

**AGENDA**  
**REGULAR MEETING OF THE**  
**CITY OF KING CITY COUNCIL**  
**AND**  
**Sitting as SUCCESSOR AGENCY OF**  
**THE RDA FOR THE CITY OF KING**

**TUESDAY DECEMBER 12, 2017**  
**6:00 P.M.**

**CITY HALL**  
**212 S. VANDERHURST AVENUE**  
**KING CITY, CALIFORNIA 93930**

*\*Spanish interpretation services will be available at meeting*

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a City meeting, Please contact the City Clerk's Office (831-386-5925) at least 48 hours prior to the Meeting to ensure that reasonable arrangements can be made to provide accessibility to the meeting.*

*\* Please submit all correspondence for City Council PRIOR to the meeting with a copy to the City Clerk.*

- 1. CALL TO ORDER**
- 2. ROLL CALL:** Council Members Darlene Acosta, Robert Cullen, Carlos DeLeon, Mayor Pro Tem Carlos Victoria, and Mayor Mike LeBarre
- 3. FLAG SALUTE**
- 4. CLOSED SESSION ANNOUNCEMENTS**
- 5. SPECIAL PRESENTATIONS**  
  
None
- 6. PUBLIC COMMENT**  
Any member of the public may address the Council for a period not to exceed *three minutes'* total on any item of interest within the jurisdiction of this Council that is not on the agenda. The Council will listen to all communications; however, in compliance with the Brown Act, the Council cannot act on items not on the agenda. Comments should be directed to the Council as a whole and not to any individual Council Member. Slanderous, profane or personal remarks against any Council Member, staff member or member of the audience is not permitted.
- 7. COUNCIL COMMUNICATIONS & COMMITTEE REPORTS**  
Individual Council Members may comment on Council business, his or her Council activities, City operations, projects or other items of community interest. Council Members may also request staff to report back at a subsequent meeting on any matter or take action to direct staff to prepare a staff report for a future agenda.
- 8. STAFF COMMUNICATIONS**  
Comments presented by the City Manager, City Attorney or other staff on City business and/or announcements.

## **9. CONSENT AGENDA**

The following items listed below are scheduled for consideration as a group. The recommendations for each item are noted. Members of the audience may speak on any item(s) listed on the Consent Agenda. Any Council Member, the City Manager, or the City Attorney may request that an item be withdrawn from the Consent Agenda to allow for full discussion. The Council may approve the remainder of the Consent Agenda on one motion. Items withdrawn from the Consent Agenda may be considered by separate motions at the conclusion of the discussion of each item.

- A. Meeting Minutes of November 28, 2017 Council Meeting  
Recommendation: approve and file.
- B. City Check Register  
Recommendation: approve and file.
- C. Successor Agency Check Register  
Recommendation: approve and file.
- D. Consideration: Consulting Services for Community Choice Aggregation Program  
Recommendation: 1) approve and authorize the City Manager to execute Amendment #1 to the Consultant Services Agreement with Bayshore Consulting Group, Inc. to increase the contract amount from \$5,000 to \$10,000; and 2) appropriate the additional \$5,000 needed.
- E. Consideration: Reimbursement Agreement with Smith-Monterey, LLC Relating to Downtown Addition Project and Multimodal Center Project  
Recommendation: 1) approve and authorize the City Manager to execute an Agreement with Smith-Monterey, LLC relating to reimbursement of City expenses for the Downtown Addition Project and Multimodal Transportation Center Project; and 2) authorize the City Manager to modify the amount of contribution that will be made by Smith-Monterey, LLC toward the cost of the Point C contract if the scope of work and costs are increased or decreased.
- F. Consideration: Authorizing the Submittal of an Application Accepting Allocation of Funds and Execution of a Grant Agreement with the Federal Aviation Administration (FAA), for the Airport Improvement Program Transmittal of Fiscal Year 2018  
Recommendation: adopt Resolution 2017-4614 authorizing the submittal of a grant application to the FAA; acceptance of an allocation of funds for fiscal year 2018; and authorizing the City Manager to enter into and sign the grant agreement and any subsequent amendments with the FAA for the purpose of said grant.
- G. Consideration: Amendment to City Manager Employment Agreement  
Recommendation: adopt a Resolution approving an amendment to the employment agreement with the City Manager.

## **10. PUBLIC HEARINGS**

None

## **11. REGULAR BUSINESS**

- A. Consideration: Congregated Choice Aggregation Program Implementation Plan and Full-Service Agreement  
Recommendation: 1) adopt a Resolution approving a Congregated Choice Aggregation Program (CCA) Implementation Plan; 2) approve and authorize the City Manager to execute a Full-Service Agreement between the City of King and Pilot Power Group, Inc.; and 3) authorize the City Manager to make non-substantive changes to the Full-Service Agreement as necessary and approved as to form by the City Attorney.

## **12. CITY COUNCIL CLOSED SESSION**

Announcement(s) of any reportable action(s) taken in Closed Session will be made in open session, and repeated at the beginning of the next Regular City Council meeting as this portion of the meeting is not recorded.

- A. Conference with Labor Negotiators  
Pursuant to Government Code Section §54957  
Agency Representative: Steven Adams  
Employee Organizations: SEIU, KCPSA, KCPOA, KCCEA
- B. Government Code Section §54957  
Conference with Legal Counsel - Anticipated Litigation  
Initiation of litigation Pursuant to Paragraph (4) of Subdivision (d) of Section 54956.9 (Deciding whether to Initiate Litigation):  
One Case
- C. Conference with Real Property Negotiators  
Properties: Portions of APN 245-111-030-000 and APN 245-111-029-000;  
and APN 245-111-034-000  
Agency Representative: Steven Adams

## **13. ADJOURNMENT**

**City Council Meeting  
November 28, 2017**

**1. CALL TO ORDER:**

Regular Meeting called to order at 6:00pm by Mayor LeBarre.

**2. FLAG SALUTE:**

The flag salute was led by Mayor LeBarre.

**3. ROLL CALL:**

City Manager Adams conducted roll call.

City Council: Darlene Acosta, Robert Cullen, Carlos DeLeon, Mayor Michael LeBarre, Mayor Pro Tem Carlos Victoria.

City Staff: City Manager Steven Adams; City Attorney Shannon Chaffin; Police Chief Robert Masterson; Admin. Asst./Deputy City Clerk, Erica Sonne

**4. CLOSED SESSION ANNOUNCEMENTS:**

None

**5. PRESENTATIONS:****A. Mayor's Commendation Honoring Wesley Beebe**

Mayor LeBarre presented his commendation honoring Mr. Beebe for his work on the historic downtown not charging for the renderings of 300 Broadway and assisting with the façade grants.

**6. PUBLIC COMMUNICATIONS:**

None

**7. COUNCIL COMMUNICATIONS:**

Mayor Pro Tem Victoria had nothing to report.

Council Member Cullen circulated the Solid Waste Authority Highlights. He stated that the Chamber of Commerce picked Lynn's Too for Business of the Year, Paulette Bumbalough for Citizen of the Year and Ricky Humphrey's for Friend of the Community.

Council Member Acosta had nothing to report.

Council Member DeLeon stated that the School Board that there are homework updates. The high school hired a school nurse for the school nurse position.

Mayor LeBarre had nothing to report.

**8. CITY STAFF REPORTS AND COMMENTS:**

City Manager Adams stated there will be an dedication ceremony for the security cameras January 9<sup>th</sup>, working on the multimodal center project, working on seasonal employee housing, bringing forward an ordinance that will recognize places in the city for seasonal employee housing, schedule for the sewer line

project under the railroad tracks to enable Colledgeville to move forward, working on code enforcement that will open up more space for seasonal employee housing and another project on Bitterwater Road. CCA contract will be moving forward, façade enhancements construction going on, Amgen of California organizing committee first meeting, Thursday we are hosting a learned class where the kids will be shadowing staff.

City Attorney Shannon Chaffin nothing to report at this time.

## 9. CONSENT AGENDA

- A. Meeting Minutes of November 14, 2017 Council Meeting
- B. City Monthly Treasurer's Report- October 2017
- C. Successor Agency Monthly Treasurer's Report- October 2017
- D. Public Financing Authority Monthly Treasurer's Report- October 2017
- E. City Check Register
- F. Consideration: Cancellation of Regular Meeting on December 26, 2017
- G. Consideration: Second Reading and Adoption of an Ordinance of the City Council of the City of King Adding and Adopting Chapter 7.65 of Title 7 of the King City Municipal Code Pertaining to Hotel, Motel and Motor Lodge Occupancy Regulations and Operational Standards and Adoption of a finding of No Significant Effect Under CEQA Guidelines Section 15061(B)(3) and Class 1 Exemption Under CEQA Guidelines Section 15301
- H. Consideration: Public Service Easement to the City of King City At 602 South First Street
- I. Consideration: Pavement Management Program Funding Agreement
- J. Consideration: Award of Contract for Consulting Services Airfield Electrical Improvements (Airport Improvement Project 2017 FAA Grant) Design Phase

Mayor LeBarre pulled item 9(G) for discussion.

City Attorney Chaffin clarified 9(H) adding a couple of attachments clarifying the resolution to incorporate those attachments and 9(J) award of contract with Kimley-Horn approval will be as to material terms the scope of work is provided this evening provide to public as well. Indemnification announcing requirements to protect the City are being worked through. Approval of that tonight will be seen as the forward.

Action: Motion to approve consent agenda with City Attorneys additions by Cullen and seconded by Victoria.

AYES: Council Members: Mayor LeBarre, Acosta, Cullen, DeLeon and Mayor Pro Tem Victoria

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

Mayor LeBarre read the ordinance title into the record "Consideration: Second Reading and Adoption of an Ordinance of the City Council of the City of King Adding and Adopting Chapter 7.65 of Title 7 of the King City Municipal Code Pertaining to Hotel, Motel and Motor Lodge Occupancy Regulations and Operational Standards and Adoption of a finding of No Significant Effect Under CEQA Guidelines Section 15061(B)(3) and Class 1 Exemption Under CEQA Guidelines Section 15301." He clarified that the ordinance does not limit farmworker housing.

Bill Lipe, Monterey County, spoke on housing being difficult in the entire state. He feels that the crux of the issue is that the TOT be paid. He stated that the issue of concern is the caps also, maybe a higher percentage the first year. He requests that the time be expanded to the end of next year and on the TOT, he feels the City needs to be paid.

Janet Buttgerreit stated that this is about the town and the comfort of the farmworkers. She read her letter into the record. Since the last discussion of an ordinance about the use of motels for boarding houses, there has been an improvement in some areas by our subdivision. The garbage seems to be less, the tent for feeding the workers is no longer there and the big temporary storage unit is gone... it is back right now but most likely temporary. The buses no long park on the streets but the have been replace with many cars that were not there before... we were told that the workers did not have cars but it seems they do and they park them on the street. It is puzzling that they are not parked at the motels where they are staying.

So you could say that the H2A workers are good neighbors. The workers themselves have always been courteous as the pass by our homes and never been a problem.

The problem is...are they going to continue to be our neighbors when the places where they stay are zoned and permitted as temporary housing for automobile travelers?? The motels are not neighborhoods...they are commercial enterprises. What obligation do we have to treat them differently when our established rules say otherwise?

If this must continue in some mode do we have to continue to lose revenue from TOT taxes that our town so desperately needs to support law enforcement and infrastructure? We have heard that the workers spend lots of money in the town after they return from work. That is a good thing but the sales tax they pay amounts to around 1 cent per dollar to the City of King after all the distribution. TOT tax on a room costing \$90.00 a night equals \$9.00 a night and it all goes to the City of King.

So there would need to be a purchase of \$900 in taxable sales by the workers to equal one night of TOT taxes. These are estimate figures since the amount charged per room is not known. Please get reports that show what the income is from TOT tax now and take the time to extrapolate what the City coffers would receive if TOT taxes were paid on the occupancy of long term stays.

We all realize that we must be gentle with our farmers and their problems with finding a stable labor force. The City of King has already done that and is doing that with their ordinance. The laborers need housing that gives them space and comfort. Motel rooms with 4 to a room cannot provide that. We need to encourage the farmers to supply adequate housing for their workers and it has already happened in the Old Meyer building. Fast tracking the permit process and inspections will further encourage the farmers in this direction.

The Owners of the motels in King City did not purchase their businesses with the purpose they now use it for. King City is trying very hard to attract visitors to our mission, the Pinnacles, the MCARLM park and venues at the Salinas Valley Fair. It is a fact that the Fair has to turn away events it could provide the space for, but due to the lack of adequate motels rooms for the event, they cannot book such events.

So again the Council must look at their zoning and ordinances and balance our City's needs. Please take the long view of what we want our town to be.

King City in Bloom just recently received several awards for the town's efforts to enhance what we have in our community. Please be a part of moving the town to an even more attractive place for people to visit and choose to live here.

Alfredo, H2A worker, he is here to make a good living for his family, he is on his 5<sup>th</sup> visa, he is not going to come back next year if the 75% goes into effect. He doesn't want to be here but local people are to lazy to work so he needs to be here.

City Manager Adams gave an overview of what this ordinance about.

Stacy from Super 8, Motel Manager, stated that the workers are very respectful, she has heard rumors of complaints that they are not saying what they are, and the Ag workers are happy where they are staying. She stated that the cars are from the trailer park on River Dr. The trailer is there for storage purposes while the guys are here. Were they are staying now they are very happy.

Dep, Subway lived in King City for 18 years, the workers are eating in King City. People are living in 2 or 3 families living in one house because they can't make it. We have to appreciate the workers. The tourist may never come back.

Dep Desi, Keefers and Super 8, he is proud to be a resident and business owner of King City. They can not make it on tourist alone. They provide housing for all visitors. They are temporary workers and are not here for a year. They are living better than in a labor camp. They never said no to TOT tax. Question is why can't we rent to them for longer. Fair goes for four days and people stay for 2 days. All of our guest that are staying with us are making a living for their family and will not hurt anyone. Please do not make us kick out our guests. We are not opposing the tax we are opposing the cap.

Ankit Panchal, Hotel owner in Monterey, Carmel, Santa Cruz representing hotel owners.

KP Patel, hotel owner feels that workers and labors need to be able to stay longer than 30 days. He doesn't feel anyone is trying to get out of the TOT tax. He would like to see City Council reconsider this ordinance.

John Buttgerreit stated that we do rely on agriculture but we also have economic base that relies on visitors and tourists. There are 4 motels surrounding our one stop light that puts 1,100 people in a small area. The fair would like to bring in more venues but we need more motels.

Lance Bassetti, Elkhorn Packing, stated that he feels that they have tried to meet all the demands and they are trying to build more housing but it is going to take more time. He is concerned for the CAP. He sees both sides.

Tina Lopez, business owner, she appreciates the clarification. She would like to know if the City is monitoring housing to make sure the 75% is coinciding with the H2A workers housing coming into town. She had heard there were complaints and no complaints. This was initiated because of complaints that have been resolved.

Dirk Genini, Farm labor contractor, this is a whole central coast issue and would like to see King City give more time with the stake holders.

Mark Bloom, he is hearing both sides, doesn't understand the issues, he hears the City Manager saying that the ordinance allows for time to make this happen. He hasn't heard anything yet that is against a farmworker.

Donna Myers, made a complaint about the bus's she wanted to clarify that she didn't want to have Dep lose his business. He complaint was that she almost got into two accidents. The parking on River Dr. is not the ag workers. She doesn't want to see any of these people kicked out.

Mayor LeBarre clarified that no one will be kicked out.

Mayor Pro Tem Victoria, thanked everyone for being here. He can not and will not support a plan that will hurt our business owners and economy in general. In our council report it clearly states and several times farm workers as being affected if this plan gets approved. So, in a way, we do anticipate farm workers to be affected, and by doing this, King City will be financially affected. Now, all this was initiated by, as mention by our City Manager in previous meetings, a few complaints, it came to council as a complaint, and it end up with this ordinance being presented. Most of these issues have been resolved. After having conversation with several agriculture business owners, supervisors and contractors, 100% of the people he talked to disapprove this ordinance. He is the first one to admit we need housing for farm workers, but once again, we don't have the housing. He further stated that if we limit how long people that come to work can stay and contractors do not get assurance that the rooms will be available, we will lose the hundreds of thousands of dollars that come to our business, and yes you may argue that it does not come to our city budget, but it goes t the families of the business owners who have invested their lives in King City. He is opposed t telling any business owner how to run their business, he is not willing to tell workers how long they can stay, and where to stay. If they are staying in a specific hotel/motel...maybe it is due to the great treatment and service they are provided with, especially if the price is right. It is not clear to him why we are not allowing long term stays, but we want to allow them to check in and out... he doesn't get it no 8 months, but yes to 8,30 day period. So if it is about the money, lets have a decent conversation and get a win-win situation for everybody.

Mayor LeBarre, clarified again that it is not kicking anyone out.

Councilmember Acosta stated that over the last few years as a City we have been having to put in a lot of work in our sewer system. The focus is becoming about motels when it stems from other issues. It is not about the ag workers. She stressed that the 280-day cap is 9 months. The Council aware that there is a housing issue. The issue is motels are short term stays. As a City we need to give equitable housing to our farm worker community. No one has been locked out of their home. She feels that this has been discussed. She feels that everyone has lost something. She feels everyone has gained as well. She feels there has been a lot of hashing out and she is happy with the outcome.

Councilmember DeLeon stated that he appreciates the motel owners and everyone staying at the motels. If you are a visiting farmworker we appreciate you, his dad was a farmworker, he knows the struggles, he deeply appreciates that. He also used to run a motel, Motel 6, he knows that Motel 6 now has extended stay rooms, they are larger rooms, they have kitchenettes. These motels in King City do not have that, these motels are temporary overnight stays. He stated if you want to rent it for a long term stay and have it be a resident, they are not zoned for that they are zoned for residential. If you want to rent it for residential we would need to rezone it and you would need to remodel the rooms which is a big undertaking. He said as far as having visiting workers stay here and work here we are not going to let them stay just anywhere, like people's cars or garages just because they are okay with it, it is not humane. They are not adequate. These rooms are too small. He feels that this compromise of 8 or 9 months of 75% of your rooms is more than is fair. He stated that with anything else the motel owners can contest this however, he stated that the City is basically looking out for farm worker's. We want to be able to let them stay here as other cities just flatly said no. He furthers stated that we don't want to be like those other Cities we want to be welcoming we want to be accommodating but we want to do with in the confines of the law and the confines of the existing ordinance. He stated that it took a long while to get to this point. He said we would be working on getting adequate housing for visiting workers. We can't just let them stay anywhere we want to be welcoming to them. We do not want to have labor camps like back in the 60's where it is like one room. It has to be adequate and it has to be zoned properly and it has to meet all the requirements. As far as singling out people, he has seen the Facebook posts and all the miss information. This is upsetting to think that this a race issue. There is nothing in the ordinance that says farmworkers it is for anyone who wants to stay there. He would have liked to see this turn out back in May for this whole process. He stated that we have met a compromise that is not going to make everyone

happy, but compromises don't do that compromises work it out for the temporary. He stated that they can negotiate the fees for those rooms to accommodate the "loss". There are a lot of emotions that say it is anti-worker and it is not anti-worker. If you want to provide housing then provide housing, as the motels are set up now they are not set up for housing. He feels the ordinance is more than fair. He feels that everyone has a valid opportunity to speak their mind and let us know what they think. The ordinance will force other entities to build affordable housing. We need to do the right thing and sometimes the right thing is going to upset the people. The council has everyone's best interest at heart.

Action: Motion to approve consent item 9(G) with direction to bring this back on a yearly basis, 3 to 6 months before the next trigger would begin so housing can be reevaluated and make sure projects are in line by LeBarre and seconded by Cullen.

AYES: Council Members: Mayor LeBarre, Acosta, Cullen, DeLeon and

NOES: Council Members: Mayor Pro Tem Victoria

ABSENT: Council Members:

ABSTAIN: Council Members:

**10. PUBLIC HEARINGS:**

None

**11. REGULAR BUSINESS:**

None

**ADJOURNMENT:**

There being no further business to come before the City Council, Mayor LeBarre adjourned the regular meeting at 7:26pm. to closed session reading into the record the following

A. Public Employee Performance Evaluation Pursuant to Government Code Section 54957:

Title: City Manager

**Approved Signatures:**

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Mayor, Michael LeBarre  
City of King

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City Clerk, Steven Adams  
City of King



**KING CITY**  
C A L I F O R N I A

Item No. 9(B)

**REPORT TO THE CITY COUNCIL**

**DATE: DECEMBER 12, 2017**  
**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**  
**FROM: STEVEN ADAMS, CITY MANAGER**  
**BY: PATRICIA GRAINGER, ACCOUNTANT**  
**RE: CONSIDERATION OF CITY CHECK REGISTER**

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**RECOMMENDATION:**

It is recommended City Council receive and file.

**BACKGROUND:**

At least once a month, the City Treasurer shall submit to the City Council, a copy of the check register.

**DISCUSSION:**

The purpose of this item is to provide the Council an opportunity to review and monitor ongoing expenditures. These documents are attached.

**COST ANALYSIS:**

There is no fiscal impact as a result of this action.

**ENVIRONMENTAL REVIEW:**

No Environmental Review required for this item.

**ALTERNATIVES:**

The following alternatives are provided for Council consideration:

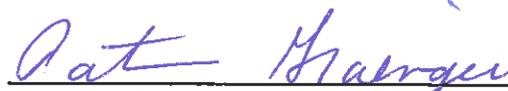
1. Receive and file the report; or
2. Provide other direction to staff regarding requests for additional information.

**CITY COUNCIL/CITY  
CITY CHECK REGISTER  
DECEMBER 12, 2017  
PAGE 2 OF 2**

Exhibits:

1. Check Register Report

Submitted by:

  
Patricia Grainger, Accountant

Approved by:

  
Steven Adams, City Manager

Check Register Report

Nov 17, 2017 (FY 2017-18)

Date: 11/17/2017

Time: 11:37 am

Page: 1

KING CITY CITY HALL

BANK: WELLS FARGO BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
<b>WELLS FARGO BANK Checks</b>							
59816	11/17/2017	Printed		AT&T-GA	AT & T	Long Distance Phone -	245.98
59817	11/17/2017	Printed		ADAMSS	STEVEN ADAMS	C M Travel Reimbursement	129.95
59818	11/17/2017	Printed		KCTVHARD	ALCANTAR HARDWARE INC	Paint for Soccer field lines.	209.11
59819	11/17/2017	Printed		ALVAREZ	ALVAREZ TECHNOLOGY GROUP INC	Computer Services	304.50
59820	11/17/2017	Printed		AM SUPPLY	AMERICAN SUPPLY CO.	Janitorial Supplies	801.72
59821	11/17/2017	Printed		AT & T	AT & T	Monthly Access Transport -	345.11
59822	11/17/2017	Printed		AT&T - C	AT&T	K C P D - #9391048347	702.10
59823	11/17/2017	Printed		BAYSHORE	BAYSHORE CONSULTING GROUP, INC	Consulting Group	1,519.60
59824	11/17/2017	Printed		CAL WATER	CALIFORNIA WATER SERVICE CO.	Monthly Water -	23,774.31
59825	11/17/2017	Printed		CASEY PRIN	CASEY PRINTING, INC.	Postage - K C Survey	2,433.65
59826	11/17/2017	Printed		CATHOLIC	CATHOLIC CHARITIES	Catholic Charities	2,500.00
59827	11/17/2017	Printed		CNAUTO	CLARK N. CLEVINGER	Small equipment oil.	4.28
59828	11/17/2017	Printed		COASTL	COASTLINE MARKETING GROUP INC	Website Maint.	125.00
59829	11/17/2017	Printed		CONATSER	CONATSER WELDING & MACHINE,LLC	Irrigation Pipe.	65.58
59830	11/17/2017	Printed		CSGCON	CSG CONSULTANTS INC	Contract Inspector	1,360.00
59831	11/17/2017	Printed		DURANC	CONNIE DURAN	Youth basketball sibling	20.00
59832	11/17/2017	Printed		GEORGE L M	GEORGE L MEE MEMORIAL HOSPITAL	DUI 17-1203 -	64.00
59834	11/17/2017	Printed		HANNA	HANNA & BRUNETTI	Infrastructure-First St, So of	28,092.25
59835	11/17/2017	Printed		HINDERLITE	HINDERLITER, DELLAMAS & ASSOC	Contract service - sales,	1,487.50
59836	11/17/2017	Printed		HYDRO TURF	HYDRO TURF, INC.	Blades for riding mower.	345.25
59837	11/17/2017	Printed		SCOFIELD	IRMA SCOFIELD	Mens Polo Shirts &	188.92
59838	11/17/2017	Printed		JBTIRE	MIGUEL JACOBO	Unit #112 - Service Vehicle	2,712.07
59839	11/17/2017	Printed		ROLAND	JOCELYN E. ROLAND, PH.D., ABPP	Pre-emp psy	450.00
59840	11/17/2017	Printed		KIMLEY-HOR	KIMLEY-HORN & ASSOCIATES, INC.	A/P 16 Airport Layout	13,506.18
59841	11/17/2017	Printed		KC IND	KING CITY INDUSTRIAL SUPPLY	Dust mask.	242.73
59842	11/17/2017	Printed		KINGL	KING LUMINAIRE	BLACK LINER	1,830.00
59843	11/17/2017	Printed		LA HEARNE	L.A. HEARNE COMPANY	Clorine Acid for Pools.	363.31
59844	11/17/2017	Printed		LCAH	LOS COCHES ANIMAL HOSPITAL	Service Chg	5.75
59845	11/17/2017	Printed		MOCO TAX	MONTEREY COUNTY TAX COLLECTOR	Property Tax 2017-18	24,375.36
59846	11/17/2017	Printed		MYCHEV	MY CHEVROLET INC	Used 2017 Ford Fushion.	36,279.30
59847	11/17/2017	Printed		O'REILLY A	O'REILLY AUTOMOTIVE, INC.	Fix Broken Irrigation Wires	31.90
59848	11/17/2017	Printed		OFFICE DEP	OFFICE DEPOT	Receipt Book	339.90
59849	11/17/2017	Printed		PURE WATER	PENINSULA PURE WATER INC.	KCPD - Water	73.70
59850	11/17/2017	Printed		PETTY CASH	PETTY CASH-PATRICIA GRAINGER	City Hall - Petty Cash	202.02
59851	11/17/2017	Printed		PAC	PG&E	Monthly Service -	15,136.01
59852	11/17/2017	Printed		PBGFS	PITNEY BOWES GLOBAL	Folding & Stamp Machine	630.87
59853	11/17/2017	Printed		PROYOUTH	PROYOUTH	After School Program	11,458.33
59854	11/17/2017	Printed		QUILL CORP	QUILL CORPORATION	Supplies	171.07
59855	11/17/2017	Printed		RED SHIFT	RED SHIFT INTERNET SERVICES	Monthly Internet	30.90
59856	11/17/2017	Printed		ROSSI BROS	ROSSI BROS TIRE & AUTO SERVICE	Front Loader	145.67
59857	11/17/2017	Printed		SALVALP	S & L INVESTMENT	Ballistic Vest	2,277.81
59858	11/17/2017	Printed		SV FAIR	SALINAS VALLEY FAIR	Lease - Basketball	2,862.50
59859	11/17/2017	Printed		SO CO NEWS	SO CO NEWSPAPERS	CUP 2016-008	1,618.56
59860	11/17/2017	Printed		SOTOJE	JESUS G. SOTO	District Meeting	200.00
59861	11/17/2017	Printed		SPEAK	SPEAKWRITE BILLING DEPT	Dictation	193.39
59862	11/17/2017	Printed		SPECIALTY	SPECIALTY CONSTRUCTION INC.	Silt & Sediment Removal	58,900.00
59863	11/17/2017	Printed		THE SALINA	THE SALINAS CALIFORNIAN	CCA Prog Ordinance	1,078.02
59864	11/17/2017	Printed		ZAPPIA	THE ZAPPIA LAW FIRM, APC	Legal Service	2,146.00
59865	11/17/2017	Printed		TYLERB	TYLER BUSINESS FORMS	W-2's & Misc 1099 Forms.	355.00

Check Register Report

Nov 17, 2017 (FY 2017-18)

Date: 11/17/2017

Time: 11:37 am

Page: 2

KING CITY CITY HALL

BANK: WELLS FARGO BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
<b>WELLS FARGO BANK Checks</b>							
59866	11/17/2017	Printed		U.S. BAN	U.S. BANK CORP PAYMENT SYSTEM	Various Charges -	1,555.95
59867	11/17/2017	Printed		UNION P	UNION PACIFIC RAILROAD COMPANY	Pipeline License Fee -	4,780.00
59868	11/17/2017	Printed		VI FAM MED	VALLEY INDUSTRIAL & FAMILY	Engles TB Test	30.00
59869	11/17/2017	Printed		VERIZON WI	VERIZON WIRELESS	Cell Phone -	1,138.42
59870	11/17/2017	Printed		YRCINC	YRC INC.	Delivery Charges for Ammo.	30.00
<b>Total Checks: 54</b>						<b>Checks Total (excluding void checks):</b>	<b>249,869.53</b>
<b>Total Payments: 54</b>						<b>Bank Total (excluding void checks):</b>	<b>249,869.53</b>
<b>Total Payments: 54</b>						<b>Grand Total (excluding void checks):</b>	<b>249,869.53</b>

Check Register Report

Dec 1, 2017 (FY 2017-18)

Date: 12/01/2017

Time: 4:51 pm

Page: 1

KING CITY CITY HALL

BANK: WELLS FARGO BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
<b>WELLS FARGO BANK Checks</b>							
59871	12/01/2017	Printed		A & G PUMP	A & G PUMPING, INC	Rental Chge per Toilet/Unit	87.65
59872	12/01/2017	Printed		ADAMS	ADAMS ASHBY GROUP, LLC	Preparation Grant	4,500.00
59873	12/01/2017	Printed		KCTVHARD	ALCANTAR HARDWARE INC	Table	322.90
59874	12/01/2017	Printed		A & W	ALESHIRE & WYNDER LLP	Attorney Fees -	8,504.00
59875	12/01/2017	Printed		ALVAREZ	ALVAREZ TECHNOLOGY GROUP INC	Surveillance System Set-up	655.80
59876	12/01/2017	Printed		AT & T	AT & T	Sentry Alarm Monthly -	2,048.84
59877	12/01/2017	Printed		CVT	CENTRAL VALLEY TOXICOLOGY INC	Drug Lab - 17-0978	421.00
59878	12/01/2017	Printed		RANDY	FIDENCIO CID	District Block Party	280.00
59879	12/01/2017	Printed		CNAUTO	CLARK N. CLEVENER	Cleaning small equipment	8.65
59880	12/01/2017	Printed		COASTAL	COASTAL TRACTOR	Rental for Sewer Plant	649.50
59881	12/01/2017	Printed		COASTL	COASTLINE MARKETING GROUP INC	Website maint.	125.00
59882	12/01/2017	Printed		CSGCON	CSG CONSULTANTS INC	Contract Inspector	3,655.00
59883	12/01/2017	Printed		DAVE'S REP	DAVE'S REPAIR SERVICE	Tank Testing - Fuel	800.00
59884	12/01/2017	Printed		EESCON	EES CONSULTING, INC	K C CCA Peer Review 2017	1,450.00
59885	12/01/2017	Printed		MAGNITUDE	OSCAR GARCIA	Service for Camera	67.80
59886	12/01/2017	Printed		GIS	GONZALES IRRIGATION SYSTEMS,	Broker water irrigation line.	299.42
59887	12/01/2017	Printed		GREEN'S	GREEN'S ACCOUNTING	October 2017 Acct Service	9,902.38
59888	12/01/2017	Printed		HYDRO TURF	HYDRO TURF, INC.	Riding Mower Maint Repair.	833.95
59889	12/01/2017	Printed		GUTTREE	JUAN G. GUTIERREZ	Tree Contract	11,000.00
59890	12/01/2017	Printed		KC IND	KING CITY INDUSTRIAL SUPPLY	Janitorial Supplies.	354.94
59891	12/01/2017	Printed		LA HEARNE	L.A. HEARNE COMPANY	National Night Out Supplies	46.58
59892	12/01/2017	Printed		LEXIPOL LL	LEXIPOL LLC	Update	3,350.00
59893	12/01/2017	Printed		ACES	AVELINO A. MARTINEZ	Cleaning of Fire House.	2,800.00
59894	12/01/2017	Printed		CYPRESSW	MILES CLIFFORD FARMER	Sept & Oct 2017 -	9,500.60
59895	12/01/2017	Printed		O'REILLY A	O'REILLY AUTOMOTIVE, INC.	Tool Kit for Justin.	86.59
59896	12/01/2017	Printed		OFFICE DEP	OFFICE DEPOT	Calendar - 2018	274.80
59897	12/01/2017	Printed		PACIFIC CR	PACIFIC CREST ENGINEERING INC.	Landfill Annual	4,950.00
59898	12/01/2017	Printed		PARTS & SE	PARTS & SERVICE CTR- NAPA, INC	Car Kit For Lock Out	190.39
59899	12/01/2017	Printed		PURCHASE P	PURCHASE POWER*PITNEY BOWES	Postage -	250.68
59900	12/01/2017	Printed		QUALITY CO	QUALITY CODE PUBLISHING LLC	Municipal Code Supplement.	1,449.26
59901	12/01/2017	Printed		REGISTER	JUSTIN REGISTER	Operator Exam	140.00
59902	12/01/2017	Printed		SANCTH	TINA SANCHEZ	Rec Ctr Rental Sec Deposit.	500.00
59903	12/01/2017	Printed		SENTRY	SENTRY	Monthly Alarm System	150.00
59904	12/01/2017	Printed		STATE WATE	STATE WATER RESOURCE	WWTP - Annual Permit	9,023.00
59905	12/01/2017	Printed		STERI	STERICYCLE, INC	Hazard Waste	338.06
59906	12/01/2017	Printed		SUAREZ/FER	FERNANDO SUAREZ	Membership - Reimbursement	45.00
59907	12/01/2017	Printed		SURVEI	SURVEILLANCEGRID INTEGRATION	K C Security Phase I	89,532.48
59908	12/01/2017	Printed		KASEY'S	KASEY TERTULIEN	Final Reimbursement -	8,436.00
59909	12/01/2017	Printed		SPCA	THE SPCA FOR MONTEREY COUNTY	Oct 2017 Services.	4,200.00
59910	12/01/2017	Printed		ZAPPPIA	THE ZAPPPIA LAW FIRM, APC	Legal Service	116.00
59911	12/01/2017	Printed		TIRE KING	TIRE KING & AUTO EXPRESS	Car Washes - Patrol Vehicles	1,601.08
59912	12/01/2017	Printed		TORO	TORO PETROLEUM CORP.	Fuel and Oil -	3,396.98
59913	12/01/2017	Printed		TRI	TRI-COUNTY FIRE PROTECTION INC	Fire Extinguisher - Corp Yard	179.00
59914	12/01/2017	Printed		TULARE	TULARE COUNTY JAIL INDUSTRIES	Retirement Plaque	51.18
59915	12/01/2017	Printed		U.S. BANCO	U.S. BANCORP EQUIPMENT FINANCE	Copier Contract -	278.42
59916	12/01/2017	Printed		U.S. BANCO	U.S. BANCORP EQUIPMENT FINANCE	Contract Copier -	330.32
59917	12/01/2017	Printed		U.S. BAN	U.S. BANK CORP PAYMENT SYSTEM	Various Charges -	3,777.79
59918	12/01/2017	Printed		VERIZON WI	VERIZON WIRELESS	Cell Phone Service -	1,318.37
59919	12/01/2017	Printed		WEDGE	WEDGE & FOBES INVESTIGATIONS	Investigative services -	4,570.59

Check Register Report

Dec 1, 2017 (FY 2017-18)

Date: 12/01/2017

Time: 4:51 pm

Page: 2

KING CITY CITY HALL

BANK: WELLS FARGO BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
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**Total Checks: 49**

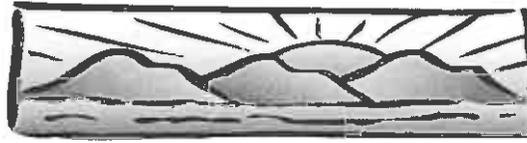
**Checks Total (excluding void checks): 196,850.00**

**Total Payments: 49**

**Bank Total (excluding void checks): 196,850.00**

**Total Payments: 49**

**Grand Total (excluding void checks): 196,850.00**



**KING CITY**  
C A L I F O R N I A

Item No. 9(C)

**REPORT TO THE CITY COUNCIL**

**DATE:** DECEMBER 12, 2017  
**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL  
**FROM:** STEVEN ADAMS, CITY MANAGER  
**BY:** PATRICIA GRAINGER, ACCOUNTANT  
**RE:** CONSIDERATION OF SUCCESSOR AGENCY CHECK REGISTER

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**RECOMMENDATION:**

It is recommended City Council receive and file.

**BACKGROUND:**

At least once a month, the City Treasurer shall submit to the City Council, a copy of the check register.

**DISCUSSION:**

The purpose of this item is to provide the Council an opportunity to review and monitor ongoing expenditures. These documents are attached.

**COST ANALYSIS:**

There is no fiscal impact as a result of this action.

**ENVIRONMENTAL REVIEW:**

No Environmental Review required for this item.

**ALTERNATIVES:**

The following alternatives are provided for Council consideration:

1. Receive and file the report; or
2. Provide other direction to staff regarding requests for additional information.

**CITY COUNCIL/SUCCESSOR AGENCY  
SUCCESSOR AGENCY CHECK REGISTER  
DECEMBER 12, 2017  
PAGE 2 OF 2**

Exhibits:

1. Check Register Report

Submitted by:   
Patricia Grainger, Accountant

Approved by:   
Steven Adams, City Manager

**Check Register Report**

Nov 17, 2017 (FY 2017-18)SA

Date: 11/17/2017

Time: 11:50 am

Page: 1

KING CITY CITY HALL

BANK: SUCCESSOR AGENCY OF

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
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**SUCCESSOR AGENCY OF Checks**

221	11/17/2017	Printed		MOCO TAX	MONTEREY COUNTY TAX COLLECTOR	SA 1st & 2nd Installment -	202.78
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<b>Total Checks: 1</b>						<b>Checks Total (excluding void checks):</b>	<b>202.78</b>
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<b>Total Payments: 1</b>						<b>Bank Total (excluding void checks):</b>	<b>202.78</b>
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<b>Total Payments: 1</b>						<b>Grand Total (excluding void checks):</b>	<b>202.78</b>
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Item No. 9(D)

**REPORT TO THE CITY COUNCIL**

**DATE: DECEMBER 12, 2017**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: STEVEN ADAMS, CITY MANAGER**

**RE: CONSIDERATION OF CONSULTING SERVICES FOR  
COMMUNITY CHOICE AGGREGATION PROGRAM**

**RECOMMENDATION:**

It is recommended the City Council: 1) approve and authorize the City Manager to execute Amendment #1 to the Consultant Services Agreement with Bayshore Consulting Group, Inc. to increase the contract amount from \$5,000 to \$10,000; and 2) appropriate the additional \$5,000 needed.

**BACKGROUND:**

California legislation (AB117) enables cities and counties to form a CCA program to pool their residential, business and municipal electricity loads and purchase and/or generate electricity on their behalf. Under such a program, the CCA becomes the electric power provider, which is also commonly referred to as a Community Choice Energy program or CCE. PG&E would transmit and bill for the power. However, customers also maintain the ability to opt out of the program and continue to receive their power directly from PG&E.

Staff was directed to issue a Request for Proposal (RFP) to select a firm to provide a feasibility study on forming a CCA and to operate it if the City Council decided to proceed. A contract with Bayshore Consulting Group, Inc. was also authorized to assist the City in evaluating the proposals. Barbara Boswell of Bayshore Consulting Group, Inc. has significant experience in assisting communities with establishing a CCA. The RFP was distributed to all electric service providers listed on the California Public Utilities Commission (CPUC) website and the contract was awarded to Pilot Power Group, Inc. at the August 8, 2017 meeting.

**CITY COUNCIL  
CONSIDERATION OF CONSULTING SERVICES FOR COMMUNITY CHOICE  
AGGREGATION PROGRAM  
DECEMBER 12, 2017  
PAGE 2 OF 2**

**DISCUSSION:**

The consultant has completed the initial scope of work, which involved assisting the City in evaluating proposals, selecting the firm, and reviewing the feasibility study. Drafting the contract and implementation plan are critically important to ensuring the City's interests are protected in establishing the program. Therefore, Ms. Boswell's experience has been extremely important to ensure these documents are drafted appropriately for the City. At this time, the authorization of costs needs to be increased in order to pay for this additional work.

**COST ANALYSIS:**

The additional work results in an increased cost to the General Fund for \$5,000. This cost will likely be reimbursed after the CCA is operational.

**ENVIRONMENTAL REVIEW:**

The consultant services contract is not a "project" for the purposes of the California Environmental Quality Act (CEQA) as it does not have the potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. No further action is required under CEQA for City Council action.

**ALTERNATIVES:**

The following alternatives are provided for Council consideration:

1. Approve staff's recommendation;
2. Do not approve the appropriation and request the cost be paid from an existing budgeted account;
3. Do not approve the contract amendment; or
4. Provide staff other direction.

**Exhibits:**

1. Contract Amendment with Bayshore Consulting Group, Inc.

Approved by: \_\_\_\_\_

  
Steven Adams, City Manager



Item No. 9(E)

REPORT TO THE CITY COUNCIL

**DATE:** DECEMBER 12, 2017

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** STEVEN ADAMS, CITY MANAGER

**RE:** CONSIDERATION OF REIMBURSEMENT AGREEMENT WITH SMITH-MONTEREY, LLC RELATING TO DOWNTOWN ADDITION PROJECT AND MULTIMODAL CENTER PROJECT

**RECOMMENDATION:**

It is recommended the City Council: 1) approve and authorize the City Manager to execute an Agreement with Smith-Monterey, LLC relating to reimbursement of City expenses for the Downtown Addition Project and Multimodal Transportation Center Project; and 2) authorize the City Manager to modify the amount of contribution that will be made by Smith-Monterey, LLC toward the cost of the Point C contract if the scope of work and costs are increased or decreased.

**BACKGROUND:**

One of the key features of the Smith-Monterey, LLC Downtown Addition project is the proposed Multimodal Transportation Center (MTC). In 2008, the City hired Railpros to prepare preliminary design work on the MTC and entered into an agreement with Smith-Monterey to reimburse the City for the costs of the Railpros contract, as well as other City consultants and staff time associated with the study. The City agreed to pay back one-third of the costs contributed by Smith-Monterey, LLC. When the Development Agreement with Smith-Monterey, LLC was approved in 2014, it was agreed to provide Smith-Monterey, LLC credit towards future development impact fees in lieu of the amount owed by the City.

**DISCUSSION:**

The City is now contracting for additional consultant services from Point C, Inc. to assist in preparing a funding strategy and to prepare a grant application(s). Smith-Monterey, LLC has agreed to pay a portion of the costs if a portion of their

**CITY COUNCIL  
CONSIDERATION OF REIMBURSEMENT AGREEMENT WITH SMITH-  
MONTEREY, LLC RELATING TO DOWNTOWN ADDITION PROJECT AND  
MULTIMODAL CENTER PROJECT  
DECEMBER 12, 2017  
PAGE 2 OF 2**

contribution is credited toward future development impact fees consistent with the terms of the Railpros reimbursement agreement. Given timing constraints involving a grant that has been identified, the scope of work may be modified. As a result, staff is recommending the City Manager be provided authority to modify the amount of contribution as necessary, but the terms of the reimbursement would remain the same.

**COST ANALYSIS:**

The cost to the City of the overall work involved is anticipated to be in the range of \$15,000. However, the impact of the agreement proposed in this City Council agenda item is a net savings to the City.

**ENVIRONMENTAL REVIEW:**

The reimbursement agreement is not a "project" for the purposes of the California Environmental Quality Act (CEQA) as it does not have the potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. No further action is required under CEQA for City Council action.

**ALTERNATIVES:**

The following alternatives are provided for Council consideration:

1. Approve staff's recommendation;
2. Modify and approve the agreement;
3. Do not approve the agreement; or
4. Provide staff other direction.

**Exhibits:**

1. Agreement with Smith-Monterey, LLC relating to reimbursement of City expenses for the Downtown Addition Project and Multimodal Transportation Center Project

Approved by: \_\_\_\_\_

  
Steven Adams, City Manager

**AGREEMENT**  
**BETWEEN THE CITY OF KING AND SMITH-MONTEREY, LLC**  
**RELATING TO REIMBURSEMENT OF CITY EXPENSES**  
**DOWNTOWN ADDITION PROJECT**

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THIS AGREEMENT (herein "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the CITY OF KING, a California municipal corporation ("City") and SMITH MONTEREY, LLC (herein "Developer").

NOW, THEREFORE, the parties hereto agree as follows:

**RECITALS**

A. Whereas, Smith-Monterey, LLC is the owner of approximately 90-acres of real property east of First Street, located within the City limits. Smith-Monterey desires to develop its property with a planned development consisting of residential units as well as other mixed uses, including office, retail, lodging, public, quasi-public, and parks uses ("Downtown Addition"); and

B. Whereas, City and Smith-Monterey entered into a Development Agreement for the Downtown Addition project on August 8, 2014; and

C. Whereas, the Downtown Addition reflects a transit oriented design. It is the City's and Developer's desire to blend the Downtown Addition into the Historic Downtown located along Broadway Street. The City and Developer are interested in extending Broadway Street across the UPRR tracks at grade and developing a railroad station/multi-modal transportation facility in this location that will be used by the existing Amtrak Coast Starlight service and possibly by future Coast Daylight service; and

D. Whereas, to fund and obtain approval for the Multi-modal Transportation Center and Amtrak station ("MMTC"), the City wants to hire Point C, Inc. to prepare a strategic funding plan and grant application work for the MMTC; and

E. Whereas, the City and Developer agree that the Downtown Addition is likely to benefit from the MMTC and associated grade crossing and rail safety improvements; therefore, the Developer will reimburse the City for a portion of the cost of the plan and grant application; and

F. Whereas, the City and Developer entered into a similar agreement on October 29, 2008 for reimbursement of costs associated with other work related to planning for the multi-modal station and associated grade crossing and rail safety improvements; and

G. Whereas, under the terms of Section 2.04(6) of the Downtown Addition Development Agreement, City shall give a Development Impact Fee credit to Developer for the amount owed by City to Developer to repay a portion of the reimbursement of costs for the work

provided for under the October 29, 2018 reimbursement agreement between City and Developer; and

H. Whereas, City and Developer agree that some of the cost of the mentioned work is directly attributable to the Developer and some of the cost of the mentioned work is directly attributable to the needs of the City. It is not possible to arrive at the appropriate share with mathematical certainty, and the parties therefore agree that although the Developer will reimburse the City for a portion of the costs, etc., the City shall bear responsibility to repay one third of the amount contributed by Developer in the form of a credit towards future transportation development impact fees.

**NOW, THEREFORE**, the parties agree as follows:

**1. REIMBURSEMENT FOR CITY CONSULTANT COSTS**

1.1. **City Consultants.** The existing outside consultant to be involved in the project will be Point C, Inc.

1.2. **Invoice, Accounting and Reimbursement.** City shall invoice Developer for a lump sum total payment of five thousand, two hundred and fifty dollars (\$5,250) once City has incurred at least that amount in expenses for the strategic funding plan and grant application.

1.3. **Repayment Obligation and Development Fee Credit.** City is hereby and shall remain responsible to repay to Developer one third of the total costs paid by developer in the form of a development impact fee credit. For development fees otherwise owing from the Project, the City shall give a credit to the Developer in the amount of one thousand, seven hundred and thirty-two dollars and fifty cents (\$1,732.50).

**2. NOTICES**

All notices, consents, requests, demands or other communications to or upon the respective parties shall be in writing and shall be effective for all purposes upon receipt, including without limitation, in the case of (i) personal delivery, (ii) delivery by messenger, express or air courier or similar courier, (iii) delivery, by United States first class certified or registered mail, postage prepaid, and (iv) transmittal by electronically confirmed facsimile, addressed as follows:

**CITY OF KING:**

212 South Vanderhurst Avenue  
King City, CA 93930  
Attn: City Manager  
Telephone: 831-386-5917  
Fax: 831-396-5968  
sadams@kingcity.com

**DEVELOPER:**

Smith-Monterey, LLC  
P.O. Box 25010  
Ventura, California  
Attn: Gregory H. Smith, Managing Member  
Telephone: 805-648-3363  
Fax: 805-648-4603  
greg@smithhobson.com

And a Copy to:  
John M. Baucke, AICP  
President  
New Urban Realty Advisors  
3748 Pescadero Drive  
Santa Barbara, CA 93105  
805-698-2845  
Fax: 805-456-0442  
john@NewUrbanRealtyAdvisors.com

### 3. GENERAL PROVISIONS

3.1 **Further Assurance.** The parties shall cooperate with one another and perform such acts and execute such documents or instruments as may reasonably be necessary, proper or desirable to carry out the purposes and intent of this Agreement.

3.2 **Governing Law.** This Agreement shall be interpreted, governed and enforced pursuant to the laws of the State of California.

3.3 **Construction.** The principle to construe an agreement against its drafter in cases of uncertainty shall not be utilized in the interpretation of this Agreement.

3.4 **Integration.** This Agreement sets forth the entire agreement of the parties relating to its subject matter. There are no obligations, commitments, representations or warranties relating to subject matter of this Agreement except as expressly set forth in this Agreement.

3.5 **Waiver, Modification and Amendment.** Any amendment of, supplement to or waiver of any obligations under this Agreement must be in writing and signed by all parties to this Agreement.

3.6 **Assignment.** All or any portion of Developer's interest in this Agreement may be assigned at any time and from time to time upon and with the express written consent of the City, which consent shall not unreasonably be withheld. Developer may assign all or any portion of their interest in this Agreement without consent of the city only to any of the following persons: (i) an Affiliate of the transferor; (ii) the other Member and/or its Affiliate; (iii) an Institutional lender as pledge or security for a loan; (iv) the surviving entity in a merger or conversion of the ownership interests in and to the securities of such Member or owner in a single transaction or series of related transactions; (v) one or more Smith-Monterey Family Members or their Affiliate(s); (vi) a revocable inter vivos trust of which any Smith-Monterey Family Member is a trustee and a beneficiary. A non-consensual assignment of the Developer's interest in this Agreement shall be effective upon written notice of assignment being given to the City and the remaining Developer and upon the assignee executing a written assumption of the assignor's obligations hereunder. For purposes of this Section, as applied to any person or entity (a "Person") an "Affiliate" means any other person or entity (a) directly or indirectly, controlled by, or under common control with that Person, or (b) who is a member, stockholder, director, officer, manager or comparable principal of, or relative or spouse of, the specified Person. For purposes

of this definition, "controlling," "controlled by" or "under common control" means the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, alternatively means the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of that Person, whether through ownership of voting securities or otherwise. Any attempted transfer not consistent with this section shall be deemed a default by the Developer of this Agreement.

3.8 **Successors and Assigns.** This Agreement shall be binding on City and the Developer and, as permitted herein, the Developer's successor in interest to the Downtown Addition.

3.9 **Warranty of Authority.** The persons executing below on behalf of the respective parties to this Agreement represent and warrant that each of them are able and fully empowered to sign for their party principal and, as agents for the parties, have full authority to commit their principals to the terms and conditions of this Agreement. Notwithstanding the above, the approval as to form of the City Attorney is for the convenience only of the City and its elected officials and agents and is not to be construed as creating any attorney client relationship between the City Attorney and Developer nor does it constitute any warranty as to the interpretation or enforceability of any paragraph contained in this Agreement.

3.10 **Counterpart Originals.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which taken together shall constitute one and the same instrument.

**WHEREFORE**, the parties execute this Memorandum of Understanding on the dates set forth below.

CITY OF KING, a municipal corporation

SMITH-MONTEREY, LLC, a California limited liability company

\_\_\_\_\_  
By: Steven Adams  
Its: City Manager

\_\_\_\_\_  
By: Gregory H. Smith  
Its: Managing Member

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Erica Sonne, Deputy City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Shannon Chaffin, City Attorney



Item No. 9(F)

**STAFF REPORT**

**DATE:** DECEMBER 12, 2017

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** OCTAVIO HURTADO, HANNA & BRUNETTI, CITY ENGINEERS

**RE:** AUTHORIZING THE SUBMITTAL OF AN APPLICATION ACCEPTING ALLOCATION OF FUNDS AND EXECUTION OF A GRANT AGREEMENT WITH FEDERAL AVIATION ADMINISTRATION (FAA), FOR AIRFIELD ELECTRICAL IMPROVEMENTS, AIRPORT IMPROVEMENT PROGRAM TRANSMITTAL OF FISCAL YEAR 2018

**RECOMMENDATION:**

It is recommended City Council adopt Resolution 2017-4614 authorizing the submittal of a grant application to the FAA; acceptance of an allocation of funds for fiscal year 2018; authorizing the City Manager to enter into and sign the grant agreement and any subsequent amendments with the FAA for the purpose of said grant.

**BACKGROUND:**

On September 13, 2017, the City of King ("Sponsor") accepted a grant offer from the Federal Aviation Administration ("FAA") for the Design Phase to Rehabilitate Runway 11/29 Medium Intensity Runway Lighting (MIRL) system as part of an Airfield Electrical Improvements project at Mesa Del Rey Airport (Airport Improvement Project Grant No. AIP 2017). The consultants will be preparing the design and bid assistance services and plan on having the deliverables ready by early spring 2018. The City as the Sponsor of Mesa Del Rey Airport is now seeking federal funding for Fiscal Year 2018 to help fund the construction phase. Applications for Federal Assistance for the next funding cycle are due to FAA by December 31, 2017.

The Airfield Electrical Improvement Project is part of the Capital Improvement Program submitted to the FAA and is included in the Airport Layout Plan.

**CITY COUNCIL  
DECEMBER 12, 2017  
AUTHORIZING SUBMITTAL OF APPLICATION FOR FEDERAL AVIATION  
ADMINISTRATION GRANT FUNDING FOR AIP 2018 AIRFIELD ELECTRICAL  
IMPROVEMENTS (CONSTRUCTION PHASE)  
PAGE 2 OF 3**

**DISCUSSION:**

This new application will follow the design phase of this project (AIP 2017), which is scheduled to be completed by March 2018. Once the improvement plans and specifications are complete, the City will go out to bid for the Construction phase to hire a Contractor to complete the work.

**COST ANALYSIS:**

The City is seeking funding from the Federal Aviation Administration for the construction phase of the Airfield Electrical Improvements. The Engineers Estimate for this project is \$450,000. The FAA will only fund ninety (90%) of the total cost of the project. Therefore, the grant request to the FAA is for \$405,000. The City will be applying for a 5% match from Cal Trans, \$22,500. The remaining 5%, \$22,500 will be paid by the City. The City may use in-kind staff time to meet this obligation.

**ENVIRONMENTAL FINDING**

This project has already been environmentally assessed by the City. A Notice of Exemption ("NOE") was filed with the County of Monterey on January 19, 2017. The Project is a Class 1 Categorical Exemption under the California Environmental Quality Act ("CEQA") Guidelines Section 15301-Existing Facilities. The Project involves exterior alterations involving electrical conduit at the Mesa Del Rey Airport. No expansions are proposed; only replacement and rehabilitation of existing damaged conduit and lighting. No further action under CEQA is required. Further, the City submitted a Documented Categorical Exclusion form to the FAA for consideration of this project. On August 3, 2017, the FAA sent a letter stating that the Project is Categorical Excluded pursuant to FAA Order 1050.1F as it relates to the National Environmental Protection Act ("NEPA"). No further action under NEPA is required.

**ALTERNATIVES:**

The following alternatives are provided for Council consideration:

1. Approve staff's recommendations;
2. Modify and approve the proposed Resolution;
3. Do not approve staff's recommendation; or
4. Provide other direction to staff.

Exhibits:

1. Resolution 2017-4614.

**CITY COUNCIL  
DECEMBER 12, 2017  
AUTHORIZING SUBMITTAL OF APPLICATION FOR FEDERAL AVIATION  
ADMINISTRATION GRANT FUNDING FOR AIP 2018 AIRFIELD ELECTRICAL  
IMPROVEMENTS (CONSTRUCTION PHASE)  
PAGE 3 OF 3**

Submitted by: ~~HA~~ For Octavio Hurtado  
Octavio Hurtado, Hanna & Brunetti, City Engineers

Approved by:   
Steven Adams, City Manager

**RESOLUTION NO. 2017-4614**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KING  
AUTHORIZING THE SUBMITTAL OF AN APPLICATION, ACCEPTANCE OF AN  
ALLOCATION OF FUNDS AND EXECUTION OF A GRANT AGREEMENT WITH THE  
FEDERAL AVIATION ADMINISTRATION, FOR AIRPORT IMPROVEMENT  
PROGRAM TRANSMITTAL OF FISCAL YEAR 2018**

**WHEREAS**, the City completed the Airport Capital Improvement Plan (ACIP) for fiscal years 2018 to 2025; and

**WHEREAS**, the City has completed an application for federal funding Fiscal Year 2018 for Airfield Electrical Improvements to rehabilitate the existing runway lighting circuit Medium Intensity Runway Lighting (MIRL) system (Construction Phase); and

**WHEREAS**, the City Council authorizes the City Manager to submit the FAA Grant Application for Fiscal Year 2018; and

**NOW, THEREFORE, BE IT RESOLVED**, that at acceptance of the Federal Assistance for Fiscal Year 2018, the City Manager of the City of King City is authorized to enter into and sign the grant agreement and any subsequent amendments with the Federal Aviation Administration for the purpose of this grant.

**BE IT RESOLVED** by the City Council of the City of King as follows:

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of King City held on December 12, 2017, by the following vote:

**AYES**, Councilmembers:

**NOES**, Councilmembers:

**ABSENT**, Councilmembers:

**ABSTAIN**, Councilmembers:

**ATTEST:**

\_\_\_\_\_  
Michael LeBarre, Mayor

\_\_\_\_\_  
Steven Adams, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Shannon L. Chaffin  
City Attorney



Item No. 9(G)

**REPORT TO THE CITY COUNCIL**

**DATE: DECEMBER 12, 2016**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: SHANNON CHAFFIN, CITY ATTORNEY**

**RE: CONSIDERATION OF AMENDMENT TO CITY MANAGER  
EMPLOYMENT AGREEMENT**

---

**RECOMMENDATION:**

It is recommended the City Council adopt a Resolution approving an amendment to the employment agreement with the City Manager.

**BACKGROUND:**

The City entered into an employment agreement with the City Manager on October 27, 2015 and he began employment on November 9, 2015. The City Council recently completed his two-year performance evaluation and directed the Interim City Attorney to draft a revision to the agreement for consideration at the December 12, 2017 meeting.

**DISCUSSION:**

The proposed terms are identical to the prior agreement with the exception of an adjustment in compensation. The only change is provision of the same compensation adjustments that were provided to the City's other management (confidential) employees during this past year, which includes a 3% Cost of Living Adjustment ("COLA").

**COST ANALYSIS:**

The annual impact to the City's budget from this action is estimated to be approximately \$7,500.

**CITY COUNCIL  
CONSIDERATION OF CITY MANAGER EMPLOYMENT AGREEMENT  
DECEMBER 12, 2017  
PAGE 2 OF 2**

**ENVIRONMENTAL REVIEW:**

This matter is not a "project" for the purposes of the California Environmental Quality Act (CEQA) as it does not have the potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. No further action is required under CEQA for City Council action.

**ALTERNATIVES:**

The following alternatives are provided for Council consideration:

1. Adopt the Resolution and the amendment to the employment agreement;
2. Make other modifications to the agreement and then adopt the Resolution;
3. Do not adopt the Resolution; or
4. Provide other direction to staff.

Approved by: \_\_\_\_\_  
Shannon Chaffin, Interim City Attorney

## AGREEMENT NO. 2017-\_\_

### SECOND AMENDMENT TO EMPLOYMENT AGREEMENT FOR CITY MANAGER SERVICES BETWEEN THE CITY OF KING AND STEVEN ADAMS

This Second Amendment to the Employment Agreement for City Manager Services ("Second Amendment") is made and entered into \_\_\_\_\_, 2017, by and between STEVEN ADAMS, an individual ("Adams"), and the CITY OF KING, a Municipal Corporation ("City"), effective November 9, 2017. Adams and City are collectively referred to herein as ("Parties").

#### RECITALS

A. The Parties previously entered into an Employment Agreement for City Manager Services ("Employment Agreement"), effective November 9, 2015, and which was subsequently amended on or about November 9, 2016 ("First Amended Agreement") attached hereto and incorporated herein by reference (see Resolution 2016-455 attached as Exhibit A).

B. Pursuant to Section 12 of the Employment Agreement, on November 14, 2017, the City Council convened in closed session for the purpose of conducting the annual performance evaluation of Mr. Adams, and subsequently agreed to adjust Adams' compensation as set forth below.

C. It is the purpose of this Second Amendment to ensure the retention of Adams' services as City Manager and the performance of the duties of the office in a manner which serves the best interests of the City, subject always to the direction of the City Council.

#### AGREEMENT

**NOW, THEREFORE**, in recognition of Adams' performance, consideration of the foregoing recitals, the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Compensation. Section 3 of the First Amended Employment Agreement is amended to provide a one time cost of living adjustment of three percent (3%) to Employee's 2016-2017 base salary, effective November 9, 2017.

2. Except as set forth hereinabove, all terms and conditions of the Employment Agreement and the First Amended Agreement shall remain in full force and effect.

3. Continuing Obligations. The Parties shall continue to comply with any and all requirements of the Employment Agreement.

4. Counterparts. The Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same agreement.

**IN WITNESS WHEREOF**, the Parties have duly executed this Amendment on the day and year first above written.

**CITY OF KING,**  
a Municipal Corporation

By: \_\_\_\_\_  
Mike LeBarre, Mayor

December \_\_\_\_\_, 2017

**STEVEN ADAMS,**  
an individual

By: \_\_\_\_\_  
Steven Adams

December \_\_\_\_\_, 2017

**ATTEST:**

By: \_\_\_\_\_  
Erica Sonne, CMC  
Deputy City Clerk

**APPROVED AS TO FORM:**

**ALESHIRE & WYNDER, LLP**

By: \_\_\_\_\_  
Shannon Chaffin,  
City Attorney

**EXHIBIT A:** Resolution No. 2016-455 Approving the First Amendment to the Employment Agreement for City Manager Services effective February 9, 2016 (Exhibit A to the First Amendment includes the Employment Agreement for City Manager Services Between the City of King and Steve Adams effective February 9,2015).

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KING, CALIFORNIA,  
APPROVING THE SECOND AMENDMENT TO THE EMPLOYMENT AGREEMENT  
FOR CITY MANAGER SERVICES**

**WHEREAS**, effective November 9, 2015, the City of King hired Steven Adams to serve as the City Manager pursuant to an Employment Agreement for City Manager Services Between the City of King and Steven Adams (“Employment Agreement”); and

**WHEREAS**, effective November 9, 2016, the City of King City Council, based upon the outstanding performance and service to the City of Mr. Adams, approved the First Amendment to the Employment Agreement for City Manager Services; and

**WHEREAS**, the City Council, based upon the continued outstanding performance and service to the City of Mr. Adams, desires to again amend the Employment Agreement; and

**WHEREAS**, the position of City Manager qualifies as a department head position and, therefore, the City’s personnel policies will not apply; and

**WHEREAS**, the City Council is committed to a compensation policy that strengthens the recruitment and retention of well qualified managers and employees; and

**WHEREAS**, the City Council desires this Second Amended Employment Agreement to ensure the retention of City Manager services and the performance of the duties of the office in a manner which serves the best interests of City of King, subject always to the direction of the City Council.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of King as follows:

Section 1. The foregoing recitals are true and correct and are incorporated by reference.

Section 2. The City Council hereby approves the Second Amendment to the Employment Agreement, attached as Exhibit “A”, and authorizes the Mayor to execute the same on behalf of the City.

Section 3. The Second Amendment to the Employment Agreement shall be entered into effective November 9, 2017.

Section 4. The City Council finds that the Amendment to the Employment Agreement serves a public purpose and is in the best interest and welfare of the City of King and its residents.

Section 5. This resolution shall be effective upon adoption.

**I HEREBY CERTIFY** that the foregoing resolution was passed and adopted by the City Council of the City of King at a regular meeting thereof held on the 12<sup>th</sup> day of December, 2017 by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**ATTEST**

\_\_\_\_\_  
**ERICA SONNE, Deputy City Clerk**

**CITY OF KING**

By: \_\_\_\_\_  
**MIKE LEBARRE, Mayor**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
**SHANNON L. CHAFFIN, City Attorney**  
**Aleshire & Wynder, LLP**

I, \_\_\_\_\_, Deputy City Clerk of the City of King, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of King on the date and by the vote indicated herein.

**Exhibit A: Second Amendment to the Employment Agreement For City Manager Services Between the City of King and Steven Adams**



Item No. 11(A)

**REPORT TO THE CITY COUNCIL**

**DATE: DECEMBER 12, 2017**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: STEVEN ADAMS, CITY MANAGER**

**RE: CONSIDERATION OF CONGREGATED CHOICE  
AGGREGATION PROGRAM IMPLEMENTATION PLAN AND  
FULL SERVICE AGREEMENT**

**RECOMMENDATION:**

It is recommended the City Council: 1) adopt a Resolution approving a Congregated Choice Aggregation Program (CCA) Implementation Plan; 2) approve and authorize the City Manager to execute a Full Service Agreement between the City of King and Pilot Power Group, Inc.; and 3) authorize the City Manager to make non-substantive changes to the Full Service Agreement as necessary and approved as to form by the City Attorney.

**BACKGROUND:**

The City Council has held a number of discussions regarding potential creation of a Community Choice Aggregation (CCA) program. Under such a program, the CCA becomes the electric power provider, which is also commonly referred to as a Community Choice Energy program or CCE. PG&E would continue to transmit and bill for the power. However, customers also maintain the ability to opt out of the program and continue to receive their power directly from PG&E.

In response to a Request for Proposal (RFP), Pilot Power Group, Inc. was selected to prepare a feasibility study and ultimately launch and operate the program if the Council chose to proceed. At the October 24, 2017 meeting, based on the results of the feasibility study and an independent third-party peer review, the Council directed staff to proceed with the process of launching the CCA. At the November 14, 2017 meeting, the City Council adopted an Ordinance authorizing the implementation of a CCA. While the RFP and proposal submitted by Pilot Power Group, Inc. included the full scope of work for implementation of the CCA, the initial contract only consisted of the feasibility

**CITY COUNCIL  
CONSIDERATION OF CONGREGATED CHOICE AGGREGATION PROGRAM  
IMPLEMENTATION PLAN AND FULL SERVICE AGREEMENT  
DECEMBER 12, 2017  
PAGE 2 OF 4**

study. Therefore, the City must now enter into a formal contract with Pilot Power Group, Inc. to launch and operate the CCA in order to proceed.

As required by California law, a key step in proceeding with the City's CCA program, King City Community Power ("KCCP") is filing an Implementation Plan and Statement of Intent ("Plan") with the California Public Utilities Commission ("Commission"). The Plan must be adopted by the Council and provide the Commission with a variety of general information about KCCP's rates, organizational structure, operations and third party suppliers. By law, the Commission has 90 (ninety) days to certify the Plan.

The Commission may also seek additional information from the City regarding the Plan. KCCP may not launch service to customers prior to certification of the Plan by the Commission, but, notably, California law "does not require the Commission to approve, disapprove, decertify or modify the Plan." In other words, the California law defers to the decision making of the Council regarding oversight of the Plan. If the Council implements material changes to KCCP, the Plan requires amendment, resubmission to the Council for adoption, and resubmission to the Commission.

**DISCUSSION:**

The process of negotiating the contract with Pilot Power Group, Inc. has included review and recommendations from the City Attorney's Office, the City's consultant, and MBASIA, the City's insurance pool. The proposed agreement establishes the following:

- The City's obligations during operation of the CCA, including staffing the CCA and rate-setting.
- Pilot's obligations for operating the CCA, including indemnification of the City and financing for the CCA.
- Insurance requirements for Pilot and the CCA, including Workers Compensation, General Liability, Auto and Professional Services.
- The CCA's energy procurement protocols, including the type and amount of energy to be purchased.
- The accounting and payment procedures for the CCA.
- Service costs for operation of the CCA, including Pilot's managerial costs, month data management and notice of enrollment.

The terms are consistent with the prior proposal submitted by Pilot Power Group, Inc. They have agreed to fully indemnify the City, including any potential claims related to Proposition 26 and Proposition 218 issues. Insurance will also be provided in compliance with the recommendations of MBASIA. The City

**CITY COUNCIL  
CONSIDERATION OF CONGREGATED CHOICE AGGREGATION PROGRAM  
IMPLEMENTATION PLAN AND FULL SERVICE AGREEMENT  
DECEMBER 12, 2017  
PAGE 3 OF 4**

Attorney's Office and City Consultant have negotiated terms for the banking and financial provisions that protect the City's interest, while providing the procedures for Pilot Power Group, Inc. to successfully manage the program. Under the financial arrangement, expenses will be handled similar to the City's existing process. Before the bank issues payments, the City Manager's approval will be required. A monthly check register will then be submitted to the City Council for review and approval.

The banking provisions in the proposal submitted by Pilot Power Group, Inc. and the agreement also include was it referred to as a "Lock Box" mechanism to help keep the CCA accountable to the citizens of King City and to ensure that the King City CCA will pay Pilot Group, Inc. for power and other expenses incurred on behalf of the King City CCA. The payments King City CCA customers make, plus all other sources of King City CCA revenue, are deposited into the Lock Box. Withdrawals by the City from the Lock Box may only occur upon majority vote of the City Council in a duly noticed public hearing. A Lock Box "Waterfall" governs which payments are made first:

The City may only withdraw funds from the Lock Box if all of the following conditions are met:

1. All monthly payments in #1-6, above, are paid; and
2. The ending monthly Lock Box balance does not fall below \$750,000.

The Implementation Plan contains KCCP's Statement of Intent to:

- Provide universal CCA access to all King City residents.
- Provide reliable CCA services.
- Treat all similarly situated KCCP customers equally (e.g. all agricultural load receives the same pricing and service).
- To comply with all applicable California laws and regulations.

The Plan also contains information regarding KCCP's:

- Organizational structure, its operations, and its funding;
- Ratesetting and other costs to participants;
- Provisions for disclosure and due process in setting rates and allocating costs among participants;
- Methods for entering and terminating agreements with other entities;
- Rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures.
- Program termination plans; and

**CITY COUNCIL  
CONSIDERATION OF CONGREGATED CHOICE AGGREGATION PROGRAM  
IMPLEMENTATION PLAN AND FULL SERVICE AGREEMENT  
DECEMBER 12, 2017  
PAGE 4 OF 5**

- Third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.

The contract also includes the agreement with the financial institution. However, it is not attached with the staff report and will be distributed prior to the meeting. Review and comment by the financial institution will still be necessary. Therefore, staff is requesting Council authority to make necessary changes to execute the agreement in response to comments received. However, any policy changes involved with the comments would be presented to the City Council for formal action.

**COST ANALYSIS:**

The program will be provided on a turnkey basis and will be funded entirely by customer rates. Therefore, there will be no cost to the City. In addition, staffing costs incurred by the City related to the program will be reimbursed.

**ENVIRONMENTAL REVIEW:**

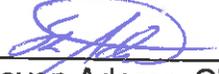
City Council approved the CEQA findings in the Ordinance authorizing formation of the CCA. Staff's environmental assessment determined that the project falls within the Class 7 Categorical Exemption set forth in CEQA Guidelines, Section 15307, which exempts certain actions by regulatory agencies to maintain, restore, or enhance natural resources, other than construction activities, where the regulatory process includes procedures to protect the environment. Staff determined this exemption applies to the proposed project since the primary impact of the CCA will be to increase use of renewable energy sources and installation of rooftop solar panels in King City. Furthermore, staff determined that none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project.

**ALTERNATIVES:**

The following alternatives are provided for Council consideration:

1. Approve staff's recommendations;
2. Direct staff to make changes to the contract or Implementation Plan;
3. Do not approve the contract or Implementation Plan and do not continue with forming a CCA; or
4. Provide staff other direction.

**CITY COUNCIL  
CONSIDERATION OF CONGREGATED CHOICE AGGREGATION PROGRAM  
IMPLEMENTATION PLAN AND FULL SERVICE AGREEMENT  
DECEMBER 12, 2017  
PAGE 5 OF 5**

Submitted and Approved by:  \_\_\_\_\_  
Steven Adams, City Manager

**RESOLUTION NO.**

**A RESOLUTION OF KING CITY ADOPTING A COMMUNITY CHOICE  
AGGREGATION IMPLEMENTATION PLAN AND STATEMENT OF INTENT**

**WHEREAS**, California Assembly Bill 117 (“AB 117”), adopted in 2002 and later supplemented in 2011 by California Senate Bill 790, provides the broad framework under which local governments procure electricity for retail customers aggregated within their boundaries (“Community Choice Aggregation” or “CCA”), and

**WHEREAS**, since 2013 King City (“City”) has considered the benefits and impacts CCA could bring to the City; and

**WHEREAS**, on November 5, 2017 the City opened a public hearing, considered public testimony and introduced for first reading by title only an ordinance authorizing the implementation of a City CCA program, including a proposed determination of a California Environmental Quality Act (“CEQA”) Categorical Exemption Class Seven (7) (“City CCA Ordinance”), and on November 14, 2017, the City conducted the second reading and adopted the City CCA Ordinance; and

**WHEREAS**, AB 117 requires that prior to launching City CCA service, the City submit to the California Public Utilities Commission (“Commission”) a CCA Implementation Plan and Statement of Intent (“Plan”) for certification; and

**WHEREAS**, the City has considered the Plan at a duly noticed public hearing;  
and

**WHEREAS**, notice of the intent to adopt this Resolution of Application has been given.

**NOW, THEREFORE, BE IT RESOLVED AND ORDAINED** by the City Council as follows:

1. A Resolution adopting the King City Community Choice Aggregation Implementation Plan and Statement of Intent is hereby adopted and approved, and the City Manager of the City is authorized to prepare and submit the Plan to the Commission as indicated by AB 117.
2. The City Manager is authorized to prepare and submit such additional documents and notices, including any notices required by Commission regulations and rules, to fully implement the intent of this Resolution.

**PASSED AND ADOPTED** by the City Council of King City on the 12<sup>th</sup> of December 2017, by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

**APPROVED:**

\_\_\_\_\_  
Michael LeBarre, Mayor

**ATTEST:**

\_\_\_\_\_  
Steven Adams, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Shannon L. Chaffin, Interim City Attorney

# **King City Community Power**

King City, California

## **COMMUNITY CHOICE AGGREGATION *IMPLEMENTATION PLAN AND STATEMENT OF INTENT***

**Adopted by Resolution of the King City Council on December 12, 2017.**

## I. INTRODUCTION

California Community Choice Aggregation (“CCA”) laws and regulations allow cities and counties to procure electricity for their residents, businesses and municipal facilities. Adopted in 2002, California Assembly Bill 117, as later supplemented in 2011 by California Senate Bill 790, (“AB 117”), provides the broad framework under which CCA operates. Under AB 117, local governments procure electricity for retail customers aggregated within their boundaries, while the investor-owned utility continues to provide transmission, distribution, metering, billing, payment collection, customer care, and other services. As codified in the California Public Utilities Code (“P.U.C.”), AB 117 invests the California Public Utilities Commission (“Commission”) with, among other duties, the responsibility for establishing the cost recovery mechanism that must be in place before customers can begin receiving CCA electrical service, registering CCAs, ensuring compliance with basic consumer protection rules, and receiving and certifying CCA implementation plans and statements of intent. Notably, however, AB 117 “does not require the Commission to approve, disapprove, decertify or modify a CCA’s implementation plan.”<sup>1</sup>

Incorporated in 1911 as the “City of King,” King City is a California charter city (“City”) in the process of launching a CCA program. Pursuant to P.U.C. Section 366.2(c) and Commission Decision 05-12-041, the City submits this *Community Choice Aggregation Implementation Plan and Statement of Intent* (“Implementation Plan”) for certification by the Commission. Adopted by the City at a duly noticed public hearing held on December 12, 2017, this Implementation Plan describes the City’s plans to offer CCA service to all customers within the City’s geographic boundaries that currently receive bundled electric service from Pacific Gas and Electric Company (“PG&E”). For customers who do not opt-out of the CCA program, the City CCA intends to supply competitively priced and environmentally sustainable electricity, as well as programs and services specifically designed to serve the needs of the community. The City CCA will be registered as King City Community Power (“KCCP”), with a planned service enrollment date of June 1, 2018. All eligible customers will be switched to KCCP service on that date; no phasing is planned.

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<sup>1</sup> Decision 05-12-041 (December 15, 2005), Conclusion of Law 4.

## II. THE PROCESS AND CONSEQUENCES OF AGGREGATION

*P.U.C. Section 366.2(c)(3) A community choice aggregator establishing electrical load aggregation pursuant to this section shall develop an implementation plan detailing the process and consequences of aggregation. The implementation plan, and any subsequent changes to it, shall be considered and adopted at a duly noticed public hearing....*

The City first considered CCA as a part of the Monterey Bay Community Power (“MBCP”) initiative, which began in 2013 as a regional CCA investigation involving the Counties of Santa Cruz, Monterey, and San Benito, plus all 18 cities (including the City) located within those counties, as well as some special districts. On January 10, 2017, at the invitation of City Mayor LeBarre, Pilot Power Group, Inc. (“Pilot”) presented to the City Council regarding the possibility of an independent City CCA utilizing Pilot’s Full Service Option for smaller CCAs (“FSO”). At a follow-up meeting on February 28, 2017, both MBCP and Pilot presented to the City Council. MBCP urged the City to join the newly forming MBCP Joint Powers Authority (“JPA”). Pilot presented a preliminary technical analysis of the viability of an independent City FSO CCA.

On March 28, 2017, the City Council declined membership in the JPA for the time being, while directing Staff to proceed with fully assessing the feasibility of an independent City CCA. On May 17, 2017, Staff released a Request for Proposals (“RFP”) seeking preparation of a City CCA feasibility analysis and, should the City Council subsequently seek to move forward with an independent CCA, development and implementation of a turnkey CCA program. On August 8, 2017, the City Council approved a Phase 1 contract with Pilot to produce a full and thorough CCA feasibility analysis (“Feasibility Study”).

On October 24, 2017, the City received and reviewed the Feasibility Study prepared by Pilot. An independent energy consulting firm hired by the City also conducted a peer review of the Feasibility Study, finding no issues of major concern. The City agreed with the findings of the Feasibility Study, unanimously determining that the City will receive multiple benefits by

implementing Community Choice Aggregation and that current and expected electric energy market conditions are favorable for the implementation of a City CCA. The City authorized moving forward with implementing a City CCA utilizing Pilot's FSO.

On November 5, 2017 the City opened a public hearing, considered public testimony and introduced for first reading by title only an ordinance authorizing the implementation of a City CCA program, including a proposed determination of a California Environmental Quality Act ("CEQA") Categorical Exemption Class Seven (7) ("City CCA Ordinance"). On November 14, 2017, the City conducted the second reading and adopted the City CCA Ordinance. The effective date of the City CCA Ordinance is December 15, 2017. On December 12, 2017, the City Council considered and adopted this Implementation Plan at a duly noticed public hearing. In addition to the numerous City Council meetings discussing CCA, throughout 2017 the City held a number of public outreach and education events.

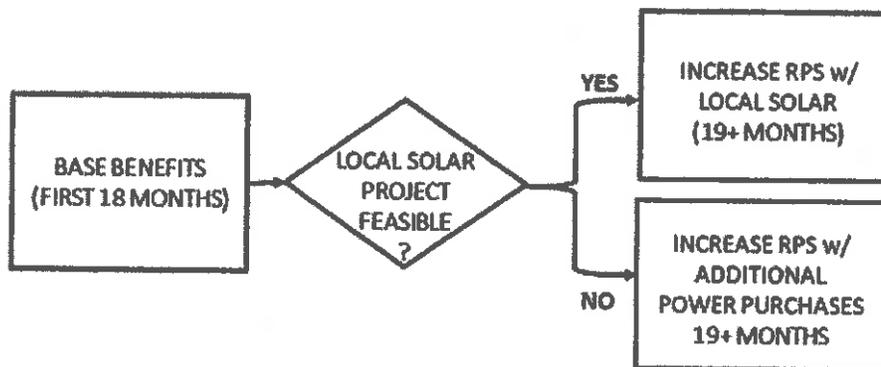
A key driver behind the City's decision to pursue an independent City CCA is the ability to tailor CCA benefits to the specific needs of the King City community ("Community"). In addition to providing competitively priced, environmentally sustainable electricity and local economic development, KCCP also seeks to address the needs of a high proportion of income qualified City residents and to contribute to the City's efforts to combat youth violence. Specifically, for the first 18 months of operation, KCCP intends to offer the following benefits ("Base Benefits"):

- **Competitive Pricing:** 1% average discount off of Pacific Gas and Electric Company's ("PG&E") fully bundled electric service to lower customer electric bills.
- **Environmental Sustainability:** Compliant California Renewable Portfolio Standard ("RPS") + 75% greenhouse gas-free electric portfolio to meet or exceed PG&E's electric portfolio.
- **Assist Income Qualified Residents:** No cost, residential rooftop solar installations for all qualifying customers to lower customer bills and expand the direct benefits of renewable energy technology to underserved populations.
- **Address Key Element of the King City Comprehensive Plan to End Youth Violence:** Installation of 20 wireless, solar-powered street lights

per year, 100 total, to provide much needed safety lighting in difficult to site infill areas, while maximizing the use of renewable technology.

- **Local Economic Development – Job Training:** Sustainable energy education at the elementary, middle and high school levels, plus vocational training at the high school and community college level to expand employment opportunities.
- **Local Economic Development – Local Power:** Study to determine the feasibility of a 3MW or larger solar power plant on the vacant City landfill property (“Local Solar Project”).

After the first 18 months of operation, if the Local Solar Project is feasible, KCCP intends to continue to enhance the Base Benefits by building, owning and operating the Local Solar Project. When the Local Solar Project becomes operational, the KCCP RPS will increase to 50%. If the Local Solar Project is not feasible, KCCP intends to enhance the Base Benefits by increasing the RPS to 50% through additional renewable power purchases. The flow chart depicted below provides a graphical representation of the intended roll out:



The City intends to enroll all eligible customers on June 1, 2018 (“Enrollment Date”). Very preliminary coordination and planning with PG&E regarding service cut over has already

commenced and will continue consistent with the planned Enrollment Date and pursuant to PG&E tariffs and protocols.

In April and May of 2018, all eligible customers will be mailed information fully informing them: 1) that if they do not opt-out, they will be automatically enrolled for KCCP service on the Enrollment Date; 2) of KCCP's terms and conditions of service; and 3) of how to opt-out of KCCP service ("Notices"). Due to a high proportion of Spanish speaking City residents, the Notices will be represented in both English and Spanish. Opting-out will be offered through the mail, by phone and through a Web based portal. No penalty will be assessed for opting-out. All customers that do not opt-out will be automatically enrolled on the Enrollment Date, and KCCP service will begin at their next regularly scheduled meter read date.

KCCP customers will continue to receive most of their electric services from PG&E, including transmission and distribution, meter reading, billing, and customer service, but they will no longer pay PG&E's generation rates. Instead, KCCP customers will pay the generation rates set by the City, as well as a number of PG&E charges related primarily to electric delivery services and those designed to prevent cost shifting to fully bundled PG&E customers. After the Enrollment Date, KCCP customers will be sent two additional Notices over a period spanning not less than two consecutive billing cycles. Customers that opt-out after the Enrollment Date will be responsible for KCCP charges for the time they were served by KCCP.

### **III. ORGANIZATION, OPERATIONS AND FUNDING**

*P.U.C. 366.2(c)(3) .... The implementation plan shall contain all of the following:*

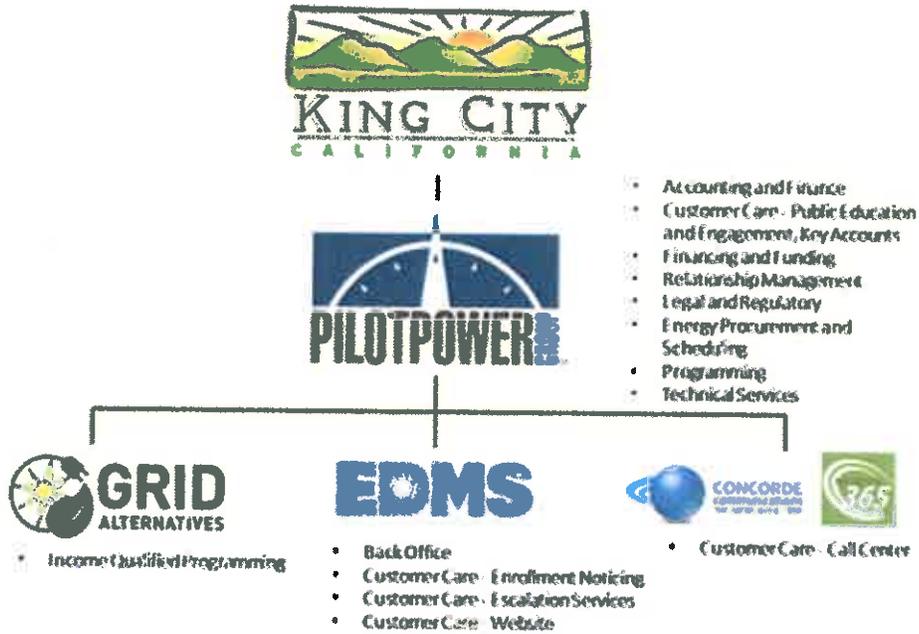
*(A) An organizational structure of the program, its operations, and its funding.*

The City Council is responsible for governing KCCP. Consistent with P.U.C. Section 366.2(m), all City CCA/KCCP meetings have been, and will continue to be, conducted under the provisions of the Ralph M. Brown Act. KCCP items will be on the City Council public agenda at least monthly, or as frequently as needed. The City Manager's office oversees the operational management of KCCP and ensures that City Council directives are followed. Subject to the governance of the City Council and the operational oversight of the City Manager's office,

through a unified, contractual agreement, Pilot provides all of KCCP's operational services as follows:

- **Accounting and Finance**, which includes risk management; GAAP and regulatory accounting; general, project and power procurement financing and credit; pro forma development and maintenance; lock box and waterfall administration; and business planning.
- **Back Office**, which includes data management; California Independent System Operator ("CAISO") and PG&E settlements; and operations planning.
- **Customer Care**, which includes public education and engagement; call center services; escalation services; key accounts management; and website.
- **Energy Procurement and Scheduling**, which includes all types and forms of power purchasing and acquisition; CAISO Scheduling Coordination; and resource planning.
- **Financing and Funding**, which includes all KCCP credit and collateral needs covering startup costs, financial postings such as the Commission bond requirement, and credit and collateral for both bilateral and CAISO power purchases.
- **Legal and Regulatory**, which includes all local, state and federal compliance and reporting; general legal support; rate setting guidance and direction; general regulatory and legislative monitoring; and policy development guidance and direction.
- **Relationship Management**, which includes coordination and liaison with strategic partners, agencies and other third parties; vendor engagement.
- **Programming**, which includes special program development and implementation, including procurement of related services and products.
- **Technical Services**, which includes load analysis, profiling, and forecasting; and development and running of modeling for scenario analysis.

The chart depicted below provides a graphical representation of the KCCP and Pilot relationship structure. A copy of the contractual agreement between the City and Pilot is also attached as Exhibit A.



#### IV. RATESETTING AND OTHER COSTS TO PARTICIPANTS

*P.U.C. 366.2(c)(3) .... The implementation plan shall contain all of the following:*  
*(B) Ratesetting and other costs to participants.*

On at least an annual basis, the City Council will set rates sufficient to recover all costs related to operation of the KCCP, including required or discretionary reserves (“Revenue Requirement”). The Revenue Requirement is derived from the ongoing maintenance of the Pro Forma and is designed to provide all of the CCA services and benefits described in this Implementation Plan at rates that are on average 1% below PG&E’s bundled service.

While the City reserves the right to develop new KCCP customer classes and rate designs consistent with applicable laws and electric industry best practices, the City’s general intention is

to maintain customer classes and rate designs identical or similar to PG&E customer classes and rate designs. Maintaining consistency with existing PG&E structures will minimize customer confusion, provide continuity and offer the presumption of intra-class equity. The City further intends to offer to KCCP customers as many of the PG&E rate-related programs, such as Balanced Payment Program and Net Energy Metering, as feasibly possible and in a manner as similar as possible to PG&E's offerings.

Other than the rates set by the City Council, KCCP does not intend to assess or charge any other costs or fees to KCCP customers, including opt-out fees.

## V. DISCLSOURE AND DUE PROCESS

*P.U.C. 366.2(c)(3) .... The implementation plan shall contain all of the following:  
(C) Provisions for disclosure and due process in setting rates and allocating costs among participants.*

All KCCP rate setting is conducted by the City Council over at least two consecutive and duly noticed public hearings. The first public hearing presents proposed rates, an overview of the Revenue Requirement supporting the rates, and an overview of the allocation of the Revenue Requirement among customer classes ("Revenue Allocation"). All work papers supporting the Revenue Requirement and Revenue Allocation are made available to the public prior to the first public hearing. Public comments on the proposed rates, Revenue Requirement and Revenue Allocation follow the City Council's normal procedure, except that written comments are accepted for public review up to 3 (three) business days prior to the second public hearing. At the second public hearing, the City Council considers adoption of the proposed rates. Current rate schedules and proposed or pending changes to the rate schedules are maintained on the City/KCCP website and are also available by contacting the KCCP call center.

## VI. ENTERING AND TERMINATING AGREEMENTS

*P.U.C. 366.2(c)(3) .... The implementation plan shall contain all of the following:  
(D) The methods for entering and terminating agreements with other entities.*

The City and Pilot are under a comprehensive contract until December 31, 2023 (“Full Service Agreement”). Under the terms and conditions of the Full Service Agreement, Pilot is responsible for all third party CCA subcontracting – i.e. the Full Service Agreement is a unified, single contract covering all of KCCP’s operational services. The Full Service Agreement may be terminated under a variety of circumstances, but only after the City procures a replacement for KCCP’s CCA operational services. A copy of the Full Service Agreement is attached as Exhibit A.

## VII. RIGHTS AND RESPONSIBILITY OF PARTICIPANTS

*P.U.C. 366.2(c)(3) .... The implementation plan shall contain all of the following:*

*(E) The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures.*

Eligible customers are entitled to universal and equitable access to KCCP benefits, services, and public processes as described in this Implementation Plan. KCCP also maintains the confidentiality of customer data consistent with the Commission’s privacy protection rules for CCA customers.<sup>2</sup>

KCCP does not screen for customer credit eligibility and does not have the ability to shutoff electric service, but reserves the right to return KCCP customers delinquent for more than 90 (ninety) days to PG&E bundled service.

## VIII. PROGRAM TERMINATION

*P.U.C. 366.2(c)(3) .... The implementation plan shall contain all of the following:*

*(F) Termination of the program.*

The City intends to operate KCCP indefinitely. Nevertheless, in the event the City decides to terminate KCCP, such a decision must be made at a duly noticed public hearing

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<sup>2</sup> Decision 12-08-045 (August 23, 2012)

occurring no later than 6 (six) months prior to the intended termination date. During the 6 (six) month unwinding period, the City will conduct KCCP operations in such a manner as to minimize the impact of the termination to KCCP customers, PG&E and other third parties.

## IX. ELECTRIC SUPPLIERS

*P.U.C. 366.2(c)(3) .... The implementation plan shall contain all of the following:*

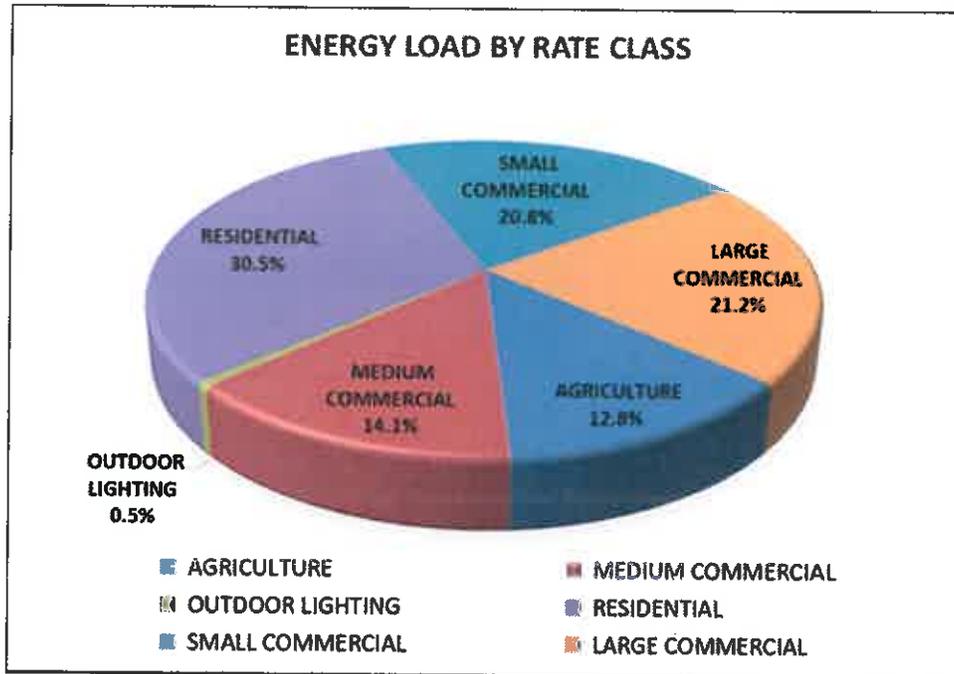
*(G) A description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.*

Under the Full Service Agreement, KCCP electric supply is competitively procured utilizing Pilot's credit and standing with multiple, major wholesale electric suppliers. Pilot's procurement for KCCP utilizes a long-term power procurement strategy to stabilize energy supply costs, maintain price certainty, increase reliability, and meet environmental, renewable and greenhouse gas goals and objectives ("Procurement Strategy"). A key element to the Procurement Strategy is a laddered approach to hedging supply that is closely tied to KCCP's rate setting cycle. The primary reason for the laddered approach is to take advantage of lower commodity pricing when available while maintaining a moderately sized, staggered position open on a rolling basis to capture the impact of market price averaging.

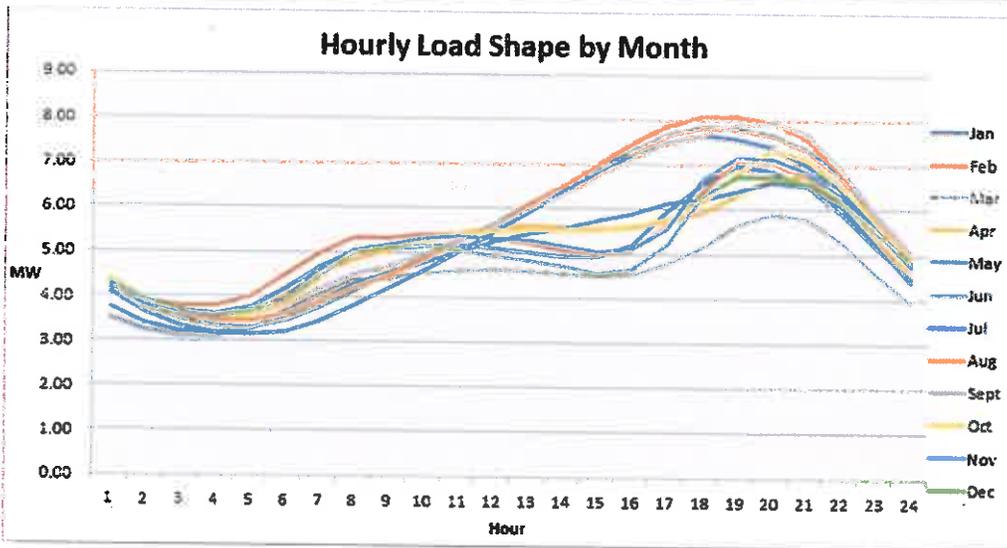
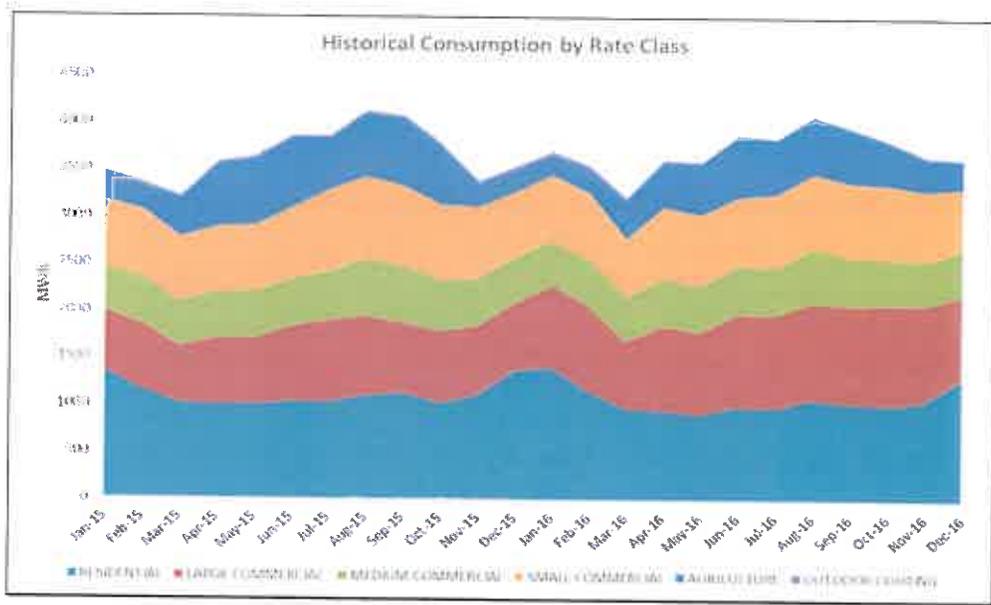
Founded in California in 2001, Pilot quickly became a leading provider of innovative energy supply and energy management solutions for customers in California's deregulated energy market. In 2004, to offer additional flexibility and transparency to customers, Pilot became a registered Scheduling Coordinator ("SC") with the CAISO. For over 15 (fifteen) years Pilot has been a registered California Energy Service Provider in good standing, providing retail customers such as defense contractors, major retailers, property managers and municipal agencies with an alternative to monopoly energy procurement. Pilot offers a full suite of energy procurement solutions, as well as individually customized programs, providing value at any or all retail customer service points. Pilot's services include but are not limited to procurement and portfolio optimization, forecasting, analysis, scheduling coordination, settlements, long-term resource planning, modeling, financial and regulatory accounting, legal and regulatory (including

compliance), risk management, executive management, customer care and a number of other professional services.

Pilot analyzed KCCP’s load utilizing PG&E load data for 2014, 2015, and 2016. Total 2016 City consumption of 44,631 MWh is adjusted to 42,109 MWh account for Direct Access load of 2,521. The graphic below illustrates the 2016 adjusted load by rate class.

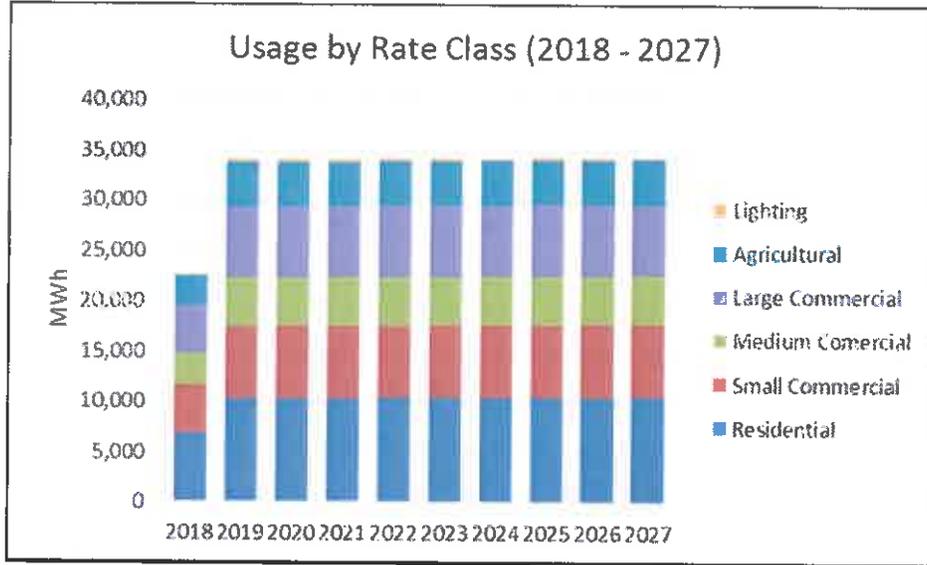


The next graphic immediately below illustrates the seasonality of 2015 and 2016 adjusted load. The graphic following the next graphic illustrates hourly load shape by month of 2016 adjusted load.



As expected, Pilot observes lower consumption during the early hours of the day, with evening peaks, and substantially higher demand in the afternoon and evening from June to September. For forecasting load growth, Pilot applied a nominal growth assumption of 0.5% year over year to residential and commercial customers, and 0.0% for agricultural and lighting. Due to 2014 – 2016 historic, this growth assumption is slightly less than the California Energy Commission’s average growth projections for all of PG&E’s service territory. Pilot then applies a 15% opt-out rate to the load forecast. While some CCA load forecasts anticipate a 20% opt-out, because the City is a small, close-knit community where public communication and involvement are extensive, the lower 15% is utilized. KCCP load forecasts for 2018 through

2027 are depicted in the graphic below.



## X. STATEMENT OF INTENT

*P.U.C. Section 366.2(c)(4) A community choice aggregator establishing electrical load aggregation shall prepare a statement of intent with the implementation plan. Any community choice load aggregation established pursuant to this section shall provide for the following:*

- (A) Universal access.*
- (B) Reliability.*
- (C) Equitable treatment of all classes of customers.*
- (D) Any requirements established by state law or by the commission concerning aggregated service, including those rules adopted by the commission pursuant to paragraph (3) of subdivision (b) of Section 8341 for the application of the greenhouse gases emission performance standard to community choice aggregators.*

KCCP shall, at all times, offer the CCA services and benefits described in this Implementation Plan to all eligible customers. KCCP shall ensure reliable CCA service through strict adherence to electric and financial industry risk management policies. Utilizing customer classes identical or similar to those utilized by PG&E, KCCP shall provide all customers within a

customer class with the same rates, terms and conditions. KCCP shall at all times adhere to all applicable Federal, California and local laws, orders, rules and regulations, including those pertaining to the application of the greenhouse gases emission performance standard to community choice aggregators.

# EXHIBIT A

## COMMUNITY CHOICE AGGREGATION FULL SERVICE AGREEMENT

**By and Between**

City of King and Pilot Power Group, Inc.

**COMMUNITY CHOICE AGGREGATION  
FULL SERVICE AGREEMENT**

**By and Between**

**City of King and Pilot Power Group, Inc.**

This Community Choice Aggregation Full Service Agreement (“Agreement”) is made and entered into effective as of December 12, 2017, (“Effective Date”), by and between the City of King (“City”), a California municipal corporation, and Pilot Power Group, Inc., a California Corporation with an office located at 8910 University Center Lane, Suite 520, San Diego, California, 92122 (“Pilot”). The City and Pilot are sometimes referred to individually as a “Party” or collectively as the “Parties.”

*WHEREAS*, pursuant to the Authority granted by the California Public Utilities Code Section 366.2(c)(12) or its successors, on November 14, 2017, the City adopted an ordinance authorizing the implement a Community Choice Aggregation (“CCA”) program within its jurisdiction (“Ordinance”);

*WHEREAS*, the Ordinance has addressed California Environmental Quality Act (“CEQA”) requirements regarding the CCA;

*WHEREAS*, the Ordinance authorized City staff to proceed with implementing a CCA program (“City CCA”);

*WHEREAS*, the City determined that a full service CCA agreement is the optimal manner in which to serve the customers of the Community CCA;

*WHEREAS*, Pilot has conclusively demonstrated possession of all resources required to fully provide CCA services to the City CCA;

*WHEREAS*, the City initiated a request for professional services and at the conclusion of that process selected Pilot to provide full CCA services to the City CCA;

*NOW THEREFORE*, the Parties agree as follows:

**ARTICLE 1: RECITALS**

The foregoing recitals are, by this reference, fully incorporated into and made part of this Agreement.

## ARTICLE 2: TERM OF AGREEMENT

### A. Term of Agreement

This Agreement is for an initial term beginning on the Effective Date of this Agreement and ending on December 31, 2023, ("Termination Date"), unless terminated early pursuant to Article 5 of this Agreement.

### B. Renewal Option

If two (2) years prior to the Termination Date the City has neither executed a new agreement with Pilot nor provided for continued operation of the City CCA through other means, Pilot shall provide written notice to the City of Pilot's decision, at Pilot's sole option, to:

1. Engage in negotiations, or continue negotiations, of a replacement agreement. If the negotiations do not result in a replacement agreement within six (6) months, Pilot shall immediately exercise option #2 or #3 in this Article 2.B of this Agreement; or
2. Renew this Agreement for an additional year, resetting the Termination Date to December 31 of the renewal year; or
3. Terminate this Agreement on the Termination Date and begin the process of transferring operations of the City CCA to another service provider selected by the City, or returning the City CCA to electric procurement service by the appropriate jurisdictional utility service provider. Termination of this Agreement under any circumstance shall be subject to the terms and conditions of Section 13 of Exhibit A of this Agreement.

## ARTICLE 3: CITY OBLIGATIONS

### A. Maintain Ordinance

Any material change to, or repeal of, the Ordinance adopted by City on November 14, 2017, which terminates the City CCA shall constitute a default by City under this Agreement.

### B. Govern City CCA

- 1) Any failure by City to govern the City CCA, including but not limited to setting rates and authorizing expenditures, in a manner consistent with prudent electric industry practice shall constitute a default by City under this Agreement.

- 2) Any failure by City to appoint and maintain sufficient staffing levels to govern the City CCA shall constitute a default by City under this Agreement.

**C. Exclusive Provider**

City expressly authorizes Pilot to act on its behalf and as its sole agent in fully providing to the City CCA all services covered under this Agreement.

**D. Control Agreement**

Any failure by City to execute and abide by any lawful provisions of the control agreement described in Section 8.a of Exhibit A of this Agreement shall constitute a default by City under this Agreement.

**E. Service Terms and Conditions**

City shall abide by the Service Terms and Conditions described in Exhibit A of this Agreement. Nothing in this Section and/or this Agreement shall require the City to engage in any action or behavior which violates any State, Federal and/or Local statute, regulation or ordinance.

#### **ARTICLE 4: PILOT OBLIGATIONS**

**A. Provide Services**

During the term of this Agreement, Pilot shall provide all of the services necessary to fully implement, operate and maintain the City CCA pursuant to the lawful Service Terms and Conditions described in Exhibit A of this Agreement.

**B. Compliance with Applicable Law**

Pilot shall comply with all applicable CCA laws and regulations in performing under this Agreement.

**C. Maintain Capitalization**

At all times Pilot shall maintain collateral or capitalization sufficient to ensure performance under this Agreement. The amount of collateral or capitalization deemed sufficient shall be determined using industry standard electric commodity procurement practices.

**D. Customer Confidentiality**

Pilot shall maintain the City CCA customer confidentiality as specified in Article 9 of this Agreement.

**E. Indemnification**

- 1) To the fullest extent permitted by law, Pilot shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers (“City Indemnitees”) from any and all loss, liability, fines, penalties, forfeitures, costs and damages, including but not limited to personal injury, death at any time, and property damage, and including further attorney’s fees, litigation and legal expenses incurred by the City Indemnitee or held to be the liability of the City Indemnitee (including plaintiff’s or petitioner’s attorney’s fees if awarded, in connection with the City Indemnitee’s defense of its actions in any proceeding) (collectively, “Losses”) incurred by any City Indemnitees from any and all claims, demands and actions in law or equity (collectively, a “Claim”), whether in contract, tort or strict liability, resulting from, arising or alleged to have arisen directly or indirectly out of: i) Pilot’s performance or non-performance under this Agreement, or ii) provided the City complies with all of the requirements of Article 3.B of this Agreement, the setting, establishing and/or charging of rates for the delivery of electricity to City CCA customers. If any portion of a claim, demand or action in law gives rise to indemnification under this Agreement, Pilot shall be responsible for indemnifying, holding harmless or defending the City as to the entire claim, demand or action in law. Pilot’s indemnification obligations under the proceeding portions of this paragraph shall apply regardless of whether the City Indemnitees are negligent, but shall not apply to any losses caused solely by the gross negligence or willful misconduct of any City Indemnitees.
- 2) In addition, Pilot shall indemnify, hold harmless and defend the City Indemnitees from any and all state or federal enforcement action(s) arising from: i) Pilot’s performance or non-performance under this Agreement, or ii) provided the City complies with all of the requirements of Article 3.B of this Agreement, the setting, establishing and/or charging of rates for the delivery of electricity to City CCA customers. Further, Pilot shall indemnify, hold harmless and defend the City Indemnitees from any and all violation(s) of federal, state and/or local law by Pilot, its officers, officials, employees, agents, subcontractors, independent contractors and volunteers.
- 3) If Pilot should subcontract all or any portion of the work to be performed under this Agreement, Pilot shall require each subcontractor to indemnify, hold harmless and defend the City Indemnitees in accordance with the terms of the two prior paragraphs of this Section. Notwithstanding the preceding sentence, any subcontractor who is a “design professional” as defined in Section 2782.8 of the California Civil Code shall, in lieu of indemnity requirements set forth in the two prior paragraphs of this Section, be required to indemnify, hold harmless and defend the City Indemnitees to the fullest extent allowed by law, from

any and all Claims and Losses that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

- 4) Reimbursement. Pilot and its successors in interest agrees to and shall reimburse the City for any and all costs and expenses, including reasonable attorneys' fees and costs and all court and filing fees arising from i) Pilot's performance or non-performance under this Agreement, or ii) provided the City complies with all of the requirements of Article 3.B of this Agreement, the setting, establishing and/or charging of rates for the delivery of electricity to City CCA customers.
- 5) Selection of Attorney. The City shall have the right to approve any counsel selected by Pilot and said approval shall not be unreasonably withheld. Pilot shall reimburse the City for any and all of the City's costs, including any attorney and staff time, to determine the suitability of the attorney or attorneys proposed by Pilot.
- 6) Review of Briefs and Filings. Notwithstanding the foregoing, the City shall have final approval of all briefs, pleadings, proposed settlements, filings, etc., submitted on behalf of the City in any litigation related to the defense of this matter.

**F. Insurance**

With respect to performance of work under this Agreement, Pilot shall maintain the insurance specified in Exhibit B of this Agreement. City's failure to demand evidence of full compliance with the insurance requirements set forth in this contract or to identify any insurance deficiency shall not relieve Pilot from, nor be construed or deemed a waiver of, Pilot's obligation to maintain the required insurance at all times during the performance of this Agreement.

**ARTICLE 5: DEFAULT AND TERMINATION**

**A. General Termination**

Upon termination of this Agreement for any reason, all outstanding obligations under this Agreement shall survive termination.

**B. Material Terms and Conditions**

Material terms and conditions ("Material T/C") include, but are not limited to all of the obligations set forth in Articles 3 and 4 of this Agreement, except that only those lawful Service Terms and Condition contained in Exhibit A of this Agreement that are specifically indicated as a Material T/C are considered material.

**C. Notification of Breach of Material T/C**

Upon discovery of a breach of any Material T/C (“Breach”), the non-breaching Party shall promptly send a written notice to the alleged breaching Party, fully describing the nature of the alleged breach and demanding cure of the Breach within thirty (30) calendar days of receiving notification (“Notice of Breach”). Within thirty (30) calendar days of receiving the Notice of Breach, the alleged breaching Party shall respond as follows:

1. Cure the Breach, including providing for any restitution as may be necessary; or
2. Reach a written accord and satisfaction with the non-breaching Party; or
3. Dispute the allegation by providing a written request to institute Dispute Resolution pursuant to Article 10 of this Agreement.

In the event the alleged breaching Party fails to respond to the Notice of Breach within thirty (30) calendar days of receipt, the non-breaching Party may, at any subsequent time, institute Dispute Resolution pursuant to Article 10 of this Agreement, or proceed to early termination of this Agreement as described in Article 5.D of this Agreement.

**D. Early Termination**

Provided all of the terms and conditions of Section 13 of Exhibit A of this Agreement are fulfilled, this Agreement may be terminated prior to the Termination Date in any of the following circumstances:

1. Pursuant to Article 5.C of this Agreement, if an alleged breaching Party fails to timely respond to a Notice of Breach, the non-breaching Party may terminate this Agreement.
2. The performance of any obligation under this Agreement by a Party becomes unlawful due to the adoption of, change in, or change in the interpretation of, any applicable law by any judicial or government authority of competent jurisdiction.
3. A regulatory, legislative or judicial body, including but not limited to the governing body of the City: 1) requires a material change to the terms of this Agreement that materially and adversely affects a Party; or 2) takes action that materially and adversely impacts a Party's ability to perform; or 3) requires an unreasonable delay in the performance of this Agreement; or 4) orders a change or modification that affects the Agreement such that either Party's obligations hereunder are materially changed, and the change is not deemed a Force Majeure Event.

4. If, no sooner than five hundred and forty (540) days following launch of service to City CCA customers, the City provides one hundred and eighty (180) days' written notice to Pilot.

## **ARTICLE 6: FORCE MAJEURE**

Pilot shall not be held in default under, or in noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, including termination of this Agreement, where such noncompliance or alleged defaults occurred or were caused by a "Force Majeure Event," defined as a strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation or other event that is reasonably beyond Pilot's ability to anticipate or control. Specifically, and without limitation of the foregoing, during any Force Majeure Event, Pilot's applicable obligations under this Agreement may be suspended. Should the Force Majeure Event resolve within six (6) months, within a reasonable amount of time following resolution of the Force Majeure Event, the suspension of Pilot's obligations shall resume, unless the City has retained a replacement service provider to operate the City CCA. Provided Pilot resumes obligations within a reasonable time following the resolution of the Force Majeure Event, Pilot shall not be liable for damages related to the Force Majeure Event. In the event a Force Majeure Event exceeds six (6) months in duration, Pilot, at its sole option, may provide ninety (90) calendar days written notice to City of intent to terminate this Agreement ("Notice to Terminate Pursuant to Force Majeure Event"). If the City disagrees with Pilot's decision to exercise the option to terminate this Agreement pursuant to a Force Majeure Event, within thirty (30) calendar days of receiving the Notice to Terminate Pursuant to Force Majeure Event, the City may submit a written request to institute Dispute Resolution pursuant to Exhibit C of this Agreement.

## **ARTICLE 7: MISCELLANEOUS**

### **A. Entire Agreement**

This Agreement, including all Exhibits to this Agreement, constitutes the entire Agreement and understanding between the Parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

### **B. Amendment**

All amendments or modifications to this Agreement shall be made in writing and signed by both Parties before they become effective.

**C. Assignment**

Due to the unique nature of providing full services to a specific CCA, this Agreement may not be assigned by the Parties. Pilot, with six (6) months written notice to the City and with the written authorization of the City, may assign this Agreement to an entity equally qualified to carry out Pilot's obligations under this Agreement. The City shall not unreasonably refuse to provide Pilot with its written authorization.

**D. Notices**

Notice shall be provided at the addresses listed below, unless another address is provided in writing by a Party.

**Notice to City:**

Steven Adams, City Manager  
City of King  
212 South Vanderhurst Avenue  
King City, CA 93930  
Phone: (831) 385-3281  
email: [sadams@kingcity.com](mailto:sadams@kingcity.com)

**Notice to Pilot:**

Pilot Power Group, Inc.  
CCA Coordinator  
8910 University Center Lane, Suite 520  
San Diego, CA 92122  
Phone: (858) 678-0118  
Email: [legal@pilotpowergroup.com](mailto:legal@pilotpowergroup.com)

Any notices, requests or demands regarding the services provided under this Agreement shall be deemed to be properly given or made:

1. By hand delivery, shall be effective on the day and at the time actually delivered to the intended recipient at its address set forth above if delivered at or before 5:00 p.m. or if delivered after 5:00 p.m. shall be effective on the next business day following delivery; or
2. Sent by U.S. Postal Service mail, postage prepaid and addressed to the intended recipient at the address listed above and shall be effective on the third (3) business day after deposit with the U.S. Postal Service; or
3. By reputable express overnight delivery service addressed to the intended recipient at the address listed above and shall be effective on the next business day after deposit with such service.

**E. Waivers**

The failure of either Party to insist upon strict performance of such requirements or provisions or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such requirements, provisions or rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, that either Party may have under federal or state law unless such waiver is expressly stated herein.

**F. Applicable Law**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California, without regard to principles of conflict of laws. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Monterey, State of California.

**G. Exhibits**

Exhibits A through G are included in this Agreement, and by this reference, incorporated into and made part of this Agreement.

**H. Controlling Provision**

In the event of any inconsistency between the text of this Agreement and the terms of the Exhibits to this Agreement, the text of this Agreement shall control.

**I. Severability**

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. The non-enforcement of any provision by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or the remainder of this Agreement.

**J. No Third-Party Beneficiaries**

Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

**K. Validity of Agreement**

The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and that the

Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

**L. Authority to Sign Agreement**

Parties agree that they are authorized to execute, deliver and perform this Agreement. The individuals signing this Agreement on behalf of the Parties warrant that they are authorized to execute this Agreement on behalf of their respective Parties.

**M. Binding Effect**

This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors, grantees, lessees, and assigns throughout the term of this Agreement.

**N. Execution by Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one instrument.

**O. Warranty & Representation of Non-Collusion.**

No official, officer, or employee of the City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of the City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Pilot warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Pilot further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Pilot is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Pilot's Authorized Initials \_\_\_\_\_

**P. Corporate Authority**

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**Q. Records, Reports, and Release of Information**

- 1) Records. Pilot shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to the City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the City to evaluate the performance of such services and shall keep such records for a period of three (3) years following completion of the services hereunder. The City shall have full and free access to such books and records upon request during normal business hours, including the right to inspect, copy, audit and make records and transcripts from such records.

Reports. Pilot shall periodically prepare and submit to the City such reports concerning the performance of the services required by this Agreement or as the City shall reasonably require.

**R. Ownership of Documents**

Hard copies and electronic versions of all studies, surveys, data, notes, emails, memorandum, correspondence, reports, drawings, specifications, maps, designs, photographs, documents and other materials (the "documents and materials") prepared by Pilot in the performance of this Agreement shall be the property of the City and shall be delivered to the City upon request of the City or upon the termination of this Agreement, and Pilot shall have no claim for further employment or additional compensation as a result of the exercise by the City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Moreover, Pilot with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby **deemed "works made for hire" for the City.**

**S. Covenant Against Discrimination**

Pilot covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or

segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Pilot shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class.

**T. Non-liability of City Officers and Employees**

No officer or employee of the City shall be personally liable to Pilot, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to Pilot or to its successor, or for breach of any obligation of the terms of this Agreement. Notwithstanding the foregoing, nothing herein shall excuse or shield any officer or employee of the City from personal liability to Pilot based on intentional torts or criminal acts.

**U. Attorneys' Fees**

If either party to this Agreement initiates or defends or is made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

**ARTICLE 8: REPRESENTATIONS AND WARRANTIES**

**A. Mutual Representations and Warranties**

Each Party represents and warrants to the other Party, as of the date of this Agreement, that:

1. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation, and if relevant under such laws, in good standing;
2. It has the corporate, governmental and/or other legal capacity, authority and power to execute, deliver and enter into this Agreement and any other related documents, and perform its obligations under this Agreement, and has taken all necessary actions and made all necessary determinations and findings to authorize such execution, delivery and performance;
3. The execution, delivery and performance of this Agreement does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

4. It has reviewed and understands this Agreement;
5. It shall comply with all federal, state, and local laws, regulations, licensing, and disclosure requirements.

**B. Additional Representations and Warranties by Pilot to City**

Pilot further represents and warrants to the City, as of the date of this Agreement, that:

1. Pilot shall hold any and all subcontractors to this Agreement to the applicable Material T/C to which Pilot is obligated under this Agreement;
2. Pilot warrants to the City that Pilot has good marketable title to all electricity sold pursuant to this Agreement, and that said electricity is free from all liens and diverse claims;
3. Pilot shall maintain all of the qualifications, certifications, approvals, and other authorizations required by law to perform its obligations under this Agreement.

**ARTICLE 9: CONFIDENTIALITY**

Pilot shall preserve the confidentiality of the customer account information it receives as a result of the performance of its obligations under this Agreement as follows:

**A.** Pilot shall abide by all laws, regulations, California Public Utilities Commission Decisions, including D.12-08-045, and contractual obligations regarding the confidentiality of customer account information. Pilot shall not disclose, use, sell or provide the City CCA customer account information to any person, firm or entity for a purpose outside of the operation of the City CCA. This provision shall survive the termination of this Agreement.

**B.** With the exception of customers eligible for free or subsidized income qualified roof top solar installations ("IQRTS"), for any voluntary release of City CCA customer information Pilot shall obtain written authorization from the City and the affected City CCA customer or customers. For IQRTS, the City authorizes the IQRTS designated program manager to conduct outreach to customers who may qualify for the IQRTS program.

**C.** All information gained or work product produced by Pilot in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Pilot. Pilot shall not release or disclose any such information or work product to persons or entities other than the City without prior written authorization from the City. Notwithstanding the foregoing, Pilot shall be authorized to submit all filings,

reports, or other information and/or documents that may be required by the California Public Utilities Commission, the California Energy Commission, the California Independent System Operator, the Federal Energy Regulatory Commission or similar regulatory body without prior written authorization from the City.

**D.** Pilot shall not, without prior written authorization from the City or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Pilot gives the City notice of such court order or subpoena.

**E.** If Pilot provides any information or work product in violation of this Agreement, then the City shall have the right to reimbursement and indemnity from Pilot for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Pilot’s conduct.

**F.** Pilot shall promptly notify the City should Pilot be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. The City retains the right, but has no obligation, to represent Pilot or be present at any deposition, hearing or similar proceeding. Pilot agrees to cooperate fully with the City and to provide the City with the opportunity to review any response to discovery requests provided by Pilot.

**G.** Notwithstanding the foregoing, nothing herein shall prevent the use by Pilot of such customer account information for the purpose of communicating with the customers. In addition, nothing herein shall prevent Pilot from using information in the public domain prior to its disclosure under this Agreement.

## **ARTICLE 10: DISPUTE RESOLUTION**

**A.** Prior to commencing any legal action the Parties shall engage in a good faith effort to mediate any dispute arising out of this Agreement. The Parties shall meet and confer in good faith to select a mediator. The mediation shall be conducted within the County of Monterey at a location agreed to by the Parties. The Parties shall split the cost of mediation equally, including the cost of hiring the mediator and securing the mediation location. Any agreement reached during the mediation and signed by the Parties shall be incorporated within this Agreement and be binding upon the Parties.

**B.** Should the Parties be unable to agree upon a mediator or reach an agreement during the mediation to resolve the dispute, either Party may take

legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Pilot shall file a statutory claim pursuant to Government Code Sections 905 et. seq. and 910 et. seq., in order to pursue any legal action under this Agreement.

C. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF KING, a municipal corporation

\_\_\_\_\_  
Mike Lebarre, Mayor

ATTEST:

\_\_\_\_\_  
Steven Adams, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Shannon L. Chaffin, City Attorney

PILOT:

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.





**COMMUNITY CHOICE AGGREGATION FULL SERVICE  
OPERATION, SUPPLY AND FUNDING AGREEMENT**

**EXHIBIT A  
SERVICE TERMS AND CONDITIONS**

Pilot and the City agree that the following CCA products and services (“CCA Services”) shall be provided by Pilot for the benefit of the City CCA under the terms and conditions as described.

**1. CCA Implementation and Timeline**

- a. In the absence of unforeseen circumstances, Pilot shall launch service to the City CCA within nine (9) months from the date of entering into this Agreement. The nine (9) months shall not include the time elapsed between submission of CCA related applications, permits or other documents for legally required approval, acknowledgement or recognition by third parties including but not limited to the City CCA governing board, Pacific Gas and Electric Company (“Utility”), the California Public Utilities Commission (“CPUC”), the California Independent System Operator (“CAISO”) and the California Energy Commission (“CEC”).
- b. Within twenty (20) business days from the date of entering into this Agreement the City shall appoint one or more persons to serve as the direct contact with Pilot during the normal course of business (“Staff”). The City shall also appoint in writing a person or persons authorized to sign and verify various CCA compliance related documents (“Authorized Representative”). The Authorized Representative may be the same person or persons as Staff, or an elected official...
- c. Within one (1) month(s) from the date of entering into this Agreement Pilot shall prepare and present to Staff a draft City CCA Implementation Plan and Statement of Intent (“CCA Plan”). Within the following one (1) month(s), City Staff, with the assistance of Pilot, shall review, finalize and present the CCA Plan to the City CCA governing board for adoption.
- d. Within three (3) month(s) from the date of entering into this Agreement Pilot shall, on behalf of the City CCA, execute a CCA Service Agreement with the Utility (“Utility Service Agreement”), including, if required, the posting a letter of credit, cash or other suitable collateral with the Utility sufficient to fulfill the requirements for executing a CCA Service Agreement with the Utility (“Utility Bond”). The Utility Bond shall be subject to the terms and conditions in Section 2 of this Exhibit A to this Agreement.
- e. Within one (1) month(s) from adoption of the CCA Plan by the City CCA governing board and execution of the Utility Service Agreement Pilot shall, on behalf of the City CCA, submit the CCA Plan to the CPUC for certification. When required by the CPUC, Pilot shall, on behalf of the City CCA, complete CPUC certification by submitting to the CPUC the certified CCA Plan and the

Utility Service Agreement, and post the CPUC required bond or other suitable collateral (“CPUC Bond”). The CPUC Bond shall be subject to the terms and conditions in Section 2 of this Exhibit A to this Agreement.

- f. Within three (3) month(s) of receiving CCA Plan certification and City CCA registration by the CPUC, Pilot shall coordinate with Staff and the Utility to develop the City CCA enrollment schedule, including finalizing data exchange protocols, the timeline for the launch of service to the City CCA customers, and the timeline for customer noticing.

## **2. CCA Funding (Material T/C)**

- a. Pilot shall provide funding for all deposits that may be required by the Utility, the CPUC, the CAISO or other entities to launch and operate City CCA (“Deposits”). The City acknowledges and agrees that should Pilot have reasonable basis to conclude that any Deposits funded by Pilot and not fully reimbursed to Pilot are in jeopardy of forfeiture, Pilot may exercise the right of recovery for the amount of the unreimbursed Deposits pursuant to the terms and conditions in Section 13 of this Exhibit A to this Agreement.
- b. Pilot shall directly pay for all costs related to the launch and ongoing provision of CCA Services (“Costs”), subject to recoupment by Pilot solely as specified in the terms and conditions in Section 8 of this Exhibit A to this Agreement. The City shall not be directly responsible for payment of any Costs through means other than as specified in the terms and conditions in Section 7 of this Exhibit A to this Agreement.
- c. Pilot shall provide all working capital, credit and collateral necessary to support all functions of Energy Procurement as described in Section 3 of this Exhibit A to this Agreement.

## **3. Energy Procurement (Material T/C)**

- a. Pilot shall ensure that the City CCA electric load is served in a least cost, best fit, and reliable manner, as determined by electric industry standards (“Energy Procurement and Risk Management Protocol”), as described in Exhibit C of this Agreement.
- b. Pilot shall conduct electric procurement in a manner consistent with the directives set during the City CCA rate-setting as described in Section 8 of this Exhibit A of this Agreement.
- c. Pilot shall procure all products and services, including but not limited to forecasting, scheduling, energy, capacity and ancillary services, required to serve the City CCA electric load.
- d. All the City CCA electric load shall be scheduled through the CAISO and will be subject to applicable CAISO charges and fees.

- e. Pilot shall perform all annual, seasonal, and monthly and day ahead forecasting needed to serve the City CCA electric load. Such forecasting shall be adjusted for historic data, weather, seasonal variations, and changes in the City CCA load due to customers choosing Utility electric energy procurement service instead of the City CCA electric energy procurement service (“Opt-Outs”), addition of new customers and terminations of service.
- f. The City shall fully cooperate with Pilot and other entities in securing the City CCA’s share of CAISO Congestion Revenue Rights (“CRRs”) from the Utility. Cooperation includes reliance on the credit worthiness of the City to secure the CRRs, but does not require the posting of any cash or collateral.

#### **4. Data Management (Material T/C)**

- a. Pilot shall, consistent with Utility and other legal requirements, securely receive the City CCA Data (“Data”) from, and transmit Data to, the Utility. Data includes but is not limited to customer account information, meter reads, billing information, customer status changes and customer payments.
- b. Pilot shall oversee all Data and processes related to Data consistent with Utility and other legal requirements.
- c. Pilot shall, consistent with Utility and other legal requirements, securely store and archive Data for a period of five (5) years.
- d. Upon request and with three (3) business days’ notice, Data shall be available for review by Staff.

#### **5. Customer Information System/Customer Relationship Management System**

- a. Pilot shall provide and maintain a database of eligible customer information to include, at a minimum, the account holders name, address, contact information (phone and email), rate information, enrollment status, payment history, billing information (preferably to include bill copies), notes from all customer calls and/or interactions, correspondence and notices. Further, at the City’s request and upon three (3) months’ notice, Pilot shall provide the City with access to and training on the systems operations and maintenance, including but not limited to the ability to enter notes regarding customer calls and/or interactions. Pilot shall provide said access and training for an additional cost of \$0.10 per account-month from the date of the City’s request until such time as the access and training is terminated.
- b. Pilot shall maintain the customer data system in compliance with all applicable local, state and federal consumer privacy and confidentiality laws and/or regulations.
- c. On a daily basis, Pilot shall backup all City CCA data for storage on an encrypted server or cloud storage provider.

**6. Customer Service and Communications (Material T/C)**

- a. Pilot shall provide the City CCA with a call center (“Call Center”) as follows:
  - 1. Dedicated “800” phone number with twenty-four (24) hour interactive voice response;
  - 2. Live agent availability Monday through Friday, 9 a.m. to 5 p.m., except holidays;
  - 3. On-demand accommodation of hearing impaired and alternative language interpreters; and
  - 4. Providing Opt-Out processing, billing review, information on the City CCA, referrals to Utility where appropriate, and other as needed assistance.
- b. Pilot shall provide and support a dedicated the City CCA website that performs online Opt-Out processing and contains the City CCA information.
- c. Pilot shall provide the City with assistance in developing and implementing communications regarding the City CCA.
- d. In the event a City CCA customer account is delinquent more than ninety (90) days, the delinquent customer shall be returned to Utility electric procurement service. Any collection of past due amounts shall be through Utility collections.

**7. Legal, Regulatory, Legislative and Compliance (Material T/C)**

- a. Pilot shall ensure that the City CCA is, at all times, compliant with and responsive to all applicable laws and regulations.
- b. After review by City Staff and review and authorization by the Authorized Representative, Pilot shall submit all required regulatory filings including but not limited to:
  - 1. CPUC Resource Adequacy
  - 2. CPUC RPS
  - 3. CPUC Emission Performance Standard
  - 4. CPUC Storage
  - 5. CEC Power Source Disclosure
  - 6. CEC Integrated Energy Policy Report
  - 7. CAISO Audit

8. Federal Energy Regulatory Commission (“FERC”) Electric Quarterly Reporting
  9. Energy Information Agency Reporting
- c. Pilot shall monitor CPUC, CEC, CAISO and FERC regulatory proceedings, and California and Federal legislative proceedings, reporting back to City Staff on issues that may be of concern to the City CCA. If approved by the City, Pilot shall participate in such proceedings as a representative of the City CCA, up to the lesser of: five (5) hours per week, or ten (10) hours per month, or sixty (60) hours per year. Assistance in excess of these limitations, or assistance outside of Pilot’s internally staffed competencies, will be charged to the City CCA pursuant to Section 7.b.6 of this Exhibit A of this Agreement, and may include a separately negotiated consulting agreement with Pilot.

**8. Finance and Accounting (Material T/C)**

- a. All City CCA revenues of any kind, including, without limitation, refunded Deposits (“CCA Revenue”) shall be promptly deposited into an account at City National Bank (“Lock Box”), as governed by the Control Agreement attached as Exhibit D to this Agreement (“Control Agreement”). Notwithstanding anything in Section 8.b.6 of this Exhibit A of this Agreement, after five hundred and forty (540) days following launch of service to City CCA and provided the Lock Box has a minimum balance of \$750,000.00, the City may determine which financial institution(s) it may choose to utilize for the deposit and any other financial transactions associated with CCA Revenue, as long as said financial institution(s) are Federal Deposit Insurance Corporation (“FDIC”) or National Credit Union Insurance Fund (“NCUSIF”) insured and otherwise meet the City’s minimum requirements for accounting and fiscal services. The City shall provide Pilot with written notice of its decision to select a new financial institution and the new account information. Pilot shall promptly provide the new account information to PG&E, or any other required institution, governmental agency or corporation, to ensure that CCA Revenues are deposited within the new account.

1. The City CCA DBA. The City CCA shall establish a “doing business as” (“DBA”) under which all City CCA banking will be processed.
2. Security Agreement and Security Interest. Upon receipt of a timely invoice, the City hereby agrees to pay Pilot for the following reasonable City CCA expenses:
  - a. All power and power related contracts, agreements and/or purchases entered into on behalf of the City CCA; and
  - b. All other contracts, agreements and/or purchases entered into on behalf of the City CCA and approved by the City.

- b. On a monthly basis and only upon receiving written authorization from the City, Pilot shall authorize payment of the following City CCA expenses from the Lock Box in the following order:
1. Governmental taxes and fees for which the City CCA is responsible, including but not limited to the statewide Electric Energy Surcharge and local Utility Users Taxes (“Taxes and Fees”).
  2. Energy related costs incurred pursuant to and consistent with the Energy Procurement and Risk Management Protocol, including but not limited to energy, capacity, ancillary services, CAISO charges and fees (including but not limited to congestion and wheeling), and renewable and carbon free energy (“Energy Costs”). Energy Costs do not include the forecasting and scheduling services covered under Pilot’s professional services fee.
  3. Principle, interest or other fees related to deferred costs and expenses, deposits, and collateral support as governed by the financial support agreement included as Exhibit F of this Agreement (“Financial Support Agreement”).
  4. Pilot’s fees, as governed by the professional services agreement included at Exhibit G of this Agreement (“Professional Services Agreement”).
  5. All other expenses and costs billed to Pilot on behalf of the City CCA.
  6. The City may only withdraw funds from the Lock Box if all of the following conditions are met:
    - i. All monthly payments under Sections 8.b.1 through 8.b.5 of this Exhibit A of this Agreement are paid; and
    - ii. No disputed payments under Sections 8.b.1 through 8.b.5 are outstanding; and
    - iii. The Lock Box balance does not fall below \$750,000.00; and
    - iv. At a duly noticed public hearing, the withdrawal of the Lock Box funds by the City is approved by a majority vote of the City Council.
- c. On both a monthly and annual basis, Pilot shall provide a full accounting to the City of all City CCA financial activities (“CCA Accounting”). The City CCA Accounting shall include, but is not limited to, a line-by-line presentation of all revenues, expenses, and cumulative Financial Support Agreement amounts.
- d. Upon reasonable notice and provided Pilot has reasonable access to the data needed for the additional reporting, Pilot shall accommodate requests for any additional financial and accounting reporting regarding the City CCA.
- e. Upon reasonable notice, City staff may request a review of all the City CCA Accounting data and processes.

- f. Pilot shall arrange for an independent annual audit of the City CCA Accounting (“Audit”). Payment for the Audit shall be processed pursuant to Section 8.b.6 of this Exhibit A of this Agreement.

**9. Rate-setting (Material T/C)**

- a. On no less than an annual basis, Pilot shall assist the City CCA in conducting a public rate-setting process (“Rate-setting”) guided by electric industry standards. Rate-setting shall be based on a revenue requirement sufficient to fully meet forecasted City CCA expenditures and any prior Rate-setting revenue shortfalls.
- b. Pilot shall accommodate all Utility rate schedules, plans and programs that can be feasibly offered under CCA protocols, including but not limited to Net Energy Metering, balanced payment plans, and California Alternate Rates for Energy.

**10. Utility Relations (Material T/C)**

Pilot shall administer all aspects of the Utility Service Agreement and act as the liaison between the Utility and the City CCA.

**11. City CCA Relations and Account Management (Material T/C)**

Pilot shall provide the City CCA with at least one key Pilot contact person (“Account Manager”). The Account Manager shall be reasonably accessible to Staff during all normal business hours and in cases of emergency. The Account Manager shall be the liaison between the City CCA and Pilot, and ensure that the City CCA issues are promptly addressed. Upon reasonable notice, Pilot may change the designated Account Manager at its sole discretion.

**12. Program Assistance**

Pilot shall provide the City CCA with assistance in implementing energy related programming including but not limited to energy efficiency, local generation, demand response and special rate designs. Provided Pilot’s assistance is limited to Pilot staff resources and competencies, Pilot’s assistance shall be covered under the Professional Services Agreement. Assistance in excess of Pilot’s two hundred (200) annual hours of staff resources, or assistance outside of Pilot’s internally staffed competencies, will be charged to the City CCA pursuant to Section 7.b.5 of this Exhibit A of this Agreement, and may include a separately negotiated consulting agreement with Pilot.

**13. Transfer of Services and Unwinding (Material T/C)**

All of the following requirements for transferring City CCA services and/or unwinding the City CCA shall apply or be fulfilled prior to termination of this Agreement:

- a. Provided the City has given Pilot one hundred eighty (180) days written notice of nomination of a replacement CCA provider or providers, Pilot shall work with

City staff to devise a plan for transferring Pilot's responsibilities under this Agreement to the replacement provider(s).

- b. City shall pay to Pilot: i) the amounts due, if any, under Exhibit F of this Agreement, ii) unreimbursed deposits, if any, and iii) the net cost, if any, of the liquidation of outstanding agreements and contracts, including but not limited to energy procurement contracts, entered into by Pilot on behalf of, and authorized by, the City CCA.
- c. If City CCA lacks sufficient funds to pay Pilot the amounts due described in Section 13.b of this Exhibit A of this Agreement, City CCA, with Pilot's assistance, shall continue operation of the City CCA in a manner that collects sufficient revenue to pay the amounts due Pilot.
- d. Under no circumstance shall Pilot cease providing CCA services to the City CCA until clear and unequivocal arrangements for replacement CCA services, or return to Utility electric procurement, is established.

**COMMUNITY CHOICE AGGREGATION FULL SERVICE  
OPERATION, SUPPLY AND FUNDING AGREEMENT**

**EXHIBIT B  
PILOT INSURANCE REQUIREMENTS**

**1. Workers' Compensation Insurance**

A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Pilot against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Pilot in the course of carrying out the work or services contemplated in this Agreement.

Statutory limits as required by the Labor Code of the State of California and Employers' Liability with limits of:

\$1,000,000.00 per Accident;

\$1,000,000.00 Disease per employee;

\$1,000,000.00 Disease per policy.

**2. General Liability insurance**

On a standard occurrence form, no less broad than ISO form CG 00 01 with minimum limits of:

\$2,000,000.00 per Occurrence;

\$2,000,000.00 General Aggregate;

\$2,000,000.00 Products/Completed Operations Aggregate.

The City shall be named as additional insureds for liability arising out of distribution of vendor's products (ISO endorsement CG 20 15 – "Additional Insured/Vendors" - or equivalent). Additional insured status shall continue for one (1) year after termination of this Agreement. The insurance provided to the City as additional insureds shall apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by the City. Pilot is responsible for any deductible or self-insured retention and shall fund it upon the City's written request, regardless of whether Pilot has a claim against the insurance or is named as a party in any action involving the City.

If Pilot maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits

maintained by Pilot. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

### **3. Primary Coverage**

For any claims related to this contract, Pilot's insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Pilot's insurance and shall not contribute with it.

### **4. Self-Insured Retentions**

Self-insured retentions must be declared to and approved by the City. The City may require Pilot to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the City.

### **5. Acceptability of Insurers**

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

### **6. Claims Made Policies**

If any of the required policies provide coverage on a claims-made basis:

- a) The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- b) Insurance must be maintained and evidence of insurance must be provided for at least two (2) years after completion of the contract of work.
- c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract Effective Date, Pilot must purchase "extended reporting" coverage for a minimum of two (2) years after completion this Agreement.

### **7. Verification of Coverage**

Pilot shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to the City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive Pilot's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**8. Subcontractors**

Pilot shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Pilot shall ensure that the City is an additional insured on insurance required from subcontractors.

**9. Special Risks or Circumstances**

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**10. Automobile Liability Insurance**

A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$1,000,000.00 per person and \$1,000,000.00 per occurrence and property damage liability limits of \$1,000,000.00 per occurrence or (ii) combined single limit liability of \$1,000,000.00. Said policy shall include coverage for owned, non-owned, leased, hired cars, and any other automobile.

**11. Professional Liability Insurance**

Professional liability insurance appropriate to Pilot's profession or in an amount not less than \$1,000,000.00 per occurrence. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least two (2) consecutive years following the completion of Pilot's services or the termination of this Agreement. During this additional two (2) year period, Pilot shall annually and upon request of the City submit written evidence of this continuous coverage.

**12. Additional Insurance Coverage**

Should the City at any time determine additional or excess insurance coverage is required in order to operate or maintain City CCA services, the City CCA shall purchase said insurance coverage as an expense or cost of the City CCA.

**13. Documentation**

The City, at its sole discretion, may require Pilot to submit Certificates of Insurance, endorsements and other documentation of the required insurance. Upon the City's written request, Certificates of Insurance and/or endorsements shall be provided within seven (7) calendar days of the City's request. Certified copies of insurance policies shall be submitted within fifteen (15) calendar days of the City's request.

**14. Materiality and Indemnification**

Pilot's indemnity and other obligations shall not be limited by the foregoing insurance requirements. Pilot's requirements under this Exhibit B of this Agreement are a Material T/C and failure by Pilot to execute this obligation constitutes a Breach of this Agreement.

# COMMUNITY CHOICE AGGREGATION FULL SERVICE OPERATION, SUPPLY AND FUNDING AGREEMENT

## EXHIBIT C ENERGY PROCUREMENT AND RISK MANAGEMENT PROTOCOL

### 1. Applicability

The Energy Procurement and Risk Management Protocol (“Procurement Protocol”) applies to all Pilot employees, contractors and consultants (“Procurement Participants”) engaged in transacting in the electric markets or working closely with those directly transacting in the electric markets for the benefit of Pilot full service CCA clients. All Procurement Participants are required to follow the Procurement Protocol in any circumstance in which Pilot is exposed to energy or energy related risk.

### 2. Roles and Responsibilities

a. Director of Procurement

The Director of Procurement shall also oversee all elements of energy procurement, load forecasting, and preparation and submission of day ahead scheduling for submission to the CAISO.

b. Director of Operations

The Director of Operations shall be responsible for overseeing all settlement activity, confirmations and other activities that support procurement, and for ensuring data reliability and auditing settlements for errors and other concerns.

c. Risk Officer

The Risk Officer shall audit the functions of the Director of Procurement and the Director of Operations, ensuring compliance with this Procurement Protocol and adequate separation of duties between the two Directorships.

d. General Counsel

The General Counsel is responsible for ensuring that the Procurement Protocol remains consistent and up to date with all applicable laws and regulations.

### 3. Authorized Transactions

a. All energy related transactions are executed under the direct authority of the Director of Procurement. Transactions will be executed using industry standard enabling agreements such as Western System Power Pool (“WSPP”) and/or Edison Electric Institute (“EEI”). On an exceptional basis and with the

written approval of the Risk Officer and the General Counsel, non-standard contracts may be executed.

b. The Director of Procurement is authorized to execute any transaction reasonably necessary to maintain a prudently managed and legally compliant CCA electric procurement portfolio, provided that:

1. The transaction will not foreseeably result in a CCA financial shortfall; and
2. The transaction is consistent with the overall direction set forth by the CCA.

If both Sections 3.b.1 and 3.b.2 of this Procurement Protocol are not met, prior to executing the non-compliant transaction, the Director of Procurement must first obtain, in writing, the approval of the Risk Officer and the CCA Staff.

c. Under no circumstance shall Pilot engage in speculative transactions. For the purposes of this Procurement Protocol, speculative transactions are any transactions that are not directly related to serving forecasted or actual load.

#### **4. Counter Party Credit Risk**

a. Pilot shall purchase only through sellers that provide industry standard credit support through either a major agency credit rating, the posting of a Letter of Credit, or the posting of collateral.

#### **5. Reporting**

a. On no less than a quarterly basis, the Director of Procurement shall prepare a report containing an analysis of:

1. All positions held in the CCA portfolio;
2. Open positions pending procurement action;
3. Extraordinary actions taken pursuant to Section III.B of this Procurement Protocol; and
4. Any other issues of note.

b. On no less than a quarterly basis, the Director of Operations shall prepare a report containing an analysis of:

1. Closed and pending CCA portfolio settlement activity;
2. Exceptions, errors and concerns regarding settlements;
3. Data metrics; and
4. Any other issues of note.

c. On an annual basis, the Risk Officer shall prepare an audit of the functions of the Director of Procurement and the Director of Operations.

**COMMUNITY CHOICE AGGREGATION FULL SERVICE  
OPERATION, SUPPLY AND FUNDING AGREEMENT**

**EXHIBIT D  
CONTROL AGREEMENT**

**COMMUNITY CHOICE AGGREGATION FULL SERVICE  
OPERATION, SUPPLY AND FUNDING AGREEMENT**

**EXHIBIT E  
PAYMENT PROTOCOL**

**I. Applicability**

The Payment Protocol (“Payment Protocol”) applies to all Pilot employees, contractors and consultants (“Payment Participants”) engaged in financial and accounting transactions for Pilot full service CCA clients. All Payment Participants are required to follow the Payment Protocol in any circumstance in which payments or transfers from the Lock Box are initiated.

**II. Roles and Responsibilities**

a. Accounting Department

Pilot’s Accounting Department shall process all transfers from the Lock Box (“Transfers”). Except for Transfers pursuant to Section 8.b.7 of Exhibit A of this Agreement, all Transfers must be for payment of products or services meeting the following criteria:

1. The products or services are covered under this Agreement; and
2. The payment will not foreseeably result in a CCA financial shortfall; and
3. The products or services are consistent with the overall direction set forth by the CCA.
4. Section III of this Exhibit E of this Agreement.

If Sections II.A.1, II.A.2 and II.A.3 of this Payment Protocol are not met, prior to executing the non-compliant Transfer, the Accounting Department must first obtain, in writing, the approval of the Risk Officer and the CCA Staff.

b. Risk Officer

The Risk Officer shall audit the functions of the Accounting Department, ensuring compliance with this Payment Protocol.

**III. Authorizing Transactions**

On a monthly basis, Pilot’s Accounting Department shall prepare an itemized report of all City CCA expenses and accounts payable, as identified within Section 8.b of Exhibit A attached to this Agreement, due within sixty (60) days or less for submission to the City (“Payables Report”). Pilot shall provide a copy of the Payables Report to the City’s City

Manager or his/her designee. Within five (5) business days of receipt of the Payables Report, the City Manager or his/her designee shall:

1. Approve or reject, in writing, each itemized expense or cost identified within the Payables Report. In order to reject an itemized expense or cost, there must be a reasonable factual basis to dispute the itemized expense or cost; if only a portion of an itemized expense or cost is subject to a reasonable dispute, the undisputed portion shall be approved;
2. Include the Payables Report in the next possible City Council meeting Consent Agenda for approval by majority vote of the City Council. The Payables Report provided to the City Council shall contain all itemized City CCA expenses or costs authorized for payment by the City Manager or his/her designee. Notwithstanding any other provision of this Agreement and/or any exhibit attached to this Agreement, the City Council shall have the authority to pull the Payables Report from the Consent Agenda and authorize or reject any individually itemized expense or cost or group of itemized expenses or costs;
3. Contact Pilot to resolve any discrepancy or dispute (“Dispute”) regarding any individually itemized expense or cost or group of itemized expenses or costs contained within the Payables Report. If the Dispute cannot be reconciled, either Party may initiate action under Article 10 of this Agreement.

**COMMUNITY CHOICE AGGREGATION FULL SERVICE  
OPERATION, SUPPLY AND FUNDING AGREEMENT**

**EXHIBIT F  
FINANCIAL SUPPORT AGREEMENT**

Pilot shall provide financial support to the CCA as follows:

**1. Deferred Costs**

Deferred Costs shall include, but are not limited to, fees and expenses that are incurred prior to the launch of CCA service:

- a. Expenses incurred prior to the execution of this Agreement in the amount of \$8,540.00.
- b. Deposits, included but not limited to security and collateral deposits.
- c. As specified in the Professional Services Agreement, Exhibit G of this Agreement.
- d. Accrued Interest, calculated on monthly accrued costs assessed at an APR equal to the published Wall Street Journal current prime rate plus 1.75%

CCA shall reimburse Pilot for the Deferred Costs an amount that shall be amortized for payment in equal monthly amounts during the twelve (12) months beginning sixty (60) days following launch of service. Interest will be calculated on the balance owed by the CCA on the last day of the month at the rate specified in Section 1.d of this Exhibit F of this Agreement.

**2. Credit Support for Energy Procurement**

Pilot shall provide energy scheduling services as CAISO authorized Scheduling Coordinator ("SC"). CAISO charges incurred by the SC shall be billed separately from the energy scheduling services ("CAISO Charges"). Pilot shall provide CCA with a statement of CAISO Charges settlement activities on a monthly basis consistent with the CAISO's settlement calendar. Based on CAISO information availability, each month Pilot shall provide the CCA with an aggregate or estimate of the CCA Charges. As required by the CAISO, Pilot shall make timely payment of CAISO Charges.

Payments for CAISO Charges made by Pilot will accrue interest from the time of payment to the time of reimbursement to Pilot, at an APR equal the rate specified in Section 1.d of this Exhibit F of this Agreement. Payments for all non-CAISO energy procurement charges made by Pilot will also accrue interest from the time of payment to the time of reimbursement to Pilot, at an APR equal the rate specified in Section 1.d of this Exhibit F of this Agreement. All interest under this Section 2 of Exhibit F of this Agreement shall be reimbursed to Pilot on a monthly basis, consistent with Section 8.b.4 of Exhibit A of this Agreement.

### **3. Deposits Required After Amortization of Deferred Costs**

Deposits required after Deferred Costs are amortized pursuant to Section 1 of this Exhibit F of this Agreement shall be paid directly from CCA funds. If payment of such Deposits would foreseeably result in a CCA financial shortfall, any shortfalls paid by Pilot shall accrue monthly interest at an APR equal to the published Wall Street Journal current prime rate plus 1.75%. Pilot shall be reimbursed for these Deposits and related accrued interest as soon as CCA funds are available.

### **4. Revenue Shortfall After Amortization of Deferred Costs**

Pilot funding required to cover revenue shortfalls after Deferred Costs are amortized pursuant to Section 1 of this Exhibit F of this Agreement shall accrue monthly interest at an APR equal to the published Wall Street Journal current prime rate plus 1.75%. Pilot shall be reimbursed for this revenue shortfall funding and related accrued interest as soon as CCA funds are available.

**COMMUNITY CHOICE AGGREGATION FULL SERVICE  
OPERATION, SUPPLY AND FUNDING AGREEMENT**

**EXHIBIT G  
PROFESSIONAL SERVICES AGREEMENT**

The following fees shall begin accruing three (3) months prior to launch of electric service to CCA customers:

- 1. Professional Services** **\$16,666.67/month**

Covers staffing resources and normal course of business costs such as travel and office services, related to CCA accounting, finance, public education and engagement, key accounts management, executive management, legal/regulatory/legislative, energy procurement/scheduling, programming, and technical service, subject to the limitations indicated in Exhibit A of this Agreement.
- 2. Data Management, Website, Call Center** **\$1.15/account-month**

All services subject to the limitations indicated in Exhibit A of this Agreement.
- 3. Enrollment Noticing** **\$1.74/account**

Covers 4 black and white, post card sized mailings per account.

Payment to Pilot for the above described fees shall be consistent with Section 8.a.5 of Exhibit A of this Agreement, and Exhibits E and F of this Agreement. Pilot shall also invoice the CCA on or about the 5<sup>th</sup> business day of the month for amounts owed for the previous month and payment to Pilot shall be made by electronic transfer as either an Automated Clearing House ("ACH") or wire transfer in United States Dollars.