



AGENDA
NEWMAN CITY COUNCIL
REGULAR MEETING AUGUST 25, 2015
CITY COUNCIL CHAMBERS, 7:00 P.M., 938 FRESNO STREET

- 1. Call To Order.**
- 2. Pledge Of Allegiance.**
- 3. Invocation.**
- 4. Roll Call.**
- 5. Declaration Of Conflicts Of Interest.**
- 6. Ceremonial Matters.**
- 7. Items from the Public - Non-Agenda Items.**
- 8. Consent Calendar**
 - a. Waive All Readings Of Ordinances And Resolutions Except By Title.
 - b. Approval Of Warrants. ([View Warrant Register](#))
 - c. Approval Of Minutes Of The August 11, 2015 Meeting. ([View Minutes](#))
 - d. Adopt Resolution No. 2015- , A Resolution Approving The Filing Of The Final Map For Mattos Ranch. ([View Report](#))
- 9. Public Hearings**
 - a. Adopt Resolution No. 2015- , A Resolution Approving A 20-Year Solar Power Purchase Agreement With Solar City Corporation And Authorizing The City Manager To Execute The Agreement And Associated Documents. ([View Report](#))
- 10. Regular Business**
 - a. Adopt Resolution No. 2015- , A Resolution Appointing The Mayor Of The City For The Remaining Unexpired Mayoral Term Through November 2016, Pursuant To Government Code Sections 1752 And 36512(b), And Requesting That City Staff Issue A Public Notice Of A City Council Vacancy. ([View Report](#))
 - b. Adopt Resolution No. 2015- , A Resolution Adopting The Urban Level Of Flood Protection Summary Report In Order For The City To Comply With The SB5 Requirements. ([View Report](#))
 - c. Adopt Resolution No. 2015- , A Resolution Adopting A New Job Description And Salary Range For Fire Chief. ([View Report](#))
- 11. Items From District Five Stanislaus County Supervisor.**
- 12. Items From The City Manager And Staff.**
- 13. Items From City Council Members.**
- 14. Adjournment.**

Calendar of Events

August 25 - City Council - 7:00 P.M.

August 30 - September 7 - Fall Festival.

September 7 - Labor Day Holiday - City Offices Closed.

September 8 - City Council - 7:00 P.M.

September 10 - Recreation Commission - 7:00 P.M.

September 12 - Youth Soccer Season Begins.

September 15 - Two-On-Two Meeting With The School Board - 4:00 P.M.

September 17 - Planning Commission - 7:00 P.M.

September 22 - City Council - 7:00 P.M.



AP Check Register

August 20, 2015 FY 14-15

Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
Del Puerto Health Care District	10-21-6235	107942	\$ 420.00	8/20/2015	Pre-employment physical/Fragoza/Breier/Stice
		107942 Total	\$ 420.00		
CITY OF PATTERSON	10-22-6200	107941	\$ 250.00	8/20/2015	Fire data input/June 2015
		107941 Total	\$ 250.00		
Rolfe Construction	20-32-7776	107943	\$ 62,286.75	8/20/2015	CDBG waterline replacement Fresno & West Ave #2
		107943 Total	\$ 62,286.75		
Rolfe Construction	20-32-7776	107944	\$ 5,053.25	8/20/2015	Retention payment on CDBG waterline replacement Fresno & West Av
		107944 Total	\$ 5,053.25		
		Grand Total	\$ 68,010.00		



Manual Check Register

August 20, 2015

Vendor	Fund-Dept-Acct	Check #	Amount	Check Date	Description
GRAPHIC PRINT SHOP	10-01-6620	107825	\$ 73.03	8/5/2015	Walnut gavel with presentation block/Mayor Katen
107825 Total			\$ 73.03		
Newman 4-H	10-01-6620	107865	\$ 25.00	8/13/2015	1/2 page ad for breakfast fundraiser
107865 Total			\$ 25.00		
Grand Total			\$ 98.03		



AP Check Register August 21, 2015 FY 15-16

Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
Advanced Building Cleaners, Inc.	10-33-6200	107866	\$ 3,634.02	8/21/2015	Power sweeping service/July 2015
		107866 Total	\$ 3,634.02		
Alderhorst International, Inc	10-21-6207	107867	\$ 10,618.00	8/21/2015	Police service Dog
		107867 Total	\$ 10,618.00		
American Valley Waste Oil, Inc	60-50-6500	107868	\$ 45.00	8/21/2015	Pick up of used oil @ WWTP
		107868 Total	\$ 45.00		
AMERICAN SOCCER COMPANY,	10-45-6735	107869	\$ 599.75	8/21/2015	Soccer supplies
		107869 Total	\$ 599.75		
Applied Development Economics	10-01-6200	107870	\$ 2,315.88	8/21/2015	Property tax study/July 2015
		107870 Total	\$ 2,315.88		
AUS Sacramento MC Lockbox	10-33-6200	107871	\$ 66.05	8/21/2015	Uniform cleaning/mat rental/towels/July 2015
AUS Sacramento MC Lockbox	10-44-6200	107871	\$ 44.03	8/21/2015	Uniform cleaning/mat rental/towels/July 2015
AUS Sacramento MC Lockbox	60-50-6200	107871	\$ 66.05	8/21/2015	Uniform cleaning/mat rental/towels/July 2015
AUS Sacramento MC Lockbox	63-56-6200	107871	\$ 44.03	8/21/2015	Uniform cleaning/mat rental/towels/July 2015
AUS Sacramento MC Lockbox	10-22-6200	107871	\$ 25.84	8/21/2015	Uniform cleaning/mat rental/towels/July 2015
AUS Sacramento MC Lockbox	10-07-6200	107871	\$ 96.80	8/21/2015	Uniform cleaning/mat rental/towels/July 2015
AUS Sacramento MC Lockbox	10-21-6200	107871	\$ 71.00	8/21/2015	Uniform cleaning/mat rental/towels/July 2015
		107871 Total	\$ 413.80		
Arevalo Ana	10-45-6724	107872	\$ 6.69	8/21/2015	Reimbursement for supplies for movie night snack bar/Arevalo
		107872 Total	\$ 6.69		
AVID TRAFFIC SUPPLIES	10-33-6300	107873	\$ 797.77	8/21/2015	5 gals White and Yellow street paint
AVID TRAFFIC SUPPLIES	10-33-6300	107873	\$ 590.59	8/21/2015	5 gals Yellow street paint
		107873 Total	\$ 1,388.36		
Baker Supplies and Repairs	10-33-6200	107874	\$ 88.28	8/21/2015	Replaced backpack frame/replaced fuel lines& crank
Baker Supplies and Repairs	10-44-6200	107874	\$ 88.28	8/21/2015	Replaced backpack frame/replaced fuel lines& crank
		107874 Total	\$ 176.56		
BERTOLOTTI DISPOSAL	69-47-6220	107875	\$ 200.00	8/21/2015	40 yard trash bin dumping @ corp yard
BERTOLOTTI DISPOSAL	10-33-6220	107875	\$ 311.24	8/21/2015	40 yard trash bin dumping @ corp yard
		107875 Total	\$ 511.24		
B G AUTO	60-50-6530	107876	\$ 4.48	8/21/2015	Miniature lamp
B G AUTO	10-33-6530	107876	\$ 102.78	8/21/2015	Interior door handle
B G AUTO	63-56-6530	107876	\$ 7.08	8/21/2015	2 quarts motor oil
B G AUTO	10-33-6300	107876	\$ 946.02	8/21/2015	Paint thinner
		107876 Total	\$ 1,060.36		
Bohannon Insurance Group	10-00-2260	107877	\$ 770.46	8/21/2015	Professional services for July 2015/ins admin
		107877 Total	\$ 770.46		
BUSINESS CARD	10-00-5830	107878	\$ 156.02	8/21/2015	T-shirts with logo reimbursed
BUSINESS CARD	10-44-6660	107878	\$ 131.63	8/21/2015	8 locks for the cabinets @ Memorial Bldg



AP Check Register

August 21, 2015 FY 15-16

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BUSINESS CARD	10-33-6690	107878	\$ 2.00	8/21/2015	Parkinf fee for Stancog meeting
BUSINESS CARD	10-45-6724	107878	\$ 575.00	8/21/2015	Backyard Flicks outdoor cinema
BUSINESS CARD	16-44-7505	107878	\$ 35.30	8/21/2015	Shipping for table carts for Memorial Bldg
BUSINESS CARD	10-33-6690	107878	\$ 1.00	8/21/2015	Parking fee for Stancog meeting
BUSINESS CARD	10-45-6724	107878	\$ 156.71	8/21/2015	Food for Movie Night snack bar
BUSINESS CARD	16-44-7505	107878	\$ 270.98	8/21/2015	Table carts for Memorial Bldg
BUSINESS CARD	10-45-6722	107878	\$ 14.92	8/21/2015	Supplies for Fit Kids
BUSINESS CARD	16-44-7505	107878	\$ 331.11	8/21/2015	3 folding chair dollies for Memorial Bldg
BUSINESS CARD	60-50-6300	107878	\$ 86.08	8/21/2015	2 5-lb fly baits for WWTP
BUSINESS CARD	10-45-6739	107878	\$ 139.42	8/21/2015	Food for teen center snack bar
BUSINESS CARD	10-45-6724	107878	\$ 526.00	8/21/2015	Movie rental "Big Hero"
BUSINESS CARD	10-45-6724	107878	\$ 476.00	8/21/2015	Movie rental "Star Wars The Clone"
BUSINESS CARD	10-45-6740	107878	\$ 34.99	8/21/2015	Video & audio signal converter for teen center
BUSINESS CARD	10-45-6735	107878	\$ 16.76	8/21/2015	Supplies for youth soccer coaches clinic
BUSINESS CARD	10-21-6200	107878	\$ 10.00	8/21/2015	ScheduleBase 8-19-15 to 9-19-15
BUSINESS CARD	10-45-6722	107878	\$ 63.99	8/21/2015	Supplies for Fit Kids
BUSINESS CARD	10-21-6635	107878	\$ 45.00	8/21/2015	Membership dues/CAPE/Richardson
BUSINESS CARD	10-21-6620	107878	\$ 424.75	8/21/2015	Supplies for back to school event
BUSINESS CARD	10-45-6724	107878	\$ 47.86	8/21/2015	Supplies for Movie night
BUSINESS CARD	10-21-6635	107878	\$ 315.00	8/21/2015	Membership dues/Calif Police Chiefs/Richardson
BUSINESS CARD	10-45-6724	107878	\$ 142.76	8/21/2015	Supplies for Movie Night
BUSINESS CARD	10-21-6530	107878	\$ 14.00	8/21/2015	Car washes
BUSINESS CARD	10-21-6690	107878	\$ 17.64	8/21/2015	Meals
BUSINESS CARD	10-21-6690	107878	\$ 18.02	8/21/2015	Meals during K-9 purchase trip
		107878 Total	\$ 4,052.94		
CALIFORNIA CONSULTING, LL	10-15-6200	107879	\$ 3,000.00	8/21/2015	Grant writing services/August 2015
		107879 Total	\$ 3,000.00		
Canon Solutions America, Inc.	10-14-6200	107880	\$ 93.10	8/21/2015	Copier maintenance and copy charges/July 2015
Canon Solutions America, Inc.	60-50-6200	107880	\$ 93.10	8/21/2015	Copier maintenance and copy charges
Canon Solutions America, Inc.	63-56-6200	107880	\$ 93.11	8/21/2015	Copier maintenance and copy charges
Canon Solutions America, Inc.	60-50-6200	107880	\$ 43.26	8/21/2015	Copier maintenance and copy charges
Canon Solutions America, Inc.	63-56-6200	107880	\$ 43.26	8/21/2015	Copier maintenance and copy charges
Canon Solutions America, Inc.	10-21-6200	107880	\$ 105.09	8/21/2015	Copier maintenance & copy charges/July 2015
		107880 Total	\$ 470.92		
Canon Financial Services, Inc.	60-50-6200	107881	\$ 86.70	8/21/2015	Copier lease payment
Canon Financial Services, Inc.	63-56-6200	107881	\$ 86.70	8/21/2015	Copier lease payment
Canon Financial Services, Inc.	10-21-6200	107881	\$ 196.96	8/21/2015	Copier lease payment
Canon Financial Services, Inc.	10-14-6200	107881	\$ 106.06	8/21/2015	Copier lease payment
Canon Financial Services, Inc.	60-50-6200	107881	\$ 106.06	8/21/2015	Copier lease payment



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Canon Financial Services, Inc.	63-56-6200	107881	\$ 106.06	8/21/2015	Copier lease payment
		107881 Total	\$ 688.54		
CDW GOVERNMENT, INC	10-21-6300	107882	\$ 40.90	8/21/2015	6" displayport VGA adapter
		107882 Total	\$ 40.90		
CENTRAL SANITARY SUPPLY	10-44-6660	107883	\$ 158.10	8/21/2015	Automatic foam soap dispenser/Mem Bldg
		107883 Total	\$ 158.10		
Challenger Teamwear	10-45-6735	107884	\$ 686.15	8/21/2015	80 soccer balls
		107884 Total	\$ 686.15		
Chevron & Texaco Business Card Services	10-33-6500	107885	\$ 193.48	8/21/2015	Gas and diesel purchases/7-15-15 to 8-14-15
Chevron & Texaco Business Card Services	10-44-6500	107885	\$ 133.01	8/21/2015	Gas and diesel purchases/7-15-15 to 8-14-15
Chevron & Texaco Business Card Services	63-56-6500	107885	\$ 922.91	8/21/2015	Gas and diesel purchases/7-15-15 to 8-14-15
Chevron & Texaco Business Card Services	60-50-6500	107885	\$ 450.00	8/21/2015	Gas and diesel purchases/7-15-15 to 8-14-15
Chevron & Texaco Business Card Services	10-21-6500	107885	\$ 3,649.58	8/21/2015	Gas and diesel purchases/7-15-15 to 8-14-15
Chevron & Texaco Business Card Services	10-22-6500	107885	\$ 304.41	8/21/2015	Gas and diesel purchases/7-15-15 to 8-14-15
Chevron & Texaco Business Card Services	69-47-6500	107885	\$ 104.73	8/21/2015	Gas and diesel purchases/7-15-15 to 8-14-15
Chevron & Texaco Business Card Services	10-07-6500	107885	\$ 65.77	8/21/2015	Gas and diesel purchases/7-15-15 to 8-14-15
		107885 Total	\$ 5,823.89		
CLENDENIN BIRD & CO LLP	10-14-6205	107886	\$ 3,195.00	8/21/2015	2nd progress billing for FY 14-15 audit
CLENDENIN BIRD & CO LLP	60-50-6205	107886	\$ 3,195.00	8/21/2015	2nd progress billing for FY 14-15 audit
CLENDENIN BIRD & CO LLP	63-56-6205	107886	\$ 3,195.00	8/21/2015	2nd progress billing for FY 14-15 audit
		107886 Total	\$ 9,585.00		
Comcast	10-21-6420	107887	\$ 148.59	8/21/2015	High speed interenet @ 1200 Main St/8-6-15 to 9-05-15
		107887 Total	\$ 148.59		
DASH Medical Gloves	10-21-6300	107888	\$ 76.31	8/21/2015	1 case black nitrile exam gloves
		107888 Total	\$ 76.31		
Delgado's Welding and Hardfacing	10-44-6660	107889	\$ 169.99	8/21/2015	Made 2 posts
		107889 Total	\$ 169.99		
Del Puerto Health Care District	10-21-6235	107890	\$ 320.00	8/21/2015	Pre-employment physical/Tommy Flores
		107890 Total	\$ 320.00		
E&M ELECTRIC, INC.	62-60-6225	107891	\$ 161.74	8/21/2015	Battery backup
E&M ELECTRIC, INC.	62-60-6225	107891	\$ 3.92	8/21/2015	Lamp
E&M ELECTRIC, INC.	10-44-6670	107891	\$ 49.79	8/21/2015	Lamp/teen center
E&M ELECTRIC, INC.	10-44-6670	107891	\$ 124.47	8/21/2015	5 Sylvania lights/teen center
E&M ELECTRIC, INC.	10-44-6660	107891	\$ 421.51	8/21/2015	Reworked conduit and wiring on roof of Memorial Bldg
E&M ELECTRIC, INC.	63-56-6300	107891	\$ 64.53	8/21/2015	Light bulbs for well house
		107891 Total	\$ 825.96		
Escatel Ivan	60-50-6150	107892	\$ 200.00	8/21/2015	Steel-boot reimbursement/Escatel
		107892 Total	\$ 200.00		



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FERGUSON ENTERPRISES, INC 1423	63-56-6300	107893	\$ 90.41	8/21/2015	2 direct read bronze water meters
		107893 Total	\$ 90.41		
Garcia and Associates	18-32-7739	107894	\$ 2,790.01	8/21/2015	Hwy 33 & Inyo Ave professional services/July 2015
		107894 Total	\$ 2,790.01		
Gavilanez Laura	10-00-2840	107895	\$ 17.10	8/21/2015	Partial deposit refund of Memorial bldg deposit/Gavilanez
		107895 Total	\$ 17.10		
GEORGE W. LOWRY, INC	60-50-6500	107896	\$ 710.00	8/21/2015	300 gallons red dyed diesel @ WWTP
		107896 Total	\$ 710.00		
Gouveia Engineering, Inc	24-32-7766	107897	\$ 2,898.75	8/21/2015	CNG Fast Fill fueling station/July 2015
Gouveia Engineering, Inc	18-32-7739	107897	\$ 2,088.75	8/21/2015	Hwy 33 & Inyo project/July 2015
Gouveia Engineering, Inc	10-31-6200	107897	\$ 141.75	8/21/2015	Rule 20 A/Alleys/July 2015
Gouveia Engineering, Inc	10-31-6200	107897	\$ 52.50	8/21/2015	Mattos Ranch/July 2015
Gouveia Engineering, Inc	10-31-6200	107897	\$ 1,200.94	8/21/2015	SPR 15-01 Lucas Holdings/July 2015
Gouveia Engineering, Inc	10-31-6200	107897	\$ 460.00	8/21/2015	Vesting Tentative Map-Lucas/July 2015
Gouveia Engineering, Inc	20-32-7776	107897	\$ 152.50	8/21/2015	Waterline replacement/July 2015
Gouveia Engineering, Inc	71-07-7505	107897	\$ 114.19	8/21/2015	Memorial Bldg construction/July 2015
		107897 Total	\$ 7,109.38		
Grand Lodge of California	40-07-8130	107898	\$ 628.75	8/21/2015	Principal payment on city hall/Sept 2015
Grand Lodge of California	60-50-8130	107898	\$ 628.75	8/21/2015	Principal payment on city hall/Sept 2015
Grand Lodge of California	63-56-8130	107898	\$ 628.76	8/21/2015	Principal payment on city hall/Sept 2015
Grand Lodge of California	40-07-8120	107898	\$ 1,009.48	8/21/2015	Interest payment on city hall/Sept 2015
Grand Lodge of California	60-50-8125	107898	\$ 1,009.48	8/21/2015	Interest payment on city hall/Sept 2015
Grand Lodge of California	63-56-8125	107898	\$ 1,009.48	8/21/2015	Interest payment on city hall/Sept 2015
		107898 Total	\$ 4,914.70		
HARD DRIVE GRAPHICS	71-21-7010	107899	\$ 639.20	8/21/2015	Vinyl graphics for new patrol vehicle/PD
		107899 Total	\$ 639.20		
HEWLETT-PACKARD FINANCIAL	10-21-7105	107900	\$ 3,788.42	8/21/2015	Hardware lease 8-1-15 to 7-31-16/PD
		107900 Total	\$ 3,788.42		
HOUSE STEPHANIE	10-45-6739	107901	\$ 4.19	8/21/2015	Reimbursement for supplies purchased/Teen center
HOUSE STEPHANIE	10-45-6722	107901	\$ 61.96	8/21/2015	Reimbursement for supplies purchased/Fit Kids
HOUSE STEPHANIE	10-45-6724	107901	\$ 155.54	8/21/2015	Reimbursement for supplies purchased/Movie Night
		107901 Total	\$ 221.69		
HUTCHINS JASON	10-21-6695	107902	\$ 48.00	8/21/2015	Per diem/POST training/Hutchins
		107902 Total	\$ 48.00		
IMAGE UNIFORMS	10-21-6300	107903	\$ 476.24	8/21/2015	Uniforms for Tommy Flores
		107903 Total	\$ 476.24		
Independent Stationers	10-14-6300	107904	\$ 7.35	8/21/2015	Pen ink refills
Independent Stationers	60-50-6300	107904	\$ 7.35	8/21/2015	Pen ink refills
Independent Stationers	63-56-6300	107904	\$ 7.36	8/21/2015	Pen ink refills



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Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
107904 Total			\$ 22.06		
INFOSEND, INC	60-50-6200	107905	\$ 969.10	8/21/2015	Utility bill and late notice mailing/July 2015
INFOSEND, INC	63-56-6200	107905	\$ 969.09	8/21/2015	Utility bill and late notice
INFOSEND, INC	63-56-6200	107905	\$ 21.50	8/21/2015	Shipping and handling of return of "Stage 2 Flyer" inserts
107905 Total			\$ 1,959.69		
IRRIGATION DESIGN & CONST	69-47-6300	107906	\$ 49.22	8/21/2015	PVC molded tee
107906 Total			\$ 49.22		
J&E Janitorial and Handyman	10-07-6200	107907	\$ 200.00	8/21/2015	Complete bathroom cleaning and floor cleaning @ city hall
107907 Total			\$ 200.00		
JOE'S LANDSCAPING & CONCR	63-56-6200	107908	\$ 171.12	8/21/2015	4 hour trencher rental
JOE'S LANDSCAPING & CONCR	69-47-6200	107908	\$ 8,065.00	8/21/2015	Landscape services in the LLD/July 2015
107908 Total			\$ 8,236.12		
Marko Construction Group, Inc	24-32-7766	107909	\$ 3,800.00	8/21/2015	Progress payment #1/CNG Fast fill fueling station
Marko Construction Group, Inc	24-32-7766	107909	\$ 40,417.71	8/21/2015	Progress payment #3/CNG Fast fill fueling station
107909 Total			\$ 44,217.71		
MENEZES SALES	10-44-6150	107910	\$ 150.00	8/21/2015	Steel-toe boots/Singh
MENEZES SALES	60-50-6150	107910	\$ 50.00	8/21/2015	Steel-toe boots/Singh
MENEZES SALES	10-44-6150	107910	\$ 100.00	8/21/2015	Steel-toe boots/Sotelo
MENEZES SALES	10-33-6150	107910	\$ 50.00	8/21/2015	Steel-toe boots/Sotelo
MENEZES SALES	69-47-6150	107910	\$ 50.00	8/21/2015	Steel-toe boots/Sotelo
107910 Total			\$ 400.00		
MID VALLEY IT, INC	10-21-6200	107911	\$ 1,583.20	8/21/2015	IT CONTRACT service/Sept 2015/PD
MID VALLEY IT, INC	10-14-6200	107911	\$ 791.60	8/21/2015	IT CONTRACT/FIN
MID VALLEY IT, INC	63-56-6200	107911	\$ 791.60	8/21/2015	IT CONTRACT/WATR
MID VALLEY IT, INC	60-50-6200	107911	\$ 791.60	8/21/2015	IT CONTRACT/SEWR
107911 Total			\$ 3,958.00		
Modesto Police Department	10-21-6695	107912	\$ 75.00	8/21/2015	Registration/POST training radar/Hutchins
107912 Total			\$ 75.00		
Morales Martin	10-00-2840	107913	\$ 51.61	8/21/2015	Refund of partial Memorial Bldg deposit/Morales
107913 Total			\$ 51.61		
NEWMAN MINI MART	10-21-6500	107914	\$ 96.88	8/21/2015	Gas purchases/PD
107914 Total			\$ 96.88		
NEWMAN SMOG AND LUBE	10-21-6530	107915	\$ 43.56	8/21/2015	Oil and filter change on 07 Buick
NEWMAN SMOG AND LUBE	10-21-6530	107915	\$ 179.17	8/21/2015	Oil and filter change on 2011 Dodge Charger
NEWMAN SMOG AND LUBE	10-21-6530	107915	\$ 47.60	8/21/2015	Oil and filter change on 2009 Dodge Charger
107915 Total			\$ 270.33		
North Star Engineering Group, Inc	18-32-7739	107916	\$ 137.50	8/21/2015	Engineering services thru 7/31/15/Inyo & Hwy 33
107916 Total			\$ 137.50		
NORMAC, INC.	69-47-6300	107917	\$ 271.85	8/21/2015	Tees/bushings/expansion repair clamps/pvc cement & primer



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Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
NORMAC, INC.	69-47-6300	107917	\$ 109.88	8/21/2015	6" pvc expansion repair clamp
NORMAC, INC.	10-44-6300	107917	\$ 54.72	8/21/2015	Solenoid
NORMAC, INC.	10-44-6300	107917	\$ 149.84	8/21/2015	12 volt giant pony pump
		107917 Total	\$ 586.29		
PACIFIC WATER RESOURCES	62-60-6225	107918	\$ 1,310.71	8/21/2015	Vacuum pump/domes/repair kit/o-rings/float switch
		107918 Total	\$ 1,310.71		
CITY OF PATTERSON	10-03-6200	107919	\$ 660.00	8/21/2015	Video reimbursement/July 2015
		107919 Total	\$ 660.00		
Tank Town Media LLC	10-21-6600	107920	\$ 139.88	8/21/2015	Employment ad for Police Officer
		107920 Total	\$ 139.88		
Pete's Auto Repair	60-50-6530	107921	\$ 17.40	8/21/2015	Lube, oil and filter change/05 Chevy PU
Pete's Auto Repair	10-44-6530	107921	\$ 5.80	8/21/2015	Lube, oil and filter change
Pete's Auto Repair	10-33-6530	107921	\$ 5.80	8/21/2015	Lube, oil and filter change
Pete's Auto Repair	69-47-6530	107921	\$ 14.50	8/21/2015	Lube, oil and filter change/05 Chevy PU
Pete's Auto Repair	10-44-6530	107921	\$ 7.25	8/21/2015	Lube, oil and filter change
Pete's Auto Repair	10-33-6530	107921	\$ 7.25	8/21/2015	Lube, oil and filter change
Pete's Auto Repair	10-44-6530	107921	\$ 33.00	8/21/2015	Lube, oil and filter change/2013 Ford F150
Pete's Auto Repair	60-50-6530	107921	\$ 11.00	8/21/2015	Lube, oil and filter change/2013 Ford F150
		107921 Total	\$ 102.00		
P G & E	10-07-6410	107922	\$ 605.15	8/21/2015	Gaas and electric @ 938 Fresno St 7-7-15 to8-05-15
P G & E	60-50-6410	107922	\$ 605.15	8/21/2015	Gaas and electric @ 938 Fresno St 7-7-15 to8-05-15
P G & E	63-56-6410	107922	\$ 605.14	8/21/2015	Gaas and electric @ 938 Fresno St 7-7-15 to8-05-15
P G & E	60-50-6410	107922	\$ 43.79	8/21/2015	Electric @ WWTP 5-14-15 to 6-12-15
		107922 Total	\$ 1,859.23		
PROFORCE LAW ENFORCEMENT	10-21-6300	107923	\$ 265.24	8/21/2015	12 gauge ammo
PROFORCE LAW ENFORCEMENT	10-21-6300	107923	\$ 3,522.87	8/21/2015	Ammunition/PD
		107923 Total	\$ 3,788.11		
Ready Refresh by Nestle	10-14-6300	107924	\$ 22.93	8/21/2015	Bottled water delivered/July 2015
Ready Refresh by Nestle	60-50-6300	107924	\$ 22.93	8/21/2015	Bottled water delivered/July 2015
Ready Refresh by Nestle	63-56-6300	107924	\$ 22.94	8/21/2015	Bottled water delivered/July 2015
Ready Refresh by Nestle	10-45-6300	107924	\$ 38.00	8/21/2015	Bottled water delivered/July 2015
Ready Refresh by Nestle	10-21-6300	107924	\$ 5.88	8/21/2015	Bottled water delivered/July 2015
Ready Refresh by Nestle	60-50-6300	107924	\$ 35.19	8/21/2015	Bottled water delivered/July 2015
Ready Refresh by Nestle	63-56-6300	107924	\$ 35.19	8/21/2015	Bottled water delivered/July 2015
Ready Refresh by Nestle	60-50-6300	107924	\$ 50.42	8/21/2015	Bottled water delivered/July 2015
		107924 Total	\$ 233.48		
SAFE-T-LITE	10-33-6300	107925	\$ 106.46	8/21/2015	20) 18" traffic cones
SAFE-T-LITE	60-50-6300	107925	\$ 53.22	8/21/2015	20) 18" traffic cones
SAFE-T-LITE	63-56-6300	107925	\$ 53.22	8/21/2015	20) 18" traffic cones



AP Check Register August 21, 2015 FY 15-16

Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
		107925 Total	\$ 212.90		
Silber Roger	10-33-6270	107926	\$ 820.00	8/21/2015	Weed abatement services Jan-July 2015
		107926 Total	\$ 820.00		
SIRCHIE	10-21-6300	107927	\$ 93.96	8/21/2015	Methamphetamine & Duquenois test kits
		107927 Total	\$ 93.96		
SOLECON, INC	10-07-6665	107928	\$ 621.83	8/21/2015	Replaced TXV valve on AC unit at museum
		107928 Total	\$ 621.83		
Southern Aluminum	16-44-7505	107929	\$ 2,803.23	8/21/2015	9 Alulite tables for Memorial Bldg
		107929 Total	\$ 2,803.23		
Sparrow-Overby Catherine	10-00-5521	107930	\$ 55.00	8/21/2015	Refund Pioneer Park rent/cancelled use/Sparrow-Overby
		107930 Total	\$ 55.00		
State of Calif Dept of Justice	10-00-2014	107931	\$ 656.00	8/21/2015	Fingerprint and livescan fees/July 2015
State of Calif Dept of Justice	10-21-6200	107931	\$ 98.00	8/21/2015	Fingerprint and livescan fees reimbursed/July 2015
		107931 Total	\$ 754.00		
Stanislaus County Auditor-Controller	10-21-6615	107932	\$ 4,500.00	8/21/2015	SR 911 Fire dispatch services Jul-Sept 2015
		107932 Total	\$ 4,500.00		
STAPLES ADVANTAGE	10-21-6300	107933	\$ 17.09	8/21/2015	Ball point pens/PD
STAPLES ADVANTAGE	10-21-6300	107933	\$ 51.85	8/21/2015	Wireless keyboard/memobooks/sharpie pens/cash register rolls/PD
		107933 Total	\$ 68.94		
STANTEC CONSULTING SERVICE, Inc	60-50-6200	107934	\$ 17,571.50	8/21/2015	Water and wastewater on-call 2015-2016
		107934 Total	\$ 17,571.50		
Sun Valley Portables	69-47-6200	107935	\$ 155.76	8/21/2015	Portable restroom & service/July 2015
		107935 Total	\$ 155.76		
UNIVAR USA, INC	63-56-6300	107936	\$ 307.53	8/21/2015	119 gals sodium hypochlorite delivered @ well #5
UNIVAR USA, INC	63-56-6300	107936	\$ 625.77	8/21/2015	213 gals sodium hypochlorite delivered @ well #8
		107936 Total	\$ 933.30		
USA BLUEBOOK	60-50-6300	107937	\$ 212.00	8/21/2015	Test ball plug 8'
USA BLUEBOOK	63-56-6300	107937	\$ 134.81	8/21/2015	3 Adjustable hydrant wrenches
		107937 Total	\$ 346.81		
MATTOS NEWSPAPERS, INC.	63-56-6600	107938	\$ 320.50	8/21/2015	Display ad/water conservation
MATTOS NEWSPAPERS, INC.	10-21-6300	107938	\$ 66.73	8/21/2015	250 Business card Sarah Mires
MATTOS NEWSPAPERS, INC.	10-06-6600	107938	\$ 80.00	8/21/2015	Notice of public hearing/zone change 15-1
MATTOS NEWSPAPERS, INC.	17-44-7521	107938	\$ 240.00	8/21/2015	Notice to bidders/skate plaza
MATTOS NEWSPAPERS, INC.	10-06-6600	107938	\$ 72.00	8/21/2015	Notice of public hearing/zone change 15-1
MATTOS NEWSPAPERS, INC.	10-06-6600	107938	\$ 72.00	8/21/2015	Notice of public hearing/adopt Ord amend title 4
MATTOS NEWSPAPERS, INC.	10-45-6724	107938	\$ 39.45	8/21/2015	Display ad/Movie night
MATTOS NEWSPAPERS, INC.	10-45-6724	107938	\$ 78.90	8/21/2015	Display ad/Movie night
MATTOS NEWSPAPERS, INC.	10-45-6724	107938	\$ 39.45	8/21/2015	Display ad/Movie night
MATTOS NEWSPAPERS, INC.	10-21-6300	107938	\$ 66.73	8/21/2015	250 business cards Jasmine Fragoza



AP Check Register August 21, 2015 FY 15-16

Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
107938 Total			\$ 1,075.76		
Westside Landscape & Concrete	10-33-6270	107939	\$ 275.00	8/21/2015	Weed abatement @ 1955 Taylor Drive
Westside Landscape & Concrete	10-33-6270	107939	\$ 640.00	8/21/2015	Weed abatement @ 1923 Patrick Drive
107939 Total			\$ 915.00		
YANCEY LUMBER COMPANY	10-44-6300	107940	\$ 149.44	8/21/2015	Diamond blade/tile cut blade/pvc union/hacksaw/concrete/
YANCEY LUMBER COMPANY	10-33-6300	107940	\$ 8.89	8/21/2015	Drywall knife/lithium grease
YANCEY LUMBER COMPANY	60-50-6300	107940	\$ 53.75	8/21/2015	Drywall knife/lithium grease
YANCEY LUMBER COMPANY	63-56-6300	107940	\$ 31.83	8/21/2015	Couplings/bleach/furnace filter/socket
YANCEY LUMBER COMPANY	69-47-6300	107940	\$ 18.86	8/21/2015	Gear oil/cut wheel
YANCEY LUMBER COMPANY	10-46-6300	107940	\$ 34.32	8/21/2015	key tags/angle valve/shelf bracket/angle union
YANCEY LUMBER COMPANY	62-60-6225	107940	\$ 15.30	8/21/2015	Anti-seize lube
YANCEY LUMBER COMPANY	10-22-6300	107940	\$ 70.36	8/21/2015	Screws/drill/propane/rubber hose
YANCEY LUMBER COMPANY	10-21-6307	107940	\$ 50.58	8/21/2015	Rice and lamb dog food
YANCEY LUMBER COMPANY	10-44-6660	107940	\$ 6.10	8/21/2015	Gray duct tape
YANCEY LUMBER COMPANY	63-56-6530	107940	\$ 18.87	8/21/2015	Ratchett/socket
YANCEY LUMBER COMPANY	10-07-6300	107940	\$ 31.24	8/21/2015	Supplies for police dept landscape
YANCEY LUMBER COMPANY	10-21-6308	107940	\$ 24.47	8/21/2015	Wastebasket/litter box scoop/Lysol/trash bags
107940 Total			\$ 514.01		
Grand Total			\$ 168,388.38		



MINUTES
NEWMAN CITY COUNCIL
REGULAR MEETING AUGUST 11, 2015
CITY COUNCIL CHAMBERS, 7:00 P.M., 938 FRESNO STREET

1. **Call To Order** - Mayor Katen 7:00 P.M.
2. **Pledge Of Allegiance.**
3. **Invocation** - Mayor Pro Tem Martina.
4. **Roll Call** - **PRESENT:** Davis, Graham, Candea, Martina And Mayor Katen.
ABSENT: None.
5. **Declaration Of Conflicts Of Interest** - None.

6. Ceremonial Matters

- a. Badge Pinning Of Reserve Officer Tommy Flores.

Chief Richardson Introduced Officer Tommy Flores And Presided Over His Badge Pinning Ceremony.

Reserve Officer Flores Thanked Everyone For The Opportunity And Specifically Thanked Officer Fanucchi For Being Instrumental In Reaching His Goal Of Becoming A Police Officer. Flores Stated That He Would Work Hard And Do His Best For The City Of Newman When He Returns From His Military Service.

7. Items from the Public - Non-Agenda Items

Charlie Goeken, Former Mayor Of Waterford, Thanked Mayor Katen For His Service And Noted That He Had Done An Excellent Job Representing The City Well Beyond Newman's Boundaries. Goeken Congratulated Mayor Katen And Again Thanked Him.

Theresa Smith, 1313 Pointer Way, Reviewed The Various Services That The Women's Fire Auxiliary Provides And Noted That The Fire Auxiliary Wanted To Continue To Utilize The Fire Station For Their Various Fundraisers, Blood Drives And Meetings.

Rosa Lee Hurst, 1447 Q Street, Stated That The Women's Fire Auxiliary Was Concerned That When Chief Souza Retired, That Their Group Might Not Be Able To Utilize The Fire Station For Its Various Functions.

City Manager Holland Noted That Nothing Should Change Regardless Of The Fire Department's Leadership. Holland Mentioned That The City Understands The Value Of The Women's Fire Auxiliary And The Services They Provide. He Stated That The Fire Auxiliary Will Be Allowed To Continue Utilizing The Fire Station For Their Various Functions.

8. Consent Calendar

- a. Waive All Readings Of Ordinances And Resolutions Except By Title.
- b. Approval Of Warrants.
- c. Approval Of Minutes Of The July 28, 2015 Meeting.
- d. Acknowledge And Accept The Report On Fiscal Year 2014-2015 CDBG Accomplishments.
- e. Adopt Resolution No. 2015-43, Approving The Fiscal Year 2015-2016 CDBG Subrecipient Agreement With Stanislaus County.

- f. Adopt Resolution No. 2015-44, Ratifying Memorandum Of Understanding Between The City Of Newman And The Newman Police Officer's Association On Behalf Of The Police Officers, Corporals And Sergeants Bargaining Unit.
- g. Adopt Resolution No. 2015-45, Supporting The Designation Of Highway 132 As The John Muir Highway.

ACTION: On A Motion By Graham Seconded By Davis, The Consent Calendar Was Approved By The Following Vote: AYES: Davis, Graham, Candea, Martina And Mayor Katen; NOES: None; ABSENT: None; NOT PARTICIPATING: None.

9. Public Hearings

- a. Adopt Resolution No. 2015-46, Declaring The Existence Of A Public Nuisance Under Ordinance No. 95-4.

Mayor Katen Opened The Public Hearing At 7:16 P.M.

There Being No Public Comment, Katen Closed The Public Hearing At 7:16 P.M.

ACTION: On Motion By Candea Seconded By Martina, Resolution No. 2015-46, A Resolution Declaring The Existence Of A Public Nuisance Under Ordinance No. 95-4, Was Adopted By The Following Vote: AYES: Davis, Graham, Candea, Martina And Mayor Katen; NOES: None; ABSENT: None; NOT PARTICIPATING: None.

- b. Second Reading And Adoption Of Ordinance No. 2015-4, An Ordinance Of The City Council Of The City Of Newman Amending Title 4 Building Regulations Of The Newman City Code, Adding Chapter 4.23 Solar Permitting Procedures And Authorize Staff To Publish A Summary Of Said Ordinance.

Mayor Katen Opened The Public Hearing At 7:18 P.M.

There Being No Public Comment, Katen Closed The Public Hearing At 7:18 P.M.

ACTION: Ordinance No. 2015-4, Amending Title 4 Building Regulations Of The Newman City Code, Adding Chapter 4.23 Solar Permitting Procedures, Had Its Second Reading By Title Only. On A Motion By Martina Seconded By Candea, Said Ordinance Was Adopted And Staff Was Authorized To Prepare And Publish A Summary Of The Ordinance By The Following Vote: AYES: Davis, Graham, Candea, Martina And Mayor Katen; NOES: None; ABSENT: None; NOT PARTICIPATING: None.

- c. Second Reading And Adoption Of Ordinance No. 2015-5, Amending Title 5, Zoning And Accompanying Zoning Maps Of The City Of Newman Rezoning A Parcel From R-2 To P-Q And Authorize Staff To Publish A Summary Of Said Ordinance.

Mayor Katen Opened The Public Hearing At 7:21 P.M.

There Being No Public Comment, Katen Closed The Public Hearing At 7:22 P.M.

ACTION: Ordinance No. 2015-5, Amending Title 5, Zoning And Accompanying Zoning Maps Of The City Of Newman Rezoning A Parcel From R-2 To P-Q, Had Its Second Reading By Title Only. On A Motion By Graham Seconded By Davis, Said Ordinance Was Adopted And Staff Was Authorized To Prepare And Publish A Summary Of The Ordinance By The Following Vote: AYES: Davis, Graham, Candea, Martina And Mayor Katen; NOES: None; ABSENT: None; NOT PARTICIPATING: None.

10. Regular Business - None.

11. Items From District Five Stanislaus County Supervisor.

Supervisor DeMartini Invited Everyone To Attend The Seventh Annual Health Summit. DeMartini Explained That The Health Summit Was Taking Place In Newman At The West Side Theatre On August 20th And Noted That There Were Six Confirmed Teams As Well As Fourteen Vendors. DeMartini Mentioned That The 2015 Health Summit Would Be Providing Free Medical Screenings Via The Sutter Health Mobile Clinic. He Concluded By Noting That The Weigh-In Would Begin At 11:30 AM.

12. Items From The City Manager And Staff.

City Manager Holland Welcomed Reserve Office Flores To The City. Holland Reported That The Agreement With The West Stanislaus Fire Protection District Was Being Reviewed By Both Parties' Attorneys. He Stated That He Hoped To Begin Advertising For The New Fire Chief In The Coming Weeks. Holland Mentioned That The City Would Be Hosting The Last Outdoor Movie Night Event Of The Season On August 15th And That The Featured Movie Was *Big Hero 6*. He Thanked Mayor Katen For His Service As An Employee, Council Member And Mayor. Holland Expressed That He Would Miss The Mayor, He Then Presented The Mayor With A Commemorative Gavel Recognizing His Service On The City Council.

Chief Richardson Wished The Mayor Luck And Noted That He Would Be Missed.

Public Works Director Kim Thanked The Mayor For His Support

Finance Director Humphries Reported That As The Mayor Was Leaving, The City Was In Good Financial Standing With Sufficient Reserves. He Then Thanked The Mayor For His Support.

City Planner Ocasio Thanked The Mayor For His Service And Stated That It Had Been A Pleasure To Work With Him.

13. Items From City Council Members.

Council Member Davis Stated That Mayor Katen Had Done A Tremendous Job As Mayor.

Council Member Graham Coagulated Reserve Office Flores And Wished Him Well As He Travels Overseas For His Military Service. Graham Congratulated And Thanked Mayor Katen For His Service As Mayor.

Council Member Candea Stated That He Would Miss The Mayor And Wished Him Luck. Candea Then Wished Reserve Office Flores Luck As He Travels Overseas.

Council Member Martina Stated That It Had Been A Pleasure Working With Mayor Katen And Thanked Him For His Leadership. Martina Mentioned That It Was Evident That The Mayor Cares About Newman.

Mayor Katen Stated That He Had Worked Hard For The City Of Newman And Tried To Do What He Thought Was Best For The City. Katen Declared That It Was An Honor To Be Elected And Represent The City Of Newman. He Remarked That He Had Enjoyed His Time In Newman. Katen Introduced His Wife Deanne And Grandchildren Mia And Isabella And Indicated That He Is Moving To Be Closer To Family. Katen Reiterated That He Thoroughly Enjoyed Serving The City Of Newman. He Mentioned That His Last Official Day Would Be August 20, 2015 Which Will Mark Thirty-Six Years To The Day That He First Started Working For The City Of Newman On August 20, 1979.

14. Adjournment.

ACTION: On Motion By Candea Seconded By Martina And Unanimously Carried, The Meeting Was Adjourned At 7:31 P.M.

**ADOPT RESOLUTION NO. 2015- , A RESOLUTION APPROVING THE FILING OF THE
FINAL MAP FOR MATTOS RANCH**

RECOMMENDATION:

It is recommended that the Newman City Council adopt Resolution No. 2015- , A Resolution Approving The Filing Of The Final Map For Mattos Ranch

BACKGROUND:

On April 21, 2005, the Planning Commission recommended approval of Zone Change (ZC) No. 2004-01 and denial of Vesting Tentative Tract Map (VTTM) No. 04-03 to the City Council.

On June 27, 2006, the Newman City Council approved Ordinance No. 2006-2, rezoning the area known as Mattos Ranch from R-2/R-M (Duplex/Mobile Home) to P-D (Planned Development). Furthermore, on that same day, the City Council voted to approve the tentative map by overturning the action of the Newman Planning Commission regarding TM 04-03 via Resolution No. 2006-29.

A Development Agreement (DA) for the subdivision was approved by the City Council on September 9, 2008; a three-year extension to said DA was approved by the Council on June 9, 2015 (Ordinance No. 2015-3).

ANALYSIS:

The applicant, George Souza, has requested approval of Mattos Ranch Final Map (FM 13-01). Approval of the Final Map would confirm that all of the conditions set out in the approved VTTM have been satisfied and that the final map is in substantial conformance with the tentative map. Until the project's Final Map has been approved by City Council and recorded, lots within the subdivision cannot be sold and are not legal divisions of land. The map has been reviewed by the City Engineer for conformance and only requires some minor adjustments/corrections (which are being processed). If approved by the Council, the Final Map will not be recorded until said corrections have been addressed to the City Engineer's satisfaction.

FISCAL IMPACT:

None

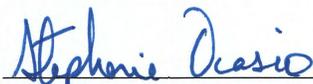
CONCLUSION:

Approval of the Final Map is the last step in formalizing the Mattos Ranch subdivision. Upon map filing, the applicant will be able to legally divide the lots and begin sales. Therefore, staff recommends that the Council adopt Resolution No. 2015- , A Resolution Approving The Filing Of The Final Map For Mattos Ranch.

ATTACHMENTS:

1. Resolution No. 2015- , A Resolution Approving The Filing Of The Final Map For Mattos Ranch.
2. Final Map for Mattos Ranch

Respectfully submitted,



Stephanie Ocasio
City Planner

REVIEWED/CONCUR



Michael Holland
City Manager

RESOLUTION NO. 2015-

A RESOLUTION APPROVING THE FILING OF THE FINAL MAP FOR MATTOS RANCH

WHEREAS, George Souza, the applicant for approval of a final map for MATTOS RANCH, having filed the final map with the City Clerk; and

WHEREAS, the Secretary of the Planning Commission, having examined the same and determined that said final map conforms with the tentative map and with the conditions and requirements imposed as a condition to acceptance of said tentative map; and

WHEREAS, the City Engineer having examined the same and determined that the subdivision as shown is substantially the same as it appeared on the tentative map, and all provisions of the law and of Ordinance No. 77-19 of the City of Newman applicable at the time of approval of the tentative map have been complied with; that said map conforms with the conditions and requirements imposed as a condition to acceptance of said tentative map and that said map is technically correct; and

WHEREAS, the City Council having considered said map at the time of subdivision and the offers of dedication; and

WHEREAS, the City Council finds and determines that said final map is in conformity to the requirements of Ordinance No. 77-19, as amended.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newman that the final map of MATTOS RANCH be and the same hereby is approved.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 25th day of August, 2015 by Council Member _____, who moved its adoption, which motion was duly seconded and it was upon roll call carried and the resolution adopted by the following vote:

AYES:
NOES:
ABSENT:

APPROVED:

Mayor

ATTEST:

City Clerk

OWNERS' STATEMENT :

WE, THE UNDERSIGNED, HEREBY STATE THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE OR INTEREST OF RECORD IN THE LAND SHOWN ON THIS FINAL MAP, AND WE CONSENT TO THE MAKING AND FILING OF THIS FINAL MAP IN THE OFFICE OF THE RECORDER OF STANISLAUS COUNTY, CALIFORNIA.

WE ALSO OFFER FOR DEDICATION TO THE PUBLIC FOR PUBLIC USE ALL THE STREETS, AVENUES, COURTS, ROADS AND EASEMENTS AND IN FEET LOT "A", AND OTHER PUBLIC PLACES AND DEDICATIONS AS SHOWN WITHIN THE EXTERIOR BOUNDARY OF THE LAND BEING DIVIDED. AND WE ALSO RELINQUISH ALL ACCESS RIGHTS TO AND FROM PRINCE ROAD AND TO PROPERTIES SOUTH OF THE BOUNDARY OF THIS SUBDIVISION (EXCEPT APPROVED ACCESS OPENINGS) ALL AS SHOWN ON THIS FINAL MAP.

OWNER : GEORGE J. SOUZA AND MARLENE M. SOUZA, TRUSTEES OF THE G. & M. SOUZA 2012 TRUST

DATED THIS ____ DAY OF _____, 20__.

GEORGE J. SOUZA, TRUSTEE

MARLENE M. SOUZA, TRUSTEE

CERTIFICATE OF DEDICATION:

THE FOLLOWING REAL PROPERTY IS DEDICATED BY GEORGE J. SOUZA AND MARLENE M. SOUZA AND G. & M. SOUZA 2012 TRUST, 2101 HOLLOWELL ROAD, NEWMAN, CA. 95360, FOR THE PURPOSE OF A STORM DRAINAGE PIPE LINE AND BASIN:

BEGINNING AT THE SOUTHEAST CORNER OF LOT "1" AS SHOWN ON CERTAIN MAP ENTITLED MATTOS ESTATES PHASE 1, FILED IN BOOK 55 OF PARCEL MAPS, PAGE 11, STANISLAUS COUNTY RECORDS; THENCE FOLLOWING THE EASTERLY LINE OF SAID LOT "1" NORTH 00°17'32" EAST, 234.00 FEET; THENCE NORTH 89°41'19" WEST, 234.00 FEET; THENCE LEAVING SAID EASTERLY LINE OF LOT "1" SOUTH 00°17'32" WEST, 234.00 FEET TO THE SOUTH LINE OF SAID LOT "1"; THENCE SOUTH 89°41'19" EAST, 234.00 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PROPERTY ALSO BEING SHOWN AS LOT "A" HEREON.

THE CITY OF NEWMAN SHALL RECONVEY THE PROPERTY TO THE SUBDIVIDER IF THE CITY OF NEWMAN MAKES A DETERMINATION PURSUANT TO GOVERNMENT CODE SECTION 66477.7 THAT THE SAME PUBLIC PURPOSE FOR WHICH THE PROPERTY WAS DEDICATED DOES NOT EXIST, OR THE PROPERTY OR ANY PORTION THEREOF IS NOT NEEDED FOR PUBLIC UTILITIES.

ACKNOWLEDGEMENT CERTIFICATE :

STATE OF CALIFORNIA
COUNTY OF _____

ON _____, BEFORE ME, _____, A
(DATE)
NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT

AND
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND,
_____, NOTARY PUBLIC
PRINT NAME:
COMMISSION EXPIRES: _____

CITY CLERK'S CERTIFICATE:

THIS IS TO CERTIFY THAT AT ITS REGULAR MEETING HELD ON THE ____ DAY OF _____, 2014, THE CITY COUNCIL OF THE CITY OF NEWMAN, COUNTY OF STANISLAUS, STATE OF CALIFORNIA, APPROVED THIS FINAL MAP AND ACCEPTED ON BEHALF OF THE PUBLIC FOR PUBLIC USE, THE STREETS, AVENUES, ROADS, EASEMENTS AND IN FEET LOT "A", AND OTHER PUBLIC PLACES AS SHOWN ON THIS FINAL MAP. SAID APPROVAL IS SUBJECT TO SATISFACTORY COMPLETION OF IMPROVEMENTS THEREON OF SAID STREET RIGHTS-OF-WAY AND LOT "A" IN ACCORDANCE WITH CITY OF NEWMAN ORDINANCES AND ANY AMENDMENTS THERETO, APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP.

DATED THIS ____ DAY OF _____, 20__.

MICHAEL HOLLAND
CITY CLERK, CITY OF NEWMAN

NOTE:

THE FOLLOWING SIGNATURES OF EASEMENT HOLDERS OF RECORD ARE OMITTED PURSUANT TO TITLE 7, DIVISION 2, CHAPTER 2, ARTICLE 2, SECTION 66436 (B)(1) OF THE GOVERNMENT CODE

1) AN EASEMENT FOR COUNTY ROAD AND RIGHTS INCIDENTAL THERETO IN FAVOR OF THE COUNTY OF STANISLAUS AS SET FORTH IN A DOCUMENT RECORDED APRIL 13, 1921, VOLUME 338 OF DEEDS, PAGE 74, AFFECTS PORTION OF SAID LAND.

CLERK OF THE BOARD OF SUPERVISORS' CERTIFICATE:

THIS IS TO CERTIFY THAT THE OWNERS OF THE PROPERTY SHOWN ON THE ACCOMPANYING MAP HAVE FILED WITH THE BOARD OF SUPERVISORS:
(CHECK ONE)

- A) A BOND OR DEPOSIT APPROVED BY SAID BOARD TO SECURE THE PAYMENT OF TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES, WHICH ARE AT THE TIME OF FILING THIS MAP, A LIEN AGAINST SAID PROPERTY OR ANY PART THEREOF.
- B) RECEIVED TAX BILL OR BILLS OR SUCH OTHER EVIDENCE AS MAY BE REQUIRED BY SAID BOARD SHOWING FULL PAYMENT OF ALL APPLICABLE TAXES.

DATED THIS ____ DAY OF _____, 20__.

CHRISTINE FERRARO TALLMAN,
CLERK OF THE BOARD OF SUPERVISORS

BY: _____ DEPUTY

CITY PLANNING COMMISSION'S CERTIFICATE:

THIS IS TO STATE THAT THIS SUBDIVISION MAP SUBSTANTIALLY CONFORMS TO THE TENTATIVE MAP AND ACTION TAKEN THEREON BY THE CITY OF NEWMAN PLANNING COMMISSION AT A REGULAR MEETING HELD ON JUNE 13, 2008.

DATED THIS ____ DAY OF _____, 20__.

SECRETARY, PLANNING COMMISSION

TAX COLLECTOR'S CERTIFICATE:

THIS IS TO CERTIFY THAT THERE ARE NO LIENS FOR ANY UNPAID STATE, COUNTY, SCHOOL, MUNICIPAL, OR SPECIAL ASSESSMENTS, EXCEPT SPECIAL ASSESSMENTS OR TAXES NOT YET PAYABLE AGAINST THE LAND SHOWN ON THIS MAP.

APN: 028-016-048-000

AS TO STATE, COUNTY, SCHOOL, OR MUNICIPAL TAXES:

GORDON B. FORD,
COUNTY TAX COLLECTOR

DATE: _____ BY: _____
DEPUTY

IMPROVEMENT AGREEMENT STATEMENT:

THIS FINAL MAP IS SUBJECT TO THE PROVISIONS OF A PARCEL MAP IMPROVEMENT AGREEMENT RECORDED ON MARCH 22, 2002, AS DOCUMENT NUMBER 2002-0037217, STANISLAUS COUNTY RECORDS.

SURVEYOR'S STATEMENT :

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF GEORGE J. & MARLENE M. SOUZA, TRUSTEES OF THE G. & M. SOUZA 2012 TRUST IN JULY, 2013. I HEREBY STATE THAT THIS SUBDIVISION MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP. IF ANY, ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR WILL BE SET ON OR BEFORE APRIL 2017 OR OR APPROVED EXTENSION THEREOF AND THAT SAID MONUMENTS WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATED THIS ____ DAY OF _____, 20__.

DAVID L. HARRIS, L.S. 5443



CITY ENGINEER'S STATEMENT :

I HAVE EXAMINED THIS FINAL MAP; THAT THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP; AND ANY APPROVED ALTERATIONS THEREOF. ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND OF THE MUNICIPAL CODE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

DATED THIS ____ DAY OF _____, 20__.

MARIO B. GOUVEIA, R.C.E. C53261
CITY ENGINEER

CITY LAND SURVEYOR'S STATEMENT :

I HEREBY STATE THAT I HAVE EXAMINED THIS PARCEL MAP AND I AM SATISFIED THAT THE MAP IS TECHNICALLY CORRECT.

DATED THIS ____ DAY OF _____, 20__.

RYAN SCHIESS, P.L.S. 8366

RECORDER'S STATEMENT :

FILED THIS ____ DAY OF _____, 20__ AT ____ M.
IN BOOK ____ OF MAPS, AT PAGE ____ AT THE
REQUEST OF DAVID L. HARRIS.

FEES: \$ _____

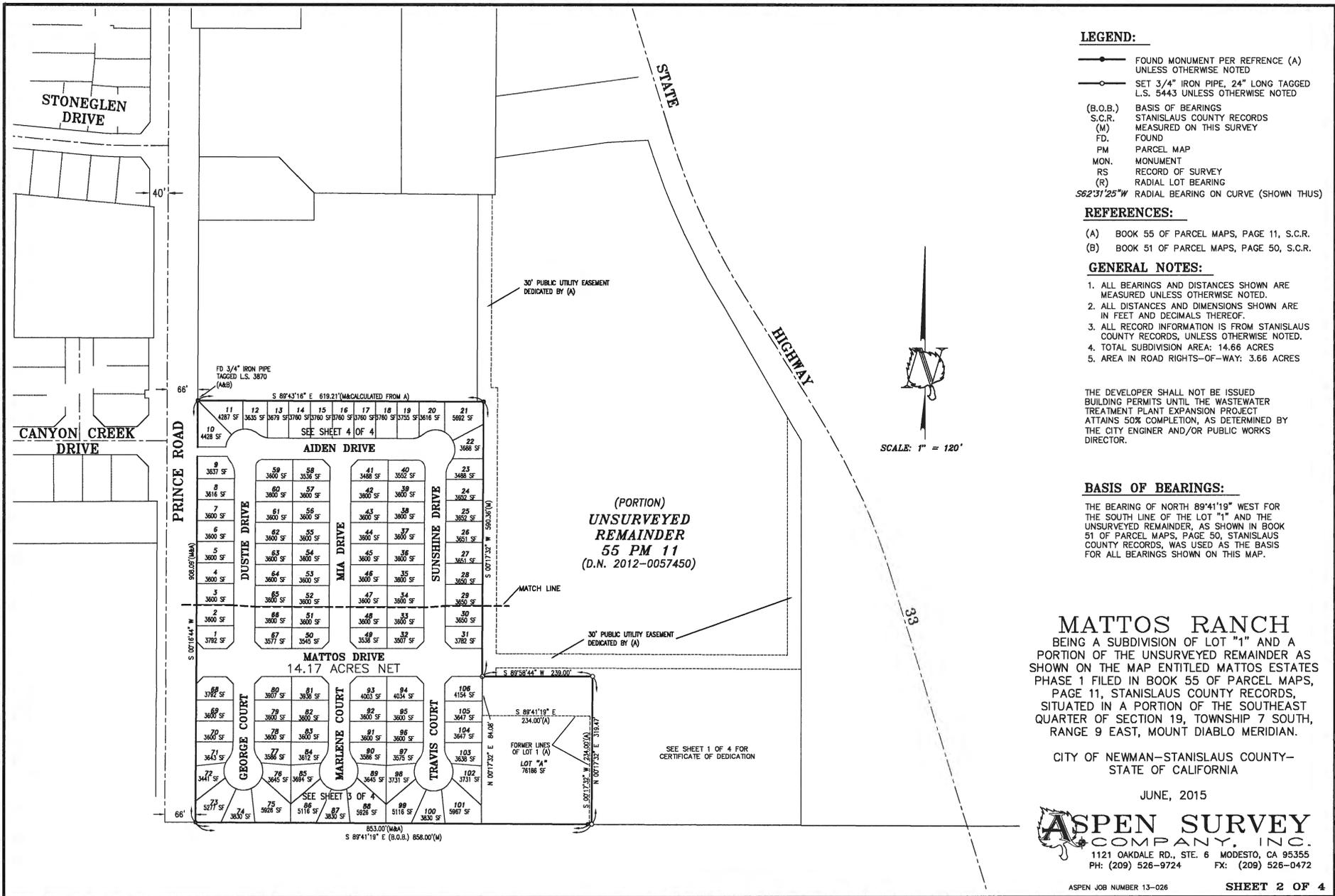
LEE LUNDRIGAN, ASSISTANT/DEPUTY RECORDER
CLERK RECORDER

MATTOS RANCH

BEING A SUBDIVISION OF OF LOT "1" AND A ORTION OF THE UNSURVEYED REMAINDER AS SHOWN ON THE MAP ENTITLED MATTOS ESTATES PHASE 1 FILED IN BOOK 55 OF PARCEL MAPS, PAGE 11 STANISLAUS COUNTY RECORDS, SITUATED IN A PORTION OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 7 SOUTH, RANGE 9 EAST, MOUNT DIABLO MERIDIAN

CITY OF NEWMAN-STANISLAUS COUNTY
STATE OF CALIFORNIA
JUNE, 2015





(PORTION)
**UNSURVEYED
 REMAINDER**
55 PM 11
 (D.N. 2012-0057450)



TO 3/4" IRON PIPE TAGGED L.S. 3870 (A&B)

S 89°43'16" E 619.21' (MACALCULATED FROM A)

SEE SHEET 4 OF 4

11 4287 SF	12 3635 SF	13 3679 SF	14 3760 SF	15 3760 SF	16 3760 SF	17 3760 SF	18 3755 SF	19 3616 SF	20 5992 SF	21 5992 SF
10 4428 SF	AIDEN DRIVE									22 3688 SF
9 3637 SF	59 3600 SF	58 3536 SF	41 3488 SF	40 3522 SF	23 3488 SF					
8 3616 SF	60 3600 SF	57 3600 SF	42 3600 SF	39 3600 SF	24 3652 SF					
7 3600 SF	61 3600 SF	56 3600 SF	43 3600 SF	38 3600 SF	25 3652 SF					
6 3600 SF	62 3600 SF	55 3600 SF	44 3600 SF	37 3600 SF	26 3651 SF					
5 3600 SF	63 3600 SF	54 3600 SF	45 3600 SF	36 3600 SF	27 3651 SF					
4 3600 SF	64 3600 SF	53 3600 SF	46 3600 SF	35 3600 SF	28 3650 SF					
3 3600 SF	65 3600 SF	52 3600 SF	47 3600 SF	34 3600 SF	29 3650 SF					
2 3600 SF	66 3600 SF	51 3600 SF	48 3600 SF	33 3600 SF	30 3650 SF					
1 3782 SF	67 3577 SF	50 3545 SF	49 3538 SF	32 3507 SF	31 3782 SF					
MATTOS DRIVE 14.17 ACRES NET										
68 3782 SF	69 3600 SF	61 3636 SF	93 4500 SF	84 4034 SF	106 4194 SF					
69 3680 SF	70 3600 SF	62 3600 SF	80 3600 SF	85 3600 SF	105 3647 SF					
70 3600 SF	71 3645 SF	63 3600 SF	81 3600 SF	86 3600 SF	104 3647 SF					
71 3645 SF	72 3447 SF	64 3612 SF	82 3586 SF	87 3575 SF	103 3638 SF					
72 3447 SF	73 3277 SF	65 3694 SF	83 3731 SF	88 3731 SF	102 3731 SF					
73 3277 SF	74 3630 SF	66 3645 SF	89 3645 SF	86 3645 SF	101 3630 SF					
74 3630 SF	75 5928 SF	67 5116 SF	87 3830 SF	88 5928 SF	100 3630 SF					
75 5928 SF	76 5116 SF	68 3830 SF	89 5116 SF	89 5116 SF	101 5967 SF					

653.00'(M&A)
 S 89°41'19" E (B.O.B.) 858.00'(M)

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	42.00	123.80	83.59	N 45°16'47" E	168°36'25"
C2	42.00	28.81	28.25	N 70°04'08" W	39°18'15"
C3	42.00	28.81	28.25	S 70°37'39" W	39°18'10"
C4	42.00	23.99	23.59	S 44°43'10" E	168°36'25"
C5	42.00	28.81	28.25	N 19°55'49" E	39°18'10"
C6	42.00	28.81	28.25	S 19°22'21" E	39°18'10"
C7	42.00	28.81	28.25	S 19°55'49" W	39°18'10"
C8	42.00	28.81	28.25	N 19°22'21" W	39°18'10"
C9	42.00	189.57	65.00	N 89°43'16" W	258°36'20"
C10	42.00	11.35	11.29	N 31°17'50" W	192°7'11"
C11	42.00	20.50	20.30	N 03°05'08" W	27°58'12"
C12	42.00	29.97	29.33	N 24°50'21" E	40°52'48"
C13	42.00	27.66	27.17	N 64°08'55" E	37°44'21"
C14	42.00	34.13	33.20	S 73°41'59" E	46°33'54"
C15	42.00	48.96	48.23	N 84°22'12" E	66°47'16"
C16	42.00	25.38	25.00	S 44°55'18" E	34°37'48"
C17	42.00	40.76	39.18	S 00°11'51" W	55°36'31"
C18	42.00	8.49	8.47	S 33°47'50" W	113°34'48"
C19	42.00	10.01	9.98	S 32°11'57" E	13°38'59"
C20	42.00	33.34	32.47	S 02°37'55" E	452°29'04"
C21	42.00	33.38	32.52	S 42°33'05" W	45°32'57"
C22	42.00	33.84	32.93	S 88°44'29" W	49°09'52"
C23	42.00	33.91	33.00	N 45°02'36" W	46°15'53"
C24	42.00	35.89	34.92	N 02°25'50" E	48°41'03"
C25	42.00	9.39	9.37	N 33°10'36" E	17°48'32"
C26	42.00	34.37	33.41	N 01°31'44" E	46°52'50"
C27	42.00	10.71	10.68	N 32°16'31" E	14°36'48"
C28	15.00	23.58	21.21	N 85°17'59" W	31°45'17"
C29	15.00	23.58	21.21	S 44°43'18" E	90°00'00"
C30	42.00	5.53	5.53	N 85°56'47" W	07°32'59"
C31	42.00	17.60	17.47	N 86°17'59" W	31°45'17"
C32	42.00	17.60	17.47	S 78°16'23" W	24°00'42"
C33	42.00	11.21	11.18	S 58°37'18" W	15°17'28"



SCALE: 1" = 60'

LINE	BEARING	DISTANCE
L1	S 00°16'44" W	11.33
L2	S 00°16'44" W	9.98
L3	N 00°16'44" E	10.09
L4	N 00°16'44" E	9.34
L5	N 45°07'44" E	21.16
L6	S 44°52'16" E	21.27
L7	N 45°07'44" E	21.23
L8	S 45°07'44" W	21.16
L9	S 44°43'16" E	21.21
L10	N 45°16'44" E	21.21
L11	S 44°52'16" E	21.19
L12	N 00°16'44" E	11.78

LEGEND:

- FOUND MONUMENT PER REFERENCE (A) UNLESS OTHERWISE NOTED
- SET 3/4" IRON PIPE, 24" LONG TAGGED L.S. 5443 UNLESS OTHERWISE NOTED
- SET 3/4" IRON PIPE, 24" LONG TAGGED L.S. 5443 UNLESS IN MONUMENT WELL
- T— SET 1/2" IRON PIPE, 24" LONG TAGGED L.S. 5443 AT EACH LOT CORNER UNLESS NOTED
- M— MONUMENT SET AS WITNESS CORNER
- R— 1/2" IRON PIPE 24" LONG TAGGED L.S.5443 SET 6 FEET NORTHERLY ALONG THE LOT LINE UNLESS OTHERWISE NOTED

- (B.O.B.) BASIS OF BEARINGS
 S.C.R. STANISLAUS COUNTY RECORDS
 (M) MEASURED ON THIS SURVEY
 FD. FOUND
 PM PARCEL MAP
 MON. MONUMENT
 RS RECORD OF SURVEY
 (R) RADIAL LOT BEARING
 S62°31'25" W RADIAL BEARING ON CURVE (SHOWN THUS)

REFERENCES:

- (A) BOOK 55 OF PARCEL MAPS, PAGE 11, S.C.R.
- (B) BOOK 51 OF PARCEL MAPS, PAGE 50, S.C.R.

GENERAL NOTES:

1. ALL BEARINGS AND DISTANCES SHOWN ARE MEASURED UNLESS OTHERWISE NOTED.
2. ALL DISTANCES AND DIMENSIONS SHOWN ARE IN FEET AND DECIMALS THEREOF.
3. ALL RECORD INFORMATION IS FROM STANISLAUS COUNTY RECORDS, UNLESS OTHERWISE NOTED.
4. TOTAL SUBDIVISION AREA: 14.66 ACRES
5. AREA IN ROAD RIGHTS-OF-WAY: 3.66 ACRES

THE DEVELOPER SHALL NOT BE ISSUED BUILDING PERMITS UNTIL THE WASTEWATER TREATMENT PLANT EXPANSION PROJECT ATTAINS 50% COMPLETION, AS DETERMINED BY THE CITY ENGINEER AND/OR PUBLIC WORKS DIRECTOR.

BASIS OF BEARINGS:

THE BEARING OF NORTH 89°41'19" WEST FOR THE SOUTH LINE OF THE LOT "1" AND THE UNSURVEYED REMAINDER, AS SHOWN IN BOOK 51 OF PARCEL MAPS, PAGE 50, STANISLAUS COUNTY RECORDS, WAS USED AS THE BASIS FOR ALL BEARINGS SHOWN ON THIS MAP.

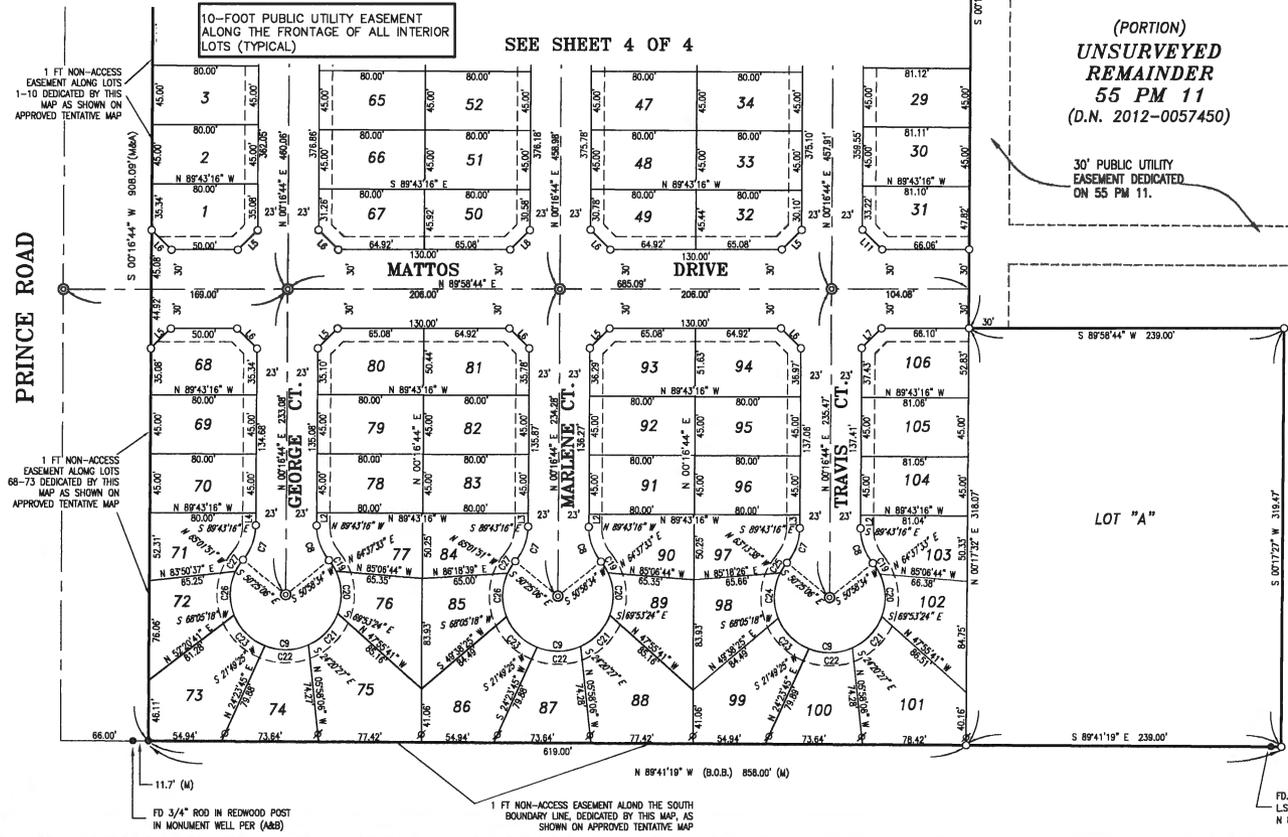
MATTOS RANCH
 BEING A SUBDIVISION OF LOT "1" AND A PORTION OF THE UNSURVEYED REMAINDER AS SHOWN ON THE MAP ENTITLED MATTOS ESTATES, PHASE 1 FILED IN BOOK 55 OF PARCEL MAPS, PAGE 11, STANISLAUS COUNTY RECORDS, SITUATED IN A PORTION OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 7 SOUTH, RANGE 9 EAST, MOUNT DIABLO MERIDIAN.

CITY OF NEWMAN—STANISLAUS COUNTY—
 STATE OF CALIFORNIA

JUNE 2015
ASPEN SURVEY
 COMPANY, INC.
 1121 OAKDALE RD., STE. 6 MODESTO, CA 95355
 PH: (209) 526-9724 FX: (209) 526-0472

ASPEN JOB NUMBER 13-026

SHEET 3 OF 4



(PORTION)
**UNSURVEYED
 REMAINDER
 55 PM 11**
 (D.N. 2012-0057450)

30' PUBLIC UTILITY
 EASEMENT DEDICATED
 ON 55 PM 11.

LOT "A"

FD. 3/4" IRON PIPE
 L.S.5443 PER (A)
 N 89°41'19" W 5.00'

21 RS 48

LEGEND:

- FOUND MONUMENT PER REFERENCE (A) UNLESS OTHERWISE NOTED
- SET 3/4" IRON PIPE, 24" LONG TAGGED L.S. 5443 UNLESS OTHERWISE NOTED
- SET 3/4" IRON PIPE, 24" LONG TAGGED L.S. 5443 UNLESS IN MONUMENT WELL
- T— SET 1/2" IRON PIPE, 24" LONG TAGGED L.S. 5443 AT EACH LOT CORNER
- +— MONUMENT SET AS WITNESS CORNER
- +— 1/2" IRON PIPE 24" LONG TAGGED L.S.5443 SET 4 FEET SOUTHERLY ALONG THE LOT LINE UNLESS OTHERWISE NOTED

- (B.O.B.) BASIS OF BEARINGS
 - S.C.R. STANISLAUS COUNTY RECORDS
 - (M) MEASURED ON THIS SURVEY
 - FD. FOUND
 - PM PARCEL MAP
 - MON. MONUMENT
 - RS RECORD OF SURVEY
 - (R) RADIAL BEARING
- 562°31'25"W RADIAL BEARING ON CURVE (SHOWN THUS)

REFERENCES:

- (A) BOOK 55 OF PARCEL MAPS, PAGE 11, S.C.R.
- (B) BOOK 51 OF PARCEL MAPS, PAGE 50, S.C.R.

GENERAL NOTES:

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BASIS OF BEARINGS:

THE BEARING OF NORTH 89°41'19" WEST FOR THE SOUTH LINE OF THE LOT "1" AND THE UNSURVEYED REMAINDER, AS SHOWN IN BOOK 51 OF PARCEL MAPS, PAGE 50, STANISLAUS COUNTY RECORDS, WAS USED AS THE BASIS FOR ALL BEARINGS SHOWN ON THIS MAP.

MATTOS RANCH
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CITY OF NEWMAN—STANISLAUS COUNTY—STATE OF CALIFORNIA

JUNE, 2015

ASPEN SURVEY
COMPANY, INC.
1121 OAKDALE RD., STE. 6 MODESTO, CA 95355
PH: (209) 526-8724 FX: (209) 526-0472

ASPEN JOB NUMBER 13-026

SHEET 4 OF 4

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	42.00'	123.60'	83.59'	N 49°16'42" E	168°36'25"
C2	42.00'	28.81'	28.25'	N 70°04'06" W	39°18'15"
C3	42.00'	28.81'	28.25'	S 70°37'59" W	39°18'10"
C4	42.00'	123.59'	83.59'	S 44°43'16" E	168°36'20"
C5	42.00'	28.81'	28.25'	N 19°55'46" E	39°18'10"
C6	42.00'	28.81'	28.25'	S 19°22'21" E	39°18'10"
C7	42.00'	28.81'	28.25'	S 19°55'46" W	39°18'10"
C8	42.00'	28.81'	28.25'	N 19°22'21" W	39°18'10"
C9	42.00'	189.57'	85.00'	N 89°43'16" W	256°36'20"
C10	42.00'	11.33'	11.29'	N 31°17'50" W	152°27'11"
C11	42.00'	20.50'	20.30'	N 09°35'08" W	27°58'12"
C12	42.00'	29.97'	29.33'	N 24°50'21" E	40°52'46"
C13	42.00'	27.88'	27.17'	N 64°08'55" E	37°44'21"
C14	42.00'	34.13'	33.20'	S 72°41'59" E	48°33'54"
C15	42.00'	48.96'	46.23'	N 84°22'12" E	66°47'16"
C16	42.00'	25.38'	25.00'	S 44°55'18" E	34°37'46"
C17	42.00'	40.76'	39.18'	S 00°11'51" W	55°36'31"
C18	42.00'	8.49'	8.47'	S 33°47'50" W	11°34'48"
C19	42.00'	10.01'	9.98'	S 32°11'57" E	13°38'56"
C20	42.00'	33.34'	32.27'	S 02°37'55" E	45°29'04"
C21	42.00'	33.39'	32.52'	S 42°53'05" W	45°32'57"
C22	42.00'	33.84'	32.93'	S 88°44'28" W	46°09'52"
C23	42.00'	33.81'	33.00'	N 49°02'38" W	46°15'53"
C24	42.00'	35.68'	34.62'	N 02°25'50" E	48°41'03"
C25	42.00'	9.39'	9.37'	N 33°10'36" E	12°48'32"
C26	42.00'	34.37'	33.41'	N 01°31'44" E	46°52'50"
C27	42.00'	13.71'	10.68'	N 32°13'31" E	14°36'45"
C28	15.00'	23.58'	21.21'	N 49°16'44" E	90°00'00"
C29	15.00'	23.56'	21.21'	S 44°43'16" E	90°00'00"
C30	42.00'	5.53'	5.53'	N 85°58'47" W	07°32'59"
C31	42.00'	23.28'	22.98'	N 68°17'59" W	31°45'17"
C32	42.00'	17.60'	17.47'	S 78°16'23" W	24°00'42"
C33	42.00'	11.21'	11.18'	S 58°37'18" W	15°17'28"

(PORTION)
**UNSURVEYED
REMAINDER
55 PM 11**
(D.N. 2012-0057450)

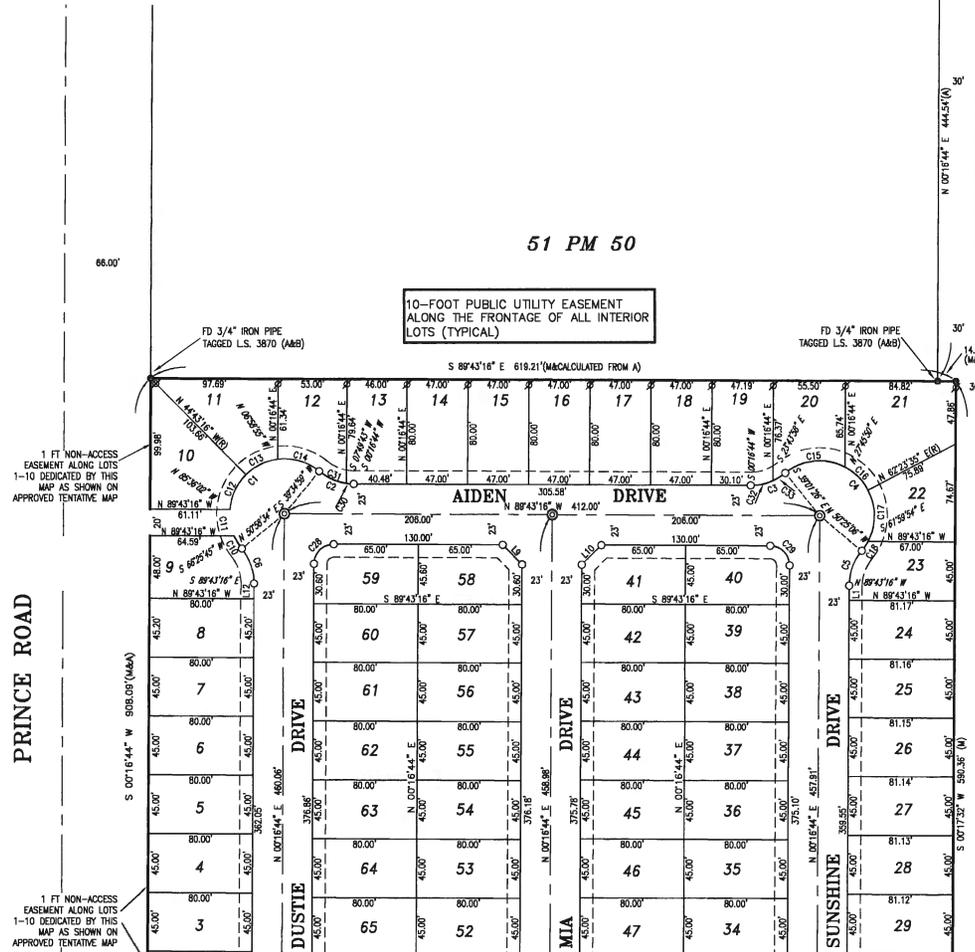
LINE	BEARING	DISTANCE
L1	S 00°16'44" W	11.33'
L2	S 00°16'44" W	9.98'
L3	N 00°16'44" E	10.09'
L4	N 00°16'44" E	9.34'
L5	N 45°07'44" E	21.16'
L6	S 44°52'16" E	21.27'
L7	N 45°07'44" E	21.23'
L8	S 45°07'44" W	21.16'
L9	S 44°43'16" E	21.21'
L10	N 45°16'44" E	21.21'
L11	S 44°52'16" E	21.19'
L12	N 00°16'44" E	11.76'

SCALE: 1" = 60'



51 PM 50

10-FOOT PUBLIC UTILITY EASEMENT ALONG THE FRONTAGE OF ALL INTERIOR LOTS (TYPICAL)



SEE SHEET 3 OF 3

PRINCE ROAD

1 FT NON-ACCESS EASEMENT ALONG LOTS 1-10 DEDICATED BY THIS MAP AS SHOWN ON APPROVED TENTATIVE MAP

1 FT NON-ACCESS EASEMENT ALONG LOTS 1-10 DEDICATED BY THIS MAP AS SHOWN ON APPROVED TENTATIVE MAP

66.00'

N 00°16'44" E 44.25'(A)

14.00' (MBA)

30' PUBLIC UTILITY EASEMENT DEDICATED ON 55 PM 11.

S 00°17'32" W 59.25' (M)

**HOLD A PUBLIC HEARING AND APPROVE A RESOLUTION AUTHORIZATING THE CITY
MANAGER TO EXECUTE A POWER PURCHASE AGREEMENT WITH SOLAR CITY
CORPORATION FOR A SOLAR PROJECT**

RECOMMENDATION:

It is recommended that City Council:

1. Hold a public hearing regarding entering into a 20-year solar power service agreement.
2. Adopt a resolution No. 2015- , Approving a 20-year Solar Power Purchase Agreement (PPA) with Solar City Corporation (Solar City) and Authorize the City Manager to execute the agreement and associated documents.

BACKGROUND:

Energy costs are continually increasing from year to year. Over the long term, these increases can become a significant burden to our City finances. Under our first solar project at our Waste Water Treatment Facility, the City entered into a 20 year Purchase Power Agreement with Solar City under a Net-metering program. To take advantage of a Net-metering program, the Solar Facility must be located near the meter it is offsetting. Our energy costs from this first solar project are fixed at a low rate for the next 20 years. It is estimated that our first facility will reduce our energy costs during the first year of operation by about \$100,000.

ANALYSIS:

This newly proposed second project differs slightly from the first solar project. This proposed second project focuses on building a second solar array to power the majority of the remaining time-of-use meters, located throughout the City, under a Renewable Energy Self-Generation Bill Credit Transfer (RES-BCT) program. This program allows the City to generate credits from the second solar panel array and use the credits to offset the energy bills from up to 50 meters located throughout the City. These meters include our City Hall, Police Department, City wells, to name a few. The City gets to select which energy bills will be offset by these credits. The City can, over the years, change which meters we want to offset should new higher use meters be added to the City's bills.

The City has reviewed two feasibility studies on Solar Power; one from Borrego Solar and one from Solar City. Of the two RES-BCT feasibility studies that were reviewed, City staff has found that Solar City's 20-year Power Purchase Agreement (PPA) program was the better option. As part of the feasibility study, Solar City completed an audit of the City's energy use across all of the City's facilities and provided the City with a detailed energy saving plan. Solar City had a lower cost per kilo-watt between the two studies (\$0.081/kWh vs \$0.11/kWh). Staff also believes that it's in the City's best interest to have Solar City manage both of our solar facilities.

Solar City is a large, publicly traded company dealing primarily in residential and commercial sized solar energy systems and has a successful history working with other public agencies. The proposed solar project presents the City with a second opportunity to control and lower energy costs across the City.

The proposed solar project would be located at the newly acquired property at the intersection of Canal School Road and Inyo (Souza Property) and offers several benefits to the City:

- The solar panel system generates low cost electricity during PG&E's highest peak-rate periods.
- The City will fix a portion of their energy costs at a low rate (\$0.081 kWh) for 20-years; while PG&E's costs will most likely continue to rise over time.
- The City can change which meters it wishes to offset. Allowing the City to maximize its savings.
- The solar project benefits sites that are otherwise space constrained or too small on their own.
- The City will not own the solar panel system and will not be responsible for any costs associated with the construction or operation and maintenance of the panels or equipment.
- The PPA includes a Performance Guarantee Agreement; which guarantees a proposed saving regardless of weather conditions and/or system underperformance issues during the contract period.
- The project is environmentally friendly; shows the City is working towards using clean energy.

The City currently spends approximately \$299,593/yr. on energy across the selected meters in the City. The newly proposed project would provide the City an excellent opportunity to realize energy savings estimated at \$74,000k in the first year (nearly 25% reduction). As PG&E's rates rise in the future, our rates will remain fixed and the savings will be greater.

Upon approval of this agreement Solar City will begin a more in depth analysis of our proposed installation location and begin a more detailed design of the project. Just prior to construction, if it is determined that too many improvements are needed, such that the purchase price of the solar energy would increase, the City may walk away from the project at no cost to the City.

Once the facility has been in operation for 20 years, at the end of the contract period, the City has several options including: extending the agreement, buying out SolarCity at the fair market value, or having Solar City remove the solar facility, at no cost to the City.

FISCAL IMPACT:

Total expected General Fund saving during the first year is \$74,233. Over the 20 year life of the project it is expected to save the City between \$1.4M and \$3.2M.

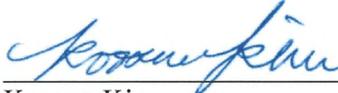
CONCLUSION:

The proposed Power Purchase Agreement provides the City another excellent opportunity to show our efforts to be environmentally friendly, while realizing a real cost savings and keeping our utility costs as low as possible. There are safeguards built into the project to protect the City financially, prior to construction and throughout the projects life. The City does not have to pay for any improvements or construction on the property. We only pay for the power the solar panels produce.

ATTACHMENTS:

1. Resolution No. 2015- , Approving a 20-year Power Purchase Agreement (PPA) with Solar City for the Solar Project and Authorize the City Manager to execute Associated Documents
2. Solar City Power Purchase Agreement

Respectfully Submitted,



Koosun Kim
Director of Public Works

REVIEWED/CONCUR:



Michael E. Holland
City Manager

RESOLUTION NO. 2015-

APPROVING A 20-YEAR SOLAR POWER PURCHASE AGREEMENT WITH SOLAR CITY CORPORATION AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT AND ASSOCIATED DOCUMENTS

WHEREAS, the CITY OF NEWMAN, herein after referred as "CITY" and SOLARCITY CORPORATION, herein after referred as "SOLARCITY" have recognized an opportunity on energy cost savings and other benefits from entering into energy service agreement for the proposed solar project; and

WHEREAS, the City held a public hearing on August 25, 2015 as noticed, to allow the City Council to hear and consider all protests and objections concerning the proposed solar project; and

WHEREAS, Said project focuses on building a solar array to power the majority of the time-of-use meters in the City under a Renewable Energy Self-Generation Bill Credit Transfer (RES-BCT) program; and

WHEREAS, Said project will generate credits with PG&E at the generation source at a "generating account" meter. Those credits can be allocated by the city to offset 29 meters, known as "benefitting accounts"; and

WHEREAS, City staff has reviewed two feasibility studies for solar project and found that SolarCity's 20-year Power Purchase Agreement (PPA) program is the most economically feasible option; and

WHEREAS, the proposed PPA would authorize the City to fix a portion of their energy costs at a low rate (\$0.081 kWh) for 20-years while PG&E's costs will most likely continue to rise over time; and

WHEREAS, the City desires to approve the PPA, attached as Exhibit A to this resolution, which will be executed for the solar project; and

WHEREAS, the City will bear no upfront capital cost for design and installation of the solar system under the proposed PPA; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newman that;

1. Approve a 20-year Power Purchase Agreement (PPA) with SolarCity for the solar project
2. Authorize the City Manager to execute the PPA and associated documents

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 25th day of August, 2015 by _____, who moved its adoption, which motion was duly seconded and it was upon roll call carried and the resolution adopted by the following roll call vote:

AYES:
NOES:
ABSENT:

APPROVED:

ATTEST:

Mayor of the City of Newman

City Clerk of the City of Newman

EXHIBIT "A"



Solar Power Purchase Agreement (Commercial CA)

This Solar Power Purchase Agreement (this "Agreement") is entered into by the parties listed below (each a "Party" and collectively the "Parties") as of the date signed by both Parties and approved by the City Council for the City of Newman (the "Effective Date").

Purchaser:		Seller:	
Name and Address	City of Newman 938 Fresno Street Newman, CA 95360 Attention: Koosun Kim, Public Works Director	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(209) 862-4448	Phone	(650) 638-1028
Fax		Fax	(650) 560-6460
E-mail	kkim@cityofnewman.com	E-mail	Contracts@solarcity.com
Facility Ownership	Purchaser owns the Facility		Contractor's License Numbers CA: CSLB 888104
Project Name	Newman RES-BCT Solar Project		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the "System") and installed at the Purchaser's facility described in **Exhibit 2** (the "Facility").

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

- Exhibit 1 Pricing Attachment
- Exhibit 2 System Description, Delivery Point and Premises
- Exhibit 3 Reserved
- Exhibit 4 General Terms and Conditions (*Revised January 17, 2013*)

City of Newman

SolarCity Corporation

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit 1
Pricing Attachment

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to two (2) Additional Terms of five (5) years each.
3. **Environmental Incentives and Environment Attributes Accrue to Seller.**
4. **Contract Price:**

Contract Year	\$/kWh
1	\$0.0810
2	\$0.0810
3	\$0.0810
4	\$0.0810
5	\$0.0810
6	\$0.0810
7	\$0.0810
8	\$0.0810
9	\$0.0810
10	\$0.0810
11	\$0.0810
12	\$0.0810
13	\$0.0810
14	\$0.0810
15	\$0.0810
16	\$0.0810
17	\$0.0810
18	\$0.0810
19	\$0.0810
20	\$0.0810

Includes ACH invoicing. If manual invoicing is required, a \$25 handling charge will be added to each invoice.

5. **Condition Satisfaction Date:** 270 days after the Effective Date
6. **Anticipated Commercial Operation Date:** 365 days after the Effective Date
7. **Outside Commercial Operation Date:** 455 days after the Effective Date
8. **Purchase Option:**

End of Contract Year	Option Price*
Buyout after year 6	\$1,422,638
Buyout after year 10	\$1,276,770
Buyout after year 20	Fair Market Value

* Higher of Fair Market Value of System or amount specified.

9. Termination Value:

Contract Year	Termination Value
1	\$2,714,408
2	\$2,376,823
3	\$1,930,870
4	\$1,578,624
5	\$1,281,928
6	\$979,302
7	\$887,379
8	\$839,516
9	\$789,720
10	\$737,893
11	\$683,932
12	\$627,727
13	\$569,163
14	\$508,121
15	\$444,475
16	\$378,092
17	\$308,832
18	\$236,550
19	\$161,093
20	\$82,299

10. Rebate Variance: All prices in this Agreement are calculated based on an upfront rebate of \$0. If the actual rebate is lower than calculated, prices will be adjusted pro-rata to reflect the actual rebate received.

Exhibit 2

System Description, Delivery Point and Premises

1. **System Location (Premises):** 2600 Hills Ferry Road, Newman, California 95360

2. **System Size (DC kW):** 703.08 kW

3. **Expected First Year Energy Production (kWh):** 1,173,162

4. **Expected Structure:** Ground Mount

5. **Includes:**

SolarCity Limited Warranty, installation of a solar energy system (includes: design, engineering, permitting, installation, monitoring, rebate application and paperwork processing for solar energy system), **prevailing wage construction**, upgrades or repair to customer or Utility electrical infrastructure and fencing to be erected around the System. Upgrades and costs with PG&E are unknown, price may be adjusted up to \$0.090/kWh. SolarCity acknowledges that the System will be located in a 100-year flood plain and has taken that fact into account in its design. If the Parties cannot reach agreement, Seller may terminate this Agreement without penalty within 30 days of confirmation of the upgrade cost.

6. **Excludes:**

Unforeseen groundwork (including, but not limited to, excavation/circumvention of underground obstacles), payment bonds, performance bonds, tree removal, tree trimming, mowing. “**Utility**” means the entity authorized to provide Purchaser with retail electric service.

7. **Delivery Point and Premises:** SolarCity shall attach a schematic that contains the:

(i) Facility;

(ii) array;

(iii) Delivery Point; and

(iv) access points needed to install and service System (bldg access, electrical room, stairs etc.).

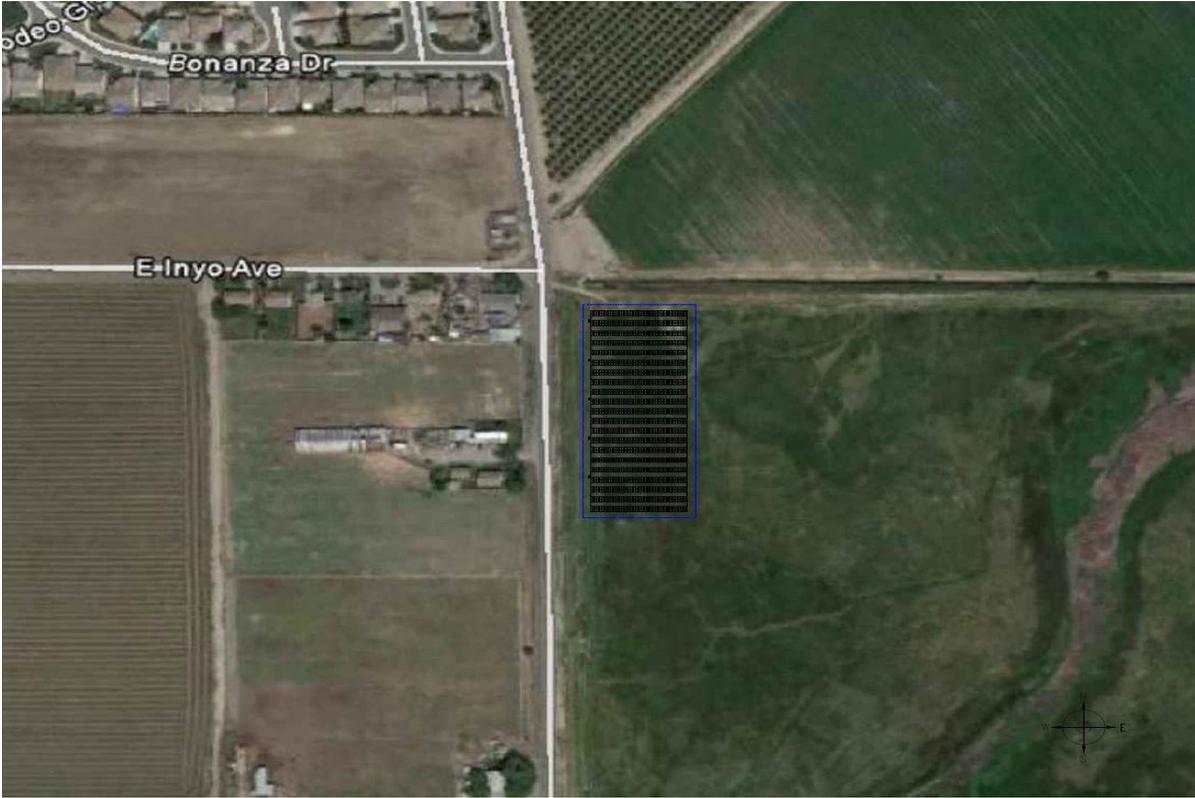


Exhibit 3

Reserved

Exhibit 4

Solar Power Purchase Agreement General Terms and Conditions

Revised January 17, 2013

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the “**Term**”). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (the “**Delivery Point**”). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy for the Facility from other sources if the Purchaser's electric requirements at the Facility exceed the output of the System.

3. **Term and Termination.**
 - a. **Initial Term.** The initial term (“**Initial Term**”) of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The “**Commercial Operation Date**” is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Upon Purchaser’s request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller’s contractor and the interconnection or similar agreement with the Utility. This Agreement is effective as of the Effective Date and Purchaser’s failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser’s obligations to make payments that otherwise would have been due under this Agreement.

 - b. **Additional Terms.** If Purchaser has not exercised its option to purchase the System by the end of the Initial Term, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each an “**Additional Term**”). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party’s offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.

4. **Billing and Payment.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the “**Contract Price**”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.

 - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.

- c. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system, including property taxes on the System; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Purchaser due to the action or omission of Seller. For purposes of this Section 4(d), "Taxes" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.
- d. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the Prime Rate (but not to exceed the maximum rate permitted by law).

5. **Environmental Attributes and Environmental Incentives.**

Unless otherwise specified on **Exhibit 1**, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy pursuant to this Agreement and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

"**Environmental Incentives**" means any and credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

"**Governmental Authority**" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the California Public Utilities Commission), or any arbitrator with authority to bind a party at law.

"**Tax Credits**" means any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

6. Conditions to Obligations.

a. Conditions to Seller's Obligations.

Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction on or before the Condition Satisfaction Date:

- i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the "**Premises**") including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
- ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller's Financing Parties. "**Construction Agreement**" as used in this subsection means an agreement between SolarCity and a subcontractor to install the System;
- iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits;
- v. Execution of all necessary agreements with the Utility for interconnection of the System to the Utility's electric distribution system; and
- vi. Prior to Seller commencing construction and installation of the System, Purchaser shall give Seller proof of insurance for all insurance required to be maintained by Purchaser under this Agreement.

b. Conditions to Purchaser's Obligations.

- i. Purchaser's obligations under this Agreement are conditioned on the occurrence of the Commercial Operation Date for the System on or before the Outside Commercial Operation Date (*See **Exhibit 1***).

c. Failure of Conditions.

If any of the conditions listed in subsections a or b above are not satisfied by the applicable dates specified in those subsections, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the parties are unable to negotiate new dates then the Party that has not failed to meet an obligation may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement.

7. Seller's Rights and Obligations.

a. Permits and Approvals. Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:

- i. any zoning, land use (including the California Environmental Quality Act) and building permits required to construct, install and operate the System; and
- ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

b. Standard System Repair and Maintenance. Seller shall construct and install the System at the Facility in accordance with applicable, prudent solar power generation practices and applicable law. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement or the Site Lease (if applicable). Seller monitors the system throughout the Term and compares actual output to expected output. Seller will provide routine, preventative and corrective maintenance and cleaning as necessary to keep the system performing in accordance with prudent, applicable solar power generation practices.

Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.

- c. **Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to conditions at the Facility or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith.
- d. **Breakdown Notice.** Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.
- e. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.
- f. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors. If a list of pre-approved contractors and subcontractors is desired, such list shall be scheduled on an appendix to this Exhibit. All contractors and subcontractors, other than those that may be scheduled on an appendix to this Exhibit, shall be subject to Purchaser's prior written consent, not to be unreasonably withheld and shall be obligated to comply with this Agreement to extent this Agreement applies to the performance of such contractors' and subcontractors' work.
- g. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses (including reasonable attorneys' fees) resulting from any liens filed against the Facility or the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.
- h. **Separate Warranty.**
 - i. The Limited Warranty that SolarCity will provide to Purchaser is a separate contract from this Agreement. No rights provided to Purchaser by the Limited Warranty may be asserted under this Agreement. No warranty is made in this Agreement. Therefore, any warranty claim must be made independently of this Agreement under the Limited Warranty and will not affect Purchaser's obligations under this Agreement.
 - ii. NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY UNDER THIS AGREEMENT. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

8. **Purchaser's Rights and Obligations.**

- a. **Facility Access Rights.** Purchaser grants to Seller and to Seller's agents, employees and contractors an irrevocable non-exclusive license running with the Premises (the "**License**") for access to, on, over, under and across the Premises for the purposes of (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (b) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Purchaser's electric system at the Facility and/or to the Utility's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "**License Term**"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of this agreement by either Party. Purchaser agrees that Seller, upon request to Purchaser, may record a memorandum of license in the land records respecting the License in form and substance reasonably acceptable to the Parties. Subject to Seller's rights under this Agreement, Purchaser retains the right to use and access the Premises and to inspect the System provided that Purchaser provides Seller with reasonable (not less than two (2) business days) prior notice of Purchaser's desire to inspect the System and all such inspections, use and access (1) do not adversely affect Seller's activities or the System, and (2) comply with Seller's safety protocols relative to the System.
- b. **OSHA Compliance.** Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.
- c. **Maintenance of Facility.** Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair. Purchaser will ensure that the Facility remains interconnected to the local utility grid at all times and will not permit cessation of electric service to the Facility from the local utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.
- d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility which may adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. **Outages.** Purchaser shall be permitted to be off line for a total of forty-eight (48) day light hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) day light hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount and any associated lost or recaptured Environmental Incentives and lost sales (and penalties payments associated with the same) of associated Environmental Attributes in accordance with Section 4. For avoidance of doubt, the forty-eight (48) hour period shall include all Scheduled Outage hours allowed under any of the terms of this Agreement, including those undertaken pursuant to Section 8(d).

- f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.
- g. **Security.** Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Purchaser. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Section 7.h.i(h) against Purchaser.
- i. **Data Line.** Seller shall monitor and record the electric energy generated by the System using Seller-provided cellular service. If such cellular service is unavailable, Seller shall provide a high speed internet data line during the Term to enable Seller to record the electric energy generated by the System. Purchaser shall ensure that data line has connectivity during the term. If for any reason Seller is unable to obtain data using the data line Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 4.
- j. **Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (A) any material malfunction in the operation of the System; or (B) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (A) an interruption in the supply of electrical energy from the System; or (B) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

9. **Change in Law.**

"**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

10. **Relocation of System.**

If Purchaser ceases to conduct business operations at and/or vacates the Facility or is prevented from operating the System at the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable

substitute premises located within the same Utility district as the terminated System or in a location with similar Utility rates and Insolation. Purchaser shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) License, which will be amended to grant rights in the real property where the System relocated to; and (iii) Term, which will be the remainder of the Term of this Agreement and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new Purchaser, owner, lessor or mortgagee consents or releases required by Seller or Seller's Financing Parties in connection with the substitute facility. Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System. Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during the period of time the System is not in operation due to the relocation and shall invoice Purchaser for such amount and any associated lost or recaptured Environmental Incentives and lost sales (and penalties payments associated with the same) of associated Environmental Attributes in accordance with Section 4. Seller shall remove the System from the vacated Facility prior to the termination of Purchaser's ownership, lease or other rights to use such Facility. Seller will not be required to restore the Facility to its prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System, but not for normal wear and tear. If the substitute facility has inferior Insolation as compared to the original Facility, Seller shall have the right to make an adjustment to Exhibit 1 such that Purchaser's payments to Seller are the same as if the System were located at the original Facility. If Purchaser is unable to provide such substitute facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser.

11. Removal of System at Expiration.

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than ninety (90) days after the expiration of the Term. Excluding ordinary wear and tear, the Facility shall be returned to its original condition including the removal of System mounting pads or other support structures. In no case shall Seller's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications. Seller shall leave the Facility in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

12. Measurement.

Electricity delivered to the Facility shall be measured by the SolarGuard monitoring system installed and maintained by Seller as part of the System. Seller shall make the foregoing measurements available to Purchaser,

13. Default, Remedies and Damages.

a. Default. Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a "**Defaulting Party**" and each event of default shall be a "**Default Event**":

- (1) failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the other Party (the "**Non-Defaulting Party**") of such failure to pay ("**Payment Default**");
- (2) failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (i) the Defaulting Party initiates such cure with the thirty (30) day period and continues such cure to completion and (ii) there is no material adverse affect on the Non-Defaulting Party resulting from the failure to cure the Default Event;

- (3) if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- (4) Purchaser loses its rights to occupy and enjoy the Premises;
- (5) a Party, or its guarantor, becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within ninety (90) days); or
- (6) Purchaser prevents Seller from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

b. Remedies.

- (1) Remedies for Payment Default. If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement, upon an additional five (5) days prior written notice to the Defaulting Party following the Payment Default.
- (2) Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement or suspension of performance of its obligations under this Agreement, upon an additional five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. If Purchaser terminates this contract without cause prior to System Installation a \$5,000 design cancellation fee shall also apply in addition to any other remedy available to Seller.
- (3) Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
 - A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to the sum of (i) the termination value set forth in Exhibit 1 (the "**Termination Value**") for such Contract Year, (ii) removal costs as provided in Section 13(b)(3)(C) and (iii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of an Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Value set forth in Exhibit 1 is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero..
 - B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (i) the present value (using a discount rate of 9.5%) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (iii) any removal costs incurred

by Purchaser, and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.

- C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13(b), then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

14. Representations and Warranties.

- a. General Representations and Warranties. Each Party represents and warrants to the other the following:

- (1) Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
- (2) Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- (3) Each Party shall comply with applicable law with respect to the use hazardous substances and neither Party shall store hazardous substances on the Premises; provided that the Parties agree that the use of hazardous substances in accordance with applicable law with respect the System does not constitute "storage" of same for purposes of applicable law.
- (4) Neither the execution and delivery of this Agreement by such Party nor the performance by such Party of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which such Party is a party or by which such Party (or, in the case of Purchaser only, the Facility) is bound.
- (5) Each Party shall use reasonable efforts to provide information to the other Party that is accurate in all material respects in connection with this Agreement.

- b. Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller the following:

- (1) License. Purchaser has title to or a leasehold or other property interest in the Premises. Purchaser has the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility. If Purchaser does not own the Premises or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.
- (2) Intentionally omitted.
- (3) Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.
- (4) Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

(5) No Pool Use. No electricity generated by the System will be used to heat a swimming pool.

15. **System and Facility Damage and Insurance.**

a. **System and Facility Damage.**

(1) Seller's Obligations. If the **System** is damaged or destroyed (including as a result of third party theft or vandalism) other than by Purchaser's gross negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (i) to pay for the cost of such restoration of the System or (ii) to purchase the System "AS-IS" at the greater of (A) then current fair market value of the System and (B) the sum of the amounts described in Section 13.b(3)A(i) (using the date of purchase to determine the appropriate Contract Year) and Section 13.b(3)A(iii).

(2) Purchaser's Obligations. If the **Facility** is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's gross negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (i) to restore the Facility or (ii) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

b. **Insurance Coverage.** At all times during the Term, Seller and Purchaser shall maintain the following insurance:

i. Seller's Insurance. Seller shall maintain (i) property insurance on the System for the replacement cost thereof, (ii) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (iii) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law.

ii. Purchaser's Insurance. Purchaser shall maintain commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

c. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance thirty (30) days (ten (10) days in the event of non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.

d. **Certificates.** Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

16. Ownership; Option to Purchase.

- a. **Ownership of System.** Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller shall file such disclaimer. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.
- b. **Option to Purchase.** At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the Fair Market Value of the System. The "**Fair Market Value**" of the System shall be determined by mutual agreement of Purchaser and Seller; provided, however, if Purchaser and Seller cannot agree to a Fair Market Value within thirty (30) days after Purchaser has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties; provided that in no event shall the Fair Market Value be less than the aggregate of the amounts calculated under Sections 13(b)(3)(A)(ii) and (iv) as of the date of System title transfer. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

17. Indemnification and Limitations of Liability.

- a. **General.** Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "**Indemnified Parties**"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 14 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(c).
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if

both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 17(c)(i)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance.

i. **"Hazardous Substance"** means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

d. **Limitations on Liability.**

i. **No Consequential Damages.** Neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.

ii. **Actual Damages.** Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section (17)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action accrues.

18. **Force Majeure.**

a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party

affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement for amounts delivered to Purchaser or otherwise shall not be excused by a Force Majeure event that impacts Purchaser's ability to make payment.
- d. If a Force Majeure event continues for a period of one hundred (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid) upon notice to the other Party, which notice shall specify a date not more than 20 days from the date of such notice on which such termination will be effective. No termination payment shall be due or owing under Article 13 for terminations pursuant to this Section 18(d).

19. **Assignment and Financing.**

- a. **Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement to any Financing Party, (ii) directly or indirectly assign this Agreement to an affiliate of Seller, (iii) assign this Agreement to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee). Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.
- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from lenders or third parties (including tax equity or similar investors) ("**Financing Parties**") in connection with the installation, construction, ownership, operation and maintenance of the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. The Parties also agree that Seller may assign this Agreement to the Financing Parties as collateral, and in connection with any such assignment, Purchaser agrees to execute a consent to assignment in customary form and reasonably acceptable to the Financing Parties.

20. **Confidentiality and Publicity.**

- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this Agreement. Each such recipient of Confidential Information shall be informed by the Party

disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 20(a), except as set forth in Section 20(b). All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 20(a) by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 20(a). To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 20(a), but shall be in addition to all other remedies available at law or in equity.

- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority or otherwise under applicable law (including the California Public Records Act) or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

21. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall use reasonable efforts to coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement. Purchaser shall notify Seller of Purchaser's intention to issue any official Press Release that discusses, identifies or includes Seller or this Agreement or the substance thereof of the System, which notice shall include the draft of the Press Release that Purchaser intends to issue. The term "Press Release" means any public document prepared by Purchaser or on behalf of (including by its employees or contractors) to be submitted to the media regarding this Agreement or the System, as applicable; provided, however, that Purchaser's responses to requests under the FOIA, internal staff reports, and/or informal responses to questions from other municipalities not released directly to the media shall not constitute a Press Release. Purchaser shall provide the Press Release notice to Purchaser not less than ten (10) days before the date on which Purchaser intends to issue same. Seller shall have seventy two (72) hours from its receipt of Purchaser's notice to review and comment upon such draft. Purchaser shall use reasonable efforts to consider Seller's reasonable comments and incorporate them into the draft before issuing same. To the extent that Purchaser materially changes any draft Press Release subsequent to providing the required notice to Seller, Purchaser shall re-notify Seller of such change and provide Seller with the updated draft and an additional opportunity to review and comment on same in accordance with Section 21. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

22. **General Provisions**

- a. **Choice of Law.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees.** Any dispute arising from or relating to this Agreement shall be arbitrated in Sacramento, California. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either

party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.

- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 4 (Representations and Warranties), Section 7(h)(No Warranty), Section 15(b) (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 20 (Confidentiality and Publicity), Section 22(a) (Choice of Law), Section 22 (b) (Arbitration and Attorneys' Fees), Section 22(c) (Notices), Section 22 (g) (Comparative Negligence), Section 22(h) (Non-Dedication of Facilities), Section 22(j) (Service Contract), Section 22(k) (No Partnership) Section 22(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 22(n) (No Third Party Beneficiaries).
- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

- j. **Service Contract.** The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- k. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- m. **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- n. **No Third Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

End of Exhibit 4



Solar Power Purchase Limited Warranty Agreement (Commercial)

This Solar Power Purchase Limited Warranty Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	City of Newman 938 Fresno Street Newman, CA 95360 Attention: Kossun Kim, Public Works Director	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(209) 862-4448	Phone	(650) 638-1028
Fax		Fax	(650) 560-6460
Email	kkim@cityofnewman.com	Email	contracts@solarcity.com
Facility Ownership	Purchaser owns the Facility		Contractor’s License Numbers
Project Name	City of Newman RES-BCT Project		

This Limited Warranty Agreement (this “**Agreement**”) is SolarCity Corporation’s (“**SolarCity**”) agreement to provide installation and other services for the solar panel system(s) (the “**System**”) it will use to sell electric energy to you (the “**Purchaser**”) and to provide a warranty for the System. A description of the System that will be used to sell you electricity is set forth in the Solar Power Purchase Agreement (the “**PPA**”) that you executed with SolarCity. The System will be professionally installed by SolarCity at the address you listed in the PPA. We will refer to the installation location as the “**Premises**” or your “**Facility**.”

When you choose SolarCity, you can be assured that we will stand behind our System and installation with industry-leading warranties. We will professionally install your solar system in a good and workman-like manner and honor our commitment to you to keep your System in good working order. Read below for full details on SolarCity’s Installation Warranty, Use Warranty, Roof Warranty, and Repair Promise. Capitalized terms not otherwise defined herein shall have the meaning set forth in your PPA.

1. SOLARCITY’S STANDARDS

For the purpose of this Agreement the standards for SolarCity’s performance will be (i) normal professional standards of performance within the solar photovoltaic power generation industry in the relevant market; and (ii) Prudent Electrical Practices “Prudent Electrical Practices” means those practices, as changed from time to time, that are engaged in or approved by a significant portion of the solar energy electrical generation industry operating in the United States to operate electric equipment lawfully and with reasonable safety, dependability, efficiency

and economy. For purposes of this Agreement, SolarCity's performance shall include necessary roof preparation for the installation of the System.

2. LIMITED WARRANTIES

(A) LIMITED WARRANTIES

SolarCity warrants the System as follows:

i. Installation Warranty

SolarCity will professionally install the System in a good and workman-like manner according to our commitments to you in Section 1. This installation warranty will run for one (1) year following the completion of the System installation.

ii. Use Warranty

Under normal use and service conditions, the System will be free from defects in workmanship or defects in, or a breakdown of, materials or components during the Warranty Period (as defined below);

iii. Roof Warranty

If SolarCity penetrates the Facility roof in performing the Installation Services, SolarCity will warrant roof damage it causes as a direct result of these roof penetrations. This roof warranty will run the longer of (A) one (1) year following the completion of the System installation; and (B) the length of any existing installer warranty on the Facility's roof; and

iv. Repair Promise

During the Warranty Period, SolarCity will repair or replace any defective part, material or component or correct any defective workmanship, at no cost or expense to Purchaser (including all labor costs), when Purchaser submits a valid claim to SolarCity under this Agreement. If we damage your Facility, Property or belongings we will repair the damage we cause or pay you for the damage we cause. SolarCity may use new or reconditioned parts when making repairs or replacements. SolarCity may also, at no additional cost to Purchaser, upgrade or add to any part of the System to ensure that it performs according to the guarantees set forth in this Agreement.

This Agreement will continue from the date SolarCity starts installing the System at your Facility through the longer of (i) the PPA Term (as that term is defined in the PPA); and (ii) ten (10) years (the "Warranty Period") except for the warranties specified in Section 2 (A)(i) and (iii) above, which may have shorter periods. If Purchaser has assumed an existing PPA, then this Agreement will cover Purchaser for the remaining balance of the original Warranty Period.

(B) MAINTENANCE AND OPERATION

i. General

During the Warranty Period, SolarCity will operate and perform all routine and emergency repairs to and maintenance of the System. SolarCity will provide Purchaser with a copy of SolarCity's Solar Operation and Maintenance Guide. This guide provides Purchaser with System operation and maintenance instructions answers to frequently asked questions, troubleshooting tips and service information.

ii. SolarGuard

During the Warranty Period, SolarCity will provide Purchaser, at no additional cost, the SolarGuard Monitoring Service (“SolarGuard”). SolarGuard is a proprietary monitoring system designed and installed by SolarCity that captures and displays historical energy generation data over an Internet connection and consists of hardware located on site and software hosted by SolarCity. The SolarGuard service requires a high speed Internet line to operate. Therefore, during the Warranty Period, Purchaser agrees to maintain the communication link between SolarGuard, the System and the Internet. Purchaser agrees to maintain and make available, at Purchaser’s cost, a functioning indoor Internet connection with one available wired Ethernet port and standard AC power outlet within eighty (80) feet of the System’s AC/DC inverter(s). This communication link must be a 10/100 Mbps Ethernet connection that supports common internet protocols (TCP/IP and DHCP).

(C) MAKING A CLAIM; TRANSFERRING THIS WARRANTY

i. Claims Process

Purchaser can make a claim by:

- a) Emailing SolarCity at the email address below;
- b) Writing us a letter and sending it overnight mail with a well-known service; or
- c) Sending us a fax at the number below.

ii. Transferable Limited Warranty

SolarCity will accept and honor any valid and properly submitted Warranty claim made during the Warranty Period by any person to whom Purchaser properly transfers the PPA.

(D) EXCLUSIONS AND DISCLAIMER

The Warranty does not apply to any repair, replacement or correction required due to the following:

- i.** someone other than SolarCity or its approved service providers installed, removed, re-installed or repaired the System;
- ii.** Destruction or damage to the System or its ability to safely produce energy not caused by SolarCity or its approved service providers while servicing the System (e.g., a tree falls on the System);
- iii.** Purchaser’s failure to perform, or breach of, Purchaser’s obligations under the PPA (such as if Purchaser modifies or alters the System);
- iv.** Purchaser’s breach of this Agreement including being unavailable to provide access or assistance to SolarCity in diagnosing or repairing a problem or failing to maintain the System as stated in the Solar Operation and Maintenance Guide;
- v.** any Force Majeure Event (as defined below);
- vi.** a power or voltage surge caused by someone other than SolarCity including a grid supply voltage outside of the standard range specified by the Utility;
- vii.** Any System failure not caused by a System defect (e.g., such as making roof repairs); or
- viii.** Theft of the System.

This Agreement gives you specific rights, and Purchaser may also have other rights which vary from state to state. This Agreement does not warrant any specific electrical performance of the System, other than that described above.

The promises in this warranty are the only express warranties made by SolarCity with respect to the System. SolarCity hereby disclaims, and any beneficiary of this Agreement hereby waives any warranty with respect to any cost savings from using the System.

3. ADDITIONAL SERVICES

(A) SCOPE OF ADDITIONAL SERVICES

Purchaser agrees that if (i) the System needs any repairs that are not the responsibility of SolarCity under this Agreement, (ii) the System needs to be removed and re-installed to facilitate remodeling of the Facility or (iii) the System is being relocated to another Facility pursuant to the PPA (collectively, items (i) - (iii) are “Additional Services”), Purchaser will have SolarCity, or another similarly qualified service provider, at Purchaser’s expense, perform such repairs, removal and reinstallation, or relocation on a time and materials basis.

(B) APPROVED SERVICE PROVIDERS

Purchaser’s retention of a third party to perform Additional Services that is not qualified to perform such Additional Services will void the Warranty. To prevent voiding the Warranty, Purchaser should obtain the written consent of SolarCity prior to engaging a third party to perform Additional Services.

If Purchaser engages a third party service provider to perform Services without the prior consent of SolarCity, Purchaser does so at the risk that SolarCity will subsequently determine such service provider was not qualified to perform the Additional Services.

(C) PRICING ON ADDITIONAL SERVICES

Performance of Additional Services by SolarCity will be on a time and materials basis at SolarCity’s then current standard rates.

4. FORCE MAJEURE

If SolarCity is unable to perform all or some of its obligations under this Agreement because of a Force Majeure Event, SolarCity will be excused from whatever performance is affected by the Force Majeure Event, provided that:

1. SolarCity, as soon as is reasonably practical, gives Purchaser notice describing the Force Majeure Event;
2. SolarCity’s suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event; and
3. No SolarCity obligation that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event is excused as a result of such Force Majeure Event.

“Force Majeure Event” means any event, condition or circumstance beyond the control of and not caused by SolarCity’s fault or negligence. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means) the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products; and failure of equipment not utilized by SolarCity or under its control.

5. LIMITATIONS ON LIABILITY

(A) NO CONSEQUENTIAL DAMAGES

In no event shall either party or its agents or subcontractors be liable to the other for special, indirect, punitive, exemplary, incidental or consequential damages of any nature. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation may not apply in such states.

(B) LIMITATION OF DURATION OF IMPLIED WARRANTIES

Any implied warranties, including the implied warranties of fitness for particular purpose and merchantability arising under state law, shall in no event extend past this Agreement. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply in such states.

(C) LIMIT OF LIABILITY

Notwithstanding any other provision of this Agreement to the contrary, SolarCity's total liability arising out of or relating to this Agreement shall in no event:

- i. For System Failure or Replacement: exceed the total of the Purchaser's payments during the previous twelve (12) month period; and
- ii. For damages to your Facility, Property or belongings: exceed three million dollars (\$3,000,000).

6. NOTICES

TO SOLARCITY:

SolarCity Corporation
3055 Clearview Way
San Mateo, CA 94402
Attention: Contracts
Telephone: (650)638-1028
Facsimile: (650)560-6460
Email: contracts@solarcity.com

TO PURCHASER:

At the Building address in
the PPA or any subsequent
billing address Purchaser gives SolarCity.

All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and shall be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the party identified in this Agreement at the address set forth above or such other address as either party may specify in writing. Each party shall deem a document faxed or sent by electronic mail to it as an original document.

7. APPLICABLE LAW/ARBITRATION

The laws of the state where the Facility is located shall govern this Agreement without giving effect to conflict of laws principles. All claims, disputes and other matters in question, arising out of, or relating to, this Agreement or the breach thereof shall be decided by binding arbitration. Each arbitration, including the selecting of the arbitrator will be administered by JAMS under its Commercial Arbitration Rules. Arbitration will be governed by the Federal Arbitration Act (Title 9 of the U.S. Code). Either party can initiate an arbitration proceeding by filing the necessary forms with JAMS. Venue for any arbitration brought under this Agreement shall be proper in the State of California, County of San Mateo. Each party shall bear its own costs and expenses,

including attorneys' fees, with respect to any arbitration. The arbitrator shall have the authority to award any legal or equitable remedy or relief that a court could order or grant. The arbitrator, however, is not authorized to change or alter the terms of this Agreement or to make any award that would extend to any transaction other than this Agreement.

8. ASSIGNMENT AND TRANSFER OF THIS AGREEMENT

SolarCity may assign its rights or obligations under this Agreement to a third party without your consent, provided that any assignment of SolarCity's obligations under this Agreement shall be to a party qualified to perform such obligation. This Agreement protects only the party that hosts the System. Purchaser's rights and obligations under this Agreement will be automatically transferred to any party to whom Purchaser properly transfers the PPA.

9. ENTIRE AGREEMENT; CHANGES

This Agreement contains the parties' entire agreement regarding the matters set forth herein. SolarCity's obligations under this Agreement are separate and distinct from the obligations of the Seller or its assigns under the PPA. No breach of this Agreement shall affect Purchaser's obligations under the PPA. The PPA may be assigned to a third party without assignment of SolarCity's obligations under this Agreement. Any change to this Agreement must be in writing and signed by both Parties. If any portion of this Agreement is determined to be unenforceable, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or re-written so as to make them enforceable. Provisions that should reasonably be considered to survive termination of this Agreement shall survive.

City of Newman

SolarCity Corporation

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



Performance Guarantee Agreement (PPA)

This Performance Guarantee Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	City of Newman 938 Fresno Street Newman, CA 95360 Attention: Kossun Kim, Public Works Director	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Contracts
Phone	209-862-4448	Phone	(650) 638-1028
Fax		Fax	(650) 638-1029
E-mail	kkim@cityofnewman.com	E-mail	contracts@solarcity.com

This Agreement sets forth the terms and conditions of a performance guarantee provided by Seller in conjunction with that certain Solar Power Purchase Agreement by and between Seller and Purchaser dated the same date as this Agreement (the “**PPA**”). All capitalized terms used hereunder shall have the meanings given such terms in the PPA. The term of this Agreement shall be concurrent with the term of the PPA. This Agreement will be updated as necessary by mutual written agreement of the Parties to reflect the as-built specifications of the System.

1. **Warranty.** Seller guarantees that during the term of the PPA the System will generate the guaranteed kilowatt-hours (kWh) (“**Guaranteed kWh**”) of energy set forth as follows:

A. If at the end of each successive sixty (60) month anniversary of the Commercial Operation Date the cumulative Actual kWh (defined below) generated by the System is *less* than the Guaranteed kWh, then Seller will send Purchaser a refund check equal to the difference between the Guaranteed kWh and the cumulative Actual kWh multiplied by the Guaranteed Energy Price per kWh (defined below). Seller will make that payment within thirty (30) days after the end of the relevant calendar year.

B. If at the end of each successive sixty (60) month anniversary of the Commercial Operation Date the Actual kWh is *greater* than the Guaranteed kWh during any sixty (60) month period, this surplus will be carried over and will be used to offset any deficits that may occur in the next true up period.

C. “**Guaranteed kWh**”:

True Up Term Years	Guaranteed kWh
Years 1-5	5,807,444
Years 6-10	5,663,702
Years 11-15	5,523,519
Years 16 -20	5,386,805

D. “**Actual kWh**” means the AC electricity produced by the System in kilowatt-hours measured and recorded by Seller during each successive sixty (60) month anniversary of the Commercial Operation Date. To measure the Actual kWh we will use the SolarGuard™ Monitoring Service or to the extent such services are not available, Seller will estimate the Actual kWh by reasonable means.

E. **“Guaranteed Energy Price per kWh”** means the dollar value per kWh as calculated in the table below:

True Up Term	Guaranteed Energy Price per kWh
Years 1-5	\$0.050
Years 6-10	\$0.060
Years 11-15	\$0.070
Years 16 - 20	\$0.080

2. **Exclusions.** The Warranty does not apply to any repair, replacement or correction required due to the following:

- A. someone other than Seller or its approved service providers installed, removed, re-installed or repaired the System;
- B. Destruction or damage to the System or its ability to safely produce energy not caused by Seller or its approved service providers while servicing the System (e.g., a tree falls on the System);
- C. Purchaser’s failure to perform, or breach of, Purchaser’s obligations under the PPA (such as if Purchaser modifies or alters the System);
- D. Purchaser’s breach of this Agreement including being unavailable to provide access or assistance to Seller in diagnosing or repairing a problem or failing to maintain the System as stated in the Solar Operation and Maintenance Guide;
- E. any Force Majeure Event (as defined below);
- F. a power or voltage surge caused by someone other than Seller including a grid supply voltage outside of the standard range specified by the Utility;
- G. Any System failure not caused by a System defect (e.g., such as making roof repairs); or
- H. Theft of the System.

Seller hereby disclaims, and any beneficiary of this Agreement hereby waives any warranty with respect to any cost savings from using the System.

3. **Force Majeure.** If Seller is unable to perform all or some of its obligations under this Agreement because of a Force Majeure Event, Seller will be excused from whatever performance is affected by the Force Majeure Event, provided that:

- A. Seller, as soon as is reasonably practical, gives Purchaser notice describing the Force Majeure Event;
- B. Seller’s suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event; and
- C. No Seller obligation that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event is excused as a result of such Force Majeure Event.

“Force Majeure Event” means any event, condition or circumstance beyond the control of and not caused by Seller’s fault or negligence. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means) the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products; and failure of equipment not utilized by Seller or under its control.

4. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and shall be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the party identified in this Agreement at the address set forth above or such other address as either party may specify in writing. Each party shall deem a document faxed or sent by electronic mail to it as an original document.

5. **Applicable Law, Arbitration.** The laws of the state where the Facility is located shall govern this Agreement without giving effect to conflict of laws principles. All claims, disputes and other matters in question, arising out of, or relating to, this Agreement or the breach thereof shall be decided by binding arbitration. Each arbitration, including the selecting of the arbitrator will be administered by JAMS under its Commercial Arbitration Rules. Arbitration will be governed by the Federal Arbitration Act (Title 9 of the U.S. Code). Either party can initiate an arbitration proceeding by filing the necessary forms with JAMS. Venue for any arbitration brought under this Agreement shall be proper in the State of California, County of San Mateo. Each party shall bear its own costs and expenses, including attorneys' fees, with respect to any arbitration. The arbitrator shall have the authority to award any legal or equitable remedy or relief that a court could order or grant. The arbitrator, however, is not authorized to change or alter the terms of this Agreement or to make any award that would extend to any transaction other than this Agreement.

6. **Assignment and Transfer of this Agreement.** Seller may assign its rights or obligations under this Agreement to a third party without your consent, provided that any assignment of Seller's obligations under this Agreement shall be to a party qualified to perform such obligation. This Agreement protects only the party that hosts the System. Purchaser's rights and obligations under this Agreement will be automatically transferred to any party to whom Purchaser properly transfers the PPA.

7. **Entire Agreement, Changes.** This Agreement contains the parties' entire agreement regarding the matters set forth herein. Seller's obligations under this Agreement are separate and distinct from the obligations of the Seller or its assigns under the PPA. No breach of this Agreement shall affect Purchaser's obligations under the PPA. The PPA may be assigned to a third party without assignment of Seller's obligations under this Agreement. Any change to this Agreement must be in writing and signed by both Parties. If any portion of this Agreement is determined to be unenforceable, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or re-written so as to make them enforceable. Provisions that should reasonably be considered to survive termination of this Agreement shall survive

SolarCity Corporation

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Honorable Mayor and Members
of the Newman City Council

**ADOPT RESOLUTION NO. 2015- , AUTHORIZING THE CITY COUNCIL TO APPOINT
A MEMBER OF THE COUNCIL TO FILL THE MAYORAL VACANCY, AND
DIRECTING STAFF TO PUBLICIZE VACANCY ON CITY COUNCIL**

RECOMMENDATION:

It is recommended that the Newman City Council adopt Resolution No. 2015- , granting the Council authority to appoint a member of the City Council to the vacancy in the Office of Mayor of the City of Newman (“City”) for the remainder of Mayor Katen’s term, and directing City Staff to prepare and run an advertisement publicizing a vacancy on the Newman City Council.

BACKGROUND:

Mayor Katen notified the City Council and City Manager that he is moving out of the City. As a result, he is no longer eligible to hold the office of Mayor, and the office is vacant. The vacancy commenced on the effective date of Mayor Katen’s resignation of August 20, 2105. Mayor Katen’s current term will expire in 2016. In order to avoid unnecessary expense for the City and its taxpayers to hold a special election to fill the vacancy, the City Council may appoint one of its members to fill the mayoral vacancy. Further, the City Council will also need to take steps to fill the additional vacancy on the Council if a Mayor is appointed from within the Council.

ANALYSIS:

If a vacancy in the elected office of Mayor occurs in a general law city, the City Council may fill that vacancy by appointing a member of the City Council to the office of Mayor.¹ If the City Council fails to fill the vacancy within 60 days, it shall then be required to call an election to fill the vacancy to be held on the next established election date, not less than 114 days thereafter.² A person appointed to fill the vacancy holds the office of Mayor for the unexpired term of the former Mayor, and any vacancy created in the membership of a City Council as a result of the appointment of a member to the office of Mayor is filled in accordance with California Government Code section 36512.³

Under section 36512(b), if a vacancy occurs in an elective office such as City Council member, the City Council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy.⁴ A person elected or appointed to fill a vacancy holds the office for the unexpired term of the former incumbent.⁵ The Newman Municipal Code supports the City Council’s appointment of a person to a Mayoral vacancy. Section 1.05.130 of the Municipal Code states that the Mayor, whether elected by the electors or chosen by the members of the City Council, is a member of the City Council and has all the powers and duties of a member of the City Council unless otherwise specifically authorized. (Emphasis added.)

If the City Council elects to appoint a current member of the Council to fill the Mayoral vacancy this will create another vacancy on the Council. The same restrictions and deadlines created by a Mayoral appointment will also apply to filling the vacancy on the Council. If the Council appoints a Mayor at the August 25, 2015 Regular Meeting, the City will have 60 days to fill the vacancy by appointment or call for a special election. Thus, the appointment must occur no later than the October 13, 2015 Regular Meeting.

One item of note is that pursuant to Government Code section 36512(d)(1), an appointment shall not be made to fill a vacancy on a city council if the appointment would result in the majority of the members serving on the council having been appointed. In this case, the City Council cannot have more than two (2) appointed members. The City Council does not have any members who are serving their current term due to appointment. Councilmembers Katen, Martina, and Davis were each qualified and took office to serve exactly as if elected at a municipal election in 2012.⁶ If the Council adopts this Resolution and moves forward with an appointment to fill the vacancy on the Council, the resulting number of appointments on the City Council will not violate this rule.

¹ Cal. Gov. Code § 1752(b).

² Cal. Gov. Code § 34902(a).

³ *Id.*

⁴ Cal. Gov. Code § 36512(a).

⁵ *Id.*

⁶ Cal. Elec. Code § 10229(a)(3).

FISCAL IMPACT:

There will be no cost to the City to appoint a Mayor from within the City Council. There is a minimum direct cost of conducting the appointment process to fill the office vacancy created by the Mayoral appointment. Conducting a special election to fill the vacancy created by the Mayoral appointment will be based on the number of registered voters and approximate cost per voter established by the Stanislaus County Elections Division but may run between \$20,000 and \$30,000.

CONCLUSION:

City staff recommends adoption of the Resolution. City staff has determined that the Council is authorized to appoint a member of the Council to the office of Mayor to complete the remainder of Mayor Katen's term, and to subsequently appoint an additional person to the resulting vacant Councilmember seat. The Resolution also directs City Staff to place advertising in local publications to make the public aware of the vacant seat on the City Council, and to assist the City Council in its selection of an individual to appoint to the City Council.

ATTACHMENTS:

1. Resolution No. 2015- , authorizing the City Council to appoint a member to the office of Mayor to complete the remainder of the current Mayoral term, and directing City Staff to place an ad publicizing a vacancy on the City Council.

Respectfully submitted,



Michael Holland
City Manager

RESOLUTION NO. 2015-

**APPOINTING THE MAYOR OF THE CITY FOR THE REMAINING UNEXPIRED
MAYORAL TERM THROUGH NOVEMBER 2016, PURSUANT TO GOVERNMENT CODE
SECTIONS 1752 AND 36512(b), AND REQUESTING THAT CITY STAFF ISSUE A PUBLIC
NOTICE OF A CITY COUNCIL VACANCY**

WHEREAS, on August 20, 2015, Mayor Ed Katen effectively resigned from the Newman City Council due to his cessation of residency in the City thereby creating a vacancy in the office of Mayor; and

WHEREAS, Mayor Katen's unexpired term runs through 2016, and the City Council wishes to avoid the exorbitant expense to taxpayers of holding a special election to fill the Mayoral vacancy; and

WHEREAS, pursuant to § 1752 of the Government Code of the State of California, with respect to a general law city, if a vacancy in the office of mayor occurs, the Council may fill that vacancy by appointing a member of the council to the office of mayor. Any person appointed to fill the vacancy shall hold the office of mayor for the unexpired term of the former mayor; and

WHEREAS, pursuant to § 36512(b) of the Government Code of the State of California, if a vacancy occurs in an elective office such as City Council, the Council shall, within 60 days from the commencement of the vacancy either fill the vacancy by appointment or call a special election to fill the vacancy; and

WHEREAS, at the August 25, 2015 Regular City Council Meeting, the City Council selected the appointment process to fill the remainder of the vacated Mayoral term ending November 2016; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newman to declare, determine, and order as follows:

Section 1

That pursuant to Section 36512(b) of the Government Code of the State of California, _____ be appointed as Mayor of the City for the remaining unexpired term of outgoing Mayor Katen.

Section 2

That City staff publish, in a newspaper of general circulation in the City of Newman, a notice of facts indicating a vacancy in the City Council and a deadline for interested persons to inform the City of their interest to be appointed to the City Council.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 25th day of August, 2015 by Council Member _____ who moved its adoption, which motion was duly seconded and it was upon roll call vote adopted.

AYES:
NOES:
ABSENT:

APPROVED:

ATTEST:

Mayor Pro Tem of the City of Newman

City Clerk of the City of Newman

**ADOPT RESOLUTION 2015 – ADOPTING THE URBAN LEVEL OF FLOOD PROTECTION
SUMMARY REPORT IN ORDER FOR THE CITY TO COMPLY WITH THE SB5 REQUIREMENTS**

RECOMMENDATION:

It is recommended that the Newman City Council adopt Resolution No. 2015- , adopting the Urban Level of Flood Protection Summary Report in order for the City to comply with the SB5 requirements.

BACKGROUND:

Recognizing the significant risk of flood in California and its negative consequences to public safety, economic development, and environmental stability, the California Legislature passed five interrelated bills to improve flood management at the State and local levels in 2007. One of those bills, the Central Valley Flood Protection Act of 2008, also known as Senate Bill 5 (SB5), contains provisions related to the requirements for incorporating flood risk considerations in land-use planning and management. SB5 defines “Urban Level of Flood Protection (ULOP)” as the “level of protection that is necessary to withstand flooding that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the California Department of Water Resources.”

As mandated by the State of California, at such time that the City of Newman (City) amends their General Plan and Zoning Ordinance to address compliance requirements with regard to the ULOP, but no later than July 2, 2016, the City needs to make “findings” with regard to the ULOP for any new development projects that are located within a special flood hazard area or an area of moderate flood hazard on official Flood Insurance Rate Maps (FIRMs) published by the Federal Emergency Management Agency (FEMA).

ANALYSIS:

As part of the first steps toward making the required finding of adequate progress, the City entered into a professional service agreement with Storm Water Consultant, Inc (Consultant) on May 26, 2015 and the Consultant developed the ULOP Summary Report (Report). The information included in the Report is summarized as follows:

1. General descriptions of ULOP requirements excerpted from the ULOP Criteria document published by the State of California Department of Water Resources dated November 2013.
2. References to information provided in the Flood Insurance Study for Stanislaus County, California, and Incorporated Areas (FEMA, September 26, 2008) and on effective FIRMs that supports a conclusion that most of the special flood hazard areas and areas of moderate flood hazard depicted on the effective FIRMs impacting the City of Newman are areas of “shallow flooding” as defined in the ULOP Criteria document.
3. References to selected provisions contained within Chapter 4.11 of the City’s Municipal Code entitled Floodplain Management.
4. Preparation of a consolidated map, using the effective FIRMs as the base map, that graphically delineates the following:
 - The City’s Planning Area Boundary.
 - Areas where new development will not be required to make “findings” with regard to the ULOP.
 - Areas where new development will be required to make “findings” with regard to the ULOP, but the “finding” will be that the new development will meet the national FEMA standard of flood protection.
 - Areas where new development will be required to make “findings” with regard to the ULOP, with said “findings” being based upon subsequent (future) 200-year or 100-year flood mapping performed by the City or others.

By adopting the ULOP Summary Report, the City can comply with the SB5 requirements as well as provide future interpretations and “findings” with regard to the ULOP for the majority of affected new development projects.

FISCAL IMPACT:

There is no fiscal impact associated with the adoption of this resolution.

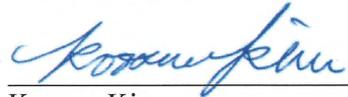
CONCLUSION:

The City has completed the ULOP Summary Report to comply with the SB5 requirements. Therefore, staff recommends that City Council adopt Resolution No. 2015- , adopting the Urban Level of Flood Protection Summary Report.

ATTACHMENTS:

1. Resolution No. 2015-
2. Urban Level of Flood Protection Summary Report for the City of Newman

Respectfully Submitted,



Koosun Kim
Director of Public Works

REVIEWED/CONCUR:



Michael E. Holland
City Manager

RESOLUTION NO. 2015-

**ADOPTING THE URBAN LEVEL OF FLOOD PROTECTION SUMMARY REPORT IN
ORDER FOR THE CITY TO COMPLY WITH THE SB5 REQUIREMENTS**

WHEREAS, In 2007, the California Legislature passed five interrelated bills to improve flood management at the State and local levels; and

WHEREAS, Senate Bill 5 (SB5) contains provisions related to the requirements for incorporating flood risk considerations in land-use planning and management; and

WHEREAS, SB5 defines “Urban Level of Flood Protection (ULOP)” as the “level of protection that is necessary to withstand flooding that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the California Department of Water Resources”; and

WHEREAS, As mandated by the State of California, at such time that the City of Newman (City) amends their General Plan and Zoning Ordinance to address compliance requirements with regard to the ULOP, but no later than July 2, 2016, the City needs to make “findings” with regard to the ULOP for any new development projects that are located within a special flood hazard area or an area of moderate flood hazard on official Flood Insurance Rate Maps (FIRMs) published by the Federal Emergency Management Agency (FEMA); and

WHEREAS, There is no fiscal impact associated with the adoption of this resolution; and

WHEREAS, By adopting the ULOP Summary Report, the City can comply with the SB5 requirements as well as provide future interpretations and “findings” with regard to the ULOP for the majority of affected new development projects; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newman hereby approves the adoption of the ULOP Summary Report in order to comply with the SB5 requirements.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 25th day of August, 2015 by _____, who moved its adoption, which motion was duly seconded and it was upon roll call carried and the resolution adopted by the following roll call vote:

AYES:
NOES:
ABSENT:

APPROVED:

Mayor Pro Tem of the City of Newman

ATTEST:

City Clerk of the City of Newman

URBAN LEVEL OF FLOOD PROTECTION SUMMARY REPORT

City of Newman



July, 2015



**URBAN LEVEL OF FLOOD
PROTECTION - SUMMARY REPORT**

CITY OF NEWMAN, CALIFORNIA

July, 2015



SWC File No. 2015-100

**URBAN LEVEL OF FLOOD PROTECTION
SUMMARY REPORT
CITY OF NEWMAN, CALIFORNIA**

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**EXHIBIT A – Map Depicting Regulatory Requirements for Flood Protection for
New Development within the City’s Planning Area
(Effective Date: July 2015)**

URBAN LEVEL OF FLOOD PROTECTION SUMMARY REPORT CITY OF NEWMAN, CALIFORNIA

1.0 Purpose of Report

This summary report has been prepared to assist the City of Newman in making future “findings” for new development projects proposed within Special Flood Hazard Areas and Areas of Moderate Flood Hazard depicted on Flood Insurance Rate Maps (FIRMs) published by the Federal Emergency Management Agency (FEMA) that said projects will withstand flooding from a 100-year return period flood event (the National FEMA Standard of Flood Protection) or a 200-year return period flood event (the Urban Level of Flood Protection). For new development within the many of these flood hazard areas, the City of Newman may continue to make interpretations of information presented on FIRMs, establish requirements for new development projects in consideration of Title 4, Chapter 4.11 of the City Code (entitled “Floodplain Regulations”) and review project design plans and other information as they have in the past. The making of “findings” is a requirement prompted by the State of California’s adoption of the Central Valley Flood Protection Act of 2008, enacted by Senate Bill (SB) 5, and must be included with City approvals of any new development project located within a Special Flood Hazard Area (Zones AE, A, AO, and AH) or an area of Moderate Flood Hazard (shaded Zone X) on FIRMs published by FEMA. “Findings” are not required for new development projects located within unshaded Zone X on FIRMs published by FEMA. The area included in this report is the City’s Planning Area.

New development in the floodplain for the San Joaquin River may be required to withstand flooding from a 200-year flood event, which is the Urban Level of Flood Protection established by SB5. This area has been identified herein, and a separate flood study will be required in the future to define the 200-year floodplain, flood depths, and water surface elevations in order for appropriate design provisions to be made for the project to meet the Urban Level of Flood Protection or for a determination to be made that the project will only need to meet the National FEMA Standard of Flood Protection. In isolated instances within this area, the City may opt to impose conservative requirements for elevating buildings in lieu of requiring a separate flood study if there is sufficient documentation and evidence that the elevating of said buildings is sufficient to meet the Urban Level of Flood Protection.

Outside of the floodplain for the San Joaquin River, there are also small areas in the City’s Planning Area that would have similar requirements as the floodplain for the San Joaquin River. However, these small areas are probably not suitable for development as they consist of a) the Central California Irrigation District (CCID) Main Canal, b) a sliver of land between State Highway 33 and the contiguous California Northern Railroad (CNRR), and c) the channel of Orestimba Creek.

The premise for much of proposed new development in Special Flood Hazard Areas and areas of Moderate Flood Hazard being governed by the National FEMA Standard of Flood Protection and not the Urban Level of Flood Protection within the City’s Planning Area is that the majority of these flood hazard areas are only subject to “shallow flooding”, which is exempted from requirements to attain the Urban Level of Flood Protection.

This report may be referenced whenever it is appropriate that a “finding” be made that a new development project will withstand flooding from a 100-year flood in conformance with the National FEMA Standard of Flood Protection and the City’s Municipal Code per the information

**URBAN LEVEL OF FLOOD PROTECTION
SUMMARY REPORT
CITY OF NEWMAN, CALIFORNIA**

provided herein. The information provided in this report has been based on a review and interpretation of available information and does not include any new flood studies or analyses.

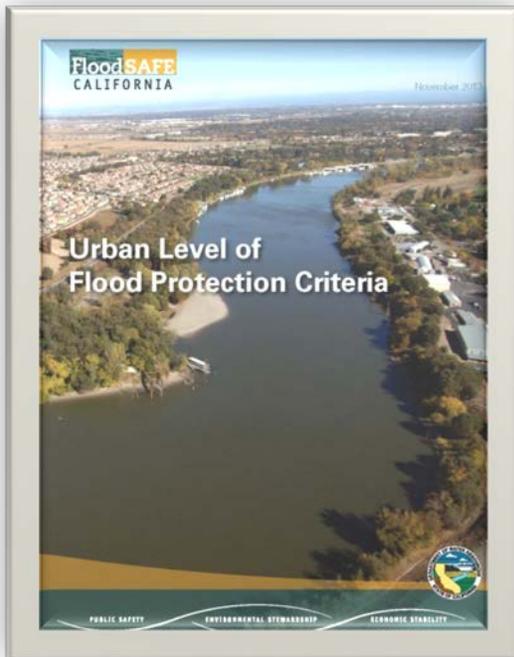
URBAN LEVEL OF FLOOD PROTECTION SUMMARY REPORT CITY OF NEWMAN, CALIFORNIA

2.0 Urban Level of Flood Protection

2.1 URBAN LEVEL OF FLOOD PROTECTION CRITERIA

The California Department of Water Resources (DWR) developed and published a document entitled *Urban Level of Flood Protection Criteria* in November 2013 that provides a systematic approach to assist cities and counties within the Sacramento-San Joaquin Valley in making “findings” related to the Urban Level of Flood Protection before approving certain land use decisions. This document may be downloaded from DWR’s website at the following web address: <http://www.water.ca.gov/floodsafe/urbancriteria/>. DWR developed the *Urban Level of Flood Protection Criteria* document to fulfill the

requirements outlined in the 2007 California Flood Legislation (that includes SB5) and associated amendments by subsequent legislation. The definition of the Urban Level of Flood Protection as provided therein is as follows:



Urban Level of Flood Protection means the level of protection that is necessary to withstand flooding that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the Department of Water Resources. Urban Level of Flood Protection shall not mean shallow flooding or flooding from local drainage that meets the criteria of the National FEMA Standard of Flood Protection.

The *Urban Level of Flood Protection Criteria* document states that cities and counties shall make a “finding” related to an Urban Level of Flood Protection or the National FEMA Level of Flood Protection for any of the following

pending land-use decisions when properties involved meet the location criteria that are listed in Section 2.2 that follows:

- Entering into a Development Agreement for all types of property development.
- Approving a discretionary permit or other discretionary entitlement for all development projects.
- Approving a ministerial permit for all projects that would result in the construction of a new residence.
- Approving a tentative map consistent with the Subdivision Map Act for all subdivisions.
- Approving a Parcel Map for which a tentative map is not required consistent with the Subdivision Map Act for all subdivisions.

URBAN LEVEL OF FLOOD PROTECTION SUMMARY REPORT CITY OF NEWMAN, CALIFORNIA

This summary report does not supersede any information or requirements contained within the *Urban Level of Flood Protection Criteria* document, and said document should be utilized by the City for making procedural decisions that are outside of the scope of this summary report.

2.2 LOCATION CRITERIA

New development is subject to the requirement of making a “finding” related to the Urban Level of Flood Protection or the National FEMA Standard of Flood Protection when all of the following conditions apply:

- It is located within an urban area that is a developed area, as defined by Code of Federal Regulations Title 44, Section 59.1, with 10,000 residents or more, or an urbanizing area that is a developed area or an area outside a developed area that is planned or anticipated to have 10,000 residents or more within the next 10 years.
- It is located within a flood hazard zone that is mapped as either a Special Flood Hazard Area or an area of Moderate Flood Hazard on FEMA’s effective FIRMs.
- It is located within the Sacramento-San Joaquin Valley.

All of these conditions apply to all properties within the City’s Planning Area that are located within a Special Flood Hazard Area (Zones AE, AH, AO, and A) or an area of Moderate Flood Hazard (shaded Zone X) on effective FEMA FIRMs.

2.3 SHALLOW FLOODING AND LOCAL DRAINAGE

If the location criteria are met per Section 2.2 above, but the new development would only experience shallow flooding or flooding from local drainage, a “finding” will still need to be made, but the standard that will apply is the National FEMA Standard of Flood Protection (100-year flood) and not the Urban Level of Flood protection (200-year flood). These types of flooding are defined below:

Shallow Flooding – Flooding that is 3.0 feet or less in depth from sources of flooding other than local drainage.

Local Drainage – Flooding caused by a contributing watershed area of less than 10 square miles, measured upstream from a given project.

2.4 EXCLUDED AREAS

For new development for properties within the City’s Planning Area that are entirely contained within unshaded Zone X (not located in a Special Flood Hazard Area or an area of Moderate Flood Hazard) on effective FEMA FIRM’s the City is not required to make a “finding” with regard to the Urban Level of Flood Protection or the National FEMA Standard of Flood Protection.

URBAN LEVEL OF FLOOD PROTECTION SUMMARY REPORT CITY OF NEWMAN, CALIFORNIA

3.0 Flood Zones and Conditions Applicable to Newman

3.1 FEMA FLOOD ZONES

The following Special Flood Hazard Areas and areas of Moderate Flood Hazard are currently depicted on FEMA FIRMs for Stanislaus County, California, and Incorporated Areas (Effective Date: September 26, 2008) or FEMA FIRMs for Merced County, California, and Incorporated Areas (Effective Date: December 2, 2008) covering the City's Planning Area and are shown on Exhibit A:

Zone AE – The flood insurance rate zone that corresponds to the 1-percent annual chance floodplains (100-year return period) that are determined by detailed methods. In most instances, whole-foot base flood elevations (BFEs) derived from detailed hydraulic analyses are shown at selected intervals within this zone.

Zone AH – The flood insurance risk zone that corresponds to the areas of 1-percent annual chance shallow flooding (usually areas of ponding) where average depths are between 1 and 3 feet. Whole foot BFEs derived from detailed hydraulic analyses are shown at selected intervals within this zone.

Zone AO – The flood insurance risk zone that corresponds to the areas of 1-percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between 1 and 3 feet. Average whole-foot base flood depths derived from detailed hydraulic analyses are shown within this zone.

Zone X (shaded) – The flood insurance rate zone that corresponds to areas within the 0.2-percent annual chance (500-year return period) floodplain, areas of 1-percent annual chance flooding where average depths are less than 1 foot, areas of 1-percent annual chance flooding where the contributing drainage area is less than 1 square mile, or areas protected from the 1-percent annual chance flood by levees. No BFEs or depths are shown within this zone.

Zone A – The flood insurance rate zone that corresponds to the 1-percent annual chance floodplains that have been estimated by approximate methods. Because detailed hydraulic analyses are not performed for such areas, no BFEs or depths are shown within this zone.

Zone AO, Zone AH, and Zone X (shaded) account for a substantial majority of the Special Flood Hazard Areas and areas of Moderate Flood Hazard mapped by FEMA within the central portion of the City's Planning Area. The only Zone AE designation is a small area where the Orestimba Creek channel cuts through the northwest corner of the City's Planning Area. Zone A is designated within the CCID Main Canal itself, within portions of the linear area between State Highway 33 and the CNRR, and within areas in the east portions of the City's Planning Area that are subject to flooding from the San Joaquin River.

There are also large areas designated as Zone X (unshaded) within the City's Planning Area on the FEMA FIRMs. These represent areas of minimal flood potential.

URBAN LEVEL OF FLOOD PROTECTION SUMMARY REPORT CITY OF NEWMAN, CALIFORNIA

3.2 SOURCES OF FLOODING

All of the Special Flood Hazard Areas and areas of Moderate Flood Hazard mapped by FEMA within the City of Newman's Planning Area are associated with flooding derived from upstream overflows from Orestimba Creek or flooding derived from the San Joaquin River.

According to the FEMA Flood Insurance Study (FIS) for Stanislaus County, California, and Incorporated Areas (Effective Date: September 26, 2008), Orestimba Creek has a contributing drainage area of 134.0 square miles measured at Interstate 5 to the west of the City of Newman that generates a peak rate or discharge of 15,590 cfs during a 100-year return period storm event. Flooding originating from Orestimba Creek initially begins as overflow from the channel segments upstream to the north and west of the City of Newman. In this area, the Orestimba Creek channel generally does not have the capacity to convey more than roughly a 10-year return period discharge. Flood flows first exceed channel capacity downstream of Jorgenson Road and the unconfined spillover on the south side of the channel is diverted to the south toward the City of Newman by berms along the west side of the CCID Main Canal, along the elevated roadway bed for State Highway 33, and along the elevated railroad grade for the CNRR. Floodwaters are conveyed south along these primary physical features and other minor diversions and into the City's Planning Area. These floodwaters pond in the southeastern part of the City until they overtop the CNRR and continue eastward. This flooding is typically shallow and has low velocities. Plate 1 depicts flooding to the south from Orestimba Creek and into the City of Newman during a significant storm that occurred in February 1998 (Source: U.S. Army Corps of Engineers, Orestimba Creek Report, December 2012).



Plate 1. Orestimba Creek Overflow Toward the City of Newman during the Flood of February 1998
(Looking South)

URBAN LEVEL OF FLOOD PROTECTION SUMMARY REPORT CITY OF NEWMAN, CALIFORNIA

Plate 2 depicts the elevated roadway bed for State Highway 33 and the elevated railroad grade for the CNRR extending south of the Orestimba Creek bridge crossings of these transportation facilities.



Plate 2. Elevated Roadway and Railroad Grades for State Highway 33 and the CNRR Extending South From Their Crossings of Orestimba Creek

According to the FEMA FIRMs for Stanislaus County, California and Incorporated Areas (Effective Date: September 26, 2008) and for Merced County, California, and Incorporated Areas (Effective Date: December 2, 2008), the San Joaquin River would inundate the eastern portions of the City's Planning Area during a 100-year return period storm. The FEMA FIRMs only map the floodplain as a Zone A designation, and depths and BFEs have not been estimated or shown. The San Joaquin River is a complex river system with upstream reservoirs, regulated flows and diversions. Should future development occur in the Zone A floodplain for the San Joaquin River, additional studies or conservative interpretations and elevating of structures will be required.

3.3 SHALLOW FLOODING EXCLUSION FROM URBAN LEVEL OF FLOOD PROTECTION

3.3.1 Overview

As stated previously in this summary report, *Urban Level of Flood Protection shall not mean shallow flooding or flooding from local drainage that meets the criteria of the National FEMA Standard of Flood Protection.* Shallow flooding is defined as flooding that is 3.0 feet or less in depth. The *Urban Level of Flood Protection Criteria* document allows cities and counties to

URBAN LEVEL OF FLOOD PROTECTION SUMMARY REPORT CITY OF NEWMAN, CALIFORNIA

choose either a 100-year or 200-year return period event as the reference flood event upon which a shallow flooding decision is made. This allows cities and counties to avoid an extensive and costly remapping of flood hazard areas already mapped and given shallow flooding designations by FEMA. Also, shallow flooding areas designated on FEMA FIRMs are typically large sheet flow areas or ponding areas of significant width, and the incremental change in flood depth between a 100-year and a 200-year return period storm would be minimal as the increase in flood discharge may be allocated across a wide area. This is true for the City of Newman. Further, there are no “flood management facilities” (defined as levees, floodwalls and their appurtenant structures in the Urban Level of Flood Protection Criteria document) that the City of Newman relies upon to avert flooding during a 100-year return period storm, but would fail during a 200-year return period storm. Therefore, it is appropriate to utilize the flood information for the 100-year return period storm that is currently available on FEMA FIRMs to make a determination regarding areas that are subject to shallow flooding.

This summary report concludes that all areas within the City’s Planning Area designated as Zone AH, Zone AO, and Zone X (shaded) on the currently effective FEMA FIRMs are areas of shallow flooding, and thus, new development within these areas will not be required to meet the Urban Level of Flood Protection (200-year return period). However, they will continue to be required to achieve the National FEMA Standard of Flood Protection (100-year return period) and conform to Title 4, Chapter 4.11 of the City Code (entitled “Floodplain Regulations”).

3.3.2 FEMA FIS General Descriptions of Flooding

The FEMA FIS contains many characterized references to flooding conditions experienced by the City of Newman originating from Orestimba Creek. References include:

“Flooding is generally shallow, and areas of inundation are controlled primarily by road, railroad, and canal embankments.”

“The principal type of flooding in the study area is sheetflow; that is, broad, shallow overland flooding generally less than 2 feet deep . . .”

“There has been very little structural damage in Newman because flooding is shallow, with relatively slow velocities.”

3.3.3 FEMA Zone AH

Zone AH is a shallow flooding zone designation (usually representing areas of ponding) where average depths are between 1 and 3 feet. In the City’s Planning Area, Zone AH has been designated for shallow ponding areas on the west side (upstream side) of the CCID Main Canal and on the west side (upstream side) of State Highway 33 and the CNRR within the south portions of existing urbanized areas of the City residing south of Inyo Avenue.

3.3.4 FEMA Zone AO

Zone AO is a shallow flooding zone designation (usually representing sheet flow on sloping terrain) where average depths are between 1 and 3 feet. In the City’s Planning Area, the majority of Zone AO designated areas have an estimated average depth of 2 feet, along the west side (upstream side) of State Highway 33 and the CNRR from roughly Inyo Avenue north to beyond Stuhr Road. There is also a limited Zone AO designation having an estimated

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average depth of 2 feet adjacent to the Orestimba Creek channel at the northwest corner of the City's Planning Area. Shallow flooding on the west (upstream) side of State Highway 33 and the CNRR is shown as having an average depth of 3 feet from north of Stuhr Road to the north boundary of the City's Planning Area.

3.3.5 FEMA Zone X (shaded)

Zone X (shaded) can mean many things, but generally represents areas of Moderate Flood Hazard that is less severe than for Special Flood Hazard Area designations (such as Zones AE, AH, AO, etc.). Zone X (shaded) may represent areas outside of the 100-year floodplain but within the 500-year floodplain, areas in the 100-year floodplain having average depths of flooding of less than 1 foot, areas in the 100-year floodplain with a contributing drainage area of less than 1 square mile, or areas protected from the 100-year flood by levees. In the City's Planning Area, Zone X (shaded) occurs adjacent to Zone AO and AH designations in areas subject to overflow flooding from Orestimba Creek where extensive ponding behind elevated facilities is not occurring. Also, the FEMA FIS only analyzes the 100-year flood event for Orestimba Creek, only lists 100-year discharges and only provides a 100-year flood profile for Orestimba Creek. Hence, this summary report has concluded that Zone X (shaded) areas in the City's Planning Area are unilaterally representing areas in the 100-year floodplain having average depths of less than 1 foot, which is classified as shallow flooding.

3.3.6 FEMA Zone A

Zone A is a flood zone designation that refers to an area in the 100-year floodplain that has been estimated using approximate methods. The degree of flooding can range from severe to mild. In the City's Planning Area, a Zone A designation is depicted on the FEMA FIRMs for the CCID Main Canal itself and for a narrow segment between the parallel State Highway 33 and CNRR derived from overflow from Orestimba Creek. Zone A is also designated for the San Joaquin River 100-year floodplain. If desired or needed in the future, the depths of flooding in these areas would need to be determined or estimated by a separate study that is outside of the scope of this Summary Report in order to determine if Urban Level of Flood Protection requirements apply and design requirements for new development.

URBAN LEVEL OF FLOOD PROTECTION SUMMARY REPORT CITY OF NEWMAN, CALIFORNIA

4.0 Conclusions

4.1 FINDINGS

In consideration of the *Urban Level of Flood Protection Criteria* document published by DWR and review and interpretation of the FEMA FIS and FIRMs, this summary report includes Exhibit A that identifies the following areas within the City's Planning Area:

- Areas that are not subject to the Urban Level of Flood Protection or the National FEMA Standard of Flood Protection requirements for new development.
- Areas that are subject to the National FEMA Standard of Flood Protection requirements for new development.
- Areas that will require additional flood studies to be performed in order to determine whether they are subject to the Urban Level of Flood Protection or the National FEMA Standard of Flood Protection requirements for new development.

The City will be required to make a "finding" that new development in any Special Flood Hazard Area (FEMA Zones AE, AH, AO, and A) or an area of Moderate Flood Hazard (shaded Zone X) will meet the Urban Level of Flood Protection or the National FEMA Standard of Flood protection.

This summary report has concluded that all areas designated as FEMA Zones AH, AO, and X (shaded) within the City's Planning Area are excluded from the Urban Level of Flood Protection requirements as they represent areas of "shallow flooding". The City will be required to make "findings" for new development in these areas that may reference this summary report and state that said new development will meet the National FEMA Standard of Flood Protection. The City may continue to use the effective FEMA FIRMs and the City Code as the basis for interpretation of specific requirements for new development to elevate structures at or above the base flood (100-year) elevation in these areas.

4.2 FREEBOARD

The *Urban Level of Flood Protection Criteria* document published by DWR does not mandate, but recommends that cities and counties consider providing freeboard in the elevating of building finished floors for the following listed reasons:

- Significant flood damage occurs to buildings before the flood elevation reaches the elevation of the finished floor.
- Wind and wakes will create waves that exceed the average flood elevation, causing damage.
- Engineers cannot know the exact elevation of the water surface. It is a calculated estimate that may be too low.
- Any flow obstruction in the nearby vicinity could increase the flood elevation.

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- Upstream development and climate change may increase future flood elevations during the building's useful life.

At the time of completion of this Summary Report, Title 4, Chapter 4.11 of the City Code (entitled "Floodplain Regulations") required elevating finished floors for new buildings at or above the 100-year flood elevations or depths and does not mandate the incorporation of freeboard.

4.3 EFFECTIVE PERIOD FOR THIS REPORT

The effective period for conclusions drawn in this summary report shall be limited to 20 years of its date of publication in conformance with the *Urban Level of Flood Protection Criteria* document published by DWR. If any changes in conditions, regulations, standards, or available flood mapping occur during this time period that should supersede the information provided herein, this report should either be revised or cease to be used as an aid in making "findings" for new development projects.

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5.0 References

City of Newman (Design, Community & Environment), *Newman 2030 General Plan*, Adopted April 10, 2007.

City of Newman, *Newman City Code, Title 4 Building Regulations, Chapter 4.11 Floodplain Regulations*, October 2014.

Federal Emergency Management Agency, *Flood Insurance Study, Stanislaus County, California, and Incorporated Areas*, September 26, 2008.

Federal Emergency Management Agency, *Flood Insurance Rate Maps, Stanislaus County, California and Incorporated Areas, Panels 770, 930, 931, 932, 933, 934, 945 and 975*, September 26, 2008.

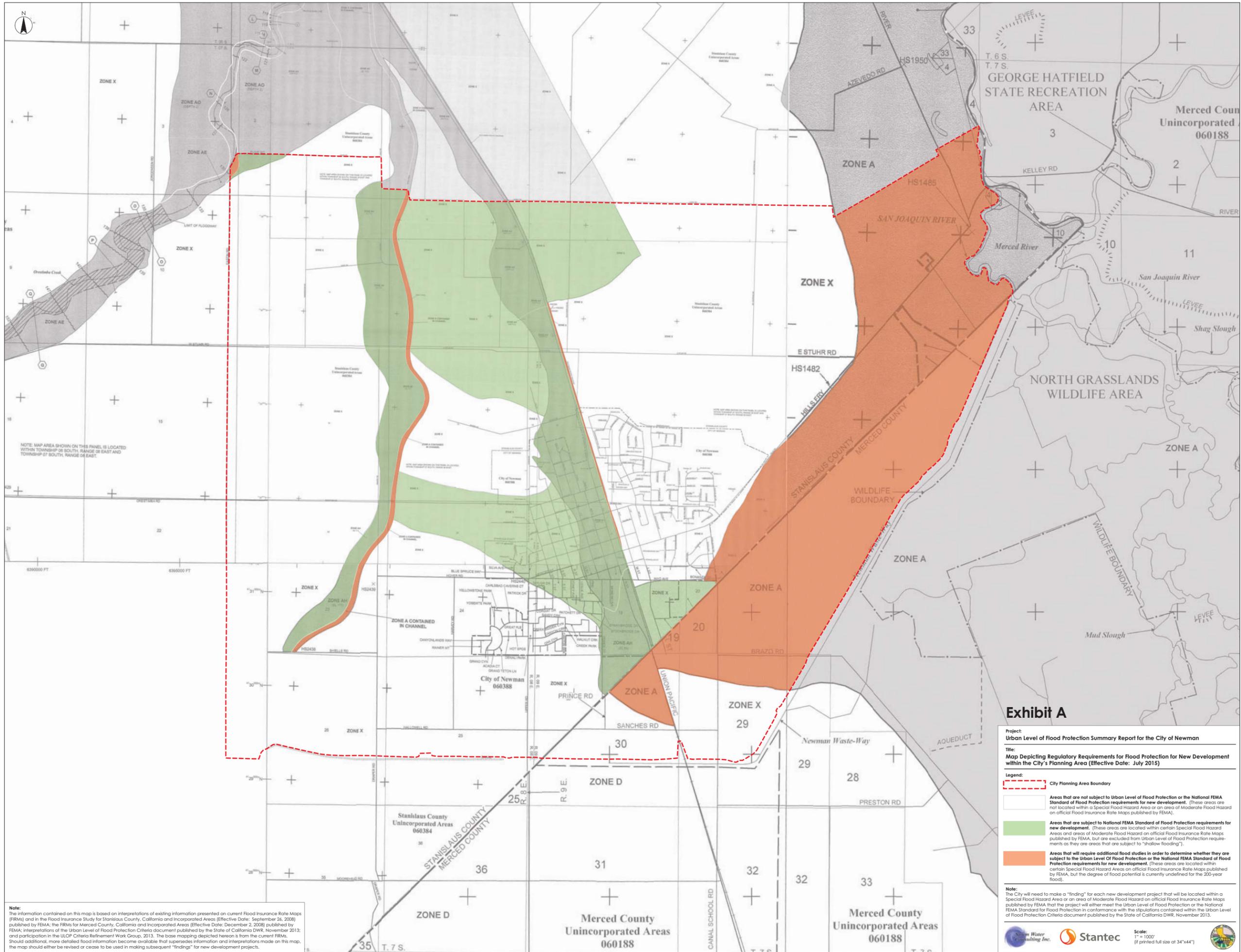
Federal Emergency Management Agency, *Flood Insurance Study, Merced County, California, and Incorporated Areas*, December 2, 2008.

Federal Emergency Management Agency, *Flood Insurance Rate Maps, Merced County, California and Incorporated Areas, Panels 325 and 350*, December 2, 2008.

State of California, Department of Water Resources, *Urban Level of Flood Protection Criteria*, November 2013.

State of California, *Senate Bill 5 (Central Valley Flood Protection Act)*, October 2007.

U.S. Army Corps of Engineers, *Orestimba Creek, West Stanislaus County, California, Draft Report for Public Review, Draft Interim Feasibility Study, Draft EA/IS*, December 2012.



Note: The information contained on this map is based on interpretations of existing information presented on current Flood Insurance Rate Maps (FIRMs) and in the Flood Insurance Study for Stanislaus County, California and Incorporated Areas (Effective Date: September 26, 2008) published by FEMA; the FIRMs for Merced County, California and Incorporated Areas (Effective Date: December 2, 2008) published by FEMA; Interpretations of the Urban Level of Flood Protection Criteria document published by the State of California DWR, November 2013; and participation in the ULOP Criteria Refinement Work Group, 2013. The base mapping depicted herein is from the current FIRMs. Should additional, more detailed flood information become available that supersedes information and interpretations made on this map, the map should either be revised or cease to be used in making subsequent "findings" for new development projects.

Exhibit A

Project:
Urban Level of Flood Protection Summary Report for the City of Newman

Title:
Map Depicting Regulatory Requirements for Flood Protection for New Development within the City's Planning Area (Effective Date: July 2015)

Legend:

- City Planning Area Boundary
- Areas that are not subject to Urban Level of Flood Protection or the National FEMA Standard of Flood Protection requirements for new development. (These areas are not located within a Special Flood Hazard Area or an area of Moderate Flood Hazard on official Flood Insurance Rate Maps published by FEMA.)
- Areas that are subject to National FEMA Standard of Flood Protection requirements for new development. (These areas are located within certain Special Flood Hazard Areas and areas of Moderate Flood Hazard on official Flood Insurance Rate Maps published by FEMA, but are excluded from Urban Level of Flood Protection requirements as they are areas that are subject to "shallow flooding".)
- Areas that will require additional flood studies in order to determine whether they are subject to the Urban Level of Flood Protection or the National FEMA Standard of Flood Protection requirements for new development. (These areas are located within certain Special Flood Hazard Areas on official Flood Insurance Rate Maps published by FEMA, but the degree of flood potential is currently undefined for the 200-year flood.)

Note:
The City will need to make a "finding" for each new development project that will be located within a Special Flood Hazard Area or an area of Moderate Flood Hazard on official Flood Insurance Rate Maps published by FEMA that the project will either meet the Urban Level of Flood Protection or the National FEMA Standard for Flood Protection in conformance with the stipulations contained within the Urban Level of Flood Protection Criteria document published by the State of California DWR, November 2013.

Scale:
1" = 1000'
(If printed full size at 34"x44")

Logos:

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URBAN LEVEL OF FLOOD PROTECTION SUMMARY REPORT



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Honorable Mayor and Members
of the Newman City Council.

JOB DESCRIPTION AND SALARY RANGE FOR FIRE DIVISION CHIEF

RECOMMENDATION:

Adopt Resolution No. 2015- , approving the job description and salary range for the Fire Division Chief position.

BACKGROUND:

The Fire Department is currently led by Chief Melvin Souza. Originally Chief Souza had indicated his plans to retire in June. However, Chief Souza has agreed to continue serving as our Chief until (1) the City and West Stan Fire Protection District can reach an agreement on cost sharing for both personnel and equipment, and (2) the City finds his replacement.

With respect to the agreement, staff is hoping to have the cost sharing agreement presented to the Council in September. With approval of this item, staff plans to begin the recruitment on September 1; with an ending date of September 30. First interviews are anticipated to be held in mid-October.

ANALYSIS:

After reviewing similar job descriptions from other communities and working with leadership from West Stanislaus County Fire Protection District, the attached job title and description has been developed. Said description has been developed to reflect the tasks and qualifications that will be necessary to meet the expectations of both parties. The salary range (\$7,153-\$8,694 per month) is commensurate with the pay structure for the joint position between the City of Patterson and District. This will be a new position within the City of Newman.

FISCAL IMPACT:

There is no immediate fiscal impact. This long term and budgetary issue will be addressed in more detail when an agreement is placed on the agenda.

CONCLUSION:

The attached job description has been developed through the cooperation of City and District staff in anticipation of the parties agreeing to a cost sharing agreement. With said agreement nearing completion, staff is recommending the Council approve the job description and salary schedule so that staff may begin the recruitment process.

ATTACHMENTS:

1. Resolution 2015-
2. Proposed job description for Fire Division Chief.

Respectfully submitted,



Michael Holland
City Manager

RESOLUTION NO. 2015-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWMAN ADOPTING A
NEW JOB DESCRIPTION AND PAY SCALE FOR FIRE DIVISION CHIEF**

WHEREAS, the City of Newman desires to provide updated job descriptions and pay scales which provide clear definitions of employee job conditions, duties and requirements; and

WHEREAS, the Fire Department is currently changing its command structure; and

WHEREAS, the City Manager has determined that a Fire Division Chief is a vital part of the current restructuring; and

WHEREAS, the City Manager and the Fire Chief from the West Stanislaus Fire District have collaborated to create a job description and pay scale that meet the expectations of both parties; and

WHEREAS, the new job description accurately reflects the anticipated duties and responsibilities, as well as the required knowledge abilities and skills; and

WHEREAS, adoption of the Fire Division Chief job description will allow management to continue to work towards a new and more efficient Fire Department; and

WHEREAS, the following salary schedule is recommended for the position; \$7,153 to \$8,694 per month; and

WHEREAS, the attached document known as the City of Newman Job Description for Fire Division Chief has been prepared by the City Manager in conjunction with the Fire Chief from the West Stanislaus Fire District and is recommended to the City Council; and

WHEREAS, the City Council of the City of Newman has reviewed the Class Specifications.

NOW, THEREFORE BE IT RESOLVED that the City Council of the city of Newman does hereby adopt the Fire Division Chief job description and pay scale to the City of Newman Class Specifications attached as Attachment "A".

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 25th day of August, 2015 by Council Member _____, who moved its adoption, which motion was duly seconded and it was upon roll call carried and the resolution adopted by the following roll call vote:

AYES:
NOES:
ABSENT:

APPROVED:

Mayor Pro Tem of the City of Newman

ATTEST:

City Clerk of the City of Newman

JOB DESCRIPTION



City of Newman /
West Stanislaus Fire Protection District



FIRE DIVISION CHIEF

JOB SUMMARY

Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

The Fire Division Chief is a joint-funded (60/40) position between the City of Newman and the West Stanislaus Fire Protection District (WSFPD). The incumbent is responsible for a geographical division which includes the City of Newman and West Stanislaus Fire Protection District. Within these response areas, the incumbent will share operations, training, support services, and prevention functions with existing WSFPD Division Chiefs. The Division Chief is responsible for planning, organizing, and directing activities, as well as overseeing fire suppression, hazardous material mitigation, fire and life safety code compliance, emergency medical services and administrative support services.

SUPERVISION RECEIVED AND EXERCISED

The Fire Division Chief is a unique position wherein it reports directly to the City Manager of the City of Newman and the WSFPD Chief. The incumbent shall report to the City Manager on all City related policies, procedures, and other City related programs. The incumbent will also report to the WSFPD Chief regarding all fire suppression and protection related issues and any and all items that necessitate WSFPD Chief and/or Board approvals.

Division Chiefs exercise direct supervision of subordinate-level supervisors, career/volunteer personnel, technical and administrative support personnel.

ESSENTIAL DUTIES

The following duties are typical for this classification. Incumbents may not perform all of the listed duties and/or may be required to perform additional or different duties from those set forth below to address business needs and changing business practices.

Examples of duties:

- Participates in the development and implementation of goals, objectives, policies, and priorities for assigned programs;
- Recommends and administers policies and procedures; oversees and participates in the development of new fire/life-safety related programs;
- Prepares specialized budgets related to assigned activities; assists in budget implementation; participates in forecast of additional funds needed for staffing, equipment, materials, and supplies; administers the approved budget;
- Supervises personnel including provision of timely performance evaluations; recommends and implements approved discipline; provides staff development; and maintains high standards necessary for efficient, professional operations;
- Conducts and documents formal and informal counseling sessions with subordinates; corrects work deficiencies and develops work skills; anticipates and resolves potential problems that may affect job performance;
- Assists in developing and implementing short and long-term strategic plans in support of Department/District goals and objectives;
- Confers with, and makes recommendations to the City Manager and WSFPD Fire Chief regarding projects and programs as related to the Department/District;
- Responds to major alarms; personally directs activities as necessary; participates in On-Call Chief Officer program, providing City/District coverage;

Examples of duties (continued):

- Models appropriate professional management conduct; maintains appropriate confidentiality of sensitive information; complies with and supports City/District policies and procedures, labor laws, and MOU provisions;
- Represents the Department to outside groups and organizations; participates in outside community and professional forums; provides technical assistance as necessary; serves as staff on a variety of boards, commissions, and committees; prepares and presents staff reports to the City of Newman City Council and West Stanislaus Board of Directors, along with other necessary correspondence as needed;
- Assures City/District personnel/volunteers work in a safe manner; follows safety requirements; monitors and assures compliance with local, state and federal regulations and other legal requirements;
- Assists and supports emergency planning and response programs;
- Assists with emergency planning and emergency operations center functions during emergencies and Emergency Operations Center (EOC) activation;
- Assists in the maintenance of City/District apparatus and equipment, ensuring a constant state-of-readiness; conducts needs assessment for apparatus/equipment; oversees and participates in design, planning, and implementation of new apparatus/equipment; coordinates with City Fleet Services and outside vendors; maintains accurate apparatus/equipment maintenance records;
- Coordinates with fellow Command Staff;
- Perform other duties as assigned.

MINIMUM QUALIFICATIONS

In general, a Division Chief will need the following skills, knowledge, and attributes to be successful in fulfilling the responsibilities of the position:

Knowledge of:

- Principles, practices, methods and techniques of modern fire and life safety, fire suppression, fire investigation, emergency medical services and disaster preparedness activities; hazardous materials response, and associated programs, services, and operations;
- Operational characteristics, maintenance and uses of firefighting apparatus and equipment;
- Principles and practices of leadership, motivation, team building and conflict resolution;
- Laws, codes, ordinances, and regulations related to City and autonomous fire districts;
- Organizational and management practices as applied to the analysis and evaluation of programs;
- Principles and practices of organization, administration and personnel management;
- Principles and practices of budget preparation and administration;
- Incident Command System (SEMS/NIMS).

Ability to:

- Plan, direct and manage activities within the Fire Department/District, including fire suppression, fire and life safety code compliance, training, apparatus/equipment maintenance, emergency medical services and mitigating hazardous materials incidents;
- Assist in the preparation and administration of department/district budgets;
- Develop and administer department policies and procedures;
- Supervise, train and evaluate assigned personnel/volunteers;
- Gain cooperation through discussion and persuasion;
- Analyze problems, identify alternative solutions, project consequences of proposed actions and implement recommendations in support of goals;
- Interpret and apply Federal, State, local and department policies, procedures, laws and regulations;
- Meet the physical requirements necessary to safely and effectively perform assigned duties;
- Identify and respond to issues and concerns presented by the public, the City, and/or the Fire District;
- Communicate clearly and concisely, both orally and in writing;
- Establish and maintain effective working relationships with those contacted in the course of work.

EXPERIENCE AND CERTIFICATION(S)

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Attachment "A"

Experience:

Seven years of increasingly responsible command and supervisory experience in an organized fire department/fire district.

Education:

Associate's degree from an accredited college or university with major course work in fire science, fire administration, business or public administration, or a related field; Bachelor's degree preferred.

Certification:

- California State Board of Fire Services, Fire Officer Certification
- California State Board of Fire Services, Fire Instructor-I Certification
- California State Board of Fire Services, Fire Prevention Officer Certification
- Police Officers Standards and Training (POST) 832pc

License or Certificate:

Possession of a valid California driver's license in compliance with California Department of Motor Vehicles regulations and requirements related to the driving and operating of fire apparatus. Maintenance of a valid California driver's license with the appropriate endorsements, qualifications, and medical clearances is required as a condition of employment for the position of Division Chief.

NECESSARY SPECIAL REQUIREMENTS

- **Must be 21 years of age or older.**
- **Must be a non-smoker and non-habitual tobacco user.**
- **Must successfully pass a pre-employment medical examination, including a drug screen, fingerprint, background check, and reference check.**
- **Must be able to provide proof of U.S. citizenship or legal right to work in the United States.**

PHYSICAL REQUIREMENTS

Environmental Conditions:

Work is performed in a standard office with frequent travel to various locations to attend meetings and/or perform Department activities in responding to emergency scenes, disasters, or critical incidents; the employee occasionally works near moving mechanical parts; occasionally exposed to outside weather conditions and wet and/or humid conditions; occasionally works in high, precarious places; occasionally exposed to fumes or airborne particles, toxic or caustic chemicals, extreme cold, extreme heat, risk of electrical shock, risk of radiation, and vibration; the noise level in the work environment is usually moderate; however, the noise level is occasionally very loud due to sirens, etc; wear protective apparel including goggles, face protector, aprons, safety shoes, and self-contained breathing apparatus; incumbents may be required to work extended hours including evenings and weekends and may be required to travel outside City boundaries to attend meetings.

Physical Conditions:

Primary functions require sufficient physical ability to work in an office setting; walk, stand, or sit for prolonged periods of time; occasionally stoop, bend, kneel, crouch, reach, and twist; occasionally climb and balance; regularly push, pull, lift, and/or carry light to moderate weights; frequently lift and/or move moderate to heavy weights; perform arduous and prolonged tasks under adverse and dynamic conditions; occasionally lift and/or move heavy weights; operate office equipment including use of computer keyboard; requires a sense of touch, finger dexterity, and gripping with hands and fingers; ability to speak and hear to exchange information; ability to operate a vehicle to travel to various locations; ability to operate and use specialized vehicles and equipment.

Working Conditions:

Must be willing and have the ability to work such hours as are necessary to accomplish the job requirements, remain awake for long periods of time (including 24 hour periods) under strenuous situations, remain on-call 24 hours a day, attend meetings, seminars and conferences during or after work hours, travel out of town or out of state for several days at a time, work under adverse conditions such as those inherent in emergency firefighting situations, consistently follow through with duties/assignments and work harmoniously with subordinates and superiors, wear approved uniform. Report for work on a regular, consistent basis and maintain an acceptable attendance record in accordance with Department policy.