a written notice of such dispute reasonably describing the basis therefor prior to 4:30 p.m. Pacific Time on the last Business Day of the Quarterly Invoice Review Period (each, a "Notice of Dispute"). Failure to deliver a Notice of Dispute prior to 4:30 p.m. Pacific Time on the last Business Day of the Quarterly Invoice Review Period for any Quarterly Invoice (the "Quarterly Invoice Dispute Deadline") shall, subject to Section 5.4, result in Buyer irrevocably accepting the applicable Quarterly Invoice and waiving any dispute with respect to the applicable Quarterly Invoice and all audit rights under Section 4.6 with respect thereto. If Buyer delivers a valid Notice of Dispute prior to the Quarterly Invoice Dispute Deadline for a Quarterly Invoice, the Parties shall meet in a good faith effort to resolve such dispute during the thirty (30) day period following delivery of the Notice of Dispute.

(b) Annual Invoices. Buyer shall have thirty (30) days from the date of an Annual Invoice (the "Annual Invoice Review Period") to review and confirm the calculation of the net Purchase Price set forth in the Annual Invoice in accordance with this Agreement. If Buyer has a good faith dispute that the Purchase Price in the Annual Invoice has not been calculated in accordance with this Agreement, Buyer shall deliver Seller a Notice of Dispute prior to 4:30 p.m. Pacific Time on the last Business Day of the Annual Invoice Review Period. Failure to deliver a Notice of Dispute prior to 4:30 p.m. Pacific Time on the last Business Day of the Annual Invoice Review Period for any Annual Invoice (the "Annual Invoice Dispute Deadline") shall, subject to Section 5.4, result in Buyer irrevocably accepting the applicable Annual Invoice and waiving any dispute with respect to the applicable Annual Invoice and all audit rights under Section 4.6 with respect thereto. If Buyer delivers a valid Notice of Dispute prior to the Annual Invoice Dispute Deadline for an Annual Invoice, the Parties shall meet in a good faith effort to resolve such dispute during the thirty (30) day period following delivery of the Notice of Dispute.

4.4 Payment. Buyer shall pay each Invoice within thirty (30) days from the date of such Invoice. All payments made under this Agreement shall be made in immediately available United States Dollars by electronic transfer without additional notice, and without fees, deductions for counterclaims, set off (except as expressly provided in Section 5.4) or other claims, to the following account:

| | |
|-----------------|-----------------------|
| Seller: | Desert View Power LLC |
| Bank: | [●] |
| Account Number: | [●] |
| ABA Number: | [●] |

4.5 Late Payment. If Buyer fails to remit any amount payable hereunder by it when due, interest on such unpaid amount shall accrue daily at the Interest Rate and be payable on demand. The right to collect such interest shall be in addition to, and not in lieu of, any other rights or remedies available to the receiving Party, whether pursuant to this Agreement at law or in equity.

4.6 Audit Rights. Each Party (or its designee) shall have the right, with at least two (2) Business Days' prior written notice, at its sole expense and during normal working hours, to examine and make copies of the books and records of the other Party to the extent reasonably necessary to verify the accuracy of any payment, charge or computation made pursuant to this Agreement; provided, that no adjustment for any Invoice disputed in accordance with Section 4.3 will be made unless a Notice of Dispute is submitted prior to the applicable Dispute Deadline. If any such examination reveals any inaccuracy, the necessary adjustments in payments due will be promptly made and paid or refunded, as applicable.

4.7 Certain Notices.

(a) Seller shall promptly, but no later than ten (10) Business Days following Seller's receipt thereof, give Notice to Buyer of Seller's receipt of a Notice of Violation after the Effective Date. To the extent legally permitted, Seller shall provide Buyer a copy of the Notice of Violation.

(b) Seller shall promptly, but no later than ten (10) Business Days following Seller's receipt thereof, give Notice to Buyer of Seller's receipt of a written determination from a Governmental Authority that Seller has failed to be in material compliance with the material terms of any mitigation, settlement, restitution and other requirements agreed to between Seller and such Governmental Authority to resolve a Notice of Violation.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party, as of the date of this Agreement that:

(a) It is duly organized and validly existing under the laws of the jurisdiction of its organization and, if relevant under such laws, in good standing;

(b) It has the organizational authority and power to execute, deliver and perform its obligations under this Agreement;

(c) Assuming execution and delivery by the other Party, this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, subject to bankruptcy, reorganization, and similar laws affecting creditors' rights generally and to general principals of equity (regardless of whether considered in a proceeding in equity or at law);

(d) There is no pending or (to its knowledge) threatened litigation, arbitration or administrative proceeding that materially adversely affects its ability to perform its obligations under this Agreement; and

(e) It is not relying upon any advice, reports, analyses, or representations of the other Party other than those expressly set forth in this Agreement, or any guarantee of the obligations of such other Party, and the other Party has not given to it any assurance or guarantee as to the expected financial performance or results of this transaction, and it has entered into this transaction as principal and for its own account (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), with a full understanding of, and the ability to assume, the terms and risks of the same, and has made its trading and investment decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary.

5.2 Contract PCAs. Seller warrants with respect to Contract PCAs delivered by Seller pursuant to this Agreement that (a) the Facility received Feedstock during the Vintage Year from one or more of the facilities set forth in 14 Cal. Code Regs. Section 18993.1(i) in a sufficient amount to produce electricity underlying such Contract PCAs; (b) such Contract PCAs are derived from electricity generated from Feedstock at the Facility during the Vintage Year; (c) Seller has the right and power to sell such Contract PCAs; (d) such Contract PCAs are delivered free from all liens, claims, security interests, encumbrances and other defects of title arising through Seller prior to delivery (other than Buyer's obligation to pay Seller the Purchase Price); and (e) such Contract PCAs have not otherwise been sold or transferred by Seller to any jurisdiction other than Buyer to satisfy any Recovered Organic Waste Product obligation elsewhere under any standard, marketplace or jurisdiction.

5.3 Buyer Consumption. Buyer represents and warrants that Buyer is, and at all times during the term will be, a jurisdiction within the meaning of 14 Cal. Code Regs. Section 18993.1(a), and that Buyer will exercise Reporting Rights with respect to Contract PCAs in respect of any period only to the extent Buyer Energy Consumption during such period permits Buyer to do so.

5.4 Disallowed PCAs. If there is a Final Determination that any Contract PCAs purchased by Buyer hereunder do not meet the requirements for Buyer's SB 1383 Recovered Organic Waste Product procurement target as set forth in the Applicable Standard due solely to the feedstock used to generate electricity at the Facility to produce such PCAs not qualifying as "Feedstock" ("Disallowed PCAs"), then Seller shall refund to Buyer (or, if Buyer owes any amounts hereunder to Seller, apply toward such balance) the Purchase Price actually paid by Buyer for such Disallowed PCAs or, if Seller has not yet invoiced Buyer for such Disallowed PCAs, Seller shall not invoice Buyer (and Buyer shall not be required to pay the Purchase Price) for such Disallowed PCAs. Buyer acknowledges and agrees that the remedies granted to Buyer in this Section shall be the sole and exclusive remedies of Buyer for any Final Determination that any PCAs are Disallowed PCAs. Notwithstanding the foregoing, if any person or entity challenges a Final Determination that any PCAs are Disallowed PCAs in a court of competent jurisdiction, then (a) the Parties shall reasonably cooperate with such person or entity in its efforts to challenge such Final Determination; and (b) neither Party shall oppose such person or entity in its efforts to challenge such Final Determination, and (c) the remedies set forth in this Section shall not be exercisable unless and until a Final Determination is made that PCAs are Disallowed PCAs.

5.5 Environmental. Seller represents and warrants as of the Effective Date that Seller has not received any unresolved written notice of violation from any governmental authority, including but not limited to the Environmental Protection Agency ("EPA") or California Environmental Protection Agency (a "Governmental Authority"), arising under any Federal or California state environmental law ("Environmental Law") relating to the Seller's ownership or operation of the biomass generation facility located at 62300 Gene Welmas Way, Mecca, California 92254 (the "Biomass Facility"), or the Biomass Facility (each, a "Notice of Violation"), other than the Finding and Notice of Violation ENF-2-1 issued by the EPA on June 13, 2022.

5.6 Limitation of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 5.1, 5.2, 5.3, 5.4 AND 5.5, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND EACH PARTY EXPRESSLY DISCLAIMS, AND THE OTHER PARTY ACKNOWLEDGES THAT SUCH PARTY IS NOT RELYING UPON, ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, AND WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY WITH RESPECT TO (A) CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE; OR (B) ANY ACTION OR FAILURE TO ACT, OR APPROVAL OR FAILURE TO APPROVE, OF ANY AGENCY OR GOVERNMENTAL ENTITY.

5.7 Limitations of Liability. THE PARTIES CONFIRM AND AGREE THAT UNDER THIS AGREEMENT, NO PARTY IS REQUIRED TO PAY OR WILL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT, LOST REVENUE, COSTS OF DELAY, LIABILITY TO THIRD PARTIES, BUSINESS INTERRUPTION DAMAGES, OR OTHERWISE, WHETHER BY STATUTE, IN TORT, CONTRACT OR OTHERWISE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE PARTIES' PERFORMANCE (OR NON-PERFORMANCE) UNDER THIS AGREEMENT. IN NO EVENT WILL EITHER PARTY'S LIABILITY FOR ANY CLAIM OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THIS AGREEMENT OR FROM PERFORMANCE OR BREACH THEREOF EXCEED THE PURCHASE PRICE REQUIRED TO BE PAID HEREUNDER.

5.8 Survival. The representations in Sections 5.1, 5.2, 5.3, 5.4 and 5.5 shall survive any expiration or termination of this Agreement until the first (1st) anniversary of the termination of the Term, whereupon they shall automatically terminate and be of no further force or effect.

ARTICLE 6 TERM; SURVIVAL.

6.1 Term. This Agreement is effective as of the Effective Date and will remain effective until the earlier to occur of (a) delivery of all of the Contract PCAs and Seller's receipt of the full Purchase Price for all Contract PCAs; (b) the termination of this Agreement pursuant to Section 6.2 or Section 7.9; and (c) [*date*] (the "Term").

6.2 Termination Due to Event of Default. If an Event of Default occurs with respect to either Party (the "Defaulting Party") at any time during the Term, the other Party (the "Performing Party") may, in addition to any other rights or remedies available to the Performing Party, (a) designate by written Notice delivered to the Defaulting Party a date, no earlier than the day such Notice is delivered and no later than twenty (20) days after such Notice is delivered, as the early termination date of the Term; or (b) by written notice delivered to the Defaulting Party, immediately suspend transfers of Contract PCAs due in respect of this Agreement (provided that such suspension shall not suspend or otherwise affect Buyer's obligations to pay for Contract PCAs delivered prior to the date of suspension).

6.3 Survival. Except as set forth herein, Article 1, Article 2, Article 3, Article 4, Section 5.6, Section 5.7, Section 5.8, this Section 6.3, and Article 7 (subject to the limitation in Section 7.6) shall survive expiration or termination of the Term. Termination of the Term or this Agreement shall not release any Party from the obligation to pay any amounts which may be due or owing under this Agreement with respect to any period prior to the date of termination of this Agreement.

ARTICLE 7 GENERAL PROVISIONS

7.1 Waiver of Immunity. Each Party waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (a) suit; (b) jurisdiction of any court; (c) relief by way of injunction or order for specific performance or recovery of property; (d) attachment of its assets (whether before or after judgment); and (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any suit, action, or proceedings relating to any dispute arising out of or in connection with this Agreement.

7.2 Notices. All notices, invoices, other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or e-mail. Notices, invoices and communications shall be deemed given when (a) actually received; (b) delivered by private courier (with confirmation of delivery); (c) transmitted by e-mail (with confirmation of transmission) (d) the next Business Day after delivered to a reputable overnight courier with all charges prepaid; or (e) five (5) Business Days after being deposited in the United States mail, first-class, registered or certified, return receipt requested, with postage paid. The communications shall be sent to the following addresses, or a different address provided by the receiving Party in accordance with the notice delivery requirements above:

If to Seller:

Desert View Power LLC
 3600 American River Drive, Suite160
 Sacramento, California 95864
 Attention: **[name]**
 Phone: [●]
 E-mail: [●]

If to Buyer:

[name]
[address]
 Attention: [●]
 Phone: [●]
 Email: [●]

7.3 Force Majeure. Neither Party shall be liable for any failure or delay in the performance of its respective obligations hereunder (other than the obligation to make any payment) if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such Party, which event or circumstance was not anticipated as of the Effective Date, including acts of God; expropriation or confiscation of facilities by a governmental agency (including without limitation a tribal authority); compliance with any change of law or government regulation, or order by government authority; act of war, rebellion or sabotage or damage resulting therefrom; fire, flood, earthquake, explosion or accident; epidemic or pandemic; riot, strike, or other concerted acts of workmen, whether direct or indirect (“Force Majeure”). Notwithstanding the foregoing, Force Majeure shall not include (a) the loss of Buyer’s markets for PCAs; (b) Buyer’s inability to use PCAs for regulatory compliance reasons caused by Buyer; (c) Buyer’s ability to purchase PCAs from another source or at a price lower than the Per PCA Price; or (d) Seller’s ability to sell PCAs at a price greater than the Per PCA Price. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “Claiming Party”) gives written notice and details of the Force Majeure to the other Party as soon as practicable, then, the Claiming Party shall be excused from the performance of its obligations hereunder (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall seek to remedy the Force Majeure with commercially reasonable efforts. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure. A Party seeking to be excused from performance of any of its obligations hereunder is not required to rely solely on this Section, but shall be entitled to rely on any other applicable provision of this Agreement.

7.4 Entire Agreement; Amendments. The terms of this Agreement constitute the entire agreement between the Parties with respect to the matters set forth in this Agreement and supersede all prior and contemporaneous representations, warranties, covenants and agreements, whether oral or written. This Agreement may be changed only by written agreement identified as an amendment to this Agreement executed and delivered after the date hereof by all of the Parties.

7.5 Waiver. Either Party may waive compliance with any of the agreements or conditions of the other Party contained herein. Any such waiver shall be valid only if expressly set forth in an instrument in writing signed by the Party to be bound thereby. Any waiver of any breach, term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. No delay by Buyer or Seller in exercising its rights or remedies hereunder, including the right to terminate this Agreement or suspend performance, shall be deemed to constitute or evidence any waiver by Buyer or Seller of any right hereunder. The rights granted in this Agreement are cumulative of every other right or remedy that the enforcing Party may otherwise have at law or in equity or by statute.

7.6 Confidentiality.

(a) Definition. For purposes of this Agreement, “Confidential Information” means oral and written information exchanged between the Parties in connection with this Agreement, including but not limited to utility customer account data, trade secret, and proprietary information, and personal financial data. . Notwithstanding the foregoing, the following shall not constitute Confidential Information: (i) information which was already in a Party’s possession on a non-confidential basis prior to its receipt from the other Party; (ii) information which is obtained from a third person who, insofar as is known to the Party, is not prohibited from transmitting the information to the Party by an obligation of confidentiality to the other Party; (iii) information which is or becomes publicly available through no fault of the Party; (iv) information which is at any time independently developed by employees or consultants of a Party who have not had access to Confidential Information in the possession of that Party; and (v) records which are deemed to be public records subject to disclosure under the California Public Records Act, Government Code Section 6250, et seq.

(b) Generally. Except as provided in this Section 7.6, neither Party shall use for any purpose other than completing the transactions contemplated by this Agreement, or publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the Term, without the other Party’s prior express written consent. Each Party may permit knowledge of and access to Confidential Information only to those of its affiliates and its and their members, directors, managers, officers, attorneys, accountants, representatives, agents and employees that have a need to know related to this Agreement and agree to keep such information confidential.

(c) Required Disclosure. Notwithstanding the foregoing, if required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated, or if requested by a court, governmental agency or authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required or requested, provided that, if permitted by applicable laws, such Party has notified the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that court, governmental agency, or authority to treat such information in a confidential manner or to prevent such information from being disclosed or otherwise becoming part of the public domain, and the Party being compelled to disclose shall reasonably cooperate (at the disclosing Party’s expense) with the disclosing Party’s reasonable requests to limit or prevent such disclosure.

(d) Survival. This Section 7.6 survives for a period of one (1) year following the expiration or termination of this Agreement.

7.7 Governing Law. This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of California, including its statutes of limitations and repose, but without regard to any borrowing statute that would result in the application of the statute of limitations or repose of any other jurisdiction.

7.8 Venue. Each Party hereby (a) irrevocably consents to the exclusive jurisdiction of any California State and Federal courts sitting in Sacramento, California with respect to all actions and proceedings arising out of or relating to this Agreement; (b) agrees that all claims with respect to any such action or proceeding shall be heard and determined exclusively in such California State or Federal court; (c) waives the defense of an inconvenient forum; (d) consents to service of process by mailing or delivering such service to it at its address set forth below and (v) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

7.9 Change in Law. If any statutes, rules, or regulations are enacted, amended or revoked which (other than statutes, rules, or regulations are enacted, amended or revoked by Buyer) have the effect of (a) changing the transfer and sale procedures set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable; (b) making this Agreement illegal or unenforceable; or (c) eliminating the existence of the Contract PCAs or prohibiting Buyer from applying PCAs to Buyer's SB 1383 Recovered Organic Waste Product procurement target (a "Change in Law"), the Parties agree to negotiate in good faith to amend this Agreement to conform with such Change in Law in order to maintain the original intent of the Parties under this Agreement. If the Parties cannot agree in good faith to amend this Agreement to conform with such Change in Law in order to maintain the original intent of the Parties under this Agreement within sixty (60) days of a Party providing the other Party with a written notice of a Change in Law, then either Party may terminate this Agreement upon delivery of written notice of termination to the other Party.

7.10 Construction; Interpretation. All Article and Section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires. Unless otherwise expressly provided, the words "include" and "including" do not limit the preceding words or terms, and mean "including without limitation". In the calculation of any period of time, if the last day of such period falls on a day other than a Business Day, the period of time shall be automatically extended to the next Business Day. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

7.11 Assignment. Buyer may not assign this Agreement or its rights or obligations hereunder in whole or in part. Seller may assign, mortgage, pledge, sell, or otherwise directly or indirectly assign its interest in this Agreement or its rights hereunder with the prior written consent of Buyer which shall not be unreasonably withheld.

7.12 No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties (and their successors and assigns permitted hereunder) shall not impart any rights enforceable by any other third party.

7.13 Electronic Transmissions. Each Party agrees that (a) any signature page to this Agreement, consent or signed document transmitted by electronic transmission shall be treated in all manner and respects as an original written document; (b) any such signature page, consent or document shall be considered to have the same binding and legal effect as an original document; and (c) at the request of any Party, any such signature page, consent or document transmitted by electronic transmission shall be re-executed and/or re-delivered, as appropriate, by the relevant Party or parties in its original form. Each Party further agrees that such Party will not raise the transmission of a signature page, consent or document by electronic transmission as a defense in any proceeding or action in which the validity of such signature page, consent or document is at issue and hereby forever waives such defense. For purposes of this Agreement, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

7.14 Counterparts. This Agreement may be executed in one or more counterparts and by different Parties in separate counterparts, each of which will be deemed an original, but all of which will together constitute one instrument.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its duly authorized representatives as of the date first set forth above.

DESERT VIEW POWER, LLC

By: _____
Name:
Title:

[LEGAL NAME OF ENTITY (ALL CAPS)]

By: _____
Name:
Title:

EXHIBIT A

FORM OF
ANNUAL REPORT

This Annual Report, dated as of [*date*], evidences the purchase and sale of the number of Contract PCAs during the Contract Year set forth below pursuant to that certain Procurement Compliance Attribute Purchase Agreement, dated as of [*date*] (the "Purchase Agreement"), between Desert View Power LLC ("Seller") and [*name of buyer*] ("Buyer"). Capitalized terms used but not defined in this Annual Report shall have the meanings assigned in the Purchase Agreement.

- Contract Year Ending: [●]
- Facility: [●]
- Contract PCAs During Contract Year (kWh): [●]
- Buyer Energy Consumption (kWh) During Contract Year: [●]
- Total PCAs Delivered During Contract Year (kWh): [●]
- Total PCAs Delivered During Contract Year (equivalent tons): [●]

A Notice of Violation from a Governmental Authority with respect to the Biomass Facility [was] [was not] received by Seller during the Contract Year.

[As of the date of this Annual Report, Seller [has] [has not] received written determination from the applicable Governmental Authority not disputed by Seller in good faith that Seller is not in material compliance with the material terms of any mitigation, settlement, restitution and other requirements imposed by such Governmental Authority, to resolve the Notice of Violation from such Governmental Authority with respect to the Biomass Facility.]

The Parties will revise the form of the Annual Report to reflect annual reporting requirements specified by CalRecycle.

EXHIBIT B

FORM OF
PCA CERTIFICATE

DESERT VIEW POWER LLC (“Seller”), through the undersigned authorized representative in his official capacity as an officer, DOES HEREBY CERTIFY UNDER PENALTY OF PURJURY as of [*date*] that:

1. This Certificate is being delivered pursuant to that certain Procurement Compliance Attribute Purchase Agreement, dated as of [*date*] (the “Purchase Agreement”), between Seller and [*name of buyer*] (“Buyer”). Capitalized terms used but not defined herein shall have the meanings assigned in the Purchase Agreement.

2. Seller is the owner and operator of the biomass-fueled electricity generation facility located at 62300 Gene Welmas Way, Mecca, California 92254 (the “Facility”).

3. The Facility qualifies as a biomass conversion facility that generates electricity for sale to the California electricity grid through the use of biomass feedstock received directly from one or more permitted solid waste facilities described in 14 Cal. Code Regs. Section 18993.1(i).

4. During the Contract Year identified below, the Facility generated electricity from biomass feedstock received directly from one or more permitted solid waste facilities described in 14 Cal. Code Regs. Section 18993.1(i) sufficient to produce the number of PCAs transferred to Buyer under the Purchase Agreement during the Contract Year identified below (the “Transferred PCAs”):

| | |
|-----------------------------------|----------------------------|
| <u>Number of Transferred PCAs</u> | <u>Contract Year Ended</u> |
| [●] | December 31, [●] |

5. Upon payment in full for the Transferred PCAs, the Transferred PCAs have not otherwise been sold or transferred by Seller to any jurisdiction other than Buyer to satisfy any recovered organic waste obligation elsewhere under any standard, marketplace or jurisdiction.

IN WITNESS WHEREOF, this Certificate has been executed and delivered by a duly authorized representative as of the date first set forth above.

DESERT VIEW POWER, LLC

By: _____
Name:
Title:

EXHIBIT C

FORM OF
QUARTERLY CERTIFICATE

This Quarterly Certificate, dated as of [*date*], evidences the purchase and sale of the number of Contract PCAs during the Quarterly Period and Contract Year set forth below pursuant to that certain Procurement Compliance Attribute Purchase Agreement, dated as of [*date*] (the “Purchase Agreement”), between Desert View Power LLC (“Seller”) and [*name of buyer*] (“Buyer”). Capitalized terms used but not defined in this Certificate shall have the meanings assigned in the Purchase Agreement.

- Facility:
- Quarterly Period Ending:
- Contract Year Ending:
- (a) Buyer Energy Consumption for Contract Year-to-Date through end of Quarterly Period:
- (b) PCAs allocated to Buyer Contract Year-to-Date through end of Quarterly Period:
- (c) PCAs delivered by Seller to Buyer during prior Quarterly Periods of Contract Year:
- PCAs delivered by Seller to Buyer this Quarterly Period, equal to the lesser of (a) or (b), less (c)
- Price per kWh:
- Price per Equivalent Ton:
- Aggregate Purchase Price Due:

Expected Energy Consumption 1,214,993
Contract PCA Volume 750,750

| | Original Projection Consumption* | Original Projection PCAs generated* | Actual Consumption* | Actual PCAs generated* | Updated Forecast Consumption* | Updated Forecast PCAs generated* | Total Projected Consumption* | Total Projected PCAs generated* |
|--------------|--|---|------------------------|---------------------------|-------------------------------------|--|------------------------------------|---------------------------------------|
| January | 101,249 | 37,538 | 85,000 | 50,000 | | | 85,000 | 50,000 |
| February | 101,249 | 37,538 | 85,000 | 50,000 | | | 85,000 | 50,000 |
| March | 101,249 | 37,538 | 85,000 | 50,000 | | | 85,000 | 50,000 |
| April | 101,249 | 37,538 | 90,000 | 75,000 | | | 90,000 | 75,000 |
| May | 101,249 | 90,090 | 95,000 | 130,000 | | | 95,000 | 130,000 |
| June | 101,249 | 90,090 | 100,000 | 175,000 | | | 100,000 | 175,000 |
| July | 101,249 | 90,090 | | | 110,000 | 80,000 | 110,000 | 80,000 |
| August | 101,249 | 90,090 | | | 110,000 | 80,000 | 110,000 | 80,000 |
| September | 101,249 | 90,090 | | | 100,000 | 30,000 | 100,000 | 30,000 |
| October | 101,249 | 75,075 | | | 95,000 | 16,000 | 95,000 | 16,000 |
| November | 101,249 | 37,538 | | | 95,000 | 13,000 | 95,000 | 13,000 |
| December | 101,249 | 37,538 | | | 95,000 | 1,750 | 95,000 | 1,750 |
| YTD / Future | 1,214,993 | 750,750 | 540,000 | 530,000 | 605,000 | 220,750 | 1,145,000 | 750,750 |

* Attributed to this jurisdiction

SCHEDULE IPRICING AND VOLUME

The example schedules below represent pricing based on the cumulative volume signed up by July 31, 2023, by all Pioneer Community Energy jurisdictions. The contract with each individual jurisdiction will have its individualized schedule inserted into the document.

Pricing is in three tiers: 0-10,000 tons; 10,001-20,000 tons; 20,001+ tons.

All PCAs purchased will be priced at the total volume signed up by July 31, 2023.

If Total 2025 Commitment from all Pioneer Community Energy jurisdictions is up to 10,000 tons as of 7/31/2023:

Then Schedule 1 would look like this:

| <u>Vintage Year</u> | <u>Per PCA Price (\$/ton equivalent)</u> | <u>Per PCA Price (\$/kWh)</u> | <u>Volume (tons equivalent)</u> | <u>Volume (kWh)</u> | <u>Percentage of Generation</u> | <u>Purchase Price (Contract Year)</u> |
|---------------------|--|-------------------------------|---------------------------------|---------------------|---------------------------------|---------------------------------------|
| 2023 | \$31.50 | \$0.0485 | 3,000 | 1,950,000 | 1.30% | \$ 94,500.00 |
| 2024 | \$32.45 | \$0.0499 | 6,500 | 4,225,000 | 2.82% | \$ 210,892.50 |
| 2025 | \$33.42 | \$0.0514 | 10,000 | 6,500,000 | 4.33% | \$ 334,183.50 |
| 2026 | \$34.42 | \$0.0530 | 10,000 | 6,500,000 | 4.33% | \$ 344,209.01 |
| 2027* | \$35.45 | \$0.0545 | TBD | TBD | TBD | TBD |

If Total 2025 Commitment from all Pioneer Community Energy jurisdictions is 10,001 to 20,000 tons as of 7/31/2023:

Then Schedule 1 would look like this:

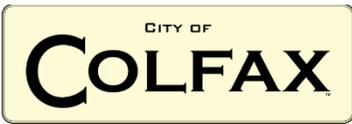
| <u>Vintage Year</u> | <u>Per PCA Price (\$/ton equivalent)</u> | <u>Per PCA Price (\$/kWh)</u> | <u>Volume (tons equivalent)</u> | <u>Volume (kWh)</u> | <u>Percentage of Generation</u> | <u>Purchase Price (Contract Year)</u> |
|---------------------|--|-------------------------------|---------------------------------|---------------------|---------------------------------|---------------------------------------|
| 2023 | \$30.25 | \$0.0465 | 3,942 | 2,562,300 | 1.71% | \$ 119,245.50 |
| 2024 | \$31.16 | \$0.0479 | 8,541 | 5,551,650 | 3.70% | \$ 266,116.21 |
| 2025 | \$32.09 | \$0.0494 | 13,140 | 8,541,000 | 5.69% | \$ 421,691.84 |
| 2026 | \$33.05 | \$0.0509 | 13,140 | 8,541,000 | 5.69% | \$ 434,342.59 |
| 2027* | \$34.05 | \$0.0524 | TBD | TBD | TBD | TBD |

If Total 2025 Commitment from all Pioneer Community Energy jurisdictions is 20,001 to 30,000 tons as of 7/31/2023:

Then Schedule 1 would look like this:

| <u>Vintage Year</u> | <u>Per PCA Price (\$/ton equivalent)</u> | <u>Per PCA Price (\$/kWh)</u> | <u>Volume (tons equivalent)</u> | <u>Volume (kWh)</u> | <u>Percentage of Generation</u> | <u>Purchase Price (Contract Year)</u> |
|---------------------|--|-------------------------------|---------------------------------|---------------------|---------------------------------|---------------------------------------|
| 2023 | \$29.00 | \$0.0446 | 6,265 | 4,071,990 | 2.71% | \$ 181,673.40 |
| 2024 | \$29.87 | \$0.0460 | 13,573 | 8,822,645 | 5.88% | \$ 405,434.47 |
| 2025 | \$30.77 | \$0.0473 | 20,882 | 13,573,300 | 9.05% | \$ 642,457.70 |
| 2026 | \$31.69 | \$0.0488 | 20,882 | 13,573,300 | 9.05% | \$ 661,731.43 |
| 2027* | \$32.64 | \$0.0502 | TBD | TBD | TBD | TBD |

* The volume in 2027 will automatically adjust to represent 100% of the Buyer's Recovered Organic Waste Product target as provided by CalRecycle, with the Percentage of Generation and the Purchase Price filled in accordingly.



Staff Report to City Council

FOR THE JULY 26, 2023, REGULAR CITY COUNCIL MEETING

From: Mike Luken, Interim City Manager
Prepared by: Mike Luken, Interim City Manager
Subject: Creation of Ad Hoc Committees:
 A. Revitalization of Historic Downtown Colfax
 B. Shady Glen Sewer Integration Project

Budget Impact Overview:

| N/A: <input checked="" type="checkbox"/> | Funded: | Un-funded: | Amount: | Fund(s): |
|--|---------|------------|---------|----------|
|--|---------|------------|---------|----------|

RECOMMENDED ACTION: Establish two (2) Ad Hoc Committees and appoint two councilmembers for each committee for the Revitalization of Historic Downtown Colfax and for the Shady Glen Sewer Integration Project

Summary/Background

The City of Colfax, in partnership with a local nonprofit, CivicWell, and GHD Inc. is preparing a plan that will include policy recommendations and design concepts for a revitalized downtown Colfax where residents and visitors can safely and comfortably walk or bicycle between destinations, spending time and money at local businesses. The Plan will address the needs of people of all ages and abilities, particularly Colfax residents and visitors, who travel to and from the historic downtown business district. The plan will support revitalization while preserving the character of Main Street and the historic downtown business district. This project raises major concerns with infrastructure, economic development and land use that necessitates a greater level of Council participation and input on a regular basis. A larger advisory committee for the grant that represents a wide spectrum of the community is already in place and assisting this project as well.

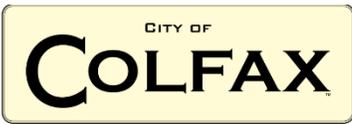
On June 14, 2023, the Council adopted Resolution 23-2023 authorizing the City Manager to execute a professional services agreement with Wood Rodgers to prepare two Clean Water State Revolving Planning Grant Applications for the consolidation of the Shady Glen Mobile Home Park wastewater system with the City of Colfax wastewater system. This project has begun with earnest and raises major concerns with infrastructure and land use that necessitates a greater level of Council participation and input on a regular basis.

Fiscal Impacts

None beyond that of the current adopted projects contained in the FY 2023-2024 budget.

Attachments:

None



Staff Report to City Council

FOR THE JULY 26, 2023, REGULAR CITY COUNCIL MEETING

From: Mike Luken, Interim City Manager
Prepared by: Mike Luken, Interim City Manager
 Alfred A. “Mick” Cabral, City Attorney
Subject: Review Colfax Municipal Code Chapter 5.32 (Commercial Cannabis Activity), consider potential changes, and provide direction to staff

Budget Impact Overview:

| N/A: ✓ | Funded: | Un-funded: | Amount: | Fund(s): |
|--------|---------|------------|---------|----------|
|--------|---------|------------|---------|----------|

RECOMMENDED ACTION: Review the current commercial cannabis ordinance, discuss potential changes, and provide staff direction

Summary/Background

At the February 22, 2023, regular meeting, the Council reviewed the City’s Commercial Cannabis Activity ordinance (The “Cannabis Ordinance”; Colfax Municipal Code [“CMC”] Chapter 5.32) for legal compliance and were advised that the current ordinance complies with California law. At the June 14, 2023, regular meeting, Council directed staff to place the Cannabis Ordinance on a public agenda for the purpose of discussing and providing direction to staff regarding potential changes. Any changes staff is directed to make will be presented in proposed amendments to the City’s Cannabis Ordinance.

Potential changes to the Cannabis Ordinance involve policy-level direction. Council’s policy choices are:

1. Take no action and allow CMC Chapter 5.32 to remain intact. This would mean that the current medicinal cannabis retailer will be able to continue to engage in the retail sale of medicinal cannabis only unless its license is canceled or not renewed.
2. Direct staff to present proposed changes to the Cannabis Ordinance based on Council policy direction. Policy changes can include increasing or reducing the types or number of commercial cannabis licenses allowed under CMC Chapter 5.32. Any changes will have to be considered and acted upon at a future public meeting.
3. Direct staff to present an amendment that will repeal Chapter 5.32 and outlaw all cannabis sales in Colfax. Repealing Chapter 5.32 would have to be considered and acted upon at a future public meeting.

Ordinance 542 adopted July 8, 2020, and codified in Colfax Municipal Code Chapter 5.32 is the primary cannabis regulatory scheme in Colfax. Ordinance 542 conditionally allows commercial cannabis cultivation, distribution, manufacturing, microbusinesses, and testing licenses to be issued within Retail Commercial (C-R), Highway Commercial (C-H), Light Industrial (I-L) and Heavy Industrial (I-H) zones within Colfax. Commercial retail cannabis licenses are limited to one medicinal retail establishment. At Council direction, that license was issued to Golden State Patient Care, LLC.

Ordinance 542 was premised upon the following direction unanimously issued from Council to staff on February 13, 2019: “(1) Staff shall resume the commercial cannabis application process by accepting one application for a medicinal cannabis permit and no others without further direction from the Council. (2) Golden State Patient Care shall be allowed to submit the only application for a medicinal cannabis permit at this time. (3) Since there will be only one application, staff will implement only Phase 1 of the required application process. If Golden State Patient Care successfully qualifies during the application process, its annual permit shall be submitted to the Council for approval. (4) Any medicinal cannabis permit issued to Golden State Patient Care shall expire one year after it is issued, unless it is renewed or revoked as allowed by Colfax Municipal Code Chapter 5.32, shall be for medicinal cannabis only, and shall be valid only for _____

Golden State Patient Care’s current location. (5) Golden State Patient Care’s temporary business license shall remain valid until it is issued, or fails to qualify for, a medicinal cannabis license under Colfax Municipal Code Chapter 5.32, whichever is earlier.”

The direction from Council was incorporated into Resolution 31-2019 on July 24, 2019 as follows: “The City Manager is authorized to issue one Commercial Cannabis Retail Type-M license to Golden State Patient Care on the following conditions: (1) the license issued shall be valid for 1-year from the date of issuance; (2) the City Council reserves the right to renew or decline to renew the license at any time; (3) the licensee shall at all times comply with Colfax Municipal Code Chapter 5.32, Colfax Resolution 12-2018, and all applicable state and local laws, rules, regulations and ordinances that pertain to commercial cannabis activities, and all conditions imposed on the issued license; and (4) the permittee shall pay all required fees prior to issuance of the license authorized by this Resolution.”

At the time, Golden State Patient Care asked the Council and staff to expand the permissible scope of commercial cannabis activities and consider issuing a microbusiness cannabis license. Council declined to do so. Since that time, Golden State Patient Care has asked to expand the scope of its business license to include adult use cannabis sales. Staff does not have authority to issue an adult use cannabis license without further specific action by the City Council.

Cannabis is still a Schedule 1 controlled substance and is illegal under federal law even though it is legal under California law. The federal Rohrbacher-Farr amendment, which remains effective, prohibits the federal government from spending federal money to interfere with the implementation of state medical cannabis laws. It is unclear whether and, if so, how federal law will be enforced against local cannabis establishments, if at all.

The Cannabis Ordinance is lengthy (approximately 54 pages) and complex. The Cannabis Ordinance outlaws commercial cannabis cultivation, manufacture, processing, storing, laboratory testing, labeling, sale, delivery, distribution, and transportation in the City that it does not expressly allow. (CMC §5.32.040).

The Cannabis Ordinance conditionally allows and regulates retailer facilities (CMC §5.32.330), cultivation (CMC §5.32.350), distribution (CMC §5.32.360), manufacturing (CMC §5.32.370), microbusinesses (CMC §5.32.380), and testing facilities (CMC §5.32.390). It sets the following limits on the types of cannabis businesses allowed to operate in the City:

- (1) Medicinal Retailer (including microbusiness engaged in retail sales): Maximum of one (1).
- (2) Cultivation: Maximum of two (2).
- (3) Distribution: Maximum of two (2).
- (4) Non-volatile manufacturing: Maximum of two (2).
- (5) Microbusiness: Maximum of two (2).
- (6) Testing Laboratory: Maximum of two (2).

No changes to the ordinance are required to license any of these activities, but Council would have to authorize staff to issue the licenses.

POTENTIAL CHANGES TO THE ORDINANCE.

Staff assumes that the Council does not want to re-write the Cannabis Ordinance. Assuming the Council likewise does not want to repeal the Cannabis Ordinance and outlaw all commercial cannabis activities in Colfax, the following are among the primary topics staff believes are suitable for Council discussion and direction:

(1) The Number Of Authorized Licenses. CMC §5.32.080 authorizes the issuance of 11 licenses between six separate categories. The policy issue is whether that number is excessive, inadequate, or satisfactory, and whether the number of permissible licenses per category should be reallocated. The only active license is for

one medicinal retailer. Council previously authorized development of a cultivation facility, but that project has evidently been abandoned. This would require the Cannabis Ordinance to be amended.

(2) The Permissible Categories Of Cannabis Licenses. The Cannabis Ordinance regulates adult and medicinal retailer licenses but only allows issuance of one medicinal license. The Cannabis Ordinance likewise does not allow issuance of a cannabis delivery license. The policy issue is whether to expand the permissible license categories to include adult use and/or delivery, or any other category of license allowed by State law. This would require the Cannabis Ordinance to be amended.

(3) Fees And Charges. The current fee structure was established by Resolution 13-2018 and modified by Council direction to recover the City’s implementation costs pro rata between licensees. The one licensee within City limits recently commented on the burden of having to bear all of the City’s implementation costs. The policy issue is whether the application and related fees remain adequate, and whether collection of the implementation costs should be reconsidered.

Most of the remainder of the Cannabis Ordinance addresses process and regulatory issues that have not been the source of complaints or difficulties. The above list of topics is not intended to restrict the scope of Council’s discussion in any respect. Council may discuss and provide direction on any aspect of the Cannabis Ordinance it wants to address.

THE AMENDMENT PROCESS.

Ordinances can only be adopted at a regular Council meeting unless they qualify as “urgency” ordinances, and cannot be adopted within five days of their introduction. If the Council directs staff to present an amended ordinance, it will be introduced at a subsequent meeting and adopted at a later regular meeting. Ordinances become effective 30 days after their adoption and are subject to referendum during that 30-day period.

Staff will be available to answer any questions.

Fiscal Impacts

Unknown at this time.

Attachments:

1. Cannabis Licensing Timeline

- 11/6/96 The Compassionate Use Act is passed by the voters as Proposition 215. It was approved by 55.6% of voters and decriminalized the cultivation and use of medical marijuana by seriously ill individuals who have a doctor's recommendation. It was the first ballot initiative in the United States to decriminalize medical marijuana. The law exempts from criminal liability patients and primary caregivers who possess or cultivate marijuana for personal medical purposes of the patient.
- 7/1/03 Business license issued to Golden State Patient Collective (GSPC)/ Cheryl Riendeau.
- 1/1/04 SB 420, known as the "Medical Marijuana Program" is adopted by the California legislature to clarify Proposition 215. It states that a patient's medical records must contain written documentation by the attending physician that the patient has been diagnosed with a serious medical condition and that the medicinal use of cannabis is appropriate. A "serious medical condition" is defined to include: AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms (multiple sclerosis), seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of the person to conduct one or more major life activities or if not alleviated, may cause serious harm to the patient's safety or physical or mental health.
- 7/1/08 GSPC, which had since become incorporated, is issued City Business license 6012 effective 7/1/08.
- 3/19/09 City receives an application for second medical marijuana dispensary. The Council becomes concerned that more will follow.
- 6/9/09 Ordinance 502 imposing a moratorium on new cannabis business licenses passes. GSPC is allowed to continue as legal non-conforming use.
- 7/1/09 City issues a business license to GSPC, scheduled to expire 6/30/10; GSPC is the only "grandfathered" license.
- 7/20/09 Ordinance 503 is adopted and extends the moratorium to 12 months.
- 10/28/09 Ordinance 506 is adopted and adds Chapter 17.109 to CMC. Allowed marijuana dispensaries with valid business license as of November 27, 2009, to continue as legal non-conforming use.
- 12/8/10 Alameda County District Attorney issues an opinion that local ordinances do not provide a defense to cannabis related prosecutions under state law.
- 2/1/11 U.S. Attorney issues a written opinion that cannabis sales legal under state law or local ordinance remain illegal under federal law and are subject to federal prosecution.
- 6/27/12 Gilbert Dalpino, owner of the GSPC building, receives a letter from the U.S. Attorney threatening forfeiture if medical marijuana sales were allowed to continue, plus fines.
- 6/30/12 GSPC's business license expires. No application for renewal is submitted.
- 8/8/12 Ordinance 519 is adopted, adding Chapter 17.162 to CMC. The relevant part reads:
- "17.162.020 - Existing medical marijuana dispensaries.
- Existing medical marijuana dispensaries with valid business licenses as of November 27, 2009, shall be considered as legal nonconforming uses. Such dispensaries may continue to operate in accordance with the provisions of [Chapter 17.32](#), except that, in addition to such regulations, if any of the following circumstances arise then, without further action by the city, such building and the land on which such building is located shall be subject to the provisions of this chapter prohibiting such use:
- A. The operators of the dispensary are convicted of any crime other than an infraction relating to the operation of the dispensary;

- B. The dispensary becomes a public nuisance;
- C. The dispensary or its operators violate any provision of this Code relating to its operation;
- D. The dispensary is closed or its activities curtailed by the action of a superior governmental authority or by order of any court of competent jurisdiction; or
- E. The dispensary is closed or its activities curtailed by other valid legal process.

- 8/22/12 Bruce Kranz tells Council that dispensary closed down; Gilbert Dalpino said dispensary was replaced by food bank.
- 7/25/13 Contra Costa County District Attorney issues an opinion letter to the effect that local ordinances do not provide a defense to state prosecution of cannabis offenses.
- 4/23/14 Meeting at which allowing medical cannabis in Colfax is discussed at length.
- 1/1/16 AB 266, AB 243 and SB 643 (Medical Marijuana Regulation & Safety Act [MMRSA]) become effective and create a state licensing and regulatory framework for medical marijuana. Allowed local control or prohibition.
- 9/14/16 Council discussion about reopening GSPC.
- 11/8/16 Proposition 64, the “Control, Regulate and Tax Adult-Use of Marijuana Act of 2016 (AUMA), which was proposed by initiative, passes. It established a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana. AUMA reserved to local jurisdictions specific powers regarding commercial adult-use cannabis activities, including adopting and enforcing local ordinances regulating commercial adult-use activity.
- City of Colfax Measure 8, which would have imposed a special tax on medical marijuana sales, fails. The special tax would have been used to reduce sewer service charges.
- 6/27/17 Governor signs Medicinal and Adult Use Cannabis and Safety Act (MAUCRSA), reserving regulatory authority to cities. This law consolidated the licensure and regulation of commercial medicinal and adult use cannabis activities, including the retail sale of medicinal cannabis.
- 10/3/17 City Attorney opines that the City does not have legal authority under current ordinances to issue GSPC a medicinal cannabis permit.
- 10/11/17 City Attorney repeats his opinion that Council did not have legal authority to issue a business license based on current ordinance. The Council disregarded legal advice and instructed City Manager to issue a temporary conditional license. CM complied.
- Ordinance 534 is introduced as placeholder while HDL prepared a comprehensive regulatory ordinance. Effective January 1, 2018, the State would have been authorized to issue a license without City consent unless Ordinance 534 was in place. The “grandfathering” provisions of the City ordinance remain intact but the conditions under which the dispensary becomes a prohibited use are slightly modified. Changes to the grandfathering provisions are shown in red font; deletions are double strikeout.

“17.162.0~~2~~80 - Existing medical marijuana dispensaries.

It is unlawful for any person to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises or location within the City of Colfax, the operation of a cannabis dispensary, and/or processing facility, and/or testing laboratory. The sole exception to this prohibition is that one Existing medical marijuana dispensaries dispensary that existed and had with a valid City business licenses as of November 27, 2009, shall be considered as legal nonconforming uses conditionally allowed subject to the provisions of the Colfax Municipal Code, as amended or replaced

from time-to-time. In addition thereto, such dispensary shall become a prohibited use and shall not be allowed to engage in business in Colfax upon the happening of any of the following events: ~~Such dispensaries may continue to operate in accordance with the provisions of Chapter 17.32, except that, in addition to such regulations, if any of the following circumstances arise then, without further action by the city, such building and the land on which such building is located shall be subject to the provisions of this chapter prohibiting such use:~~

- A. The operators of the dispensary, **or any of its owners**, are convicted of any crime other than an infraction relating to the operation of the dispensary;
- B. The dispensary becomes a public nuisance;
- C. The dispensary or its operators violate any provision of this Code relating to its operation;
- D. The dispensary is closed **for any reason**. ~~or its activities curtailed by the action of a superior governmental authority or by order of any court of competent jurisdiction; or~~
- E. The dispensary is closed or its activities curtailed by **the action of a superior governmental authority, by order of any court of competent jurisdiction, or by other valid legal process; or**
- F. **The dispensary becomes a prohibited use by amendment to any provision of the Colfax Municipal Code, any code incorporated therein, or any provision of California law; or**
- G. **The dispensary violates any condition of any permit issued by the City of Colfax or any license issued by the State of California.**

- 10/25/17 Council adopts Ordinance 534.
- 12/19/17 Medicinal cannabis business license is issued to Golden State Patient Care, LLC.
- 2/28/18 Ordinance 535 is adopted; regulatory provisions are moved to Chapter 5.32, “grandfathering” language is deleted. .
Ordinance 536 is adopted and comprehensively regulates all cannabis activities in Colfax.
Resolution 12-2018 is adopted and approves license application procedures.
Resolution 13-2018 is adopted and establishes fees to process commercial cannabis permit applications.
Resolution 14-2018 is adopted and authorizes background checks for cannabis permit applicants.
- 4/2/18 Application period opens and is scheduled to close June 4, 2018. Applications received from GSPC, River City Phoenix, Colfax Wellness and Elevation 2425.
- 4/16/18 Business License is issued to GSPC (GOLDSP).
- 6/13/18 Ordinance 537 is adopted and imposes cannabis business tax. Approved by the voters on 11/6/18.
- 8/8/18 Council directs staff to stop the application process pending further direction from Council. This was shortly before the Phase 1 process was completed. The process was stopped because a Council majority did.
- 2/13/19 Staff is directed to resume acceptance of one medicinal cannabis license; GSPC is to be the only applicant.
- 7/24/19 Council adopts Resolution 31-2019 directing CM to issue one medicinal license to GSPC. Council declines to authorize issuance of adult use license.
- 8/22/19 Business License issued to GSPC

- 7/8/20 Ordinance 542 is adopted allowing up to 10 licenses in different categories; adult use licenses are specifically and intentionally not included.
- Staff is directed to develop a fee structure that will allow the City to recover its cost of establishing and implementing the commercial cannabis regulation program through equitable allocation between permittees.
- 7/13/20 GSPC Business License renewed by City
- 8/6/20 Special Cannabis Workshop
- 8/26/20 Council adopts Resolution 53-2020 approving commercial cannabis permit application guidelines.
- 9/25/20 Application notification is released to the public, and the application period opens.
- 11/24/20 Application period closes.
- 12/7/20 SCI completes Phase 1 review.
- 1/27/21 Council authorizes the CM to issue a cultivation license to Fireworx Farms at the conclusion of meeting all applicable requirements of the administrative process.
- 7/30/21 GSPC Business License renewed by City
- 1/26/22 Council directs staff to place a discussion of expanding permissible cannabis licenses to include adult use on a future agenda.
- 2/9/22 Council discussion of expanding permissible cannabis licenses to include adult use. Extensive comments received. Did not have majority Council support so no further action was taken.
- 7/28/22 GSPC Business License renewed by City
- 1/25/23 Council directs staff to schedule a discussion of cannabis ordinances for February 2023.
- 2/10/23 SCI memorandum confirming that the Colfax cannabis ordinance complies with California law.
- 2/23/23 Council discusses whether Colfax cannabis ordinance complies with State law. No action requested.
- 6/28/23 Council requests discussion of all aspects of cannabis ordinance sometime in July, including recovery of implementation costs.
- 7/23 Business License renewal received and being processed by City.