



REGULAR BOARD MEETING

AUGUST 13, 2024



**STOCKTON  
EAST WATER  
DISTRICT**

PROVIDING SERVICE SINCE 1948  
www.sewd.net

**DIRECTORS**

Richard Atkins  
President  
Division 1

Andrew Watkins  
Division 2

Alvin Cortopassi  
Division 3

Melvin Panizza  
Division 4

Paul Sanguinetti  
Division 5

Paul Nakaue  
Division 6

Thomas McGurk  
Vice President  
Division 7

**STAFF**

Justin M. Hopkins  
General Manager

Juan M. Vega  
Assistant General Manager

**LEGAL COUNSEL**

Jeanne M. Zolezzi  
General Counsel

Phone 209-948-0333  
Fax 209-948-0423

E-mail sewd@sewd.net

6767 East Main Street  
Stockton, CA 95215

Post Office Box 5157  
Stockton, CA 95205

**MEETING NOTICE**

THE REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE STOCKTON EAST WATER DISTRICT WILL BE HELD AT 12:30 P.M., TUESDAY, AUGUST 13, 2024 AT THE DISTRICT OFFICE, 6767 EAST MAIN STREET STOCKTON, CALIFORNIA 95215

**Assistance for the Disabled:** If you are disabled in any way and need accommodation to participate in the meeting, please contact Administrative Staff at (209) 948-0333 at least 48-hours in advance for assistance so the necessary arrangements can be made.

FOR CONTINUED CONVENIENCE STOCKTON EAST WATER DISTRICT BOARD MEETINGS WILL BE AVAILABLE BY TELECONFERENCE.

Please call (347) 566-2741/Passcode: 300 937 522# to be connected to the Regular Board Meeting, to begin at 12:30 p.m. Agendas and minutes are located on our website at www.sewd.net.

**AGENDA**

Page No

- A. Pledge of Allegiance (Admin Assistant Rodriguez) & Roll Call**
- B. Consent Calendar (None)**
- C. Public Comment (Non-Agenda Items)**
- D. Scheduled Presentations and Agenda Items**
  - 1. Minutes 08/06/24 01
  - 2. Warrants
    - a. Fund 68 – Municipal & Industrial Groundwater Fund 05
    - b. Fund 70 – Administration Fund 07
    - c. Fund 71 – Water Supply Fund 11
    - d. Fund 89 – Fish Screen Improvement 13
    - e. Fund 91 – Vehicle Fund 15
    - f. Fund 94 – Municipal & Industrial Fund 17
    - g. Payroll 21
    - h. Summary 23
    - i. Short Names/Acronym List 25
    - j. SEWD Vehicles & Heavy Equipment 27
  - 3. Stockton East Water District – Consider Authorizing Participation In The SJMSHCP To Satisfy Mitigation Requirements For The Bellota Weir Modification Project 29

<b>D.</b>	<b>Scheduled Presentations and Agenda Items – <i>continued</i></b>	
	4. Stockton East Water District – Consider Approval Of Water Transfer Agreement With WID Memo	31
	a. Water Transfer Agreement Between Woodbridge Irrigation District and Stockton East Water District	33
	5. Stockton East Water District – Consider Approval Of Water Service Contract With Friends Of Elkhorn, LLC Memo	41
	a. Friends of Elkhorn, LLC – Non-Potable Water Service Agreement	43
	6. Stockton East Water District – Consider Proposed Budget Amendment and Approval Of Variable Frequency Drive Purchase for P-26	47
	7. Stockton East Water District – Solar Power & Services Agreement Between White Pine Entity and Stockton East Water District	49
<b>E.</b>	<b>Committee Reports</b>	
	1. San Joaquin County and Delta Water Quality Coalition Steering Committee Meeting, 08/12/24	
<b>F.</b>	<b>Report of the General Manager</b>	
	1. Water Supply Report 08/06/24	87
	2. Informational Items	
	a. <u>San Joaquin County – State Of The County, 2:30 p.m., 09/12/24</u>	89
	b. <u>Contra Costa Water District – Value Of Water Tour, 8:30 a.m., 10/17/24</u>	91
	3. Report on General Manager Activities	
	a. ACWA State Legislative Committee Meeting, 08/09/24	93
	b. Stockton East Water District Activities Update	
	4. Stockton East Water District Water Treatment Plant Update	
<b>G.</b>	<b>Director Reports</b>	
<b>H.</b>	<b>Communications</b>	
<b>I.</b>	<b>Agenda Planning/Upcoming Events</b>	
	1. Greater Stockton Chamber of Commerce – 2024 Summer Chamber Diversity Mixer – Port of Stockton, Albert Lindely House, 5:00 p.m., 08/15/24	95
<b>J.</b>	<b>Closed Session</b>	
	1. CONFERENCE WITH LEGAL COUNSEL - Existing Litigation California Water Service Company, City of Stockton & Stockton East Water District vs. Central San Joaquin Water Conservation District Government Code 54956.9 (a)	

- J. Closed Session - *continued***
2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION Potential exposure to litigation – Government Code Section 54956.9 – two cases
  3. CONFERENCE WITH LEGAL COUNSEL - Personnel Government Code 54957

**K. Adjournment**

**Certification of Posting**

I hereby certify that on August 8, 2024 I posted a copy of the foregoing agenda in the outside display case at the District Office, 6767 East Main Street, Stockton, California, said time being at least 72 hours in advance of the meeting of the Board of Directors of the Stockton East Water District (Government Code Section 54954.2).  
Executed at Stockton, California on August 8, 2024.



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Priya Ram, Finance Director  
Stockton East Water District

Any materials related to items on this agenda distributed to the Board of Directors of Stockton East Water District less than 72 hours before the public meeting are available for public inspection at the District's office located at the following address: 6767 East Main Street, Stockton, CA 95215. Upon request, these materials may be available in an alternative format to persons with disabilities

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THE REGULAR MEETING OF THE BOARD OF DIRECTORS  
OF STOCKTON EAST WATER DISTRICT WAS HELD AT THE DISTRICT OFFICE  
6767 EAST MAIN STREET, STOCKTON, CA  
ON TUESDAY, AUGUST 6, 2024, AT 12:30 P.M.

**A. PLEDGE OF ALLEGIANCE AND ROLL CALL**

President Atkins called the regular meeting to order at 12:30 p.m., and Manager Hopkins led the Pledge of Allegiance.

Present at roll call at the District were Directors Atkins, Nakaue, Panizza and Watkins. Also present were Manager Hopkins, Assistant Manager Vega, Finance Director Ram, Administrative Assistant Rodriguez and Legal Counsel Zolezzi. Directors Cortopassi, McGurk and Sanguinetti were absent.

**B. CONSENT CALENDAR (None)**

**C. PUBLIC COMMENT (None)**

**D. SCHEDULED PRESENTATIONS AND AGENDA ITEMS**

1. Minutes 07/30/24 Regular Meeting

A motion was moved and seconded to approve the July 30, 2024 Minutes, as presented.

Roll Call:

Ayes: Atkins, Nakaue, Panizza, Watkins  
Nays: None  
Abstain: None  
Absent: Cortopassi, McGurk, Sanguinetti

2. Warrants – California Public Employees’ Retirement System

A motion was moved and seconded to approve the August 6, 2024, California Public Employees’ Retirement System, as presented.

Roll Call:

Ayes: Atkins, Nakaue, Panizza, Watkins  
Nays: None  
Abstain: None  
Absent: Cortopassi, McGurk, Sanguinetti

3. Water Year 2023 – Accounts Receivable Credits for Refund for AG and Municipal & Industrial (M&I)

Finance Director Ram presented the Board with Water Year 2023 – Accounts Receivable Credits for Refund for AG and Municipal & Industrial (M&I). Finance Director Ram explained that each year, in preparation for the new billing cycle, the District issues credits and writes off accounts with San Joaquin County. Initially, credits are applied to customer accounts based on their water usage statements, which are sent along with their initial bills. However, the AG Credit Refund underwent a second review due to the discovery of incorrect credits issued to two customers. Finance Director Ram noted that while one of the accounts was resolved, the account with San Joaquin County remains in dispute Staff will visit San Joaquin County on Wednesday to gather additional

information regarding the disputed account. The findings will be presented to the Board at the next regular meeting.

Director Panizza mentioned he found the new format of the AG Credit Refund to be helpful and easy to understand. Finance Director Ram replied when Director Panizza questioned one of the San Joaquin County accounts, she requested staff to include the descriptions.

Director Watkins corrected line 43 Watkins, G TR (Ronnie Lynn) to read K & A Watkins.

Director Nakaue inquired if the San Joaquin County account is associated with M&I credit. Finance Director Ram confirmed that it is.

A motion was moved and seconded to approve the Water Year 2023 – Accounts Receivable Credits for Refund for AG and Municipal & Industrial (M&I), as presented.

Roll Call:

Ayes: Atkins, Nakaue, Panizza, Watkins  
Nays: None  
Abstain: None  
Absent: Cortopassi, McGurk, Sanguinetti

## **E. COMMITTEE REPORTS**

### **F. REPORT OF GENERAL MANAGER**

#### **1. Water Supply Report as of 07/30/24**

Manager Hopkins provided a handout of the Water Supply Report for information only that included storage, release, and production data collected from various sources as of midnight last night.

There is 204,943 AF in storage at New Hogan Reservoir. Current releases are set at 235 cfs. There is 1,921,409 AF in storage at New Melones Reservoir. Current releases are set at 1,873 cfs. The current release at Goodwin Dam to Stanislaus River is set at 314 cfs and release to all water users is set at 1,789 cfs. The District Water Treatment Plant (WTP) is currently processing 56 mgd. North Stockton is currently utilizing 16 mgd. South Stockton is currently using 9 mgd. Cal Water is currently utilizing 26 mgd. The City of Stockton WTP is currently processing 16 mgd.

#### **2. Information Items:**

a. Manager Hopkins noted items: F-2a and F-2b

#### **3. Report on General Manager Activities**

##### **a. Stockton East Water District Activities Update**

Manager Hopkins reported it was determined the CAT generator fuel pump has gone bad and is expected to be replaced on Wednesday. Staff are still having issues with the Cummins service department and getting a day scheduled for them to come out. However, the CAT service department is confident they could repair the Cummins generator and will be coming to fix the Cummins generator this week.

Director Atkins inquired if the Cummins generator still has a front oil seal leak. Manager Hopkins replied the oil seal is fixed however, staff found that the control board got fried during the lightning strike.

Manager Hopkins reported Multi Factor Authentication will be implemented for the Districts' network users and will begin the week of August 19<sup>th</sup> with tech support being present on August 20<sup>th</sup> to help with any challenges there might be. Manager Hopkins reported the Multi Factor Authentication is a two-step process for signing into the Districts' email, sending a unique code to your cellphone.

Assistant Manager Vega reported the authentication method Verve will be using is Microsoft which installs an authenticator app on your device which will provide you with a code each time you log in to your email.

Manager Hopkins reported one of the Out-Of- District customers might need additional transfer water due to Oakdale Irrigation District (OID) potentially ending its deliveries early, which would leave the customer without enough water to complete their irrigation. Manager Hopkins reported the customer reached out and requested up to 500 acre-feet more of transfer water. Staff reached out to Rock Creek Water District (RCWD), which can provide the necessary water transfer. Staff are awaiting the customer's response regarding the additional transfer water request.

Director Panizza inquired when Oakdale Irrigation District will stop water deliveries. Manager Hopkins replied mid-August since it is based on inflows.

#### 4. Stockton East Water District Engineering Update

Assistant Manager Vega presented the Board with an Engineering update.

Assistant Manager Vega reported on the Project and Construction Management activities which included the Water Supply Master Plan and CIP, Water Treatment Plant Master Plan and CIP, SWEEP Block Grants project management, FEMA Repair Projects including the Lower Farmington Canal, SCADA Improvements, Extraction Well #2 Pipeline and Electrical, Aquifer Storage Recovery Well 74-01, Solids Dredger and Dewatering Improvements, Fencing and Security Access, Highway 4 Traveling Water Screen, Low Lift Pumping Station P-1 Pump Replacement and McGurk Low-Water Crossing. Assistant Manager Vega also reported on the Planning, Design, Permitting and Grants activities which included the Draft CIP Budget for Fiscal Year 2025-2026, George Watkins Low Water Crossing, Eight Mile Dam, Low Lift Pump Station Standby Generator Quotes, OCR and Stockton Diverting Canal Confluence Fish Barrier, Peters Pipeline Control Vault Replacement, Potter Creek Pump Station, Mormon Slough Railroad Bridge Fish Passage, Raise Actuators and Replace Butterfly Valves for Main Control Vaults, DWR (Department of Water Resources) Watershed Resiliency Grant, Federal Highways Agency Culvert AOP Grant, John Fugazi Jr Permitting and Bellota Modification Project.

Director Nakaue inquired on the meaning of Highway 4 Traveling Water Screen. General Manager Hopkins replied the water screens are trash racks.

## G. DIRECTOR REPORTS

### 1. ACWA's Regions 3 & 4 Event and Tour, 07/31/24

Director Watkins and Manager Hopkins attended the ACWA's Region 3 & 4 Event and Tour. Director Watkins reported the event was held at the City of Roseville and toured the new Aquifer Storage Recovery (ASR) wells. Director Watkins reported the wells do not recharge the same volume of water they extract or produce. Only half of the water production capacity is going back to the ground. The City of Roseville relies on the ASR wells and will continue to construct more.



Director Watkins reported the ASR well head is concrete and has a stainless-steel casing. Stainless steel lines also run down to the bladder valve which are powered by nitrogen.

## **H. COMMUNICATIONS**

### **I. AGENDA PLANNING/UPCOMING EVENTS**

1. ACWA State Legislative Committee Meeting, 10:00 a.m., 08/09/24
2. Stockton East Water Suppliers (SAWS) Meeting, 1:00 p.m., 08/09/24  
*\*All meetings have been cancelled until further notice. \**
3. San Joaquin County and Delta Water Quality Coalition Steering Committee Meeting, 9:00 a.m., 08/12/24

### **J. REPORT OF THE COUNSEL**

1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION Potential exposure to litigation – Government Code Section 54956.9 – one case

President Atkins adjourned the meeting to closed session at 1:03 p.m. The regular meeting reconvened at 1:39 p.m., with no reportable action.

### **K. ADJOURNMENT**

President Atkins adjourned the meeting at 1:40 p.m.

Respectfully submitted,

Justin M. Hopkins  
Secretary of the Board

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STOCKTON EAST WATER DISTRICT  
INVOICES FOR BOARD PACKAGE  
AUGUST 13, 2024

Vendor name	Account #	Description	Amount	Invoice No.
1 PG&E 1949656419-6	10-5302-0	GROUNDWATER PROD. FUND 68 Gas & Electric 06/04/24 - 07/13/24 Extraction Well #1	3,559.01	19496564196-07/23/24
		<b>GROUNDWATER PROD. FUND 68 TOTAL</b>	<b>\$3,559.01</b>	

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STOCKTON EAST WATER DISTRICT  
INVOICES FOR BOARD PACKAGE  
AUGUST 13, 2024

Vendor name	Account #	Description	Amount	Invoice No.
	<b>ADMIN FUND 70</b>			
2 ACWA/JPIA (Health Benefits)	10-5047-0	September 2024 medical, dental, vision, & life insurance-Admin	21,285.00	0703588
3 ACWA/JPIA (Health Benefits)	10-5062-0	September 2024 medical, dental, vision, & life insurance-DIR	10,900.43	0703588
4 ACWA/JPIA (Health Benefits)	10-5050-0	September 2024 medical, dental, vision, & life insurance-RET Admin	3,040.57	0703588
5 ADT Security Services	10-5141-0	08/18/24-09/17/24 Alarm monitoring services for Admin Bldg.	55.79	1079743262
6 Airespring Inc.	10-5141-0	Monthly internet charges 08/01/24-08/31/24	955.56	187098105
7 Cerida Investment Corp.	10-5141-0	Answering service from 07/30/24-08/26/24	143.75	112-90141
8 Darrel Evensen	10-5104-0	AWWA ACE-24 Travel reimbursement	171.35	AWWA 2024
9 Employee Relations Network	10-5154-0	New hire	68.22	97499
10 Heather Wood	10-5101-0	2024 Safety Shoe Allowance for H. Wood	190.70	Safety Shoe Reimb 24
11 Herum, Crabtree,Suntag	10-5150-0	July 2024 General Matters	3,891.30	112259
12 Herum, Crabtree,Suntag	10-5190-0	July 2024 GSA	2,927.40	112263
13 Herum, Crabtree,Suntag	10-5190-0	July 2024 SEWD v. SWRCB	852.60	112264
14 Herum, Crabtree,Suntag	10-5176-0	July 2024 Water Right Applications [Master File]	749.70	112261
15 Herum, Crabtree,Suntag	10-5165-0	July 2024 Stanislaus River Matters	499.80	112258

**STOCKTON EAST WATER DISTRICT  
INVOICES FOR BOARD PACKAGE  
AUGUST 13, 2024**

Vendor name	Account #	Description	Amount	Invoice No.
		<b>ADMIN FUND 70</b>		
16 Herum, Crabtree,Suntag	10-5165-0	July 2024 Triennial Review	357.00	112526
17 Herum, Crabtree,Suntag	10-5150-0	July 2024 Mokelumne River Forum	214.20	112260
18 Herum, Crabtree,Suntag	10-5162-0	July 2024 New Melones Contract- CBD	35.70	112265
19 Inductive Automation, LLC	10-5143-0	Ignition Edge Panel-SCADA Software & Annual Support plan	4,524.76	1332826
20 Jan-Pro of the Greater Bay Area	10-5154-0	August 2024 monthly janitorial services-Admin	670.00	24770-Admin
21 Justin's Scuba Time Inc.	10-5101-0	Tank service (1) and inspections (2)	95.00	24014
22 Kristin V. Coon	10-5131-0	Water Conservation Education September 2024	17,369.03	2024-09
23 Orkin Pest Control	10-5154-0	Pest & rodent control service-July 2024-July 2025	3,737.60	8/1/24/268917435
24 Quadient Leasing USA Inc./MailFinance/Neopost	10-5126-0	Rental Charges Neopost Machine 08/29/24-11/28/24	545.15	Q1440787
25 Quill Corporation	10-5125-0	Office supplies ordered on 07/18/24	289.46	39608772/39589896
26 Red Wing Shoe Store	10-5101-0	2024 Safety Shoe Allowance-Donis, Marshall, Strohm, Van Vliet	944.83	015569/25014569/14569
27 San Joaquin County Ag Commissioner	10-5133-0	Sponsorship with the 2024 SJC AgVenture Program	1,000.00	2024 AgVenture
28 SEWD Vehicle Fund	10-5181-0	June 2024 - Vehicle Mileage Reimbursement-Admin	823.50	June 2024-Admin
29 Shred City LLC	10-5127-0	Shredding service May-July 2024	120.00	27182051424/1124/0924
30 US Bank-Newegg	10-5124-0	Computer monitor -D. Evensen	215.49	Cahoon8501-07/22/24a
31 US Bank Corporate Payment Systems	10-5127-0	Meeting expense on 06/25/24	9.79	Cahoon8501-07/22/24b
32 US Bank-Pinecraft Shoe	10-5101-0	2024 Safety Shoe Allowance-A. Riojas	238.03	Cahoon8501-07/22/24c
33 US Bank-USPS	10-5126-0	Postage for registration for Unit 95	9.85	Cahoon8501-07/22/24m
34 US Bank-Tractor Supply	10-5101-0	Drum fans (4), straps, & cable ties-Heat illness prevention	1,353.62	Higares4509-07/22/24ab
35 US Bank-Pilot/JW Marriot	10-5104-0	2024 CSDA GM Summit-Fuel & lodging	1,174.48	Hopkins9020-07/22/24ab
36 US Bank Corporate Payment Systems	10-5127-0	Meeting expense on 07/08/24-07/18/24	207.64	Hopkins9020-07/22/24cdf
37 US Bank-Arco/Chevron/JW Marriot	10-5104-0	2024 CSDA Workshop-Travel expense	340.37	Ram8035-07/22/24abc
38 US Bank Corporate Payment Systems	10-5127-0	Meeting expense on 06/24/24-07/19/24	1,282.79	Ram8035-072224dei-Inotv
39 US Bank-Amazon	10-5125-0	Computer privacy screens (2)	53.86	Ram8035-07/22/24f
40 US Bank-Best Buy	10-5124-0	Vacuum	207.09	Ram8035-07/22/24g
41 US Bank-Greater Stockton Chamber of Commerce	10-5133-0	Industrial Technology BBQ-Silver Sponsorship	700.00	Ram8035-07/22/24h
42 US Bank-Staples	10-5133-0	Postcards for Farmers/Growers meeting	357.18	Ram8035-07/22/24m
43 US Bank-Amazon	10-5141-0	Cell phone cases, chargers, & headphones	113.69	Ram8035-07/22/24q

**STOCKTON EAST WATER DISTRICT  
INVOICES FOR BOARD PACKAGE  
AUGUST 13, 2024**

Vendor name	Account #	Description	Amount	Invoice No.
		<b>ADMIN FUND 70</b>		
44 US Bank-Association of California	10-5103-0	ACWA 2024 Executive Edge Leadership-J. Hopkins	435.00	Ram8035-07/22/24r
45 US Bank-The Record	10-5106-0	Monthly E-Subscription to The Record August 2024	9.99	Ram8035-07/22/24s
46 US Bank-Eminence Print Co.	10-5101-0	Safety orange shirts with District logos-Maintenance new employee	486.62	Vega2302-07/22/24b
47 US Bank Corporate Payment Systems	10-5127-0	Meeting expense on 07/09/24-07/16/24	731.46	Vega2302-07/22/24cde
48 US Bank-Amazon	10-5125-0	Office supplies ordered on 05/29/24-07/15/24	233.90	Vega2302-07/22/24fjk
49 US Bank-Dameron Hospital	10-5101-0	Medical Exam	2,821.00	Vega2302-07/22/24g
50 US Bank-Enterprise/Door dash	10-5104-0	AWWA ACE-24 Conference-Travel expense	230.22	Vega2302-07/22/24hi
51 Verizon Wireless Multi-line account	10-5141-0	Wireless charges from 06/26/24-07/25/24	1,042.61	9969973477
52 Verve Networks	10-5140-0	Multi-factor authentication implementation-Labor/New computer setup-Ops desk	1,080.00	30485/30405
53 Xerox Financial Services LLC	10-5124-0	Monthly lease for Plotter Printer 07/18/24-08/17/24	752.46	6050914
54 XRoads Networks, Inc	10-5141-0	StarLink charges July 2024	345.00	Z030055
		<b>ADMIN FUND 70 TOTAL</b>	<b>\$90,890.54</b>	

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INVOICES FOR BOARD PACKAGE  
AUGUST 13, 2024

Vendor name	Account #	Description	Amount	Invoice No.
		<b>WATER SUPPLY FUND 71</b>		
55 7-11 Material Inc	10-5202-0	Machado Pipe Leak Repair-Fiber strand & 4000 Blend	2,110.82	410130728
56 ACWA/JPIA (Health Benefits)	10-5047-0	September 2024 medical, dental, vision, & life insurance-NM	20,360.98	0703588
57 ACWA/JPIA (Health Benefits)	10-5050-0	September 2024 medical, dental, vision, & life insurance-RET WS	4,595.07	0703588
58 ACWA/JPIA (Health Benefits)	10-5056-0	September 2024 medical, dental, vision, & life insurance-NH	3,530.06	0703588
59 Badger Meter, Inc.	10-5202-0	Endpoints for meters	1,724.44	1669719
60 HDS White Cap Construction Supply	10-5213-0	Peter's Pipeline Leak Repair-Concrete adhesive	536.22	10020228801
61 Iconix Waterworks/Corix Water Products US Inc	10-5206-0	Bellota Air Release Valve prj-2" ARI air valves (12) & pipe wrap	48,571.55	U2416021931/16027625
62 Iconix Waterworks/Corix Water Products US Inc	10-5213-0	Peter's Pipeline Leak Repair-Butterfly valve, gasket, fasteners	4,777.65	U2416027740
63 PG&E 0530302291-6	10-5213-0	Electricity 07/01/24-07/29/24 Birdcage trash rack	830.99	05303022916-07/30/24
64 PG&E 1949656419-6	10-5213-0	Gas & Electric 06/04/24 -07/13/24 BellotaBlickh-NM	218.67	19496564196-07/23/24
65 PG&E 1949656419-6	10-5202-0	Gas & Electric 06/04/24 -07/13/24 Canal gate-NH	28.72	19496564196-07/23/24
66 PG&E 6722855250-0	10-5202-0	Electricity 06/25/24-07/23/24 Mosher Slough Headworks	21.82	67228552500-07/24/24
67 Power Services, Inc.	10-5203-0	Standard pump test (3)	900.00	7568
68 SEWD Vehicle Fund	10-5207-0	June 2024 - Vehicle Mileage Reimbursement-NH	24,936.15	June 2024-NH



**STOCKTON EAST WATER DISTRICT  
INVOICES FOR BOARD PACKAGE  
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Vendor name	Account #	Description	Amount	Invoice No.
		<b>WATER SUPPLY FUND 71</b>		
69 SEWD Vehicle Fund	10-5218-0	June 2024 - Vehicle Mileage Reimbursement-NM	14,868.42	June 2024-NM
70 Stockton Pipe & Supply	10-5213-0	Peter's Pipeline Leak Repair-16" Pipe flanges & blind flange	676.81	396892/396903
71 The Home Depot	10-5213-0	Hoses & fasteners for Duck Creek & Copperopolis trash rack	61.24	5023271
72 UniFirst Corporation	10-5213-0	Weekly Uniform & Laundry Service Week 07/18/24 & 07/25/24	208.00	2360094966/2360093170
73 US Bank-AAA Ornamental	10-5206-0	Bellota Air Release Valve prj-Angle iron, flat bar, hinges	370.12	Riojas0385-07/22/24d
		<b>WATER SUPPLY FUND 71 TOTAL</b>	<b>\$129,327.73</b>	

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**STOCKTON EAST WATER DISTRICT  
INVOICES FOR BOARD PACKAGE  
AUGUST 13, 2024**

Vendor name	Account #	Description	Amount	Invoice No.
		<b>FISH SCREEN IMPROVEMENT FUND 89</b>		
74 Fishbio	10-5180-0	Professional services for Bellota project April-June 2024	4,210.00	4736
75 HDR Engineering, Inc.	10-5180-0	Prof & technical support for DWSRF & WIFIA 06/02/24-06/29/24. RBM 10/31/24	8,076.29	1200638630
		<b>FISH SCREEN IMPROVEMENT FUND 89 TOTAL</b>	<b>\$12,286.29</b>	

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AUGUST 13, 2024

Vendor name	Account #	Description	Amount	Invoice No.
		<b>VEHICLE FUND 91</b>		
76 Brannon Tire Corp.	10-5182-0	Tires for Unit 53	1,334.87	20390440
77 Stockton Auto & Truck	10-5182-0	Battery cable for Unit 87/Filters to service Units 76, 88, 89	161.38	010410/10092/10409
78 Stockton Auto & Truck	10-5182-0	Belts for mower attachment on Unit 52	63.08	010602
79 US Bank-PayPal Sonicelect/Rough Country	10-5182-0	Strobe lights & floor mats for Unit 93 & 94	756.96	Cahoon8501-07/22/24jk
80 US Bank-Diamond Mowers/Rough Country	10-5182-0	Seal kit for repairs on mower attachment for Unit 38/Steps for Unit 94	707.57	Higares4509-07/22/24ce
81 US Bank-Quick Quack	10-5182-0	Car wash - Unit 92	9.74	Hopkins9020-07/22/24e
82 US Bank-CA Dept. of Tax & Fee Administration	10-5182-0	CA State Use Tax for Unit 91-Kafman Trailer	1,881.30	Hopkins9020-0/2224fg
83 US Bank-Jamar Services	10-5182-0	Fuel for Unit 82, 83, 47	223.50	Riojas0385-07/22/24abc
		<b>VEHICLE FUND 91 TOTAL</b>	<b>\$5,138.40</b>	

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STOCKTON EAST WATER DISTRICT  
INVOICES FOR BOARD PACKAGE  
AUGUST 13, 2024

Vendor name	Account #	Description	Amount	Invoice No.
		<b>MUNICIPAL &amp; INDUSTRIAL FUND 94</b>		
84 ACWA/JPIA (Health Benefits)	10-5047-0	September 2024 medical, dental, vision, & life insurance-M&I	57,679.77	0703588
85 ACWA/JPIA (Health Benefits)	10-5050-0	September 2024 medical, dental, vision, & life insurance-RET M&I	9,261.56	0703588
86 All Cal Equipment Services, Inc	10-5326-0	Rental of boom truck for work on HSPS 07/01/24-07/15/24	5,500.00	66220
87 AutoZone Stores Inc.	10-5321-0	Drain pan & gasket maker for maintenance on HSPS generators	29.07	4036019240
88 AvidWater, LLC	10-5324-0	Sand & gravel for filtration system on TP Irrigation System	158.07	0483049-IN
89 Batteries Plus Bulbs	10-5321-0	Batteries for 74-02 Cameras	43.71	P74435096
90 Carollo Engineers, Inc	10-5323-0	Hypochlorite disinfection progress bill through 06/30/24. Approved RBM 03/22/22	15,026.90	FB53437-27
91 Chemtrade Chemicals US LLC	10-5301-0	Acidified alum delivered on 07/05/24-07/30/2024	34,602.88	90132929-90132928
92 Electric Power Systems International, Inc.	10-5321-0	Engineers & Electricians for emergency replacement of Switchgear-Power Outage	45,447.04	INV_00154420
93 Electric Power Systems International, Inc.	10-5321-0	Parts to replace Switchgear at LLPS -Power Outage	6,621.05	INV_00154421
94 FGL Environmental	10-5308-0	Inorganic analysis-Metals/Wet Chemistry-Turbidity,odor,NO3-N	1,172.00	438468A/87/12/92
95 FGL Environmental	10-5308-0	Coliform bacti monitoring sampled on 07/22/24	2,700.00	439840A-450217A
96 FGL Environmental	10-5308-0	Inorganic analysis-Wet Chemistry-Alk (CaCO3)/Organic-TOC-EPA, SRL 524M	239.00	450080A/450078A
97 Fresno Oxygen	10-5344-0	Welding supplies	64.20	0063411898

**STOCKTON EAST WATER DISTRICT  
INVOICES FOR BOARD PACKAGE  
AUGUST 13, 2024**

Vendor name	Account #	Description	Amount	Invoice No.
		<b>MUNICIPAL &amp; INDUSTRIAL FUND 94</b>		
98 Grainger, Inc.	10-5343-0	Hammer drill	250.73	9180462542
99 Grainger, Inc.	10-5341-0	Hard hats	98.65	9176310697
100 Grainger, Inc.	10-5344-0	Trash bags	65.86	9178041134
101 Grainger, Inc.	10-5307-0	Fuses to repair titrator in Lab	14.27	9196564216
102 Granite Construction Company	10-5324-0	Asphalt for road maintenance at Treatment Plant	1,170.83	2748853/1380/9234
103 Hixco	10-5344-0	Fasteners for stock	174.59	487663/488260
104 Holt of CA	10-5321-0	Materials & supplies for repairs on CAT emergency generator on LLPS	1,261.58	001172784/45/44/85/86
105 Horizon	10-5324-0	Materials & supplies for TP grounds & irrigation system	347.28	2B224262/4359/4027
106 Industrial Electrical Company PLC	10-5321-0	Inspect CAT emergency generator at LLPS-Power Outage	1,200.00	PI-076087
107 Jan-Pro of the Greater Bay Area	10-5326-0	August 2024 monthly janitorial services-Maintenance/Ops	553.00	24770-Maintenance/Ops
108 JCI Jones Chemicals, Inc	10-5301-0	12.5% Sodium Hypochlorite delivered on 07/19/24-08/01/24	40,526.50	946555-947043
109 NorthStar Chemical	10-5301-0	ACH delivered on 07/05/24	23,102.14	285089
110 PG&E 0908023195-5	10-5302-0	Electricity 06/20/24-07/18/24 WTP East Side Feeder	19,588.77	09080231955-07/23/24
111 PG&E 1949656419-6	10-5302-0	Gas & Electric 06/04/24 -07/13/24 TP Electricity	26.83	19496564196-07/23/24
112 PG&E 1949656419-6	10-5303-0	Gas & Electric 06/04/24 -07/13/24 TP Natural gas	183.26	19496564196-07/23/24
113 PG&E 2544904013-5	10-5302-0	Electricity 06/20/24-07/18/24 TP HS @6749 E Main	185,358.33	25449040135-07/22/24
114 Rexel USA Inc	10-5323-0	Circuit breakers MCC-2M-Approved RBM 05/17/22	29,997.07	5137809624.003
115 SEWD Vehicle Fund	10-5181-0	June 2024 - Vehicle Mileage Reimbursement-M&I	12,138.42	June 2024-M&I
116 Stantec Consulting Services Inc.	10-5323-0	Prof. services for WTP Master Plan. Approved RBM 11/04/23 & 05/21/24	24,915.00	2257640
117 Stockton Auto & Truck	10-5321-0	Radiator cap & belt to service Cummins emergency generator	93.98	010514
118 Stockton Auto & Truck	10-5344-0	Hand towels	13.61	010514b
119 Stockton Windustrial Co.	10-5321-0	Pipe fittings for maintenance on SED Basin 3 & chemical feeders	185.20	377685 01/377538 01
120 Stockton Windustrial Co.	10-5321-0	Thread rods for installation of Hypochlorite quill in Ops	11.96	377580 01
121 Stoneridge Roofing	10-5326-0	High Service Roof Replacement prj-Labor & Materials. Approved RBM 06/25/24	94,500.00	7/16/24
122 Sunbelt Rentals, Inc	10-5321-0	LLPS Power Outage-Diesel generator rental 07/03/24-07/30/24	10,132.15	156309900-0011
123 SunE Solar Mission III LLC	10-5302-0	Energy produced on low & high side solar panels June 2024	36,446.60	90000447
124 UniFirst Corporation	10-5342-0	Weekly Uniform & Laundry Service Week 07/18/24 & 07/25/24	591.98	2360094966/2360093170
125 United Rentals North America Inc	10-5321-0	Rental of concrete saw for electrical mods 07/10/24-07/11/24	292.35	236077764-001
126 Univar USA Inc.	10-5301-0	Caustic soda delivered on 07/08/24-07/29/24	27,150.18	52290979-52290978
127 US Bank-Amazon	10-5343-0	Carabiner clip & hook, magnetic tool & tray, non-contact sequence testers	657.13	Cahoon8501-07/22/24dgi
128 US Bank-CJ Spray Inc./Pacific Air	10-5321-0	Compressor oil & maintenance kit to service HSPS compressor	379.10	Cahoon8501-07/22/24ef
129 US Bank-PayPal UPS	10-5321-0	Shipping for I/O module repairs	58.11	Cahoon8501-07/22/24h
130 US Bank-Amazon	10-5344-0	Gate openers for new District vehicles (6)	33.94	Cahoon8501-07/22/24i
131 US Bank-Standard Parts	10-5321-0	Motor capacitor for maintenance on HVAC at LLPS	11.97	Higares4509-07/22/24d

**STOCKTON EAST WATER DISTRICT  
INVOICES FOR BOARD PACKAGE  
AUGUST 13, 2024**

Vendor name	Account #	Description	Amount	Invoice No.
		<b>MUNICIPAL &amp; INDUSTRIAL FUND 94</b>		
132 US Bank R. L. Righetti Enterprises	10-5321-0	Belt, hoses, crank for repairs on Cummins emergency generator	348.17	Higares4509-07/22/24f
133 US Bank-Kents Oil	10-5324-0	Asphalt oil for road maintenance at Treatment Plant	80.81	Mendez5476-07/22/24a
134 US Bank-Amazon	10-5321-0	Security supplies	64.62	Ram8035-07/22/24p
135 US Bank-ULINE	10-5341-0	Hard hat & safety vest	89.57	Ram8035-07/22/24u
136 US Bank-Hardin Animal Hospital	10-5321-0	Security maintenance	127.00	Wunderl3017-07/22/24
137 US Bureau of Reclamation-DOI	10-5211-0	CVP NM Water FY 2023-M&I	525,648.46	Sept. 2024
138 Valley Landscaping & Maintenance Inc	10-5324-0	Inspect irrigation controller & sprinkler system at TP 07/19/24	2,500.00	87993
139 Valley Landscaping & Maintenance Inc	10-5325-0	WTP landscaping services for July 2024	2,550.00	87916
140 Valley Springs Feed & Pet Supply	10-5321-0	WTP security supplies ordered on 07/25/24	45.03	0158
141 Wille Electric Supply Co, Inc.	10-5321-0	Materials & supplies for P-27 VFD repairs & modifications	6,059.05	07269/7665/7273/7302
142 Wille Electric Supply Co, Inc.	10-5344-0	Insulated spade & fork terminals, level, zipper bag, electrical reference guides	488.65	S2208353.001/8942.001
143 Wille Electric Supply Co, Inc.	10-5321-0	Electrical enclosure for electrical upgrades along New Water	23.46	S2200792.001
		<b>MUNICIPAL &amp; INDUSTRIAL FUND 94 TOTAL</b>	<b>\$1,228,101.44</b>	

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STOCKTON EAST WATER DISTRICT  
PAYROLL EXPENSES AUGUST 13, 2024

Vendor name	Description	Amount
	<b>ADMIN FUND 70</b>	
1 SEWD Fund 01-General Fund	Payroll Date - 07/05/24	38,072.14
	Payroll Date - 07/19/24	37,874.47
	<b>ADMIN FUND 70 PAYROLL TOTAL</b>	<b>\$ 75,946.61</b>
	<b>WATER SUPPLY FUND 71</b>	
	Payroll Date - 07/05/24	36,564.30
	Payroll Date - 07/19/24	38,766.43
	<b>WATER SUPPLY FUND 71 PAYROLL TOTAL</b>	<b>\$ 75,330.73</b>
	<b>MUNICIPAL &amp; INDUSTRIAL FUND 94</b>	
3 SEWD Fund 01-General Fund	Payroll Date - 07/05/24	131,059.85
	Payroll Date - 07/19/24	135,885.22
	<b>MUNICIPAL &amp; INDUSTRIAL FUND 94 PAYROLL TOTAL</b>	<b>\$ 266,945.07</b>
	<b>TOTAL FOR RBM 08/13/24</b>	<b>\$ 418,222.41</b>

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STOCKTON EAST WATER DISTRICT  
INVOICES AND PAYROLL FOR BOARD PACKAGE  
AUGUST 13, 2024

Fund Number	Fund Summary	AP Amount	Payroll Amount
Fund 68	Groundwater Prod. Fund	3,559.01	
Fund 70	Administration Fund	90,890.54	75,946.61
Fund 71	Water Supply Fund	129,327.73	75,330.73
Fund 89	Fish Screen Improvement Fund	12,286.29	
Fund 91	Vehicle Fund	5,138.40	
Fund 94	Municipal & Industrial Fund	1,228,101.44	266,945.07
	<b>TOTAL FUND SUMMARY</b>	<b>\$1,469,303.41</b>	<b>\$418,222.41</b>

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Short Names/Acronym List

ACH	Aluminum Chlorohydrate
ACWA	Association of California Water Agencies
Admin	Administration
Ads	Advertisement
AF	Acre Feet
AG	Agriculture
AR	Accounts Receivable
AWP	Alternative Work Program
CEQA	California Environmental Quality Act
Chgs	Charges
CM	Construction Management
COP	Certificate of Participation
CSDA	California Special District Authority
CSJWCD	Central San Joaquin Water Conservation District
CVPWA	Central Valley Project Water Association
CWS	California Water Services Company
DB	Distribution Box
DBCP	Dibromochloropropane
DDTS	Direct Distance Telephone Service
DL	Direct Line
Educ	Education
FCC	Federal Communications Commission
FOIA	Freedom of Information Act
GM	General Manager
HCP	Habitat Conservation Plan
HP	Hewlett Packard
HSPS	High Service Pump Station
HVAC	Heating, Ventilating Airconditioning
LD	Long Distance
LFC	Lower Farmington Canal
LLPS	Low Lift Pump Station
LT2	Long Term 2 -Enhanced Surface Water Treatment Rule
M&O	Maintenance & Operations
MCC	Master Control Center
Misc.	Miscellaneous
mtg	Meeting
NH-	New Hogan
NM	New Melones
NH3-N	Ammonia
NMCF	New Melones Conveyance Facility
NWRP	New Water Reservoir Project
OBA	Oxygen Breathing Apparatus
OCR	Old Calaveras River
PACL	Poly Aluminum Chloride
PM	Preventive Maintenance
Prof	Professional
PSM	Process Safety Management
PVC	Polyvinyl Chloride
RMP	Risk Management Plan
SCADA	Supervisory Control And Data Acquisition
SCBA	Self Contained Breathing Apparatus
SEWD	Stockton East Water District
SWRCB	State Water Resources Control Board
St	Street
T5	Water Treatment Operator Certificate Grade 5
Tel	Telephone
THM	Trihalomethane
TO	Task Order
TP	Treatment Plant
UFC	Upper Farmington Canal
UPS	Uninterrupted Power Supply
VAMP	Vernalis Adaptive Management Plan
VFD	Variable Frequency Drive
WMP	Water Management Plan
WQMS	Water Quality Monitoring System
WS	Water Supply
WSEP	Water Supply Enhancement Project
WTP	Water Treatment Plant

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<b>Vehicles</b>	
Unit 36 2004 Chevy Pickup 2500hd Silverado	Pickup Truck
Unit 37-2004 Jeep Grand Cherokee Laredo	Automobile
Unit 47 2008 Chevy Pickup Silverado 2500 4x4	Pickup Truck
Unit 49 2009 Ford Edge AWD - Ltd	Automobile
Unit 55 2010 Ford F150 Pickup	Pickup Truck
Unit 57 2011 Ford F150 Pickup Long Bed	Pickup Truck
Unit 64 2015 Ford F250 S-Duty 4wd	Pickup Truck
Unit 65 2015 Ford F250 S-Duty 4wd	Pickup Truck
Unit 66 2015 Ford F250 S-Duty 4wd	Pickup Truck
Unit 67 2015 Ford F250 S-Duty 4wd	Pickup Truck
Unit 69 2015 Ford F150 4x4 Supercrew Pickup	Pickup Truck
Unit 74 2019 Ford F250 S-Duty 4wd	Pickup Truck
Unit 75 2019 Ford F250 S-Duty 4wd	Pickup Truck
Unit 76 2020 Ford Escape	Automobile
Unit 79 2022 Ford F150	Pickup Truck
Unit 80 2022 Ford F150	Pickup Truck
Unit 81 2022 Ram 1500	Pickup Truck
Unit 82 2023 Toyota Tacoma	Pickup Truck
Unit 83 2023 Toyota Tacoma	Pickup Truck
Unit 84 2023 Toyota Tacoma	Pickup Truck
Unit 85 2023 Toyota Tacoma	Pickup Truck
Unit 86 2023 Ford F-350	Pickup Truck
Unit 87 2023 Ford F-350	Pickup Truck
Unit 88 2024 Toyota Rav4	Automobile
Unit 89 2024 Toyota Rav4	Automobile
Unit 90 2024 Ford F-350	Pickup Truck
Unit 92 2024 Ford F-150	Pickup Truck
Unit 93 2024 Toyota Tacoma	Pickup Truck
Unit 94 2024 Toyota Tacoma	Pickup Truck
<b>Light equipment</b>	
Genie GS 1930 Scissor Lift	Lift
Unit 70 2016 Cat Forklift	Forklift
Unit 58 2014 Polaris Ranger EV- Maintenance	Utility Vehicle
Unit 59 2014 Polaris Ranger EV- Maintenance	Utility Vehicle
Unit 60 2014 Polaris Ranger EV- Operations	Utility Vehicle
Unit 61 2014 Polaris Ranger EV- Water Supply	Utility Vehicle
Unit 62 2014 Polaris Ranger EV- Water Supply	Utility Vehicle
Unit 63 2014 Polaris Ranger EV- Operations	Utility Vehicle
<b>Heavy equipment</b>	
Mower-walker	Tractor
Unit 16 2003 Ford 450 -- diesel	Heavy Truck
Unit 26 1990 International Dump Truck	Heavy Truck
Unit 29 Caterpillar Backhoe	Heavy Equip.
Unit 38 John Deere 6420 Tractor	Tractor
Unit 41 Case Tractor 570mxt Turbo	Tractor
Unit 45 2008 Ford F650 Flatbed Truck (diesel)	Heavy Truck
Unit 48 2008 Chevy Kodiak C4500 (diesel)	Heavy Truck
Unit 52 Kubota Tractor	Tractor
Unit 53 2011 Kenworth T300 Dump Truck (dsl)	Heavy Truck
Unit 56 2010 Ford F450 Truck	Heavy Truck
Unit 73 2018 Caterpillar Backhoe	Heavy Equip.
Unit 77 2022 CAT Long Reach Excavator	Heavy Equip.
Unit 95 Manitex 26 Ton Crane Truck	Heavy Truck
<b>Accessories</b>	
Dive Boat	Accessory
Boat Trailer	Trailer
Allis-Chalmers Disc	Accessory
Pak Flail Mower (orange)	Accessory
Alamo Articulate Mower Attachment	Accessory
Landpride RCR2596 Rotary Mower	Accessory
Unit 30 Big Tex Equipment Trailer /25,900gvw	Trailer
Unit 34 2000 Cartaway Tank Trailer /6000gvw	Trailer
Unit 43 2007 Wells Cargo Trailer Model TW122	Trailer
Unit 44 1996 Genie Lift TZ-34/20 Knuckleboom	Trailer
Unit 50 6 Diesel Pump	Trailer
Unit 51 12 Diesel Pump	Trailer
Unit 68 2015 Welding Trailer	Trailer
Unit 71 2017 Utility Landscaping Trailer	Trailer
Unit 72 2002 Utility Trailer	Trailer
Unit 91 2024 Kauffman Equipment Trailer	Trailer
Spray Rig 03	Trailer
Spray Rig 05	Trailer



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# Memorandum

**To:** Board of Directors  
**From:** Justin Hopkins – General Manager  
Patrick Cuthbert – FISHBIO  
**Date:** August 13, 2024  
**Re:** Consider Authorizing Participation in the SJMSHCP to Satisfy Mitigation Requirements for the Bellota Weir Modification Project

---

## **Background**

The Stockton East Water District's (District) environmental consultants for the Bellota Weir Modification Project, FISHBIO and Moore Biological Consultants, have been working to develop a mitigation strategy for the multiple elderberry bushes requiring removal as part of the Bellota Weir Modification Project; as requested by the US Fish and Wildlife Service (USFWS) during the Section 7 review of the project. While reviewing potential mitigation options, the permitting team has prioritized cost effectiveness and timeliness.

## **Summary**

Through research and consultation with District staff, the environmental consultants identified three options to satisfy the mitigation requirements conditioned by USFWS. First, the environmental consultants investigated the option to purchase credits with a local mitigation bank. Upon contacting a mitigation bank in French Camp, CA, the option was ruled out for several reasons:

1. When initially contacted, the mitigation bank noted that they were sold out of credits. They did note that they would have an additional phase of their project coming available, but the timeline was roughly 18 months from the contact date (April 25, 2024).
2. The cost of credits was significant. At the time of inquiry, an estimated 195.87 credits at a cost of \$5,500/credit were required to offset potential impacts, resulting in a total cost of \$1,077,285.
3. The purchase of the mitigation credits would likely not absolve the District of having to arrange for the transplantation of the elderberry shrubs, which would lead to additional costs.

The second alternative analyzed was the District performing self-mitigation using available land at the Bellota site. Development and maintenance of a District owned mitigation site would be very costly and time consuming due to ongoing preservation and reporting requirements. Additionally, the District lacks the specialized staff necessary to monitor and report on the mitigation site.

As a third alternative, FISHBIO and Moore Biological Consultants investigated the potential of utilizing the San Joaquin Council of Governments (SJCOG) San Joaquin

County Multi-Species Habitat Conservation and Open Space Plan (SJMSHCP; hereafter “Plan”). The Plan is administered by SJCOG and is an optional mitigation program to reduce project impacts to a less-than-significant level. The Plan involves payment of per-acre fees to preserve and manage conservation lands. The Plan authorizes take of 97 covered species, including the valley elderberry longhorn beetle, and requires compliance with Incidental Take Minimization Measures (ITMMs) that are issued on a project-by-project basis.

The Bellota Weir Modification Project was presented to the SJCOG Habitat Technical Advisory Committee (HTAC) on June 12, 2024, and the associated site visit and survey was performed on June 27, 2024. During this survey, two additional elderberry shrubs were identified within the project area. The associated ITMMs, incorporating reviews and edits by Moore Biological Consultants, were finalized on July 23, 2024. The benefits of utilizing the SJMSHCP are:

1. Substantial cost savings, as compared to the purchase of mitigation credits via a bank, with the fees due to SJCOG totaling \$146,809.70.
2. Alignment of proposed ITMMs with mitigation measures established in the California Department of Fish and Wildlife Lake and Streambed Alteration Agreement issued for the Bellota Modification Project, meaning little additional mitigation would be required.
3. A more expeditious timeline for implementation of the ITMMs, compared to awaiting availability of new mitigation credits at the accepted mitigation bank. Once executed, the processing of the ITMMs and issuance of coverage can be obtained within 90 days.

FISHBIO and Moore Biological Consultants jointly recommend that the District’s Board of Directors adopt the ITMMs and utilize them to complete the USFWS Section 7 Consultation, thereby resolving the obstacles to obtain the 404 Clean Water Certification from the US Army Corps of Engineers for the Bellota Modification Project.

### **Financial Impact**

The total estimated cost to purchase environmental mitigation credits is \$146,809.70, which is within the District’s Fiscal Year 2024-2025 approved budget of \$2.3M for Bellota Weir Modification Project expenses.

### **Recommendation**

Staff respectfully recommends the Board of Directors authorize the General Manager to approve participation in the SJMSHCP for the Bellota Weir Modification Project in the amount of \$146,809.70, plus a 20% contingency of \$29,361.94, for a total not to exceed amount of \$176,171.64, and make all other necessary approvals.

# Memorandum

**To:** Board of Directors  
**From:** Justin Hopkins – General Manager  
**Date:** August 13, 2024  
**Re:** Consider Approval of Water Transfer Agreement with WID

---

## **Background**

In February 2023, the Stockton East Water District (District) and North San Joaquin Water Conservation District (NSJ) entered in a Water Exchange Agreement to provide available NSJ surface water supplies to Elkhorn Golf Club (Elkhorn). District staff contacted Elkhorn prior to the 2024 irrigation season and confirmed their desire to continue to use surface water, however NSJ was not interested in renewing the Water Exchange Agreement. Since the District is unable to directly deliver water to Elkhorn, staff were required to identify a new surface water supply source.

## **Summary**

Through several discussions and correspondences with Woodbridge Irrigation District (WID), District staff and legal counsel collaboratively developed a Water Transfer Agreement between the District and WID. WID would deliver up to 360 acre-feet of surface water annually into Pixley Slough for Elkhorn's use, when supplies are available, under the proposed Water Transfer Agreement.

## **Recommendation**

Staff respectfully recommends the Board of Directors authorize the General Manager to execute the Woodbridge Irrigation District Water Transfer Agreement and make all other necessary approvals.

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**AGREEMENT FOR THE TRANSFER OF WATER BY AND BETWEEN  
WOODBRIDGE IRRIGATION DISTRICT AND  
STOCKTON EAST WATER DISTRICT**

This AGREEMENT FOR THE TRANSFER OF WATER (“**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 (“**Effective Date**”), by and between the WOODBRIDGE IRRIGATION DISTRICT (“**WID**”), and the STOCKTON EAST WATER DISTRICT (“**Stockton East**”). WID and Stockton East are each individually referred to as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

*WHEREAS*, Stockton East supplies irrigation, municipal and industrial (M&I) and domestic water to portions of eastern San Joaquin County and the greater City of Stockton metropolitan area from a combination of surface and groundwater sources; and

*WHEREAS*, Stockton East has a contract with the Department of the Interior’s Bureau of Reclamation (“**Reclamation**”) to be supplied with water from the Calaveras River utilizing the Calaveras River distributaries and other facilities owned by Stockton East; and

*WHEREAS*, Stockton East has requested a temporary surface water supply from WID to be served to Stockton East customer Friends of Elkhorn, LLC, which owns a diversion on Pixley Slough that can provide water to lands that Stockton East cannot supply with facilities conveying Reclamation supplies; and

*WHEREAS*, Friends of Elkhorn, LLC has groundwater wells it may use to irrigate its property; and

*WHEREAS*, WID is operating under and by virtue of Division 11 of the California Water Code; and

*WHEREAS*, WID is the owner of certain senior water rights to the waters of the Mokelumne River, including pre-1914 appropriative water rights; and

*WHEREAS*, WID uses Pixley Slough to convey Mokelumne River water to San Joaquin County, Oak Grove Park; and

*WHEREAS*, WID wants to ensure that Mokelumne River water it has released to Pixley Slough for delivery to San Joaquin County Oak Grove Park is not instead diverted from Pixley Slough by Friends of Elkhorn, LLC; and

*WHEREAS*, due to ongoing conservation practices and improvements in facilities by WID, the water to be sold to Stockton East Purchaser by this Agreement, (“**Transfer Water**”) is available in relatively wet years and surplus to the current needs of the landowners and water users of WID in accordance with California Water Code section 22259; and

*WHEREAS*, the quantity and quality of groundwater within the Eastern San Joaquin Groundwater Sub basin is under threat, and the sale of water to Stockton East under this Agreement will allow Friends of Elkhorn, LLC to avoid pumping groundwater in years when Transfer Water is made available in Pixley Slough; and

*WHEREAS*, by this Agreement, the parties intend to facilitate a sale of conserved water by WID to Stockton East,

**NOW, THEREFORE**, WID and Stockton East, on the terms and conditions herein set forth, agree as follows:

### **AGREEMENT**

1. **TERM:** This Agreement shall become effective upon the Effective Date and shall terminate on September 30, 2028. The parties may renew this Agreement upon mutually agreeable terms.

2. **WATER AVAILABLE FOR PURCHASE:** WID shall make pre-1914 water under Statement 015557 (“**Transfer Water**”) available to Stockton East in the amounts set forth in this Section, subject to the terms and conditions of this Agreement. Transfer Water will be used within the boundaries of Stockton East.

A. Transfer Water will be available for purchase in those years when 60,000 acre-feet of Regulated Base Supply (RBS) is due to WID under its agreement with East Bay Municipal Utility District. In years Transfer Water is available, WID will provide up to 360 acre-feet of supply at a maximum rate of 300 gallons per minute.

B. WID shall provide a preliminary determination to Stockton East by March 15 of Transfer Water availability and final determination of Transfer Water availability by July 1, annually.

C. “**Year**” shall run concurrently with the water year defined as October 1 through September 30 of the following calendar year.

3. **DELIVERY:**

A. Delivery Point. The Transfer Water will be made available by WID, and measured by Stockton East at the Friends of Elkhorn, LLC diversion (the “**Delivery Point**”) in accordance with the schedule agreed to by the Parties pursuant to Section 10. Transfer Water made available at the Delivery Point shall be considered “**Delivered**”. Transfer Water will be diverted by Friends of Elkhorn, LLC at the Friends of Elkhorn, LLC diversion pump located on Pixley Slough approximately 0.4 river miles upstream of Davis Road.

B. Delivery Rate. WID shall provide the Transfer Water to be made available as set forth in Section 2 at a rate not more than 300 gallons per minute.

C. Delivery Measurement. The Transfer Water will be made available and measured at the Delivery Point with a totalizing, volumetric flow meter to an accuracy accepted by the water industry. Measurements shall be provided monthly to WID in the Years in which water is made available. WID shall be provided access to the meter to verify readings and accuracy.

D. Limits on Diversions. In the Years when Transfer Water is available, Stockton East will notify Friends of Elkhorn, LLC that it has no legal right to divert water from Pixley Slough in excess of the quantity of Transfer Water. In the Years when Transfer Water is not available, Stockton East will notify Friends of Elkhorn, LLC that it has no legal right to divert any water from Pixley Slough.

E. No Conveyance of Rights. This Agreement is for a transfer of water under specified conditions including a limited term, and it does not and the parties affirmatively disclaim that this Agreement is a conveyance or sale of any right, title or interest in WID's water rights to Stockton East, any user of the water involved, or any of their successors or assigns.

4. **COMPLIANCE WITH APPLICABLE LAWS AND APPROVALS:**

A. It is a condition to the obligations of the Parties under this Agreement that the Parties comply with the requirements of the California Environmental Quality Act ("CEQA"). WID shall be the lead agency for CEQA purposes.

B. No approval of the transfer is required by the State Board as the State Board does not have jurisdiction over transfers of water subject to pre-1914 water rights.

5. **PURCHASE PRICE:** Stockton East shall pay Forty-Seven Dollars and Fifty Cents (\$47.50) for each acre foot of Transfer Water Delivered at the Delivery Point. The price shall increase by \$1 per acre foot each Year, with the first such increase for the Year beginning October 1, 2024.

6. **PAYMENT:** WID shall invoice Stockton East every month in the Years that Transfer Water is made available. The invoices will be based on the amount diverted and measured at the Delivery Point.

7. **INTEREST:** Stockton East shall pay WID interest at an interest rate of 1.50 percent per month on any charges that remain unpaid under this Agreement thirty (30) days beyond the due date.

8. **WATER QUALITY AND QUANTITY:** WID makes no warranty or representations as to the quality of the Transfer Water Delivered, and the quantity WID will deliver is subject to the conditions in Sections 9 and 11.

9. **LIMITING CONDITIONS:**



A. WID Limiting Conditions. WID's obligation to make Transfer Water available pursuant to this Agreement will, at all times, be subject and subordinate to the following conditions (collectively, "**WID's Limiting Conditions**"):

- i. The terms and conditions of WID's water rights as they currently exist;
- ii. The rights of landowners within WID's boundary to the beneficial use of water as related to the Delivery of Transfer Water;
- iii. Applicable federal and state laws now in existence, and as modified from time to time, may affect WID's rights or obligations.

Nothing in this Agreement shall be construed so as to contradict, conflict with, or otherwise be contrary to the provisions of any of WID's Limiting Conditions; and in the event of any conflict between any of WID's Limiting Conditions and this Agreement, WID's Limiting Condition(s) shall control, and WID shall not be deemed to be in violation of this Agreement by any modifications of the Agreement, including reduced supply for Stockton East, that may be required to ensure compliance with any of WID's Limiting Conditions.

B. Stockton East Limiting Conditions. Stockton East's obligation to purchase Transfer Water as provided in this Agreement will, at all times, be subject and subordinate to the following conditions (collectively "**Stockton East's Limiting Conditions**"):

- i. Stockton East shall be obligated to pay only for Transfer Water that has been scheduled in accordance with this Agreement and Delivered by WID; and
- ii. Applicable federal and state laws now in existence, and as modified from time to time, which may affect Stockton East's rights or obligations.

Nothing in this Agreement shall be construed so as to contradict, conflict with, or otherwise be contrary to the provisions of any of Stockton East's Limiting Conditions; and in the event of any conflict between any of Stockton East's Limiting Conditions and this Agreement, Stockton East's Limiting Condition(s) shall control, and Stockton East shall not be deemed to be in violation of this Agreement by any modifications of the Agreement that may be required to ensure compliance with any of Stockton East's Limiting Conditions.

10. **DELIVERY SCHEDULE:** Consistent with this Agreement, WID will make Transfer Water available at the Delivery Point on a schedule developed by the Parties ("**Delivery Schedule**"). The Delivery Schedule will change every year. When the Delivery Schedule is finalized will depend upon WID's determinations of available Transfer Water to Stockton East, as outlined in Section 2. Stockton East will notify WID of its water delivery daily demands and scheduling of releases into Pixley Slough.

11. **WATER SUPPLY REDUCTIONS:** WID may reduce Delivery of Transfer Water for any of the following reasons: WID's Limiting Conditions; failure of facilities; intervening acts, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of water otherwise available to WID; diversions outside the control of WID; and any action, legislation, ruling or determination adverse to WID affecting this Agreement and beyond the reasonable control of WID. WID shall make good faith efforts to avoid such reductions, but Stockton East agrees that WID shall not be liable for reductions of supply in this Agreement due to the above-stated causes.

12. **APPROVALS AND COSTS:** The cost to prepare and submit the appropriate CEQA documentation shall be paid by WID and supported by Stockton East staff at no cost to WID.

13. **LITIGATION COSTS:** WID agrees to defend its own interests in any litigation or regulatory action challenging the validity of WID's water rights. The Parties shall each defend their own interests in litigation or regulatory action involving this Agreement, including environmental compliance and purchase of the Transfer Water. All Parties agree to reasonably cooperate with each other in the defense of any litigation that may be filed as a result of this Agreement. This Section shall survive termination or expiration of this Agreement.

14. **COOPERATION:** To the extent reasonably required, each Party to this Agreement shall, in good faith, assist the other Party in obtaining all such necessary approvals and preparation of required environmental documents. The Parties agree to cooperate and assist each other in good faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of the Agreement.

15. **WAIVER OF RIGHTS:** Any waiver, at any time, by any Party of its rights with respect to a breach, default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default, or matter with respect to this Agreement.

16. **ASSIGNMENT:** No Party may assign its rights or obligations under this Agreement, in whole or in part, without prior written consent of all Parties hereto.

17. **NOTICES:** Any notice or communication required or permitted hereunder shall be in writing and shall be delivered personally, delivered by a nationally recognized overnight courier service or sent by certified or registered mail, postage prepaid, or sent by electronic transmission subject to confirmation of such transmission. Any such notice or communication shall be deemed to have been given (i) when delivered, if personally delivered, (ii) one (1) Business Day after it is deposited with a nationally recognized overnight courier service, if sent by a nationally recognized overnight courier service, (iii) the day of sending, if sent by email prior to 5:00 p.m. (PT) on any Business Day or the next succeeding Business Day if sent by email after 5:00 p.m. (PT) on any Business Day or on any day other than a Business Day or (iv) five (5) Business Days after the date of mailing, if mailed by certified or registered mail, postage prepaid, in each case, to the following address or email address, or to such other address or addresses as such party may subsequently designate to the other Party by notice given hereunder:

WOODBIDGE IRRIGATION DISTRICT

Keith Bussman, General Manager  
Woodbridge Irrigation District  
Post Office Box 580  
Woodbridge, CA 95258  
18750 North Lower Sacramento Road  
Woodbridge, CA 95258  
Email: [bussmanwid@gmail.com](mailto:bussmanwid@gmail.com)  
Phone: (209) 625-8438

STOCKTON EAST WATER DISTRICT

Justin Hopkins, General Manager  
Stockton East Water District  
Post Office Box 5157  
Stockton, CA 95205  
6767 East Main Street,  
Stockton, CA 95215  
Email: [jhopkins@sewd.net](mailto:jhopkins@sewd.net)  
Phone: (209) 948-0333

As used herein, “**Business Day**” means any day other than a Saturday, Sunday, or any other day on which banking institutions in the State of California are authorized by law or executive action to close.

18. **MISCELLANEOUS:**

A. Approvals. Where the terms of this Agreement provide for action to be based upon a judgment, approval, review, or determination of any Party, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

B. Dispute Resolution. In the event of any dispute regarding interpretation or implementation of this Agreement, authorized representatives from the Parties shall endeavor to resolve the dispute by meeting within thirty (30) days after the request of a Party to resolve the dispute. If the dispute remains unresolved after such meeting, the Parties shall use the services of a mutually acceptable neutral consultant in an effort to resolve the dispute. Parties shall share the fees and expenses of said consultant equally. If a neutral consultant cannot be agreed upon, or if the consultant’s recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation and any Party may, at its option, pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

C. Other Agreements. Nothing contained within this Agreement restricts the ability of WID to provide water services and sales to its existing landowners and prior outside lands.

D. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties, and supersedes any oral agreement, statement or promise relating to the subject matter of the Agreement. No other agreement, statement, or promise made to any party, or to any employee, officer, or agent of a Party to this Agreement, or to any other person, that is not in writing and signed by all Parties shall be binding upon them. Any amendment, including oral modifications, must be reduced to writing and signed by all Parties to be effective.

E. Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the Parties of at least one full set of counterparts. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

F. Authority. The signatories represent that they have appropriate authorization to enter into this Agreement on behalf of the Party for whom they sign.

G. General Interpretation. The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any Party.

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

**PARTIES:**

STOCKTON EAST WATER DISTRICT

WOODBIDGE IRRIGATION DISTRICT

By: **DRAFT**  
Justin Hopkins, General Manager

By: **DRAFT**  
Keith Bussman, General Manager

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# Memorandum

**To:** Board of Directors  
**From:** Justin Hopkins – General Manager  
**Date:** August 13, 2024  
**Re:** Consider Approval of Water Service Contract with Friends of Elkhorn, LLC

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## **Background**

In June 2023, the Stockton East Water District (District) and Friends of Elkhorn, LLC (Elkhorn) entered into a one-year Water Service Contract to provide available NSJ surface water supplies to Elkhorn. District staff contacted Elkhorn prior to the 2024 irrigation season and confirmed their desire to continue to use surface water, however a new Water Service Contract is required.

## **Summary**

Through several discussions and correspondences with Elkhorn, District staff and legal counsel collaboratively developed a multi-year Water Service Contract between the District and Elkhorn. Elkhorn would receive up to 360 acre-feet of surface water annually out of Pixley Slough from Woodbridge Irrigation District (WID), when supplies are available, under the accompanying WID Water Transfer Agreement.

## **Recommendation**

Staff respectfully recommends the Board of Directors authorize the General Manager to execute the Friends of Elkhorn, LLC, Water Service Contract and make all other necessary approvals.

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**AGREEMENT FOR NON-POTABLE WATER SERVICE**

This AGREEMENT FOR NON-POTABLE WATER SERVICE (“**Agreement**”) is made this \_\_\_ day of \_\_\_\_\_, 2024 by and between the FRIENDS OF ELKHORN, LLC, a California limited liability company (“**Landowner**”) and STOCKTON EAST WATER DISTRICT, organized and existing under and by virtue of Enabling Legislation of the California State Legislature (“**District**”). Landowner and District are each individually referred to in this Agreement as a “**Party**” and collectively as the “**Parties.**”

**1. RECITALS.**

A. Landowner is the owner of that real property located near 1050 ELKHORN ROAD, STOCKTON, and identified as San Joaquin County Assessor Parcel Nos. 070-090-300 and -310 (“**Property**”), which Property is within the boundaries of District. The Property is operated by Landowner as a golf course, requiring non-potable water for irrigation.

B. Landowner has requested non-potable municipal water service (“**Water**”) from District for irrigation of the Property.

C. District does not have physical improvements in place that can provide Water to the Property, but has entered into a water transfer agreement with Woodbridge Irrigation District (“**WID**”) to supply the Water to the Property dated \_\_\_\_\_, 2024 (“**Transfer Agreement**”).

D. The Parties intend by this Agreement to confirm the terms and conditions under which Water may be provided to the Property.

NOW THEREFORE, the Parties agree as follows:

**2. WATER.**

A. Water Service. Provided Water is available and provided WID continues to agree to deliver Water to the Property, District will provide Water to the Property, upon the same terms and conditions that it provides irrigation water to properties within the District boundaries.

B. Water Availability. The Transfer Agreement makes Water available for use by Landowner only under certain circumstances. Landowner has received a copy of the Transfer Agreement, and is familiar with its terms. District shall provide Landowner with advance notice when Water is available for diversion under the Transfer Agreement and this Agreement. Landowner acknowledges that it has no legal right to divert water from Pixley Slough during the irrigation season without authorization by District. The Parties acknowledge that while the Property uses Water for municipal purposes as defined by the District’s governing legislation, even in years when Water is available in Pixley Slough for diversion by Landowner, the Water available under this Agreement is available only during the irrigation season as determined annually by WID and the District (ordinarily March through October of each year).

C. Water Measurement. The District will install, maintain, and replace, as necessary, a flow meter with a volumetric totalizer for measurement of all water diverted by Landowner.



Landowner will assist to facilitate installation of the flow meter to the meter manufacturer's specifications.

3. **RULES AND REGULATIONS.** Water delivery from DISTRICT is subject to District rules and regulations, as adopted and modified from time to time, including all applicable charges.

4. **WATER USE EFFICIENCY.** Landowner shall demonstrate its overall irrigation efficiency on the Property and be able to achieve efficiency goals established by the District from time to time. The ability to achieve these efficiency goals will be evaluated by the District. The burden shall be on the Applicant(s) to prove that irrigation efficiency goals are maintained.

5. **TERM.** This Agreement shall become Effective on the Effective Date and shall terminate on September 30, 2028. The Parties may renew this Agreement upon mutually agreeable terms provided WID is willing to extend the Transfer Agreement.

6. **RATES.** Landowner agrees to pay to District the rate established annually by the Board of Directors of the District after public hearing.

7. **INSTALLATION AND OPERATION OF CONVEYANCE FACILITIES.** Landowner agrees to install, operate and maintain the facilities necessary to transport Water from Pixley Slough to the Property at Landowner's sole cost and expense.

8. **ACCESS EASEMENT.** Landowner agrees to provide direct ingress and egress, Monday through Friday, during normal business hours, to the District's agents, including WID, vehicles and equipment during the term of this Agreement. The District will coordinate access with the Landowner at least 24 hours in advance.

9. **QUALITY OR FITNESS OF WATER.** District makes no warranty or representations as to the quality or fitness for use of the Water sold and provided to Landowner pursuant to this Agreement. Landowner shall be responsible for all necessary measures at its own expense for any testing, treatment, and other steps required for Water sold pursuant to this Agreement.

10. **AVAILABILITY & REDUCTION IN WATER.** District makes no representation, guarantee or warranty to Landowner regarding the availability of Water or the quantity, quality, or delivery times of said Water. Water delivered to Landowner under this Agreement may be reduced by District due to it becoming unavailable as determined by the District, drought, failure of facilities, intervening acts, failure of North San Joaquin to wheel the Water, or any other actions beyond the control of District.

11. **INDEMNIFICATION.** This Agreement is made on the express condition that District shall be free from all liability and claims for damages by reason of any injury to or death of any person, or persons, or damage to property of any kind whatsoever, arising out of or in any manner connected with this Agreement, District's provision of Water pursuant to this Agreement, and/or with Landowner's acts or omissions related to this Agreement. In this regard, Landowner hereby agrees to and shall indemnify and hold harmless District from and against any and all claims, damages, loss, liability and expenses, including court costs and attorneys' fees, arising out of or on account of injury to or death of any person or loss of or damage to any property as hereinabove mentioned.

12. **NOTICE.** Any notice or communication required or permitted hereunder shall be in writing and shall be delivered personally, delivered by nationally recognized overnight courier service or sent by certified or registered mail, postage prepaid, or, if an email address is provided, sent by electronic transmission, subject to confirmation of such electronic transmission. Any such notice or communication shall be deemed to have been given (i) when delivered, if personally delivered, (ii) one (1) Business Day after it is deposited with a nationally recognized overnight courier service, if sent by nationally recognized overnight courier service, (iii) the day of sending, if sent by email prior to 5:00 p.m. (PT) on any Business Day or the next succeeding Business Day if sent by email after 5:00 p.m. (PT) on any Business Day or on any day other than a Business Day or (iv) five (5) Business Days after the date of mailing, if mailed by certified or registered mail, postage prepaid, in each case, to the following address or email address, or to such other address or addresses as such Party may subsequently designate to the other Party by notice given hereunder:

To Landowner: Friends of Elkhorn, LLC  
5637 N. Pershing Ave, Suite A-1  
Stockton, CA 95207  
Phone: 209-473-0394  
Email: patcurry2539@sbcglobal.net

To District : Stockton East Water District  
Attention: General Manager  
Post Office Box 5157  
6767 East Main Street  
Stockton, CA 95215  
Phone: 209-948-0333  
Email: jhopkins@sewd.net

“**Business Day**” means any day other than a Saturday, Sunday or any other day on which banking institutions in the State of California are authorized by law or executive action to close.

### 13. MISCELLANEOUS.

A. Amendments. This Agreement supersedes all prior negotiations of the Parties and contains the entire Agreement of the Parties on the matters covered hereby. This Agreement may not be modified orally, or in any other manner, other than by an Agreement in writing signed by all of the Parties.

B. Permits and Government Approvals. Landowner shall obtain all necessary permits and governmental approvals required for their performance under this Agreement.

C. Attorney’s Fees. In the event of any controversy, claim, or dispute, relating to this Agreement or the breach thereof, the prevailing Party shall be entitled to recover from the losing Party reasonable expenses, attorney's fees and costs.

D. Counterparts and Electronic Signatures. This Agreement may be executed in two or more counterparts and when so executed shall have the same force and affect as though

all signatures appeared in one document. An electronic signature of this Agreement shall be considered an original signature of this Agreement for all purposes.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as a sealed instrument as of the Effective Date.

**LANDOWNER**

FRIENDS OF ELKHORN, LLC, a  
California limited liability company

By **DRAFT**  
\_\_\_\_\_  
\_\_\_\_\_, President

**DISTRICT**

STOCKTON EAST WATER DISTRICT

By **DRAFT**  
\_\_\_\_\_  
Richard Atkins, President

ATTEST:

By **DRAFT**  
\_\_\_\_\_  
Justin M. Hopkins, General Manager

# Memorandum

**To:** Board of Directors  
**From:** Justin Hopkins – General Manager  
Juan Vega – Assistant General Manager  
David Higaes – Maintenance Manager  
**Date:** August 13, 2024  
**Re:** Consider Proposed Budget Amendment and Approval of Variable Frequency Drive Purchase for P-26

---

## **BACKGROUND**

In November 2022, P-26 suffered a catastrophic failure due to a short in the motor windings, which led to electric motor failure. The motor underwent rebuilding and the VFD was tested and reinstated into service. However, in May 2024, P-26 experienced another failure, this time within the VFD itself. The VFD experienced a failure due to a short circuit that in turn resulted in an arc flash within the electrical cabinet. The VFD was damaged beyond repair.

## **SUMMARY**

The District has standardized on ABB VFDs for their quality and availability. Staff requested a quote to replace the P-26 VFD with the result listed in **Table 1**. The quote is for a VFD in a fused cabinet with cooling intake fans and line and load reactors. The VFD will enhance the operational reliability and longevity of the equipment.

Quote S2205097-0001 Item	Price	Lead Time
ABB ACQ580-C03-361A-4	\$81,792	Not specified

**Table 1. Quote**

Installing a replacement VFD on P-26 will provide the High Service Pumping Station with the necessary standby 300 HP pump capacity, ensuring redundancy for this critical process. Operational flexibility and redundancy are essential to maintaining uninterrupted operations during equipment failure.

## **FINANCIAL IMPACT**

The provided quote of \$81,792 for an ABB VFD, plus a 10% contingency for all other project-related costs, brings the total not-to-exceed amount to \$89,971. The failure of the P-26 VFD was an unexpected event and as such, purchase of a replacement VFD was not part of the Board of Directors' (Board) approved Fiscal Year (FY) 2024-2025 Budget. Therefore, a budget amendment such as the one presented in **Table 2** would be necessary to proceed with the purchase.

Item	Fund	Account	Purpose	Beginning Balance	Transfer	Ending Balance
Transfer To	94	10-5323-0	Maint. & Repair TP - P-26 VFD Purchase	\$ -	\$ 90,000	\$ 90,000
Transfer From	94	10-5323-0	Maint. & Repair TP - Solids Handling/Dewatering Lagoons	\$ 1,890,000	\$ (90,000)	\$ 1,800,000

**Table 2. Proposed Budget Amendment**

The *Solids Handling/Dewatering Lagoons* project is planned as a multi-year project and, upon recent analysis, not all the FY 2024-2025 funds are expected to be expended. Thus, there should be sufficient funds within that project’s budget after the budget amendment.

**RECOMMENDATION**

Staff recommends that the Board authorize the proposed budget amendment and the General Manager to approve the purchase of one ABB VFD for the quoted amount of \$81,792, plus 10% for all other project-related costs and contingencies of \$8,179, for a total not to exceed of \$89,971 and make all other necessary approvals.

**SOLAR POWER & SERVICES AGREEMENT**

This Solar Power & Services Agreement (this “Agreement”) is made and entered into as of [ ], 2024 (the “Effective Date”), between [White Pine Entity], a Delaware limited liability company (“Seller”), and Stockton East Water District, a California public agency, (“Purchaser”; and, together with Seller, each, a “Party” and together, the “Parties”).

**WITNESSETH:**

WHEREAS, Purchaser desires that Seller install and operate a ground-mounted solar photovoltaic system at the Premises (owned by the Purchaser and as hereafter defined) for the purpose of providing Solar Services (as hereafter defined), and Seller is willing to do the same.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1:** Special Terms and Conditions
- Exhibit 2:** General Terms and Conditions
- Exhibit 3:** Performance Guaranty

IN WITNESS WHEREOF and in confirmation of their consent to this Agreement and intending to be legally bound hereby, Seller and Purchaser have executed this Agreement as of the Effective Date.

**PURCHASER**

**SELLER**

**Stockton East Water District**

**White Pine Development, LLC**

**DRAFT**

**DRAFT**

By: \_\_\_\_\_  
Name: [ ]  
Title: [ ]

By: \_\_\_\_\_  
Name: Evan Riley  
Title: Authorized Person

**EXHIBIT 1**  
**Special Terms and Conditions**

The following Schedules are incorporated by reference and made part of this Agreement:

Schedule 1-1	Description of the Premises, System and Scope of Work
Schedule 1-2	kWh Rate
Schedule 1-3	Early Termination Fee
Schedule 1-4	Estimated Annual Production
Schedule 1-5	Notice Information
Schedule 1-6	Grant of Licenses

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**Schedule 1-1: Description of the Premises, System and Scope of Work**

The “Premises” is the land as approximately depicted below, including the solar array in blue, an integrated battery energy storage system (“BESS”) in green, and distribution lines (“12 kV Distribution Lines”) in turquoise, below. The layout is subject to change based on final Purchaser reviews, constraints and approvals. The assessor’s parcel numbers for the Premises are included in the table below.



<b>A. Premises</b>	
<b>APNs:</b>	A parcel of real property located in San Joaquin County, California, as approximately depicted above, and with the following APNs: 10117034, 10117035 & 10105006
<b>B. Solar System Description</b>	
<b>Interconnection Type:</b>	PG&E Rule 21
<b>Solar System Size (kW dc):</b>	2,700 kW
<b>Solar System Size (kW ac):</b>	2,250 kW
<b>BESS System Size (kW/kWh):</b>	1,940 kW/7,820 kWh
<b>C. Scope of Work</b>	
<b>Overview:</b>	Design and supply (i) grid-interconnected, ground-mounted solar electric (PV) system with an integrated BESS and (ii) 12 kV Distribution Lines.

The Parties acknowledge and agree that, upon written notice to the Purchaser, Seller may update Part B of the table set forth on this Schedule 1-1 after the Effective Date to reflect the then current System design. Additionally, as it pertains to the System design, and for the avoidance of doubt, the Seller will work with Purchaser to incorporate all access and infrastructure constraints present onsite and outlined in Exhibit 4.



**Schedule 1-2 – kWh Rate**

1. The “Term” of this Agreement is 30 years, beginning on the Effective Date, unless earlier terminated in accordance with its terms.
2. The “kWh Rate” with respect to the System under this Agreement shall be in accordance with this Schedule 1-2, subject to any adjustments described herein:

<b>Contract Year</b>	<b>kWh Rate* (\$/kWh)</b>
1	\$0.174
2	\$0.177
3	\$0.181
4	\$0.184
5	\$0.188
6	\$0.191
7	\$0.195
8	\$0.199
9	\$0.202
10	\$0.206
11	\$0.210
12	\$0.214
13	\$0.218
14	\$0.222
15	\$0.226
16	\$0.231
17	\$0.235
18	\$0.240
19	\$0.244
20	\$0.249
21	\$0.254
22	\$0.258
23	\$0.263
24	\$0.268
25	\$0.273
26	\$0.279
27	\$0.284
28	\$0.289
29	\$0.295
30	\$0.300
<b>Note:</b> *The kWh Rate for each Contract Year after Contract Year 1 is calculated based on the Contract Year 1 kWh Rate multiplied by a 1.9% escalation factor for each subsequent year.	

3. kWh Rate Adjustments:

- (a) *Interconnection Adjustment:* Upon Seller’s receipt of the final system impact study results from the Utility, Seller will notify Purchaser of the Final I/C Cost, and the kWh Rate will be adjusted as set forth below (the “Interconnection Adjustment”):

- (i) If the Final I/C Cost is \$150,000, the kWh Rate shall be as set forth in the above table.

- (ii) If the Final I/C Cost is greater than \$150,000, the kWh Rate shall be adjusted upwards by \$0.004/kWh for every \$100,000 that the Final I/C Cost is in excess of \$150,000 by prorating the kWh Rate listed in the table above.
- (iii) If the Final I/C Cost is less than \$150,000, the kWh Rate shall be adjusted downwards by \$0.004/kWh for every \$100,000 that the Final I/C Cost is less than \$150,000 by prorating the kWh Rate listed in the table above.
- (iv) If the Final I/C Cost is greater than \$900,000 (the “Adjustment Maximum”), the Seller shall have the right to (x) continue development of the System with the adjustment of the kWh Rate limited to \$0.020/kWh or (y) terminate this Agreement as set forth in Section 2.2(b) of Exhibit 2 (in which case Purchaser will have no further liability or obligation to Seller arising out of or pursuant to this PPA except as expressly stated herein).

For purposes of clarity, the kWh Rate will be adjusted starting with the first dollar in excess of or less than \$150,000, as applicable, for any Interconnection Adjustment listed above.

**Schedule 1-3 – Early Termination Fee**

1. The Early Termination Fee with respect to the System under this Agreement shall be calculated in accordance with the following:

<b>Early Termination Occurs in Contract Year:</b>	<b>Early Termination Fee (\$/Wdc)</b>
1	\$5.36
2	\$5.10
3	\$4.86
4	\$4.63
5	\$4.41
6	\$3.19
7	\$2.97
8	\$2.77
9	\$2.58
10	\$2.41
11	\$2.25
12	\$2.09
13	\$1.95
14	\$1.82
15	\$1.70
16	\$1.58
17	\$1.48
18	\$1.38
19	\$1.28
20	\$1.20
21	\$1.12
22	\$1.04
23	\$0.97
24	\$0.90
25	\$0.84
26	\$0.79
27	\$0.73
28	\$0.68
29	\$0.64
30	\$0.59

2. Following the Expiration Date, the Early Termination Fee shall be deemed to be \$0. If the project is terminated before Contract Year 1, the Contract Year 1 termination values applies.

**Schedule 1-4 – Estimated Annual Production**

1. The Estimated Annual Production with respect the System under this Agreement is as follows:

<b>Contract Year</b>	<b>Estimated Annual Production (kWh)</b>
1	4,141,329
2	4,120,622
3	4,100,019
4	4,079,519
5	4,059,122
6	4,038,826
7	4,018,632
8	3,998,539
9	3,978,546
10	3,958,653
11	3,938,860
12	3,919,166
13	3,899,570
14	3,880,072
15	3,860,672
16	3,841,368
17	3,822,161
18	3,803,051
19	3,784,035
20	3,765,115
21	3,746,290
22	3,727,558
23	3,708,920
24	3,690,376
25	3,671,924
26	3,653,564
27	3,635,296
28	3,617,120
29	3,599,034
30	3,581,039

2. The Estimated Annual Production values set forth in the table above are estimates (and not guarantees) of approximately how many kWhs are expected to be generated annually by the System based on the size of the System indicated in Schedule 1-1. Seller shall deliver to Purchaser updated Estimated Annual Production values for this Schedule 1-4 immediately following the Commercial Operation Date that reflect the actual System size.

**Schedule 1-5 – Notice Information**

**Purchaser:**

Stockton East Water District

Attn: General Manager  
Post Office Box 5157  
6767 E Main St,  
Stockton, CA 95205  
Email: [sewd@sewd.net](mailto:sewd@sewd.net)  
Phone: 209.948.0333

**Seller:**

White Pine Development, LLC

Attn: Evan Riley  
1808 Wedemeyer Street, Suite 221  
San Francisco, CA 94129  
Email: [evan@whitepinerenew.com](mailto:evan@whitepinerenew.com)  
Phone: 559-691-7017

**Financing Party:**

[To be provided by Seller when known]

## Schedule 1-6 – Licenses

1. Purchaser hereby grants to Seller (i) an exclusive license to the portion of the Premises that includes the solar array and battery energy storage system, which will be fenced in, (ii) a non-exclusive license to the portion of the Premises that includes the 12 kV Distribution Lines, and (iii) a non-exclusive license to the access and utility routes (collectively, the “Licenses”). The Licenses will be coterminous with the Term and contain all the rights necessary for Seller to use and occupy portions of the Premises for the installation, operation, maintenance and removal of the System pursuant to the terms of this Agreement, including ingress and egress rights to the Premises for Seller and its employees, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the System with the electrical wiring of the Premises. Purchaser further grants to Seller the right of Seller to sub-license the Licenses to its affiliates, Financing Parties, employees, contractors and subcontractors, as required, to fulfill the purposes of this Agreement. If Seller’s financing structure requires that Purchaser enter into a license agreement directly with Financing Party, Purchaser shall enter into such an agreement which shall be in a form set forth by Seller and acceptable to Purchaser, with such acceptance not to be unreasonably withheld, and which shall contain substantially the same rights as set forth in this Section 1 of Schedule 1-6 of Exhibit 1.
2. Regardless of whether Purchaser owns the Premises or leases the Premises from a landlord, Purchaser hereby covenants that:
  - a. Seller shall have access to the Premises and System during the Term of this Agreement and for so long as reasonably needed after termination to remove the System pursuant to the applicable provisions herein, and
  - b. Neither Purchaser nor Purchaser’s landlord, if applicable, will interfere or handle any Seller equipment or the System without written authorization from Seller.
3. At request of Seller, Purchaser shall execute a Memorandum of License, which shall be in form and substance set forth on Exhibit A to Schedule 1-6 of this Exhibit 1, or other form agreed to by the Parties. Seller may, at its sole cost and expense, record such Memorandum of License with the appropriate land registry or recorder’s office. At the same time the Memorandum of License is executed by Purchaser, Seller shall execute a Quitclaim Deed releasing the Memorandum of License, to be held by Purchaser with authorization to record such Quitclaim Deed upon termination of the License agreement in accordance with its terms.<sup>1</sup>
4. (a) Notwithstanding anything to the contrary in the Agreement, Purchaser shall operate and maintain the Premises to comply with the requirements of all applicable Environmental Laws that limit or govern the conditions or uses of the Premises, without impairing or interfering with Seller’s construction, operation and ownership of the System or occupancy of the Premises.  
  
(b) Notwithstanding anything to the contrary in the Agreement, Seller shall operate and maintain the Premises to comply with the requirements of all applicable Environmental Laws that limit or govern the conditions or uses of the Premises and without impairing or interfering with Purchaser’s ability to operate and maintain any of its water supply infrastructure underneath the Premises. In the event that any such maintenance work by Purchaser results in a disruption or an outage in System production and/or requires the partial or complete temporary disassembly or movement of the System, then Section 4.3 of Exhibit 2 shall govern.<sup>2</sup>
5. (a) Purchaser shall indemnify, hold harmless and defend Seller from and against all claims, payments, costs, and expenses, and conduct all actions required under Environmental Laws, in connection with any Hazardous Materials released, spilled, or deposited at, on above or below the Premises by the Purchaser.

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<sup>1</sup> NTD: The Parties to discuss the intent of holding a Quitclaim Deed in escrow.

(b) Seller shall indemnify, hold harmless and defend Purchaser from and against all claims, payments, costs and expenses, and conduct all actions required under Environmental Laws, in connection with any Hazardous Materials released, spilled, or deposited at, on or above or below the Premises by the Seller.

6. The Parties agree and acknowledge that (a) Seller shall at all times retain title to and be the legal and beneficial owner of the System and (b) the System shall at all times be personal property of Seller, as defined under Article 9 of the Uniform Commercial Code, and shall not be deemed attached to, a fixture of or to, or an accession or part of, the Premises.

**Exhibit A to Schedule 1-6– Form of Memorandum of Licenses**

**THIS MEMORANDUM OF LICENSES** (“Memorandum”) is made and entered into on [\_\_\_\_], 202[ ] by and between [ ] (“Licensee”), and Stockton East Water District, a California public agency (“Licensor”), for the Term (as hereinafter defined), to license certain real property which is described particularly on Exhibit 1, attached hereto (the “Premises”).

**WHEREAS**, Licensor and Licensee have entered into a Solar Power & Services Agreement dated as of [ ] for the purchase and sale of electrical energy (the “Solar Agreement”), and such Solar Agreement includes the grant of licenses to Licensee for the Premises, pursuant to the terms of the Solar Agreement. The terms of the license include, but are not limited to, all the rights necessary for Licensee to use and occupy portions of the Premises for the installation, operation, maintenance and removal of the System (as defined in the Solar Agreement) pursuant to the terms of the Solar Agreement; and

**WHEREAS**, Licensor and Licensee (collectively, “Parties”) desire to enter into this Memorandum to provide constructive notice of the license pursuant to the terms of the Solar Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, the Parties hereby agree as follows:

1. The Licensor and Licensee have agreed to the terms of certain licenses in the Premises.
2. The Term of the license commenced on the date that the provider mobilized to start construction on the Premises and will terminate at the end of the term of the Solar Agreement between Licensor and Licensee or other term mutually agreed upon in writing, whichever is later.
3. All of the license provisions set forth in the Solar Agreement are incorporated into this Memorandum by reference.
4. Licensor and Licensee agree and acknowledge that (a) Licensee shall at all times retain title to and be the legal and beneficial owner of the System and (b) the System shall at all times be personal property of Licensee, as defined under Article 9 of the Uniform Commercial Code, and shall not be deemed attached to, a fixture of or to, or an accession or part of, the Premises.
5. The Solar Agreement and this Memorandum shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and assigns, and shall be construed as covenants running with the land.



**Exhibit 1 to Memorandum of Licenses**

**Description of the Premises**

[Insert description of the Premises]

*[Signature Page Follows]*

**[FOR FORM PURPOSES ONLY – DO NOT EXECUTE]**

IN WITNESS WHEREOF, this Memorandum has been executed and delivered under seal on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Seller:

\_\_\_\_\_  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Purchaser:

\_\_\_\_\_  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[FOR FORM PURPOSES ONLY – DO NOT EXECUTE]**

STATE OF \_\_\_\_\_ )  
  SS.  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

**EXHIBIT 2**  
**General Terms and Conditions**

**1. DEFINITIONS.**

1.1 Definitions. In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

“12 kV Distribution Line” or “12 kV Distribution Lines” has the meaning set forth in Schedule 1-1 of Exhibit 1 (Special Terms and Conditions).

“Adjustment Maximum” has the meaning set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions).

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

“Agreement” has the meaning set forth in the Preamble.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Assignment” has the meaning set forth in Section 13.1.

“Bankruptcy Event” means with respect to a Party, that either:

- (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or
- (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of 60 days.

“Battery Energy Storage System” or “BESS” has the meaning set forth in Schedule 1-1 of Exhibit 1.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in California are required or authorized by Applicable Law to be closed for business.

“Claims” has the meaning set forth in Section 16.2.

“Commercial Operation Date” has the meaning set forth in Section 3.3(b).

“Consumer Price Index” means the Consumer Price Index for the Western Region, “Size Class B/C” as published by the Bureau of Labor Statistics of the United States Department of Labor (1982-1984=100). If the Consumer Price Index is hereafter converted to a different standard reference base or otherwise revised, the determination of the Consumer Price Index adjustment shall be made with the use of such conversion factor, formula or table for converting the Consumer Price Index, as may be published by the Bureau of Labor Statistics, or, if the bureau shall no longer publish the same, then with the use of such conversion factor, formula or table as may be published by an agency of the United States, or failing such publication, by a nationally recognized publisher of similar statistical information.

“Contract Year” means a 12-month period commencing on the Commercial Operation Date and each succeeding 12-month period; if the Commercial Operation Date does not occur on the first day of a month, the first Contract Year shall be deemed to include that portion of the month in which the Commercial Operation Date occurred plus the succeeding 12-month period such that every subsequent Contract Year shall commence on the first day of a month and end on the last day of the month immediately preceding such anniversary.

“Covenants, Conditions and Restrictions” or “CCR” means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

“Disruption Period” has the meaning set forth in Section 4.3.

“Early Termination Date” means any date on which this Agreement terminates other than by reason of expiration of the then applicable Term. Note no Early Termination is available in years 1 through 6 of the contract term.

“Early Termination Fee” means the fee payable by Purchaser to Seller under the circumstances described in Section 2.2(a) , or Section 11.2, and in the amount described on Schedule 1-3 of Exhibit 1 (Special Terms and Conditions).

“Effective Date” has the meaning set forth in the preamble to this Agreement.

“Electrical Energy” means the total quantity of electricity generated by the System that is recorded by Seller’s metering equipment pursuant to Section 4.2.

“Environmental Attributes” means the characteristics of electric power generation at the System that have intrinsic values, separate and apart from the Electrical Energy, including, without limitation, carbon trading credits, renewable energy credits or certificates, capacity attributes, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, and Green-e® products.

“Environmental Law” means any and all federal, state, local, provincial and foreign, civil and criminal laws, statutes, ordinances, orders, common law, codes, rules, regulations, judgments, decrees, injunctions relating to the protection of health and the environment, worker health and safety, and/or governing the handling, use, generation, treatment, storage, transportation, disposal, manufacture, distribution, formulation, packaging, labeling, or release to the environment of or exposure to Hazardous Materials, including any such requirements implemented through Governmental Approvals.

“Estimated Annual Production” has the meaning set forth in Section 5.2.

“Estimated Remaining Payments” means as of any date, the estimated remaining Solar Services Payments to be made through the end of the then-applicable Term, as reasonably determined by Seller.

“Expiration Date” means the date on which this Agreement terminates by reason of expiration of the Term.

“Final I/C Cost” means the final interconnection costs for the System set forth in the final system impact study provided by the Utility to Seller.

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Seller (or an Affiliate of Seller) leases the System, (ii) any Person (or its agent) who has made or will make a loan to or otherwise provides financing to Seller (or an Affiliate of Seller) with respect to the System, or (iii) any Person acquiring a direct or indirect interest in Seller or in Seller’s interest in this Agreement or the System as a tax credit investor.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“General Conditions” means this Exhibit 2 (General Terms and Conditions) of this Agreement, including all Schedules hereto.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority, including any such approval, consent, order or binding agreements with or involving a governmental authority under Environmental Laws.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Hazardous Materials” means any hazardous or toxic material, substance or waste, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, mold, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are regulated under or for which liability can be imposed under any Environmental Law.

“Indemnified Parties” has the meaning set forth in Section 16.1.

“Indemnifying Parties” has the meaning set forth in Section 16.1.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Premises.

“Invoice Date” has the meaning set forth in Section 6.2.

“kWh Rate” means the price per kWh as set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions), subject to any Interconnection Adjustment defined therein.

“Liabilities” has the meaning set forth in Section 16.1.

“Licenses” has the meaning set forth in Schedule 1-6 of Exhibit 1.

“Liens” has the meaning set forth in Section 7.1(e).

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Party” or “Parties” has the meaning set forth in the preamble to this Agreement.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Pre-Existing Environmental Conditions” means the presence or release of, or exposure to, any Hazardous Materials at, to, on, in, under or from the Premises that first existed, arose or occurred on or prior to Seller’s commencement of construction at the Premises.

“Premises” has the meaning set forth in Schedule 1-1 of Exhibit 1.

“Purchaser” has the meaning set forth in the preamble to this Agreement.

“Purchaser Default” has the meaning set forth in Section 11.2(a).

“Seller” has the meaning set forth in Exhibit 1 (Special Terms and Conditions).

“Seller Default” has the meaning set forth in Section 11.1(a).

“Security Interest” has the meaning set forth in Section 8.2.

“Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies, and any other solar or renewable energy subsidies and incentives. This does not include any public grant funding that is applied for, and directly received by, either the Purchaser or the Licensor.

“Solar Services” has the meaning set forth in Section 5.1.

“Solar Services Payment” has the meaning set forth in Section 6.1.

“Special Conditions” means Exhibit 1 of this Agreement, including all Schedules thereto.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent or (b) the maximum rate allowed by Applicable Law.

“System” means the integrated assembly of photovoltaic panels, solar power plant battery energy storage system, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, distribution lines, ballasts, disconnects, combiners, switches, wiring devices and wiring.

“System Operations” means Seller’s operation, maintenance and repair of the System performed in accordance with the requirements herein.

“Term” has the meaning set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions).

“Termination Date” means the date on which this Agreement ceases to be effective, including on an Early Termination Date or the Expiration Date.

“Utility” means Pacific Gas & Electric Company.

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting this Agreement. Words in this Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

## 2. **TERM AND TERMINATION.**

2.1 Term. The Term of this Agreement shall commence on the Effective Date. The electricity supply period under this Agreement commences on the Commercial Operation Date and continues for the duration of the Term, unless terminated earlier pursuant to the provisions of this Agreement.

### 2.2 Early Termination.

(a) Purchaser may terminate this Agreement for any reason (i) after the sixth anniversary of the Commercial Operation Date and (ii) upon 60 days’ prior written notice. In such event, Purchaser shall pay, as liquidated damages, the Early Termination Fee set forth on Schedule 1-3 of Exhibit 1 (Special Terms and Conditions), and Seller shall cause the System to be disconnected and removed from the Premises. Upon Purchaser’s payment to Seller of the Early Termination Fee, this Agreement shall terminate automatically, and all rights, interests, duties, and obligations shall cease except as otherwise expressly set forth (including, but not limited to, Section 18.6). Nothing in this Section 2.2(a) limits or modifies Purchaser’s rights to early termination under Section 2.2(b) or Section 11 herein.

(b) Purchaser may terminate this Agreement during the Term if the Interconnection Adjustment exceeds the Adjustment Maximum. Upon Purchaser's written notice to Seller of its intent to terminate this Agreement, this Agreement shall terminate automatically, Seller shall cause the System to be disconnected and removed from the Premises, and all rights, interests, duties, and obligations shall cease except as otherwise expressly set forth in this Agreement. Purchaser shall not be obligated to pay Seller the Early Termination Fee if this Agreement is terminated pursuant to this Section 2.2(b).

### 2.3 Conditions of this Agreement Prior to Commercial Operation Date.

(a) In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Seller may (in its sole discretion) provide written notice to Purchaser that it is terminating this Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

- (i) Seller determines, in its sole discretion, that the Premises, as is, is insufficient to accommodate the System or unsuitable for construction or operation of the System.
- (ii) Premises conditions (including environmental conditions) or construction requirements exist that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the Electrical Energy from the System as designed.
- (iii) There is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the System.
- (iv) Seller is unable to obtain financing for the System on terms and conditions satisfactory to it.
- (v) There has been a material adverse change in the rights of Seller to construct the System on the Premises.
- (vi) Seller has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to energy generated by the System or that interconnection costs or an interconnection schedule are not obtained from the Utility on terms and conditions satisfactory to it.
- (vii) Purchaser has determined that there are easements, CCRs or other land use restrictions, liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System.
- (viii) There has been a material adverse change in Purchaser's creditworthiness.
- (ix) A material adverse change in Seller's ability to obtain and maintain all necessary consents, approvals, or permits required to for Seller to perform its obligations under this Agreement.

(b) If any of the conditions set forth in Section 2.3(a) are partly or wholly unsatisfied, and Seller wishes to revise the information in Exhibit 1 (Special Terms and Conditions), then Seller may propose modifications to Exhibit 1 (Special Terms and Conditions) for acceptance by Purchaser. If Purchaser does not accept such modified Special Conditions in writing, Seller may terminate this Agreement as provided in Section 2.3(a). If Purchaser accepts such revised Special Conditions in writing, such revised Special Conditions shall be deemed an amendment of this Agreement, and this Agreement shall remain in force and effect upon execution of the modification by both Parties.

(c) If this Agreement is terminated prior to the Commercial Operation Date, pursuant to Section 2.3(a), but after the System, or any part of it (including System mounting pads or other support structures), has been built on the Premises, such termination shall be subject to the removal procedures set forth in Section 11.3.

## 3. **CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.**

3.1 Installation Work. Seller will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1-1 of Exhibit 1 (Special Terms and Conditions) and Applicable Law. At its



request, Purchaser shall have the right to review all construction plans and designs, including engineering evaluations of the impact of the System. Seller shall perform the Installation Work at the Premises between the hours of 7:00 a.m. and 7:00 p.m. in a manner that minimizes inconvenience to and interference with the use of the Premises to the extent commercially practical.

3.2 Approvals; Permits. Seller shall obtain and maintain all necessary consents, approvals and permits required for Seller to perform its obligations under this Agreement, including but not limited to those related to the Utility, any Governmental Approval, and any consents, waivers, approvals or releases required pursuant to any applicable contract or CCR; provided, that, Purchaser shall reasonably assist Seller in obtaining any such consents, approvals and permits at no cost to the Purchaser. Seller shall pay for all costs and expenses needed to obtain such approvals and permits.

3.3 System Acceptance Testing.

(a) Seller shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States.

(b) If the results of such testing indicate that the System is capable of generating and delivering Electrical Energy for a sum total of four continuous hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Utility, then Seller shall send a written notice to Purchaser to that effect, and the date of such notice shall be the "Commercial Operation Date."

**4. SYSTEM OPERATIONS.**

4.1 Seller as Owner and Operator. The System will be owned by Seller or Seller's Financing Party and will be operated and maintained and, as necessary, repaired by Seller at its sole cost and expense; provided, that any repair or maintenance costs incurred by Seller as a result of Purchaser's negligence or breach of its obligations hereunder, shall be reimbursed by Purchaser.

4.2 Metering. Seller shall install and maintain a revenue grade kilowatt-hour (kWh) meter for the measurement of Electrical Energy provided by the System.

4.3 System Disruptions. In the event that (x) Purchaser repairs the Premises for any reason not directly related to damage caused by the System, and such repair requires the partial or complete temporary disassembly or movement of the System, or (y) any act or omission of Purchaser or Purchaser's employees, Affiliates, agents or subcontractors (collectively, a "Purchaser Act") results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Seller for all work required by Seller to disassemble or move the System and (ii) continue to make all payments for the Solar Services during such period of System disruption (the "Disruption Period"), and (iii) reimburse Seller for any other lost revenue during the Disruption Period, including any lost revenue associated with any reduced Solar Incentives during the Disruption Period. For the purpose of calculating Solar Services Payments and lost revenue for such Disruption Period, Solar Services for each month of said months shall be deemed to have been produced at the average rate over the same month for which data exists (or, if the disruption occurs within the first 12 months of operation, the average over such period of operation). Upon Purchaser's written request, Seller will provide reasonable documentation supporting its lost revenue calculations.

**5. DELIVERY OF SOLAR SERVICES.**

5.1 Electric Power Purchase Requirement. Purchaser agrees to accept and purchase 100% of the Electrical Energy during the Term<sup>3</sup> (the "Solar Services"). While the Electrical Energy is calculated and billed on a per kWh basis as set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions), it represents a package of services and benefits, including any reduction in Purchaser's peak demand from the Utility.

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<sup>3</sup> NTD: The Parties to discuss removal of the "up to Purchaser's maximum demand" language.

5.2 Estimated Annual Production. The annual estimate of Electrical Energy with respect to the System for any given year as determined pursuant to this Section shall be the “Estimated Annual Production.” The Estimated Annual Production for each year of the Term is set forth in Schedule 1-4 of Exhibit 1 (Special Terms and Conditions).

5.3 Environmental Attributes and Solar Incentives. Purchaser’s purchase of Solar Services does not include Solar Incentives nor the Environmental Attributes, which shall be owned by Seller or Seller’s Financing Party for the duration of the System’s operating life. Purchaser disclaims any right to Solar Incentives or Environmental Attributes based upon the installation of the System at the Premises, and shall, at the request, and sole expense, of Seller, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.3.

5.4 Title to System. Throughout the duration of this Agreement, Seller or Seller’s Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Seller or Seller’s Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property.

## 6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Seller a monthly payment (the “Solar Services Payment”) for the Electrical Energy generated by the System during each calendar month of the Term equal to the product of (x) the Electrical Energy multiplied by (y) the kWh Rate.

6.2 Invoice. Seller shall invoice Purchaser on or about the first day of each month (each, an “Invoice Date”), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Solar Services Payment in respect of the immediately preceding month. The invoice shall include a detailed summary of the calculations set forth in Section 6.1. The last invoice shall include production only through the Termination Date of this Agreement.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date.

6.4 Late Payment. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under this Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

## 7. GENERAL COVENANTS.

7.1 Seller’s Covenants. Seller covenants and agrees to the following:

(a) Notice of Damage or Emergency. Seller shall (x) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, and (y) immediately notify Purchaser if it becomes aware of any event or circumstance relating to the System or the Premises that poses a significant risk to human health, the environment, the System or the Premises.

(b) System Condition. Seller shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Services at a commercially reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work, Solar Services, and System Operations, Seller shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Seller and to enable Seller to perform such obligations.

(d) Health and Safety. Seller shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Solar Services, and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property.

(e) Liens. Other than a Financing Party's security interest in or ownership of the System, Seller shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Seller's performance or non-performance of its obligations hereunder. If Seller breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien; provided, however, that Seller shall have the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such Lien from title to the Premises or that assure that any adverse judgment with respect to such Lien will be paid without affecting title to the Premises. Seller's obligations regarding Liens in this Section shall apply during the Term and the Move-Out Period.

(f) Prohibited Activities. As to the Premises, Seller shall (i) not commit any waste or legal nuisance thereon, (ii) maintain the Premises in a reasonably neat and orderly condition and not accumulate or dispose of trash or debris thereon, (iii) not bring firearms, lead ammunition, dogs or other animals thereon, (iv) repair any damage to the Premises caused by Seller, its agents, employees, contractors or any other party under the direct control of Seller, and (v) not destroy, deface, change or remove any survey or boundary line marker or monument or any artifact, rock, plant or animal remains, or permit the same to be done by others who are under the control of, or subject to direction by Licensee.<sup>4</sup>

(g) Utilities; Maintenance. During the Term, (a) Seller shall contract in its name for and pay for all public utility services used on the Premises by Seller, and (b) Seller shall be responsible for the repair and maintenance of the entire Premises, as well as the cost of installation of any utility improvements necessary for Seller's use or operation. Purchaser shall have no responsibility for any supply interruptions in power service during the Term, except to the extent caused by Purchaser's negligence or willful misconduct.

## 7.2 Purchaser's Covenants. Purchaser covenants and agrees as follows:

(a) Notice of Damage or Emergency. Purchaser shall (x) promptly notify Seller if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (y) immediately notify Seller it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

(b) Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein; provided however, Purchaser is authorized to encumber the Premises either directly or indirectly, including the placement of any liens on the Premises, provided such encumbrances do not impair or impede Seller's purpose under this Agreement or with respect to the System. If Purchaser breaches its obligations under this Section, it shall immediately notify Seller in writing, shall promptly cause such Lien to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien

(c) Consents and Approvals. Purchaser shall comply with Applicable Law in connection with providing Seller with reasonable access to the Premises and in performing any of its obligations under this Agreement. Purchaser shall ensure that any authorizations required to enter into this Agreement and make the Premises available to Seller for the purposes of this Agreement, are obtained or provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, Governmental Approvals, rebates or other financial incentives, Purchaser shall reasonably

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<sup>4</sup> NTD: The Parties to discuss the intent of 7.1(f)(iv) & (v).

cooperate with Seller to obtain or issue such approvals, Governmental Approvals, rebates or other financial incentives in the name of Seller. Purchaser shall provide to Seller copies of all Governmental Approvals and CCRs applicable to the Premises, other than those obtained by Seller or to which Seller is a party. Seller is responsible for all costs and expenses for such compliance.

(d) Use of System. Purchaser will not use Electrical Energy generated by the System for the purposes of heating a swimming pool within the meaning of Section 48 of the Internal Revenue Code.

(e) Financial Statements. Purchaser shall provide to Seller its publicly available and audited financial statements as requested by Seller within 15 Business Days of Seller's request.

(f) Executed Interconnection Agreement. Purchaser shall execute an interconnection agreement and all other documentation required by the Utility to the reasonable satisfaction of the Seller. For the avoidance of doubt, Seller shall be responsible for paying all costs associated with interconnection with the Utility.

(g) Title; Authority. Purchaser shall maintain title to or other valid property interest in the Premises such that the Purchaser has the full right, power, and authority to grant the licenses in Schedule 1-6 for the duration of the Term.

## 8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties of Both Parties. In addition to any other representations and warranties contained in this Agreement, each Party represents and warrants to the other as of the Effective Date that:

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;
- (e) to its actual knowledge, there is no litigation, action, proceeding or investigation pending or threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and
- (f) its execution and performance of this Agreement and the transactions contemplated hereby do not and will not constitute a breach of any term or provision of, or a default under, (i) any contract, agreement or Governmental Approval to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations of Purchaser. Purchaser represents and warrants to Seller as of the Effective Date that:

- (a) Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party;
- (b) the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises;
- (c) no existing lease, mortgage, security interest or other interest in or lien upon the Premises exists that could attach to the System as an interest adverse to Seller's Financing Party's Security Interest therein;

(d) there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement;

(e) Purchaser has no actual knowledge that the Premises is not in compliance with Environmental Laws;

(f) Purchaser has title to or other valid property interest in the Premises such that Purchaser has the full right, power and authority to grant the licenses in Schedule 1-6 and such grant of the license does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises; and

(g) all information provided by Purchaser to Seller, as it pertains to (i) the Premises and (ii) Purchaser's estimated electricity requirements, is accurate in all material respects.

8.3 NO OTHER WARRANTIES. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT.

## 9. TAXES AND GOVERNMENTAL FEES.

9.1 Purchaser's Taxes. Purchaser is responsible for the payment of, or reimbursement of Seller, for all taxes, fees, or charges assessed on the generation, sale, delivery or consumption of Electrical Energy produced by the System. Seller shall notify Purchaser in writing with a detailed statement of such amounts, which shall be invoiced by Seller and payable by Purchaser.

9.2 Seller's Taxes. Seller is responsible for: (1) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of Electrical Energy under this Agreement; and (2) personal property or other taxes imposed on the System.

9.3 The parties acknowledge that Purchaser is a public agency, and does not pay property taxes on the Premises. During the Term, if Seller's use of the Premises results in a change in the taxable status of the Premises, Seller shall pay such tax liability allocable to the Premises, together with any related interest or penalties, other than interest and/or penalties arising from Purchaser's failure to timely provide Seller with a copy of such tax bill.

## 10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums), including, without limitation, the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of Seller or as a result of such party's failure to comply with a collective bargaining agreement); (v) action or inaction by a Governmental Authority, with jurisdiction thereof (unless Purchaser is a Governmental Authority and Purchaser is the Party whose performance is affected by such action or inaction). A Force Majeure Event shall not be based on the economic hardship of either Party.

10.2 Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force

Majeure Event; provided that the Party claiming relief under this Article 10 shall, as soon as practicable after becoming aware of the circumstances constituting Force Majeure, (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Purchaser shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Purchaser prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. Notwithstanding anything in this Agreement to the contrary, if a Force Majeure Event shall have occurred that has affected Seller's performance of its obligations hereunder and that has continued for a continuous period of 180 days, then Purchaser shall be entitled to terminate this Agreement upon 90 days' prior written notice to Seller. If at the end of such 90 day period such Force Majeure Event shall still continue, this Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2(a) (Early Termination) shall be inapplicable.

## 11. **DEFAULT.**

### 11.1 Seller Defaults and Purchaser Remedies.

(a) Seller Defaults. The following events shall be defaults with respect to Seller (each, a "Seller Default"):

(i) A Bankruptcy Event shall have occurred with respect to Seller; and

(ii) Seller breaches any material representation, covenant or other term of this Agreement and (A) if such breach can be cured within 30 days after Purchaser's written notice of such breach and Seller fails to so cure, or (B) Seller fails to commence and pursue a cure within such 30 day period if a longer cure period is needed.

(b) Purchaser's Remedies. If a Seller Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, Purchaser may terminate this Agreement and exercise any other remedy it may have at law or equity or under this Agreement.

(c) No Early Termination Fee. Seller shall not be entitled to the Early Termination Fee pursuant to Section 2.2(a) if this Agreement is terminated due to Seller's Default.

### 11.2 Purchaser Defaults and Seller's Remedies.

(a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a "Purchaser Default"):

(i) A Bankruptcy Event shall have occurred with respect to Purchaser;

(ii) Purchaser breaches any material representation, covenant or other term of this Agreement if (A) such breach can be cured within 30 days after Seller's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such 30 day period if a longer cure period is needed; and

(iii) Purchaser fails to pay Seller any undisputed amount due to Seller under this Agreement within 30 days from receipt of notice from Seller of such past due amount.

(b) Seller's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, Seller may terminate this Agreement and upon such termination, (A) Seller shall be entitled to receive from Purchaser the Early Termination Fee pursuant to Section 2.2(a), and (B) Seller may exercise any other remedy it may have at law or equity or under this Agreement.

11.3 Removal of System. Within six (6) months after the termination or expiration of this Agreement (“Move-Out Period”), Seller shall completely remove the System and all of Seller’s property from the Premises and restore the Premises to its original condition, excluding any (i) normal wear and tear, and (ii) any other remediation work that Purchaser requests in writing that Seller has not completed, and vacate the Premises. Purchaser shall provide sufficient space for the reasonable temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal. The removal of The System and Seller’s property shall be completed in a manner that does not unreasonably and adversely affect the suitability of the Premises to be used for the same purposes existing as of the Effective Date, and Seller shall leave the Premises free of any condition created by Seller that present a current unreasonable risk of harm to Purchaser or member of the public. This Section 11.3 shall survive the termination of this Agreement.

11.4 Removal Bond. Within sixty (60) days after the date this Agreement shall have no more than five (5) years remaining in its Term, Seller shall procure a bond from a reputable surety, in an amount to be determined by an independent engineer selected by agreement of the parties reasonably experienced at calculating decommissioning costs for photovoltaic projects in the State of California, guaranteeing the performance of Seller’s obligations under Section 11.3.

## 12. LIMITATIONS OF LIABILITY.

12.1 Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Parties for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with this Agreement.

12.2 A Party’s maximum liability to the other Party under this Agreement, shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, provided, however, the limits of liability under this Section 12.2 shall not apply with respect to (i) indemnity obligations hereunder in respect of personal injury, intellectual property infringement or environmental claims and (ii) any obligation of Purchaser to pay Solar Service Payments, or the Early Termination Fee.

## 13. ASSIGNMENT.

13.1 Assignment by Seller. Seller shall not sell, transfer or assign (collectively, an “Assignment”) this Agreement or any interest therein, without Purchaser’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, that, Purchaser acknowledges that Seller may assign this Agreement to a Financing Party or an Affiliate in connection with development, construction and/or permanent financing facilities, including without limitation structured tax equity and/or securitization financing, upon written notice to the Purchaser. In the event that Seller identifies a secured Financing Party in Schedule 1-5 of Exhibit 1 (Special Terms and Conditions), or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Schedule 2-1 of this Exhibit 2 (General Terms and Conditions) and agrees to provide such estoppels and acknowledgments as Seller may reasonably request from time to time. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1.

13.2. Acknowledgment of Collateral Assignment. In the event that Seller identifies a secured Financing Party in Schedule 1-5 of Exhibit 1 (Special Terms and Conditions), or in a subsequent notice to Purchaser, then Purchaser hereby acknowledges:

(a) the collateral assignment by Seller to the Financing Party, of Seller’s right, title and interest in, to and under this Agreement, is consented to by Purchaser upon written notice to Purchaser of such collateral assignment.

(b) that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Seller’s interests in this Agreement.

(c) that it has been advised that Seller has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System.

13.3 Assignment by Purchaser. Purchaser shall not assign this Agreement or any interest therein, without Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Within 90 days of Purchaser providing the Seller with information on credit, interconnection transferability, and any other information reasonably requested by Seller, Seller will provide Purchaser a determination if it consents to such Assignment. Any Assignment by Purchaser without the prior written consent of Seller shall be void and not release Purchaser of its obligations hereunder.

#### 14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 1-5 of Exhibit 1 (Special Terms and Conditions), or at such other address as may be designated in writing to the other Party from time to time. In the event a Party (including a Financing Party) desires to change the notice address, the Party desiring such change shall provide written notice to all other Parties of such change.

14.2 Notice. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, by commercial overnight delivery service, or transmitted by email (with PDF notice attached) and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by email (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under this Agreement shall be e-mailed as a PDF to the e-mail address provided by Purchaser in Exhibit 1, Schedule 1-5, or other e-mail address as the Purchaser may request by delivering a notice of change of address to the Seller.

15. **PURCHASER'S RIGHT OF ENTRY**. Purchaser, and its authorized employees or agents, shall have the right, upon seventy-two (72) hours' notice to Seller, and only in the presence of a Seller representative, to enter upon the Premises or any part thereof for the purpose of inspecting the Premises, posting legally required notices thereon, or complying with any obligation or exercising any right under this Agreement. Notwithstanding the foregoing, Purchaser shall not have the right to touch or handle the System or any of its components.

#### 16. INDEMNITY.

16.1 General. Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "Indemnified Parties"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from (1) any Claim (as defined in Section 16.2 relating to the Indemnifying Party's breach of any representation or warranty set forth in Section 8 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 16.1 does not apply to Liabilities arising out of or relating to any form of Hazardous Materials or other environmental contamination, such matters being addressed exclusively by Section 16.3.

16.2 Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 16.2 unless it has obtained the prior written consent of the other Party, which consent shall not be



unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 16.2 for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

### 16.3 Environmental Indemnification.

(a) Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Materials to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.

(b) Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of (i) any Pre-Existing Environmental Conditions or (ii) any Hazardous Materials to the extent deposited, spilled or otherwise caused by Purchaser or any of its contractors, agents or employees.

## 17. INSURANCE.

17.1 Generally. Seller shall maintain the following insurance coverages in full force and effect throughout the Term and Move-Out Period either through insurance policies or acceptable self-insured retentions: (a) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law, (b) Commercial General Liability Insurance covering Purchaser and System operations, written on "occurrence" policy forms, including coverage for premises/operations, products/completed operations, broad form property damage, blanket contractual liability, and personal injury, with no exclusions for explosion, collapse and underground perils, or fire (including wild fire), with coverage limits of no less than \$1,000,000 for injuries or death to one or more persons or damage to property resulting from any one occurrence, a \$2,000,000 general aggregate, and a products and completed operations liability aggregate limit of not less than \$2,000,000. The commercial general liability policy shall also include a severability of interest clause with no exclusions or limitations on cross liability, (c) an umbrella policy providing excess limits over the primary policies described herein, in an amount not less than \$5,000,000 per occurrence and general aggregate (inclusive of the coverage requirements and limits above) covering Seller and System operations, with a term concurrent with that of the commercial general liability insurance and automobile liability insurance required herein, and (d) Automobile liability insurance covering Seller, including coverage for owned, leased, non-owned and hired automobiles for both bodily injury and property damage in accordance with statutory legal requirements, with combined single limits of no less than \$1,000,000 per accident with respect to bodily injury, property damage or death. To the extent Seller does not own any automobiles, contingent liability for hired, leased and non-owned automobiles may be obtained through endorsement to the general liability policy required above. Additionally, Seller shall carry adequate property loss insurance on the System which need not be covered by Purchaser's property coverage. The amount and terms of property insurance coverage will be determined at Seller's sole discretion. Purchaser shall maintain commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate. It is understood that all such insurance shall be independent and not tied to any indemnity provision. It is the intention of the Parties that the additional insured coverage to be provided hereunder shall provide primary and first dollar coverage. In addition, it is understood and agreed that Seller's obtaining or failure to obtain the required insurance shall in no way relieve Seller from its indemnity obligations hereunder. Further, Seller's indemnity obligations shall extend to the full amount of any damage, loss or liability described in the indemnity provisions of this Agreement, and the Seller's indemnity obligations shall not be limited to the amount of insurance obtained or required. Failure of Seller to obtain and maintain insurance provided herein shall be deemed a Seller Default pursuant to Section 11.1, and Purchaser shall be entitled to relief as set forth therein. Seller shall cause each contractor, subcontractor, material supplier, and/or its agents employed/engaged by Seller to purchase and maintain insurance of the type coverage and with limits specified above.

17.2 Certificates of Insurance. Each Party, upon request, shall furnish current certificates evidencing that the insurance required under Section 17.1 is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insured agrees to give the other Party 30 days' written notice before the insurance is cancelled or materially altered.

17.3 Additional Insureds. Each Party's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear.

17.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

17.5 Other Requirements. All liability policies required in this Section 17 that are maintained by Licensee or on behalf of Seller shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) shall operate in the same manner as if there were a separate policy covering each such insured and shall not contain an exclusion for cross liability. All insurance policies must be issued by insurance carriers that are currently rated by Best Rating Services as A-/VII or better and licensed to conduct business in California. All insurance maintained by Seller shall be primary. All insurance shall provide a thirty (30) calendar day notice of cancellation for non-renewal, ten (10) calendar days for nonpayment of premium. Seller shall deliver renewal certificates of insurance and, if requested by Purchaser, copies of renewal insurance policies, with evidence that the renewal premiums therefor have been fully paid, at least ten (10) calendar days prior to expiration of the then policy period. Upon Purchaser's request, Seller will promptly furnish Licensor with certificates of insurance evidencing the insurance required to be maintained under this Section 17.

17.6 Each Party each hereby waives any right of recovery against the other and the authorized representatives of the other for any loss or damage that is covered or required by this Agreement to be covered by any policy of insurance maintained with respect to the Premises or any operations therein, even though such loss or damage might have been occasioned by the negligence of such party. Each Party shall cause its insurers issuing insurance policies relating to this Agreement, the Premises or the System to provide that such insurers waive all right of recovery by way of subrogation against the other Party in connection with any claim, loss or damage covered by such policies.

## **18. MISCELLANEOUS.**

18.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto or incorporated by reference, constitute the entire agreement and understanding between Seller and Purchaser with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof which are of no further force or effect. The Exhibits and Schedules attached to this Agreement, including these General Conditions as incorporated by reference, are integral parts of this Agreement and are an express part of this Agreement. In the event of a conflict between the provisions of these General Conditions and any applicable Special Conditions, the provisions of Exhibit 1 (Special Terms and Conditions) shall prevail.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Purchaser.

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 EXCLUSIVE REMEDIES. TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

18.5 [Reserved]

18.6 Limited Effect of Waiver. The failure of Seller or Purchaser to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.7 Survival. The obligations under Sections 2.2 (Early Termination), Section 7.1(d) (Seller Covenant), Section 8.3 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), 11.3 (Removal of System), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 16 (Indemnity), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to any choice of law principles.

18.9 Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

18.10 Relation of the Parties. The relationship between Seller and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Seller and Purchaser, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18.11 Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective successors and permitted assigns.

18.12 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

18.13 Electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic “pdf” delivery of the signature page or DocuSign.

18.14 No Third-Party Beneficiaries. Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.

18.15 Liquidated Damages Not Penalty. Upon early termination, Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages. Purchaser further acknowledges that Seller’s actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser’s rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Seller’s actual damages.

*[Remainder of page intentionally left blank.]*

Schedule 2-1

**Certain Agreements for the Benefit of the Financing Parties**

Purchaser acknowledges that Seller will be receiving financing accommodations from one or more Financing Parties and that Seller may sell or assign the System or this Agreement and/or may secure Seller's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such Financing Party, Purchaser agrees as follows:

(a) Consent to Collateral Assignment. Purchaser consents to either the assignment, sale or conveyance to a Financing Party or the collateral assignment by Seller to a Financing Party, of Seller's right, title and interest in and to this Agreement.

(b) Notices of Default. Provided Purchaser has received written notice of the address of each Financing Party, Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Seller, a copy of each notice of default given by Purchaser under this Agreement, inclusive of a reasonable description of Seller default. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with Seller to cancel, modify or terminate this Agreement without the written consent of the Financing Party. Nothing in this Schedule shall prevent Purchaser from terminating this Agreement as otherwise allowed under this Agreement.

(c) Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement:

(i) The Financing Party, shall be entitled to exercise, in the place and instead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement and only in the event of Seller's or Purchaser's default. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

(ii) The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller thereunder or cause to be cured any default of Seller thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Seller under this Agreement or (unless the Financing Party has succeeded to Seller's interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Purchaser hereby gives it the option to do so.

(iii) Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give written notice to Purchaser of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

(iv) Upon any default not reasonably susceptible to cure by a Finance Party, including, without limitation, rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of the Financing Party made within ninety (90) days of such default, Purchaser shall enter into a new agreement with the Financing Party or its designee having the same terms and conditions as this Agreement.

(d) Right to Cure.

(i) Purchaser will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Seller) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement. The Parties agree that the cure rights described herein are in addition to and apply and commence following the expiration of any notice

and cure period applicable to Seller. The Parties respective obligations will otherwise remain in effect during any cure period; provided that if such Seller default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

(ii) If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Seller's assets and shall, within the time periods described in Sub-section (d)(i) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect

(e) Release and Waiver; Financing Agreement Defaults. Until such time as all of Seller's obligations to any Financing Party under an agreement between Seller and a Financing Party (a "Financing Agreement") (excluding contingent indemnification and reimbursement obligations that, by their express terms, survive the repayment of the loans, interest, fees and other amounts owed under said Financing Agreement) have been paid in full, Purchaser hereby waives, releases and relinquishes to said Financing Party all right, title, interest, claim and lien which Purchaser has or may in the future have, under any and all Applicable Laws, including statutory rights, in, to or against the System, and the System shall not be subject to levy, sale on distress or distraint for rent or any claim, lien or demand of any kind by Purchaser. If an event of default occurs and is continuing under a Financing Agreement, Purchaser agrees that the affected Financing Party has the right to (i) enter the Premises to remove or dispose of the System at any time; (ii) take possession of and succeed to all of Seller's right, title and interest under this Agreement, including the right to operate the System, and/or (iii) prepare the System for sale and/or conduct a sale or liquidation of the System on the Premises and/or store the System on the Premises for a reasonable period in connection therewith. The Financing Party shall not be liable for rental storage charges under this Agreement or otherwise; provided, however, that said Financing Party agrees to remove or abandon the System in accordance with the requirements of Section 11.3 of this Agreement, which expressly requires that said Financing Party: (i) remove of all of the tangible property comprising the System from the Premises on a mutually convenient date but in no case later than ninety (90) days after the Termination Date; (ii) return the Premises to its original condition, including removal of all System mounting pads or other support structures, except for ordinary wear and tear; (iii) leave the Premises in neat and clean order. For the avoidance of doubt, the Financing Party would not be required to replace or reconstruct any improvements removed or demolished by the Seller or Purchaser during construction or maintenance of the System. If said Financing Party fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (including all System mounting pads or other support structures) at said Financing Party's reasonable cost. Purchaser agrees that any action taken by a Financing Party to exercise its remedies under a Financing Agreement shall not constitute a default or event of default under this Agreement, and this Agreement shall continue in full force and effect following the exercise of such remedies. Any assignment of the membership interests in the Seller shall constitute a permitted assignment under this Agreement and this Agreement shall continue in full force and effect following such assignment, without the requirement of any further documentation regarding such assignment between Seller and Purchaser.

EXHIBIT 3

**Performance Guarantees**

This Performance Guaranty (“Guaranty”) sets forth the terms and conditions of a performance guaranty provided by Seller in conjunction with this Agreement. Capitalized terms not otherwise defined herein have the meanings given such terms in this Agreement. The term of this Guaranty will be concurrent with the Term of this Agreement. The Parties acknowledge and agree that Table 1.A of this Exhibit 3 will be updated prior to the Commercial Operations Date based upon final System design, with figures equal to 70% of the updated Estimated Annual Production (kWh) set forth in Schedule 1-4.

1. **Guaranty**. Seller guarantees that during the Term of this Agreement, for each Contract Year, the System will generate not less than the Pre-Adjustment Annual Production (kWh) of the System as set forth in **Table 1.A** below; provided that the **Table 1.A** values are subject to downward adjustment for weather conditions (such adjusted value, the “Guaranteed kWh”). For clarity purposes, all Electrical Energy shall be included in the Pre-Adjustment Annual Production (kWh) value.

A. Seller will use local weather data to determine the System’s Guaranteed kWh, based on the following methods if available and in descending order of preference:

- (i) satellite data provided by an independent third-party vendor of Seller; or
- (ii) available data from a locally installed weather station at the Premises.

**Table 1.A**, projected production values assuming average weather conditions:

Contract Year	Pre-Adjustment Annual Production (kWh)
1	2,898,930
2	2,884,436
3	2,870,013
4	2,855,663
5	2,841,385
6	2,827,178
7	2,813,042
8	2,798,977
9	2,784,982
10	2,771,057
11	2,757,202
12	2,743,416
13	2,729,699
14	2,716,050
15	2,702,470
16	2,688,958
17	2,675,513
18	2,662,135
19	2,648,825
20	2,635,581
21	2,622,403

Contract Year	Pre-Adjustment Annual Production (kWh)
22	2,609,291
23	2,596,244
24	2,583,263
25	2,570,347
26	2,557,495
27	2,544,708
28	2,531,984
29	2,519,324
30	2,506,727

B. If at the end of each successive Contract Year (set forth in Table 1.A) the Electrical Energy produced by the System as measured and recorded by Seller (the “Actual kWh”) is less than the Guaranteed kWh for that Contract Year, then Seller shall pay Purchaser the Prorated Amount.

The “Prorated Amount” shall be an amount equal to (i) the kWh Shortfall multiplied by (ii) the applicable Performance Guarantee Payment Rate.

The “kWh Shortfall” shall be an amount equal to the *difference* between (i) the Guaranteed kWh and (ii) the Actual kWh.

Any such payment payable to Purchaser shall be credited to Purchaser as a credit on the invoice that is submitted by Seller at the end of such Contract Year.

C. If a payment of greater than fifty dollars (\$50) is due under Section 1(B), Seller will deliver a statement to Purchaser detailing the Guaranteed kWh and the calculation of the payment due. If no payment is due, then no statement or payment will be issued.

D. “Performance Guarantee Payment Rate” means the dollar value per kWh set forth in **Table 1.D** below:

Contract Year	Performance Guarantee Payment Rate
1	\$0.174
2	\$0.177
3	\$0.181
4	\$0.184
5	\$0.188
6	\$0.191
7	\$0.195
8	\$0.199
9	\$0.202
10	\$0.206
11	\$0.210
12	\$0.214
13	\$0.218
14	\$0.222

Contract Year	Performance Guarantee Payment Rate
15	\$0.226
16	\$0.231
17	\$0.235
18	\$0.240
19	\$0.244
20	\$0.249
21	\$0.254
22	\$0.258
23	\$0.263
24	\$0.268
25	\$0.273
26	\$0.279
27	\$0.284
28	\$0.289
29	\$0.295
30	\$0.300

2. **Exclusions.** The Guaranty set forth in Section 1 does not apply to the extent of any reduced generation from the System due to the following (including the downtime required for repair, replacement or correction):

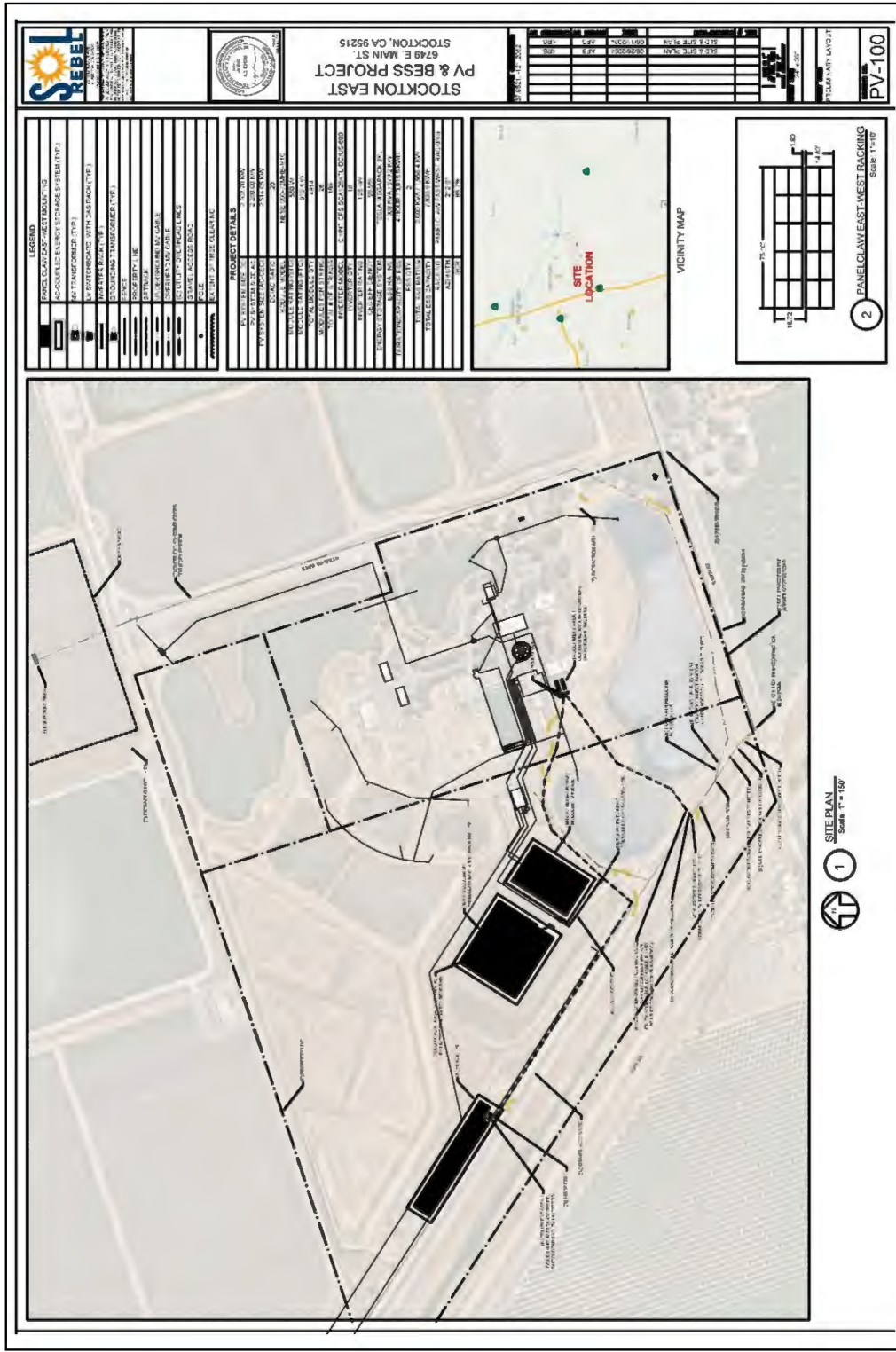
- A. Force Majeure Event (as defined in this Agreement) and (i) a power or voltage surge caused by someone other than Seller, including a grid supply voltage outside of the standard range specified by the Utility; and (ii) theft of the System.
- B. Purchaser’s material breach of its obligations under this Agreement.

3. **Liquidated Damages; Waiver of Cost Savings.** The Parties agree that the payment described in Section 1(B) is a fair and reasonable approximation of the damages suffered by Purchaser as a result of underperformance of the System.

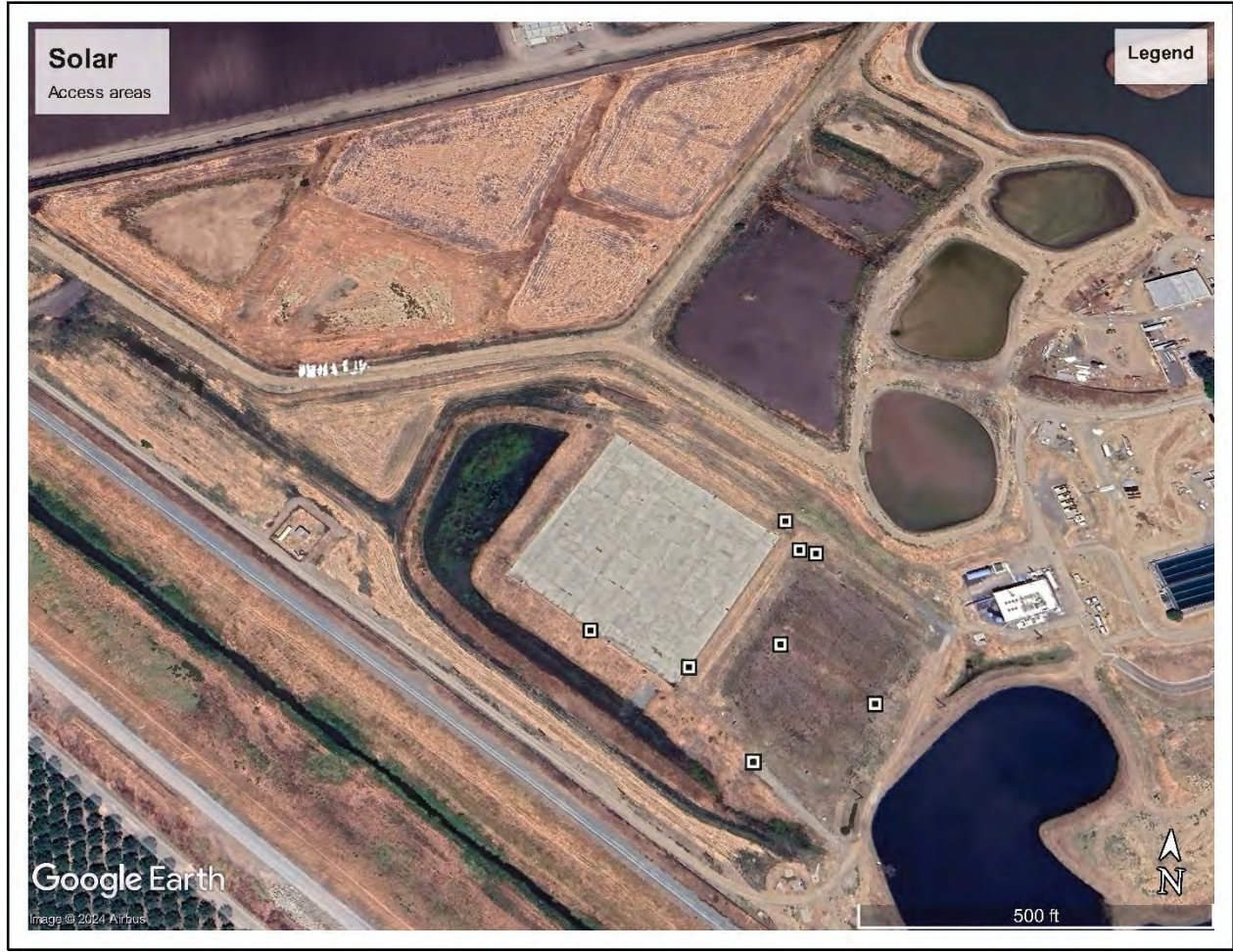


EXHIBIT 4

SEWD Pipeline Infrastructure



**EXHIBIT 4**  
**SEWD Access Points**



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Weekly Water Report	As of: August 6, 2024	As of: August 13, 2024
<b>New Hogan (NHG) TOC</b>	<b>317,100</b>	<b>AF</b>
Storage:	204,943	AF
Net Storage Change:	-3,229	AF
Inflow:	23	CFS
Release:	235	CFS
<b>New Melones (NML) Allocation</b>	<b>75,000</b>	<b>AF</b>
Storage:	1,921,409	AF
Net Storage change:	-16,246	AF
Inflow:	813	CFS
Release:	1,873	CFS
<b>Source: CDEC Daily Reports</b>		

<b>Goodwin Diversion (GDW)</b>		
Inflow (Tulloch Dam):	1,870	CFS
Release to Stanislaus River (S-98):	314	CFS
Release to OID (JT Main):	883	CFS
Release to SSJID (SO Main):	347	CFS
Release to SEWD & CSJWCD:	<u>245</u>	CFS
Total Release	1,789	CFS
<b>Source: Tri-Dam Operations Daily Report</b>		
<b>Farmington Dam (FRM)</b>		
Diverted to SEWD:	110	CFS
Diverted to CSJWCD:	170	CFS

<b>Surface Water Used</b>		
Irrigators on New Hogan:	14	
Irrigators on New Melones:	4	
Out-Of-District Irrigators:	2	
DJWWTP Production:	56	MGD
North Stockton:	16	MGD
South Stockton:	9	MGD
Cal Water:	26	MGD
City of Stockton DWSP Production:	16	MGD

<b>District Ground Water Extraction</b>		
74-01	0	GPM
74-02	0	GPM
North	0	GPM
South	0	GPM
Extraction Well # 1	<u>0</u>	GPM
Total Well Water Extraction	0	GPM
Total Ground Water Production	0	MGD

**Note: \*\*The data reported here is available as of 08/04/24**

**\*The data reported here is available as of 08/05/24**

**All other flow data reported here is preliminary, as of 9:00 a.m. on 08/06/24**

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# SAVE THE DATE

Please Join  
Chairman Miguel Villapudua  
for the  
State of the County

09.12.24  
2:30 PM  
BOB HOPE THEATER  
STOCKTON



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## Event Details

 View Map

### Value of Water Tour

**Thursday, October 17, 2024**

Join us for a FREE full day tour to learn about your water system. Tour major facilities that make your tap water some of the best in the country.

Have you ever wondered where the water comes from when you turn on your faucet? Would you like to see how we produce the safe, high-quality drinking water that is delivered to your home? Interested to see how your rate dollars are invested in your drinking water system? On our public tours, you'll follow the journey of water from its source to your tap.

#### Itinerary

- Delta Intake
- Los Vaqueros Dam and Interpretive Center
- Contra Costa Canal
- Randall-Bold Water Treatment Plant
- Bailey Reservoir and Pump Station

**Date:** October 17, 2024

**Time:** 8:30 AM - 3:30 PM

**Address:** 1331 Concord Ave  
Concord, CA, CA 94520

**Email:** Email Us  
(mailto:osymonds@ccwater.com)

**Cost:** FREE

**Link:** Register Now  
(<https://www.eventbrite.com/e/contra-costa-water-district-value-of-water-tour-tickets-956605983247?aff=ebdsshcopyurl&utm-campaign=social&utm-content=attendeeshare&utm-medium=discovery&utm-term=organizer-profile&utm-share-source=organizer-profile>)



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**ACWA State Legislative Committee**

August 9<sup>th</sup>, 2024

**Virtual Meeting Only**

**Zoom Link:**

<https://acwa.zoom.us/j/88236497406?pwd=acN418wDJhSGMcTsgWckcDyJRIYf8i.1>

**Meeting ID: 882 3649 7406**

**Passcode: 117756**

10:00 a.m. – 12:00 p.m.

- 
- |  |  |
|--|--|
| <b>1. Welcome</b>                          | <b>Lauren Layne, Chair</b><br><b>Brian Poulsen, Vice-Chair</b> |
| <b>2. Executive Director’s Report</b>      | <b>Dave Eggerton</b>   |
| <b>3. Deputy Executive Director Report</b> | <b>Cindy Tuck</b>  |
| <b>4. Review of Bill Packets</b>           |  |
| <b>5. Legislative Updates</b>              | <b>Adam Quinonez</b>   |
| <b>6. Regulatory Updates</b>               | <b>Chelsea Haines</b>  |
| <b>7. Other Business</b>                   |  |
| <b>8. Adjourn</b>                          |  |


**Reminder:** Next State Legislative Committee Meeting is the Annual Planning Meeting on ***December 5<sup>th</sup>, 2024.***

\*Bill packets are also available online by logging on to [www.acwa.com](http://www.acwa.com).


To access, go to the About My ACWA tab > ACWA Committees > State Legislative > 2024 State Legislative Committee Meeting Materials (Members Only)

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# 2024 SUMMER CHAMBER DIVERSITY MIXER

 August 15, 2024

 5:00 PM - 7:00 PM

 Port of Stockton, Albert Lindley House  
1 Fyffe Ave.  
Stockton, CA 95203



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