CITY OF PITTSBURG
AGENDA

OCTOBER 07, 2019

CITY HALL COUNCIL CHAMBER
65 CIVIC AVENUE, PITTSBURG, CA

CLOSED SESSION
6:30 P.M.

REGULAR MEETINGS
7:00 P.M.

CITY COUNCIL
PITTSBURG ARTS AND COMMUNITY FOUNDATION
PITTSBURG POWER COMPANY
SOUTHWEST PITTSBURG GEOLOGIC HAZARD ABATEMENT DISTRICT II

PRESIDING

Juan Antonio Banales, Mayor/Chair
Jelani Killings, Vice-Mayor/Chair
Marilyn "Merl" Craft, Council Member/Board Member
Holland Barrett White, Council Member/Board Member
Shanelle Scales-Preston, Council Member/Board Member

FOR HOUSING AUTHORITY:
S.L. Floyd, Housing Authority Member
Annie Hill Herring, Housing Authority Member

Pittsburg City Council meetings are held the first and third Mondays of each month at 7:00 p.m. The Housing Authority meets in conjunction with the City Council on the third Monday of each month. The Pittsburg City Council meets regularly in the Council Chamber at 65 Civic Avenue, unless otherwise noted above. The City Council also sits as the Board of Directors of several other City agencies. The stipends for all agency members conform to state statutes governing compensation amounts. All other Agencies meet on an as needed basis and will be listed above if applicable. Copies of the open session agenda packets, which are distributed to the City Council, are on file in the office of the City Clerk, 65 Civic Avenue, Pittsburg, California, and are available for public inspection, beginning 72 hours in advance, during normal business hours (8:00 a.m. – 5:00 p.m., Monday through Friday, except from noon to 1:00 p.m. and City holidays). The agenda and reports are also located on the City's website at www.ci.pittsburg.ca.us. Additionally, if any reports or documents, which are public records, are distributed to the City Council less than 72 hours before the meeting, those reports and documents will also be available for public inspection in the City Clerk's Office and on the day of the meeting in the Council Chamber at the public counter area below the dais.

AUDIENCE REMARKS

The Audience Remarks period is for the public to comment on any items scheduled to be heard during the Closed Session portion of the meeting, if applicable.

6:30 P.M. - CONVENE IN CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION for City Council: Initiation of litigation pursuant to Section 54956.9(d)(4)
   Number of cases: one

2. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION for Pittsburg Power Company Governing Board: Initiation of litigation pursuant to Section 54956.9(d)(4)
   Number of cases: one

7:00 P.M. - CONVENE IN OPEN SESSION FOR REGULAR MEETING

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

PROCLAMATION

3. National Arts and Humanities Month

4. National Hispanic Heritage Month

PRESENTATIONS

5. Sister City Student Delegation

6. CCTA Draft Transportation Expenditure Plan (TEP)

CITY MANAGER REPORTS/REMARKS

The City Manager may make brief announcements or informal comments at this time and brief the Council on items of interest. (No Action Required)

CITIZENS REMARKS

Members of the audience who wish to address the City Council or Agency Boards on issues that are not scheduled for the agenda and on any items listed as part of the Consent Calendar should complete a Speaker's Card available at the dais. Please read the card carefully in order to fill out the card properly. Submit the completed card to the City Clerk before the item is called, preferably before the meeting begins. Individuals will be given three minutes to address the Council unless additional time is allowed as provided for spokespersons. Prior to speaking, each member of the public shall state their name and business and City of residence in a clear and audible tone of voice. (No Action Required)

CITY COUNCIL MEETING

CONSIDERATION

7. Adoption of a City Council Resolution Approving General Agreement Terms and Authorizing the City Manager to Negotiate and Execute Agreements with Property Upsurge LLC and Carol Gallagher

   The City has initiated discussions with two property owners regarding the use of the vacant rear exterior portions of properties located at 160 E. 3rd Street and 340 Cumberland Street. Approval of this item would establish general terms and authorize the City Manager to negotiate and execute an agreement consistent with the approved terms. The premises consist of approximately 2,000 square feet of exterior space.

8. Adoption of a City Council Resolution to Authorize Allocation of U.S. Department of Justice – Bureau of Justice Assistance Edward Byrne Memorial Justice Assistance Grant (J.A.G.)

   The Pittsburg Police Department has submitted a preliminary application to the U.S. Department of Justice for funding under the Edward J. Byrne Memorial Justice Assistance Grant (JAG) Program in the amount of $19,769.

CONFLICT OF INTEREST STATEMENT

City Council/Agency Members may make any conflict of interest declarations pertaining to Consent Calendar items at this time.

COMBINED CITY COUNCIL, PITTSBURG ARTS AND COMMUNITY FOUNDATION, PITTSBURG POWER COMPANY AND SOUTHWEST PITTSBURG GHAD II CONSENT CALENDAR

9. Minutes of September 16, 2019

10. Adoption of a City Council and Power Company Resolution Approving the Carryover of Fiscal Year 2018-19 Designated Operating Budget Balances into the Fiscal Year 2019-20 Budget

    The City of Pittsburg has various operating programs and activities budgeted in Fiscal Year 2018-19 were not completed, or are on-going. The balances remaining in each of the budgets as of June 30, 2019 need to be carried forward into the current fiscal year's budget in order to continue and/or complete these obligations. The Governmental Accounting Standards Board (GASB) Statement No. 54 requires governing bodies to approve unencumbered operating budget carry-forward requests at the closest meeting after the end of a fiscal year.

11. Adoption of City Council and Power Company Resolutions Approving the Carryover of Fiscal Year 2018-19 Capital Improvement Project Budget Balances into the Current Fiscal Year 2019-20 Budget

    The City of Pittsburg has multi-year Capital Improvement Projects which were not completed during the 2018-19 fiscal year. The budget balances remaining in each of these projects as of June 30, 2019 need to be carried forward into the current fiscal year budget in order to continue and/or complete these projects.

12. Adoption of a City Council Resolution Approving the First and Second Project Development Agreement Operating Memoranda, Second Amendment to the Exclusive Negotiating Rights Agreement, and First Amendment to the Option Agreement Between the City of Pittsburg, Pittsburg Power Company, and Energy Delivery Solutions LLC, and Adoption of a Pittsburg Power Company Resolution Approving the First and Second Project Development Agreement Operating Memoranda and Second Amendment to the Exclusive Negotiating Rights Agreement Between the City of Pittsburg, Pittsburg Power Company, and Energy Delivery Solutions LLC

    This item includes consideration by the City Council and Pittsburg Power Company of the first and second Operating Memoranda that set forth certain terms and conditions concerning the development of a future technology park set forth in the previously approved Project Development Agreement (PDA), as well as an amendment to the existing Exclusive Negotiating Rights Agreement (ENRA) between the City of Pittsburg ("City"), Pittsburg Power Company ("PPC"), and Energy Delivery Solutions LLC ("EDS"). This item also includes Coty Council consideration of an amendment to the Option Agreement (OA) between the City and EDS. Approval of the proposed Operating Memoranda and agreement amendments would not entitle any development within the City, nor would it constitute a commitment by the City and/or PPC to approve any CEQA documentation, entitlements, or other agreements.

13. Adoption of a City Council Resolution Approving the Transfer of Prior Year Grant and Special Revenue Fund Balances as of June 30, 2019 into the Fiscal Year 2019-20 Budget

    The City of Pittsburg receives federal, state and local funding for Police, Environmental Affairs, Community Development, Human Resources and Recreation activities. In compliance with the federal, state, and local agreements as well as governmental accounting standards, any remaining funding awards and any unspent balances need to be carried forward to the next fiscal year. We have a total of $163,993 remaining grant funding and $461,759 in unspent balances to be carried forward to the Fiscal Year 2019-20 Budget.

14. Adoption of a City Council Resolution Awarding the City Manager to Execute a Contract for Bulk Gasoline Services

    The City has various departments that require large quantities of fuel to carry out their responsibilities and to maintain operations. Staff solicited cost proposals from vendors that provide Bulk Gasoline Services. Western States Oil of San Jose, California is the lowest responsible and responsive bidder for Bulk Gasoline Services.

15. Adoption of a City Council Resolution to Authorize the City Manager to Negotiate and Execute a Lease Agreement for Fleet Equipment Financing

    The Public Works Department maintains a fleet with an approximate replacement value of over $6 million. The Public Works Department solicited bids for a Police SUV's, Police Sedans, Police UTV, Police Motorcycle, and Ford Trucks. The Finance Department solicited financing for replacement of this equipment per a Lease Agreement. The Lease Agreement exceeds the $75,000 threshold and requires approval of City Council.

COUNCIL REQUEST FOR FUTURE AGENDA ITEMS

Council Members may request items to be considered for future agendas. An item will only be brought forward with a majority vote and will appear on a future agenda with staff recommendations for further Council consideration.

16. Consideration of a City Council Request for a Future Agenda Item Related to Exploring the Feasibility of a Grocery Store Cooperative

    At the September 16, 2019, City Council meeting, Councilmember Holland Barrett White requested an item exploring the feasibility of grocery store cooperative (co-op) operating in the City of Pittsburg. As an initial step, the City Council will consider directing staff to obtain proposals and hire a consultant to prepare a market study to determine the sales potential for a grocery co-op.

COUNCIL MEMBER REPORTS/REMARKS

Council Members may make brief announcements or informal comments at this time. Council members may ask questions for clarification from City staff, and make a report on their activities, including reports on committee assignments (see attached list of ad hoc committees and other public agencies in which Council members participate). (No Action Required)

ADJOURNMENT to October 21, 2019

NOTICE TO PUBLIC

GENERAL INFORMATION

Copies of the open session agenda packets, which are distributed to the City Council, are on file in the office of the City Clerk, 65 Civic Avenue, Pittsburg, California, and are available for public inspection, beginning 72 hours in advance, during normal business hours (8:00 a.m. – 5:00 p.m., Monday through Friday, except City holidays). The full packets are also located on the City's website at www.ci.pittsburg.ca.us. If any reports or documents, which are public records, are distributed to the City Council less than 72 hours before the meeting, those reports or documents will be available for public inspection in the City Clerk's Office and on the day of the meeting in the Council Chamber at the public counter area below the dais.

SPEAKER'S CARD

Members of the audience who wish to address the City Council on issues that are not scheduled for the agenda and on any items listed as part of the agenda should complete a Speaker's Card available at the dais. Please read the card carefully in order to fill out the card properly. Submit the completed card to the City Clerk before the item is called, preferably before the meeting begins. Individuals will be given three minutes to address the Council unless additional time is allowed as provided for spokespersons. Speakers are not permitted to yield their time to another speaker. Prior to speaking, each member of the public shall state their name and business and City of residence in a clear and audible tone of voice. Pursuant to the Brown Act, no action may be taken by the City Council on items not already scheduled on the agenda; however, the City Council may refer your comments/concerns to staff or request that the item be placed on a future agenda.

PUBLIC HEARINGS

Persons who wish to speak on Public Hearings listed on the agenda will be heard when the Public Hearing is opened, except on Public Hearing items previously heard and closed to public comment. After the public has commented, the item is closed to public comment and brought to the Council/Agency level for discussion and action. Further comment from the audience will not be received unless requested by the Council/Agency.

There is a 90-day limit for the filing of a challenge in the Superior Court to certain City administrative decisions and orders which require a hearing by law, the receipt of evidence, and the exercise of discretion. The 90-day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge an action take by the City Council in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised in the public hearing, or in written correspondence delivered to the City Council prior to or at the public hearing. The City Council may be requested to reconsider a decision if the request is made prior to the next City Council meeting, regardless of whether it is a regular or special meeting.

NOTICE TO THE DISABLED AND VISUALLY OR HEARING IMPAIRED

In compliance with the Americans with Disabilities Act, the City of Pittsburg will provide special assistance for disabled citizens. Upon request, an agenda for any meeting shall be made available in appropriate alternative formats. The Council Chamber is equipped with sound amplifier units for use by the hearing impaired. The units operate in conjunction with the Chamber's sound system. You may request the sound amplifier from the City Clerk for personal use during Council meetings. If you need special assistance to participate in this meeting, or are requesting a specially formatted agenda, please contact the City Clerk at 925-252-4850. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting or provide the requested agenda format. (28 CFR 35.102-35.104 ADA Title II)

DISRUPTIVE CONDUCT

The Council requests that you observe the order and decorum of our Council Chamber by turning off or setting to vibrate all cellular telephones, and that you refrain from making personal, impertinent, or slanderous remarks. Boisterous and disruptive behavior while the Council is in session, and the display of signs in a manner which violates the rights of others or prevents others from watching or fully participating in the Council meeting, is a violation of our Municipal Code and any person who engages in such conduct can be ordered to leave the Council Chamber by the Mayor.

LIVE MEDIA BROADCASTING ADVISEMENT

City Council meetings are webcast live on the City's website at www.ci.pittsburg.ca.us on the Streaming Media page. Past meetings are also archived on that webpage. City Council meetings are also broadcast live on CCTV, Channel 24 also re-run at a later date. For more information, please contact the City Clerk's office at 252-4850.

City Council Outside Agency / Liaison / Sub-Committees Assignments - 2019

Updated February 4, 2019

OUTSIDE AGENCY BOARDS	COUNCIL MEMBER(S)	TYPE	MEETS	STAFF
ABAG	Jelani Killings / Merl Craft Alternate	Standing	Annual	G. Evans
Delta Diablo**	Juan Banales / Shanelle Scales-Preston Alt.	Standing	2nd Wednesday	F. McKinley
East Co. Co. County Habitat Conservancy	Juan Banales / Holland White Alternate	Standing	Monthly	K. Pollot
East County Water Management	Merl Craft / Holland White Alternate	Standing	Annual	F. McKinley
MCE Clean Energy Board	Shanelle Scales-Preston / Juan Banales Alt.	Standing	4 Per Year	D. Buchanan
TRANSPLAN / ECCRFFA	Juan Banales / Holland White Alternate	Standing	2nd Thursday	J. Hecht
Tri-Delta Transit (2 reps)***	S. Scales-Preston & Merl Craft / Jelani Killings Alt.	Standing	Last Wednesday	J. Hecht

LIAISON TO	COUNCIL MEMBER(S)	TYPE	MEETS	STAFF
East Bay League of Calif. Cities	Jelani Killings / Juan Banales Alt.	Standing	3rd Thursday	*Rotational
Mayor's Conference	Juan Banales / Jelani Killings Alt.	Standing	1st Thursday	G. Evans
School Districts Committee (2x2)	Holland White & Jelani Killings / Merl Craft Alt.	Standing	4th Thursday even months	G. Evans

SUBCOMMITTEES	COUNCIL MEMBER(S)	TYPE	MEETS	STAFF
CAC CDBG Subcommittee	S. Scales-Preston & Jelani Killings / Holland White Alt.	Standing	As needed	M. Aliotti
Camp Stoneman Anniversary Celebration	Merl Craft & Shanelle Scales-Preston	Ad Hoc	As needed	Evans/Simonton
CIP	Juan Banales & Jelani Killings	Ad Hoc	As needed	G. Evans
Community Services Subcommittee	Juan Banales & Holland White	Ad Hoc	As needed	G. Evans/M. Aliotti
Hills Committee	Juan Banales & Holland White / Merl Craft Alt.	Ad Hoc	As needed	G. Evans
Pittsburg Recognition Committee	Merl Craft / Juan Banales Alt.	Ad Hoc	As needed	J. Hecht
Economic Develop/Waterfront Subcommittee	Jelani Killings & Holland White / Juan Banales Alt.	Standing	Quarterly	K. Simonton
Finance Subcommittee	Jelani Killings & Juan Banales / Merl Craft Alt.	Standing	As needed	B. Farmer
Land Use Subcommittee	Juan Banales & Holland White / Merl Craft Alt.	Ad Hoc	As needed	K. Pollot
Pittsburg Arts & Community Foundation	Merl Craft & S. Scales-Preston / Jelani Killings Alt.	Standing	As needed	G. Evans
Pittsburg Police Activities League (PAL)	S. Scales-Preston & Holland White / Juan Banales Alt.	Standing	Monthly	B. Addington
Power Company Advisory	S. Scales-Preston & Holland White / Merl Craft Alt.	Standing	As needed	D. Buchanan
Sister City Committee	Holland White & Merl Craft / Jelani Killings Alt.	Ad Hoc	As needed	K. Simonton
Successor Agency Subcommittee	Merl Craft & Jelani Killings / S. Scales-Preston Alt.	Standing	As needed	M. Aliotti

*Rotational Staff as assigned by City Manager
**Stipend of $209 per month
***Stipend of $100 per month

COMMISSION/SUBCOMMITTEE MEETING SCHEDULE

Following is a tentative list of currently scheduled Commission meetings for the upcoming month. For further information, please visit our website at www.ci.pittsburg.ca.us and click on the CALENDAR link for meetings, dates, times and locations.

Commission	Tentative Meeting Dates
Planning Commission	2nd and 4th Tuesdays
Community Advisory Commission	1st Wednesday

Planning Commission meetings are regularly held the second and fourth Tuesdays of the month in the Pittsburg City Hall Council Chambers.

Community Advisory Commission meetings are regularly held the first Wednesday of the month in the Pittsburg City Hall Council Chambers.

In addition to the Commission Meetings listed above, there are several Council Member Subcommittees that meet on an “as needed basis”. For a list of subcommittees that Council Members and staff are assigned to, please see the “Council Committee List” attached to the agenda.

Subcommittee Meetings that are anticipated to occur in the coming month vary. The meeting dates, times and locations for these meetings are yet to be determined. This information will be posted on the City’s website, www.ci.pittsburg.ca.us , as soon as it is determined. Please check the Calendar on the City’s website for information.

For further information, contact the City staff member assigned to that Commission or Subcommittee.

City of Pittsburg
65 Civic Avenue • Pittsburg, California 94565

PROCLAMATION

NATIONAL ARTS AND HUMANITIES MONTH
OCTOBER 2019

WHEREAS, the nation's 95,000 nonprofit arts organizations, the National Endowment for the Arts, the National Endowment for the Humanities, the nation's 4,500 local arts agencies, and the arts and humanities councils of the 50 states and the six U.S. jurisdictions have regularly issued official proclamations on an annual basis designating October as National Arts and Humanities Month; and

WHEREAS, the arts and humanities embody much of the accumulated wisdom, intellect, and imagination of humankind and enhance and enrich the lives of every American, and play a unique role in the lives of our families, our communities, and our country; and

WHEREAS, cities and states, through their local and state arts agencies and representing thousands of cultural organizations, have celebrated the value and importance of culture in the lives of Americans and the health of thriving communities during National Arts and Humanities Month for several years; and

WHEREAS, the humanities help diverse communities across the United States explore their history and culture with the support and partnership of the National Endowment for the Humanities, the 55 state and territorial humanities councils, and local educational and cultural institutions; and

WHEREAS, the arts and culture industry strengthens our economy by generating $166.3 billion in total economic activity annually, $26 billion in government revenue, and by supporting the full-time equivalent of 5 million jobs; and

WHEREAS, the creative economy drives tourism and commerce, supports American workers, and makes up 4.3% of the annual GDP. Proposed federal legislation titled the CREATE Act (S.650 and H.R.1519) would support economic development of the creative economy.

NOW, THEREFORE, BE IT RESOLVED, I, Juan Antonio Banales, Mayor of the City of Pittsburg, California, on behalf of the entire City Council, hereby proclaim October as National Arts and Humanities Month in Pittsburg and call upon our residents to celebrate and promote the arts and culture in our nation and to specifically encourage the greater participation by those said citizens in taking action for the arts and humanities in their towns and cities.

Juan Antonio Banales, Mayor

Alice E. Evenson

Alice E. Evenson, City Clerk

ATTEST: October 7, 2019

City of Pittsburg
65 Civic Avenue • Pittsburg, California 94565

PROCLAMATION

NATIONAL HISPANIC HERITAGE MONTH SEPTEMBER 15 - OCTOBER 15, 2019

WHEREAS, America draws strength from the extraordinary diversity of its people, that our national character is enhanced by citizens who maintain and honor cultural customs brought from other lands; and

WHEREAS, the Hispanic people have long been a part of this tradition, having been among the earliest settlers in California, in Contra Costa County and other regions of the United States and Latinos over the years have come to this country in search of democracy, freedom and a better way of life. Their diverse and vibrant culture includes elements originating in Europe, North America, Central America, South America and the Caribbean; and

WHEREAS, many Hispanic sons and daughters have served our country with distinction, making important contributions in the arts and sciences, the business world, academia, government, agriculture and the Armed Forces helping to preserve the democracy and freedom all Americans enjoy, and where, since World War I have been awarded the Medal of Honor more than any other ethnic group; and

WHEREAS, pursuant to Public Law No. 100-402, approved August 17, 1988, "That the President of the United States is hereby authorized and requested to issue annually a proclamation designating 31 day period beginning September 15 and ending on October 15 as "National Hispanic Heritage Month" and calling upon the people of the United States especially the educational community, to observe such month with appropriate activities;" and

WHEREAS, the City of Pittsburg recognizes the important contributions to this community that those of Hispanic heritage have made.

NOW, THEREFORE, I, Juan Antonio Banales, Mayor, on behalf of the City Council of the City of Pittsburg, do hereby proclaim the days of September 15 through October 15, 2019, as "National Hispanic Heritage Month" and encourage all citizens to honor this observance with programs, activities, and ceremonies to learn about and promote the Latino-Hispanic contributions.

JAB

Juan Antonio Banales, Mayor

ATTEST:

Alice E. Evenson

Alice E. Evenson, City Clerk

October 7, 2019

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Approving General Agreement Terms and Authorizing the City Manager to Negotiate and Execute Agreements with Property Upsurge LLC and Carol Gallagher

MEETING DATE: October 7, 2019

EXECUTIVE SUMMARY

The City has initiated discussions with two property owners regarding the use of the vacant rear exterior portions of properties located at 160 E. 3rd Street and 340 Cumberland Street. Approval of this item would establish general terms and authorize the City Manager to negotiate and execute an agreement consistent with the approved terms. The premises consist of approximately 2,000 square feet of exterior space.

FISCAL IMPACT

The proposed rent is one dollar ($1) annually.

RECOMMENDATION

Staff recommends the City Council adopt a Resolution approving the agreement terms and authorize the City Manager to negotiate and execute agreements for use of the vacant rear exterior portions of properties located at 160 E. 3rd Street and 340 Cumberland Street.

BACKGROUND

Staff has approached Property Upsurge LLC, owner of the property at 160 E. 3rd Street, and Carol Gallagher, owner of the property at 340 Cumberland Street, (collectively the "Owners") regarding use of the rear exterior portions of these respective properties for activities such as hosting outdoor events.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

An agreement of this nature would activate an underutilized space, and allow the City, as well as other parties, to host events, entertain outdoors, and ensure proper maintenance of the area.

Staff is proposing the following terms:

- Fee: $1 annually
- City shall consult with Owner(s) prior to installation of any improvements.
- Term: One year from the agreement commencement date, automatically renewing annually, to a maximum total of ten (10) years, unless either party provides written notice of termination.
- Agreement may be terminated by either party with 30 days written notice. However, in the event the City has provided Owner(s) with written notice to hold an event which would be held more than thirty (30) days but less than ninety (90) days following notice by Owner(s) to terminate agreement, the effective termination date shall be no earlier than the day following the scheduled event.

Upon approval of the proposed terms, the agreements will be further negotiated, drafted, and executed by the City Manager and Owners.

ATTACHMENTS: Resolution

Report Prepared By: Jordan Davis, Assistant to the City Manager

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a City Council Resolution Approving General Agreement Terms and Authorizing the City Manager to Negotiate and Execute Agreements with Property Upsurge LLC and Carol Gallagher	)))))	RESOLUTION NO. 19-

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, the City propose to enter into agreements with Property Upsurge LLC, owner of the property at 160 E. 3rd Street, and Carol Gallagher, owner of the property at 340 Cumberland Street, (collectively the “Owners”) for the rear exterior portions of these respective properties; and

WHEREAS, the City seeks to utilize these areas for activities such as outdoor events or dining; and

WHEREAS, the rear exterior portions of these respective properties are currently vacant and undeveloped; and

WHERAS, use of these areas would activate an underutilized space, and allow the City, as well as other parties, to host events, entertain outdoors, and ensure proper maintenance of the area; and

WHEREAS, the City and Owners have agreed to the general terms; and

WHEREAS, the general agreement to terms does not bind the parties to any agreement.

NOW, THEREFORE, the Pittsburg City Council finds and determines as follows:

Section 1.

All the recitals above are true and correct and incorporated herein.

Section 2.

The Pittsburg City Council hereby adopts this Resolution approving the following general terms for each respective agreement:

- Fee: $1 annually
- City shall consult with Owner(s) prior to installation of any improvements
- Term: One year from the agreement commencement date, automatically renewing annually, to a maximum total of ten (10) years, unless either party provides written notice of termination.

- Agreement may be terminated by either party with 30 days written notice. However, in the event the City has provided Owner(s) with written notice to hold an event which would be held more than thirty (30) days but less than ninety (90) days following notice by Owner(s) to terminate Agreement, the effective termination date shall be no earlier than the day following the scheduled event.

Section 3.

The City Council hereby authorizes the City Manager to negotiate and execute agreements for use of the vacant rear exterior portions of properties located at 160 E. 3rd Street and 340 Cumberland Street.

Section 4.

The City Manager is hereby authorized to take such further actions as may be necessary or appropriate to carry out City's obligations pursuant to this Resolution.

Section 5.

The City Clerk shall certify to the adoption of this Resolution.

Section 6.

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the Pittsburg City Council at a regular meeting on the 7th day of October 2019, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Mayor

ATTEST:

Alice E. Evenson, City Clerk

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution to Authorize Allocation of U.S. Department of Justice – Bureau of Justice Assistance Edward Byrne Memorial Justice Assistance Grant (J.A.G.)

MEETING DATE: October 7, 2019

EXECUTIVE SUMMARY

The Pittsburg Police Department has submitted a preliminary application to the U.S. Department of Justice for funding under the Edward J. Byrne Memorial Justice Assistance Grant (JAG) Program in the amount of $19,769.

FISCAL IMPACT

No impact to the City's General Fund. Upon award of grant funds, the Police Department is requesting appropriation of $19,769 to the Fiscal Year 2019-20 budget in fund 291 to be used for the purchase of four StarChase Pursuit Management and GPS Tracking Technology systems. Any costs incurred over the $19,769 grant amount will be absorbed by other Police Department equipment funds

RECOMMENDATION

Staff recommends City Council approval of the attached resolution authorizing the appropriation of J.A.G. grant funds and authorizing the City Manager or his designee to act on the City's behalf relative to this grant including the establishment of necessary fiscal accounting.

BACKGROUND

With the support of the Edward Byrne Memorial Justice Assistance Grant, the Pittsburg Police Department will enhance its Auto Theft Reduction and Recovery Program by adding four StarChase Pursuit Management and GPS Tracking Technology systems.

Often when stolen vehicles are located in the community, a vehicle pursuit may be initiated. Vehicle pursuits expose innocent citizens, law enforcement officers and fleeing violators to the risk of serious injury or death.

The system is a pursuit management technology that contains a miniature GPS tag and a launcher mounted in a police vehicle. This technology mitigates risk and protects communities. It is utilized for high-risk traffic situations, such as DUIs, traffic infractions, stolen vehicles, human trafficking or felony events.

The StarChase system is a proven technology that provides a significant tactical advantage to law enforcement officers in failure-to-yield or high-risk flight situations. Once a vehicle is tagged it enables a dispatcher to track the suspect in real time using a web-based mapping program. The officer remains on the street, a potentially dangerous pursuit is avoided, and the offender can then be safely apprehended.

Pittsburg Police Department currently has 20 vehicles equipped with a StarChase system. The first system was installed in December 2016. Since that time, 134 successful deployments have resulted in 105 arrests, 97 recovered stolen vehicles.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

The Department's overall goal is to use funds from the Edward Byrne Memorial Justice Assistance Grant to enhance the existing Auto Theft Reduction and Recovery Program with new StarChase technology and continue the successful recovery of stolen vehicles, protect law enforcement officers and innocent citizens in the event a pursuit is initiated, as well as gather intelligence related to other law enforcement related investigations.

The Pittsburg Police Department has applied for $19,769 from the U.S. Department of Justice, Bureau of Justice Assistance through the Edward Byrne Memorial Justice Assistance Grant (J.A.G.). The Department requests authorization to accept appropriate the grant funds.

ATTACHMENTS:

Report Prepared By: Brian Addington, Chief of Police

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the matter of:

Adoption of a City Council Resolution to Authorize Allocation of U.S. Department Of Justice – Bureau of Justice Assistance Edward Byrne Memorial Justice Assistance Grant (J.A.G.)	)))))	RESOLUTION NO. 19-

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, the Edward Byrne Memorial Justice Assistance Grant (JAG) Program allows local governments to support a broad range of activities to prevent crime and improve the criminal justice system; and

WHEREAS, the Police Department has applied for $19,769 in program funds to be used for the purchase of three StarChase Pursuit Management and GPS Tracking Technology systems; and

WHEREAS, the Pittsburg Police Department currently has 20 vehicles equipped with a StarChase system. The first system was installed in December 2016. Since that time, 134 successful deployments have resulted in 105 arrests, 97 recovered stolen vehicles.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. The City Council finds and determines that the above recitals are true and correct and are incorporated herein.

Section 2. The Pittsburg Police Department is authorized to accept grant funds from the U.S. Department of Justice Bureau of Justice Assistance Grant and allocate their expense to the purchase of four StarChase Pursuit Management and GPS Tracking Technology systems.

Section 3. The City Manager or his designee is authorized to accept on the City's behalf relative to this grant, including the establishment of necessary fiscal accounting from fund 291 and execution of all necessary documents.

Section 4. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 7TH day of October 2019, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

____
Juan Antonio Banales, Mayor

ATTEST:

____
Alice E. Evenson, City Clerk

CITY OF PITTSBURG
CITY COUNCIL/AGENCY CONCURRENT MEETING MINUTES

DATE: September 16, 2019

LOCATION: Council Chamber, City Hall, 65 Civic Avenue, Pittsburg, CA 94565

CITY COUNCIL/AGENCY MEMBERS
Juan Antonio Banales, Mayor/Chair
Jelani Killings, Vice-Mayor/Chair Council/Agency Member
Marilyn Craft, Council/Agency Member
Holland Barrett White, Council/Agency Member
Shanelle Scales-Preston, Council/Agency Member
S.L. Floyd, Agency Member
Annie Hill Herring, Agency Member

APPOINTED OFFICIALS
Garrett Evans, City Manager/Executive Director
Donna Mooney, City Attorney/Legal Counsel
Alice E. Evenson, City Clerk/Agency Secretary (elected)
Nancy Parent, City Treasurer (elected)

A workshop was held at 5:30 P.M. presenting the Opportunity Zones EIFD (Enhanced Infrastructure Financing District).

Mayor Banales called the meeting of the City Council to order at 7:34 P.M. in the City Council Chamber at City Hall, 65 Civic Avenue, Pittsburg, CA after convening at 6:20 P.M. for the following items:

1. CONFERENCE WITH LABOR NEGOTIATORS Pursuant to Section 54957.6: City designated representatives: Stacy Shell; Employee organizations: Police Officers Association (POA) and Police Management Group (PMG)

2. CONFERENCE WITH REAL PROPERTY NEGOTIATORS pursuant to Section 54956.8: Property: 352, 368, 384 Railroad Avenue (APNs 085-105-011, 085-105-012, 085-105-013); Successor Agency negotiators: Garrett Evans and Maria Aliotti; Negotiating parties: Global Resources Trading LLC; Under negotiation: Price and terms of payment

3. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION pursuant to Section 54956.9(d)(1): C.S.M.C.S. Case # ARB-18-0294 - Teamsters Local 856 and City of Pittsburg (Grievance Re Employee Discipline)

Prior to convening in Closed Session the following audience remarks were made:

Wolfgang Croskey, Croskey Real Estate, representing property in Item 2 noted he was available if there were any questions.

Ofc. Davis, Pittsburg Police Department, on behalf of both the POA and PMG, thanked the City Manager and Human Resources Director for working with the POA and

PMG representatives in the effort to resolve a labor negotiation issue. Based on the communication the POA and PMG have had with the City Manager and Human Resources Director they feel a tentative resolution agreement has been met. He asked the City Council to review the proposed resolution with the understanding the POA and PMG feel this is a fair and reasonable agreement.

Mayor Banales stated there was no reportable action taken in Closed Session.

ROLL CALL

All Members were present.

PLEDGE OF ALLEGIANCE

Chief Addington led the Pledge of Allegiance.

PROCLAMATION

4. Clean Air Day

A proclamation was read designating Clean Air Day.

5. National Immigrant Day

A proclamation was read designating October 28, 2019 as National Immigrant Day in the City of Pittsburg.

PRESENTATIONS

6. PAL CPR Recognition

Wolfgang Croskey, representing PAL, thanked PAL and the Pittsburg Arts and Community Foundation for the successful program whereby youth in the community are able to attend classes to learn CPR, First Aid and AED operation and receive certification. The certificates of completion were handed out to those participants.

CITY MANAGER'S REMARKS

City Manager Evans thanked everyone for the successful Seafood Festival.

Assistant City Manager McKinley announced upcoming events.

CITIZENS REMARKS

Karen Lewis, Pittsburg, voiced concerns about Food Source closing and the potential for an empty storefront. She would like to see the City pursue a grocery co-op.

Dianna Schepers, Pittsburg, noted that Sister Act is playing at the California Theatre through Sunday. She also noted that Pittsburg Community Theater is looking for warehouse space.

Lisa Maule, Pittsburg, suggested better marketing is needed for the struggling farmer's market.

COMBINED CITY COUNCIL AND PITTSBURG POWER COMPANY CONSIDERATION

10. Adoption of a City Council Resolution Establishing The Digital Office for New Americans and a Pittsburg Power Company Resolution Allocating $50,000 to The Digital Office of New Americans

Silvia Angeles, Pittsburg, representing the East County Regional Group sponsored by First Five Contra Costa, spoke through a translator. She thanked the City for taking this first step for the immigrant community.

On Motion by Member Craft, seconded by Member White to adopt and carried by the following vote:

AYES: Craft, Scales-Preston, White, Banales
NOES: Killings

CITY COUNCIL

PUBLIC HEARING

11. Adoption of a City Council Resolution Approving the 2018-2019 Community Development Block Grant Consolidated Annual Performance and Evaluation Report

Mayor Banales opened the Public Hearing. There being no one to speak to the item, Mayor Banales closed the Public Hearing.

On Motion by Vice-Mayor Killings, seconded by Member Scales-Preston to adopt and carried unanimously.

12. Adoption of a City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement Between the City and Stoneman Laboratories LLC, AP-18-1371

Mayor Banales opened the Public Hearing.

Pat O'Keefe, CEO of Stoneman Labs, thanked the Council for the consideration and said he was available to answer any questions.

Lisa Maule, Pittsburg, inquired about the number of jobs this would bring to the City.

There being no one to speak further to the item, Mayor Banales closed the Public Hearing.

On Motion by Mayor Banales, seconded by Member White to adopt and carried By the following vote:

AYES: Craft, Scales-Preston, White, Banales
NOES: Killings

CONSIDERATION

13. Introduction and Waive First Reading of an Ordinance Amending Title 5 of the Pittsburg Municipal Code Related to Cannabis Regulations

Wolfgang Croskey, Pittsburg, hoped the Council would review ways to make Pittsburg more attractive to all businesses.

On Motion by Mayor Banales, seconded by Member Craft to adopt and carried by the following vote:

AYES: Craft, Scales-Preston, Banales
NOES: Killings, White

CONFLICT OF INTEREST STATEMENT

There were no conflict of interest statements.

COMBINED CITY COUNCIL, PITTSBURG ARTS AND COMMUNITY FOUNDATION, PITTSBURG POWER COMPANY AND SUCCESSOR AGENCY CONSENT CALENDAR

On Motion by Member Craft, seconded by Member White to adopt without Items 15 and 22 and carried unanimously.

14. Minutes of August 19, 2019

16. Adoption of a City Council Resolution to Accept a Federal Highway Safety Improvement Program (HSIP) Grant for Contract 2019-01, Traffic Signal Improvement Project

17. Adoption of a City Council Resolution Authorizing the City of Pittsburg to Access State and Federal Summary Information for Employment and Related Purposes

18. Adoption of a City Council Resolution to Amend the Staffing Allocation in the Building Division

19. Adoption of a City Council Resolution to Authorize an Amendment to the Employment Agreement for the City Attorney

20. Adoption of a City Council Resolution to Accept Contract 2019-09, Water Treatment Plant Raw Water Intake Line Replacement Project as Complete and Authorize the City Engineer to File a Notice of Completion

21. Adoption of a City Council Resolution to Amend the Master Pay Schedule as Required by California Public Employees' Retirement System

23. Adoption of a City Council Resolution to Accept the Plans and Specifications and Authorize Award of Contract 2019-06 Montezuma Slough Pump Station Reconstruction Project

24. Adoption of a City Council Resolution to Accept the 2018 Patch Paving Contract as Complete and Authorize the City Engineer to File a Notice of Completion

25. Adoption of a City Council Resolution to Authorize the City Manager to Execute Contract for Water Treatment Plant Chemical Supply - Sodium Hydroxide

26. Adoption of a City Council Resolution to Approve Two Reclassifications

27. Adoption of a City Council Resolution to Authorize the City Manager to Execute Contract Agreement for Water and Sewer Supplies

28. Adoption of a City Council Resolution to Execute a Consultant Agreement with Luhdorff and Scalmanini for Engineering Services

The following items were considered separately:

15. Adoption of a Pittsburg Arts and Community Foundation Resolution Approving the Lease Terms and Authorizing the Executive Director to Execute a Lease Agreement between the Pittsburg Arts and Community Foundation and Tony Keslinke and a Pittsburg Power Company Resolution Allocating up to $50,000 to Pittsburg Arts and Community Foundation for Relocation Costs and Tenant Improvements

Lisa Maule, Pittsburg, stated she was glad to know the arts community finally had a semi-permanent location.

On motion by Mayor Banales, seconded by Member Craft to adopt and carried unanimously.

22. Adoption of a City Council Resolution to Authorize the City Manager to Execute an Agreement with Ambrose Recreation and Park District for Construction Management of the Ambrose Park Rest Room Project

The following spoke in favor of the project and thanked the City for participating in improving Ambrose Park:

Francisco Torres, Pittsburg, ACE Alliance for Community Empowerment
Rochelle Pierre, East County Regional Group
Denise Woods, East County Regional Group
Annette Ramirez, Pittsburg

On motion by Member Craft, seconded by Member White to adopt and carried unanimously.

COUNCIL REQUEST FOR FUTURE AGENDA ITEMS

Member White requested exploration of a feasibility study to establish a grocery co-op in the city of Pittsburg.

On motion by Member White, seconded by Member Scales-Preston to approve for a future agenda and carried unanimously.

COUNCIL MEMBER REPORTS AND REMARKS

Member Craft attended the Camp Stoneman event which was well received. She thanked the Pittsburg Historical Society, Member Scales-Preston, and Dennisha Marsh for all their hard work organizing the event.

Member White thanked Members Scales-Preston and Craft for their leadership on the Camp Stoneman event. He also noted State Treasurer Fiona Ma had visited Pittsburg touring the Hitachi light rail plant, and she voiced an interest in partnering with the City for economic development priorities.

Member Scales-Preston attended the Camp Stoneman event and the Seafood Festival. She thanked the Police Department and city staff that worked on both events.

Vice-Mayor Killings attended the economic development subcommittee along with Member White. He attended the Clean Pittsburg cleanup at Riverview Park and the CIP subcommittee.

Mayor Banales thanked Members Scales-Preston and Craft for their help with the Camp Stoneman event. He attended the Police Department Awards Dinner, and the Math Engineering Science Achievement (MESA) 10 Year Anniversary at the Los Medanos College campus.

ADJOURNMENT

The City Council meeting was adjourned at 10:11 P.M. to October 7, 2019.

Respectfully submitted,

Alice E. Evenson, City Clerk

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor/Chair and Council/Agency Members

FROM: Garrett Evans, Executive Director/City Manager

SUBJECT: Adoption of a City Council and Power Company Resolution Approving the Carryover of Fiscal Year 2018-19 Designated Operating Budget Balances into the Fiscal Year 2019-20 Budget

MEETING DATE: October 7, 2019

EXECUTIVE SUMMARY

The City of Pittsburg has various operating programs and activities budgeted in Fiscal Year 2018-19 that were not completed or are on-going. The balances remaining in each of the budgets as of June 30, 2019 need to be carried forward into the current fiscal year's budget in order to continue and/or complete these obligations. The Governmental Accounting Standards Board (GASB) Statement No. 54 requires governing bodies to approve unencumbered operating budget carry-forward requests at the closest meeting after the end of a fiscal year.

FISCAL IMPACT

The City Council has approved the attached listing of items in the Fiscal Year 2018-19 operating budget. These are continuing programs and activities that were not completed in Fiscal Year 2018-19. Staff has confirmed that balances in each specific fund are sufficient to cover all budgeted carry-forward costs.

RECOMMENDATION

City Council approve the carryover of designated operating budget balances from the Fiscal Year 2018-19 Budget into the current Fiscal Year 2019-20 Budget.

BACKGROUND

At the close of the 2018-19 Fiscal Year, the attached operating budgets, which were approved by City Council, were not completed. Staff has determined that it will be necessary to transfer the balance of these prior commitments into the current 2019-20 fiscal year budget as required by governmental accounting standards. The attached listing shows the operating accounts and their remaining budgets to be carried forward into the current 2019-20 fiscal year budget.

The operating and administrative carryover funds are:

Fund	Amount
General Fund	$184,745
General Plan Update Fund	$207,264
Local Traffic Mitigation Fund	$53,285
Lighting and Landscaping Fund	$13,100
NPDES Fund	$36,958
Marina Fund	$27,000
Information Systems Fund	$117,580
Subtotal	$639,932
Island Energy Fund	$12,500
Pittsburg Power Company Fund	$565,920
Subtotal	$578,420
Total	$1,218,352

A more detailed description of the carryover funds included above are listed in the Carryover Operating Budget Listing attached to this staff report.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

GASB 54 requires governments to create fund balance classifications (Restricted, Committed, Assigned, and Unassigned) that identify constraints that control how fund balances can be spent. Encumbered and unencumbered carry-forward appropriations are included in the Committed fund balance category. GASB 54 includes a provision that governing bodies approve unencumbered operating budget carryovers soon after the end of a fiscal year in order to be included in the Committed fund balance category. GASB 54 does not require governing bodies to approve encumbered and capital project appropriation carry-forwards.

Staff recommends that the funds for all incomplete designated operating programs and activities budgeted in Fiscal Year 2018-19 in the amount of $1,218,352 be carried forward into the 2019-20 fiscal year budget.

ATTACHMENTS: Carryover Operating Budget Listing
City Resolution
Pittsburg Power Resolution

Report Prepared By: Krista Nuxoll, Financial Analyst

Approved By: Brad Farmer, Director of Finance

BEFORE THE GOVERNING BOARD OF THE PITTSBURG POWER COMPANY

In the Matter of:

Adoption of a Resolution Approving the	)	
Carryover of Fiscal Year 2018-19	)	RESOLUTION NO. 19-
Designated Operating Budget Balances	)	
into the Fiscal Year 2019-20 Budget	)	

The Board of Directors of the Pittsburg Power Company DOES RESOLVE as follows:

WHEREAS, at the close of the 2018-19 fiscal year, various operating programs and activities that were not completed or are on-going and must be carried over into the next budget year; and

WHEREAS, in compliance with the Governmental Accounting Standards Board (GASB) Statement No. 54 requirements, it is necessary to identify and commit unencumbered operating budget carry-forwards as soon as practical after the end of a fiscal year; and

WHEREAS, staff has determined that it will be necessary to transfer the balance of these commitments into the current 2019-20 fiscal year budget; and

WHEREAS, funds previously approved by the Board are available and will not exceed respective fund balances.

NOW, THEREFORE, the Pittsburg Power Company finds and determines as follows:

Section 1. Findings

The recitals set forth are true and correct statements and are hereby incorporated in conjunction with the respective staff report.

Section 2. Authorization

A. The Pittsburg Power Company does hereby authorize to carry forward into Fiscal Year 2019-20 the programs and activities not completed during Fiscal Year 2018-19 to comply with GASB 54 requirements.

B. That the Pittsburg Power Company further authorizes the sum of $578,420 from unreserved, designated funds be re-appropriated and may be expended as required to carry out completion of various operating programs and activities; and that the 2019-20 budget is amended and the appropriate line items in the following funds may be increased not to exceed the amounts shown:

Island Energy Fund	$ 12,500
Pittsburg Power Fund	565,920
Total Pittsburg Power Company:	**$ 578,420**

Section 3. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the Pittsburg Power Company at a regular meeting on the 7th day of October, 2019, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

____
Juan Antonio Banales, Chair

ATTEST:

____
Garrett Evans, Executive Secretary

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a Resolution Approving the)
Carryover of Fiscal Year 2018-19) RESOLUTION NO. 19-
Designated Operating Budget Balances)
into the Fiscal Year 2019-20 Budget)

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, at the close of the 2018-19 fiscal year, various operating programs and activities that were not completed or are on-going and must be carried over into the next budget year; and

WHEREAS, in compliance with the Governmental Accounting Standards Board (GASB) Statement No. 54 requirements, it is necessary to identify and commit unencumbered operating budget carry-forwards as soon as practical after the end of a fiscal year; and

WHEREAS, staff has determined that it will be necessary to transfer the balance of these commitments into the current 2019-20 fiscal year budget; and

WHEREAS, funds previously approved by the City Council are available and will not exceed respective fund balances.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

The recitals set forth are true and correct statements and are hereby incorporated in conjunction with the respective staff report.

Section 2. Authorization

A. The City Council does hereby authorize to carry forward into Fiscal Year 2019-20 the programs and activities not completed during Fiscal Year 2018-19 to comply with GASB 54 requirements.

B. That the City Council of the City of Pittsburg further authorizes the sum of $639,932 from unreserved, designated funds be re-appropriated and may be expended as required to carry out completion of various operating programs and activities; and that the 2019-20 budget is amended and the appropriate line items in the following funds may be increased not to exceed the amounts shown:

General Fund	$ 184,745
General Plan Update Fund	207,264
Local Traffic Mitigation Fund	53,285
Lighting and Landscaping Fund	13,100
NPDES Fund	36,958
Marina Fund	27,000
IT Fund	117,580
Total City:	**$ 639,932**

Section 3. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 7th day of October, 2019, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Juan Antonio Banales, Mayor

ATTEST:

Alice E. Evenson, City Clerk

Operating/Administrative Carryover Budgets to FY 2019-20

Department	*Account Number*	*Account Title*	*Amount to Carry Forward to FY19-20*	*Justification*
Police Department	110-42101-3005	*Capital Equipment*	106,000	Cameras and Equipment
Recreation-Summer Youth	110-41710-1131	*Part-Time Salaries*	51,677	PSYC program
Recreation-Summer Youth	110-41710-2199	*Contractual Services*	10,872	PSYC program
CM Contingency	110-49991-4599	*Contingency*	16,196	Carryover Unused City Manager Contingency
		Total General Fund:	**$ 184,745**	
General Plan Update	130-41510-2199	*Contractual Services*	207,264	Preparation of General Plan Update
		Total General Plan Update Fund:	**$ 207,264**	
Local Traffic Mitigation	303-52253-3001	*Land Acquisition*	53,285	Land Acquisition from County
		Total Local Traffic Mitigation Fund:	**$ 53,285**	
Lighting & Landscaping	205-43012-2224	*Street Light Repairs*	13,100	Decorative Poles and Light Fixtures
		Total Lighting and Landscaping Fund:	**$ 13,100**	
NPDES	207-49991-2199	*Contractual Services*	36,958	Environmental Consulting Services
		Total NPDES Fund:	**$ 36,958**	
Marina	550-41121-2218	*Maintenance Agreement*	27,000	Cameras
		Total Marina Fund:	**$ 27,000**	
IT	601-40023-1304	*Software*	43,580	Dell Software
IT	601-40023-2199	*Contractual Services*	50,000	Carahsoft Services
IT	601-40023-2218	*Maintenance Agreements*	24,000	AT&T
		Total Information Systems Fund:	**$ 117,580**	
		Total City of Pittsburg Operating Budget Carryover :	***$ 639,932***	

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor/Chair and Council/Agency Members

FROM: Garrett Evans, Executive Director/City Manager

SUBJECT: Adoption of City Council and Power Company Resolutions Approving the Carryover of Fiscal Year 2018-19 Capital Improvement Project Budget Balances into the Current Fiscal Year 2019-20 Budget

MEETING DATE: October 7, 2019

EXECUTIVE SUMMARY

The City of Pittsburg has multi-year Capital Improvement Projects which were not completed during the 2018-19 fiscal year. The budget balances remaining in each of the projects as of June 30, 2019 need to be carried forward into the current fiscal year budget in order to continue and/or complete these projects.

FISCAL IMPACT

The attached listing of Capital Improvement Projects has been approved by the City Council/Board in prior fiscal years. These are continuing projects and staff has confirmed that balances in each specific fund are sufficient to cover all budgeted costs.

Capital Improvement Projects in Successor Agency funds were approved by the former Redevelopment Agency in prior fiscal years and were included in a City/RDA Funding Agreement on October 19, 2009 and are considered City projects.

RECOMMENDATION

Staff recommends that the City Council/Board approve the carryover of multi-year Capital Improvement Project budget balances which were incomplete as of June 30, 2019 into the current Fiscal Year 2019-20 Budget. For completed projects, any unspent funds will revert back to unallocated reserves.

BACKGROUND

At the close of the 2018-19 fiscal year, the attached budgeted Capital Improvement Projects were approved by City Council/Board in prior years but were not completed. Staff has determined that it will be necessary to transfer the balance of these multi-year commitments into the current fiscal year 2019-20 budget as required by governmental accounting standards. The attached Carryover Project Listing shows the Capital Project Fund amounts needed to be carried forward into the current 2019-20 fiscal year budget.

The Capital Project Carryover List by fund accounts are:

Fund	Amount
Measure J Fund	$4,864,616
Gas Tax Fund	$1,448,688
SB-1 RMRA Gas Tax Fund	$315,809
Grant Fund	$1,157,526
NPDES Fund	$23,761
Local Traffic Mitigation Fund	$4,396,774
Park Dedication Fund	$524,772
Capital Improvements Fund	$1,467,167
Kirker Creek Drainage Fund	$5,009
Community Capital Improvements Fund	$279,952
Regional Traffic Mitigation Fund	$19,031
Water Operating Fund	$3,575,918
Sewer Operating Fund	$16,067,411
Waterfront Fund	$1,515,220
Marina Fund	$20,000
SA Capital Projects Fund	$341,881
Island Energy Fund	$1,392,406
Total CIP Carryover	$37,415,951

A more detailed description of the carryover funds included above are listed in the Capital Project Listing attached to this staff report.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

All capital project budgets have been appropriated in prior fiscal years and in order to continue and or complete these projects it will be necessary to carryover unspent budgets to the current fiscal year in the amount of $37,415,951. As a supplement to the Carryover Project Listing, the Capital Improvement Project Status report is attached to this staff report.

ATTACHMENTS: City of Pittsburg Resolution
Pittsburg Power Company Resolution
Carryover Project Listing
Capital Project Status

Report Prepared By: Krista Nuxoll, Financial Analyst

Report Reviewed By: Brad Farmer, Director of Finance

City of Pittsburg Capital Project Carryover Listing to Fiscal Year 2019-20

Project #	Capital Project Description	Remaining Balance	Carryover Amount
2010	Multimodal Transit Station	24,585	24,585
2014	San Marco Blvd Class I Trail	64,364	64,364
2016	2018-19 Traffic Calming	50,214	50,214
2017	2018-19 Fence/Soundwall/Streetlight	98,965	98,965
2018	(2) PASS Loveridge and Bailey Corridors	55,000	55,000
2019	(2) BART Pedestrian & Bicycle Connectivity	4,571,488	4,571,488
	Total Measure J Fund 204	***$ 4,864,616***	***$ 4,864,616***
2205	West Leland Street Lighting	541,587	541,587
2207	(2) West Leland High Friction	525,905	525,905
2210	2017-18 Traffic Calming Project	32,913	32,913
2211	EBART Parking Strategy & Signage	9,765	9,765
2215	Standard Detail Update	22,753	22,753
2216	(2) Range Road Sidewalk Improvements	120,000	120,000
2217	2018-19 Citywide Pavement Management	180,865	180,865
2222	Patch Paving Project	14,900	14,900
	Total Gas Tax Fund 203	***$ 1,448,688***	***$ 1,448,688***
2218	West Leland Pavement Management	196,254	196,254
2219	Citywide Striping and Signage	49,855	49,855
2220	2018-19 Traffic Signal Modification	60,330	60,330
2221	2018-19 Traffic Signal Equipment	9,370	9,370
	Total SB-1 RMRA Gas Tax Fund 228	***$ 315,809***	***$ 315,809***
2995	(2) Regional Freeway Security Project	1,157,526	1,157,526
	Total Grant Fund 295	***$ 1,157,526***	***$ 1,157,526***
2701	Storm Drain Trash Capture (Frontage Road)	23,761	23,761
	Total NPDES Fund 207	***$ 23,761***	***$ 23,761***
3006	(2) California Ave Widenng Phase I - *Revenue Only*	9,816	9,816
3009	El Pueblo Street Rehab (2012-05) - Phase I	89,199	89,199
3011	W. Leland Extension (San Marco to Avila)	15,822	15,822
3014	San Marco Right Turn @ W. Leland	45,633	45,633
3015	James Donlon Extension Phase I	4,236,304	4,236,304
	Total Local Traffic Mitigation Fund 303	***$ 4,396,774***	***$ 4,396,774***
3057	Ambrose Park Master Plan & Improvements	14,932	14,932
3070	Small World Park Improvements	990	990
3071	Annual Playground Replacement	80,000	80,000
3072	City Park Soccer Field Turf Replacement	235,320	235,320
3073	Annual Park Features Replacement	59,907	59,907
3074	Biennial Restroom Replacement/Rehabilitation	133,623	133,623
	Total Park Dedication Fund 304	***$ 524,772***	***$ 524,772***
3113	(2) W Leland Pavement Marker/Speed Sign	331,288	331,288
3114	(2) W Leland Delination/Crosswalk	224,582	224,582
3115	(2) Stoneman Avenue Intersection Improvements	830,028	830,028
1424	Video Camera Project	81,269	81,269
	Total Capital Improvements Fund 301	***$ 1,467,167***	***$ 1,467,167***
3205	Pump Station Repairs	5,009	5,009
	Total Kirker Creek Drainage Fund 302	***$ 5,009***	***$ 5,009***
3320	Railroad Ave. Building Improvements	8,486	8,486
3324	California Theatre - Phase I	137,713	137,713
3326	Library Improvements	10,863	10,863
3330	Plaza Marina Tenant Improvements	1,916	1,916

City of Pittsburg Capital Project Carryover Listing to Fiscal Year 2019-20

Project #	Capital Project Description		Remaining Balance		Carryover Amount
3331	Railroad Ave (3rd - 8th St) Improvements		8,066		8,066
3332	Citywide Fence and Soundwall Repairs		44,735		44,735
3382	(2) Seismic Retrofit Bridge		68,183		68,183
	Total Community Capital Improvements Fund 322	$	***279,962***	$	***279,962***
3702	RR Ave Traffic Signal Timing		4,540		4,540
3703	BART Access Improvements		9,364		9,364
3704	BART Parking and Access Strategy		5,127		5,127
	Total Regional Traffic Mitigation Fund 307	$	***19,031***	$	***19,031***
5002	East 14th Street Waterline Relocation		135,488		135,488
5030	Automatic Water Meter Reading System		21		21
5035	Upgrade SCADA System		8,544		8,544
5040	Water Treatment Plant Sludge Handling Facility		169,824		169,824
5045	(2) Rossmoor Well Replacement		30,642		30,642
5050	2013-14 WTP Capital Repairs & Improvements		166,200		166,200
5055	2016-17 Sludge Removal		250,000		250,000
5058	2017-18 WTP Capital Repairs		114,669		114,669
5060	2021-22 WTP Filter Media Replacement		99,965		99,965
5061	WTP Raw Water Intake Line Replacement		50,565		50,565
5071	(3) Main W Leland (WTP to SW Hills)		2,550,000		2,550,000
	Total Water Operating Funds	$	***3,575,918***	$	***3,575,918***
5119	Citywide Sewer Inspection Project		81,874		81,874
5201	Highway 4 Trunk Line Relief (2007-09)		133,113		133,113
5204	2010-11 Sewer Replacement Program		4,406,499		4,406,499
5205	(3) 2014-15 CCTV/Inspection/Sewer Replacement		11,157,397		11,157,397
5206	Sewer Master Plan Update		175,000		175,000
5208	Montezuma Pump Station Replacement		113,528		113,528
	Total Sewer Operating Funds	$	***16,067,411***	$	***16,067,411***
5400	Marina Dredging		716,782		716,782
5402	(2) Brownfield EPA Grant Project		238,111		238,111
5403	(2) Boat Launching Facility Improvements		560,327		560,327
	Total Waterfront Fund 540	$	***1,515,220***	$	***1,515,220***
5502	Marina Infrastructure Rehab		20,000		20,000
	Total Marina Fund 550	$	***20,000***	$	***20,000***
8336	(1) Citywide Storm Drain Improvements (2009-01)		341,881		341,881
	Total Successor Agency Capital Projects Fund 802	$	***341,881***	$	***341,881***
			Total City Carryover	$	**36,023,545**

City of Pittsburg Capital Project Carryover Listing to Fiscal Year 2019-20

Project #	Capital Project Description	Remaining Balance	Carryover Amount

PPC Carryover Projects

Project #		Capital Project Description	Remaining Balance	Carryover Amount
580-46115-2420		Mare Island Residential Units - Development Refund	106,356	106,356
580-46115-3007		Mare Island Residential Units - Gas Electric Meters	35,981	35,981
5802		Capital Reinvestment Projects	180,342	180,342
5807		IE Facility Relocation Project	350,000	350,000
5811		Gas Line Removal and Replacement	63,998	63,998
5813		Mare Island Residential Units	106,582	106,582
5814		2017-18 Cable Replacement	154,470	154,470
5816		Duct Bank and Vault Replacements	176,545	176,545
5817		Station H KWH Metering Equipment	38,500	38,500
5818		Dockside Power Expansion REIMB	179,632	179,632
		Total Island Energy Fund 580	***$ 1,392,406***	***$ 1,392,406***

Total Pittsburg Power Carryover **$ 1,392,406**

GRAND TOTAL CIP CARRYOVER: $ 37,415,951

(1) Although these items remain in Successor Agency funds, they were included in a City/RDA funding agreement on 10/19/09 and are now City projects

(2) Carryover partially or fully funded by outstanding grant funding

(3) Carryover partially or fully funded by outstanding bond funding

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a City Council Resolution Approving the Carryover of Fiscal Year 2018-19 Capital Improvement Project Budget Balances Into the Current Fiscal Year 2019-20 Budget	)))))	RESOLUTION NO. 19-

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, at the close of the 2018-19 Fiscal Year there are several Capital Improvement Projects that were not completed or are ongoing; and

WHEREAS, a budget amendment is necessary to incorporate Capital Improvement Project budgets that remain unspent into the current fiscal year budget; and

WHEREAS, funds previously approved by the City Council are available and will not exceed respective fund balances; and

WHEREAS, the project balances being carried over are being partially funded from other sources in the amounts of $3,545,364 in outstanding grant funding, $1,694,000 in Water Bond fund balance and $1,192,623 in cooperative agency funding; and

WHEREAS, Capital Projects in Successor Agency to RDA funds were included in a City/RDA Funding Agreement on October 19, 2009 and are considered City projects.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

The recitals set forth above are true and correct statements and are hereby incorporated in conjunction with the respective staff report.

Section 2. Authorization

A. The City Council does hereby authorize the carryover of Capital Improvement Project budget balances into the current fiscal year.

B. The City Council further authorizes the sum of $36,023,545 to be appropriated from funds remaining in prior year incomplete Capital Projects into the 2019-20 Fiscal Year budget as follows:

Measure J Fund	$ 4,864,616
Gas Tax Fund	1,448,688
SB-1 RMRA Gas Tax Fund	315,809
Grant Fund	1,157,526
NPDES Fund	23,761

Local Traffic Mitigation Fund	4,396,774
Park Dedication Fund	524,772
Capital Improvements Fund	1,467,167
Kirker Creek Drainage Fund	5,009
Community Capital Improvements Fund	279,962
Regional Traffic Mitigation Fund	19,031
Water Operating Fund	3,575,918
Sewer Operating Fund	16,067,411
Waterfront Fund	1,515,220
Marina Fund	20,000
SA Capital Projects Fund	341,881
TOTAL CITY CIP CARRYOVER:	**$ 36,023,545**

Section 3. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 7th day of October, 2019 by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

____
Juan Antonio Banales, Mayor

ATTEST:

____
Alice E. Evenson, City Clerk

BEFORE THE GOVERNING BOARD OF THE PITTSBURG POWER COMPANY

In the Matter of:

Adoption of a Power Company Resolution) Approving the Carryover of Fiscal Year) 2018-19 Capital Improvement Project Budget) Balances into the Current Fiscal Year 2019-20) Budget)	RESOLUTION NO. 19-

The Board of Directors of the Pittsburg Power Company DOES RESOLVE as follows:

WHEREAS, at the close of the 2018-19 Fiscal Year there are several Capital Improvement Projects that were not completed or are ongoing; and

WHEREAS, a budget amendment is necessary to incorporate Capital Improvement Project budgets that remain unspent into the current fiscal year budget; and

WHEREAS, funds previously approved by the Board are available and will not exceed respective fund balances.

NOW, THEREFORE, the Pittsburg Power Company Board of Directors finds and determines as follows:

Section 1. Findings

The recitals set forth above are true and correct statements and are hereby incorporated in conjunction with the respective staff report.

Section 2. Authorization

A. The Pittsburg Power Company Board of Directors does hereby authorize the carryover of Capital Improvement Project budget balances into the current fiscal year.

B. The Pittsburg Power Company Board of Directors further authorizes the sum of $1,392,406 be appropriated from funds remaining in prior year incomplete Capital Projects into the 2019-20 Fiscal Year budget as follows:

Island Energy Fund	$	1,392,406
TOTAL POWER COMPANY:	**$**	**1,392,406**

Section 3. Effective Date.

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the Pittsburg Power Company of the City of Pittsburg at a regular meeting on the 7th day of October, 2019 by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

____
Juan Antonio Banales, Chair

ATTEST:

____
Garrett Evans, Executive Secretary

City of Pittsburg CAPITAL IMPROVEMENT PROJECTS STATUS @06/30/19						
Project #	Capital Project Description	Total Project Budget	Prior Year Expenses	FY2018-19 Budget	Expenses at 6/30/19	Balance Remaining
1424	Video Camera Project	300,000	213,519	86,481	5,212	81,269
2010	Multimodal Transit Station	4,222,000	3,697,618	524,382	499,797	24,585
2011	School Area Safety Improvements	530,300	519,038	11,262	-	11,262
2014	San Marco Blvd Class I Trail	538,000	9,447	528,553	464,189	64,364
2015	West Leland/Burton Ave Traffic Signal	50,000	3,621	46,379	42,866	3,513
2016	2018/19 Citywide Traffic Calming	100,000		100,000	49,786	50,214
2017	2018/19 Fence/Soundwall/Streetlight	100,000		100,000	1,035	98,965
2018	PASS Loveridge and Bailey Corridors	55,000		55,000	-	55,000
2019	BART Pedestrian & Bicycle Connectivity	4,578,000		4,578,000	6,512	4,571,488
2205	West Leland Street Lighting	735,331	191,674	543,657	2,070	541,587
2206	Standard Specification Update	150,000	144,349	5,651	5,457	194
2207	W Leland High Friction	608,800	37,303	571,497	45,593	525,905
2210	2017-18 Traffic Calming Project	104,500	28,474	76,026	43,114	32,913
2211	EBART Parking Strategy & Signage	100,000	71,030	28,970	19,205	9,765
2214	Traffic Signal Equipment	53,783	53,783	-	-	-
2215	Standard Detail Update	100,000	8,335	91,665	68,912	22,753
2216	Range Road Sidewalk Improvements	120,000		120,000		120,000
2217	2018/19 Citywide Pavement Management	200,000		200,000	19,135	180,865
2218	West Leland Road Pavement Management	1,510,407		1,510,407	1,314,153	196,254
2219	2018/19 Citywide Striping and Signage	50,000		50,000	145	49,855
2220	2018/19 Traffic Signal Modification	60,330		60,330		60,330
2221	2018/19 Traffic Signal Equipment	96,217		96,217	86,847	9,370
2222	FY18-19 Patch Paving Project	298,000		298,000	283,100	14,900
2701	Storm Drain Trash Capture (Frontage Road)	211,758	187,997	23,761		23,761
2995	Regional LPR/Camera Project - PITTSBURG	2,759,841	734,161	2,025,680	868,154	1,157,526
2996	Regional LPR/Camera Project - ANTIOCH	281,498	265,040	16,458	16,458	(0)
2997	Regional LPR/Camera Project - RICHMOND	335,320		335,320	335,320	-
2998	Regional LPR/Camera Project - SAN PABLO	-		-		-
2999	Regional LPR/Camera Project - HERCULES	92,506		92,506	92,506	-
3000	Regional LPR/Camera Project - PINOLE	30,835		30,835	30,835	-
3006	California Ave Widenng Phase I	2,542,213	2,537,213	5,000	5,000	(0)
3009	El Pueblo Street Rehab (2012-05) - Phase I	427,430	338,231	89,199	-	89,199
3011	W. Leland Extension (San Marco to Avila)	50,000	19,729	30,271	14,449	15,822
3013	Intelligent Transportation System Upgrade	230,000	217,185	12,815	289	12,526
3014	San Marco Right Turn @ W. Leland	100,000	54,367	45,633		45,633
3015	James Donlan Extension PHASE I	6,585,447	181,350	6,404,097	2,167,793	4,236,304
3057	Ambrose Park Master Plan & Improvements	3,033,527	3,014,875	18,652	3,720	14,932
3069	De-Anza Park Rehabilitation	50,000	44,121	5,879	5,879	-
3070	Small World Park Improvements	24,428		24,428	23,438	990
3071	Annual Playground Replacement	80,000		80,000		80,000
3072	City Park Soccer Field Turf Replacement	250,000		250,000	14,680	235,320
3073	Annual Park Features Replacement	75,000		75,000	15,093	59,907
3074	Biennial Restroom Replacement/Rehabilitation	140,000		140,000	6,377	133,623

City of Pittsburg CAPITAL IMPROVEMENT PROJECTS STATUS @06/30/19					Expenses at 6/30/19	Balance Remaining
Project #	Capital Project Description	Total Project Budget	Prior Year Expenses	FY2018-19 Budget		
3113	W Leland Pavement Marker/Speed Sign	376,800	15,523	361,277	29,989	331,288
3114	W Leland Delination/Crosswalk	265,900	17,777	248,123	23,541	224,582
3115	Stoneman Avenue Intersection Improvements	880,000	10,090	869,910	39,882	830,028
3116	Downtown Sidewalk Repair	211,075	674	210,401	210,398	3
3202	Railroad Ave. Storm Drainage Improvements	1,006,555	998,208	8,347	2,905	5,442
3205	Pump Station Repairs	75,800	70,791	5,009		5,009
3320	Railroad Ave. Building Improvements	3,309,000	3,252,727	56,273	47,787	8,486
3324	California Theatre - Phase I	8,412,515	8,274,472	138,043	330	137,713
3326	Library Improvements	3,118,765	3,100,132	18,633	7,770	10,863
3330	Plaza Marina Tenant Improvements	30,000	28,084	1,916		1,916
3331	Railroad Ave (3rd - 8th St) Improvements	82,000	65,692	16,308	8,242	8,066
3332	Citywide Fence and Soundwall Repairs	80,000	27,064	52,936	8,200	44,735
3382	Seismic Retrofit Bridge	875,045	279,070	595,975	527,792	68,183
3702	RR Ave Traffic Signal Timing	70,000	65,460	4,540		4,540
3703	BART Access Improvements	25,000	15,636	9,364		9,364
3704	BART Parking and Access Strategy	80,000	74,873	5,127		5,127
5002	E 14th Waterline Relocation	160,000	-	160,000	24,512	135,488
5029	Loveridge Road Waterline Project	2,548,695	2,543,695	5,000		5,000
5030	Automatic Water Meter Reading System	2,506,793	2,202,428	304,365	304,344	21
5035	Upgrade SCADA System	500,000	491,456	8,544		8,544
5040	Water Treatment Plant Sludge Handling Facility	11,920,780	11,717,431	203,349	33,525	169,824
5045	Rossmoor Well Replacement	1,630,079	1,568,553	61,526	30,884	30,642
5049	Water Main - Buchanan Road	4,515,799	4,510,799	5,000	2,549	2,451
5050	2013/14 WTP Capital Repairs & Improvements	1,267,146	1,084,192	182,954	16,754	166,200
5051	Water Main/Service/Valve Repl Program	2,356,865	2,354,458	2,407		2,407
5055	16/17 Sludge Removal	250,000		250,000		250,000
5058	2017/18 WTP Capital Repairs	150,000		150,000	35,331	114,669
5059	2017/18 WTP Filter Replacement	558,674	553,819	4,855	480	4,375
5060	2021/22 WTP Filter Replacement	100,000		100,000	35	99,965
5061	WTP Raw Water Intake Rep	145,000		145,000	94,435	50,565
5071	Main W Leland (WTP to SW Hills)	2,550,000		2,550,000		2,550,000
5119	Citywide Sewer Inspection Project	112,410	30,536	81,874		81,874
5201	Highway 4 Trunk Line Relief (2007-09)	200,000	66,887	133,113		133,113
5204	2010/11 Sewer Replacement Program	10,066,180	3,519,649	6,546,531	2,140,032	4,406,499
5205	CCTV/Inspection/Sewer Replacement	11,627,500	201,906	11,425,594	268,197	11,157,397
5206	Sewer Master Plan Update	175,000		175,000		175,000
5207	Sewer Line Replacement East of Loveridge	100,000		100,000	82,312	17,688
5208	Montezuma Pump Station Replacement	125,000		125,000	11,472	113,528
5400	Maintenance Dredging	973,208	22,072	951,136	234,354	716,782
5402	Brownfield EPA Grant	300,000	12,562	287,438	49,327	238,111
5403	Boat Launching Facility Imp	564,000		564,000	3,673	560,327
5502	Marina Infrastructure Rehab	20,000		20,000		20,000

City of Pittsburg CAPITAL IMPROVEMENT PROJECTS STATUS @06/30/19					Expenses at 6/30/19	Balance Remaining
Project #	Capital Project Description	Total Project Budget	Prior Year Expenses	FY2018-19 Budget		
5802	Capital Reinvestment Projects	1,174,644	910,123	264,521	84,179	180,342
5807	IE Facility Relocation Project	399,728	49,728	350,000		350,000
5811	Gas Line Removal and Replacement	150,000	554	149,446	85,448	63,998
5813	Mare Island Residential Units	506,806	363,517	143,289	36,707	106,582
5814	2017/18 Cable Replacement	250,000	95,530	154,470		154,470
5816	Duct Bank and Vault Replacements	400,000		400,000	223,455	176,545
5817	Station H KWH Metering Equipment	80,000		80,000	41,500	38,500
5818	Dockside Power Expansion REIMB	450,000		450,000	270,368	179,632
8336	Citywide Storm Drain Improvements (2009-01)	700,000	345,289	354,711	12,830	341,881
	Totals:	*$ 110,403,233*	*$ 61,517,662*	*$ 48,885,571*	*$ 11,552,332*	*$ 37,333,240*

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO:	Mayor/Chair and Council/Agency Members
FROM:	Garrett Evans, Executive Director/City Manager
SUBJECT:	Adoption a City Council Resolution Approving the First and Second Project Development Agreement Operating Memoranda, Second Amendment to the Exclusive Negotiating Rights Agreement, and First Amendment to the Option Agreement Between the City of Pittsburg, Pittsburg Power Company, and Energy Delivery Solutions LLC, and Adoption of a Pittsburg Power Company Resolution Approving the First and Second Project Development Agreement Operating Memoranda and Second Amendment to the Exclusive Negotiating Rights Agreement Between the City of Pittsburg, Pittsburg Power Company, and Energy Delivery Solutions LLC
MEETING DATE:	October 7, 2019

EXECUTIVE SUMMARY

This item includes consideration by the City Council and Pittsburg Power Company of the first and second Operating Memoranda that set forth certain terms and conditions concerning the development of a future technology park set forth in the previously approved Project Development Agreement (PDA), as well as an amendment to the existing Exclusive Negotiating Rights Agreement (ENRA) between the City of Pittsburg ("City"), Pittsburg Power Company ("PPC"), and Energy Delivery Solutions LLC ("EDS"). This item also includes Coty Council consideration of an amendment to the Option Agreement (OA) between the City and EDS. Approval of the proposed Operating Memoranda and agreement amendments would not entitle any development within the City, nor would it constitute a commitment by the City and/or PPC to approve any CEQA documentation, entitlements, or other agreements.

FISCAL IMPACT

There is no fiscal impact related to the approval of any of the proposed memoranda or other agreements at this time. As described in detail in the August 19, 2019, staff report (attached), there is a potentially positive future fiscal impact related to development of a technology park. Approval of the proposed Operating Memoranda and amendments to previously executed agreements would support the implementation of the PDA and development of a technology park in Pittsburg. Additionally, the proposed OA amendment would specify EDS's responsibility to reimburse the City for the actual cost of maintenance of the option properties, in an amount not to exceed $250,000, beginning August 1, 2023.

RECOMMENDATION

Staff recommends the City Council and PPC Board take the following, respective actions:

1. City Council adopt a Resolution approving the First and Second Operating Memoranda, the Second Amendment to the Exclusive Negotiating Rights Agreement, and the First Amendment to the Option Agreement with Energy Delivery Solutions LLC.

2. PPC Board adopt a Resolution approving the First and Second Operating Memoranda and the Second Amendment to the Exclusive Negotiating Rights Agreement with Energy Delivery Solutions LLC.

BACKGROUND

On August 1, 2017, the City and PPC entered into an ENRA obligating the City and PPC to negotiate exclusively with EDS to finance and develop substations and related electrical infrastructure to provide industrial load through PPC; on July 31, 2019, the ENRA term was extended to July 31, 2020. Pursuant to City Council Resolution No. 16-13242, the City Manager and/or Executive Director of PPC may enter into ENRAs for a term not to exceed three (3) years in order to evaluate energy-related projects; To proceed beyond this evaluation period, a proposed ENRA or amendment must be brought before the City Council and/or PPC Board.

On May 24, 2018, the City Council adopted Resolution No. 18-13482, approving an OA with EDS for approximately 101 acres of the former Delta View Golf Course. The initial term of this OA is five (5) years, currently scheduled to terminate on June 4, 2023.

On August 19, 2019, the City Council adopted Resolution No. 19-13667, and the PPC Board Adopted Resolution N0. 19-383, approving a Project Development Agreement between the City, PPC, and EDS.

EDS is an affiliate of SteelRiver Operations LP (SteelRiver) and TransBay Funding, which maintains $2.5 billion in fund and co-investment capital under management, including the $550 million Trans Bay Cable Project, located along W. 10th Street in Pittsburg. The development of the 53-mile HVDC Trans Bay Cable project was a joint effort between the City and SteelRiver. PPC is a municipal utility which has provided retail gas and electric services since 1997 to customers on Mare Island in Vallejo; however; PPC staff believes there is significant opportunity to provide additional service to high-usage customers as new load.

SUBCOMMITTEE FINDINGS

While this item and the requested action by the City Council does not entitle any development, staff would note that the potential technology park project has been brought before the public for input on multiple occasions. On January 29, 2019, the item was presented to the Land Use Subcommittee, and on February 5, 2019, a meeting was held to discuss the project with the 18 residents living adjacent to the project site. Additionally, on April 9, 2019, a study session was held before the Planning Commission to solicit additional feedback.

STAFF ANALYSIS

As mentioned above, approval of the proposed Operating Memoranda and amendments to previously executed agreements would support the implementation of the PDA and development of a technology park in Pittsburg. The operating memoranda would set forth additional terms and conditions concerning the development of a future technology park but would not entitle any development. Any future project will be the subject of environmental review under CEQA and require numerous discretionary approvals and public hearings.

The proposed second amendment to the ENRA would extend the agreement through July 31, 2021, upon execution; to July 31, 2024 upon the submittal of a Final Environmental Impact Report (EIR) by EDS; and to July 31, 2029, should EDS either: 1) spends at least One Million Dollars ($1,000,000.00) in construction costs for the technology park Project at the Option Properties; or 2) enters into a binding contract with a counterparty for the acquisition of one or more Option Properties. The ENRA amendment would also specify the City may request progress reports regarding a particular project and terminate the agreement if it finds progress on the Project has ceased, become ineffective, or non-productive, as well as clarify the City's authorized representatives and the definition of a project.

The proposed first amendment to the OA would extend the term to June 4, 2028, and specify beginning August 1, 2023, EDS shall pay the City a maintenance fee equal to the lesser of the actual cost of the maintenance of the Option Properties or the sum of Two Hundred Fifty Thousand dollars ($250,000).

ATTACHMENTS:
- Proposed City Council Resolution
- Proposed Pittsburg Power Company Resolution
- Staff Report (without Attachments) Dated August 19, 2019
- Project Development Agreement
- Project Development Agreement Operating Memorandum No. 1
- Project Development Agreement Operating Memorandum No. 2
- Exclusive Negotiating Rights Agreement
- First Amendment to Exclusive Negotiating Rights Agreement
- Second Amendment to Exclusive Negotiating Rights Agreement
- Staff Report (without Attachments) Dated June 4, 2018
- Option Agreement
- First Amendment to Option Agreement

Report Prepared By: Jordan Davis, Assistant to the City Manager

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Approval of First and Second Project Development Agreement Operating Memoranda, Second Amendment to Exclusive Negotiating Rights Agreement, and First Amendment to Option Agreement Between the City of Pittsburg, Pittsburg Power Company, and Energy Delivery Solutions LLC	))))))))	RESOLUTION NO. 19-_____

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, the City of Pittsburg wishes to facilitate economic development, as well as expand its tax base and the employment opportunities for residents, while retaining its discretion to review and consider potential approval of development projects; and

WHEREAS, cities in California are sometimes in competition with other jurisdictions for locating new economic development opportunities, especially those concerning a technology park that may include data centers and other advanced technology facilities. These opportunities have sometimes been lost to nearby cities or states that provide for property and sales and use tax incentives and that do not provide for or require green power or carbon pricing prevalent and to the level desired in California; and

WHEREAS, Pittsburg Power Company (PPC) is a municipal utility which has provided retail gas and electric services since 1997, has been involved in numerous contractual and service-provider relationships concerning the acquisition, transmission and distribution of electricity, and wishes to explore opportunities to provide new service load;

WHEREAS, pursuant to City Council Resolution No. 16-13242, the City Manager and/or Executive Director of PPC may enter into exclusive negotiating agreements for a term not to exceed three years in order to evaluate energy-related projects; and

WHEREAS, on August 1, 2017, the City, PPC, and Energy Delivery Solutions LLC (EDS) (hereafter collectively referred to as the “Parties”) entered into that certain “City of Pittsburg, Pittsburg Power Company and Energy Delivery Solutions LLC Exclusive Negotiating Rights Agreement,” (the “ENRA”) with a term ending on July 31, 2019; and

WHEREAS, on July 31, 2019, the Parties executed the First Amendment to the ENRA in order to extend the term to July 31, 2020; and

WHEREAS, on May 24, 2018, the City Council adopted Resolution No. 18-13482, approving an Option Agreement with EDS for approximately 101 acres of City-owned property, with a term scheduled to end on June 4, 2023; and

WHEREAS, EDS wishes to pursue development of a technology park ("Project") on one or more of the Option Properties. The Project would include one or more data centers consisting of facilities used to house information technology equipment including, but not limited to, computers, telecommunications equipment, auxiliary power, and storage systems; and

WHEREAS, EDS and its affiliates have participated in the financing, development and construction of numerous infrastructure projects and facilities, including projects within the City of Pittsburg; and

WHEREAS, the Parties have determined that PPC, in conjunction with EDS, may provide power to the Project at rates below those of competing energy providers for such new load. The City and the EDS have determined that such favorable rates of power should attract data center users and operators; and

WHEREAS, on August 19, 2019, the City Council adopted Resolution No. 19-13667, and the PPC Board Adopted Resolution No. 19-383, approving a Project Development Agreement (PDA) between the City, PPC, and EDS. The PDA provides for the subsequent adoption of individual operating memoranda that would set forth additional terms and conditions; and

WHEREAS, the Project and any necessary entitlements, including the potential transfer and sale of the Option Properties, will be the subject of environmental review under the California Environmental Quality Act (Public Resources Code Sections 21000, et seq.) ("CEQA") and require numerous discretionary approvals and agreements, and public hearings; and

WHEREAS, nothing in the approval of these Project Development Agreement Operating Memoranda or agreement amendments shall constitute a commitment by the City and/or PPC to approve CEQA documentation or land use or any other entitlements or agreements concerning the Project, which shall adhere to applicable state and local law regarding development.

NOW, THEREFORE, the City Council finds and determines as follows:

<u>Section 1. Findings</u>

A. The City Council hereby find and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City Council set forth below.

B. The City and/or PPC, as applicable, has key elements of jurisdiction or authority concerning the Project Development Agreement and Project, including, without limitation:

1. The jurisdiction under the State Planning and Zoning Law (California Government Code Sections 65000, et seq.) to exercise land use jurisdiction over the real property used for Project facilities within the City's boundaries, including the adoption of an ordinance approving a land use development agreement under Government Code Sections 65864, et seq.;

2. Jurisdiction under the Franchise Act of 1937 (California Public Utilities Code Sections 6201, et seq.) to grant a franchise to use public streets and rights-of-way for facilities for the transmission of electricity;

3. Authority to sell, and grant a lease, easement, license or other interest in real property owned by City;

4. Jurisdiction under the Eminent Domain Law (California Code of Civil Procedures Sections 1230.010, et seq.) to acquire real property interests to accommodate Project facilities, both within and outside City's boundaries, extraterritorial condemnation having been expressly authorized by Section 1240.125 of such law; and

5. Authority under the CEQA Guidelines (Title 14, California Code of Regulations Section 15051(b)) to act as Lead Agency and evaluate potential environmental impacts of the Project and adopt appropriate mitigation measures.

Section 2. Decision

The City Council hereby approves the First and Second Project Development Agreement Operating Memoranda and Second Amendment to the Exclusive Negotiating Rights Agreement between the City of Pittsburg, Pittsburg Power Company, and Energy Delivery Solutions LLC, and First Amendment to the Option Agreement between the City of Pittsburg, Pittsburg Power Company, and Energy Delivery Solutions LLC.

Section 3. Execution of Agreement

The City Manager is hereby authorized to take any and all other actions necessary to carry out this Resolution.

Section 4. Certification

The City Clerk shall certify to the adoption of this Resolution.

Section 5. Effective Date

This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 7th day of October 2019, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

____
Juan Antonio Banales, Mayor

ATTEST:

____
Alice E. Evenson, City Clerk

BEFORE THE GOVERNING BOARD OF THE PITTSBURG POWER COMPANY

In the Matter of:

Approval of First and Second Project Development Agreement Operating Memoranda and Second Amendment to Exclusive Negotiating Rights Agreement, Between the City of Pittsburg, Pittsburg Power Company, and Energy Delivery Solutions LLC	)))))))	RESOLUTION NO. 19-_____

The Board of Directors of the Pittsburg Power Company, a Joint Powers Authority, DOES RESOLVE as follows:

WHEREAS, the City of Pittsburg wishes to facilitate economic development, as well as expand its tax base and the employment opportunities for residents, while retaining its discretion to review and consider potential approval of development projects; and

WHEREAS, cities in California are sometimes in competition with other jurisdictions for locating new economic development opportunities, especially those concerning a technology park that may include data centers and other advanced technology facilities. These opportunities have sometimes been lost to nearby cities or states that provide for property and sales and use tax incentives and that do not provide for or require green power or carbon pricing prevalent and to the level desired in California; and

WHEREAS, Pittsburg Power Company (PPC) is a municipal utility which has provided retail gas and electric services since 1997, has been involved in numerous contractual and service-provider relationships concerning the acquisition, transmission and distribution of electricity, and wishes to explore opportunities to provide new service load;

WHEREAS, pursuant to City Council Resolution No. 16-13242, the City Manager and/or Executive Director of PPC may enter into exclusive negotiating agreements for a term not to exceed three years in order to evaluate energy-related projects; and

WHEREAS, on August 1, 2017, the City, PPC, and Energy Delivery Solutions LLC (EDS) (hereafter collectively referred to as the “Parties”) entered into that certain “City of Pittsburg, Pittsburg Power Company and Energy Delivery Solutions LLC Exclusive Negotiating Rights Agreement,” (the “ENRA”) with a term ending on July 31, 2019; and

WHEREAS, on July 31, 2019, the Parties executed the First Amendment to the ENRA in order to extend the term to July 31, 2020; and

WHEREAS, EDS wishes to pursue development of a technology park ("Project") within the City of Pittsburg. The Project would include one or more data centers consisting of facilities used to house information technology equipment including, but not limited to, computers, telecommunications equipment, auxiliary power, and storage systems; and

WHEREAS, EDS and its affiliates have participated in the financing, development and construction of numerous infrastructure projects and facilities, including projects within the City of Pittsburg; and

WHEREAS, the Parties have determined that PPC, in conjunction with EDS, may provide power to the Project at rates below those of competing energy providers for such new load. The City and the EDS have determined that such favorable rates of power should attract data center users and operators; and

WHEREAS, on August 19, 2019, the City Council adopted Resolution No. 19-13667, and the PPC Board Adopted Resolution No. 19-383, approving a Project Development Agreement (PDA) between the City, PPC, and EDS. The PDA provides for the subsequent adoption of individual operating memoranda that would set forth additional terms and conditions; and

WHEREAS, the Project and any necessary entitlements, including the potential transfer and sale of the Option Properties, will be the subject of environmental review under the California Environmental Quality Act (Public Resources Code Sections 21000, et seq.) ("CEQA") and require numerous discretionary approvals and agreements, and public hearings; and

WHEREAS, nothing in the approval of these Project Development Agreement Operating Memoranda or agreement amendments shall constitute a commitment by the City and/or PPC to approve CEQA documentation or land use or any other entitlements or agreements concerning the Project, which shall adhere to applicable state and local law regarding development.

NOW, THEREFORE, the PPC Board of Directors finds and determines as follows:

Section 1. Findings

A. The PPC Board of Directors hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the PPC Board set forth below.

B. PPC, as applicable, has key elements of jurisdiction or authority concerning the Project Development Agreement and Project, including, without limitation:

1. The authority to conduct activities as a municipal utility under Article 11,

Section 9(a), of the California Constitution, including the furnishing of power outside its boundaries;

2. The authority to own and operate a transmission and distribution system to supply power to the Project;

Section 2. Decision

The Pittsburg Power Company Board of Directors hereby approves the First and Second Project Development Agreement Operating Memoranda and the Second Amendment to the Existing Exclusive Negotiating Rights Agreement between the City of Pittsburg, Pittsburg Power Company, and Energy Delivery Solutions LLC.

Section 3. Execution of Agreement

The Executive Director is hereby authorized to take any and all other actions necessary to carry out this Resolution.

Section 4. Certification

The City Clerk shall certify to the adoption of this Resolution.

Section 5. Effective Date

This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Pittsburg Power Company Board of Directors at a regular meeting on the 7th day of October 2019, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

____
Juan Antonio Banales, Chair

ATTEST:

____
Garrett Evans, Executive Secretary

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO:	Mayor/Chair and Council/Agency Members
FROM:	Garrett Evans, Executive Director/City Manager
SUBJECT:	Adoption of Both a City Council Resolution and Pittsburg Power Company Resolution Approving a Project Development Agreement Between the City of Pittsburg, Pittsburg Power Company, and Energy Delivery Solutions LLC
MEETING DATE:	August 19, 2019

EXECUTIVE SUMMARY

This item includes consideration of a Project Development Agreement (PDA) between the City of Pittsburg (City), Pittsburg Power Company (PPC), and Energy Delivery Solutions LLC (EDS) that sets forth certain terms and conditions concerning the development of a future technology park. Approval of the PDA would not entitle any development within the City, nor would it constitute a commitment by the City and/or PPC to approve any CEQA documentation, entitlements, or other agreements.

FISCAL IMPACT

There is no fiscal impact related to the approval of the PDA at this time. There is a potentially positive future fiscal impact related to the approval of the PDA. As described in more detail below, the PDA outlines terms and conditions that specify the developer would, pending approval of a future project approved pursuant to the applicable development ordinances and regulations and laws, construct electric Transmission and Distribution (T&D) Assets that would allow PPC to deliver new load to large-scale users. EDS would also be responsible for certain costs related to the future delivery of power by PPC, as well as all costs related development, and reimbursement for costs related to the processing of future applications.

RECOMMENDATION

Staff recommends the City Council and PPC Board take the following, respective actions:

1. City Council adopt a Resolution and approve the Project Development Agreement with Energy Delivery Solutions LLC.
2. PPC Board adopt a Resolution and approve the Project Development Agreement with Energy Delivery Solutions LLC.

BACKGROUND

In March 2018, the City experienced the closure of the former Delta View Golf Course, which occupied approximately 175 acres of City-owned property. In May 2018, the City Council directed staff to explore economic development and employment opportunities on a portion of this land, and EDS submitted a letter to the City expressing interest in development of a technology park at this location. EDS is an affiliate of SteelRiver Operations LP (SteelRiver) and TransBay Funding, who maintain $2.5 billion in fund and co-investment capital under management, including the $550 million Trans Bay Cable Project, located along W. 10th Street in Pittsburg. The development of the 53-mile HVDC Trans Bay Cable project was a joint effort between the City and SteelRiver. On May 24, 2018, the City Council adopted Resolution No. 18-13482, approving an Option Agreement with EDS for approximately 101 acres of the former Delta View Golf Course.

PPC is a municipal utility which has provided retail gas and electric services since 1997 to customers on Mare Island in Vallejo; however; PPC staff believes there is significant opportunity to provide additional service to high-usage customers as new load.

SUBCOMMITTEE FINDINGS

While this item and the requested action by the City Council does not entitle any development, staff would note that the potential technology park project has been brought before the public for input on multiple occasions. On January 29, 2019, the item was presented to the Land Use Subcommittee, and on February 5, 2019, a meeting was held to discuss the project with the 18 residents living adjacent to the project site. Additionally, on April 9, 2019, a study session was held before the Planning Commission to solicit additional feedback.

STAFF ANALYSIS

As mentioned above, the proposed PDA would set forth certain terms and conditions concerning the development of a future technology park but would not entitle any development. Any future project will be the subject of environmental review under CEQA and require numerous discretionary approvals and public hearings.

As this project represents a Public-Private Partnership which the City and PPC believe can be a mutually beneficial undertaking, both parties would accept certain obligations to help ensure its success, including but not limited to those described below.

Over the 20 year term of the agreement, EDS would assume all costs related to its own development and would also have the right and responsibility to obtain power purchase agreements for wholesale power; PPC, would provide retail power to users within the technology park, which would represent a substantial increase in service load.

EDS would have the exclusive assignable right to finance the T&D infrastructure to serve this increased load to the project, as well as the right to enter into an Operation and Maintenance (O&M) Agreement to provide all services needed to operate and maintain the energy infrastructure and delivery of power; PPC would have the exclusive option to purchase the T&D Assets for nominal consideration. In exchange for EDS's role in constructing the T&D infrastructure that would allow PPC to serve the new load, the City would agree to rebate a portion of the gross revenue from power sales.

Departing load costs would be included in tariffed/contracted rates and payable by the end use customer. Further, EDS would be responsible for applying for and obtaining all regulatory approvals and would reimburse the City for all costs related to processing of the land use entitlements, including environmental studies determined by the City to be necessary, and any other agreements.

As a mechanism to attract users, the City would also rebate a portion of the unsecured sales and use and property taxes. The City would also work with EDS to grant easements or franchises necessary, as allowed by law, to facilitate utility connections to and from the project, and, if necessary, establish one or more maintenance districts to ensure the proper upkeep of the all infrastructure.

ATTACHMENTS:

Proposed City Council Resolution
Proposed Pittsburg Power Company Resolution
Project Development Agreement

Report Prepared By: Jordan Davis, Assistant to the City Manager

PROJECT DEVELOPMENT AGREEMENT
PITTSBURG TECHNOLOGY PARK

This PROJECT DEVELOPMENT AGREEMENT ("Agreement") is entered into as of the 19th day of August, 2019 ("Effective Date"), by the CITY OF PITTSBURG, a municipal corporation (“City”); PITTSBURG POWER COMPANY, a joint powers authority (“PPC”); and ENERGY DELIVERY SOLUTIONS LLC, a Delaware limited liability company (“Company”).

RECITALS

This Agreement is based upon the following facts:

Capitalized terms in these Recitals have the meanings described in Article 1 of this Agreement.

WHEREAS:

A. The City has general municipal jurisdiction over the territory within its boundaries. The City wishes to facilitate economic development efforts and to expand its tax base and employment opportunities for its residents, while retaining its discretion to review and consider potential approval of development projects.

B. Communities in California are sometimes in competition with other communities in California or in other states for locating new economic development opportunities, especially those concerning a technology park that may include data centers and other advanced technology facilities. Those opportunities have sometimes been lost to nearby cities or states that provide for property and sales and use tax incentives and that do not provide for or require green power or carbon pricing prevalent and to the level desired in California.

C. PPC is a municipal utility which has provided retail gas and electric services since 1997. PPC wishes to explore opportunities to provide additional service to potential customers for new load, and thus potentially expand the number and size of base load customers requiring new load.

D. The Parties have previously entered into that certain “City of Pittsburg, Pittsburg Power Company and Energy Delivery Solutions LLC Exclusive Negotiating Rights Agreement” dated August 1, 2017 (the “ENRA”), that certain “Reimbursement and Indemnification Agreement” dated August 1, 2017 (“Reimbursement Agreement”), and that certain “Confidentiality Agreement” dated August 1, 2017 (the “Confidentiality Agreement”).

Consistent with the ENRA, Company wishes to pursue development of a technology park on one or more of the Option Properties as defined in the Option Agreement, as further described below. The technology park would include one or more data centers consisting of facilities used to house information technology equipment including computers, telecommunications, auxiliary power and storage systems, as further described in the ENRA (the "Project").

E. City is located within Contra Costa County and is in possession of an approximate 101-acre tract of land which it has set aside for economic development. In discussions with the Company it has been determined that such land would be suitable for development as a technology park and other related uses. City and Company have also determined that the City, through PPC, in conjunction with Company, may potentially be able to provide power to these users at rates below those of competing energy providers for such new load. The City, PPC, and Company have determined that such favorable rates of power should attract technology park users and operators.

F. Accordingly, the parties entered into the Option Agreement ("Option Agreement") on the June 5, 2018, pursuant to which the Option Properties (as defined in the Option Agreement) could be transferred and sold to Company under the terms and subject to the provisions of the Option Agreement.

G. The Parties intend in this Agreement to set forth terms and conditions concerning the development of the Project and the respective roles of Company, the City and its municipal utility, PPC. The Project, including the potential transfer and sale of the Option Properties, will be the subject of environmental review under the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.*) ("CEQA") and require numerous discretionary approvals and agreements. Nothing in this Agreement shall constitute a commitment by the City and/or PPC to approve CEQA documentation, land use or any other entitlements or agreements concerning the Project, which shall follow applicable development ordinances and regulations and laws.

H. The Parties further intend to set forth in this Agreement the terms and conditions pursuant to which: (1) Company will obtain and manage one or more power purchase agreements; (2) the City, through PPC, will provide retail power to Company and its assignees; (3) the City will rebate to Company or its assignee a portion of the gross revenue from power sales; (4) the City will provide, or reasonably assist Company in making arrangements with other public agencies to provide, water to the Project;

(5) Company will have the exclusive assignable right to finance the transmission and distribution infrastructure to serve load on the Option Properties; and (6) Company will have the exclusive assignable right to enter into an Operation and Maintenance (O&M) Agreement to provide all services needed to operate and maintain the energy infrastructure and delivery of power to serve load on the Option Properties.

I. The Parties have also discussed the City's intent to provide lowered sales and use and property taxes to attract users to the Project and agreed that such favorable rates are a material factor in successfully establishing a technology park and attracting data centers. Accordingly, this Agreement provides for the use of sales and use and property tax incentives to further the objectives of the Parties, as allowed by law.

J. Company and its Affiliates have participated in the financing, development and construction of numerous infrastructure projects and facilities.

K. Company wishes to develop the Project as a technology park which may include data centers and, possibly, other commercial activities to provide economic benefits and to create load for power to be provided by the City through PPC.

L. City has key elements of jurisdiction or authority concerning the Project, including, without limitation:

1. The authority to conduct activities as a municipal utility under Article 11, Section 9(a), of the California Constitution, including the furnishing of power outside its boundaries;

2. The authority to own and operate a transmission and distribution system to supply power to the Project;

3. The jurisdiction under the State Planning and Zoning Law (California Government Code Sections 65000, *et seq.*) to exercise land use jurisdiction over the real property used for Project facilities within the City's boundaries, including the adoption of an ordinance approving a land use development agreement under Government Code Sections 65864, *et seq.*;

4. Jurisdiction under the Franchise Act of 1937 (California Public Utilities Code Sections 6201, *et seq.*) to grant a franchise to use public streets and rights-of-way for facilities for the transmission of electricity;

5. Authority to sell, and grant a lease, easement, license or other interest in real property owned by City;

6. Jurisdiction under the Eminent Domain Law (California Code of Civil Procedures Sections 1230.010, *et seq.*) to acquire real property interests to accommodate Project facilities, both within and outside City's boundaries, extraterritorial condemnation having been expressly authorized by Section 1240.125 of such law; and

7. Authority under the CEQA Guidelines (Title 14, California Code of Regulations Section 15051(b)) to act as Lead Agency and evaluate potential environmental impacts of the Project and adopt appropriate mitigation measures.

M. PPC has been engaged in the exercise of municipal utility jurisdiction since approximately 1997. PPC has been involved in numerous contractual and service-provider relationships concerning the acquisition, transmission, and distribution of electricity.

N. On August 19, 2019, the City Council and PPC Board approved this Agreement, determining that it would be in the best interests of City and PPC and in support of the health, safety and general welfare of the citizens of the City for Pittsburg to support the development of the Project, fully subject to the City's exercise of its environmental review and land use discretion as required under CEQA and other applicable laws.

NOW, THEREFORE, in consideration of the foregoing recitals of fact, the mutual covenants, representations and conditions described herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1.

DEFINITIONS

The following words and phrases are used as defined terms throughout this Agreement and each such term shall have the meaning set forth in this Article.

1.1. **"Affiliate"** of a specified person or entity means any other person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person or entity specified. For purposes of the foregoing, "control," "controlled by," and "under common control with," with respect to any person or entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, partnership or member interests, by contract, or otherwise.

1.2. "Agreement" means this Project Development Agreement.

1.3. "Best Reasonable Efforts" means reasonably prompt, substantial, and persistent efforts in a manner that is commercially, technically, legally, ethically, and financially reasonable in order to achieve the intent and purposes of this Agreement, but that does not require extraordinary or unusual actions that would not be reasonable under the circumstances.

1.4. "CEQA" means the California Environmental Quality Act (California Public Resources Code Sections 21000, *et seq*.) and the related California Code of Regulations Sections 15000 *et seq.* (the **"CEQA Guidelines"**), as amended from time to time.

1.5. "City" means the City of Pittsburg, a general law city and a California municipal corporation.

1.6. "City Authorizing Resolution" means the resolution approving this Agreement, adopted by the City Council.

1.7. "City Clerk" means the duly elected and serving City Clerk of the City.

1.8. "City Council" means the duly elected and constituted governing council of the City.

1.9. "Company" means Energy Delivery Solutions LLC, a Delaware limited liability company.

1.10. "Days" means calendar days, not business days.

1.11. "EIR" means an environmental impact report prepared pursuant to CEQA.

1.12. "EIS" means an environmental impact statement prepared pursuant to NEPA.

1.13. "Effective Date" means the date on which both the City Authorizing Resolution and the PPC Authorizing Resolution have been adopted.

1.14. "Encumbrance" means a mortgage, deed of trust, or any other device by which the Project Assets or any portion thereof, secure a loan or indebtedness. To **"Encumber"** means to create an Encumbrance.

1.15. "Entitlements" means all grants of authorization to develop real property and the statutes, ordinances, plans, decisions, resolutions, permits, rules, regulations, and official policies that must be complied with and/or issued as a condition to and in accordance with authorization for development of real property for the Project. Examples of "Entitlements" include a general plan amendment, zoning map and/or text amendments, subdivision maps, conditional use permits, municipal code and zoning ordinance provisions, site plans, development agreement, development plans, design reviews, variances, building permits, certificates of occupancy, and amendments to any of the above. The term “Entitlements" is not dependent on the nature (such as legislative, quasi-judicial, ministerial or administrative) of the matter in question.

1.16. “EPC Contract” means a contract for the engineering, procurement, and construction of a portion of the Project.

1.17. "Estoppel Certificate" means a writing, signed by the Party issuing it, certifying that: (i) this Agreement is in full force and effect and is a binding obligation of that Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if amended or modified, describing the amendments; (iii) all consents required to be given by the Party have been given; (iv) to the knowledge of the Party, no default in the performance of the requesting Party's obligations under the Agreement exists or, if a default does exist, the nature and amount of any default; and (v) certifying to such other matters as the requesting Party may reasonably request.

1.18. “Force Majeure Event” means any cause beyond the reasonable control of a Party which renders it unable to perform a given obligation hereunder, and includes, without limitation, failure of or imminent threat of failure of facilities due to flood, earthquake, volcanic activity, tsunami, tornado, storm, fire, pestilence, lightning, and other natural catastrophe, epidemic, war, riot, civil disturbance or disobedience, vandalism, strike, labor dispute, labor or material shortage, sabotage, terrorism, restraint by court order or public authority, and action or non-action by, or inability to obtain the necessary authorizations or approvals from, any governmental agency (not meant to include Pittsburg) or authority, which by exercise of such Party’s Best Reasonable Efforts could not reasonably have prevented and which by the exercise of such Party’s Best Reasonable Efforts cannot be overcome.

1.19. “FONSI” means a finding of no significant impact under NEPA.

1.20. “Lead Agency” means the public agency that has primary responsibility for decisions regarding the proper environmental review for a project, as defined in CEQA.

1.21. “NEPA” means the National Environmental Policy Act (42 United States Code Sections 4321, *et seq.*).

1.22. "Operating Memorandum" means a separate agreement entered into by two or more Parties to implement some aspect of this Agreement in furtherance of the Project, as described in Article 6.

1.23. "Party" means either City, PPC or Company.

1.24. "Parties" means City, PPC and Company, collectively.

1.25. "Pittsburg" means City and PPC, collectively.

1.26. "Pittsburg Indemnitee" means City, PPC, all of their respective Affiliates, and all of their and their Affiliates' respective directors, officers, partners, elected officials, appointed officials, members, contractors, lenders, agents and employees.

1.27. "Power Purchase Agreement" (or "PPA") means an agreement by which electric power is procured from one or more suppliers for PPC to supply to the Project.

1.28. "PPC" means the Pittsburg Power Company, a joint powers authority. If at any time PPC is no longer organized as a joint powers authority, then "PPC" shall refer to that City department that continues to carry out the City's jurisdiction to operate a municipal gas and electric utility, and City shall cause such department to so operate in order to carry out PPC's rights and responsibilities under this Agreement.

1.29. "PPC Authorizing Resolution" means the resolution approving this Agreement, adopted by the PPC governing board. If PPC is no longer organized as a joint powers authority at the time the City Authorizing Resolution is adopted, then that resolution shall also constitute the PPC Authorizing Resolution.

1.30. "PPC Option" means the option for PPC to acquire the Transmission and Distribution Assets.

1.31. "Project" means the technology park as described in Article 2, and any Transmission and Distribution Assets developed by the Company for transfer to PPC.

1.32. "Project Assets" means all tangible and intangible property necessary for the construction and operation of the Project, including, without limitation, land and land rights, easements, construction materials, permits, certificates, Entitlements, other governmental approvals or authorizations, design and construction plans and documents, fully or partially constructed portions of the Project and all EPC Contracts or other contracts being used for the construction, operation, maintenance, management or any other purpose related to the Project.

1.33. “Project Contracts” means this Agreement, the Purchase and Sale Agreement, any Operating Memoranda, and any other agreement entered into by and between the Parties concerning the Project or contemplated under this Agreement.

1.34. “Purchase and Sale Agreement” means an agreement entered into between City or PPC and Company for the acquisition of the Transmission and Distribution Assets.

1.35. “Recitals” means letter paragraphs A through N, above.

1.36. "Retail Power Agreement” (or “RPA”) means an agreement by which PPC provides electric power to an end-use customer within the Project.

1.37. “Transmission and Distribution Assets” shall mean any transmission and distribution assets required to be constructed for PPC to serve load for the Project.

ARTICLE 2.

DESCRIPTION OF THE PROJECT

The Project is the development of a technology park on the Option Properties anticipated to include the siting of one or more data centers. A data center is a facility used to house information technology equipment including computers, telecommunications, and storage systems. A data center includes redundant or backup power supplies, redundant data communications connections, environmental controls, and various security devices. The Project is also anticipated to include Transmission and Distribution Assets.

ARTICLE 3.

GENERAL COOPERATION

3.1. Cooperation of the Parties. Each Party agrees to work together in good faith with the other Parties during the term of this Agreement and use its Best Reasonable Efforts to carry out its obligations hereunder. Each Party agrees to use its Best Reasonable Efforts to (a) cooperate with the other Parties in all material respects; (b) identify and resolve all issues concerning implementation of this Agreement; and (c) otherwise take all reasonable steps and perform all reasonable actions necessary to accomplish the purposes and intent of this Agreement.

3.2. Project Consultation Committee. A Project Consultation Committee shall be established to facilitate regular communication and coordination concerning Project activities and provide a forum for review and consultation with the City. Consultation shall address such topics as Project design and capacity; selection of technology; selection of potential and preferred routes for Transmission and Distribution Assets and other infrastructure; preparation of environmental documents; processing of contracts (including, without limitation, those contracts described in Articles 7 and 8; and obtaining rights of way, among other subjects). Each Party shall designate representatives to participate in the committee. The committee shall meet as often as the representatives deem necessary, and upon the request of Company's Representative or Pittsburg's Representative, as defined within sections 3.3 and 3.4, at such times and places as they agree. The Parties recognize and acknowledge that it is in their mutual best interests when each Party uses its Best Reasonable Efforts to engage in meaningful consultation that is reasonably anticipated to assist in achieving their shared and respective objectives as described in this Agreement; however, the Parties further recognize and agree that defining a degree of consultation for purposes of contractual enforcement is not practicable and that, accordingly, no claim, right or cause of action shall accrue to any Party based on its assertion of alleged insufficiency of such consultation by any other Party.

3.3. Company's Representative. President Sean O'Reilly is designated as Company's Representative, who is authorized to take actions to implement this Agreement on behalf of Company. He may in turn designate to Pittsburg in writing such other Company staff as he deems appropriate to assist in implementing this Agreement, along with their permissible scope of authority. Depending on the issues to be reviewed or the decisions to be made by the committee at any particular meeting, Company's Representative shall bring to the meeting such other Company staff as may be necessary to reach the required result. Pittsburg shall be entitled to rely upon the instruction, direction, approval or request of Company's Representative and his designees. Company may change its representative or designees at any time by prior written notice to Pittsburg.

3.4. Pittsburg's Representative. The City Manager of City, when referring to the City, and Executive Director, when referring to PPC, is designated as Pittsburg's Representative, who is authorized to take actions to implement this Agreement on behalf of the City and PPC. The City Manager/Executive Director may in turn designate to Company in writing such other City staff as he deems appropriate to assist in implementing this Agreement, along with their permissible scope of authority. Depending on the issues to be reviewed or the decisions to be made by the committee at any particular meeting, Pittsburg's Representative shall bring to the meeting such other Pittsburg staff as may be necessary to reach the required result. Company shall be entitled to rely upon the instruction, direction, approval or request of Pittsburg's Representative and his or her designees. Pittsburg may change its representative or designees at any time by prior written notice to Company.

ARTICLE 4.

COMPANY'S ROLE AND RESPONSIBILITIES

4.1. Developer and Project Manager. Company is the developer and manager of the Project, with the right and responsibility to make decisions regarding the Project typically vested in an owner, developer and project manager, including, without limitation, Project design studies and work; application for and pursuit of approval for necessary permits, financing, development, underwriting and contracting; material and equipment acquisition; implementation of required environmental mitigation; land acquisition; construction; and as further described in this Article.

4.2. Ownership. Company is the owner of the Project, subject to PPC's Option to acquire the Transmission and Distribution Assets.

4.3. Project Feasibility. Company may perform such feasibility analyses as it deems appropriate and reevaluate Project feasibility from time to time in its discretion.

4.4. Project Design and Capacity. Company shall have the right and responsibility to determine Project proposed design, scope and capacity, subject to the lawful jurisdiction of governmental entities including, without limitation, City's jurisdiction over design review/master plan provisions and other zoning and land use entitlements.

4.5. Selection of Technology. Company shall have the right and responsibility to determine Project specifications and select the technology and corresponding equipment and material for use in the Project, from among competing vendors and manufacturers, and to award contracts to vendors; provided that with respect to Transmission and Distribution Assets, the Company will use good utility practice and consult with the City and PPC.

4.6. Preparation of Environmental Document. Company and City shall consult concerning City's role as Lead Agency under CEQA, as further described in Section 5.1. City, exercising its lawful discretion under CEQA, may conclude that an EIR is required for the Project. If City reaches that conclusion, Company shall have the right, at its discretion, to cause a draft EIR to be prepared by a consultant retained by Company, subject to independent evaluation by City, consistent with CEQA Guidelines Section 15084(d)(3). Company shall also have the right, as further described in Section 5.1, to prepare drafts of any other documents in the environmental process for City's review and independent exercise of judgment concerning the sufficiency thereof. City shall be entitled to retain its own independent consultant, for which City shall be reimbursed under the Reimbursement Agreement, and who shall be regularly and reasonably informed of the progress and who shall be involved to the extent necessary to conduct an appropriate independent review of the draft EIR/EIS on behalf of the City without the need to duplicate any significant time and effort. The City shall have the authority to provide technical and substantive direction to Company's consultant in the preparation of an EIR and other environmental documents.

4.7. Application for Governmental and Regulatory Approvals. Company shall submit an application for, and pursue approval of, any permit, license, Entitlement or other approval required for the Project by any governmental agency. City shall cooperate with and use its Best Reasonable Efforts to assist Company in applying for and obtaining any such approvals, permits, licenses, or Entitlements from other governmental entities, and the City will process all such applications submitted to it pursuant to the applicable codes and ordinances.

4.7.1. City Approvals. Company and City shall consult to determine what City Entitlements and other approvals are required for the Project. Company shall apply for any necessary City Entitlements and approvals, and City shall process such applications in conformance with applicable law. Nothing in this Agreement shall be deemed to require City to act on an application to a particular outcome. The Parties recognize that City shall exercise such jurisdiction and discretion as is lawfully vested in it as to each application concerning the Project.

4.7.2. Land Use Development Agreement. While not a required land use approval, Company may apply to City for approval of a land use development agreement pursuant to California Government Code Sections 65864, *et seq*. Approval of such agreement shall be subject to City's exercise of discretion as provided by law. Notwithstanding the foregoing, Company and City may determine that such an agreement is not required for the Project.

4.7.3. Additional Government Approvals and Permits. Company shall apply for Entitlements and any other approvals or permits required for the Project by any other governmental agencies.

4.8. Negotiation and Documentation of Rights-of-Way. Company shall negotiate and document any lease, easement, license, permit, right-of-way, or franchise necessary for the Project.

4.9. Development Costs. Company shall be responsible for paying its own development costs that it determines are necessary for the Project and shall have the sole discretion to determine whether and when a particular expense should be incurred; subject to the terms of this Agreement. Company shall also be responsible for reimbursing the City's costs consistent with the terms of the Reimbursement Agreement. Company shall reimburse the City the reasonable costs for third party evaluations, including but not limited to, power purchase assessments of the Project. Nothing in this Agreement shall require Company to fund development costs beyond the date notice of Company's decision to withdraw from the Project and terminate this Agreement under the terms of Article 13 is received by City or PPC, subject to liabilities covered by Section 5.4.5, and excepting any costs which have already been incurred and are legally payable.

4.10. Operating Costs. Company (or a third party who acquires all or a portion of an Option Property from Company by sale or lease) shall be responsible for all expenses relating to the operation and maintenance of the Project, including but not limited to taxes (such as business, real property, use, and sales taxes), assessments, land maintenance and security, and any other fees or exactions payable to other state and local jurisdictions within which any of the Project Assets are located and any necessary contracts covered under Article 7. Company shall not be responsible for any operation and maintenance costs associated with the Transmission and Distribution Assets after such Assets are transferred to PPC pursuant to a Purchase and Sale Agreement or otherwise except pursuant to the terms of any O&M agreement between Company or its Affiliates and City and/or PPC.

4.11. Financing and Encumbrances. No Encumbrance may be placed on the Transmission and Distribution Assets unless approved by Pittsburg. Notwithstanding any other provision of the Agreement, Company shall not Encumber any City or PPC property unless approved by City or PPC.

4.12. Departing Load Costs. Departing load costs shall be included in tariffed/contracted rates and payable by the end use customer. The City and/or PPC shall collect from customer and pay departing load costs through such collected amounts, but in no event shall City/PPC be liable for departing load costs.

4.13. Company's Responsibility Regarding Maintenance of Infrastructure Constructed by the Project. Upon establishment of one or more maintenance or other types of districts by the City to help fund the maintenance of project-created infrastructure, Company shall agree to annex Option Properties into said districts, and shall agree that any owner of any such Option Properties shall pay its assessment as to each such owned property. The City shall consult with Company as to the formation of one or more districts as described in this section. No such districts shall be formed to provide maintenance services as to any Option Properties for which Company has not yet exercised its Option without Company's consent. Upon such formation, and to the extent required to maintain project-created infrastructure on properties for which Company has not yet exercised its Option, Company shall reimburse City for annual maintenance assessments. Such obligation shall continue for the life of the Option Agreement or this Project Development Agreement, whichever is longer.

4.14. Management of Project Documents. Company shall have the right to retain any and all of Company's documents associated with the Project at its offices in San Francisco, except those documents Company provides to the City in furtherance of its obligations hereunder. The execution of the Project Contracts and all documents related to the development of the Project shall be signed in Pittsburg. The City (and its advisors and consultants) shall have the right to review other Project documents (excluding documents protected from disclosure as attorney work-product or subject to the attorney-client privilege, or internal memoranda of Company or its Affiliates) at reasonable times, upon reasonable notice and in accordance with the Confidentiality Agreement executed by the Parties. In no event shall the City be deemed to own or have custody of Project documents created by or on behalf of and retained by Company and not provided to the City in connection with its obligations hereunder. Company shall retain ownership, custody and control of all Project documents it retains. Documents that the City reviews at Company's offices shall not be considered as having been provided to the City under this section.

4.15. Media Relations. Company shall prepare all press releases issued by the Parties on the Project, subject to the advance approval of City Representative, which shall not be unreasonably withheld or delayed. City Representative shall act on a proposed press release within five (5) business days.

4.16. Schedule. Company shall have the right and authority to establish its preferred schedule for the Project, in consultation with City. As of the Effective Date, Company anticipates commencement of review under CEQA in 2019; the completion of permitting and development activities and commencement of construction for the first data center in 2020; and completion of construction and commencement of commercial operation of the first data center in 2021.

4.17. Limitation on Company's Role. In no event shall Company have, or be deemed to have, responsibility for management of the Transmission and Distribution Assets owned by the City or PPC in connection with this Project solely by its fulfillment of obligations under this Agreement for any other purpose whatsoever, except to the extent such responsibilities are contractually assumed by the Company or its Affiliates pursuant to an O&M contract.

ARTICLE 5.

PITTSBURG'S ROLE AND RESPONSIBILITIES

5.1. Environmental Review. City shall act as Lead Agency for the Project for purposes of conducting environmental review under CEQA, with its costs and expenses reimbursed as provided in the Reimbursement Agreement. Upon Company's request, and upon consultation with City and the appropriate federal agency or agencies, City's environmental review shall result in a joint NEPA/CEQA document.

5.1.1. Applications. Company shall apply to City for one or more discretionary Entitlements or approvals within City's jurisdiction. City shall use its Best Reasonable Efforts to determine whether the application is complete within thirty (30) Days.

5.1.2. Initial Study. The Parties anticipate that City will conclude that an EIR will be prepared for the Project, and thus acknowledge that an initial study would not be legally required. However, Company may in its discretion prepare, and submit for City's independent evaluation and possible use, a draft environmental checklist form as described in CEQA Guidelines Appendix G. If City concludes that an EIR will be prepared, City shall issue a notice of preparation as soon as reasonably practicable. Company may in its discretion prepare, and submit for City's independent evaluation and possible use, a draft notice of preparation.

5.1.3. Draft EIR. Assuming City determines that an EIR will be prepared for the Project pursuant to CEQA, Company may in its discretion elect to have Company's consultant prepare the draft EIR pursuant to CEQA Guidelines Section 15084(d). Any such draft EIR will be subject to City's independent evaluation of its sufficiency. Company may in its discretion prepare, and submit for City's independent evaluation and possible use, proposed responses to comments on the draft EIR. If Company has requested preparation of a joint NEPA/CEQA document, Company may prepare the EIR as a joint EIR/EIS, or as a joint EIR/FONSI, in consultation with City and the appropriate federal agency or agencies.

5.1.4. Completion of Review. City shall use its Best Reasonable Efforts to complete its review of the Project under CEQA and, as appropriate, NEPA, as soon as practicable, and in any event within the times required by law. Company shall instruct its consultant to provide the City and its consultant with any and all documentation and written information relied on by Company's consultant and necessary for City to conduct a meaningful review of the draft EIR as provided in Section 4.6.

5.1.5. Environmental Review Process. Upon Company or City's request, City and Company shall negotiate and execute an Operating Memorandum to govern the CEQA and, as appropriate, NEPA process consistent with this Section 5.1. Any such memorandum shall be consistent with NEPA (as appropriate), CEQA and the CEQA Guidelines, and shall serve to aid the Parties in expeditiously completing the environmental review process.

5.1.6. Additional Environmental Studies. At the City's request and during the entitlements process, Company shall cause to have prepared any study deemed necessary by City or City's CEQA consultant to address potential negative environmental impacts resulting from the Project, as well as potential negative environmental impacts on the Project resulting from the existing environment if it is reasonably determined that the Project would be in conflict with standards established within the City of Pittsburg General Plan, Pittsburg Municipal Code, or any established regional, state, or federal thresholds of significance.

5.1.7. Lead Agency Status. If City's status as Lead Agency is disputed, Company may in its discretion and in consultation with City submit the matter to the State Office of Planning and Research for resolution pursuant to CEQA Guidelines Section 15053*.* City may participate in any such submittal and advocate in support of resolving the matter in favor of City as Lead Agency.

5.1.8. No Obligation to Recommend Approval. Nothing in this Agreement shall be deemed to require City staff to recommend adoption of any CEQA and, as applicable, NEPA documentation and/or Statement of Overriding Considerations, or to require City to exercise its discretion on any documentation described in this agreement to a particular outcome.

5.1.9. Indemnification of City. To the fullest extent provided by applicable law, Company shall defend, indemnify and hold harmless City from and against all liability, loss, damage, expense, costs (including without limitation reasonable attorneys' fees) arising out of a legal challenge to the validity of any and all environmental documentation.

5.2. Discretionary Land Use Approvals. Company shall apply for, and City shall process, applications for discretionary land use approvals as described in this Section.

5.2.1. Approvals Required. Company and City shall consult to determine the specific approvals required for the Project under the City of Pittsburg Municipal Code. Company shall submit applications for such approvals as soon as reasonably practicable.

5.2.2. Land Use Development Agreement. While not a required land use approval, Company may apply to City for approval of a land use development agreement pursuant to California Government Code Sections 65864, *et seq.* City shall process any such application concurrently with other applications for required land use approvals.

5.2.3. Processing Approvals. City shall use its Best Reasonable Efforts to process and act upon Company's applications as soon as reasonably practicable, upon certification of the necessary environmental document under CEQA.

5.2.4. City's Decisions. Nothing in this Agreement shall be interpreted to require any particular outcome in City's decisions on discretionary land use approvals. The Parties recognize that City is legally vested with the responsibility to evaluate applications on their merits, independently exercise its jurisdiction and reach its decision to approve or disapprove such applications.

5.3. Easements/Franchises. If City determines to approve Entitlements for the Project, and after conducting any proceedings required by law, City shall grant Company encroachment permits subject to payment of established City fees, easements with payment of fair market value or, subject to City's discretion and as allowed by law, franchises (within City owned streets) for the consideration provided for under law (and subject to the provisions of Section 5.5 as applicable), in locations reasonably requested by Company across any City-owned property, for the purpose of furthering the Project or any portion thereof.

5.4. Acquisition by Eminent Domain. The Project may require the acquisition and disposition of property interests within or outside of City's boundaries. Upon Company's request, City shall consider the initiation of proceedings to acquire property for the Project as provided in this Section. City may determine that PPC is the appropriate condemning authority; for convenience, a reference in this Section 5.4 to "City" shall also be to PPC as required by the context. Company recognizes that City's filing a complaint in eminent domain is subject to separate, discretionary decisions of the City Council or PPC Board on the adoption of a resolution of necessity and the approval of an appropriate environmental document under CEQA. City is under no obligation to actually initiate an eminent domain proceeding, since such a decision is legally vested in the City Council or other governing board and cannot be pre-determined by this Agreement.

5.4.1. Company's Request. Company may request City to consider the initiation of eminent domain proceedings, as to any real property interests Company reasonably deems necessary for the Project. Company shall specify any such property with sufficient particularity, including the necessary legal description, to allow City to begin its proceedings.

5.4.2. City's Actions. Upon Company's request and consistent with requirements imposed by law, City may commence all condemnation proceedings, defend inverse condemnation proceedings, and take all other steps and actions necessary to condemn the real property interests necessary for the Project and identified by Company. If the City conveys any such interest to Company, such transfer shall be at no cost except for reimbursement as provided in Section 5.4.3 and as otherwise specifically provided for under this Agreement. City shall consult with counsel designated by Company as its representative as to pending actions, pleadings and case status and otherwise advise Company from time to time of its activities under this Section 5.4, as requested by Company.

5.4.3. Reimbursement. Company shall reimburse City for any and all of the following costs, expenses and liabilities reasonably incurred by City in performing its obligations under this Section 5.4: (a) reasonable fees and disbursements of attorneys, appraisers and other professionals employed or retained by City, subject to the terms and conditions of the Reimbursement Agreement; (b) court costs; (c) statutory deposits; and (d) any final compensation or negotiated awards which may be rendered or achieved as part of any condemnation proceeding.

5.4.4. Termination of Proceedings. Company may request at any time that City terminate an eminent domain proceeding as to a particular property interest, or settle any claim against City in connection with such a proceeding, including any inverse condemnation claim. City may comply or not with any such request as it sees fit. In either event, however, Company shall not be responsible directly or indirectly for any cost, expense or liability thereafter incurred by City which could have been avoided had City terminated or settled any proceeding or claim as requested by Company. It is agreed that a cost, expense or liability shall not be deemed to be one which could have been avoided by the settlement of a matter as requested by Company unless a settlement of the claim on the basis requested by Company was in fact available to City. Any expenses incurred by City up to the time Company submits its request to terminate the proceedings shall be reimbursed as defined in Section 5.4.3.

5.4.5. Indemnification. To the fullest extent provided by applicable law, and subject to the limitations contained in Section 5.4.4, Company shall defend, indemnify and hold harmless each Pittsburg Indemnitee from and against all liability, loss, damage, expense, costs (including without limitation reasonable attorneys' fees) arising out of a termination of an eminent domain proceeding commenced hereunder, or any inverse condemnation proceeding brought against a Pittsburg Indemnitee as a result of any proceedings requested by Company, or any other claim or action for damages brought against a Pittsburg Indemnitee as a result of activity engaged in by a Pittsburg Indemnitee, which activity was necessary under this Section 5.4, except to the extent of such Pittsburg Indemnitee's sole negligence, active negligence or willful misconduct and except as otherwise provided in Section 5.4.4.

5.5. Franchise Agreement. If the Project is legally required to obtain a franchise to cross City streets and rights-of-way, Company shall apply to City for a franchise agreement under the provisions of the Franchise Act of 1937 (California Public Utilities Code Sections 6201, *et seq.*). City shall process Company's application in accordance with the provisions of such act. The terms and conditions of the franchise agreement as submitted to the City Council for its consideration shall be no more burdensome than those set forth in the then-existing franchise agreement for electric transmission facilities with PG&E or its successor-in-interest.

5.6. Application, Processing and Development Impact Fees. Company shall be responsible for compensating City for processing the applications to City described in this Agreement. City and Company shall use their Best Reasonable Efforts (subject to City's exercise of discretion as required by law) to cause the land use development agreement described in Section 5.2.2

to vest in Company during its term the right to be subject only to those fees or exactions on the Project (collectively, “Exactions”), that are in effect on the effective date of such agreement. A waiver of Exactions on the Project may render the Project subject to prevailing wages as provided by law. The vesting of Exactions under the development agreement shall extend to and preclude the use of any constitutional or statutory authority that may now exist or hereafter be established to levy and assess any application, processing or development impact fee as to the Project, or any general or special tax that is not generally applicable to all commercial or industrial property situated within the City. Exactions do not include and are not intended to preclude (a) generally assessed property taxes, (b) generally assessed sales and use taxes, (c) generally assessed franchise fees, or (c) any assessments on Option Properties levied to pay for Project-created infrastructure serving the Project and otherwise consistent with this Agreement.

5.7. Approvals from Other Governmental Agencies. City shall cooperate with and use its Best Reasonable Efforts to support Company’s applications for Entitlements and approvals from other governmental agencies including, for example, contracts for delivery of water to the Project.

5.8. Deed Restrictions. City and Company shall cooperate in using their Best Reasonable Efforts to cause the federal government to remove the public use deed restriction applicable to certain Option Properties. or portions thereof.

5.9. City’s Responsibility Regarding Maintenance of Infrastructure Constructed by the Project. City understands that operation of the Project may require certain infrastructure, including but not limited to streets, stormwater facilities, and/or trails, which may need to be constructed on Option Properties that may not be optioned for multiple years. City shall reserve the right to establish one or more maintenance districts to help fund the maintenance of infrastructure created as part of the Project.

5.10. Street Naming. City shall reserve the right to name all public and privately-owned streets throughout the development.

ARTICLE 6.

OPERATION OF THE AGREEMENT

6.1. Operating Memoranda. This Agreement requires a close degree of cooperation between Pittsburg and Company. From time to time, and on particular subjects as further described below, the Parties will clarify and provide further detail of their performance obligations under this Agreement. During the term of this Agreement, Pittsburg and Company may at any time agree that such clarifications are necessary or appropriate, in which event they shall accomplish such clarifications through Operating Memoranda approved by the Parties thereto. Each executed Operating Memorandum shall be consistent with this Agreement and shall be attached hereto. To the extent allowed by state and local law, the City Manager may execute an Operating Memorandum on behalf of City without City Council action; the Executive Director of PPC may execute an Operating Memorandum on behalf of PPC without action by the PPC Board; and Company shall be entitled to rely on any such Operating Memorandum so executed. Notwithstanding the foregoing, nothing in this Section shall prevent the City Manager or Executive Director, in his discretion and in circumstances he deems appropriate, from submitting an Operating Memorandum to the City Council or governing board for approval.

ARTICLE 7.

PRINCIPLE ECONOMIC ELEMENTS OF PROJECT AND FINANCIAL AND ECONOMIC RELATIONSHIP OF PITTSBURG AND COMPANY

7.1. Objective. By this Article 7, the Parties wish to establish the framework for agreeing to the principal economic elements of the Project and the financial, economic and contractual relationships of the Parties.

7.2. Project Power and Water. PPC will provide electric power to the Project on terms and conditions mutually agreeable to PPC and Company, which such terms and conditions shall be set forth in an Operating Memorandum. City will provide, or reasonably cooperate with Company in obtaining supplies of water to the project, on terms and conditions mutually agreeable to City and Company. Those terms and conditions shall also be set forth in an Operating Memorandum.

7.3. Taxes and Rebates. The City will rebate a portion of the net property and net Bradley Burns sales and use taxes received by the City from the Project to incentivize users located in the Project. City shall, with respect to any Parcel, rebate to the landowner or tenant of each Parcel a percentage of the net Bradley Burns sales and use tax, and net property taxes, received by the City as to that Parcel no later than 60 days following its receipt of the funds from the disbursing entity (e.g., County of Contra Costa and State Board of Equalization). This incentive will be structured to incentivize the build-out of the Project. At no such point shall Company receive the incentive.

7.3.1. The net property and net Bradley Burns sales tax incentive shall have a term of 10 years commencing on the recording of the first land sale from Company to an end-user or data center developer.

7.3.2. The following schedule defines the rebate percentage by Year and Rebate Percentage:

Year	Rebate %
1	50
2	50
3	50
4	50
5	50
6	50
7	40
8	40
9	40
10	30

7.3.3. City and Company shall cooperate in negotiations with the County, state and governmental entities to expand the property and sales tax inducements available as to each Parcel. Company agrees to implement the provisions attached hereto as Exhibit "A" and use commercially reasonable, good faith efforts to cause end-users to which it conveys Parcels to implement such provisions. The Parties anticipate implementing the provisions of this Memorandum through a Development Agreement.

7.4. Mello Roos and Enhanced Infrastructure Financing. Further, upon Company's request, the City will consider and conduct proceedings under the Mello-Roos Community Facilities Act of 1982 ("Act" or "Mello-Roos") as a financing vehicle for the cost of certain Project infrastructure as permitted under the Act. Company shall reimburse Pittsburg for all costs incurred related to the consideration and conduction of proceedings related to Mello-Roos.

Additionally, City may, at its discretion, pursue establishment of an Enhanced Infrastructure Financing District ("EIFD") as a mechanism for, among other things, funding infrastructure improvements within the City that serve the Project and may also serve other properties. Company agrees to use its Best Reasonable Efforts to support City's establishment of an EIFD.

7.5. Transmission and Distribution Assets. Company and PPC shall have certain rights concerning the Transmission and Distribution Assets.

7.5.1. Provision and Financing of Assets. In consultation with City and/or PPC, Company shall have the exclusive, assignable right to design, contract for, and finance the construction of the Transmission and Distribution Assets, on terms and conditions mutually agreeable to the Parties and set forth in Exhibit "B" of this PDA and consistent with good utility practice. Financing may be accompanied by a security interest in the Transmission and Distribution Assets.

7.5.2. O&M Services. Company shall have the exclusive, assignable right to provide operations and maintenance services for the Transmission and Distribution Assets, on terms and conditions mutually agreeable to Company and PPC and set forth in Exhibit "B" of this PDA and any applicable Operating Memorandum. Up and until such time as PPC is providing O&M Services, PPC shall have no liability nor responsibility for the performance of the Transmission and Distribution Assets.

7.5.3. Power Purchase and Sale Agreements. In consultation with City and/or PPC, Company shall have the exclusive, assignable right to arrange for power procurement under one or more Power Purchase Agreements ("PPA"), and related Retail Power Agreements ("RPA") with corresponding credit support agreements as necessary for PPC to provide power for the Project. Said credit support agreements are to be in place for the life of each individual PPA. The Parties anticipate that credit support will be provided by the end user under the terms of an RPA. Terms and conditions shall be mutually agreeable to the Parties consistent with Exhibit "B" of this PDA. Up and until such time as PPC is a counterparty to a PPA or RPSA, PPC shall have no liability nor responsibility for the power supplied to the Project.

7.5.4. PPC Option to Purchase. As further described in Article 8, PPC shall have the exclusive option to purchase the Transmission and Distribution Assets for nominal consideration with closing coincident with the commencement of commercial operations, on terms and conditions mutually agreeable to Company and PPC and consistent with Exhibit "B" of this PDA.

ARTICLE 8.

PPC ACQUISITION OF TRANSMISSION AND DISTRIBUTION ASSETS AND COOPERATION IN PROJECT FINANCING

The Parties shall use their Best Reasonable Efforts to negotiate and prepare for submittal to the governing board of City or PPC and subsequent execution a Purchase and Sale Agreement for the acquisition of Transmission and Distribution Assets in the event Company or its Affiliates choose to develop such assets for sale to PPC, within eight (8) months after execution of this Agreement.

The Parties acknowledge that construction and long-term financing for the Project will be arranged by Company and its Affiliates, on such terms and conditions as Company deems appropriate. Such financing for the development, construction and ownership of the Project, including financing for the Transmission and Distribution Assets, may be arranged with Project lenders, who may finance on a recourse or nonrecourse basis.

ARTICLE 9

JOINT, CONTRIBUTORY OR CONCURRENT NEGLIGENCE

It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, principles of comparative negligence will be followed and each Party shall bear the proportionate cost of any liability attributable to that Party's negligence. The obligations of the Parties under this Article shall survive the termination or expiration of this Agreement, consistent with Section 17.16.

ARTICLE 10.

REPRESENTATIONS AND WARRANTIES

10.1. City's Representations and Warranties. City represents and warrants to Company as of the Effective Date as follows:

10.1.1. City is a municipal corporation, which has been duly formed and organized and is validly existing and in good standing under the laws of the State of California.

10.1.2. City has the power, right and authority to enter into this Agreement and to undertake the actions contemplated hereby.

10.1.3. All requisite action has been taken by City in connection with entering into this Agreement.

10.1.4. The individuals executing this Agreement on behalf of City have the legal power, right and actual authority to bind City to the terms and conditions of this Agreement.

10.1.5. Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which City is a party or by which any of City's properties may be bound.

10.1.6. This Agreement is, and all documents required hereby to be executed by City, will be valid, legally binding obligations of and enforceable against City in accordance with their terms.

10.1.7. City has all governmental licenses, authorizations, consents and approvals to execute, deliver and perform its obligations under this Agreement.

10.1.8. No City official has a financial interest in this Agreement within the meaning of Government Code Section 1090, nor does any City official who makes or participates in the making of a governmental decision on this Agreement have a conflict of interest under the Political Reform Act (Government Code Sections 81000, *et seq*.). No City official, consultant or advisor is being compensated with a fee that is contingent on or defined by the payment of any sums to City by Company.

10.2. City's Notice. City shall promptly give Company notice upon the occurrence of any event, or receipt of any notice, which might give rise to a breach by City of any of its representations, covenants or warranties set forth in Section 11.1.

10.3. PPC's Representations and Warranties. PPC represents and warrants to Company as of the Effective Date as follows:

10.3.1. PPC is a joint powers authority, which has been duly formed and organized and is validly existing and in good standing under the laws of the State of California, as and to the extent described in final, binding judgments of the Superior Court of such State.

10.3.2. PPC has the power, right and authority to enter into this Agreement and to undertake the actions contemplated hereby, as and to the extent described in final, binding judgments of the Superior Court of such State.

10.3.3. All requisite action has been taken by PPC in connection with entering into this Agreement.

10.3.4. The individuals executing this Agreement on behalf of PPC have the legal power, right and actual authority to bind PPC to the terms and conditions of this Agreement.

10.3.5. Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which PPC is a party or by which any of PPC's properties may be bound.

10.3.6. This Agreement is, and all documents required hereby to be executed by PPC, will be valid, legally binding obligations of and enforceable against PPC in accordance with their terms.

10.3.7. PPC has all governmental licenses, authorizations, consents and approvals to execute, deliver and perform its obligations under this Agreement.

10.3.8. No PPC official has a financial interest in this Agreement within the meaning of Government Code Section 1090, nor does any PPC official who makes or participates in the making of a governmental decision on this Agreement have a conflict of interest under the Political Reform Act (Government Code Sections 81000, *et seq*.). No PPC official, consultant or advisor is being compensated with a fee that is contingent on or defined by the payment of any sums to PPC by Company.

10.4. PPC's Notice. PPC shall promptly give Company notice upon the occurrence of any event, or receipt of any notice, which might give rise to a breach by PPC of any of its representations, covenants or warranties set forth in Section 11.3. Notwithstanding the provisions of Section 11.3, PPC shall not be deemed in default hereof if it is no longer organized as a joint powers authority, in which case PPC shall function as a division of the City and City's representations, covenants and warranties set forth in Section 11.1 shall be applicable to PPC.

10.5. Company's Representations and Warranties. Company represents and warrants to Pittsburg as of the Effective Date as follows:

10.5.1. Company is a limited liability company that has been duly formed and organized and is validly existing and in good standing under the laws of the State of Delaware.

10.5.2. Company has the power, right and authority as a limited liability company to enter into this Agreement and to undertake the actions contemplated hereby.

10.5.3. All requisite action has been taken by Company in connection with entering into this Agreement.

10.5.4. The individuals executing this Agreement on behalf of Company have the legal power, right and actual authority to bind Company to the terms and conditions of this Agreement.

10.5.5. Neither the execution and delivery of this Agreement, nor the incurrence of the obligations herein set forth, nor compliance with the terms of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, Company's articles of incorporation, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease or other agreement or instrument to which Company is a party or by which any of Company's properties may be bound.

10.5.6. This Agreement is, and all documents required hereby to be executed by Company, will be valid, legally binding obligations of and enforceable against Company in accordance with their terms.

10.5.7. Company has all governmental licenses, authorizations, consents and approvals to execute, deliver and perform its obligations under this Agreement, other than permits required to be obtained for construction and operation of the Project.

10.6. Company's Notice. Company shall promptly give Pittsburg notice upon the occurrence of any event, or receipt of any notice, which might give rise to a breach by Company of any of its representations, covenants or warranties set forth in Section 11.5.

ARTICLE 11.

FORCE MAJEURE AND CONDEMNATION EVENTS

11.1. Force Majeure. Each Party shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder, except the obligation to pay money in a timely manner, if and to the extent that its failure or delay in performance is due to a Force Majeure Event, subject to the provisions of this Section.

11.1.1. Initial Notice. The Party claiming a Force Majeure Event shall give the other Parties written notice describing the particulars of the Force Majeure Event as soon as is reasonably practicable (provided that the failure of a Party to provide the notice in a timely manner shall preclude that Party from claiming relief from the Force Majeure Event hereunder only if and to the extent that such failure actually prejudices another Party).

11.1.2. Scope and Duration. The suspension of performance shall be of no greater scope and of no longer duration than are reasonably required by the Force Majeure Event. The Party claiming relief shall use its Best Reasonable Efforts to overcome or mitigate the effects of the Force Majeure Event. When such Party is able to resume performance of its obligations under this Agreement that were precluded by the event, the Party shall provide written notice to the other Parties to that effect, identifying the specific dates during which performance was precluded, and indicating that the Party has promptly resumed its performance hereunder.

11.2. Taking or Condemnation. If all or any portion of the Project Assets is taken by any governmental or other entity under any law or by right of taking, condemnation, eminent domain or other proceeding, then Company shall have the right, at its expense, to appear in such proceeding and to receive the award for all compensable value of any and all Project Assets, and any other of Company's compensable assets as they appear, along with any costs, expenses and damages resulting from such proceeding. Nothing in this Section limits any right Pittsburg may have to appear in a condemnation proceeding and, at its sole expense, pursue available remedies in the event of condemnation of a property interest of Pittsburg's, provided, however, that any recovery by Pittsburg (except as to an Option Property which has not yet been acquired by Company) shall be subordinate to Company's recovery of full compensation for any of Company's property interests. No portion of any award to Company shall be distributed to Pittsburg, unless the amount of such award exceeds the compensation due for Company's property interests and includes sums to which Pittsburg has a contractual right to recover under the Project Contracts. To the extent either Party receives any amounts or proceeds in connection with such proceedings which are payable in respect to the other Party's interest, the receiving Party agrees to hold any such amounts received by it in trust for the other Party and to promptly pay the same to it. The Parties agree to use their Best Reasonable Efforts in order to carry out the intent of this Section.

ARTICLE 12.

TERM AND TERMINATION

12.1. Term. The term of this Agreement shall commence on the Effective Date and shall terminate on the earliest of (a) twenty (20) years after the Effective Date, or as extended by mutual agreement; (b) the date that either Party formally exercises a right to terminate pursuant to Section 13.2; (c) upon the event described in Section 13.2.3; or (d) such other date as may be agreed upon by the Parties in writing.

12.2. Termination.

12.2.1. By Pittsburg. Pittsburg may terminate this Agreement if (a) Company has defaulted in its performance of a material term under a Project Contract and failed to cure such default after notice as provided in Article 13 (or such other applicable notice provision); or (b) Company becomes bankrupt, as defined in Section 13.2.4.

12.2.2. By Company. Company may terminate this Agreement at any time it determines, in its sole discretion, to withdraw from and cease pursuing the Project. In addition, Company may terminate this Agreement at any time if City or PPC (a) has defaulted in its performance of a material term under a Project Contract and failed to cure such default after notice as provided in Article 17 (or such other applicable notice provision); or (b) becomes bankrupt, as defined in Section 13.2.4.

12.2.3. Judgment. This Agreement shall be terminated upon entry, after all appeals have been exhausted, of a final judgment or issuance of a final order directed to Pittsburg as a result of any litigation to set aside, withdraw, or abrogate the approval of the City Council or PPC Board of this Agreement; provided, however, that in such event, the Parties shall use their

Best Reasonable Efforts to negotiate in good faith and enter into a contractual relationship intended to preserve to the extent practical the original intent of the Parties and to restore the balance of burdens and benefits as described in this Agreement.

12.2.4. Bankruptcy. For purposes of this Section, "bankrupt" means a situation in which (a) a Party files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent, or files any petition or answer or consent seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future applicable law relating to bankruptcy, insolvency, or other relief for debtors, or seeks or consents or acquiesces in the appointment of any trustee, receiver, conservator or liquidator of such Party or of all or any substantial part of its properties (the term "acquiesce" as used in this definition, to include the failure to file a petition or motion to vacate or discharge any order, judgment or decree within fifteen (15) Days after entry of such order, judgment or decree); (b) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against any Party seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future bankruptcy law or law relating to insolvency or other relief for debtors, and such Party acquiesces in the entry of such order, judgment or decree or such order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) Days (whether or not consecutive) from the date of entry thereof, or any trustee, receiver, conservator or liquidator of such Party or of all or any substantial part of its property is appointed without the consent or acquiescence of such Party and such appointment remains unvacated and unstayed for an aggregate of sixty (60) Days, whether or not consecutive; (c) a Party evidences its inability to pay its debts as they mature; (d) a Party gives notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations; or (e) a Party makes a general assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors.

ARTICLE 13.

DEFAULT

13.1. Default by Company. If Pittsburg determines that Company has not complied in good faith with terms or conditions of this Agreement, Pittsburg shall give written notice to Company stating the manner in which Company has failed to comply and the steps Company must take to bring itself into compliance. If, within sixty (60) Days after such notice, Company does not commence all steps reasonably necessary to bring itself into compliance and thereafter diligently pursue such steps to completion, then Company shall be deemed to be in default hereunder. Pittsburg shall have the right to pursue any remedy at law or equity, including specific performance.

13.2. Default by Pittsburg. If Company determines that Pittsburg has not complied in good faith with terms or conditions of this Agreement, Company shall give written notice to Pittsburg stating the manner in which Pittsburg has failed to comply and the steps Pittsburg must take to bring itself into compliance. If, within sixty (60) Days after such notice, Pittsburg does not commence all steps reasonably necessary to bring it into compliance and thereafter diligently pursue such steps to completion, then Pittsburg shall be deemed to be in default. Company shall have the right to pursue any remedy available at law or equity, including specific performance.

13.3. Pursuit of Dispute Resolution. Nothing in this Article shall preclude a Party from seeking dispute resolution under Article 15 during the time in which a notice to cure a default is pending.

ARTICLE 14.

DISPUTE RESOLUTION

14.1. Initiation. To commence a dispute resolution proceeding, a Party shall make written request to the other Party, specifically identifying the nature of the dispute in sufficient detail to allow for immediate evaluation and resolution. A Party shall have worked to resolve the matter through the Project Consultation Committee before commencing a formal dispute resolution under this Article.

14.2. Attempted Resolution. The Parties shall first use their Best Reasonable Efforts to consider all reasonable approaches in attempting to resolve a dispute through negotiation. Such efforts shall include, at a minimum, at least two (2) meetings that include personal participation of Company's President, Chief Executive Officer or Chief Operating Officer (or comparable senior officer), and the City Manager and the Executive Director of PPC (if such official is not also the City Manager, and if PPC is involved in the dispute).

14.3. Mediation. If a dispute is not resolved within thirty (30) Days after receipt of notice of the written request by the responding Party, the Parties shall seek expeditious mediation by a neutral third-party. If the Parties are unable to agree upon a mediator, then they shall jointly request designation of a mediator by the Judicial Arbitration and Mediation Service (JAMS), its successor, or another mutually agreeable private mediation service. Mediation shall be commenced and completed within forty-five (45) Days after completion of the thirty (30) Day period for attempted resolution by the Parties. The cost of the mediator shall be borne equally by the Parties. If mediation does not resolve the dispute, then either Party may seek judicial review as provided in Article 15.

ARTICLE 15.

JUDICIAL REVIEW

15.1. Initiation of Litigation. Any dispute that arises under or relates to this Agreement (whether contract, tort, or both) shall be resolved in the Superior Court of the County of Contra Costa, California, unless the Parties to the dispute mutually agree to a form of alternative dispute resolution. Notwithstanding any other provision of this Agreement, a Party shall have the right at any time to apply to the Superior Court of the County of Contra Costa to enjoin a breach of this Agreement.

15.2. Specific Performance. Pittsburg and Company have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and related activities and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate a Party for such efforts. For the above reasons, Pittsburg and Company agree that damages would not be an adequate remedy if a Party fails to carry out its obligations under this Agreement and that each Party shall have the right to seek and obtain specific performance as a remedy for breach of this Agreement. Notwithstanding the foregoing, Pittsburg shall have no right to seek specific performance to cause Company to proceed with the development of the Project, or any other remedy in connection with Company's decision not to proceed with the Project.

15.3. Remedies Cumulative. The rights and remedies provided in this Agreement shall not be exclusive but shall, to the extent permitted by law, be cumulative and in addition to all other rights and remedies existing at law, in equity or otherwise, except those rights and remedies which have been waived.

15.4. Limitation on Damages. Notwithstanding any other provision of this Agreement, in no event, whether as a result of breach of contract, tort (including negligence), strict liability or any other cause of action, shall a Party or any of its contractors be liable to another Party for special, indirect, incidental, punitive, exemplary or consequential damages of any nature whatsoever, including loss or damage caused by reason of loss of use, loss of profits or revenue, interest charges, cost of capital, and each Party hereby expressly releases each other Party therefrom.

15.5. Applicability of Review. Any modification, suspension or termination of this Agreement by any Party shall be subject to judicial review unless all affected Parties have consented in writing thereto.

15.6. Attorney's Fees. In any litigation by which one Party either seeks to enforce its rights under this Agreement or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be awarded reasonable attorneys' fees, together with any costs and expenses (including expert witness and referee costs), to resolve the dispute and to enforce the final judgment.

15.7. Third-party Challenge. The Parties shall cooperate with each other in all reasonable manners and use their Best Reasonable Efforts in order to keep this Agreement in full force and effect. The Parties shall cooperate in defending against any litigation challenging the approval of this Agreement or any provision therein.

15.7.1. Defense of Litigation. In the event of litigation brought by a third-party to the approval or implementation of this Agreement, or any aspect thereof, Pittsburg and Company shall jointly cooperate in the defense. The Parties may, but are not required to, develop an Operating Memorandum to further describe the details of their defense of the litigation. In the event the plaintiff or petitioner obtains a final judgment in its favor in the trial court, the Parties shall decide whether to pursue an appeal. If both Parties wish to appeal, then each shall bear its own attorneys' fees and costs on appeal unless otherwise agreed. If one Party wishes to appeal, but the other does not, then the former Party shall be entitled to pursue the appeal at its sole cost and expense, and shall indemnify the other Party against any cost associated with the appeal. This Agreement shall remain in full force and effect while the third-party litigation, including any appellate review, is pending.

15.7.2. Compliance with Judgment. No Party shall be in breach of this Agreement if it acts in conformance with a final judgment from a court of competent jurisdiction entered because of a third-party challenge.

15.8. Validation. Pittsburg shall use Best Reasonable Efforts to initiate and pursue to final judgment a validation action pursuant to California Code of Civil Procedure Sections 860, *et seq.* confirming the validity and legality of this Agreement. The costs of such an action shall be recoverable as a Reimbursable Expense pursuant to the terms of the Reimbursement Agreement.

ARTICLE 16.

NOTICES

16.1. Manner of Giving Notice. Notices provided under the terms of this Agreement shall be in writing and transmitted by mail, personal delivery, or overnight mail service. Notices to Pittsburg shall be addressed to:

City Manager
City of Pittsburg
65 Civic Avenue
Pittsburg, California 94565
Phone: (925) 252-4850
Fax: (925) 252-4851

with a copy to: City Attorney
City of Pittsburg
65 Civic Avenue
Pittsburg, California 94565
Phone: (925) 252-4850
Fax: (925) 252-4851

Notices to Company shall be addressed to:

Energy Delivery Solutions LLC
Attention: Sean O'Reilly
One Letterman Drive, Bldg. C, 5th Flr.
San Francisco, CA 94129
Phone: (415) 291-2290
Fax: (415) 651-9500

with a copy to: Energy Delivery Solutions LLC
Attention: Cliff Losh
One Letterman Drive, Bldg. C, 5th Flr.
San Francisco, CA 94129
Phone: (415) 291-2290
Fax: (415) 651-9500

16.2. Effective Date of Notices. When personally delivered to the recipient, notice is effective on delivery. When mailed first class, postage prepaid, to the last address of the recipient known to the Party giving notice, notice is effective four mail delivery days after deposit in a United States Postal Service office or mailbox, providing the fourth day lands on a normal business day and not on a federal or State of California holiday. In the event of service by mail and the fourth day lands on a federal or State of California holiday, notice shall be effective on the next business day. When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt. When delivered by overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery takes place on a normal business day and is confirmed by the delivery service, otherwise service shall be effective on the next business day. Where service is made by personal delivery, service shall not be effective unless delivery takes place on a normal business day during business hours (between 9:00 AM and 5:00 PM).

16.3. Undeliverable Notice. A correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified shall be deemed effective as of the first date that such notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service. A Party may not rely on an undeliverable notice unless the Party has also attempted personal or overnight delivery and placed a phone call to the usual business phone number of the other Party in an effort to confirm the current address for service.

16.4. Change of Address. A Party may change its address for notices by giving notice in writing to the other Party as required herein. Thereafter, notices shall be sent to the new address.

ARTICLE 17.

GENERAL PROVISIONS

17.1. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. With the exception of the Confidentiality Agreement, Reimbursement Agreement, ENRA and any Operating Memoranda entered into pursuant to this Agreement, each of which remains in full force and effect, this Agreement supersedes all previous negotiations, discussion and agreements between the Parties, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

17.2. Interpretation and Governing Law. The language in all parts of this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. A reference to a particular person, entity or Party shall include successors in interest to such person, entity or Party. A reference to a particular contract shall include amendments to such contract. In the event of a conflict between a provision of this Agreement and any of the Confidentiality Agreement, the Reimbursement Agreement, the ENRA, the Option Agreement, or any Operating Memorandum entered into hereunder, the following shall apply: the Option Agreement controls over this Agreement, the ENRA controls over this Agreement, an Operating Memorandum controls over this Agreement, and this Agreement controls over the Confidentiality and Reimbursement Agreements. The Parties agree that the laws of the State of California shall govern the construction and implementation of this Agreement. This Agreement shall be deemed to have been entered into, and obligations hereunder to have been incurred and performed, in Pittsburg, California. Each Party specifically stipulates to venue in the County of Contra Costa.

17.3. Severability. Terms of this Agreement shall be severable as set forth in this Section.

17.3.1. Provision of Agreement. If any term, covenant, condition or provision of this Agreement, or the application thereof to any circumstance, shall at any time or to any extent, be determined by a court or arbitrator of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement, or the application thereof to circumstances other than those as to which it is held invalid or unenforceable, shall be valid and enforceable, to the fullest extent permitted by law, and interpreted in the manner most consistent with effectuating the Parties' intent.

17.3.2. Jurisdiction of PPC. If for any reason a court of competent jurisdiction (or any other administrative agency legally vested with the jurisdiction to decide such matters) shall determine, by final judgment or order, that PPC lacks the legal capacity to conduct its activities under this Agreement, then the City Council hereby declares its intent to exercise its lawful role as a municipal utility in its own right, and shall fully perform the obligations of PPC hereunder as though it had done so in its own right in the first instance.

17.4. Ambiguities. Each Party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement.

17.5. Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the Party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

17.6. Headings. The headings in this Agreement are included for convenience only and shall not affect the construction or interpretation of any provision in this Agreement or any of the rights or obligations of the Parties.

17.7. Relationship of the Parties. Nothing in this Agreement shall be construed to create an association, joint venture, trust or partnership, or impose a trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties. Each Party shall be responsible for its own covenants, obligations and liabilities as herein provided. No Party or group of Parties shall be under the control of or deemed to control any other Party or the Parties as a group. Except as expressly provided in this Agreement, no Party shall be the agent of or have a right or power to bind any other Party without its express consent.

17.8. Intent. The Parties intend that the waivers and disclaimers of liability, releases from liability, and limitations and apportionments of liability expressed throughout this Agreement shall apply even in the event of the fault, negligence (in whole or in part), strict liability or breach of contract of the Party released or whose liability is waived, disclaimed, limited, apportioned or fixed by any such provision, and shall extend to such Party's Affiliates and its and their directors, officers, shareholders, partners, members, employees and agents. The Parties also intend and agree that such provisions shall continue in full force and effect notwithstanding the completion, termination, suspension, cancellation, rescission or expiration of this Agreement.

17.9. Non-Recourse Obligations. The obligations of each Party under this Agreement shall be without recourse to any of the directors, officers, shareholders, partners, members, employees, agents, board members, Council members or Affiliates of such Party or of any of the foregoing.

17.10. Assignment. This agreement shall be binding upon, and inure to the benefit of, each of the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or its rights or interests hereunder without the prior written consent of each other Party, which consent may not be unreasonably withheld, except that Company may enter into the assignments and related transactions without consent as contemplated under Recital H and Sections 7.5.1 and 7.5.2*,* and may enter into one or more contracts or subcontracts with respect to the performance of its obligations under this Agreement as provided herein. Any assignment in violation of this Section shall be null and void.

17.11. Estoppel Certificates. A Party may make a written request for an Estoppel Certificate to another Party at any time. The Party to whom the request is made shall provide an Estoppel Certificate to the requesting Party as soon as possible, but in any event within thirty (30) Days after the request. The City Manager or any person designated by the City Manager may sign an Estoppel Certificate on behalf of City. The Executive Director or comparable official of PPC, respectively, may execute an Estoppel Certificate on behalf of such entity. Any officer of Company may sign on behalf of Company. The requesting Party shall reimburse the responding Party for all reasonable and direct costs and fees incurred by the responding Party in providing the Estoppel Certificate. Any such certificate may and is intended to be relied upon by any person, including the other Party, potential purchasers of all or any part of the Property, lenders, and potential lenders.

17.12. Word Usage. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine and neuter genders shall each be deemed to include the others; (iii) “shall,” “will” or “agrees” are mandatory, and “may” is permissive; (iv) “or” is not exclusive; and (v) “include,” “includes” and “including” are not limiting.

17.13. Time of Essence. Time is of the essence regarding each provision of this Agreement of which time is an element.

17.14. Counting Days. Days shall be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday or a legal holiday, and then it shall be excluded. Any act required by this Agreement to be performed by a certain day shall be timely performed if completed before 5:00 p.m. local time on that date. If the day for performance of any obligation under this Agreement is a Saturday, a Sunday or a legal holiday, then the time for performance of that obligation shall be extended to 5:00 p.m. local time on the first following day that is not a Saturday, Sunday or legal holiday. As used in this Section, "legal holiday" means those Days observed as federal holidays by the government of the United States or state holidays by the State of California.

17.15. Recitals. Each recital set forth at the beginning of this Agreement is incorporated here by reference, as though fully set forth herein, and agreed by the Parties to be true and correct.

17.16. Survival of Obligations. It is understood and agreed by the Parties that whether or not it is specifically so provided herein, any term or provision of this Agreement, which by its nature and effect is required to be kept, observed, or performed after completion, termination, suspension, cancellation, rescission or expiration of this Agreement, shall survive such completion, termination, suspension, cancellation, rescission or expiration, and shall be and remain binding upon and for the benefit of the Parties until fully observed, kept or performed.

17.17. Third Party Beneficiaries. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights in any person. All provisions hereof are for the exclusive benefit of Pittsburg and Company. No provision hereof shall be construed to benefit or be enforceable by any third party. Notwithstanding the foregoing, Affiliates of Company are express third party beneficiaries of the provisions of this Agreement, as required by the context.

17.18. No Dedication. No undertaking by any Party under any provision of this Agreement shall constitute, and no Party shall assert, the dedication of any Party's electrical or transmission system, equipment or facilities or other property or assets of such Party, or any portion of any thereof, to any other Party or to the public, or a portion thereof, or affect the status of Company as an independent private entity and not a public utility.

17.19. Counterparts; Duplicate Originals. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. This Agreement may also be executed in duplicate originals for each Party, and each such document shall constitute an original Agreement.

17.20. Necessary Acts. The Parties shall execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement, including, without limitation, the delivery of customary and reasonably satisfactory evidence of and opinions on the validity of any representations and warranties contained in, and the authority to execute and enter into, any Project Contract.

17.21. Amendment. This Agreement may be amended only by the mutual agreement of the Parties. Any Party may propose an amendment to this Agreement and shall give notice of the requested amendment to each Party. No amendment of this Agreement shall be binding unless it is in writing and signed by the Parties.

WHEREFORE, the Parties have executed this Agreement below.

ENERGY DELIVERY SOLUTIONS LLC,
a Delaware limited liability company

By: ______________________________
Sean O'Reilly
President

CITY OF PITTSBURG,
A California Municipal Corporation

By: ______________________________
Garrett Evans
City Manager

Approved as to form:

By: ______________________________
Donna Mooney
City Attorney

Attest:

By: ______________________________
Alice Evenson
City Clerk

PITTSBURG POWER COMPANY JOINT POWERS AUTHORITY

By: ____________________________
Garrett Evans
Executive Director

Approved as to form:

By: ____________________________
Donna Mooney
Legal Counsel

Attest:

By: ____________________________
Alice Evenson
Agency Secretary

EXHIBIT "A"

SALES AND USE TAX PROCEDURES

Any purchase, acquisition, and/or supply of goods and materials, as well as any new or replacement equipment and supplies purchased by Company, its successors or assigns, including without limitation a purchaser or lessee of any Parcel ("Parcel Owner") or its contractors, subcontractors, agents or affiliates, in connection with this Project and for use on a Parcel shall be apportioned and paid to and at the applicable sales tax rate in effect for the City as administrated by the California Department of Tax and Fee Administration ("CDTFA"). At no point may Parcel Owner or its contractors, subcontractors, agents or affiliates contractually agree to share sales and use taxes from this Project, a Parcel or portion thereof with any other city, county or other entity in the State of California, regardless of any agreement they might have with another jurisdiction where they have offices or conduct business. The City of Pittsburg will be the sole jurisdiction of record to the transfer of title. Parcel Owner and its contractors, subcontractors, agents and affiliates shall comply with the Sales and Use Tax Requirements ("Requirements") set forth below and all applicable CDTFA requirements. If the City becomes aware of modifications necessary to such Requirements, City may propose to incorporate new or revised requirements, subject to Parcel Owner's agreement which shall not be unreasonably withheld, conditioned or delayed. Failure by Parcel Owner, its contractors, subcontractors, agents or affiliates to comply with this condition to ensure appropriate taxes are properly paid and passed through to the City will result in Parcel Owner paying a fee equivalent to the taxes which the City would have received had Parcel Owner, its contractors, subcontractors, agents or affiliates taken such actions to ensure the sales taxes referenced in the first sentence of this subsection are apportioned to the City.

Sales and Use Tax Requirements: Parcel Owner, its contractors, subcontractors, agents and affiliates shall adhere to the following steps in an effort to maximize the City's allocation of sales and use taxes associated with Project construction and operations by taking the following steps:

1. Prior to issuance of a grading or building permit or within sixty (60) days of the effective date of the last land use entitlement required for the Project, whichever comes first, the Parcel Owner shall register with the CDTFA and keep such registration current throughout its ownership of a Parcel.

2. Apply for a Use Tax Direct Pay Permit. Upon receipt of registration, provide a copy to the City and/or their consultant for verification.

3. Self-accrue and pay use taxes in accordance CDFTA requirements.

4. Report local and district use taxes to CDFTA on applicable use tax returns.

5. Use Tax-Point of Sale/Use Designation. Parcel Owner shall require all contractors, subcontractors, agents and affiliates providing building materials and fixtures, such as but not limited to, bulk lumber, concrete, structural steel and pre-fabricated building components to be used in connection with the construction and development of, or incorporated into, the Project, and electronic equipment for use on a Parcel to:

   (a) obtain a Seller's Permit;
   (b) issue a resale certificate to any supplier of material that will allow it to buy property without payment of tax;
   (c) file timely Sales and Use tax returns and report local tax on materials consumed and fixtures sold by the contractor, subcontractor, agent or affiliate based on the sole jobsite location located in the City of Pittsburg;
   (d) elect to obtain a sub permit for the job site of any contract valued at Five Million Dollars ($5,000,000) or more enabling the contractor, subcontractor, agent or affiliate to make a direct allocation of the tax based on the jobsite located in the City of Pittsburg; and
   (e) otherwise designate the Parcel as the place of use of materials used in the construction of the Project in order to have the full local use tax portion of the sales and use tax distributed directly to the City of Pittsburg.

6. Parcel Owner/General Contractor shall require and instruct each of its subcontractors to cooperate with the City to ensure the local use tax is allocated to the City of Pittsburg.

7. To assist City in its efforts to ensure that the full amount of such local sales/use tax is allocated to the City, Parcel Owner/General Contractor shall provide City with a quarterly spreadsheet, which includes a list of all subcontractors, agents or affiliates with contracts in excess of the amount set forth above, a description of all applicable work, and the dollar value of such subcontracts or agreements. City or City's consultant may use the information provided it to contact each contractor, subcontractor, agent or affiliate to determine which may qualify to register the jobsite for allocation of the local use tax to the City of Pittsburg.

8. The Parcel Owner will establish an office location within the City of Pittsburg's territorial boundaries from the date of its acquisition of an interest in a Parcel until Parcel Owner has established an office for Parcel Owner at the Parcel.

EXHIBIT "B"

INFRASTRUCTURE

Company shall have the assignable right to provide and/or finance the Transmission and Distribution System (collectively the "Infrastructure") to City and PPC as follows:

(a) Cost of Transmission and Distribution System to be repaid on cost of service basis and for no other consideration from City or PPC. Costs on infrastructure include:

a. depreciation year-to-year
b. Equity Return of 10.5% + Tax (assuming 50/50 Cap structure) all as consistent with the rate principles, procedures and documentation to be described in an Operating Memorandum
c. Interest Cost

(b) Project finance style documentation for repayment of cost of Transmission and Distribution System from revenues received from Project by PPC.

Payments for power to PPC under Retail Sales Agreements shall be deposited in a restricted account, with disbursements from that account subject to the following order of priority: 1) components of the Cost of Service (exclusive of service charge); 2) payments to repay cost of Transmission and Distribution System as described above; 3) payments under the O&M Agreement (described above); 4) PPC's administrative costs (excluding non-PPC allocations of City staff and infrastructure costs); 5) payments under an EDS Services and Marketing Agreement to be described in an Operating Memorandum); and 6) remaining funds disbursed in PPC's discretion.

(c) Company shall consult with City and PPC regarding technology, timing, contracts, any necessary rights of way and other relevant material matters regarding the development of the Transmission and Distribution System.

(d) If Company has developed or financed the Transmission and Distribution System and upon completion has offered to transfer such System to City and PPC for $1 (one dollar) on the terms described in (a) and (b) above, and the City and PPC do not in their sole discretion take possession of the System on such terms, then Company shall have the unfettered right to transfer such System to another municipal utility at its discretion and neither City nor PPC shall object to or interfere in any way with such other municipal utility providing power to the Project. Any and all obligations of the City and PPC as to the power Transmission and Distribution System, other than contractual obligations which by their nature would reasonably be required to survive such transfer, shall be relieved immediately if the Company transfers the System to another municipal utility.

(e) All equipment used in connection with the Transmission and Distribution System and any other infrastructure will conform to the equipment and infrastructure specifications in the CEQA approvals for the Project.

OPERATING MEMORANDUM #1 REGARDING RETAIL POWER AGREEMENT AND WATER SUPPLY TO PROJECT DEVELOPMENT AGREEMENT

On August 19, 2019, the CITY OF PITTSBURG ("City"), PITTSBURG POWER COMPANY ("PPC") and Energy Delivery Solutions LLC ("Company") entered into that certain *Project Development Agreement* ("PDA"). Through their duly authorized representatives, the Parties wish to enter into this Operating Memorandum #1 ("Memorandum"), pursuant to Article 6 of the PDA.

This Memorandum is based upon the following facts:

1. The PDA is in full force and effect. Capitalized terms in this Memorandum shall have the meaning specified in the PDA, unless otherwise required by the context.

2. Pursuant to Article 6 of the PDA, the Parties may enter into an operating memorandum in order to clarify or provide further detail of their performance obligations under the PDA. The Parties agree that the terms and conditions of this Memorandum are expressly subject to lawful exercise of the City's jurisdiction as further described in Recital G and Section 5.2.4 of the PDA.

3. The PDA contemplated in Section 7.2 that the Parties would agree to (a) arrangements pursuant to which the City and PPC would agree to supply power to the Company and its assignees pursuant to retail power agreements, Company being the exclusive retail energy customer as to each of the parcels of the Property (each such parcel being a "Parcel"); and (b) to arrangements pursuant to which the City would supply water to the Project.

4. One Retail Power Agreement ("RPA") in such form as mutually agreed by the Parties will be created for each Parcel and executed by the City, PPC and the Company. Company will have the right to assign such RPA to one or multiple end users of each Parcel. The retail price of power under such RPA will be established according to the following cost of service formula and will be calculated annually:

- Invoiced cost of energy;
- Costs on infrastructure, including:
    - depreciation year-to-year
    - Equity Return of 10.5% indexed annually to reflect changes in return in accordance with average FERC ROEs + Tax (assuming 50/50 Cap structure)
    - Interest Cost

- Operating and maintenance ("O&M") costs per Code of Federal Regulations regarding centralized service companies (which set forth standard FERC accounting procedures);
- Charges mandated by State authorities, including the CPUC; and
- Service charge (the "Service Charge") to PPC, initially set at 1 cent per kWh and thereafter indexed to inflation in accordance with the San Francisco-Oakland Bay Area Consumer Price Index for All Urban Consumers (CPI-U), published by the U.S. Bureau of Labor Statistics (and which charge will be deemed to include full recovery of any allocation of City staff or non-power infrastructure costs and costs of credit support); subject to the terms and conditions of Operating Memorandum #2 entered into concurrently herewith.

The City and PPC will supply annually an annual budget and a five-year forecast; the cost of service calculation above shall be audited by an independent auditor of national reputation. The City's full cost associated with preparation of such budget and forecast and a fair and reasonable allocation of City and PPC management and administrative overhead expenses shall be recovered by the City through rates under Retail Power Agreements such that the City is not out-of-pocket for such costs. Company and its assignees shall have the right to review and audit the records of the City and PPC regarding the above referenced matters.

5. The City will provide or cause to be provided sufficient water as needed by end-users of the parcels as described below. Company shall have the right to provide the infrastructure (the "Water Infrastructure") necessary to provide water on the same terms as described with respect to the Transmission and Distribution System in PDA Exhibit "B". It is contemplated that the Project will ultimately require approximately five (5) million gallons of water per day.

The City shall contract for and provide water for the Project in accordance with the following order:

- City will seek to contract with Delta Diablo Sanitation District for recycled water supply to the extent such supply is available, which City in turn provides to the Project at City's cost including infrastructure maintenance and a fair and reasonable allocation of City and PPC management and administrative overhead expenses;
- To the extent additional supply is needed, City will seek to contract with Central Contra Costa Sanitary District ("CCSD") for recycled water to the extent such supply is available, which City in turn provides to the Project at City's cost including infrastructure maintenance and a fair and reasonable allocation of City and PPC management and administrative overhead expenses;

- To the extent additional supply is needed, City will seek to contract with Contra Costa Water District ("CCWD") for raw water from the Contra Costa Canal, which City in turn provides to the Project at City's cost including infrastructure maintenance and a fair and reasonable allocation of City and PPC management and administrative overhead expenses; and
- To the extent additional supply is needed, City will provide water from its municipal supply at a negotiated rate if available, or if not, then at its lowest available tariffed rate.

The City's delivery of potable water for domestic purposes within the Project shall be governed by the City's typical rules and regulations and costs and fees for such service. If it is necessary for Company and/or end users of a Parcel to contract directly with CCSD or CCWD, Company and City shall cooperate to provide such arrangements.

Wherefore, the authorized representatives of the Parties have executed this Memorandum, effective _______________, 2019, as follows:

ENERGY DELIVERY SOLUTIONS LLC	CITY OF PITTSBURG
By: ____________________________	By: ____________________________ Garrett Evans, City Manager
	Approved as to Form:
	By: ____________________________ Donna Mooney, City Attorney
	Attest:
	By: ____________________________ Alice Evenson, City Clerk

PITTSBURG POWER COMPANY
JOINT POWERS AUTHORITY

By: ____________________________
Garrett Evans, Executive Director

Approved as to form:

By: ____________________________
Donna Mooney, Legal Counsel

Attest:

By: ____________________________
Alice Evenson, Agency Secretary

OPERATING MEMORANDUM #2 REGARDING EDS SERVICES AGREEMENT TO PROJECT DEVELOPMENT AGREEMENT

On August 19, 2019, the CITY OF PITTSBURG ("City"), PITTSBURG POWER COMPANY ("PPC") and ENERGY DELIVERY SOLUTIONS LLC ("Company") entered into that certain *Project Development Agreement* ("PDA"). Through their duly authorized representatives, the Parties wish to enter into this Operating Memorandum #2 ("Memorandum"), pursuant to Article 6 of the PDA.

This Memorandum is based upon the following facts:

1. The PDA is in full force and effect. Capitalized terms in this Memorandum shall have the meaning specified in the PDA, unless otherwise required by the context.

2. Pursuant to Article 6 of the PDA, the Parties may enter into an operating memorandum in order to clarify or provide further detail of their performance obligations under the PDA. The Parties agree that the terms and conditions of this Memorandum are expressly subject to lawful exercise of the City's jurisdiction as further described in Recital G and Section 5.2.4 of the PDA.

3. The PDA contemplated in Section 7.5.3 that the Parties would agree to arrangements pursuant to which the Company would arrange for power procurement through one or more Power Purchase Agreements ("PPA") and Retail Power Agreements ("RPA") with related credit support as necessary for the City and PPC as it relates to the Project and would receive a portion of the revenues from the RPAs as described in Operating Memorandum #1 executed contemporaneously herewith.

4. Accordingly the Parties agree that the Company, in consultation with the City and PPC, will have the right to negotiate terms and conditions of one or more PPAs with third-party wholesale energy providers for provision of power to PPC with respect to its providing power to the Project under the RPAs as described in Exhibit "B" to the PDA, on terms and conditions consistent with the PDA, Operating Memorandum #1 and this Operating Memorandum; the Company may assign its rights and responsibilities described in this Memorandum. City and Company will agree on power procurement strategy annually. The Parties further agree to enter into an agreement pursuant to which the Company shall, as and to the extent necessary, arrange for PPAs and RPAs, including credit support ("EDS Services and Marketing Agreement") and pursuant to which the Company will be entitled to 50% of the Service Charge which shall initially be one cent per kW hour on power sales with respect to any Parcel or portion thereof pursuant to an RPA adjusted thereafter as described in Operating Memorandum #1; the Company's rights and obligations under the EDS Services and Marketing Agreement shall be

assignable. The Service Charge will not be changed without the consent of PPC, the City, the Company and any counterparty or assignee of the EDS Services and Marketing Agreement. Payments due from PPC shall be due and payable to the Company (or its assignee) 30 days after receipt by PPC of such amounts under a Power Purchase Agreement.

5. For the life of each PPA, Company shall arrange for credit support for the relevant RPA. At no point shall PPC or the City have any exposure for amounts due under a PPA except for their contractual obligation to pass through payments received from end-use customers.

Wherefore, the authorized representatives of the Parties have executed this Memorandum, effective _________________, 2019, as follows:

ENERGY DELIVERY SOLUTIONS LLC	CITY OF PITTSBURG
By: ____________________________	By: ____________________________ Garrett Evans, City Manager
	Approved as to Form:
	By: ____________________________ Donna Mooney, City Attorney
	Attest:
	By: ____________________________ Alice Evenson, City Clerk
	PITTSBURG POWER COMPANY

JOINT POWERS AUTHORITY

By: ______________________________
Garrett Evans, Executive Director

Approved as to form:

By: ______________________________
Donna Mooney, Legal Counsel

Attest:

By: ______________________________
Alice Evenson, Agency Secretary

CITY OF PITTSBURG, PITTSBURG POWER COMPANY AND ENERGY DELIVERY SOLUTIONS LLC EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

This Exclusive Negotiating Rights Agreement (the "Agreement") is entered into as of 1 August, 2017 ("Effective Date") by and between the City of Pittsburg, a municipal corporation ("City") and Pittsburg Power Company, a joint powers authority ("PPC"), and Energy Delivery Solutions LLC, a Delaware limited liability company ("Company"), each a "Party" and collectively "Parties". This Agreement is entered into with reference to the following facts:

RECITALS

A. The City has general municipal jurisdiction over the territory within its boundaries. The City wishes to facilitate economic development efforts and to expand its tax base and employment opportunities for its residents, while retaining its discretion to review and consider potential approval of development projects.

B. Communities in California are sometimes in competition with communities in other states for locating new economic development opportunities. Those opportunities have sometimes been lost to nearby states that do not provide for or require green power or carbon pricing prevalent and to the level desired in California.

C. PPC is a municipal utility which has provided retail gas and electric services since 1997. PPC wishes to explore opportunities to provide additional service to potential customers, and thus potentially expand the number and size of base load customers. Such expansion will be necessary in order for California to achieve its goal of greater integration of renewable energy sources.

D. Company has been established to explore and as determined feasible pursue the development and siting of one or more privately financed and PPC-owned substations and related electrical lines to serve large industrial load in existing or new facilities in the City, and potentially elsewhere in California. (each such substation and related electrical lines and each such industrial load consuming facility being a "Project"). Company anticipates providing financing for each Project; obtaining rights to buy power through PPC at attractive pricing, and assisting PPC in making such pricing available; and for Company to market and assign such rights to end-use customers, with PPC providing those customers with retail power services. One Project, for example only and not by way of limitation, is the development of a data center campus in Pittsburg. A data center is a facility used to house information technology equipment including computers, telecommunications and storage systems. A data center includes redundant or backup power supplies, redundant data communications connections, environmental controls and various security devices. At this time, the parties have not determined any particular site for the data center or other Projects. Company has determined that the price of electric power is a key factor in the development of each Project, and that PPC's involvement is a key factor in providing the requisite pricing.

E. The purpose of this Agreement is to provide a structure by which City, PPC and Company may negotiate key business terms for a Project, while reserving the City's exercise of its powers including all lawful land use jurisdiction. Nothing in this Agreement shall constitute a commitment by the City and/or PPC to approve land use or any other entitlements for a Project, which shall follow the applicable development ordinances and regulations.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

ARTICLE 1
EXCLUSIVE NEGOTIATING RIGHT

Section 1.1 Negotiations. City, PPC and Company shall consider the feasibility of and negotiate during the Negotiating Period described in Section 1.2, the potential for entering into a power purchase agreement or other agreements that would facilitate establishment and development of potential Projects. Assuming the Parties identify a suitable Project, they shall engage in good faith efforts to negotiate the terms of such agreement or agreements. The Parties recognize that multiple sites may be considered under this Agreement, which may or may not involve properties owned by the City.

Section 1.2 Negotiating Period. The negotiating period ("Negotiating Period") under this Agreement shall commence on the Effective Date and terminate two years thereafter, unless extended by mutual written agreement established by an amendment hereto.

Section 1.3 Exclusive Negotiations. During the Negotiating Period, the City and PPC shall not negotiate or contract with any entity, other than Company, regarding the establishment or development of a Project utilizing power provided by or through PPC, or solicit bids or proposals to do so. Additionally, during the Negotiating Period, Company shall not negotiate with any entity, other than PPC, for the provision of municipal utility service to a Project located within the City. Further, during the Negotiating Period, the Company shall have the exclusive right to negotiate to make the necessary investments required to provide to the City and the PPC the power infrastructure and related investments necessary to implement and support provision of power to a Project and to receive a utility rate of return on such investment; Company shall also have the exclusive right during the Negotiating Period, but not the obligation, for the acquisition at market rates, of all power provided through such power infrastructure.

Section 1.4 CCA. The parties recognize that the City is in the process of joining Marin Clean Energy, a community choice aggregate joint powers agency ("CCA"). This Agreement is not intended to, and shall not, affect the participation and related actions of the City and its residents and/or businesses in the CCA.

ARTICLE 2
AUTHORIZED REPRESENTATIVES

Section 2.1 Identification of Company Representatives. The Company's authorized representatives to negotiate with the City and PPC are as follows:

Cliff Losh
Sean O'Reilly
Michael Woods

Section 2.2 Identification of City and PPC Representatives. The City's and PPC's authorized representatives to negotiate with Company are as follows:

Joe Sbranti
Garrett Evans
Ruthann Ziegler

As used in this Agreement, "City and PPC" shall mean City and PPC collectively, and as a rule of construction the word "and" in such phrase shall also mean the disjunctive "or". A reference to either entity shall also include the entity's governing board, officials, officers, designated agents and employees.

ARTICLE 3
PLANNING APPROVALS/ENVIRONMENTAL REVIEW

Section 3.1 Planning Approvals. The Company acknowledges that any particular Project may require approvals and entitlements from the City ("Discretionary Approvals"). Company shall have the responsibility for applying for any such necessary Discretionary Approvals for a Project. Company shall have the sole discretion to determine whether and when to apply for such Discretionary Approvals. Company shall enter into a reimbursement agreement with City and PPC concurrently with the executing this Agreement such that Company reimburses the City and PPC for their staff, legal and consultant time and expenses in evaluating and reviewing a Project, including any Discretionary Approvals, and in regard to this Agreement. To the extent City and PPC costs are compensated through adopted fee schedules (such as, for example, planning department fees for processing land use applications), those costs shall not be duplicated in recovery under the reimbursement agreement.

Section 3.2 Environmental Review. If requested by the City and PPC upon filing of an application by Company for a particular Project, Company shall prepare at its sole cost, and submit to the City and PPC such plans, specifications, drawings, and other information, as specified by City and PPC, that are reasonably necessary to perform the applicable environmental review process as required by CEQA for a Project. The reimbursement agreement referenced above shall provide for Company to provide or pay for all environmental documentation and processing required by CEQA including, but not limited to, reimbursement for staff, legal and consultant time, preparation of plans, specifications, drawings and other information, and such other matters as determined by the City and/or PPC pursuant to the terms of the Reimbursement Agreement. The Parties may enter into other project-specific agreements that address cost-sharing and budgetary items as well. The City acknowledges that any and all work produced by Company pursuant to this Agreement is the property of Company and shall not be used by the City and PPC or disclosed to any third parties (except as required by the California Public Records Act, court order, discovery, or other legal process, and then subject to the terms and conditions of the Confidentiality Agreement executed concurrently herewith) unless Company agrees in writing, in its sole discretion, to such use and disclosure.

Section 3.3 Progress Reports. Upon reasonable notice, as from time to time requested by the City and PPC, the Company shall make oral or written progress reports advising the City and PPC on studies being made and matters being evaluated by the Company with respect to this Agreement and any Project.

ARTICLE 4
GENERAL PROVISIONS

Section 4.1 Limitation on Effect of Agreement. This Agreement (and any extension of the Negotiating Period) shall not obligate City, PPC or Company to enter into any particular agreement concerning a Project. By execution of this Agreement, the City and PPC are not committing themselves to or agreeing to undertake acquisition, disposition, or exercise of control over any Project site or portion thereof. Execution of this Agreement by the City and PPC is merely an Agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City Council and PPC Board of Directors action the final discretion and approval regarding the execution, if any, of a power purchase or other agreement which the Parties may negotiate. Any agreement resulting from negotiations pursuant to this Agreement shall become effective only if and after such Agreement has been considered and approved by the Company, and by the City Council of the City and the Board of Directors of PPC as appropriate, following conduct of all legally required procedures, and following completion of all applicable requirements of CEQA.

Section 4.2 No Commissions. The City and PPC shall not be liable for any real estate commissions or brokerage fees that may arise from Company's conduct under this Agreement or any agreement that may result therefrom. Company shall not be liable for any real estate commissions or brokerage fees that may arise from City's or PPC's conduct under this Agreement or any agreement that may result therefrom. Each Party represents that it they has not engaged any broker, agent or finder in connection with this transaction, and each Party shall defend, indemnify and hold the other Parties harmless from any claims by any broker, agent or finder retained by such indemnifying Party.

Section 4.3 Default and Remedies.

(a) Default. Failure by a Party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by a Party, the non-defaulting Party may terminate this Agreement. Following such termination, no Party shall have any further right, remedy or obligation under this Agreement.

(c) Injunctive Relief. Each Party understands and acknowledges that any breach of the provisions of this Agreement could cause injury to the other Parties for which monetary damages may not be an adequate remedy. Accordingly, each Party agrees that if a breach occurs or is imminent, and monetary damages would not be an adequate remedy, the injured Party shall be entitled to seek such injunctive relief as it may deem necessary to prevent or remedy such breach.

(d) No Other Remedies. Except as expressly provided above and for a Party's indemnity obligations under Section 4.2 and under the Reimbursement Agreement: (i) no Party shall have any liability to another Party for damages or otherwise for any default; (ii) nor shall a Party have any other claims with respect to performance under this Agreement; and (iii) each party specifically waives and releases any such rights or claims it may otherwise have at law or in equity.

(e) Attorneys' Fees. The prevailing Party in any action to enforce this Agreement shall be entitled to recover attorneys' fees and costs from the non-prevailing Party.

Section 4.4 Assignment. This Agreement inures to the benefit of and binds the Parties and their respective representatives, successors, and permitted assigns. No Party may assign its rights or obligations hereunder without the prior written consent of the other Parties, which consent may be granted or withheld in the consenting Party's sole and absolute discretion; provided, however, that City and PPC may assign their rights hereunder in full, or partially as discussed further below, to another public entity, provided such entity's governing board consists of a majority of the members of the City Council or PPC Board and whose jurisdiction to conduct municipal utility activities as a municipal corporation under Article XI, Section 9(a) of the California CONSTITUTION has been confirmed by final judgment of the Superior Court of the State of California by way of a validation action pursuant to California CODE OF CIVIL PROCEDURE Sections 860, *et seq*. The Parties recognize that a Party may form a new entity for each Project, and the Parties wish to provide for an expeditious mechanism by which such entity may become subject to the terms of this Agreement and have all the rights and obligations of a Party hereunder, while also providing for this Agreement to remain in full force and effect as between Company, City and PPC, and as between any other affiliate of Company, City and PPC. A Party may accomplish a partial assignment as contemplated by this Section by providing written notice thereof to the non-assigning Party or Parties, accompanied by written acceptance of the partial assignment and the terms hereof by the relevant entity or affiliate. Any assignment in violation of this Section shall be null and void.

Section 4.5 Integration. This Agreement constitutes the entire agreement between the Parties regarding exclusive rights to negotiate concerning a Project.

Section 4.6 Modification. Any modification of this Agreement shall be in writing and executed by each Party.

Section 4.7 Governing Law. The Parties agree that the laws of the State of California shall govern the construction and implementation of this Agreement. Venue shall lie in Contra Costa County.

Section 4.8 Notification. Notices provided under the terms of this Agreement shall be in writing and transmitted by certified mail (return receipt requested), courier or overnight delivery service. Notices to City and PPC shall be addressed to:

City Manager
City of Pittsburg
65 Civic Avenue
Pittsburg, California 94565
Phone: (925) 252-4850
Fax: (925) 252-4851

with a copy to:

Ruthann G. Ziegler
555 Capitol Mall

Suite 1200
Sacramento CA 95814
Phone: (916)-556-1531

and with a copy to:

General Counsel
Pittsburg Power Company
65 Civic Avenue
Pittsburg, California 94565
Phone: (925) 252-4850

Notices to Company shall be addressed to:

Energy Delivery Solutions LLC
One Letterman Drive, Bldg. C, 5th Fl.
San Francisco, CA 94129
Attention: Sean O'Reilly
Phone: (415) 291-2299
Facsimile: (415) 651-9500

with a copy to:

Energy Delivery Solutions LLC
One Letterman Drive, Bldg. C, 5th Fl.
San Francisco, CA 94129
Attention: Cliff Losh
Phone: (415) 291-2290
Facsimile: (415) 651-9500

Notice provided to a Party under this paragraph shall be effective when received by the receiving Party's representative as identified above, or on such date as delivery is refused. In the event of a partial assignment under Section 4.5, the assigning Party may specify a separate address for notices as to the entity or affiliate subject to that assignment.

Section 4.9 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, shall not be affected.

Section 4.10 Ambiguities. Each Party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement.

Section 4.11 Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the Party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

Section 4.12 Headings. The headings in this Agreement are included for convenience only and shall not affect the construction or interpretation of any provision in this Agreement or any of the rights or obligations of the Parties.

Section 4.13 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of City, PPC and Company and no other person shall have any right of action under or by reason of this Agreement.

Section 4.14 Effect on Project. Neither this Agreement nor any communications of the Parties shall be deemed to create any obligation or liability for any Party to proceed with a Project (or continue to proceed with development of a Project) unless and until the Parties so agree in writing. No joint venture, partnership, or other fiduciary relationship shall be deemed to exist or arise with respect to a Project because of this Agreement.

WHEREFORE, the Parties have executed this Agreement below, further agreeing that execution may be in multiple counterparts, each executed copy of which shall constitute an original of the same instrument. Each Party represents and warrants that each individual executing this Agreement on such Party's behalf has the legal power, right and actual authority to do so.

ENERGY DELIVERY SOLUTIONS LLC

By: ____________________

Name: SEAN O'REILLY

Title: CEO

Date: 7/20/17

CITY OF PITTSBURG

By: ____________________
Joe Sbranti
City Manager

Approved as to form:

____
Ruthann G. Ziegler
City Attorney

Attest:

By: Alice E. Evenson
Alice E. Evenson
City Clerk

PITTSBURG POWER COMPANY

Approved as to form:

Ruthann G. Ziegler
Legal Counsel

2821703.1

By: ______________________
Joe Sbranti
Executive Director

FIRST AMENDMENT TO
CITY OF PITTSBURG, PITTSBURG POWER COMPANY AND
ENERGY DELIVERY SOLUTIONS LLC
EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

This First Amendment ("Amendment") to Exclusive Negotiating Rights Agreement ("Agreement") is entered into as of July 31, 2019 by and between the City of Pittsburg, a municipal corporation ("City") and Pittsburg Power Company, a joint powers authority ("PPC"), and Energy Delivery Solutions LLC, a Delaware limited liability company ("Company"), each a "Party" and collectively "Parties". This Amendment is entered into with reference to the following facts:

RECITALS

A. On August 1, 2017, the Parties entered into the Agreement. The Agreement provided in its section 1.2 for a negotiating period thereunder of two (2) years.

B. The Parties wish to amend the Agreement to provide for a negotiating period of three years ending July 31, 2020.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

AMENDMENT

Section 1.2 of the Agreement, "Negotiating Period", is hereby amended to read as follows:

The negotiating period ("Negotiating Period") under this Agreement shall commence on August 1, 2017 and terminate July 31, 2020, unless extended by mutual written agreement established by an amendment approved consistent with Resolution No. 16-13242.

[Signature Page Follows]

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ENERGY DELIVERY SOLUTIONS LLC

By: [signature]

Name: SEAN O'Reilly

Title: President

Date: 9/17/19

CITY OF PITTSBURG

By: [signature]
Garrett Evans
City Manager

Approved as to form:

By: [signature]
Donna Mooney
City Attorney

Attest:

By: Alice E. Evenson
Alice E. Evenson
City Clerk

PITTSBURG POWER COMPANY

By: [signature]
Garrett Evans
Executive Director

Approved as to form:

By: [signature]
Donna Mooney
Legal Counsel

Attest:

By: Alice E. Evenson
Alice E. Evenson
Agency Secretary

SECOND AMENDMENT TO
CITY OF PITTSBURG, PITTSBURG POWER COMPANY AND
ENERGY DELIVERY SOLUTIONS LLC
EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

This Second Amendment (“Second Amendment”) to Exclusive Negotiating Rights Agreement ("Agreement") is entered into as of ________________, 2019, by and between the City of Pittsburg, a municipal corporation (”City"), Pittsburg Power Company, a joint powers authority (“PPC”), and Energy Delivery Solutions LLC, a Delaware limited liability company ("Company"), each a “Party” and collectively “Parties”. This Second Amendment is entered into with reference to the following facts:

RECITALS

A. On August 1, 2017, the Parties entered into the Agreement. The Agreement provided in its section 1.2 for a negotiating period thereunder of two (2) years.

B. On June 5, 2018, City and Company entered into that certain “Option Agreement Between the City of Pittsburg and Energy Delivery Solutions LLC” (“Option Agreement”).

C. Effective August 1, 2019, the Parties executed that certain First Amendment to the Agreement (“First Amendment”). Under the First Amendment, the Parties extended the negotiating period from two (2) years to three (3) years.

D. The Parties now wish to amend the Agreement to provide for further extensions of the negotiating period, based on Company achieving certain benchmarks for the technology park Project as further described below.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

AMENDMENT

1. <u>Recitals</u>

Recital D of the Agreement, defining the term “Project”, is hereby amended to read as follows:

D. Company has been established to explore and as determined feasible pursue the development and siting of one or more privately financed and PPC-owned substations and related electrical lines to serve large industrial load in excess of 25 megawatts in new facilities in the City, and potentially elsewhere in California. (each such substation and related electrical lines and each such industrial load consuming facility being a "Project”). Company anticipates providing financing for each Project; obtaining rights to buy power through PPC at attractive pricing, and assisting PPC in making such pricing available; and for Company to market and assign such rights to end-use customers, with PPC providing those customers with retail power services. One Project, for example only and not by way of limitation, is the development of a data center campus in Pittsburg. A data center is a facility used to house information technology equipment including computers, telecommunications and storage systems. A data center includes redundant or backup power supplies, redundant data communications connections, environmental controls and various security devices. At this time, the parties have not determined any particular site for the data center or other Projects. Company has determined that the price of electric power is a key factor in the development of each Project, and that PPC's involvement is a key factor in providing the requisite pricing.

2. Negotiations.

Section 1.1 of the Agreement, “Negotiations”, is hereby amended to read as follows:

(a) City, PPC and Company shall consider the feasibility of and negotiate during the Negotiating Period described in Section 1.2, the potential for entering into a power purchase agreement or other agreements that would facilitate establishment and development of potential Projects. Assuming the Parties identify a suitable Project, they shall engage in good faith efforts to negotiate the terms of such agreement or agreements. The Parties recognize that multiple sites may be considered under this Agreement, which may or may not involve properties owned by the City.

(b) From time to time and with thirty days written notice, City may request oral or written progress reports from Company regarding a particular Project as to which the Parties are negotiating. City may terminate negotiations as to a particular Project upon a reasonable, good faith finding by City that progress on the development of that Project has ceased, become ineffective, or non-productive. City shall provide Company sixty (60) days written notice of its desire to terminate negotiations as to such Project pursuant to this section and Company will have one hundred twenty (120) days in which to cure to the City's reasonable satisfaction.

3. Negotiating Period.

Section 1.2 of the Agreement, “Negotiating Period”, is hereby amended to read as follows:

The negotiating period ("Negotiating Period") under this Agreement shall commence on August 1, 2017 and terminate July 31, 2021, provided, however, that the Negotiating Period shall be extended as follows:

(a) If Company submits to the City a draft Final Environmental Impact Report (EIR) for the technology park Project at the Option Properties (as such terms are defined in the Option Agreement) on or before July 31, 2021, then the Negotiating Period shall be extended an additional three (3) years and terminate July 31, 2024.

(b) If before July 31, 2024, Company either (i) spends at least One Million Dollars ($1,000,000.00) in construction costs for the technology park Project at the Option Properties, or (ii) enters into a binding contract with a counterparty for the acquisition of one or more Option Properties for the construction of a data center thereon, then the Negotiating Period shall be extended an additional five (5) years and terminate July 31, 2029.

4. Authorized Representatives

The City and PPC's authorized representatives listed in Section 2.2 of the Agreement, "Identification of City and PPC Representatives," is hereby amended to list the following authorized representatives to negotiate with Company:

City Manager/Executive Director
Assistant City Manager
City Attorney/Legal Counsel

5. Termination.

A new Article 5 is added to the Agreement to read as follows:

Article 5
Termination

Section 5.1 Termination by EDS. EDS may terminate this Agreement with or without cause, at any time during the term hereof upon thirty (30) days' prior written notice to City and PPC.

Section 5.2 Termination by City. From time to time and with thirty days written notice, City may request oral or written progress reports from EDS regarding the technology park Project as defined in the Option Agreement and any business developments with respect to the Option Properties. City may terminate this Agreement upon a reasonable, good faith finding by City that progress on the technology park Project development has ceased, become ineffective, or non-productive. City shall provide EDS sixty (60) days written notice of its desire to terminate pursuant to this section and EDS shall have one hundred twenty (120) days in which to cure to the City's reasonable satisfaction.

6. Effectiveness.

Except as specifically amended by the First Amendment and this Second Amendment, the Agreement remains in full force and effect.

WHEREFORE, the Parties have executed this Second Amendment as of the first date set forth above.

ENERGY DELIVERY SOLUTIONS LLC

By: ____________________________

Name: __________________________

Title: ___________________________

Date: ___________________________

CITY OF PITTSBURG

By: ____________________________
Garrett Evans
City Manager

Approved as to form:

____
Donna Mooney
City Attorney

Attest:

By: ____________________________
Alice E. Evenson
City Clerk

Approved as to form:

____
Donna Mooney
Legal Counsel

PITTSBURG POWER COMPANY

By: ____________________________
Garrett Evans
Executive Director

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

DATE: 5/24/2018

TO: Mayor and Council Members

FROM: Joe Sbranti, City Manager

SUBJECT: Adoption of a Resolution Approving an Option Agreement with Energy Delivery Solutions LLC for a Technology Park Development at the former Delta View Golf Course

MEETING DATE: 6/4/2018

EXECUTIVE SUMMARY

The City and Energy Delivery Solutions LLC (EDS) are proposing to enter into an Option Agreement for approximately 101.7 acres of land at the former Delta View Golf Course. EDS wishes to pursue the development of a technology park that would include one or more data centers.

FISCAL IMPACT

Dependent upon the scale of development, the City could realize significant sales, use and property taxes associated with the technology park. For calculating the purchase price, the first 10 acres will be sold for $1.50 per square foot. The price per square foot will increase by $0.50 per square foot for every 10 acres sold, rounding out at $6.00 per square foot for the final 11.7 acres. If all of the 101.7 acres of property were sold, the final compensation for the land would be $16,779,312.

RECOMMENDATION

City Council move to adopt the Resolution and approve the Option Agreement with Energy Delivery Solutions LLC.

BACKGROUND

The City recently experienced the closure of the Delta View Golf Course on March 1, 2018. The Delta View Golf Course occupied approximately 175 acres of a larger set of City owned properties that encompasses approximately 420 acres. During the May 7, 2018 City Council meeting, the City Council directed staff to explore Economic Development and Employment Opportunities on a portion of the former golf course.

EDS, an affiliate of SteelRiver Operations LP (SteelRiver) and TransBay Funding, is in support of the City's efforts to create a technology park at the former golf course. SteelRiver has $2.5 billion in fund and co-investment capital under management including the $550 million Trans Bay Cable. The development of the 53 mile HVDC Trans Bay Cable project was a joint effort between the City and SteelRiver. On May 3, 2018, EDS submitted a letter to the City expressing interest in developing a technology park at the former golf course.

SUBCOMMITTEE FINDINGS

This item was discussed at the Pittsburg Power Company Subcommittee.

STAFF ANALYSIS

Staff, in continuing efforts to increase revenues and spur economic development, has been discussing the potential of a technology park with EDS for the last two years. A challenge for a technology park, given its high investment requirements, is that it must be accessible to energy (power lines or generation) and avoid areas that are near railroads and flood designated areas. The land on the eastern edge of the golf course meets the preferred criteria.

The attached 5 year Option Agreement contemplates that the City and EDS will need to negotiate definitive agreements regarding the sale and transfer of properties to EDS for the technology park, consistent with the California Environmental Quality Act (CEQA), mitigation measures pursuant to CEQA, and all permits necessary for governmental entities including the City.

The approximately 101.7 acres is proposed to be split into 20, five acre parcels that can be optioned dependent upon the development parameters of the technology park. As detailed in the Fiscal Impact, the final compensation for the land would be $16,779,312. The revenue derived from the land sale and the potential creation of an Enhanced Infrastructure Finance District could generate significant resources to build, construct, and maintain the Diverse Recreational Opportunities discussed at the May 7, 2018 City Council meeting.

ATTACHMENTS: 1. May 3, 2018 Letter
2. Option Agreement
3. Resolution

Report Prepared By: Report prepared by: Garrett Evans, Assistant City Manager

OPTION AGREEMENT BETWEEN
THE CITY OF PITTSBURG AND ENERGY DELIVERY SOLUTIONS LLC

This option agreement ("Agreement") is made on this 5th day of June, 2018, by and between the CITY OF PITTSBURG, a municipal corporation ("City") and ENERGY DELIVERY SOLUTIONS LLC., a Delaware limited liability company ("EDS"), each a "Party" and together the "Parties." This Agreement is based upon the following facts:

A. City owns several adjacent parcels of real property at or in the vicinity of the Delta View Golf Course in Pittsburg, California. The parcels relevant to this Agreement are:

Reference ID#	Assessor's Parcel Number	Acreage (+/-)
Parcel #1	095-150-032	13.24
Parcel #2	094-080-011	11.75
Parcel #5	095-160-001	2.97
Parcel #6	095-160-002	20.50
Parcel #7 (Portion)	094-090-001	35.21
Parcel #16 (Portion)	094-080-002	18.03
	Total Acreage:	101.70

These parcels are depicted on the map attached as Exhibit "A" and in the legal descriptions attached as Exhibit "B", both exhibits incorporated here by reference (each an "Option Property" and collectively the "Option Properties").

B. The Parties have previously entered into that certain "City of Pittsburg, Pittsburg Power Company and Energy Delivery Solutions LLC Exclusive Negotiating Rights Agreement" dated August 1, 2017 (the "ENRA"). Consistent with the ENRA, EDS wishes to pursue development of a technology park on one or more of the Option Properties. The technology park would include one or more data centers consisting of facilities used to house information technology equipment including computers, telecommunications, auxiliary power and storage systems, as further described in the ENRA (the "Project"). The Parties anticipate negotiating and entering into a Project Development Agreement ("PDA"), which will set forth terms and conditions concerning the development of the Project and the respective roles of EDS, the City and its municipal utility, Pittsburg Power Company. The Project, including the potential transfer and sale of the Option Properties, will be the subject of environmental review under the California Environmental Quality Act (Public Resources Code sections 21000, *et seq.*) ("CEQA") and require numerous discretionary approvals and agreements. Nothing in this Agreement shall constitute a commitment by the City and/or PPC to approve CEQA documentation, land use or any other entitlements or agreements concerning the Project, which shall follow applicable development ordinances and regulations and laws.

C. This Option Agreement recognizes that the parties agree to negotiate definitive documents and potential approvals to be considered by the City regarding the potential transfer and sale of the Option Properties to EDS for the Project. The parties agree that no obligation to enter into definitive transaction documents, or any transaction, shall exist by virtue of this Option

Agreement and no Project or definitive transaction documents shall be deemed to be approved, until after (i) the proposed Project is reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), (ii) any additional conditions or changes to the project based on the CEQA review have been resolved in a manner acceptable to the City, and (iii) all required permits for the Project have been obtained from the City and other governmental authorities with jurisdiction in accordance with applicable laws and regulations.

D. As required by law, the City retains the sole and independent discretion as the lead agency under CEQA to, among other things, balance the benefits of the Project against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided, and determine not to proceed with the Project. No legal obligations to approve the Project, the permits for the Project, or the transaction will exist unless and until the parties have negotiated, executed, and delivered definitive agreements based upon information produced during the CEQA environmental review process and on other public review and hearing processes, subject to all applicable governmental approvals.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1. Grant of Option.

City hereby grants to EDS an exclusive option to purchase each of the Option Properties, subject to the terms and conditions set forth in this Agreement ("Option" or "Options"). EDS anticipates seeking various land use entitlements for the Option Properties, including without limitation one or more tentative and final subdivision maps subdividing the Option Properties into approximately twenty (20) parcels of approximately five (5) acres each, with final maps filed in phases during the Option term. Each such subdivided parcel, upon filing of a final map, shall be considered an Option Property. Once the CEQA environmental review process is completed and approved, EDS shall have the right in its discretion to exercise the Option to acquire one Option Property at a time, or all Option Properties together, or any collection of individual Option Properties; provided, however, that EDS shall have entered into a binding contract for the conveyance of an interest in real property (such as, without limitation, a fee sale or ground lease) of the first Option Property to a data center client or user before EDS may exercise its Option for the second Option Property. After EDS has entered into such binding contract as to the first Option Property, EDS may exercise its Option as to any or all of the remaining Option Properties at EDS' discretion. Should EDS elect to exercise an Option on one or more but not all of the Option Properties, the Option granted hereunder shall remain in full effect as to each remaining Option Property for the remainder of the Agreement term, unless the Agreement is sooner terminated under the provisions hereof.

Section 2. Consideration.

Upon execution and delivery of this Agreement, EDS shall pay to City the sum of one dollar ($1.00) as consideration for the Options. The option consideration set forth in this section, as well as any other consideration deemed to have been received by City under this Agreement, is and shall be deemed consideration solely for the granting of the Options by City. On expiration of the Option term, City shall retain the Option consideration. If the Option is exercised, the consideration shall not be credited against the purchase price of the Option Properties. If the Option is exercised, the purchase price of the Option Properties shall be:

i. For the first 10 Acres, \$1.50 per square foot.
ii. For the second 10 Acres, \$2.00 per square foot.
iii. For the third 10 Acres, \$2.50 per square foot.
iv. For the fourth 10 Acres, \$3.00 per square foot.
v. For the fifth 10 Acres, \$3.50 per square foot.
vi. For the sixth 10 Acres, \$4.00 per square foot.
vii. For the seventh 10 Acres, \$4.50 per square foot.
viii. For the eighth 10 Acres, \$5.00 per square foot.
ix. For the ninth 10 Acres, \$5.50 per square foot.
x. For the final acreage of 11.7 Acres, \$6.00 per square foot.

Section 3. Inspections.

3.1 Entry; Indemnity. With five calendar days' prior written notice to the City during the Option Term, EDS may enter the Option Properties for purposes of inspection, survey, tests, design of improvements, and other actions reasonably related to the investigation by EDS of the suitability of the Option Properties for the Project. EDS shall comply with all applicable governmental laws, ordinances, and regulations in the conduct of activity on the Option Properties under this section. EDS will indemnify, defend, and hold City harmless from any loss, damage, claim, cost, lien, action, liability, or judgment (including, without limitation, City's attorney fees and defense costs) (i) incurred for, from, or by any person or entity acting on behalf of, at the request of, or for the purpose of the actions of EDS under this section; and (ii) for personal injury, property damage, or other loss or damage of any kind arising from, resulting from, or in any way related to such entry, except that caused by the sole negligence or willful misconduct of City.

3.2 Minor Changes. With the City's prior written authorization, EDS may make minor changes in the Option Properties in the course of any investigation permitted under this section (e.g., soils borings), provided that the change or damage is only temporary, that it is reasonably necessary to the investigation of the physical characteristics of the Option Properties, and that EDS repairs such damage and restores the Option Properties to the original condition promptly on completion of the investigation.

3.3 Survival of Obligations. The obligations under this section 3 shall survive the termination of this Agreement or the expiration of the term of the Option for the purpose of EDS completing any obligations hereunder.

3.4 Insurance. EDS shall secure and maintain at all times during the Option Term (commencing thirty (30) days after the effective date hereof) (i) a commercial general liability policy of insurance, including bodily injury and property damage coverage, written on an "occurrence" basis, with limits of not less than two million (\$2,000,000) dollars, insuring EDS against injury to persons or damage to property arising from or in connection with any action permitted under this Agreement, naming City as an additional insured under a proper endorsement to that policy, and containing coverage for contractual liability for EDS's obligations under this Agreement; and (ii) workers' compensation and employers' liability insurance in accordance with California law. EDS shall deliver to City a copy of certificates and endorsements evidencing such coverage in force, before entering onto the Option Properties. EDS agrees to provide at least thirty days prior written notice to the City of any cancellation, modification, or reduction as to scope or amount of such policies.

Section 4. Term; Termination.

4.1 Option Term. The initial term of the Option shall begin on the effective date hereof (the first date written above), and shall remain in effect for a period of five (5) years thereafter, with termination to occur, unless sooner exercised or terminated, on June 4, 2023 ("Option Term").

4.2 Termination by EDS. EDS may terminate this Agreement and the Option granted under this Agreement, with or without cause, at any time during the Option Term upon thirty (30) days' prior written notice to City.

4.3 Termination by City. From time to time and with thirty days written notice, City may request oral or written progress reports from EDS regarding the Project and any business developments with respect to the Option Properties. City may terminate the Option upon a reasonable, good faith finding by City that progress on the Project development has ceased, become ineffective, or non-productive. City shall provide EDS sixty (60) days written notice of its desire to terminate pursuant to this section and EDS will have one hundred twenty (120) days in which to cure to the City's reasonable satisfaction. The Parties may further address termination rights and obligations in the PDA. Should the City deny approval or land use entitlements for the Project as defined in Recital B, such denial shall not terminate this Option Agreement; in that situation, (i) EDS may still exercise the Option (consistent with terms to be set forth in definitive agreements) and either apply for CEQA approval and entitlements for an alternative development project on the Option Properties (approval or denial of which shall remain in the City's sole discretion) or sell the Option Properties in compliance with this Agreement; and (ii) the Parties shall negotiate a reasonable extension of this Option Agreement in order to provide EDS with sufficient time to exercise its rights under section 4.3(i) immediately preceding. Such extension shall be no less than that amount of time sufficient to allow EDS up to one (1) year to submit each subsequent development application for the Option Properties, together with the actual amount of time for the City to take final action on each such development application (which shall include the actual time required to conclude any litigation challenging such final action).The parties agree that any action by the City, whether approval, modification or denial, of EDS' application pursuant to section 4.3(i) shall trigger the ability of EDS to act for a second time pursuant to Section 4.3(i) or (ii), but shall not trigger the ability of EDS to act for a third or subsequent time pursuant to Section 4.3(i) or (ii). Furthermore, any proceeds from one or more sales by EDS pursuant to Section 4.3(i) of the Option Properties shall involve revenue sharing between EDS and the City on a fifty/fifty basis of any net proceeds after return to EDS of its direct Project development expenses and carrying costs (excluding overhead and internal salary expenses), which expenses and costs shall not exceed five million dollars ($5,000,000), pursuant to subsequent terms and conditions in the PDA.

Section 5. General Provisions.

5.1 Time is of the Essence. Time is of the essence of this Agreement and is a material term of each and every Option granted herein. If any Option is not exercised as required by this Agreement before expiration of the Option Term, all unexercised Options and all applicable rights of EDS shall automatically and immediately terminate without notice, and EDS shall have no interest whatever in the Option Properties for which it has not provided an Exercise Notice. Once the Option has terminated, it may not be revived by any subsequent payment or further action by EDS.

5.2 Memorandum of Option. On execution of this Agreement, City and EDS shall execute and record in the official records of Contra Costa County a memorandum of option. EDS covenants to execute and deliver to City immediately on the expiration or earlier termination of the term of this Option a quitclaim deed in recordable form releasing and reconveying to City all right, title, and interest of EDS in the Option Properties.

5.3 Notices. All notices and other communications authorized or required under this Agreement shall be in writing and transmitted by certified mail (return receipt requested), courier, or overnight delivery, and shall be addressed as follows:

City:

City Manager
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Phone: (925) 252-4851
Fax: (925) 252-4851

With a copy to:

Ruthann G. Ziegler
Meyers Nave
555 Capitol Mall
Suite 1200
Sacramento, CA 95815
Phone: (916) 556-1531
Fax: (916) 556-1516

EDS:

Energy Delivery Solutions LLC
Attention: Sean O'Reilly
One Letterman Drive, Bldg. C, 5th Flr.
San Francisco, CA 94129
Phone: (415) 291-2290
Fax: (415) 651-9500

With a copy to:

Energy Delivery Solutions LLC
Attention: Cliff Losh
One Letterman Drive, Bldg. C, 5th Flr.
San Francisco, CA 94129
Phone: (415) 291-2290
Fax: (415) 651-9500

Notice provided to any Party under this paragraph shall be effective when received by the receiving Party's representative as identified above, or on such date as delivery is refused.

5.4 Assignment. This Agreement inures to the benefit of and binds the Parties and their respective representatives, successors, and permitted assigns. No Party may assign its rights or obligations hereunder without the prior written consent of the other Party, which consent may be granted or withheld in the consenting Party's sole and absolute discretion. Notwithstanding the foregoing, EDS may assign this Agreement to an affiliate. "Affiliate" means any other person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with EDS. For purposes of the foregoing, "control," "controlled by" and "under common control with," with respect to any person or entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, partnership or member interests, by contract or otherwise.

5.5 Integration. This Agreement constitutes the entire agreement between the Parties regarding an Option on the Option Properties. Notwithstanding the foregoing, the following agreements between the Parties remain in full force and effect: the ENRA, Confidentiality Agreement dated August 1, 2017, and Reimbursement and Indemnification Agreement dated August 1, 2017.

5.6 Modification. Any modification of this Agreement shall be in writing and executed by each Party.

5.7 Governing Law. The Parties agree that the laws of the State of California shall govern the construction and implementation of this Agreement.

5.8 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, shall not be affected.

5.9 Ambiguities. Each Party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement.

5.10 Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the Party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

5.11 Headings. The headings in this Agreement are included for convenience only and shall not affect the construction or interpretation of any provision in this Agreement or any of the rights or obligations of the Parties.

5.12 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and EDS and no other person shall have any right of action under or by reason of this Agreement.

5.13 No Joint Venture. No joint venture, partnership, or other fiduciary relationship shall be deemed to exist or arise with respect to the Project because of this Agreement.

5.14 Recitals. Recitals A, B, C and D are incorporated into this Agreement as if fully set forth herein.

5.15 Execution. This Agreement may be executed in multiple counterparts, each executed copy of which shall constitute an original of the same instrument. Each Party represents and warrants that each individual executing this Agreement on such Party's behalf has the legal power, right and actual authority to do so

By signing below, the Parties evidence their agreement with the provisions of this Option Agreement and agree to use this Option Agreement as the framework for the good faith negotiations of further binding definitive agreements. Any agreements resulting from negotiations will become effective only if and after such agreement has been considered and approved by the City following conduct of all legally required procedures.

ENERGY DELIVERY SOLUTIONS LLC

By: ______________________
Sean O'Reilly
Chief Executive Officer

CITY OF PITTSBURG

By: ______________________
Joe Sbranti
City Manager

Approved as to form:

____
Ruthann G. Ziegler
City Attorney

Attest:

By: Alice E. Evenson
Alice E. Evenson
City Clerk

7

EXHIBIT A

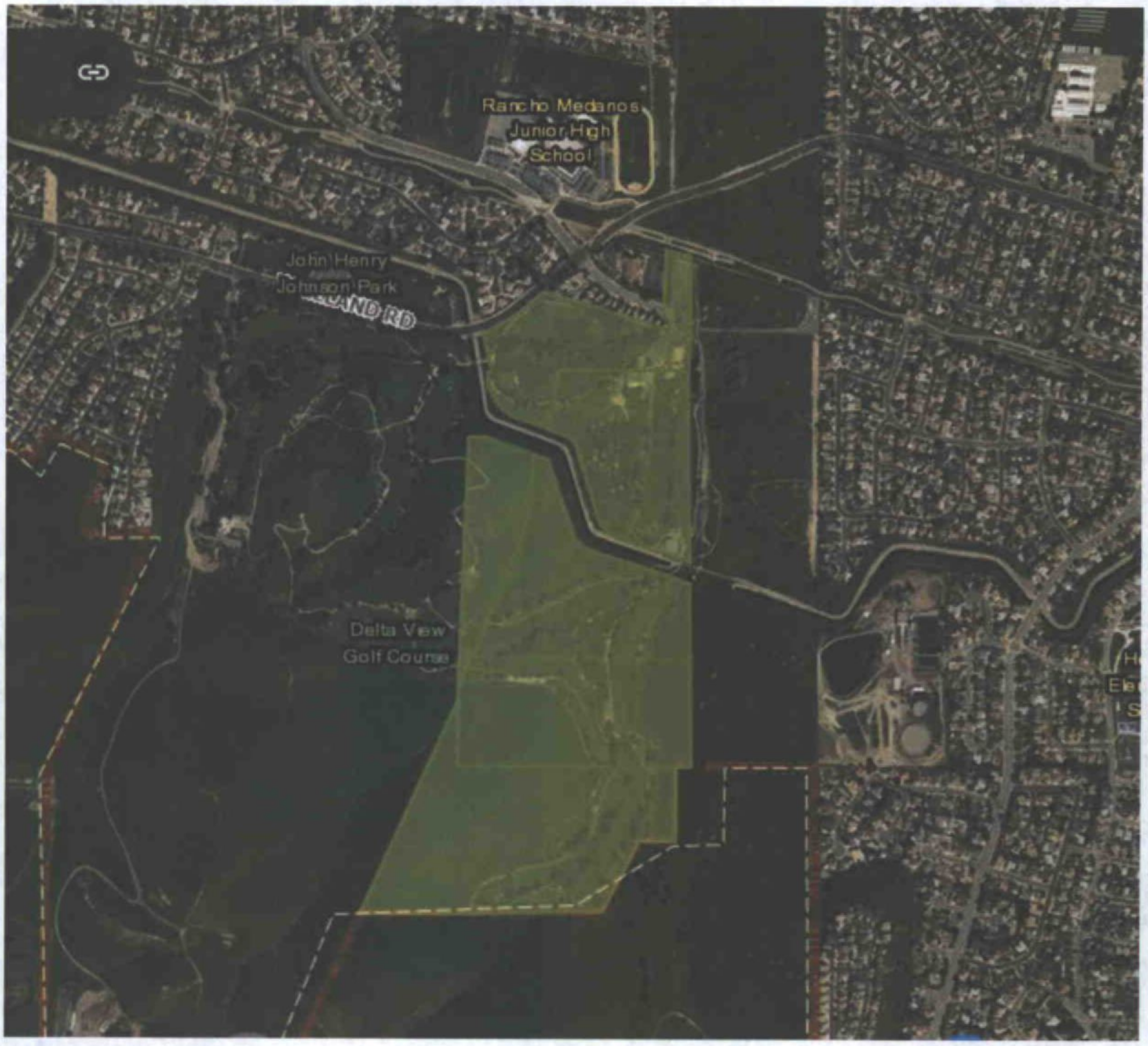
Rancho Medanos
Junior High
School
John Henry
Johnson Park
Delta View
Golf Course

EXHIBIT B

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF PITTSBURG, IN THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

TRACT ONE: (PARCEL #1)

Parcel A as shown on Parcel Map MS 677-05, filed June 10, 2005, in Book 193 of Parcel Maps, Page 39, Contra Costa County Records.

APN: 095-150-032

TRACT TWO: (PARCEL #2)

A parcel of land in Contra Costa County, California, within Sections 13 and 24, Township 2 North, Range 1 West, and Section 19, Township 2 North, Range 1 East, Mount Diablo Base and Meridian, and being a portion of that land owned by the United States of America known as the Camp Stoneman Rifle Range, said Rifle Range being described in that certain final order of condemnation, a certified copy of which is recorded in the Office of the County Recorder of Contra Costa County in Volume 1117 of Official Records at Page 553, the said parcel of land being more particularly described as follows:

Beginning at the section corner common to Sections 13, 24, 18 and 19, Township and Range as above designated; thence along the West boundary of Section 19 and the Westerly boundary of the right of way for a canal which is under the authority of the United States Bureau of Reclamation, as the said boundary is described in the Deed from John T. Fahy to United States of America dated Aril 26, 1938 and recorded May 12, 1938 in Volume 448 of Official Records at Page 388, Records of Contra Costa County, South 0° 8' East 365.80 feet; thence continuing along the canal right of way boundary North 89° 52' East 100.00 feet; thence continuing along said canal right of way boundary South 69° 36' East 458.39 feet to a point in the Easterly boundary of the said Rifle Range property (1117 or 553); thence along said Easterly boundary South 8° 40' 28" West 526.65 feet to an angle point in said boundary; thence continuing along the said Easterly boundary/South 23° 40' 28" West 4495.12 feet (this bearing appears in 1117 or 553 as South 23° 43' 58" West) to an angle in the Rifle boundary, and to a point in the South boundary of the Southeast quarter of Section 24; thence continuing along the boundary of the Rifle Range and along the South line of Section 24 South 89° 16' 04" West 1298.15 feet to the Southwest corner of the Southeast quarter of said Section 24; thence leaving the boundary of the Rifle Range property along the West boundary of the Southeast quarter of Section 24 North 0° 03' 42" East 2612.46 feet; thence North 21° 18' 20" East 1644.93 feet; thence North 01 33' 30" East 559.00 feet; thence North 16° 45' East 1520.00 feet to a point in the Southerly boundary of the right of way for the hereinbefore mentioned canal, which point is North 73° 12' West 148.00 feet from an angle point in the said canal Southerly boundary; thence along the Southerly boundary of the canal right of way as the said boundary is described in the Deed of a 10.09 acre parcel from William C. Silveira to United State of America dated January 3, 1938 and recorded March 9, 1938 in Volume 456 of Official Records at Page 11, Records of Contra Costa County, along the following courses: South 73° 12' East 148.00 feet; South 67° 29' East 150.80 feet; South 78° 55' East 150.80 feet; South 73° 12' East 400.00 feet; South 74° 38' East 400.10 feet; South 73° 12' East 299.00 feet; South 41° 32' East 73.50 feet; South 09° 52' East 381.30 feet to a point in the Easter boundary of Section 13; thence continuing along the boundary of the canal right of way and along the East line of Section 13 South 0° 08' East 111.80 feet.

EXCEPTING THEREFROM that portion granted to Contra Costa County Fire Protection District by instrument recorded on July 22, 1997, under Document No. 97-0127877.

ALSO EXCEPTING THEREFROM that portion of Leland Road as shown on that certain Record/of Survey recorded on April 20, 1981 in Book 68 of L.S.M., at Pages A6 and 37.

ALSO EXCEPTING THEREFROM THAT PORTION LYING WESTERLY OF THE WEST LINE OF SAID SECTION 19.

EXHIBIT B
(Continued)

APN: 094-080-011.

TRACT THREE: (PARCEL #16)

Portion of the North 1/2 of the Southwest 1/4 of Section 19, Township 2 North, Range 1 East; portion of the Northeast 1/4 of the Southeast 1/4 and portion of the Southeast 1/4 of the Northeast 1/4 of Section 24, Township 2 North, Range 1 West, Mount Diablo Base and Meridian, described as follows:

Beginning at a concrete monument marking the West 1/4 corner of said Section 19; thence from said point of beginning South 89° 48' 40" East, along the East-West center line of said Section 19, 1459.36 feet to an iron pipe; thence South 0° 25' 20" West, 548.5 feet to an iron pipe; thence North 89° 34' 35" West, 299.87 feet; thence South 29° 16' 25" West, 517.45 feet to an iron pipe; thence North 89° 34' 40" West, at 914.39 feet an iron pipe on the West line of said Section 19, a total distance of 1562.18 feet to an iron pipe on the East line of the parcel of land described as Tract No. 9 in the Final Order of Condemnation, entered July 8, 1947 under Action No. 27368 and in the United States District Court, Northern District, Southern Division, entitled United States of America, Plaintiff, vs. C.A. Hooper & Co., et al, defendants, a certified copy of which was recorded August 12, 1947 in Volume 1117 of Official Records, at Page 553; thence North 23° 43' 58" East, along said East line, 1628.88 feet to an iron pipe on the West line of said section 19; thence South 0° 28' 42" East, along said West line 500.01 feet to the point of beginning.

APN: 094-080-002

TRACT FOUR: (PARCEL #7)

Lots 1, 2 and 3, and the Southeast 1/4 (one-fourth) of the Northwest 1/4 (one-fourth) of Section 19, Township 2 North, Range 1 East, Mount Diablo Base and Meridian.

EXCEPTING THEREFROM:

1. That parcel of land containing 11.42 acres, more or less, described in the Deed from John Fahy, et ux., to United States of America, dated April 26, 1938 and recorded May 12, 1938 in Volume 448 of Official Records, at Page 388, as follows:

"Beginning on the East line of the Northwest quarter of said Section 19, distant thereon North 0° 16' Eat 975.7 feet from Grant Corner Number 5 of the Rancho Los Medanos at the center of said Section 19; thence from said point of beginning South 0° 16' West 63.3 feet, along said East line; thence North 71° 11' West 1526.9 feet; thence on a curve to the right (tangent to the preceding course) with a radius of 180 feet, a distance of 169.2 feet; thence North 17° 19' West 462.4 feet; thence on a curve to the left (tangent to the preceding course) with a radius of 60 feet, a distance of 54.8 feet; thence North 69° 36' West 486.3 feet; thence South 89° 52' West 100.00 feet; thence more or less, to the Mount Meridian, which is the West line of the Northwest 1/4 of said Section 19; thence North 0° 08' West 365.8 feet, more or less, along said Meridian to Grant Corner Number 7 of the Rancho Los Medanos, which is the Northwest corner of said Section 19; thence North 89° 44' East 101.0 feet, along said line; thence South 0° 16' East 100.0 feet; thence South 25° 44' East 135.6 feet; thence South 52° 47' East 103.7 feet; thence South 69° 36' East 457.8 feet; thence South 17° 19' East 542.3 feet; thence South 49° 04' East 106.2 feet; thence South 71° 11' East 600.0 feet; thence South 78° 02' East 503.6 feet; thence South 66° 55' East 268.8 feet; more or less, to the East lien of said Northwest quarter of Section 19; thence South 0° 16' West 126.6 feet, more or less, along said line to the point of beginning.

ALSO EXCEPTING THEREFROM:

That portion thereof described in the Deed to Pacific Gas and Electric Company recorded September 19, 1952, Book 1994, Page 129.

EXHIBIT B
(Continued)

ALSO EXCEPTING THEREFROM: That portion thereof described in the Deed to the City of Pittsburg recorded December 8, 1960, Book 3759, Official Records, Page 1.

ALSO EXCEPTING THEREFROM:

That portion thereof lying Northerly of the Southwesterly boundary line of the Contra Costa Canal.

APN: 094-090-01

TRACT FIVE: (PARCEL #5)

PARCEL ONE:

Beginning at the Southwest corner of the 13.92 acre parcel of land described and designated Parcel VI in the Deed from C.A. Hooper & Co. to Pacific Gas and Electric Company, dated December 27, 1951 and recorded in the Office of the County Recorder of said County of Contra Costa in Book 1872 of Official Records at Page 189, an running thence North 0° 10' East, along the Westerly boundary line of said 13.92 acre parcel of land; thence South 73° 11 1/2' East, along the Northerly boundary line of said 13.92 acre parcel of land, 182.03 feet; thence South 0° 19 1/2' West 718.40 feet to a point in the Southerly boundary line of said 13.92 acre parcel of land; thence South 89° 50' West, along the last mentioned boundary line, 172.41 feet, more or less, to the point of beginning; being a portion of Rancho Las Medanos.

PARCEL TWO:

A right of way for a road for ingress to and egress from Parcel One within the strip of land described as follows, to wit:

A strip of land of the uniform width of 60 feet extending from the Easterly boundary line of said 13.92 acre parcel of land Westerly to the Easterly boundary line of Parcel One hereinbefore described, and lying equally on each side of the line which begins at a point in the Easterly boundary line of said 13.92 acre parcel of land from which the Southeast corner of said 13.92 acre parcel of land bears South 0° 19 1/2' West 263.0 feet distant and runs thence South 89° 50' West, parallel with the Southerly boundary line of said 13.92 acre parcel of land, 800 feet, more or less, to the Easterly boundary line.

APN: 095-160-001

TRACT SIX: (PARCEL #6)

Lots 1, 2 and 3, and the Southeast 1/4 (one-fourth) of the Northwest 1/4 (one-fourth) of Section 19, Township 2 North, Range 1 Eat, Mount Diablo Base and Meridian.

EXCEPTING THEREFROM:

1. That parcel of land containing 11.42 acres, more or less, described in the Deed from John Fahy, et ux., to United States of America, dated April 26, 1938 and recorded May 12, 1938 in Volume 448 of Official Records, at Page 388, as follows:

"Beginning on the East line of the Northwest quarter of said Section 19, distant thereon North 0° 16' Eat 975.7 feet from Grant Corner Number 5 of the Rancho Los Medanos at the center of said Section 19; thence from said point of beginning South 0° 16' West 63.3 feet, along said East line; thence North 71° 11' West 1526.9 feet; thence on a curve to the right (tangent to the preceding course) with a radius of 180 feet, a distance of 169.2 feet; thence North 17° 19' West 462.4 feet; thence on a curve to the left (tangent to the preceding course) with a radius of 60 feet, a distance of 54.8 feet; thence North 69° 36' West 486.3 feet; thence South 89° 52' West 100.00 feet;

EXHIBIT B
(Continued)

thence more or less, to the Mount Meridian, which is the West line of the Northwest 1/4 of said Section 19; thence North 0° 08' West 365.8 feet, more or less, along said Meridian to Grant Corner Number 7 of the Rancho Los Medanos, which is the Northwest corner of said Section 19; thence North 89° 44' East 101.0 feet, along said line; thence South 0° 16' East 100.0 feet; thence South 25° 44' East 135.6 feet; thence South 52° 47' East 103.7 feet; thence South 69° 36' East 457.8 feet; thence South 17° 19' East 542.3 feet; thence South 49° 04' East 106.2 feet; thence South 71° 11' East 600.0 feet; thence South 78° 02' East 503.6 feet; thence South 66° 55' East 268.8 feet; more or less, to the East lien of said Northwest quarter of Section 19; thence South 0° 16' West 126.6 feet, more or less, along said line to the point of beginning.

ALSO EXCEPTING THEREFROM:

That portion thereof described in the Deed to Pacific Gas and Electric Company recorded September 19, 1952, Book 1994, Page 129.

ALSO EXCEPTING THEREFROM:

That portion thereof described in the Deed to the City of Pittsburg recorded December 8, 1960, Book 3759, Official Records, Page 1.

ALSO EXCEPTING THEREFROM:

That portion thereof lying Southerly of the Northeasterly boundary line of the Contra Costa Canal.

APN: 095-160-002

FIRST AMENDMENT TO OPTION AGREEMENT BETWEEN THE CITY OF PITTSBURG AND ENERGY DELIVERY SOLUTIONS LLC

This First Amendment (“First Amendment”) to the Option Agreement Between the City of Pittsburg and Energy Delivery Solutions LLC ("Agreement") is entered into as of ________________, 2019 by and between the City of Pittsburg, a municipal corporation (”City"), and Energy Delivery Solutions LLC, a Delaware limited liability company ("Company"), each a “Party” and collectively “Parties”. This First Amendment is entered into with reference to the following facts:

RECITALS

A. On June 5, 2018, the Parties entered into the Agreement. The Agreement provided in its section 4.1 for an option period thereunder of five (5) years.

B. The Parties now wish to amend the Agreement to provide for an option period of ten (10) years.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

AMENDMENT

1. The following shall be added to the end of Section 2 of the Agreement, “Consideration”:

Beginning August 1, 2023, Company shall pay City a maintenance fee equal to the lesser of the actual cost of the maintenance of the Option Properties or the sum of Two Hundred Fifty Thousand dollars ($250,000).

2. Section 4.1 of the Agreement, “Option Term”, is hereby amended to read as follows:

The initial term of the Option shall begin on June 5, 2018 and shall remain in effect for a period of ten (10) years thereafter, with termination to occur, unless sooner exercised or terminated, on June 4, 2028 ("Option Term").

3. Effectiveness.

Except as specifically amended by this First Amendment, the Agreement remains in full force and effect.

[Signature Page Follows]

//

WHEREFORE, the Parties have executed this First Amendment as of the first date set forth above.

ENERGY DELIVERY SOLUTIONS LLC

By: ______________________________

Name: ___________________________

Title: ____________________________

Date: ____________________________

CITY OF PITTSBURG

By: ______________________________
Garrett Evans
City Manager

Approved as to form:

____
Donna Mooney
City Attorney

Attest:

By: ______________________________
Alice E. Evenson
City Clerk

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Approving the Transfer of Prior Year Grant and Special Revenue Fund Balances as of June 30, 2019 into the Fiscal Year 2019-20 Budget

MEETING DATE: October 7, 2019

EXECUTIVE SUMMARY

The City of Pittsburg receives federal, state and local funding for Police, Environmental Affairs, Community Development, Human Resources and Recreation activities. In compliance with the federal, state, and local agreements as well as governmental accounting standards, any remaining funding awards and any unspent balances need to be carried forward to the next fiscal year. The City has a total of $163,993 remaining grant funding and $461,759 in unspent balances to be carried forward to the Fiscal Year 2019-20 Budget.

FISCAL IMPACT

This transfer of previously budgeted revenues of $163,993 and appropriations of $461,759 are designated for the specific grants accounted for in the Special Revenue Funds (Funds 282, 283, 293 and 299). Excess appropriations over revenues will come from fund balances previously funded by the specific grants to be used only for these grants. There is no General Fund impact.

RECOMMENDATION

Staff recommends that the City Council approve the transfer of the uncompleted grant programs as of June 30, 2019 into the current Fiscal Year 2019-20 Budget.

BACKGROUND

At the end of Fiscal Year 2018-19, the City had several multi-year grant activities and/or Special Revenue funds which were not totally funded and expended. These remaining activities have been committed and will be spent during Fiscal Year 2019-20 or completed by their expiration date.

The five departments requesting the transfer of carry over balances are:

Department	Revenue Carry Over	Expense Carry Over
Police	$88,654	$342,192
Environmental Affairs	$0	$33,901
Community Development	$74,842	$74,842
Human Resources	$0	$10,000
Recreation	$497	$824
Total	$163,993	$461,759

A more detailed description of the grants included above are listed in Exhibit 1 of this staff report.

SUBCOMMITTEE FINDINGS

This item not presented to a subcommittee.

STAFF ANALYSIS

Adopting the resolution to carry forward unfinished grant programs into Fiscal Year 2019-20 ensures budgetary compliance and a clear audit trail. Therefore, staff determines that it is necessary to carry-over these remaining balances to the current Fiscal Year 2019-20 Budget.

ATTACHMENTS: Resolution
Exhibit 1

Report Prepared By: Margaret Padua, Finance Division Manager

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adopt a Resolution Approving the Transfer of Prior Year Grant and Special Revenue Fund Balances as of June 30, 2019 into the Fiscal Year 2019-20 Budget for the City of Pittsburg In the Amount of $163,993 in Revenue and $461,759 in Expenses	))))))	RESOLUTION NO. 19-

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, the City Council has expressed its intention of receiving various federal, state and local grant and special revenue fund; and

WHEREAS, the City Council does hereby find that at the end of Fiscal Year 2018-19, there are several incomplete grant and special revenue fund programs which will continue in the succeeding fiscal year.

NOW THEREFORE, the City Council finds and determines as follows:

Section 1. Finding

The recitals set forth are true and correct statements and are hereby incorporated.

Section 2. Authorizations

A. The City Council does hereby authorize the carry forward of grant and special revenue and expense fund balances into Fiscal Year 2019-20 for the grant and special revenue fund programs not completed during the Fiscal Year 2018-19 to comply with government accounting standards.

B. The City Council further authorizes that the amount of $163,993 in Revenue and $461,759 in Expenses, as reflected in Exhibit I, be appropriated from reserves for grant monies already paid to the City in advance, from prior year's interest earnings and/or Local Agency matching requirements, and from federal or state reimbursements for the transfer of prior year grant and special revenue fund programs into the Fiscal Year 2019-20 Budget.

Section 3. Effective Date

This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED, by the City Council of the City of Pittsburg, at a regular meeting on the 7th day of October 2019, by the following vote:

AYES:

NAYS:

ABSTAINED:

ABSENT:

____

Juan Antonio Banales, Mayor

ATTEST:

____

Alice E. Evenson, City Clerk

EXHIBIT 1

TRANSFER OF GRANT BALANCES AS OF JUNE 30, 2019
INTO CITY OF PITTSBURG FISCAL YEAR 2019/2020 BUDGET

PROJECT #	Revenue Carry-over AMOUNT	Expenses Carry-over AMOUNT	DESCRIPTION
Police			
293-2948		109,505	FY17/18 Supplemental Law Enforcement Grant (SLESA)
293-2949		144,034	FY18/19 Supplemental Law Enforcement Grant (SLESA)
299-2970	32,774	32,774	FY18/19 -19/20 Tobacco Grant
299-2971	38,887	38,887	FY18/19 OTS DUI Grant
299-2980	16,993	16,993	FY18/19 ABC Enforcement Grant
Sub-total	**$ 88,654**	**$ 342,192**	
Environmental Affairs			
282-2849		14,677	FY18/19 Used Oil Payment Program OPP9
283-2857		1,292	FY17/18 Beverage Container Recycling Grant
283-2858		17,932	FY18/19 Beverage Container Recycling Grant
Sub-total	**$ -**	**$ 33,901**	
Community Development			
299-2471	74,842	74,842	Pittsburg Active Transportation and Safe Routes Plan (ATP)
Sub-total	**$ 74,842**	**$ 74,842**	
Human Resources			
299-2910		5,000	FY17/18 Hartford Life Insurance - Revenue Sharing
299-2910		5,000	FY18/19 Hartford Life Insurance - Revenue Sharing
Sub-total	**$ -**	**$ 10,000**	
Recreation/Senior Center			
299-2990	497	595	Senior Center Health/Winter Ball/Fashion Grant
299-2991		129	Keller Canyon Mitigation Fund- Sr. Center "Key" Grant
299-2993		100	Small World Park - Advertising Grant
Sub-total	**$ 497**	**$ 824**	
Grand Total	**$ 163,993**	**$ 461,759**	

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Awarding a Contract for Bulk Gasoline Services

MEETING DATE: October 7, 2019

EXECUTIVE SUMMARY

The City has various departments that require large quantities of fuel to carry out their responsibilities and to maintain operations. Staff solicited cost proposals from vendors that provide Bulk Gasoline Services. Western States Oil of San Jose, California is the lowest responsible and responsive bidder for Bulk Gasoline Services.

FISCAL IMPACT

Funding for Bulk Gasoline Services was allocated by the City Council in the Operating Budget for Fiscal Year 2019-20 (Resolution 19-13643) and is available in the Fleet Maintenance (611-43201-1361) and Marina Operations (550-41121-1361) Accounts. The contract amount includes $450,000 for Public Works and $611,500 for Marina Operations.

RECOMMENDATION

City Council adopt the attached Resolution awarding a contract with Western States Oil for Bulk Gasoline Services.

BACKGROUND

The Public Works Department is responsible for the operations and maintenance of the City's vehicle and equipment fleet of about 190 predominantly gas-powered cars, trucks, and other equipment, including generators for the City's water system. The City also has responsibility for marina operations. These departments require large quantities of fuel to carry out their responsibilities, including fuel for the operation of fleet vehicles and for resale at the Marina. On occasion, the Marina staff may need to order resale oil products for diesel and two-stroke motors.

Periodically, the City invites proposals from various fuel vendors for prices in the form of Cost per Gallon plus a mark-up for delivery, overhead, and other costs. The vendor is required to obtain and deliver fuel supplied by the “Rack Supplier” with the lowest price currently available. Cost proposals from vendors generally give a price that is plus or minus over the “rack” rate over this lowest available price, and the City pays the combined total per gallon.

Staff solicited bids that were due September 23, 2019, for Bulk Gasoline Services to several vendors. Western States Oil, of San Jose, California was the lowest responsible and responsive bidder.

Staff is recommending execution of a Bulk Gasoline Services Contract for a period of one year due on October 1, 2019 with a one (1) year and two (2) year renewal option. Bulk Gasoline Services will be provided at three (3) locations: the Corporation Yard and Environmental Center for refueling City vehicles and equipment; and at the Marina for resale to the general public and Marina tenants.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

Staff solicited bids for Bulk Gasoline Services from several vendors. Western States Oil, was the lowest responsible and responsive bidder.

The City Manager shall be authorized to execute additional contract extensions of one (1) and two (2) years if deemed fiscally appropriate by City staff.

ATTACHMENTS: Resolution
Bid Results

Report Prepared By: Hilario Mata, Assistant Director of Public Works

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a City Council Resolution) Awarding a Contract for Bulk Gasoline) Services)	RESOLUTION NO. 19-

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, the Public Works Department is responsible for the operations and/or maintenance of the City's vehicle and equipment fleet, which consists of about 190 cars and trucks, plus other equipment; and

WHEREAS, City Council previously approved funding for Bulk Gasoline Services in the Fiscal Year 2019-20 Public Works Department's Fleet Maintenance (611-43201-1361) and Marina Operations (550-41121-1361) Accounts; and

WHEREAS, the City's purchasing policy requires that all contracts and purchases of supplies, general services or professional services $50,001 and over be formally bid; and

WHEREAS, the City solicited bids that were due September 23, 2019, from various vendors for providing Bulk Gasoline Services for the City; and

WHEREAS, Western States Oil, of San Jose, California, was the low bidder for Bulk Gasoline Services; and

WHEREAS, there is a one (1) and two (2) year option to extend the Agreement if deemed in the best interest fiscally by staff of the City.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. The recitals set forth above are true and correct statements and are hereby incorporated.

Section 2. This proposal is accepted and awarded to Western State Oil, of San Jose, California, for the delivery of Bulk Gasoline Services to meet the needs of the City.

Section 3. The City Manager is authorized and directed to execute a contract with Western States Oil for Bulk Gasoline Services, in the amount of $450,000 for Public Works Fleet Maintenance and $611,500 for Marina Operations.

Section 4. The City Manager is authorized to increase the maximum purchasing limits on any purchase order previously approved by the City Council within the adopted annual budget limitations of the Public Works and Marina Departments.

Section 5. The Finance Director is authorized and directed to increase the maximum purchasing limits on the listed purchase orders approved by the City Council if authorized for increase by the City Manager and there are sufficient budgeted funds in respective gasoline accounts.

Section 6. The City Manager is authorized and directed to execute one (1) or two (2) year extensions if deemed in the best interests of the City.

Section 7. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 7th day of October, 2019, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

____
Juan Banales, Mayor

ATTEST:

____
Alice E. Evenson, City Clerk

ATTACHMENT

RFQ 09-23, BULK GASOLINE SERVICES – BID RESULTS

Bid Prices (+ or -) Over Lowest Rack Price

Item No.	Location	*Western States Oil	Ramos Oil Company
1	**Corporation Yard** Truck/Trailer Bid Price, Capacity 10,000 Gal. **87-OCTANE**	-$0.0387	$0.0
2	**Environmental Center** Bobtail Bid Price, Capacity 900 Gal. **87-OCTANE**	+$0.0235	$0.0
3	**Harbor/Marina** Truck/Trailer Bid Price (FOR RE-SELL) **87-OCTANE**	-$0.0318	$0.0
4	**Harbor/Marina** Truck/Trailer Bid Price (Over Rack) (FOR RE-SELL) **91-OCTANE**	-$0.0318	$0.0

***Western States Oil is the lowest responsive, responsible bidder**

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution to Authorize the City Manager to Negotiate and Execute a Lease Agreement for Fleet Equipment Financing

MEETING DATE: October 7, 2019

EXECUTIVE SUMMARY

The Public Works Department maintains a fleet with an approximate replacement value of over $6 million. The Public Works Department solicited bids for a Police SUV's, Police Sedans, Police UTV, Police Motorcycle, and Ford Trucks. The Finance Department solicited financing for replacement of this equipment per a Lease Agreement. The Lease Agreement exceeds the $75,000 threshold and requires approval of City Council.

FISCAL IMPACT

The City Council previously approved the financing of the equipment in the FY 2019-20 Public Works Department's Fleet Maintenance budget in the amount of $705,000. The final proposal for the approved equipment came in at $724,512.26. In addition to the previously authorized vehicle list, three patrol vehicles have been requested, bringing the total equipment to be financed up to $848,058.05. The lease payments of $187,343.86 per year, including both principal and interest associated with this lease for a total cost not to exceed $936,719.30 over 5 years. The additional cost over previously approved financing will be absorbed into the current budget and no additional funding is being requested in the current Fiscal Year.

RECOMMENDATION

City Council adopt the attached Resolution thereby approving a lease agreement between Holman Capital and the City; and authorize the City Manager to execute a lease financing agreement to purchase through a financing agreement, seven (7) Ford SUV Police Patrol Vehicles, two (2) Ford Sedan Police Vehicles, nine (9) Ford Trucks, one (1) Police Motorcycle, two (2) Riding Mowers, one (1) Police UTV, and one (1) Ford Dump Truck.

BACKGROUND

The Public Works Department Fleet Maintenance Division is responsible for the maintenance of a fleet of 190 cars, trucks, heavy equipment and other equipment. This includes police patrol cars, sedans, motorcycles, heavy duty trucks and construction equipment and light/medium duty trucks, vans and SUV's, and other pieces of equipment (mowers, compressors, pumps, train, carousel, etc). The fleet has a replacement value of approximately $6 million.

The Public Works Fleet Maintenance Division obtained competitive bids for seven (7) Ford SUV Police Patrol Vehicles, two (2) Ford Sedan Police Vehicles, nine (9) Ford Trucks, one (1) Police Motorcycle, two (2) Riding Mowers, and one (1) Police UTV and the lowest bidder in all cases has been chosen. The Ford Dump Truck will be bid once Ford Motor Company releases the technical specifications for the F750 model.

The Financing Department requested bids from several financing sources. Holman Capital came in with a lowest rate at 3.70%.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

The proposed equipment to be replaced and added was budgeted for replacement with the FY 2019-20 budget. Public Works Staff has obtained competitive proposals for Ford SUV Police Patrol Vehicles, Ford Sedan Police Vehicles, Ford 150/250/350 Trucks, BMW Police Motorcycles, Kubota Riding Mowers, and a Polaris Police UTV. The Ford Dump Truck will be bid once Ford Motor Company releases the technical specifications for the F750 model.

The total lease/purchase price of the equipment is up to $936,719.30, $848,058.05 for the equipment and $88,661.25 in interest payments over the 5-year lease term. At the end of the lease/purchase, the equipment becomes property of the City.

ATTACHMENTS: Resolution
Financing and Lease Agreement with Holman Capital
Bid Results

Report Prepared By: Hilario Mata, Assistant Director of Public Works

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter Of:

Adopt City Council Resolution to)
Authorize City Manager to Approve a) RESOLUTION NO. 19-
Lease Agreement for Fleet Equipment)
Financing)

WHEREAS, the City of Pittsburg operates a fleet of approximately 190 cars and trucks plus other equipment with an estimated value of over $6,000,000; and,

WHEREAS, the Public Works Department is responsible for the care and maintenance of this equipment and annually replaces vehicles and equipment that have outlived their cost-effective usefulness to the City; and,

WHEREAS, it is in the best interests of the City and the citizens of Pittsburg that the City's vehicle and equipment fleet be maintained in optimum working condition to preserve these equipment assets and provide the best and most cost-efficient service to the citizens of Pittsburg; and,

WHEREAS, from time to time vehicles and equipment become old or worn out to the point where they are no longer able to provide optimum service to the City and/or are too costly to maintain; and,

WHEREAS, these old and worn out vehicles and equipment must routinely be replaced or added to provide City staff with adequate equipment to provide the best and most cost-effective services to the citizens of Pittsburg; and,

WHEREAS, the City of Pittsburg solicited bids for seven (7) Ford SUV Police Patrol Vehicles, two (2) Ford Sedan Police Vehicles, nine (9) Ford Trucks, one (1) Police Motorcycle, two (2) Riding Mowers, and one (1) Police UTV; and,

WHEREAS, the City of Pittsburg selected the lowest bid received for each of the above equipment; and

WHEREAS, the City of Pittsburg will solicit bids for a Ford F750 Dump Truck with an estimated cost of $95,000 to $110,000 once manufacturer specifications are released by Ford Motor Company; and

WHEREAS, the City of Pittsburg solicited financing solutions for the above equipment; and

WHEREAS, Holman Capital provided the lowest financing interest rate for the equipment.

NOW, THEREFORE, the City Council resolves as follows:

A. The recitals set forth above are true and correct statements and are hereby incorporated.

B. The bid for seven (7) Ford SUV Police Patrol Vehicles, two (2) Ford Sedan Police Vehicles, nine (9) Ford Trucks received by the City of Pittsburg is accepted and awarded to All Star Ford, in the amount of $639,494.87.

C. The bid for one (1) Polaris UTV is accepted and awarded to Polaris Sales Inc. in the amount of $35,098.59.

D. The bid for one (1) BMW Motorcycle as received by the City of Pittsburg is accepted and awarded to Long Beach BMW, in the amount of $32,210.55.

E. The bid for two (2) Kubota Riding Mowers received by the City of Pittsburg is accepted and awarded to Garton Tractor, in the amount of $31,254.04.

F. The City desires to enter in a lease agreement with Holman Capital for the Equipment not to exceed $936,719.30 over 5 years.

G. The City Manager or his designee is hereby authorized and directed to negotiate and execute a lease financing agreement.

H. The future bid for a Ford F750 Dump truck shall be accepted and awarded not to exceed the amount of $110,000.

I. The City Manager is authorized to accept the lowest bid on the remaining bid.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 7th day of October 2019, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

____
Juan Antonio Banales, Mayor

ATTEST:

____
Alice E. Evenson, City Clerk

Wednesday, 24 September 2019
Brad Farmer
Finance Director
City of Pittsburg
291 North Main Street
Pittsburg, CA 94565

VIA E-MAIL

RE: Proposal for Lease Purchase Financing

Brad:

Holman Capital Corporation ("HCC") is pleased to present to the City of Pittsburg its proposal for equipment/project financing. The terms and conditions of our proposal are outlined as below:

Option	Financing Amount	Interest Rate	Term	Payment Frequency	Payments Per Year	Payment	Total Payment
A	$848,058.05	3.70%	5	Semi-Annual	2	$93,671.93	$936,719.30

LESSEE: **City of Pittsburg,** Lessee is a state or political subdivision within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code").

LESSOR: Holman Capital Corporation, or its Assignee

GUIDANCE LINE OF CREDIT: The Lessor will endeavor to provide a $2,000,000 Guidance Line of Credit to fund future transactions. The Guidance Line of Credit will have a twelve (12) month renewal period. Each drawdown is subject to collateral review and final legal approval. The interest rate will be set at the time of funding and remain fixed for the term of the financing.

TYPE OF FINANCING: Master Lease Purchase Agreement. Said Agreement shall be a net lease arrangement whereby Lessee is responsible for all costs of operation, maintenance, insurance, and taxes. The Agreement shall be based on the annual appropriation of funds. Each funding under the Master Lease Purchase Agreement will have a Payment Schedule, Financing Amount, Market Interest Rate and Related Exhibits.

BANK QUALIFICATION: The financing will be Bank Qualified (Small Issuer). The Borrower expects to issue less than $10,000,000.00 in new tax-exempt debt or capital leases in the current calendar year.

EQUIPMENT/ USE OF PROCEEDS: Acquisition of Vehicles and Capital Equipment

PURCHASE OPTION: The purchase option can be exercised on any scheduled payment date.

The current payment and purchase option are due should the Lessee decide to exercise the option.

ESCROW FUNDING: HCC has assumed funding of an escrow account for this transaction on or about **October 11, 2019.** The Equipment Acquisition Fund will be used to pay equipment vendors/contractors and any escrow expenses.

Escrow Agent will be selected by Lessee subject to HCC's credit approval. HCC to review and approve escrow disbursements prior to Escrow Agent disbursing of funds. It is assumed that all interest earnings will accrue for benefit of Lessee. This proposal also does not take into consideration the application of any interest earnings from the escrow fund of the account.

ESCROW DISBURSEMENTS: HCC will request the following information from the Lessee to authorize disbursement of funds to vendors and or the Lessee from the escrow account:

- Executed Disbursement Request Form
- Executed Acceptance Certificate
- Copies of Vendor Invoices;
- Proof of Payment (required if Lessee is requesting a reimbursement)
- Proof of Insurance (both Liability and Property and Casualty Coverage)

REIMBURSEMENT: If Lessee intends to be reimbursed for any equipment cost associated with this Agreement, intent for reimbursement from the proceeds of this Agreement must be evidenced, and must qualify under the Treasury Regulation Section 1.150.2.

INSURANCE: The Lessee shall furnish confirmation of all risk physical damage insurance coverage for the full cost of the property plus one million ($1,000,000.00) dollars combined single limit property damage and bodily injury insurance covering the property. HCC shall be named as loss payee and additional insured on such coverage.

AUTHORIZED SIGNORS:

The Lessee's governing board shall provide HCC with its resolution or ordinance authorizing this Agreement and shall designate the individual(s) to execute all necessary documents used therein.

LEGAL OPINION:

The Lessee's counsel shall furnish HCC with an opinion covering this transaction and the documents used herein. This opinion shall be in a form and substance satisfactory to HCC.

LEGAL TITLE:

Title to the equipment will be in the name of Lessee. Lessor will be granted a security interest or lien on all collateral being financed.

DOCUMENTATION:

Utilize standard HCC lease agreement that will cover all facets of the transaction. A copy of the sample master lease agreement will be forwarded to the Lessee upon acceptance of the proposal. The Lessee will be responsible for a $7,500.00, which can be taken from lease proceeds or paid at closing.

RATE LOCK EXPIRATION:

If funding does not take place by **October 11, 2019,** the Lease Rate and Lease Payment Amounts will be adjusted to market conditions three (3) days prior to funding. Once set, the Lease Rate will remain fixed for the Lease Term.

FINANCIAL STATEMENTS:

Lessee shall provide to Lessor three (3) years of current financial statements, budgets, demographics, and proof of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of Lessee to continue this Agreement as may be reasonably requested by Lessor.

This proposal is subject to final credit approval by the Credit/Investment Committee of Holman Capital Corporation and approval of the lease documents in Holman Capital Corporation's sole discretion. To render a credit decision, Lessee shall provide HCC with the information requested above. Upon receipt of the signed proposal, we will endeavor to provide you with a timely commitment.

It is a pleasure to offer this proposal to you and we look forward to your favorable acknowledgment.

Sincerely,

Lance L. Holman

Lance Holman
President & CEO

AGREED TO AND ACCEPTED BY:

Name: ______________________________

Title: ______________________________

Date: ______________________________

Holman Capital

SUBJECT TO AND MADE A PART OF THAT CERTAIN PROPOSAL DATED SEPTEMBER 24, 2019

LESSEE:	CITY OF PITTSBURG
LESSOR:	HOLMAN CAPITAL CORPORATION
COMMENCEMENT:	11-Oct-2019
TERM:	5 YEARS
1ST PAYMENT DUE:	11-Apr-2020
RATE:	3.70%

PAYMENT NUMBER	DATE DUE	TOTAL RENTAL PAYMENT DUE	INTEREST COMPONENT	PRINCIPAL COMPONENT	CONCLUDING PAYMENT
0	10/11/2019				
1	4/11/2020	$ 93,671.93	$ 15,689.07	$ 77,982.86	$ 785,476.69
2	10/11/2020	$ 93,671.93	$ 14,246.39	$ 79,425.54	$ 704,462.64
3	4/11/2021	$ 93,671.93	$ 12,777.02	$ 80,894.91	$ 621,949.83
4	10/11/2021	$ 93,671.93	$ 11,280.46	$ 82,391.47	$ 537,910.54
5	4/11/2022	$ 93,671.93	$ 9,756.22	$ 83,915.71	$ 452,316.51
6	10/11/2022	$ 93,671.93	$ 8,203.78	$ 85,468.15	$ 365,139.00
7	4/11/2023	$ 93,671.93	$ 6,622.62	$ 87,049.31	$ 276,348.70
8	10/11/2023	$ 93,671.93	$ 5,012.21	$ 88,659.72	$ 185,915.79
9	4/11/2024	$ 93,671.93	$ 3,372.00	$ 90,299.93	$ 93,809.86
10	10/11/2024	$ 93,671.93	$ 1,701.48	$ 91,970.45	
Grand Totals		**$ 936,719.30**	**$ 88,661.25**	**$ 848,058.05**	**$ 4,023,329.57**

City of Pittsburg
Fleet Equipment Bid Tabulations

2020 Ford Fusion SE FWD (Qty 2)
RFQ #FPV-073019 – Bids Received 7/30/19

Company	Total Bid
All Star Ford	$42,933.78
Towne Ford	$44,249.15

2020 Ford Police Interceptor Utility (Qty 4)
RFQ #FPV-073019 – Bids Received 7/30/19

Company	Total Bid
All Star Ford	$164,727.72
Towne Ford	$169,708.99

2020 Ford F250 Crew Cab 4x4 XL (Qty 1)
RFQ #FPV-073019 – Bids Received 7/30/19

Company	Total Bid
All Star Ford	$36,535.57
Towne Ford	$27,849.40

2020 Ford F150 Reg Cab 4x2 XL (Qty 2)
RFQ #FV-082719 – Bids Received 8/27/19

Company	Total Bid
All Star Ford	$49,353.02

2020 Ford F250 Reg Cab 4x4 XL (Qty 1)
RFQ #FV-082719 – Bids Received 8/27/19

Company	Total Bid
All Star Ford	$31,557.13

2020 Ford F250 Reg Cab 4x2 XL Stake Bed Dump (Qty 1)
RFQ #FV-082719 – Bids Received 8/27/19

Company	Total Bid
All Star Ford	$38,560.63

2020 Ford F250 Reg Cab 4x2 XL Service Body (Qty 3)
RFQ #FV-082719 – Bids Received 8/27/19

Company	Total Bid
All Star Ford	$109,851.78

2020 Ford F350 Super Cab 4x2 XL Service Body (Qty 1)
RFQ #FV-082719 – Bids Received 8/27/19

Company	Total Bid
All Star Ford	$42,429.95

Polaris Ranger Crew XP UTV (Qty 1)
Quote Received 7/1/19

Company	**Total Bid**
Polaris Sales Inc.	$35,098.59

2019 BMW Police Motorcycle (Qty 1)
Quote Received 7/8/19

Company	**Total Bid**
Long Beach BMW Motorcycles	$32,210.55
CalMoto, Livermore	$33,975.26

Kubota Riding Mowers (Qty 2)
Quote Received 7/16/19

Company	**Total Bid**
Garton Tractor, Inc.	$31,254.04

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Consideration of a City Council Request for a Future Agenda Item Related to Exploring the Feasibility of a Grocery Store Cooperative

MEETING DATE: October 7, 2019

EXECUTIVE SUMMARY

At the September 16, 2019, City Council meeting, Councilmember Holland Barrett White requested an item exploring the feasibility of grocery store cooperative (co-op) operating in the City of Pittsburg. As an initial step, the City Council will consider directing staff to obtain proposals and hire a consultant to prepare a market study to determine the sales potential for a grocery co-op.

FISCAL IMPACT

Staff estimates a market study would cost approximately $15,000-$20,000, which is within the City Manager's signing authority. General Fund monies would be used to pay for the study.

RECOMMENDATION

City Council accept the report and have staff return at a later date with a report on the feasibility of a grocery co-op in the City of Pittsburg.

BACKGROUND

Pursuant to the City Council Handbook, if an individual Councilmember wishes to have an agenda item placed on a future agenda, a Councilmember may make a request under the Requests for Future Agenda Items section of the agenda. At the next regularly scheduled City Council meeting the requested item will be listed on the agenda under Request for Future Agenda Items.

The item will identify the Councilmember making the request and briefly describe the nature of the request. Staff will not spend time on the requested item except to provide assistance to the Councilmember to frame the issue so that the City Council and public clearly understand the request. Should the issue be an item that staff has already researched, or is in the process of researching, an informational report may accompany the request on the agenda. Additionally, if the City Manager feels there is information that should be shared in order to productively evaluate next steps, brief information regarding the request may be included on the subsequent agenda.

When the item is called, the Councilmember making the request will describe the request and the Council may have a brief discussion of the requested item. Upon concurrence by the majority of the membership of the City Council present that staff time and City resources be spent on an item, it shall be scheduled for a future meeting. City Council discussion will be limited to whether staff time and City resources should be spent on the item. The Council will take no other action on the item itself. City Council concurrence that staff time or City resources be spent on an item does not signify approval of the item, just that the City Council wishes to have it studied further and the Council may, at any time, decide not to pursue the item further.

SUBCOMMITTEE FINDINGS

On September 23, 2019, the Economic Development Subcommittee discussed the potential operation of a grocery co-op in the City. At this meeting, staff presented some general information on co-ops, including types, general operation, and resources available.

STAFF ANALYSIS

A grocery co-op is a business voluntarily owned and controlled by the people who use it, rather than a private or public company. Food co-ops are usually consumer cooperatives, where the decisions regarding the production and distribution of its food are chosen by the group of member-owners; however, other types of co-ops exist, such as worker co-ops, where each employee maintains a ownership stake. While co-ops have a different ownership and investment structure than typical corporations, cooperatives are not nonprofits. Instead, they return their profits to their member-owners or use them to improve their ability to meet member-owner needs.

A market study will help the City determine, among other things, the viability of a grocery co-op in Pittsburg, sales potential, number of member-owners required for operation, and siting recommendations.

Report Prepared By: Garrett Evans, City Manager