

CITY OF YUBA CITY  
STAFF REPORT

**Date:** June 5, 2018  
**To:** Honorable Mayor & Members of the City Council  
**From:** Public Works Department  
**Presentation by:** Diana Langley, Public Works Director

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**Summary**

**Subject:** ENGIE Services Solar Preventative Maintenance Agreement

**Recommendation:** Approve an Operation & Maintenance Agreement for five (5) years of solar preventative maintenance at the Corporation Yard, Senior Activity Center, and Wastewater Treatment Facility to ENGIE Services U.S. Inc. in the amount of \$117,703.54, with the finding that it is in the best interest of the City.

**Fiscal Impact:** \$117,703.54  
\$22,646.16 – Corporation Yard  
\$7,003.36 – Senior Activity Center  
\$88,054.02 – Wastewater Treatment Facility

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**Purpose:**

To develop and maintain resource-efficiency improvements at City facilities.

**Background:**

Solar facilities were installed by a private company at the Wastewater Treatment Facility from 2006 to 2008 and were then purchased by the City in 2013. Solar equipment was installed at the Corporation Yard and Senior Activity Center in 2010. None of these construction contracts included long-term maintenance, and they have since been intermittently cleaned and maintained by regional solar contractors on an as-needed basis.

The City began contracting with ENGIE Services U.S. Inc. (ENGIE), formerly known as OpTerra Energy Services, in 2014 for the construction of energy improvements across multiple City facilities, including installing solar equipment at the Water Treatment Plant and Gauche Aquatic Park. ENGIE has subsequently been awarded projects at the Wastewater Treatment Facility and Police Department. All of ENGIE's contracts include annual preventative maintenance and analysis for a number of years after the projects have been completed.

In light of this successful partnership with ENGIE on current projects, staff requested a proposal for a stand-alone agreement for the maintenance of the three facilities that are not currently under contract.

**Analysis:**

Staff has been highly impressed with the quality and efficiency of ENGIE for both construction and maintenance of solar facilities. Their methods and execution have far exceeded the other regional vendors who offer this service; although other vendors have lower rates than the proposed Operation & Maintenance Agreement from ENGIE, past service of the facilities by other vendors has been unsatisfactory and resulted in lowered system efficiency and insufficient maintenance.

**Fiscal Impact:**

Year one of the agreement is priced at \$22,170 for Fiscal Year 18/19. The agreement includes a three percent (3%) per annum increase to account for cost increases and equipment aging, for a contract total of \$117,703.54. The annual costs will be paid out of the operational budgets for each facility.

**Alternatives:**

Direct staff to release a Request for Proposals for solar maintenance services. As the City is currently contracted with ENGIE for maintenance at other locations and has worked with the other regional solar service providers unsatisfactorily in the past, it is unlikely that additional benefit could be found in this option.

**Recommendation:**

Approve an Operation & Maintenance Agreement for five (5) years of solar preventative maintenance at the Corporation Yard, Senior Activity Center, and Wastewater Treatment Facility to ENGIE Services U.S. Inc. in the amount of \$117,703.54, with the finding that it is in the best interest of the City.

**Attachments:**

1. Operation & Maintenance Agreement

**Prepared by:**

*/s/ Scarlett O. Harris*  
Scarlett O. Harris  
Administrative Assistant

**Submitted by:**

*/s/ Steven C. Kroeger*  
Steven C. Kroeger  
City Manager

**Reviewed by:**

Department Head

DL

Finance

RB

City Attorney

TH by email

# ATTACHMENT 1



DIR Project Registration # \_\_\_\_\_  
ENGIE Services U.S. Project #: ACEOM00272  
ENGIE Services U.S. Contract # R 3 2 8 4

**STANDARD AGREEMENT**

THIS AGREEMENT, made and entered into this 1<sup>st</sup> day of July 2018 in the State of California, County of Sutter, City of Yuba City, by and between the City of Yuba City, hereafter referred to as the City, and ENGIE Services U.S. Inc., hereafter referred to as the Contractor.

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements and stipulations of the City hereinafter expressed, does hereby agree to furnish to the City services and materials, as follows:

For the five-year period beginning on the O&M Commencement Date (as defined in Exhibit A) solar panel cleaning and maintenance at the Wastewater Treatment Facility, Senior Center, and Corporation Yard, as per the Operation & Maintenance Agreement attached hereto as Exhibit A. Not to exceed \$22,170 in the first year without written authorization by the City; subsequent years to be priced in accordance with Exhibit A. This Agreement supplements, but does not supersede or replace, Attachment I of the Energy Services Contract, dated as of 4 November 2014, between the City and ENGIE Services U.S. Inc., formerly known as OpTerra Energy Services, Inc., which is hereby confirmed in full force and effect.

The provisions of Exhibit A constitute a part of this agreement.

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IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

**CITY OF YUBA CITY, A  
MUNICIPAL CORPORATION**

**ENGIE SERVICES U.S. INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

License No. 995037  
500 Twelfth Street, Suite 300  
Oakland, CA 94607

## EXHIBIT A

### OPERATION & MAINTENANCE AGREEMENT

This **OPERATION & MAINTENANCE AGREEMENT** (this "Agreement") is made and entered into by and between **ENGIE Services U.S. Inc.**, a Delaware corporation ("ENGIE Services U.S."), and **The City of Yuba City** (the "Customer" and together with ENGIE Services U.S. the "Parties" and each of Customer and ENGIE Services U.S. a "Party").

### RECITALS

WHEREAS, ENGIE Services U.S. is a full-service energy services company with the technical capabilities to provide services to the Customer including, but not limited to, maintenance of Generating Facilities (as defined below);

WHEREAS, ENGIE Services U.S. has agreed to maintain the Generating Facilities on the terms and subject to the conditions of this Agreement;

NOW, THEREFORE, the Customer and ENGIE Services U.S. hereby agree as follows:

### ARTICLE 1. DEFINITIONS

For purposes of this Agreement and its Attachments, the defined terms herein shall have the meaning set forth as follows:

"**AAA**" is defined in ARTICLE 9.

"**Abnormally Severe Weather Conditions**" means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Services are then being performed. For the avoidance of doubt, the term "Abnormally Severe Weather Conditions" specifically includes rain, snow or sleet in excess of one hundred fifty percent (150%) of the median level over the preceding ten (10) year period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

"**Agreement**" is defined in the Preamble, and includes all Attachments hereto (all of which are incorporated herein), as well as all amendments, restatements, supplements and other modifications hereto.

"**Annual Maintenance Fee**" means a fee payable annually in advance by the Customer to ENGIE Services U.S.. The Annual Maintenance Fee for the first O&M Period shall be Twenty-Two Thousand One Hundred Seventy Dollars (**\$22,170**). The Annual Maintenance Fee shall be increased annually thereafter at the rate of three percent (3%) per annum, each increase to be effective on the first day of the corresponding O&M Period.

"**Applicable Law**" means any statute, law, treaty, building codes, rule, regulation, ordinance, code, enactment, injunction, writ, order, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory determination or restriction by a court or Governmental Authority or competent jurisdiction, as may be in effect at the time the Services are undertaken.

"**Applicable Permits**" means all permits, waivers, authorizations, or licenses issued or required to be issued by any Governmental Authority in connection with the Services.

"**Customer**" is defined in the Preamble.

"**Dispute**" is defined in ARTICLE 9.

"**ENGIE Services U.S.**" is defined in the Preamble.

"**Force Majeure**" means acts or events that are beyond the reasonable control of the affected Party and not caused by the negligence or fault of the Party affecting, including but not limited to any of the following: (i) acts of God; (ii) acts of the public enemy or terrorist acts; (iii) relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; (iv) work by local utility; (v) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (vi) sabotage, vandalism, riots or civil disobedience; (vii) labor disputes or strikes; (viii) labor or material shortages, delay in manufacturing and deliveries of equipment (if such delay is caused by an event that would otherwise constitute Force Majeure); (ix) restraint by court order or public authority (whether valid or invalid); (x) inability to obtain or keep in force any Applicable Permit; (xi) Abnormally Severe Weather Conditions; (xii) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long-term weather data (minimum 5 years) collected at the applicable Project Location and/or other reliable calibrated and appropriate weather station representative of

such Project Location; (xiii) requirement by utility that any Generating Facility discontinue operation for any reason; (xiv) appropriation or diversion of electricity by sale or order of any Governmental Authority; (xv) any other action by any Governmental Authority which prevents or inhibits the Parties from carrying out their respective obligations under this Agreement (including an unstayed order of a court or administrative agency having the effect of subjecting the sales of energy output to federal or state regulation of prices and/or services); or (xvi) any utility power outage at any Project Location.

**“Generating Facility”** means each photovoltaic, solar powered generating facility located at a Project Location, and includes all associated photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wires and other equipment that may be necessary to connect such solar power plant to the applicable utility meter.

**“Governmental Authority”** means any federal, state, regional, town, county, city, municipal or local government agency, department or regulatory body having jurisdiction under Applicable Law over the matter in question.

**“Hazardous Substances”** means (i) any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (ii) any “hazardous substance” as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*), as amended, and regulations promulgated thereunder; (iii) any “hazardous, toxic or dangerous waste, substance or material” specifically defined as such in 42 U.S.C. §9601 *et seq.*), as amended and regulations promulgated thereunder; and (iv) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called “superfund” or “superlien” law.

**“Interest”** shall mean interest calculated at the lesser of (i) the prime rate plus two percent (2%) or (ii) the maximum rate permitted by Applicable Law. The “prime rate” shall be “Prime Rate” of interest per annum for domestic banks as published in The Wall Street Journal in the “Money Rates” section, or if such rate ceases to be published in The Wall Street Journal or The Wall Street Journal ceases publication, such other rate as agreed by the Parties.

**“O&M Commencement Date”** means the first day of the month immediately following the later of (i) the full execution of this Agreement, and (ii) ENGIE Services U.S.’s receipt of the Annual Maintenance Fee for the first O&M Period.

**“O&M Period”** means each one-year period following the O&M Commencement Date.

**“Party”** and **“Parties”** are defined in the Preamble.

**“Project Location”** means that area or areas where the Generating Facilities are installed, as set forth in Attachment A.

**“Services”** means the maintenance services to be performed by ENGIE Services U.S. in accordance with the terms and subject to the conditions of this Agreement.

## **ARTICLE 2. TERM**

Section 2.01 So long as Customer pays to ENGIE Services U.S. the Annual Maintenance Fee, ENGIE Services U.S. will provide the Services with respect to the Generating Facilities at the Project Locations, all as described in this Agreement, annually from the O&M Commencement Date.

## **ARTICLE 3. ANNUAL MAINTENANCE FEE; REPORTING**

Section 3.01 The Annual Maintenance Fee for the first O&M Period shall be invoiced by ENGIE Services U.S. to the Customer in a lump sum upon the execution of this Agreement. All subsequent Annual Maintenance Fees will be invoiced by ENGIE Services U.S. on the first day of the corresponding O&M Period. The Customer, or its designee, shall pay ENGIE Services U.S. such Annual Maintenance Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Unless the Customer gives ENGIE Services U.S. prior written notice of its intent to terminate the Services, any failure to timely pay the Annual Maintenance Fee in accordance with this Agreement shall be a material default by Customer hereunder, and ENGIE Services U.S., in addition to any other legal, contractual and equitable remedies available to it, shall have no obligation thereafter to provide Services.

Section 3.02 Any amount not paid when due shall, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) shall be due and payable upon demand.

Section 3.03 The Annual Maintenance Fee is not refundable for any reason.

Section 3.04 Upon completion of any maintenance or repair work, ENGIE Services U.S. will update service logs detailing the work performed, location and any notes relevant to safe and efficient operations. These service logs will be compiled and submitted to the Customer on a semi-annual basis.

Section 3.05 Authority to Subcontract. ENGIE Services U.S. may delegate its duties and performance under this Agreement, and has the right to enter into agreements with any subcontractors and other service or material providers as ENGIE Services U.S. may select in its discretion to perform the Services. ENGIE Services U.S. will not be required to enter into any subcontracts with parties whom ENGIE Services U.S. has not selected or subcontractors whom ENGIE Services U.S. has objection to using.

Section 3.06 Prevailing Wages. To the extent required by California Labor Code §1771 or other Applicable Law, all employees of ENGIE Services U.S. and ENGIE Services U.S.' subcontractors performing Work at the Project Location will be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed. In accordance with California Labor Code §§1773 and 1773.2, Customer will obtain from the Director of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute the Work at the Project Location, and will cause copies of such determinations to be kept on file at its principal office and posted at each Project Location. Customer will promptly notify ENGIE Services U.S. of any changes to any such prevailing wage determination.

#### **ARTICLE 4. MAINTENANCE SERVICES**

Section 4.01 ENGIE Services U.S. will provide the following Services during the term:

(a) Inspection:

- i. Visually inspect arrays, panel mounting, wiring, combiner boxes, sub combiner boxes, and disconnect switches
- ii. Inspect PV modules for damage, discoloration or de-lamination
- iii. Inspect mounting system for damage or corrosion
- iv. Visually inspect combiner boxes, sub combiner boxes, and disconnect switch panels.
- v. Visually inspect array racking components (rooftop mount).
  1. Visually inspect racking hardware and components for abnormal wear or excessive corrosion.
  2. Visually inspect roof penetrations for signs of damage or compromised seals.
- vi. Inspection of non-penetrating racking system for any abnormal movement.
- vii. Inspection of exposed array wiring.
  1. DC wiring not installed in a raceway will be inspected for chaffing, deterioration, and proper MC connections.
- viii. Replacement/cleaning of inverter air filters.
- ix. Clean inverter air intake and vent ducts.
- x. Clean and remove dust from inverter control boards. (Using canned compressed, non-static air)
- xi. Remove all dirt and debris from inverter caged area.
- xii. Clean outside of inverter cabinet, louvres, transformer cabinet and louvres, and switchboard cabinets. Remove all spider webs, insects and debris.
- xiii. Notify customer once inspection is complete and report any concerns immediately.
- xiv. Provide detailed reporting of all maintenance activities to customer.

(b) Testing:

- i. Perform voltage testing, amperage testing, and infrared scans of inverters, combiner boxes, disconnects and switchgear on an annual basis.
- ii. Torque checks on critical electrical terminations
- iii. Perform Inverter IR scanning and servicing of all internal components per manufacturer's guidelines. (Electrician)
- iv. Inspection and IR scanning of all combiner boxes and disconnects, test all fuses for continuity. (Electrician)
- v. Notify customer once electrical maintenance is complete and report immediately any concerned issues.
- vi. Provide detailed report of all maintenance activities to customer.

(c) Cleaning:

- (i) Remove dust, dirt, and debris from outside cabinets of combiner boxes, inverters, transformers, and disconnect switches on an annual basis.

- (ii) Wash PV modules per manufacturer's warranty specifications and remove accumulated dust and debris for optimal system performance on an annual basis.
- (iii) Collect and properly dispose of run-off water where arrays are in parking lots per local authority requirement.
- (iv) Notify customer immediately of any damaged modules
- (v) Provide detailed annual inspection and cleaning report with before and after photo to customer

Section 4.02 Repair Services

If a Generating Facility is damaged and requires safe-off, repair, demolition and/or reconstruction, Customer must contact the ENGIE Services U.S. PV Operations & Maintenance Manager. In the event of damage, any component of the Generating Facility installed by ENGIE Services U.S. can be repaired or reconstructed by ENGIE Services U.S. at Customer's request. Customer must submit a request for quotation to the ENGIE Services U.S. PV Operations & Maintenance Manager. ENGIE Services U.S. will inspect the damage and provide a written quotation and complete scope of work to Customer to restore the Generating Facility to normal operational condition. Before proceeding with repairs, ENGIE Services U.S. and Customer must execute a work order, on ENGIE Services U.S.' form, for the agreed scope of work and quotation amount. Repair work is done on a time and materials basis.

- Hourly technician labor rate \$150/hr.
- Materials markup 15%

Section 4.03 Services and Equipment to Be Covered By Customer

- (a) ENGIE Services U.S.'s obligations under this Agreement are expressly conditioned upon Customer's payment of the Annual Maintenance Fee and providing and being responsible for the following, without cost to ENGIE Services U.S.:
  - (i) Making the Generating Facilities described herein available to ENGIE Services U.S. as of the O&M Commencement Date.
  - (ii) Operating and maintaining security systems associated with the Generating Facilities.
  - (iii) Maintaining all landscaping in and around Generating Facilities including tree trimming.
  - (iv) Allowing ENGIE Services U.S. and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the Services, including reasonable work, parking, and equipment staging areas.
  - (v) Allowing ENGIE Services U.S. and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for ENGIE Services U.S. to satisfy its obligations under this Agreement.
  - (vi) Remediating, pursuant to Applicable Law, any known Hazardous Substances encountered by ENGIE Services U.S. during the performance of the Services which Hazardous Substances were not deposited by ENGIE Services U.S., including any backfill with clean soil as may be reasonably required.
  - (vii) Insuring the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.
- (b) ENGIE Services U.S. will have no obligation to provide the Services to the extent such provision of Services is materially adversely affected by Customer's failure to satisfy the conditions set forth in this Agreement.

**ARTICLE 5. WARRANTY**

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 5, ENGIE SERVICES U.S. MAKES NO WARRANTIES IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. CUSTOMER WILL HAVE NO REMEDIES AGAINST EITHER ENGIE SERVICES U.S. OR ANY ENGIE SERVICES U.S. SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED BELOW. SPECIFICALLY, NEITHER ENGIE SERVICES U.S., NOR ENGIE SERVICES U.S.'s SUBCONTRACTORS OR VENDORS, WILL BE LIABLE TO CUSTOMER FOR LOSS OF PROFITS OR FOR ANY



SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

Section 5.01 ENGIE Services U.S. warrants to Customer that material and equipment furnished under this Agreement will be of good quality and new, unless otherwise specifically required or permitted by this Agreement. ENGIE Services U.S. further warrants that its workmanship provided hereunder, including its subcontractors' workmanship, will be free of material defects for a period of one (1) year from the date of installation ("ENGIE Services U.S. Warranty").

Section 5.02 Equipment and material warranties that exceed the ENGIE Services U.S. Warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned directly to Customer, after the one (1) year period. During the ENGIE Services U.S. Warranty period, ENGIE Services U.S. will be Customer's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. If any material defects are discovered within the ENGIE Services U.S. Warranty period, ENGIE Services U.S., or ENGIE Services U.S.'s subcontractors, will correct its defects, and/or ENGIE Services U.S. will work with the equipment or material manufacturer as Customer's agent to facilitate the manufacturer's correction of the equipment or material defect. Such warranty services will be performed in a timely manner and at the reasonable convenience of Customer. If a warranty issue arises on any equipment or material installed after the ENGIE Services U.S. Warranty period, and the equipment or material has a warranty period that exceeds one (1) year, Customer will contact the manufacturer directly to resolve such warranty issues and Customer acknowledges that the manufacturer will have sole responsibility for such issues.

Section 5.03 The warranties in this ARTICLE 5 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than ENGIE Services U.S. or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized ENGIE Services U.S. subcontractor, improper use or operation, or normal wear and tear under normal usage. Unless otherwise specified, all warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering, or construction, will terminate one (1) year from the date of installation; and thereafter, ENGIE Services U.S. will have no liability for breach of any warranty or for any latent or patent defect of any kind pursuant to California Code of Civil Procedure §§337.15 and 338.

**ARTICLE 6. CONSENTS**

Whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Agreement, and this Agreement does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the other Party's performance under this Agreement.

**ARTICLE 7. LIMITATION OF LIABILITY; INSURANCE**

Section 7.01 Waiver of Consequential Damages and Limitation of Liability. The liability of a defaulting Party will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense. Additionally, each Party waives any claims for negligence against the other Party to the greatest extent permitted by Applicable Law.

Section 7.02 ENGIE Services U.S. Insurance. ENGIE Services U.S. will maintain, or cause to be maintained, for the duration of this Agreement, the insurance coverage outlined in (a) through (f) below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to Customer via an insurance certificate.

(a) Workers' Compensation/Employers Liability for states in which ENGIE Services U.S. is not a qualified self-insured. Limits as follows:

- \* Workers' Compensation: Statutory
- \* Employers Liability: Bodily Injury by accident \$1,000,000 each accident  
Bodily Injury by disease \$1,000,000 each employee  
Bodily Injury by disease \$1,000,000 policy limit

(b) Commercial General Liability insurance with limits of:

- \* \$2,000,000 each occurrence for Bodily Injury and Property Damage

- \* \$4,000,000 General Aggregate - other than Products/Completed Operations
- \* \$4,000,000 Products/Completed Operations Aggregate
- \* \$2,000,000 Personal & Advertising Injury
- \* \$ 100,000 Damage to premises rented to ENGIE Services U.S.

Coverage to be written on a claims made form. Coverage to be at least as broad as ISO form CG 0001 (04/13) or its equivalent forms, without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest or (2) explosion, collapse, underground hazard.

- (c) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.
- (d) Professional Liability insurance with limits of:
  - \* \$1,000,000 per occurrence
  - \* \$1,000,000 aggregate

Coverage to be written on a claims-made form.

- (e) Umbrella/Excess Liability Insurance. Limits as follows:
  - \* \$1,000,000 each occurrence
  - \* \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

- (f) Policy Endorsements.
  - \* The insurance provided for Workers' Compensation and Employers' Liability above will contain waivers of subrogation rights against Customer.
  - \* The insurance provided for Commercial General Liability and Auto Liability above will:
    - (i) include Customer as an additional insured with respect to Work performed under this Agreement, and
    - (ii) provide that the insurance is primary coverage with respect to all insureds.

**ARTICLE 8. FORCE MAJEURE**

Neither Party will be considered to be in default in the performance of any material obligation under this Agreement (other than the obligation to make payments) when a failure of performance will be due to an event of Force Majeure. Neither Party will be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an event of Force Majeure will give prompt written notice of such fact to the other Party.

**ARTICLE 9. DISPUTE RESOLUTION; APPLICABLE LAW; VENUE; SEVERABILITY**

If a dispute arises out of or relates to this Agreement, or the services contemplated by this Agreement (a "Dispute"), either Party may initiate the dispute resolution process set forth in this ARTICLE 9 by giving notice to the other Party. Senior executives for the Parties will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives of are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation.

If the Dispute is not settled by senior management conference, the Parties will endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association ("AAA"). Mediation is a condition precedent to arbitration or the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator.

If the Dispute is not resolved by mediation within sixty (60) calendar days after the date of filing of the request for mediation, then the exclusive means to resolve the Dispute is final and binding arbitration. Either Party may initiate arbitration proceedings by notice to the other Party and the American Arbitration Association. The following provisions

apply to all arbitration proceedings pursuant to this Article: (i) The place of arbitration will be the American Arbitration Association office closest to where the Services were performed; (ii) one arbitrator will conduct the arbitral proceedings in accordance with the Commercial Arbitration Rules and Mediation Procedures (Excluding the Procedures for Large, Complex Commercial Disputes) of the American Arbitration Association currently in effect ("Arbitration Rules") (to the extent of any conflicts between the Arbitration Rules and the provisions of this Agreement, the provisions of this Agreement prevail); (iii) the Parties will submit true copies of all documents considered relevant with their respective statement of claim or defense, and any counterclaim or reply (in the discretion of the arbitrator, the production of additional documents that are relevant and material to the determination of the Dispute may be required); (iv) the arbitrator does not have the power to award, and may not award, any punitive, indirect or consequential damages (however denominated); all arbitration fees and costs are to be shared equally by the parties, regardless of which Party prevails, and each Party will pay its own costs of legal representation and witness expenses; (v) the award must be in the form of a reasoned award; (vi) the Dispute will be resolved as quickly as possible, and the arbitrator will endeavor to issue the arbitration award within six (6) months after the date on which the arbitration proceedings were commenced; and (vii) the award will be final and binding and subject to confirmation and enforcement proceedings in any court of competent jurisdiction.

This Agreement is governed by and must be interpreted under the laws of the State where the Services are performed, without regard to the jurisdiction's choice of law rules.

If any term of this Agreement is declared by a court to be illegal, invalid or unenforceable, the legality, validity and enforceability of the other terms of this Agreement will not be affected or impaired thereby, and the rights and obligations of the Parties will be enforced as if the illegal, invalid or unenforceable term were revised to the minimum extent necessary to make such term legal, valid and enforceable.

**ARTICLE 10. NOTICE**

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO ENGIE SERVICES U.S.:           ENGIE Services U.S. Inc.  
500 12<sup>th</sup> Street, Suite 300  
Oakland, CA 94607  
Attention: Jamal Aboueljoud, Director of Performance Assurance

With a COPY TO:                   ENGIE Services U.S. Inc.  
150 East Colorado Boulevard, Suite 360  
Pasadena, CA 91105  
Tel: 626-377-4948  
Attention: Contract Administrator

TO CUSTOMER:                   City of Yuba City, Public Works Department  
1201 Civic Center Blvd.  
Yuba City, CA, 95993  
Tel: (530) 822-4713  
Fax:  
Attention: Claire Shawver

**ARTICLE 11. CONSTRUCTION OF AGREEMENT**

This Agreement is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it shall not be construed for or against either Party, but shall be construed in a manner that most accurately reflects the intent of the Parties when such Agreement was executed. Each of the Parties acknowledges and agrees that neither Party has provided the other with any legal, accounting, regulatory, financial or tax advice with respect to any of the transactions contemplated hereby, and each Party has consulted its own legal, accounting, regulatory, financial and tax advisors to the extent it has deemed appropriate.

**ARTICLE 12. BINDING EFFECT**

Except as otherwise provided herein, the terms and provisions of this Agreement shall apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

**ARTICLE 13. NO WAIVER**

The failure of ENGIE Services U.S. or Customer to insist upon the strict performance of this Agreement shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of ENGIE Services U.S. or Customer.

**ARTICLE 14. HEADINGS**

Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

**ARTICLE 15. COUNTERPARTS; INTEGRATION**

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire agreement among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by email or fax shall be effective as delivery of a manually executed counterpart of this Agreement.

**ATTACHMENT A  
PROJECT LOCATIONS**

<b>City of Yuba City (Corp. Yard)</b>	<b>1185 Market St, Yuba City, CA 95991</b>
<b>Senior Center</b>	<b>777 Ainsley Ave., Yuba City CA 95991</b>
<b>WWTP - Original Site</b>	<b>302 Burns Drive, Yuba City CA 95991</b>