



FAIRFIELD-SUISUN SEWER DISTRICT

1010 CHADBOURNE ROAD • FAIRFIELD, CALIFORNIA 94534 • (707) 429-8930 • WWW.FSSD.COM
GREGORY G. BAATRUP, GENERAL MANAGER

Executive Committee Meeting Agenda

EXECUTIVE COMMITTEE

MICHAEL SEGALA, PRESIDENT

HARRY PRICE, VICE PRESIDENT

LORI WILSON

CHUCK TIMM

Meeting Date: Monday, September 17, 2018

Meeting Place: 1010 Chadbourne Road
Fairfield, California
(Executive Conference Room)

Meeting Time: 4:30 p.m.

1. Roll Call	
2. Public Comments	
3. General Manager Report	
4. <u>Discussion Items</u>	<u>Page</u>
(a) September 8, 2018 Board Workshop and Action Items	2
(b) Make Findings and Approving an Agreement for Energy Management Services with Advanced Microgrid Systems.....	4
(c) Receive Report on 2 nd Year Operations of Organic Material Recovery Center	39
(d) General Manager Goal Setting.....	41
(e) General Manager Performance Evaluation Process.....	42
(f) Community Outreach Strategy	43
5. <u>Action Items</u>	
6. Approve the September 24, 2018 Board of Directors Meeting Agenda.....	55
7. <u>Information Items</u>	
(a) Monthly Operating Summary	56
(b) Connection Fee Chart	58
(c) Potential Presentations for Board of Director Meetings	59
(d) Board Calendar	60

--End of Agenda--

The Fairfield-Suisun Sewer District will provide reasonable disability-related modification or accommodation to a person with a disability who requires a modification or accommodation in order to participate in the meeting of the Board of Directors. Please contact the District at (707) 429-8930 at least 48 hours before the meeting if you require such modification or accommodation.

Documents that are disclosable public records required to be made available under California Government Code Section 54957.5 (b) (1) and (2) are available to the public for inspection at no charge during business hours at our administrative offices located at the above address.

Members of the public may speak on any matter within the jurisdiction of the Fairfield-Suisun Sewer District by filling out a speaker's request card, and submitting the card to the Board Secretary. Comments not listed on the agenda will be taken under Public Comments. Comments on matters appearing on the agenda will be taken during consideration of the item.



FAIRFIELD-SUISUN SEWER DISTRICT

1010 CHADBOURNE ROAD • FAIRFIELD, CALIFORNIA 94534 • (707) 429-8930 • WWW.FSSD.COM
GREGORY G. BAATRUP, GENERAL MANAGER

September 13, 2018

MEMORANDUM

TO: Executive Committee

FROM: Greg Baatrup, General Manager

SUBJECT: September 8, 2018 Board Workshop

Recommendation: Receive Report and File

Discussion: The District held its 2018 Board Workshop on Saturday, September 8, 2018.

Attendees:

- Directors: Wilson, Timm, Sanchez, Moy, Hudson, Day (by teleconference) and Vice President Price.
- District Counsel: Bernadette Curry
- Staff: Ben Carver, Melissa Espinoza, Meg Herston, Helen Gaumann, Jordan Damerel, and Greg Baatrup.
- Two District Customers

The following is a summary of the workshop:

1. Review of the 2016 Board Workshop and Current Assessment
Summary: During the discussion on assessment, the Board and staff discussed the concern over the public's lack of understanding of District services and lack of public engagement except during rate-setting or hearings on boundary decisions. Discussions included ideas on expanding outreach and the resources available/needed.
2. Review Purpose, Vision, Mission and Values
Summary: These statements were reviewed; no modifications were proposed.
3. Financial Review
Summary: This review was to bring forward discussions on issues that may impact the FY2019/20 and FY2020/21 budget preparation.
 - 3.1 Review Existing Budget
Summary: A presentation of the March 2017 budget presentation was provided for background
 - 3.2 Review topics with potential impacts for future budgets
 - 3.2.a Unfunded Liability for Pension and Other Post Employment Benefits (OPEB)
Summary: As required by GASB, the unfunded liabilities that must be reported in the

District financial statements were presented. The District unfunded liability for pension is \$6.4 million and \$1.6 million for OPEB, which is being paid down through annual payments. The District is currently 80 percent funded for pension and 73.6 percent funded for OPEB. The current strategy is for the District to make its payments consisting of normal costs and payments to reduce the unfunded liability. The discussion concluded that there is concern over this cost, but there is no need to panic and no new strategy was recommended. Options will be developed, and recommendations brought forward to reduce cost implications in the upcoming budget discussions.

3.2.b Community Outreach

Summary: Staff presented a summary of the recent outreach activities and the current outreach strategy that relies on 15 to 20 staff members to go beyond their regular duties to support the District's outreach effort. The discussion concluded that there is a desire to expand the District message through newsletters and broader social media exposure, but without the expense of additional outreach staff. Recommendations for expanding outreach will be developed and brought forward in the budget discussions.

3.2.c Impacts for Potential Regulatory Driven Projects (Nutrients, Air Regs, Climate Change)

Summary: With several regulatory near-, medium-, and long-term regulatory initiatives identified that may result in costly capital improvements, a strategy was discussed to set aside funds that would be dedicated to future regulatory-driven projects. Reserve recommendations will be developed and brought forward in the budget discussions.

4. New Business Opportunities

Summary: Staff presented new opportunities, primarily in adding services to address the changing regulatory requirements for organics. The partnership with Lystek could be expanded to add the production of new marketable products such as soil blending and composting. The discussion concluded that there is a desire to work with Lystek or other partners to add services that are beneficial to the community and the District.

5. Stormwater Discussions

Summary: Staff presented the responsibilities of the cities and District and provided an update on the challenges to increasing revenue, including a brief overview of SB 231 that provided changes to some of the rates setting requirements under Proposition 218. With recognition that the court cases will be needed to perfect the usage of the new law, the discussion concluded that the strategy will be to monitor implementation of SB 231 or other legislative changes and to assess the risks before seeking a change to stormwater rates.

6. GM Evaluation Process

Summary: After a brief discussion about whether to keep the process in-house or outsourced to a consultant, the Board agreed to bring this item to a Board Meeting where all members of the Board could participate.

In the wrap-up, the Board expressed their appreciation for the workshop. There was agreement that the Board should continue to hold these every two years, preferably in the Spring.



FAIRFIELD-SUISUN SEWER DISTRICT

1010 CHADBOURNE ROAD • FAIRFIELD, CALIFORNIA 94534 • (707) 429-8930 • WWW.FSSD.COM
GREGORY G. BAATRUP, GENERAL MANAGER

September 12, 2018

MEMORANDUM

TO: Executive Committee

THOUGH: Greg Baatrup, General Manager

FROM: Talyon Sortor, Assistant General Manager

SUBJECT: Energy Management Services Agreement

Recommendation: Board of Directors to adopt a resolution making the necessary findings under Government Code 4217.12 and authorize the General Manager to enter into an Energy Management Services Agreement with Advanced Microgrid Solutions.

Background: The District's treatment plant uses a significant amount of electricity, typically around 1.2 megawatts per hour. Over the years projects have been implemented to generate our own power to lower our electrical costs including using cogeneration, solar, and wind systems. Annually, the District generates around 65 percent of its power and buys around 35 percent from PG&E.

Like most commercial or industrial bills from PG&E, the District electrical bill has several components. One cost component is known as "demand charges" has been difficult to minimize. When the on-site electricity generation is reduced or interrupted, that electricity must be made up by PG&E and consequently, a demand charge is applied to the bill. The amount of the demand charge is determined from the highest 15-minute peak power consumed. One way to reduce demand charges is to use large battery systems to store electricity then use the stored electricity to reduce the 15-minute peak and lower the demand charge.

In 2016, staff began discussions with several companies that could provide large-scale battery storage systems. The desired system would be built, owned, and operated by a contract, so the District would not have any capital at risk and to incentivize the contractor to maximize the savings. The system would also have to work with the District's multiple energy sources, including being able to export power from our solar array. The selected company needed to have the people and software to understand the complex billing structure.

Three companies analyzed our electrical load data through their models to see if they could offer a system to meet our needs. Two companies reported we were already very efficient and they did not have a cost-effective solution. Advanced Microgrid Solutions (AMS) also acknowledged the savings were marginal but believed they could package a project that would be worthwhile for both parties. AMS also demonstrated knowledge on how to handle our complex billing structure. AMS proposes a

project that includes battery storage, new solar panels to allow the project to qualify for federal tax credits, and a sophisticated energy management system to maximize savings. As the billing customer, the District applied for and was awarded a \$360,000 Self-Generation Incentive Program (SGIP) grant from PG&E that will be applied to the project capital cost.

Discussion: This project is delivered as an Energy Management Services Agreement. Under the agreement, AMS will finance, build, and operate a system on the District's treatment plant site to offset power that the District would normally purchase from PG&E. AMS will program the system to monitor our power and discharge the battery at optimal times to lower our peak power usage. The District will pay AMS a monthly fee for this service of \$15,090 (\$181,080 per year). Using historical data on power consumption, AMS calculates savings from our PG&E bill will be \$242,213 per year, so the expected net savings to the District after paying AMS would be \$61,133 per year. If AMS can help us save more than the expected savings, then AMS and the District will equally split the additional savings. If AMS is not able to save at least their service fee, then they will refund the difference between their fee and the actual savings. The battery/solar facilities are planned to be installed south of the existing solar system on lower-value District land that is not in use due to its odd shape. Staff and District Counsel have negotiated the agreement with AMS and with the most significant business terms resolved. The term of the agreement is 20 years. There may be minor non-substantive changes necessary, therefore the request is to authorize the General Manager to execute the agreement when it is ready.

This type of energy service contract is governed by California Government Code section 4217.12¹ which requires the governing board to make certain findings at a regularly scheduled public hearing². Those findings include that the contract has anticipated savings to the District and that the lease value of the land used by the contract is less than the anticipated savings. Both of those conditions are expected to be met under this contract. Following the execution of the agreement, staff will work with AMS to complete the CEQA analysis for the project. A CEQA determination will be presented to the Board for certification.

Fiscal Impact: This agreement is expected to save the District at least \$61,133 per year in electrical costs at the treatment plant.

Attachments: #1 - Agreement
 #2 - Draft of Resolution 2018-xx

¹ [4217.12](#). (a) Notwithstanding any other provision of law, a public agency may enter into an energy service contract and any necessarily related facility ground lease on terms that its governing body determines are in the best interests of the public agency if the determination is made at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, and if the governing body finds: (1) That the anticipated cost to the public agency for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the public agency of thermal, electrical, or other energy that would have been consumed by the public agency in the absence of those purchases. (2) That the difference, if any, between the fair rental value for the real property subject to the facility ground lease and the agreed rent, is anticipated to be offset by below-market energy purchases or other benefits provided under the energy service contract.

² A Public Hearing was published in accordance with the California Government Code (see <https://www.fssd.com/wp-content/uploads/2018/09/Public-Hearing-Notice-09242018.pdf>) on September 5, 2018.



Advanced Microgrid Solutions

**Energy Management Services Agreement
Solar + Storage**

This Energy Management Services Agreement (this “**Agreement**”) is made between Advanced Microgrid Solutions, Inc., a Delaware corporation, as service provider (“**AMS**”), and the “**Host**” identified in the table below, as service recipient (each a “**Party**” and collectively the “**Parties**”), as of [_____], 2018 (the “**Effective Date**”).

Details	AMS	Host
Company Name and Address	Advanced Microgrid Solutions, Inc. 25 Stillman St, Suite 200 Attn: Kenzel Hagaman San Francisco, CA 94107	Fairfield Suisun Sewer District 1010 Chadbourne Road Fairfield, CA 94534
Phone	(201) 914-2890	(707) 428-9151
Email	notices@advmicrogrid.com	TSortor@fssd.com
Property Name and Address	Fairfield-Suisun Sewer District 1010 Chadbourne Road Fairfield, CA 94534	
Project Name	FSSD Wastewater Treatment Plant Solar+Storage	
Service Account Name & Number		

This Agreement sets forth the terms and conditions for the provision of Energy Management Services by AMS to Host. Capitalized terms not otherwise defined in this Agreement shall have the meanings in **Schedule 6**.

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

- Schedule 1 Basic Agreement
- Schedule 2 Premises, Property and System
- Schedule 3 Guaranteed Savings and Pricing
- Schedule 4 Insurance
- Schedule 5 General Terms and Conditions
- Schedule 6 Defined Terms
- Schedule 7 Credit Information

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Agreement as of the Effective Date.

Advanced Microgrid Solutions, Inc.

Signature: _____

Name: _____

Title: _____

Host

Signature: _____

Name: _____

Title: _____

Schedule 1
Basic Agreement

1. **Provision of Services; Solar & Storage System.** Subject to the terms and conditions of the Agreement, AMS agrees to provide the Energy Management Services (defined below) to Host at the Property (defined below), and Host agrees to accept such Energy Management Services from AMS. To facilitate the provision of the Energy Management Services, Host grants AMS the right to install (or cause to be installed) at the Premises, and thereafter to enter the Premises to operate, maintain, improve, remove, replace, and otherwise control, (a) a solar photovoltaic generating facility (together with all associated meters, switches, conduits, footings, racking, and other technology, equipment, software, and related components, the “**PV System**”) and (b) a battery energy storage system (together with all associated meters, switches, conduits, foundations, and other technology, equipment, software, and related components, the “**Storage System,**” collectively with the PV System, the “**System**”), in each case, pursuant to the terms and conditions of the Agreement. The size and location of the System are identified in **Schedule 2**.
2. **Energy Management Services.** Subject to the terms and conditions of the Agreement, AMS will provide the following services (collectively, the “**Energy Management Services**”) to Host:
 - 2.1 **Analysis and System Design.** Using historical and forecasted load data, AMS will assess existing and forecasted energy costs at the Property to provide Delivered Cost Savings (defined below) to Host following the Commercial Operation Date. As applicable, during the Term, AMS may also identify opportunities and recommend and (with Host’s approval) implement strategies to improve energy efficiency, reduce greenhouse gas emissions, recommend alternative electricity tariffs to enhance cost savings, and/or reduce electricity costs at the Property utilizing the System or through other energy saving devices;
 - 2.2 **Energy Production.** Following the Commercial Operation Date, the PV System will generate electricity, which generated electricity will be (a) utilized to charge the Storage System, (b) delivered to the Property, (c) exported to the Local Electric Utility grid, and/or (d) exported to third parties. The anticipated size of PV System that will be initially constructed on the Premises and expected production are identified in **Schedule 2** (Premises, Property and System) attached to the Agreement;
 - 2.3 **Delivered Cost Savings.** Following the Commercial Operation Date, AMS will provide Delivered Cost Savings to Host by, among other things, utilizing the System to capture the differential between high-cost and low-cost energy prices and reduce Property demand charges. Subject to the terms and conditions of the Agreement, if AMS fails to provide the Minimum Guaranteed Cost Savings for any Term Year, AMS shall pay Host the difference between the Minimum Guaranteed Cost Savings and the Delivered Cost Savings for such Term Year. Additional terms and conditions related to the provision of the Minimum Guaranteed Cost Savings are provided in **Schedule 3** (Guaranteed Savings and Pricing) attached to the Agreement;
 - 2.4 **Economic Performance Optimization.** Following the Commercial Operation Date, AMS will provide the Delivered Cost Savings by (among other things) managing the operations and performance of the System using its proprietary forecasting software as well as operator personnel. AMS will install an internet connection and/or telephone line for remote monitoring of the System in a manner compliant with Host’s IT security policy and standards. Such monitoring will include periodic evaluations of the Delivered Cost Savings being provided through the System in an effort to improve the operations of the System given changing electricity tariffs, load requirements at the Property, and other factors; and
 - 2.5 **Energy Management Web Portal.** Following the Commercial Operation Date, AMS will provide Host with access to AMS’ energy management web portal to permit Host to review Host’s electricity usage, PV System energy production, Storage System charge and discharge, peak demand reduction enabled by the System, Delivered Cost Savings by Billing Period, and various performance and operational dashboards.
3. **Pricing and Payments.** In consideration for the Energy Management Services, following the Commercial Operation Date and continuing for the remainder of the Term, Host will pay AMS the amounts set forth in **Schedule 3** (Guaranteed Savings and Pricing).

4. Term. The term of the Agreement will commence on the Effective Date and will continue for a period of twenty (20) years following the Commercial Operation Date (the “**Term**”) unless sooner terminated pursuant to the terms and conditions of the Agreement, or extended by mutual written agreement of the Parties.

5. Assignment. Neither Party may assign the Agreement without the prior written consent of the other Party, which such consent shall not be unreasonably withheld, conditioned, or delayed, except that no consent shall be required in the following circumstances: (a) Host assigns its rights under the Agreement to any Person that becomes the fee title owner of the Property, provided that such successor fee title owner of the Premises has the same or better credit rating as Host, as reasonably determined by AMS; and (b) AMS assigns any of its rights under the Agreement to any Affiliate of AMS, any AMS Financing Party, or any Person in connection with a change of control of AMS (or its Affiliates) or any merger, sale of substantially all of AMS’ assets, or other similar transaction undertaken by AMS and/or its Affiliates. Any assignment described in the foregoing clauses (a) or (b) of this **Section 5** shall be effective only if (i) the assigning Party provides written notice of such assignment to the other Party, and (ii) the assignee or transferee agrees in writing to perform and assume all obligations of the assigning Party under the Agreement. Any attempted assignment in violation of the foregoing shall be null and void. In the event of any assignment undertaken in accordance with this **Section 5**, the assigning Party will be released from all of its liabilities and other obligations under the Agreement. The Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

End of Schedule 1

Schedule 2
Premises, Property, and System

1. Property. The address of the Property is: 1010 Chadbourne Road, Fairfield, CA 94534

2. Premises. The address of the Premises, if different from the Property, is:

The Premises is depicted on **Exhibit A**, attached to this **Schedule 2**. Prior to the Commercial Operation Date, the Parties may agree to revise **Exhibit A** attached to this **Schedule 2**, by a written amendment to the Agreement.

3. Delivery Service Account Name & Number. The name and account number for the delivery service account at the Property is:

Name: Fairfield Suisun Sewer District; Number: 2829269808

4. PV System Size. The nameplate size of the PV System and expected energy production in the first year is:

TBD kW_{DC}

TBD kWh

If the PV System will be installed on a roof, Host represents and warrants that the anticipated remaining useful life of such roof is longer than the Term.

5. Expected PV System Equipment. As of the date hereof, AMS anticipates that the PV System will include the equipment in the types and quantities specified in the following table, provided that AMS may reconfigure, optimize, replace, remove, improve, expand, and/or modify such equipment, and/or type or quantity of equipment, in its discretion.

<i>Equipment</i>	<i>Manufacturer / Model</i>	<i>Quantity</i>
Module	TBD	TBD
Inverter	TBD	TBD

6. Storage System Size. The nameplate size of the Storage System is approximately:

520 kW; 1,050 kWh

7. Expected Storage System Equipment. As of the date hereof, AMS anticipates that the Storage System will include the equipment in the types and quantities specified in the following table, provided that AMS may reconfigure, optimize, replace, remove, improve, expand, and/or modify such equipment, and/or type or quantity of equipment, in its discretion.

<i>Equipment</i>	<i>Manufacturer / Model</i>	<i>Quantity</i>
Module	Tesla	TBD
Inverter	Tesla	TBD

8. For purposes of SGIP, the cost of the Storage System is: \$1,445,300.

End of Schedule 2

Exhibit A to Schedule 2
Premises Schematic

Currently in Design and Engineering, to be completed shortly.

Schedule 3
Guaranteed Savings and Pricing

1. Expected Savings. Commencing on the Commercial Operation Date and continuing through the remainder of the Term, AMS expects to deliver the following total annual Delivered Cost Savings to Host (the “**Expected Savings**”):

Expected Savings
\$242,213 / year

2. Delivered Cost Savings. Commencing on the Commercial Operation Date and continuing through the remainder of the Term, AMS shall deliver Delivered Cost Savings (defined below) to Host at the Property. For each Billing Period, “**Delivered Cost Savings**” shall be equal to the difference between (a) the imputed electrical energy costs and demand charges at each utility service account subject to the Agreement for such Billing Period, assuming that the Energy Management Services have *not* been provided, and (b) the actual electrical energy costs and demand charges for each utility service account subject to the Agreement where the Energy Management Services *have* been provided for such Billing Period, plus any Host Credits (defined in **Section 5 of Schedule 5** attached to the Agreement) accruing to Host as a result of the Agreement. AMS shall calculate Delivered Cost Savings using data from the meter installed by AMS in connection with the System, the utility meter at the Property, and the tariffs applicable to the Property. To the extent that the tariff and/or load composition at the Property is modified or changed as a result of recommendations made by AMS, the calculation of the imputed costs in clause (a) of this definition shall assume that such modification or change to the tariff and/or load composition had not occurred. Notwithstanding the foregoing, if for any reason Delivered Cost Savings are less than zero, Delivered Cost Savings shall be deemed to be zero.

3. Minimum Guaranteed Cost Savings. Commencing on the Commercial Operation Date and continuing through the remainder of the Term, AMS shall provide Delivered Cost Savings to Host, subject to all applicable Adjustments, in the amount at least equal to the following equation, calculated monthly for each Billing Period and summed annually for each Term Year (the “**Minimum Guaranteed Cost Savings**”):

Minimum Guaranteed Cost Savings	= Energy Cost Savings + Demand Cost Savings
Energy Cost Savings	= Hourly PV Production x Hourly Energy Rate
Demand Cost Savings	= Demand Reduction x Facilities Demand Charge

Illustrative Example:

- *Annual sum of Hourly PV Production = 836,914 kWh*
- *Assumed Hourly Energy Rate corresponding to PV production = \$0.17026 / kWh*
- *Annual sum of Demand Reduction = 2,472 kW*
- *Assumed Facilities Demand Charge = \$15.61 / kW*

- *Energy Cost Savings = 836,914 kWh x \$0.17 / kWh = \$142,500*
- *Demand Cost Savings = 2,472 kW x \$15.61 / kW = \$38,600*
- *Minimum Guaranteed Cost Savings = \$142,500 + \$38,600 = \$181,100*

The components of the Minimum Guaranteed Cost Savings calculation are as follows:

- “**Hourly PV Production**” means, for each hour of each Billing Period, the anticipated hourly production of the PV System set forth on **Exhibit B to Schedule 3**, for such hour of such Billing

Period, multiplied by the applicable Annual Degradation Factor set forth on **Exhibit C to Schedule 3**, for the year in which such Billing Period occurs.

- **“Hourly Energy Rate”** means, with respect to a given hour of Hourly PV Production, the actual electrical energy cost, measured in dollars per kilowatt-hour, at the utility service account where the System is in operation for such hour based on the tariffs applicable to the Property.
- **“Demand Reduction”** means, for a given Billing Period, the amount set forth on **Exhibit D to Schedule 3**, applicable to such Billing Period.
- **“Facilities Demand Charge”** means, with respect to a given Billing Period, the actual demand charge assessed only by the Local Electric Utility, measured in dollars per kilowatt, applicable solely to the highest recorded demand usage at the utility service account where the System is in operation for such Billing Period. If any facilities-related demand charge is replaced with any other, similar charge, or if there is more than one demand charge for a given Billing Period, AMS will determine the applicable amount of the demand charge in its reasonable discretion.

4. **Annual True-Up.** Following the conclusion of each Term Year, AMS will calculate and sum the Minimum Guaranteed Cost Savings for each Billing Period of the prior Term Year, along with any applicable Adjustments, and compare such amount to the sum of the Delivered Cost Savings for each Billing Period of the prior Term Year. AMS shall provide such calculations, along with reasonable supporting documentation, to Host. If AMS fails to provide Delivered Cost Savings in an amount at least equal to the Minimum Guaranteed Cost Savings for any Term Year, then within ninety (90) days following the conclusion of such Term Year, AMS shall pay Host the difference between the Minimum Guaranteed Cost Savings and the Delivered Cost Savings for the prior Term Year, provided that such amount shall not exceed the total Energy Services Fee received by AMS for such Term Year. If the Agreement is terminated early, except due to a Default Event by AMS, AMS’ obligations in this section will not apply to the Term Year in which the Agreement is terminated.
5. **Energy Services Fee.** Commencing on the Commercial Operation Date, and continuing through the remainder of the Term, Host shall pay AMS a monthly fee in the amount of \$15,090 per month, less any Host Credits owed to Host pursuant to the Agreement (**“Energy Services Fee”**).
6. **Performance Upside.** If, for any Term Year, AMS is able to provide Delivered Cost Savings for such Term Year in excess of the Expected Savings identified in **Section 1** of this **Schedule 3**, subject to applicable Adjustment, Host shall pay AMS the AMS Share (identified in the table below) multiplied by difference between the Delivered Cost Savings and the Expected Savings (**“Performance Upside”**). At the end of each Term Year, AMS shall calculate and invoice Host for the Performance Upside.

AMS Share	Host Share
50.00%	50.00%

For the avoidance of doubt, subject to **Section 7** of this **Schedule 3**, neither the Energy Services Fee nor the Performance Upside will be affected by changes to the operating costs of the System.

7. **Adjustments.** If any of the following events occur that limits AMS’ ability to provide Delivered Cost Savings and/or other Energy Management Services during some or all of a Term Year (**“Adjustment Events”**), such Adjustment Events will result in the proration, reduction, and/or change, as reasonably determined by AMS, to the calculation and/or value of the Energy Services Fee, the Expected Savings and/or the Minimum Guaranteed Cost Savings (an **“Adjustment”**), provided that any Adjustment Events caused by any act or omission of Host will not result in an Adjustment to the Energy Services Fee:

- The System (or any portion thereof) has not commenced operations;

- Any theft, destruction, or damage affects the System;
- The sale, foreclosure, or other transfer of ownership of the Property;
- A Disruption Period occurs, including any interference with the unobstructed access to sunlight to any portion of any PV System;
- A Change In Law occurs;
- A Default Event occurs with respect to Host or its Affiliates;
- Host or its Affiliates fails to provide a lease to the Premises as required by the Agreement;
- A Force Majeure Event occurs;
- Host elects to have the Local Electric Utility apply a different tariff or rate category to the utility service account subject to the Agreement or if there is a material change in the electricity tariff structure and/or rate components applicable to Property that has a demonstrated detrimental impact on AMS' ability to provide Energy Management Services and/or Delivered Cost Savings;
- There is a deviation in the load profile at the Property that is outside any of the applicable ranges of baseline load profile characteristics (“**Baseline Load Profile Characteristics**”) set forth in **Exhibit A to Schedule 3**;
- There is a relocation and/or reduction in the installed capacity of some or all of the System in each case caused or requested by Host; or
- The System or the Property (or the electrical load at the Property) fails to qualify for or obtain some or all of the benefits under any anticipated Incentives and/or AMS Financing Benefit.

For the sake of clarity, any Adjustment pursuant to this **Section 7** shall apply only to the Term Year in which such Adjustment Event is applicable.

End of Schedule 3

Exhibit A to Schedule 3
Baseline Load Profile Characteristics for the Property

The Baseline Load Profile Characteristics of the Property are as listed in the table below:

A “**Baseline Month**” is defined as the 12 months of 15 minute interval data in the last historical year before analytics, from January 2017 to January 2018. For a given an adjustment date, the Baseline Month value equal to corresponding month within baseline data set.

For each Baseline Month:

Monthly Baseline Load Profile Characteristic	Monthly Acceptable Bounds
Property Load Factor (total load cumulative over 1 month in kWh divided by maximum load in that month in kW)	Baseline Month +/- 28%
Minimum Load (hours spent below 10% of peak building load in kW cumulative over 1 month)	Baseline Month + 200%
Peak Demand (instantaneous highest recorded demand during a month)	Baseline Month +/- 46%
Total Energy Usage (total load cumulative over 1 month in kWh)	Baseline Month +/- 35%

**Exhibit B to Schedule 3
Hourly PV Production**

	January	February	March	April	May	June	July	August	September	October	November	December
1	0	0	0	0	0	0	0	0	0	0	0	0
2	0	0	0	0	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0	0	0	0	0
5	0	0	0	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	16	22	14	0	0	0	1	0
8	569	1,158	682	822	1,031	1,185	1,124	571	549	211	1,774	1,129
9	4,930	4,090	3,172	3,560	2,867	2,829	3,294	2,829	2,981	2,928	4,701	4,874
10	8,205	6,611	5,691	6,008	5,135	4,739	5,641	5,250	5,297	5,518	6,513	7,518
11	10,860	7,812	8,007	7,956	6,740	6,669	7,541	7,706	7,659	7,352	8,282	8,813
12	11,724	8,457	9,799	9,560	8,411	8,133	9,535	9,610	9,641	8,681	8,795	9,624
13	11,581	8,760	10,238	10,421	8,875	9,048	10,352	11,053	10,349	9,602	8,730	9,223
14	10,811	8,706	10,303	10,242	9,081	9,499	10,203	11,005	10,726	9,318	8,165	8,294
15	9,027	7,072	9,767	9,408	8,721	9,086	9,361	10,650	10,185	9,052	6,674	6,676
16	5,719	5,036	7,920	7,795	7,710	7,805	8,213	9,361	8,507	7,462	3,812	3,796
17	1,343	1,974	5,070	6,070	5,569	6,219	6,180	7,046	5,780	4,772	725	314
18	0	8	1,933	3,156	3,281	3,928	3,889	3,913	2,595	1,192	62	0
19	0	0	168	494	805	1,209	1,342	892	164	0	0	0
20	0	0	0	0	0	3	8	0	0	0	0	0
21	0	0	0	0	0	0	0	0	0	0	0	0
22	0	0	0	0	0	0	0	0	0	0	0	0
23	0	0	0	0	0	0	0	0	0	0	0	0
24	0	0	0	0	0	0	0	0	0	0	0	0

Sum of Hourly PV Production = 836,914 kWh / year (NTD: 95% of P50 from analysis)

Exhibit C to Schedule 3

Annual Degradation Factor for the PV System

Term Year Following the Commercial Operation Date:	Degradation Factor
1	1.0000
2	0.9940
3	0.9880
4	0.9821
5	0.9762
6	0.9704
7	0.9645
8	0.9587
9	0.9530
10	0.9473
11	0.9416
12	0.9359
13	0.9303
14	0.9247
15	0.9192
16	0.9137
17	0.9082
18	0.9028
19	0.8973
20	0.8920

Exhibit D to Schedule 3
Demand Reduction

Billing Period	Demand Reduction (kW)
[January x - x]	206
[February x - x]	206
[March x - x]	206
[April x - x]	206
[May x - x]	206
[June x - x]	206
[July x - x]	206
[August x - x]	206
[September x - x]	206
[October x - x]	206
[November x - x]	206
[December x -x]	206
Total of all Billing Periods	2,472

Schedule 4
Insurance

1. **AMS Insurance.** During the Term, AMS shall (or shall require its contractors to) maintain the following coverages with limits not less than the following amounts:
 - 1.1 Commercial General Liability Insurance covering the insured against claims of bodily injury, personal injury, property damage (including loss of use thereof), and sudden and accidental pollution arising out of AMS' operations at the Property with limits of liability not less than the following (provided that such limits may be reached through any combination of primary and excess and/or umbrella coverages): \$1,000,000 each occurrence, and \$2,000,000 annual aggregate;
 - 1.2 Physical Damage Insurance covering the physical loss or damage to the System, which shall be written on a "special form" basis of physical loss or damage for the full replacement cost value and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, vandalism and malicious mischief, theft, and explosion. During any construction that occurs pursuant to the Agreement, AMS (or its contractor) shall maintain in force, at its own expense, Builder's Risk / Installation Floater covering contractor's labor, materials and equipment to be used for completion of the work performed under this contract against risks of direct physical loss, excluding earthquake and flood, for an amount equal to the full amount of the contract improvements;
 - 1.3 Automobile Liability Insurance with limits of liability not less than the following (provided that such limits may be reached through any combination of primary and excess and/or umbrella coverages): \$1,000,000 each accident for owned (if any), hired or non-owned vehicles; and
 - 1.4 To the extent AMS has any employees, (a) Employer's Liability Insurance with limits of liability not less than the following (provided that such limits may be reached through any combination of primary and excess and/or umbrella coverages): \$1,000,000 each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease-policy limit, and (b) Worker's Compensation Insurance to the extent required by Applicable Law.

AMS will provide Host with a certificate of insurance referencing the above insurance requirements, and AMS will notify Host within thirty (30) days following the cancellation of any insurance coverage required of AMS. AMS shall name Host as additionally insured and include a waiver of subrogation on its commercial general liability policy of insurance. The insurance required to be maintained by AMS pursuant to this **Section 1** may be carried under blanket insurance policies so long as such policies comply with this **Section 1**.

- 1.5 Umbrella or Excess Liability Insurance, written on follow form basis for the policies identified in **Section 1.1** (including sudden and accidental pollution), **Section 1.3**, and Employer's Liability Insurance in **Section 1.4(a)** above, and with limits of liability not less than \$5,000,000.00.
- 1.6 AMS shall name Host as an additional insured on all policies required of AMS herein (except workers comp), and include a waiver of subrogation in favor of Host on all policies shown above. The Commercial General Liability Insurance policy and Automobile Liability Insurance policy shall be primary and non-contributory, and the Umbrella or Excess Liability Insurance policy shall be non-contributory. All policies shall include appropriate separation of insured language. AMS hereby waives all rights and claims against Host for losses covered by any insurance policies required to be carried by AMS under this **Section 1**, and waives all rights of subrogation of its insurers, provided such waiver of subrogation shall not affect the right of AMS to recover thereunder. AMS will provide Host with a certificate of insurance referencing the above insurance requirements, and AMS will notify Host within thirty (30) days following the cancellation of any insurance coverage required of AMS except for ten (10) days for non-payment of premium.

2. Host Insurance. During the Term, Host shall maintain the following coverages with limits not less than the following amounts:
- 2.1 Commercial General Liability Insurance covering the insured against claims of bodily injury, personal injury, property damage (including loss of use thereof), and sudden and accidental pollution at the Property with limits of liability not less than the following (provided that such limits may be reached through any combination of primary and excess and/or umbrella coverages): \$1,000,000 each occurrence, and \$2,000,000 annual aggregate;
 - 2.2 Intentionally omitted.
 - 2.3 Automobile Liability Insurance with limits of liability not less than the following (provided that such limits may be reached through any combination of primary and excess and/or umbrella coverages): \$1,000,000 each accident for owned (if any), hired or non-owned vehicles;
 - 2.4 To the extent Host has any employees, (a) Employer's Liability Insurance with limits of liability not less than the following (provided that such limits may be reached through any combination of primary and excess and/or umbrella coverages): \$1,000,000 each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease-policy limit, and (b) Worker's Compensation Insurance to the extent required by Applicable Law; and
 - 2.5 Umbrella or Excess Liability Insurance, written on follow form basis for the policies identified in **Section 2.1** (including sudden and accidental pollution), **Section 2.3**, and Employer's Liability Insurance in **Section 2.4(a)** above, and with limits of liability not less than \$5,000,000.00.
 - 2.6 Host shall name AMS as an additional insured on all policies required of Host herein (except workers comp), and include a waiver of subrogation in favor of AMS on all policies shown above. The Commercial General Liability Insurance policy and Automobile Liability Insurance policy shall be primary and non-contributory, and the Umbrella or Excess Liability Insurance policy shall be non-contributory. All policies shall include appropriate separation of insured language. Host hereby waives all rights and claims against AMS for losses covered by any insurance policies required to be carried by Host under this **Section 2**, and waives all rights of subrogation of its insurers, provided such waiver of subrogation shall not affect the right of Host to recover thereunder. Host will provide AMS with a certificate of insurance referencing the above insurance requirements which will contain a thirty (30) day notice of cancellation to AMS except for ten (10) days for non-payment of premium.
 - 2.7 Host shall have the right to provide the insurance in this Section 2 through a self-insurance program, provided that Host promptly furnishes to AMS a certificate of self-insurance executed by Host, certifying the existence and scope of Host's self-insurance program coverage required of Host in this Section 2.

End of Schedule 4

Schedule 5
General Terms and Conditions

1. **Property Information.** To enable AMS to provide the Energy Management Services, Host agrees to provide AMS with the following information: (a) copies of electric utility bills and invoices for the Property received during the Term and for the twelve (12) months immediately prior to the start of the Term, (b) an executed letter or agreement, in form reasonably acceptable to AMS, allowing AMS (and/or its Affiliates) to access all electric utility bills, utility account information, and other Host information and meter data concerning Host's utility service accounts for the Property, and to act as Host's sole and exclusive agent and aggregator with respect to such accounts for the duration of the Term, and (c) access to the electrical panels and other electrical systems, and associated operating requirements, at the Premises and the Property relevant to the System. During the Term, AMS will be permitted to measure, and Host shall provide AMS with access to, real-time telemetered data associated with the electricity usage, energy and grid or services, and electricity delivery costs at each Property, and AMS or AMS' contractors may use copies of such data for their business purposes, including marketing and publicity, provided that any general public disclosure of such data shall be done in a way that Host's identity is not, and cannot through reasonable efforts, be determined

2. **Invoicing.** Following the Commercial Operation Date, and continuing through the remainder of the Term, AMS will provide to Host a monthly invoice for the amounts owed by Host under the Agreement. Host shall pay such amounts to AMS, without offset, abatement, or reduction on an agreed day of the month (the "**Due Date**"), no later than thirty (30) days following receipt of such invoice. Any amounts invoiced that are not paid by the Due Date shall accrue interest at the monthly rate of one and one-half percent (1.5%) (but not to exceed the maximum rate permitted by Applicable Law). At AMS' written request, Host shall pay all amounts owed to AMS hereunder to a AMS Financing Party designated by AMS. If Host in good faith disputes an Invoice, Host shall provide AMS with a written explanation specifying in detail the basis for the dispute, and Host shall pay the entire invoice including the amount in dispute no later than the Due Date. All disputes shall be resolved as provided in **Section 19.7** of this **Schedule 5**, and if any amount disputed by Host is determined not to be owed, AMS shall promptly refund such amount to Host or provide a credit on Host's next invoice.

3. **AMS Conditions.** Notwithstanding any provision of the Agreement to the contrary, the obligations of AMS to provide the Energy Management Services pursuant to the Agreement are expressly conditioned upon the satisfaction in full of all of the conditions set forth in this **Section 3** (the "**AMS Conditions**"), and AMS shall have the right to terminate the Agreement if at any time during the Term any of the AMS Conditions are no longer completed or satisfied on terms satisfactory to AMS. Following the Effective Date, the Parties agree to exercise commercially-reasonable efforts, and work together in good faith, to complete and satisfy the AMS Conditions with respect to the Property, Premises and/or System. The AMS Conditions are:
 - 3.1 The Premises shall be sufficient to accommodate the installation and operation of the System without any unanticipated material increase in the cost of construction or operation;
 - 3.2 AMS shall have determined that there are no conditions (including Adverse Environmental Conditions) or construction requirements that could reasonably be expected to materially increase the cost of installation or operation of the System at the Premises, or damage or adversely affect the safe operation and monitoring of the System or the provision of the Energy Management Services;
 - 3.3 Parties shall have agreed on a final System Design as provided in **Section 4.1** of this **Schedule 5**;
 - 3.4 Host's interconnection services shall be adequate to support the System, or such interconnection services can be upgraded at a cost satisfactory to AMS;
 - 3.5 The rights of AMS to lease the Premises and the Property pursuant to the terms of the Agreement shall be in full force and effect with no circumstance known to either Party reasonably likely to result in a material default or breach of such rights;

- 3.6 Host shall have obtained all third-party consents necessary to consummate the transactions contemplated by the Agreement, excluding the Governmental Approvals that AMS will obtain pursuant to **Section 4.2** of this **Schedule 5**;
 - 3.7 AMS shall have obtained commitments sufficient to finance the construction, operation, and removal of the System in accordance with the Agreement;
 - 3.8 Host shall have provided the Required Financing Documents;
 - 3.9 There has been no material adverse change in the electricity rates, rate categories, utility tariffs, load profile at the Property, costs to Host of obtaining electricity at the Property, regulatory environment, Incentives, or Applicable Law (including the expiration of any AMS Financing Benefits) that could reasonably be expected to adversely affect the economics of the Agreement for AMS and its lenders or investors; and
 - 3.10 Fee simple ownership of the applicable Premises or Property has not been transferred to a Person other than an Affiliate of Host, including any transfer by sale, foreclosure, condemnation, or otherwise.
4. System Engineering, Procurement, Construction and Operation. Subject to **Section 3** (AMS Conditions) of this **Schedule 5**, AMS shall, at its sole cost and expense, engineer, procure, construct (or cause a licensed contractor to engineer, procure, and install) and operate the initial System at the Premises in accordance with this Section 4.
- 4.1 System Design. AMS shall deliver to Host a proposed layout and design for the System (the “**System Design**”), and Host shall have ten (10) business days to provide reasonable approval of, or provide reasonable comments to, such System Design. If applicable, AMS shall prepare a revised System Design addressing Host’s comments, which Host shall approve within five (5) business days of its receipt thereof.
 - 4.2 Governmental Approvals and Permits. AMS shall be responsible, at its sole cost, for obtaining all Governmental Approvals for (a) the provision of the Energy Management Services, including the installation, operation, maintenance, and removal of the System at the Premises, and (b) the provision of Grid and Market Services under any Grid or Market Services Agreement, in each case from applicable Governmental Authorities, and from time to time during the Term, Host shall reasonably cooperate with AMS in obtaining all such Governmental Approvals as requested by AMS.
 - 4.3 Specifications; Installation Date. The System shall be installed in compliance with the System Design, Applicable Laws, and applicable Governmental Approvals in all material respects (the “**Specifications**”). AMS will coordinate construction with Host so as to minimize unreasonable disruption to Host’s business operations at the Property. Host shall provide sufficient space at or near the Premises as is reasonably necessary for the temporary storage and staging of tools, materials, and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary for the installation, construction, maintenance, repair, and removal of the System. AMS will provide notice to Host when the System has been substantially installed, and Host shall have an opportunity to inspect such installation to confirm that the System was installed in accordance with the Specifications. If the PV System is installed on a roof, and AMS, in the course of installing, maintaining, and/or removing such PV System penetrates such roof, AMS shall repair (by flashing or patching) the roof to be as leak proof as it was prior to such installation, maintenance, and/or removal of the PV System.
 - 4.4 Meters. AMS may use the existing meters at the Premises and the Property in connection with providing the Energy Management Services, and AMS may install and maintain one or more additional utility-grade kilowatt-hour meters for the measurement of electricity flow to and from the

System. Host acknowledges that AMS shall be the sole owner of all data generated by the meter(s) installed by AMS, and AMS will make such data available to Host upon request.

4.5 No Contractor Liens. AMS shall not incur, assume, or suffer to be created by any contractor, subcontractor, materialman, or other supplier of goods or services of or to AMS any lien or encumbrance of any kind against the Premises or Property (generally, a “**Contractor Lien**”), and in case of any such Contractor Lien, AMS shall cause such Contractor Lien to be discharged of record or bonded over in an amount sufficient to cover such lien within forty-five (45) days after AMS has notice that such Contractor Lien has been filed.

4.6 System Operations. AMS shall have the right to operate, maintain, replace, update, upgrade, repair, and remove the then-existing System in accordance with the Agreement and Applicable Law. Host shall (a) promptly notify AMS if it becomes aware of any event or circumstance that could reasonably be expected to adversely affect the Energy Management Services, including, without limitation, any power outages, computer outages, or any damage to the System, and (b) immediately notify AMS if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the Property, the Premises, or the personal property of AMS (including the System). AMS shall not have any responsibility or liability for any aspect of the electrical system not owned or operated by AMS which affects the function or performance of the System.

Host shall not interfere with, modify, or disturb the System or any equipment, facilities or other personal property of AMS without the prior written consent of AMS. Under no circumstances will Host attempt, or have the right, to operate the System. AMS shall be responsible for maintaining the physical security of the Premises and System. Host will not conduct, allow, or permit activities on, in, or about the Premises, or in close proximity to the Premises or System that have a reasonable likelihood of causing damage, impairing, or otherwise adversely affecting the Premises and/or System.

4.7 Removal. Provided Host has not exercised the Purchase Option, within ninety (90) days following the expiration of the Term, or the earlier termination of the Agreement (the “**Removal Period**”), AMS shall remove the then-existing System at no cost to Host. In connection with any such removal, AMS shall restore any portions of the Premises damaged or disturbed in connection with such removal, other than (a) incidental and subsurface hardware (all of which may remain at the Premises) and (b) reasonable wear and tear. AMS shall leave the Premises in neat and clean condition. Host shall cooperate with AMS as reasonably necessary to facilitate the removal of the System.

4.8 Grant of Lease; Premises. Subject to the terms and conditions of the Agreement, Host hereby leases the Premises to AMS, and AMS hereby leases the Premises from Host, for a period coterminous with the Term of the Agreement. Such lease shall provide AMS with all rights necessary to exercise its rights, and perform its obligations, under the Agreement, including, without limitation, (a) to provide the Energy Management Services, (b) to design, construct, install, interconnect, test, operate, inspect, maintain, repair, replace, remove, and decommission the System, including to interconnect and disconnect the System to the electrical panels and systems at the Property, install meters, and run conduits, (c) to sell, provide, make available, and deliver the Grid and Market Services, (d) obtain the rights and benefits under the Incentives, (e) obtain all Governmental Approvals in connection with the foregoing, (f) to access, ingress, and egress the Premises, and (g) undertake other actions reasonably related to the foregoing (collectively, the “**Permitted Use**”). Subject to its compliance with the terms and conditions of the Agreement, AMS shall have quiet possession and enjoyment of the Premises in accordance with the terms and conditions of the Agreement. AMS will comply with all reasonable rules and regulations promulgated from time to time by Host with respect to the Premises and the Property, provided, that such rules and regulations apply to all tenants, licensees, and other occupants of the Property on a non-discriminatory basis, and such rules and regulations do not prohibit or unreasonably interfere with AMS’ rights and obligations under the Agreement.

- 4.9 Maintenance and Expansion of System. Host acknowledges that AMS's ability to provide Minimum Guaranteed Cost Savings and the Energy Management Services is conditioned upon AMS's ability to reconfigure, optimize, remove, replace, improve, and/or expand the System as reasonably necessary to achieve the Minimum Guaranteed Cost Savings and provide the Energy Management Services; provided that AMS shall limit the expansion of the System to the confines of the Premises, unless agreed upon by the Parties.
5. Grid and Market Services. In addition to providing the Energy Management Services to Host, during the Term, AMS will have the right to utilize the System to provide Grid and Market Services to a Local Electric Utility, Control Area Operator, Wholesale or Distribution Energy Markets Operator, Independent System Operator or Balancing Authority, or other Person. Unless otherwise agreed in writing by the Parties, AMS will be solely entitled to all revenues and other benefits from, and will be solely responsible for all costs and obligations for, the Grid and Market Services; provided, however, that (a) Host shall receive a credit equivalent to fifty percent (50%) of all revenues from any Demand Response Programs (the "**Host Credit**"), which Host Credit shall be applied to reduce the Energy Services Fee, and any other amounts, owed by Host under the Agreement, and included in the calculation of Delivered Cost Savings; and (b) Provider's use of the System for Grid and Market Services requiring dispatch of the then-existing capacity installed under the Agreement, or any additional capacity added to the System for purposes other than to perform the Energy Management Services, shall be agreed to in writing by both Parties prior to commencement of such dispatch or installation of such additional capacity.

AMS agrees that the provision of the Grid and Market Services will not unreasonably impact or disrupt the Premises and Property, or excuse AMS from its obligation to provide the Energy Management Services. Notwithstanding any provision herein to the contrary, Host agrees that during the Term, it will not undertake any of the following without the prior, written consent of AMS, which consent shall not be unreasonably withheld, conditioned, or delayed, and shall not be withheld if any of the following will not limit, reduce, or eliminate any of the existing or anticipated economics benefits (including any Incentives) to AMS arising under the Agreement: (a) sell, assign, subscribe, pledge, provide, or commit the electrical load of the Premises and Property to any Person other than AMS, (b) sell any services, or participate in any program for services, that are the same or similar to the Grid and Market Services other than with AMS pursuant to the Agreement, or (c) provide, or engage or utilize any Person other than AMS to provide, services that are the same as or similar to the Energy Management Services at the Property.

6. Incentives. The Parties shall cooperate in applying for any grants, credits, or other Incentives (including, without limitation, SGIP) that AMS elects to pursue and are (or during the Term, may become) available and are applicable to the System (or any part thereof), the electrical load at the Property, or otherwise applicable to the provision of the Energy Management Services. Unless otherwise agreed by the Parties in writing, AMS shall be solely responsible for the cost and expense of applying for, and shall be entitled to all revenue, credits, and benefits from, any Incentives, and to the extent Host or its Affiliates acquires any right, title, interest, or possession in or to such Incentives, Host and/or its Affiliates agree to promptly transfer, assign, and deliver the same to AMS.
7. Purchase Option. Upon at least one (1) year prior written notice to AMS, so long as Host is not in breach or default of the Agreement, Host may exercise its Purchase Option to purchase all (and not less than all) of the then-existing System by paying the Purchase Option Price to AMS and executing a written Purchase Option Agreement covering the terms of the Purchase Option, separate from the Agreement; provided, however, that Host shall not have the right to exercise the Purchase Option prior to the later of (a) six (6) years after the Commercial Operation Date, and (b) the date by which none of the Tax Credits applicable to the System are subject to recapture under Applicable Law.

The Purchase Option Price, determined in AMS' reasonable discretion, shall equal the greater of the following: (a) the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition, and performance of the System and contracted revenue streams for the System, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition, and costs of removal

from a current location shall not be a deduction from the valuation, and (b) the present value of all associated future income streams expected to be received from the operation of the System for the remaining useful life of the System, including, but not limited to, the sale of Grid and Market Services, Incentives, Tax Credits, expected price of electricity, Providing Financing Benefits, accounting and tax-related credits, and avoided costs obtained from operating the System.

If Host exercises the Purchase Option pursuant to this Section, then upon AMS' receipt of payment of the Purchase Option Price, title to the System shall transfer to Host, pursuant to the written Purchase Option Agreement, on an "as is, where is" basis. Upon such transfer, AMS will assign any unexpired manufacturer's warranties associated with the System to Host to the extent assignable. Upon Host's System purchase completion, the Agreement shall terminate, and AMS will have no further obligations under the Agreement, except for such obligations arising prior to the date of such termination.

If following the exercise of the Purchase Option, Host desires to enter into an agreement with a third Person for the operation, management, and/or monetization of the System (an "Asset Management Agreement"), Host shall notify AMS of the same, and if, within thirty (30) days after the date of Host's notice, AMS notifies Host that AMS desires to offer to provide services pursuant to such an Asset Management Agreement, the Parties shall undertake commercially-reasonable efforts for a period of sixty (60) days (or such longer period as may be mutually agreed by the Parties in writing) to agree on the terms for an Asset Management Agreement. If the Parties are not able to agree on the terms for an Asset Management Agreement within such period, then Host may, for a period of three (3) months thereafter enter into an Asset Management Agreement with a third Person on terms and conditions that are no less favorable to Host than the final proposal made by AMS to Host with respect to the Asset Management Agreement. If Host does not enter into such an Asset Management Agreement with a third Person within such three (3) months, Host shall again notify AMS and the Parties shall repeat the foregoing procedures in this paragraph.

8. Taxes; Utilities. AMS shall pay all personal property taxes assessed against or levied upon the System and all other personal property of AMS located on each Premises and/or Property. AMS shall not be responsible for any real property taxes, insurance costs, utilities, or common area maintenance or repair fees, costs, taxes, or expenses associated with the Premises or Property including, without limitation, any electricity provided to charge the Storage System, electricity discharged from the System, or any sales taxes payable on amounts paid by Host to AMS hereunder. Host will provide electricity as necessary to charge, operate, and monitor the Storage System at no cost or expense to AMS.
9. Default; Remedies. If any Party commits a Default Event, or a Default Event occurs with respect to any Party (such Party, the "**Defaulting Party**" and the other Party, the "**Non-Defaulting Party**"), then subject to the limitations set forth in this Schedule 4 and the Agreement, the Non-Defaulting Party shall be entitled to terminate the Agreement and exercise any right or remedy available to it under Applicable Law, including, without limitation, the right to specific performance and injunctive relief.
10. Representations and Warranties.
 - 10.1 Mutual Representations. Effective as of the Effective Date, each Party represents to the other Party that (a) such Party is duly organized, validly existing, and in good standing under the laws of the state of its formation; (b) the execution and delivery by such Party of, and the performance of its obligations under, the Agreement have been duly authorized by all necessary action, and do not and will not require any further consent or approval of any other Person; (c) such Party has full right and authority to enter into the Agreement, and the Agreement constitutes a legal, valid, and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally; (d) except as disclosed by either Party in writing to the other prior to the date hereof, there is no litigation, action, proceeding, or investigation pending or, to the best of its knowledge, threatened against such Party before any court or other Governmental Authority by, against, affecting, or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out, satisfy, and complete its obligations under the Agreement; (e) such Party's execution and performance of its obligations

under the Agreement do not and will not constitute a material breach of any term or provision of, or a default under (i) any contract, agreement, or Governmental Approval to which it is a party or by which it its or property is bound, (ii) its organizational documents, or (iii) any Applicable Laws; (f) such Party's execution and performance under the Agreement do not and will not require any consent from a third party, including any Governmental Approvals from any Governmental Authority, other than (with respect to AMS) such Governmental Approvals required to construct, operate, repair, maintain, and decommission the System, sell and provide the Energy Management Services and Grid and Market Services, and obtain the rights and benefits under the Incentive programs; and (g) except as set forth in written notice to the other Party, such Party has not had any dealings with any broker or agent in connection with the negotiation of the Agreement, and no broker or agent is entitled to a commission, consultants fee, facilitation fee, or its equivalent in connection with the Agreement.

10.2 Host Representations & Warranties. Effective as of the Effective Date, Host represents and warrants to AMS that: (a) except as disclosed by Host to AMS prior to the Effective Date, Host is the owner of, and holds fee title to, the Property and Premises and there are no existing leases, mortgages, security interests, or other interests in or liens upon the Property or the Premises that could attach to the System, (b) Host has provided AMS (i) written notice of all Governmental Approvals or other restrictions imposed under Applicable Laws with respect to the use of the Property or the Premises that could adversely affect the provision of the Energy Management Services, including the construction and operation of the System, and (ii) copies of all environmental reports, studies, data, or other information relating to the use of the Property or Premises by AMS within Host's possession or control, (c) except as disclosed to AMS in writing, no Property or Premises contains any Adverse Environmental Condition, and (d) Host has obtained all approvals from any affected tenants and other occupants at the Property or Premises, any mortgage holder, or any other third party necessary for Host to perform its obligations under the Agreement, including, without limitation, providing AMS with access to, and the use of, the Premises pursuant to the Agreement, and shall maintain such rights and approvals during the Term and any Removal Period.

11. Indemnification. AMS shall indemnify, defend, and hold Host, its Affiliates and their shareholders, members, directors, managers, officers, employees, and agents harmless from and against any and all third-party claims, losses, damages, injuries, liabilities, costs, and expenses (collectively, "**Claims**") to the extent resulting from or arising out of (a) AMS' breach of the Agreement, and (b) the gross negligence, fraud, or willful misconduct of AMS or its employees, contractors, or agents, except to the extent that such Claims result from the negligence, fraud, or willful misconduct of Host, or its employees, contractors, or agents. Host shall indemnify, defend, and hold AMS, its Affiliates and their shareholders, members, directors, managers, officers, employees, and agents harmless from and against any and all third-party Claims to the extent resulting from or arising out of (x) Host's breach of the Agreement, and (y) the gross negligence, fraud, or willful misconduct of Host or its employees, contractors, or agents, except to the extent that such Claims result from the negligence, fraud, or willful misconduct of AMS, or its employees, contractors, or agents. A Party's defense obligations in this Section 11 are contingent upon the indemnified Party promptly notifying the indemnifying Party in writing of such Claim and promptly tendering the control of the defense of such Claim to the indemnifying Party. Each indemnified Party shall cooperate with the indemnifying Party, at the indemnifying Party's expense, in defending or settling the Claim. Any indemnified Party may join in the defense of such Claim with counsel of its choice at its own expense. An indemnifying Party may not, without the prior written consent (such consent not to be unreasonably withheld, conditioned, or delayed) of the indemnified Party, settle, compromise, or consent to the entry of any judgment regarding an indemnified Claim, the defense of which has been assumed by the indemnifying Party. No Party shall settle, compromise, or consent to the entry of any judgment regarding any Claim for which it is entitled to indemnification from the other Party hereunder without the prior written consent of the indemnifying Party.

12. LIMITATION OF LIABILITY.

12.1 NO CONSEQUENTIAL DAMAGES. EXCEPT FOR ANY BREACH OF THE CONFIDENTIALITY OBLIGATIONS IN **SECTION 15** (CONFIDENTIALITY) BELOW, AND WITHOUT LIMITING THE AMOUNTS EXPRESSLY OWED BY EITHER PARTY TO THE

OTHER HEREUNDER, INCLUDING PURSUANT TO **SCHEDULE 3** ATTACHED TO THE AGREEMENT, **SECTION 13.5** OF THIS **SCHEDULE 5**, AND **SECTION 16** OF THIS **SCHEDULE 5**, NEITHER PARTY, ITS AFFILIATES, CONTRACTORS, AGENTS, OR EMPLOYEES, SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, OR DAMAGES RELATING TO LOSS OF USE, PROFITS, BUSINESS, REPUTATION, FINANCING, REVENUE, POWER, INFORMATION, OR DATA, OR THE COST OF CAPITAL, OR SUCH DAMAGES BASED ON A PARTY'S THIRD PARTY CONTRACTS ARISING OUT OF THEIR PERFORMANCE OR NON-PERFORMANCE HEREUNDER EVEN IF ADVISED OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, (A) AMOUNTS PAYABLE BY AMS AND/OR ITS AFFILIATES UNDER ANY GRID OR MARKET SERVICES AGREEMENT, (B) ANY INCENTIVE NOT RECEIVED BY AMS OR ITS AFFILIATES, (C) ANY TAX CREDIT LOSS (AS PROVIDED IN **SECTION 13.5 OF THIS SCHEDULE 5**) OR (D) LOSS OF THE SYSTEM WILL BE DEEMED "DIRECT" DAMAGES FOR WHICH RECOVERY WILL NOT BE BARRED BY THE AGREEMENT, INCLUDING THIS **SECTION 9.1**.

12.2 DISCLAIMER. AMS DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL WARRANTIES, WHETHER EXPRESS (OTHER THAN AS EXPRESSLY SET FORTH IN THE AGREEMENT, INCLUDING THIS **SCHEDULE 5**), IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE, WITH RESPECT TO THE ENERGY MANAGEMENT SERVICES. AMS DOES NOT WARRANT THAT THE ENERGY MANAGEMENT SERVICES WILL BE PROVIDED ERROR-FREE OR UNINTERRUPTED. HOST ACKNOWLEDGES THAT THE ENERGY MANAGEMENT SERVICES SHOULD NOT TO BE PROVIDED IN CONNECTION WITH ANY APPLICATION WHERE FAILURE COULD LEAD TO A LOSS OF LIFE OR CATASTROPHIC PROPERTY DAMAGE, AND AMS SHALL HAVE NO LIABILITY FOR USE IN SUCH CONTEXTS.

13. AMS Financing-Related Provisions.

13.1 Ownership. AMS shall be the sole owner of (and Host hereby disclaims any ownership in) all right, title, and interest in and to (a) the System (including all reconfigurations, optimizations, replacements, improvements, expansions, and/or modifications made thereto, and to all personal property of AMS used in connection with the installation, operation, maintenance, repair, and monitoring of the System) and the AMS Financing Benefits, and (b) except as otherwise expressly provided in the Agreement, the Grid and Market Services, the Grid or Market Service Agreements, and the Incentives. Host agrees to reasonably cooperate with AMS to secure the benefits of the foregoing and shall, at the request of AMS, execute such documents or agreements and take such actions as are reasonably necessary to fulfill this intent. Each of Host and AMS agree that AMS (or its permitted assignee) shall be the tax owner of the System and all tax filings and reports will be filed in a manner consistent with the Agreement, and Host will not take the position on any tax return or in any other filings suggesting that it is anything other than a recipient of the Energy Management Services hereunder. Host acknowledges and agrees that (i) the Parties intend that the System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code and shall not be, and shall not be deemed to be, real property or any fixture to real property, and (ii) AMS will have the right to make (and Host hereby consents, and agrees to cooperate, with the making and perfecting of) any filings to defend and protect AMS' right, title, and interest in and to the System, including any precautionary fixture filings and financing statements in each case solely with respect to the System. If there is any mortgage or fixture filing against the Premises or the Property which could reasonably be construed as attaching to the System as a fixture of the Premises, Host agrees to provide, at AMS' request, a disclaimer or release from such lien holder.

- 13.2 No Liens. Host shall not directly or indirectly do or permit any act or omission that gives rise to any lien, encumbrance, or security interest on or with respect to any System, or with respect to any equipment, materials, or other assets of AMS, or any interest therein. For purposes of clarity, subject to AMS' rights of quiet enjoyment with respect to the Premises, nothing herein shall restrict Host from granting or maintaining a lien, mortgage, deed of trust, or other collateral interest (generally, a "**Mortgage**," and the holder thereof, a "**Mortgagee**") with respect to the Premises or Property (other than with respect to the System or any equipment, materials, or other assets of AMS). Within ten (10) days following AMS' request, Host shall disclose to AMS any existing ground or underlying leases, Mortgages, security interests, or other similar liens upon the Property or the Premises, and within thirty (30) days following AMS' request, Host shall obtain and provide the Required Financing Documents.
- 13.3 No Electric Utility; Forward Contract. Host is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company. Neither Party shall assert that AMS is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any Governmental Authority as a result of AMS' obligations or performance under the Agreement. If at any time as a result of any change in Applicable Laws, AMS would be subject to regulation as an electric utility or public service company (or its equivalent) by any Governmental Authority by virtue of the Agreement, the Parties will use best efforts to restructure the Agreement so that AMS will not be subject to such regulation, while preserving for both Parties the substantive economic benefits conferred hereunder. The transaction contemplated under the Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.
- 13.4 Host as Governmental Authority. If Host is a Governmental Authority, (a) all payments by Host hereunder are not subject to appropriations, and in the event any payment hereunder is or becomes subject to any appropriation, Host shall use its best efforts to appropriate the funds necessary to satisfy its payment obligations hereunder, and shall not discriminate between such obligations and its other obligations with respect to payments for necessary services, and (b) any failure of Host to make any payment as and when due under the Agreement as a result of any non-appropriation shall constitute a Default Event by Host. If Host is a Governmental Authority, Host represents that it has fully complied with all procurement, public bidding, and public agency contracting requirements under Applicable Law applicable to the Agreement.
- 13.5 Tax Credits. Host acknowledges that AMS intends for the System (or a portion thereof) to qualify for certain (a) investment tax credits, (b) production tax credits, and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System (collectively, "**Tax Credits**"), and Host represents and warrants that at no time during the Term of the Agreement will Host take or omit to take any action which will result in the disqualification of the System or disallowance or recapture of all or any portion of the Tax Credits. Notwithstanding any provision of the Agreement to the contrary, if as a result of a breach of any representation, warranty, or covenant of Host contained in the Agreement (i) tax counsel of AMS reasonably determines that AMS (or any partner of AMS) is not entitled to claim all or any portion of the Tax Credits with respect to the System, or (ii) any of the Tax Credits claimed by AMS (or any partner of AMS) is disallowed or adjusted by the Internal Revenue Service, or (iii) any Tax Credit is recalculated or recaptured (any determination, disallowance, adjustment, recalculation, or recapture being a "**Tax Credit Loss**"), Host shall indemnify and pay AMS an amount that shall cause AMS' after-tax economic yield and cash flow to equal the after-tax economic return that would have been realized by AMS if such Tax Credit Loss had not occurred. The Parties intend that the Agreement will be a "service contract" as defined in Section 7701(e)(1) of the Internal Revenue Code of 1986, as amended, and not a lease. The Parties do not intend to form a partnership or joint venture. No electricity generated by the System will be used to heat a swimming pool. The electricity generated by the System will be used solely for commercial and business purposes. No

portion of the electricity generated will be used for personal, family, household or agricultural purposes.

- 13.6 Taking; Damage. Host shall promptly provide written notice to AMS of any commencement, or notice of commencement, of any proceeding in respect of any foreclosure by a Mortgagee of any Premises or Property, or a temporary or permanent condemnation or taking (or private purchase in lieu thereof) by any Governmental Authority in its exercise of the right of condemnation or eminent domain of any Premises or Property. If any portion of the Premises or an System is damaged, lost, impaired, or destroyed, in whole or in part, by reason of fire, flood, or other casualty (a “**Casualty**”), Host shall give prompt notice of such Casualty to AMS. If Host decides, in its reasonable discretion, to restore the Premises, and such restoration requires the removal, re-installation or repair of the System, AMS shall, at Host’s expense, perform such removal, re-installation, or repair of the System and continue to perform the Energy Management Services through the remainder of the Term in accordance with the Agreement. In the event the Premises are not, or will not be, restored within six (6) months after the date of such Casualty, AMS may terminate the Agreement upon written notice to Host.
- 13.7 Notice to AMS Financing Parties. Concurrently with its delivery to AMS, Host will deliver copies of all notices of breach, default, termination, and Default Events to any AMS Financing Party that AMS has theretofore provided the name and address to Host. No such notice will be effective absent delivery to the AMS Financing Parties. Host will not mutually agree with AMS to cancel, modify, or terminate the Agreement without the written consent of the AMS Financing Parties. At AMS’ request, Host agrees to amend or modify the Agreement to include provisions which may reasonably be requested by a AMS Financing Party; provided, however, that such amendments or modifications do not materially impair any of Host’s rights, or materially increase the burdens or obligations of Host, under the Agreement. Upon AMS’ request, Host shall execute such additional documents and instruments reasonably required by AMS’ Financing Parties, at no material cost to Host.
- 13.8 Step-In Rights. Each AMS Financing Party shall be a third party beneficiary to AMS’ rights under the Agreement. Upon a Default Event by AMS under the Agreement, or a breach or default by AMS under any agreement with a AMS Financing Party that is not cured within the applicable time period as provided therein, the AMS Financing Party thereof shall have the right, but not the obligation, by written notice to AMS and Host (a “**Step-In Notice**”) to enforce all of the rights and assume all of the obligations of AMS under the Agreement (“**Step-In Right**”), and Host hereby consents to the same. The Step-In Notice shall specify the date on which management of the rights and obligations shall transfer to the AMS Financing Party. Host and AMS shall reasonably cooperate with the AMS Financing Party and provide all reasonable assistance to the AMS Financing Party to give effect to the terms of this Section 13.8, provided such reasonable cooperation will be at no material cost or expense to Host. If a AMS Financing Party exercises its Step-In Right, AMS shall no longer have the rights or obligations under the Agreement to the extent assumed by such AMS Financing Party. At any time after exercising the Step-In Right, a AMS Financing Party may, at its sole discretion, issue a written “**Step-Out Notice**” to AMS and Host reinstating the rights and obligations to AMS and the date on which such rights shall be reinstated. For the time period during which a AMS Financing Party is exercising its Step-In Right, Host agrees to send all written notices required under the Agreement to such AMS Financing Party at the address specified in the Step-In Notice. In the event a AMS Financing Party forecloses on, and directly or indirectly has taken ownership and control of, the Agreement, at the request of such AMS Financing Party within ninety (90) days of such foreclosure, Host shall enter into a new or amended agreement with such AMS Financing Party to reflect the change in counterparty but which agreement shall otherwise have the same terms and conditions as the Agreement.
- 13.9 Leasing Arrangements. Notwithstanding any provision of the Agreement to the contrary, AMS shall be permitted to enter into a leasing, subleasing, sale-leaseback arrangement, or other similar arrangement (generally, a “**Leased Financing Arrangement**”) for purposes of financing the provision of the Energy Management Services, including, the acquisition, construction, installation, operation, maintenance, and removal of the System, with any AMS Financing Party without any

obligation to obtain the consent of Host. In the event of any such Leased Financing Arrangement, Host agrees to cooperate with AMS, including, without limitation, making amendments or modifications to the Agreement, as reasonably necessary to facilitate such a Leased Financing Arrangement; provided, however, that such amendments or modifications shall not materially impair any of Host's rights or benefits, or materially increase the burdens or obligations of Host, under the Agreement.

14. Estoppel Certificates. Within ten (10) business days following a request in writing by either Party, Host and AMS shall execute, acknowledge, and deliver to the requesting Party an estoppel certificate, in the form submitted by the requesting Party, indicating therein any exceptions thereto that may exist at that time, and which shall also contain any other information reasonably requested by either Party or either Party's actual or potential purchasers, assignees, successors, mortgagees, lenders, investors, creditors, or AMS Financing Parties.
15. Contractors; Affiliates. AMS and Host shall each be permitted to use one or more Affiliates and/or contractors to perform any of its obligations under the Agreement; provided, however, each of AMS and Host shall continue to be responsible for all of its obligations under the Agreement, and the quality of the work performed by its Affiliates and contractors.
16. Disruption Period. In the event of a Disruption Period, in addition to other amounts owed by Host hereunder, Host shall (a) pay AMS for all work required by AMS to disassemble or move the System and to re-install, repair, and test the System, (b) if applicable, continue to pay the Energy Services Fee, and (c) reimburse AMS for any lost or reduced revenue or benefits from Grid and Market Services, Incentives, and AMS Financing Benefits that are not delivered or received during the Disruption Period due to the reduced or non-operation of the System.
17. Force Majeure. If a Party is rendered wholly or partly unable to perform its obligations under the Agreement because of Force Majeure Event, it shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected and the time for performing such excused obligations shall be extended as reasonably necessary, provided that (a) the Party affected by such Force Majeure Event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure Event, gives the other Party prompt written or oral notice describing the event; (b) the suspension or extension of time for performance is of no greater scope and of no longer duration than is required as a result of the Force Majeure Event; and (c) the Party affected by such Force Majeure Event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably practicable. AMS shall not be liable for any damage to the Property or Premises resulting from a Force Majeure Event. The Term shall be extended on a day for day basis to the extent the Energy Management Services and/or the provision of the Grid and Market Services are suspended due to a Force Majeure Event. Notwithstanding anything herein to the contrary, the obligation to make any payment due under the Agreement shall not be excused by a Force Majeure Event.
18. Confidentiality.
 - 18.1 Each Party agrees (a) not to disclose the Confidential Information of the disclosing Party to any other Person, (b) to protect such Confidential Information from unauthorized use and disclosure with the same degree of care accorded to its own confidential and proprietary information (but no less than reasonable care), and (c) to refrain from using such Confidential Information, except in connection with the exercise of rights or performance of obligations under the Agreement. Notwithstanding the foregoing, a Party may provide the other Party's Confidential Information to (i) its officers, directors, members, managers, employees, agents, counsel, contractors, consultants, and Affiliates, in each case whose access is reasonably necessary to performance of the Agreement, and (ii) existing or prospective investors, lenders, and assignees of the Agreement; provided that any such Person under clauses (i) or (ii) be bound by a written agreement or legal obligation restricting the use and disclosure of such Confidential Information at least as restrictive as provided herein. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable

(with respect to the other Party) for any breach of this provision by any Person to whom that Party discloses the Confidential Information of the other Party. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. If disclosure of information is required by a Governmental Authority or Applicable Law, the disclosing Party shall, to the extent permitted by Applicable Law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party with its efforts to limit the disclosure to the maximum extent permitted by Applicable Law.

- 18.2 Notwithstanding any provision herein to the contrary, the Parties acknowledge that Host is a public entity and is subject to the California Public Records Act, Gov. Code Section 6250, *et seq.*, and the regulations promulgated thereunder (the "PRA"). Host acknowledges that AMS considers certain of its Confidential Information to be market sensitive utility procurement related information (including power purchase agreements), which are required to remain confidential pursuant to Cal. Pub. Util. Code Section 454.5, Cal. Pub. Util. Comm., General Order 66-C, and Cal. Pub. Util. Comm. Decision 06-06-066, and certain of AMS's Confidential Information contains AMS's trade secrets. In light of the foregoing, Host agrees to provide prompt written notice to AMS of any public records requests received by Host seeking the disclosure of AMS's Confidential Information or other documents related to the Agreement or the subject matter hereof, and acknowledge that AMS may petition any court of competent jurisdiction to oppose any such public records requests, and shall provide prompt written notice to AMS of the anticipated time of producing any responsive documents prior to any such disclosure as permitted under the PRA or other Applicable Law.

19. Miscellaneous.

- 19.1 Integration. The Agreement, including all schedules and exhibits attached thereto (which are incorporated into the Agreement by this reference), is the complete agreement between the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, representations, or agreements, whether oral or written. The Agreement may be modified and/or amended only by written instrument signed by both Parties. The captions or headings in the Agreement are strictly for convenience and shall not be considered in interpreting the Agreement.
- 19.2 Notices. All notices, demands, statements, designations, approvals, or other communications (collectively, "Notices") given or required to be given by either Party to the other hereunder or by law shall be in writing and (a) sent by United States certified or registered mail, postage prepaid, return receipt requested ("Mail"), (b) delivered by electronic mail, (c) delivered by a nationally recognized overnight courier, or (d) delivered personally. Any Notice shall be sent, transmitted, or delivered, as the case may be, to the Parties at the appropriate address set forth on the signature page hereof, or to such other place as either Party may from time to time designate in a Notice delivered pursuant hereto. Any Notice will be deemed given (i) three (3) days after the date it is posted if sent by Mail, (ii) when an acknowledgement of receipt is received, if sent by electronic mail, (iii) the date the overnight courier delivery is made, or (iv) the date personal delivery is made.
- 19.3 Marketing; Publicity. Host authorizes AMS to make appropriate announcements of the Agreement and to include Host's name and logo on AMS' website, company brochures, publications, and other marketing materials.
- 19.4 Invalidity of Particular Provisions. If any provisions of the Agreement, or the application thereof to any circumstances are held to be invalid or unenforceable, then the remaining provisions of the Agreement or the application thereof to other circumstances will not be affected thereby and will be valid and enforceable to the fullest extent permitted by Applicable Law. The failure of either Party to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

- 19.5 Cooperation; Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, estoppels, certificates, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof, including, but not limited to, disclosure of information, access to the Premises and the Property, or submission of permit applications. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this section.
- 19.6 Relationship of the Parties. The Parties have entered into the Agreement for the limited purpose set out herein and agree that AMS and Host (and their Affiliates) are acting solely as an independent contractors to each other. Nothing contained in the Agreement, nor any act of a Party in pursuing its rights or fulfilling its obligations pursuant to the Agreement are or will be construed as to create a partnership or joint venture relationship between the Parties (and/or their Affiliates).
- 19.7 Disputes; Arbitration. If a dispute arises between the Parties relating to the Agreement, and despite their good faith efforts, the Parties have not succeeded in negotiating a resolution of the dispute through an in-person meeting of the representatives of both Parties, the Parties may elect to appoint a mutually acceptable neutral Person not affiliated with either of the Parties to act as a mediator. In the event the mediation does not result in resolution of the dispute, or the Parties do not elect mediation, then, upon written notice to the other Party, either Party may file a request for binding arbitration to be governed by the then-current commercial arbitration rules of the Judicial Arbitration and Mediation Service (“**JAMS**”) in effect at that time.
- 19.8 Governing Law. The Agreement, and any dispute concerning the Agreement, shall be governed by the laws of the State of California, without resort to its conflicts of law principles. Venue shall reside in Solano County, CA.
- 19.9 Counterparts. The Agreement, and each of the schedules and exhibits attached thereto, may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement, schedule, or exhibit, as applicable. The Agreement, and the schedules and exhibits attached thereto, may be duly executed and delivered by electronic, “pdf” delivery.
- 19.10 No Third Party Beneficiaries. Except as otherwise expressly provided herein, the Agreement, and all rights hereunder and thereunder are intended for the sole benefit of the Parties hereto, and shall not imply or create any rights on the part of, or obligations to, any other Person.

End of Schedule 5

Schedule 6
Defined Terms

As used in the Agreement, the following terms shall have the following meanings:

1. **“Adverse Environmental Conditions”** means (a) any violation of, breach of, or non-compliance with any Environmental Laws affecting the Premises, other than a violation, breach, or non-compliance caused by AMS, and (b) any presence or release of, or exposure to, any Hazardous Substances at, to, on, in, under, or from the Property in violation of any Environmental Law, other than the presence, release, or exposure caused by AMS.
2. **“Affiliate”** as applied to either Party shall mean any Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Party.
3. **“AMS Financing Benefits”** means all rights, deductions, credits (including depreciation, installation, or production-based incentives, and investment tax credits), grants, rebates, subsidies, payments, other benefits, reductions, offsets, and allowances and entitlements of any kind, however entitled or named, whether existing now or in the future, related to the Energy Management Services, including, without limitation, the installation, ownership, and operation of the System, including, without limitation, the Tax Credits.
4. **“AMS Financing Party”** means a lender, creditor, lessor, lessee, investor, or other financing party of AMS.
5. **“Applicable Laws”** means, with respect to any Person, the Property, the Premises, or the Energy Management Services, any laws, statutes, rules, regulations, ordinances, or requirements of any Governmental Authority having jurisdiction over such Person, Property, Premises, or System.
6. **“Bankruptcy Event”** means a Party (a) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator with respect to itself or of all or a substantial part of its assets; (b) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (c) makes a general assignment for the benefit of its creditors; (d) commences a voluntary case under any bankruptcy law; (e) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (f) fails to controvert in a timely and appropriate manner, or acquiesced in writing, to any petition filed against such Party (or such Party’s Affiliates) in an involuntary case under any bankruptcy law; or (g) takes any corporate or other action for the purpose of effecting any of the foregoing.
7. **“Billing Period”** means each of the consecutive monthly time periods during which AMS calculates Delivered Cost Savings for the Property.
8. **“Change In Law”** means an amendment, modification, nullification, suspension, repeal, or other change of any Applicable Law (or any interpretation thereof) related to the Energy Management Services, the Grid and Market Services, the Incentives, the AMS Financing Benefits, the Agreement, and/or the rights and obligations of the Parties herein.
9. **“Commercial Operation Date”** means the date that AMS identifies in a written notice to Host that the System has been installed and constructed, all required Governmental Approvals for the provision of the Energy Management Services have been obtained, and AMS has commenced, or will commence, the provision of the Energy Management Services agreed to be provided under the Agreement following the Commercial Operation Date.
10. **“Confidential Information”** means any information (a) which is disclosed in written form regarding the Property, Premises, System, Grid and Market Services, Energy Management Services, or Incentives, or the financing, financial statements, rent rolls, policies, procedures, and/or other matters or details with respect to any of the foregoing, or (b) based on the content of the information and the circumstances of disclosure would be considered confidential by a reasonable person. Notwithstanding the foregoing, Confidential Information

shall not include information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under Applicable Law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by Applicable Law), (iii) is independently developed by the receiving Party without use or reference to disclosing Party's Confidential Information, as shown by contemporaneous evidence, or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

11. **“Control Area Operator”** means a regional transmission operator or an entity responsible for managing the bulk power grid, including, without limitation, the California Independent System Operator.
12. **“Default Event”** means the occurrence of any of the following: (a) the failure of a Party to pay any amount owed by such Party under the Agreement by the date due, and such failure continues for ten (10) business days after written notice from the other Party (a **“Payment Failure”**); (b) a material breach by a Party of any of its representations or warranties, or a failure of a Party to substantially perform any material obligation (other than a Payment Failure), under the Agreement, which such breach or failure is not remedied within thirty (30) days following receipt of notice thereof from the other Party; provided, however, that if such breach or failure cannot be reasonably cured within the said thirty (30) day period notwithstanding good faith efforts to do so, such time period shall be extended for the time period required to reasonably cure such breach or failure, but not to exceed ninety (90) days; or (c) a Bankruptcy Event occurs with respect to a Party.
13. **“Demand Response Program”** means a tariffed demand response program through a Local Electric Utility applicable to the Property (and the load at the Property) and for which participation therein is made possible through the use of the System.
14. **“Disruption Period”** means the time period during which the operation, monitoring, or usage of the System is disrupted in whole or in part, or the System cannot be operated or monitored in whole or in part, as a result of a Host Act.
15. **“Environmental Law”** means any Applicable Law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, or judgment, relating to the environment, health, safety, or Hazardous Materials, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.;
16. **“Force Majeure Event”** means the occurrence of any event or circumstance beyond the reasonable control of a Party which results in the failure or delay by such Party of the performance of its obligations under the Agreement (in full or in part), or the failure or reduced performance of the System, including as a result of any of the following: an act of God, war (declared or undeclared), sabotage, riot, insurrection, civil unrest or disturbance, military or guerilla action, banditry, terrorist activity or a threat of terrorist activity which, under the circumstances, would be considered a precursor to actual terrorist activity, acts of public enemy, economic sanction or embargo, epidemic, civil strike, work stoppage, slow-down, or lock-out or labor dispute, explosion, fire, volcanic activity, earthquake or seaquake, abnormal weather condition, action of the elements, hurricane, flood, lightning, wind, drought, peril of the sea, any action or order by a Governmental Authority, the delay of or failure to act on the part of any Governmental Authority, failure or unavailability of equipment, supplies, or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence), or Change In Law.
17. **“Governmental Approvals”** means all approvals, consents, franchises, permits, certificates, licenses, attestations, authorizations, studies, agreements, or other documentation required by any Governmental

Authority, or required under any Grid or Market Services Agreement, for the provision of the Energy Management Services and/or Grid and Market Services, obtaining the Incentives, and/or the installation, operation, maintenance, monitoring, and removal of the System, including, without limitation, with respect to the interconnection of the System to the electric utility grid serving the Property and/or the Premises, and export power generated by the System to the Local Electric Utility grid.

18. **“Governmental Authority”** means all applicable federal, state, county, or municipal government or other public, administrative, or regulatory body, including, any Local Electric Utility, any Control Area Operator, and the California Public Utilities Commission, and excluding Host and its Affiliates to the extent applicable.
19. **“Grid and Market Services”** means any products or services that the System can provide from time to time, including, without limitation, in connection with demand response programs, grid support, energy or capacity services, energy market products (wholesale, distribution and otherwise), frequency regulation, ancillary services, reactive power support, and system capacity and resource adequacy benefits. For avoidance of doubt, Grid and Market Services do not include Incentives or AMS Financing Benefits.
20. **“Grid or Market Services Agreement”** means an agreement between AMS and a Local Electric Utility, Control Area Operator, Wholesale or Distribution Markets Operator, Independent System Operator or Balancing Authority, or any other Person for the sale and provision of Grid and/or Market Services.
21. **“Hazardous Substances”** means (a) petroleum or petroleum products, natural or synthetic gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and radon gas; and (b) any substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants” or “pollutants,” or words of similar import, under any Applicable Law.
22. **“Host Act”** means (a) Host repairs, modifies, or alters the Property or Premises for any reason not directly related to damage caused by the System, and such repair, modification, or alteration requires the partial or complete disassembly, repair, modification, alteration, or removal of the System, (b) any termination, amendment, or modification (other than as approved by AMS) of, or any act or omission by Host that results in a disruption or outage in the System under, any interconnection agreement entered into (or may hereafter be entered into) by Host (or any amendment or successor agreement thereto) which is (or will be) utilized, or relied upon, by AMS in connection with providing the Energy Management Services, (c) any act or omission of Host or Host’s employees, Affiliates, tenants, licensees, agents, or contractors results in a disruption or outage of the Energy Management Services (including any disruption or outage of the System), denies AMS or its employees, contractors, or agents the rights under the lease to the Premises provided herein, or causes or permits any interference with the unobstructed access to sunlight to any portion of any PV System, including, without limitation, the failure to clear and remove brush, trees, and other improvements causing any obstruction, or (d) a breach or default of the Agreement, or Default Event, by or with respect to Host or its Affiliates that is not cured following notice and within the time periods provided herein.
23. **“Incentives”** means any and all grants, credits, accelerated or bonus depreciation, installation or production-based incentives, investment tax credits, production tax credits, ancillary services or capacity products and subsidies, including, without limitation, SGIP, and all other storage or energy subsidies, incentives, tax credits, grants, accelerated rights and benefits under Applicable Law related to the performance of the Energy Management Services, including the construction, ownership, generation, storage, capacity, or production of energy or other ancillary services or benefits from the System, and/or providing Delivered Cost Savings.
24. **“Local Electric Utility”** means local electric distribution owner and operator providing energy or electric distribution and interconnection services to Host at the Property.
25. **“Person”** means any utility, transmission, or distribution provider, individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

26. “**Premises**” means the specified area within a Host-owned Property where the System will be installed. The agreed-upon location of the Premises is set forth on **Schedule 2** of the Agreement, which may be modified and amended from time to time upon the mutual, written agreement of the Parties.
27. “**Property**” means the certain real property owned by Host and includes the location of the interconnection facilities required to connect the System to the Local Electric Utility grid. The address of the Property is listed in **Schedule 2** of the Agreement.
28. “**Purchase Option**” means the right of Host to purchase all (and not less than all) of the then-existing System pursuant to **Section 7** of **Schedule 5** attached to the Agreement and a Purchase Option Agreement.
29. “**Purchase Option Agreement**” means a written agreement, separate and apart from the Agreement, between Parties to effect the Purchase Option.
30. “**Purchase Option Price**” means the amount determined pursuant to **Section 7.2** of **Schedule 5** attached to the Agreement.
31. “**Required Financing Documents**” means (a) with respect to any ground or underlying lease, Mortgage, security interest, or other similar lien encumber the Property or the Premises, either of the following as requested by AMS (i) a commercially-reasonable subordination, non-disturbance, and attornment agreement (“**SNDA**”) containing a non-disturbance covenant for the benefit of AMS, or (ii) a commercially-reasonable access and equipment lien waiver agreement (“**Lien Waiver**”) containing a right to access the Property and the Premises and remove the then-existing System following a foreclosure or other enforcement event, in each case, executed by, and in form and content reasonably acceptable to, Host, AMS, and the applicable lessor, Mortgagee, or lien holder, and in each case confirming that the applicable lessor, Mortgagee, or lien holder has no right, title, or interest in or the System, (b) an estoppel certificate from Host, as provided in **Section 14** of **Schedule 5** attached to the Agreement, and (c) if the Premises or Property is leased by Host, (i) a commercially-reasonable estoppel certificate, in the form and content submitted by AMS with respect to such underlying or ground lease, executed by the lessor thereof, and (ii) an SNDA or Lien Waiver, as requested by AMS, with respect to any Mortgage, security interest, or other similar lien made by the lessor of such underlying or ground lease.
32. “**SGIP**” means the Self Generation Incentive Program, as described in the California Public Utilities Commission Decision 14-12-033.
33. “**Term Year**” means twelve (12) consecutive Billing Periods beginning with the first Billing Period commencing on or after Commercial Operation Date; provided, however, the last Term Year may not have a full twelve (12) month time period.

End of Schedule 6

**Schedule 7
Credit Information**

Promptly following the execution of the Agreement, Host shall supply AMS with the following credit information:

HOST INFORMATION								
Name: Host Name, [Inc.]							Tax ID:	
Previous & Other Names:						Website:		
Corporate Address: 111 Street Name								
City, State, Zip City, State 99999				Phone Number: (____) ____-____			Email Address:	
Entity Type	S-Corp	C-Corp	Partnership	Sole Prop	LLC	LLP	Other	Property Owned by Applicant [] YES [] NO
Property Type	Insurance Agent Name		Agents Phone: (____) ____-____			Name of Property Owner if Not Applicant		
Information Requested: Please submit the information required below via electronic format to robertb@advmicrogrid.com.								
<u>Corporate Records</u>								
<ul style="list-style-type: none"> • Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational formation Documents (If applicable). 								
<u>Financial Statements</u>								
<ul style="list-style-type: none"> • Last five (5) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow). 								
<u>Real Estate Documents</u>								
<ul style="list-style-type: none"> • Lease with Premises Fee Owner • Copies of Liens or Third Party Security Interests in the Premises 								
AMS may request you provide additional documentation to complete the credit evaluation process. AMS will notify you if additional information is required.								

The above information and any information attached is furnished to AMS and its Financing Parties in connection with the Agreement. You acknowledge and understand that the Lender is relying on this information in finance the Agreement. You represent, warrant and certify that the information provided herein is true, correct and complete. The Financing Parties are authorized to make all inquiries deemed necessary to verify the accuracy of the information contained herein and to determine your creditworthiness. You authorize any person or consumer-reporting agency to give the Financing Parties any information it may have about you. You authorize the Financing Parties to answer questions about their credit experience with you. Subject to any non-disclosure agreement between you and the Financing Parties, this form and any other information given to the Financing Parties shall be the Financing Parties' property.

Signature:

Title:

Date:

FAIRFIELD-SUISUN SEWER DISTRICT
RESOLUTION NO. 2018-xx

**A RESOLUTION AUTHORIZING GENERAL MANAGER TO ENTER INTO ENERGY
MANAGEMENT SERVICES AGREEMENT WITH ADVANCED MICROGRID
SOLUTIONS**

WHEREAS, the Fairfield-Suisun Sewer District (District) has been planning and developing several projects to improve control over long-term energy costs; and

WHEREAS, the experience of Advanced Microgrid Solutions (AMS), the resulting savings to the District, and other relevant considerations indicate that award to AMS is the most prudent choice for the District; and

WHEREAS, the proposed Energy Management Services Agreement with AMS is one that would include installation and operation of a solar photovoltaic and battery storage systems on District land; and

WHEREAS, the proposed Agreement is an "energy service contract" within the meaning of California Government Code Section 4217.11, being one for the provision of electrical services to a public agency from alternate energy equipment on public land, namely, solar energy/battery storage; and

WHEREAS, a Notice of a Public Hearing was published on September 5, 2018, on the District's website and at the District's regular posting locations; and,

WHEREAS, at the public hearing held on September 24, 2018, at 6:00 p.m., the Board considered the reports of District staff, other materials, and comments.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE
FAIRFIELD-SUISUN SEWER DISTRICT:**

- 1) Based upon substantial evidence, including the District staff reports, and other materials and comments presented at the September 24, 2018, public hearing, the Board of Directors of the Fairfield-Suisun Sewer District finds:
 - a) The public hearing held on September 24, 2018, at 6:00 p.m. followed proper notice, as required by California Government Code Section 4217.12.
 - b) The terms of the proposed Energy Management Services Agreement, as may be modified by the General Manager in the exercise of sound discretion and in conformity with the intent of this resolution, are in the best interests of the District.

- c) The anticipated cost to the District for energy management services will be less than the anticipated marginal cost to the District of electrical energy that would have been consumed by the District in the absence of the services under the Agreement.
 - d) Any rent that the District could have received from District property required to be used for the alternate energy equipment is anticipated to be offset by benefits provided under the energy service contract.
- 2) The General Manager is hereby authorized to execute an Energy Management Services Agreement with Advanced Microgrid Solutions.
- 3) The General Manager is hereby authorized and directed to do all things necessary and proper to implement this resolution.

PASSED AND ADOPTED this 24th day of September 2018, by the following vote:

AYES: Directors _____

NOES: Directors _____

ABSENT: Directors _____

President

ATTEST: _____
District Clerk



FAIRFIELD-SUISUN SEWER DISTRICT

1010 CHADBOURNE ROAD • FAIRFIELD, CALIFORNIA 94534 • (707) 429-8930 • WWW.FSSD.COM
GREGORY G. BAATRUP, GENERAL MANAGER

September 11, 2018

MEMORANDUM

TO: Executive Committee
THROUGH: Greg Baatrup, General Manager
FROM: Jordan Damerel, Director of Engineering
SUBJECT: 2nd Year Operation Report: Organic Material Recovery Center (OMRC) at FSSD

Recommendation: Receive report and file.

Background:

Historical Biosolids Management

The District's wastewater treatment process produces residual solid material, called biosolids, which must be stabilized and disposed of. Stabilization occurs in the District's anaerobic digesters, which produce a wet biosolids product (approximately 98% water). Prior to August 2016, the District dewatered these biosolids by processing either through a mechanical screw press or through drying beds, which produced dryer biosolids containing 75-85% water. This material was then trucked to Potrero Hills Landfill for use as Alternative Daily Cover (ADC).

Lystek Organic Material Recovery Center

In recognition of impending regulations that would restrict landfills from accepting some types of organic material, the District entered into an agreement with Lystek International, Ltd., that allowed construction of a regional Organic Material Recovery Center (OMRC-FSSD), capable of processing up to 150,000 wet tons of biosolids per year, including the District's 18,000 wet tons per year resulting from the District's mechanical screw press dewatering operation. The OMRC-FSSD produces several products, including a biofertilizer product (LysteGro) and an anaerobic digester supplement to increase biogas production (LyteMize).

Discussion: The OMRC-FSSD was placed into service on August 16, 2016, accepting over 37,000 tons of District biosolids since that date, as well as importing over 26,000 tons from third parties. Although the District's base processing fee for biosolids treatment is \$56.53 per ton (FY 18-19), the second-year actual average cost (August 2017 through July 2018) was \$43.13 per ton, accounting for facility use and host mitigation fees paid by Lystek to the District for third-party biosolids processed at the District's treatment plant.

The OMRC-FSSD imported 20,000 tons of third-party biosolids between August 2017 and July 2018, compared to 5,600 tons imported between August 2016 and July 2017. District staff estimate that when the third-party import material reaches around 36,000 tons per year, the

District will be saving money over the pre-Lystek cost of \$40 per ton. Note that the \$40 per ton solution will likely be eliminated due to new state regulations regarding organics diversion from landfills.

District staff continues to coordinate with Lystek on several future endeavors, including:

- Construction of a new receiving pit to allow import of non-digested third-party wastewater sludges;
- Feeding LysteMize to the District's anaerobic digester to study potential process enhancements;
- Direct processing of the District's digested sludge without dewatering;
- Investigating other organic feedstocks that could be processed in the District's digester and/or the OMRC-FSSD; and
- Process communication improvements and data sharing between Lystek and the District.

District and Lystek staff will present a summary of the partnership and progress to date at the Board of Directors meeting on September 24, 2018.



FAIRFIELD-SUISUN SEWER DISTRICT

1010 CHADBOURNE ROAD • FAIRFIELD, CALIFORNIA 94534 • (707) 429-8930 • WWW.FSSD.COM
GREGORY G. BAATRUP, GENERAL MANAGER

September 13, 2018

MEMORANDUM

TO: Executive Committee

FROM: Greg Baatrup, General Manager

SUBJECT: General Manager Goal Setting

Recommendation: Establish goals for the General Manager as presented in 2018 performance evaluation.

Discussion: In the July 2018 General Manager Evaluation, the Board included a section to formulate goals for the General Manager during the next review period. This memorandum seeks to begin discussions to move from Board interest to specific goals that both the Board and the General Manager can use in the next evaluation period. The following is the language on goals from the General Manager's evaluation:

7. Specific Goals Set by the Board

The Board is interested in reviewing the following items to initiate goal setting for the next review period:

- *Develop a Succession Plan*
- ***Greater Director involvement*** in policy development
- *Continue to **progress in increasing** community outreach, i.e. service organizations (Kiwanis, Lions, et al)*
- *Facilitate more transparent Executive Board Meetings*
- *Incorporate 1:1 meetings with General Manager and Directors*
- ***Foster relationships*** with appropriate staff and City level i.e. public works, economic development, etc.
- *Continue to market District as a first-rate facility that can tailor to the needs of new commerce in the service area.*



FAIRFIELD-SUISUN SEWER DISTRICT

1010 CHADBOURNE ROAD • FAIRFIELD, CALIFORNIA 94534 • (707) 429-8930 • WWW.FSSD.COM
GREGORY G. BAATRUP, GENERAL MANAGER

September 13, 2018

MEMORANDUM

TO: Executive Committee

FROM: Greg Baatrup, General Manager

SUBJECT: General Manager Performance Evaluation Process

Recommendation: Discuss and recommend the process for evaluating the General Manager.

Discussion: As part of the July 2018 General Manager Evaluation and the September 2018 Board Workshop, some of the Directors expressed interest in changing the process of evaluating the General Manager performance. Specifically, whether the process would be more effective using a consultant.

To provide perspective on the costs to retain a consultant, in May 2016 the Executive Committee discussed options for changing the process. The Executive Committee asked staff to obtain a proposal from the City of Fairfield's consultant to facilitate the General Manager evaluation. The scope included meetings with each Director and the General Manager, preparation of a draft evaluation, and performance goals, follow-up meetings to review and agree on goals, objectives and compensation criteria, and a final evaluation/performance plan. The proposed cost was \$3,400. Additional interviews with the District's Management Team and Counsel increased the proposal to \$3,900.



FAIRFIELD-SUISUN SEWER DISTRICT

1010 CHADBOURNE ROAD • FAIRFIELD, CALIFORNIA 94534 • (707) 429-8930 • WWW.FSSD.COM
GREGORY G. BAATRUP, GENERAL MANAGER

September 13, 2018

MEMORANDUM

TO: Executive Committee

FROM: Greg Baatrup, General Manager

SUBJECT: Community Outreach Strategy

Recommendation:

Discuss Community Outreach Strategies.

Discussion: As part of the September 2018 Board Workshop, the Directors expressed interest in expanding outreach. To have an effective District outreach strategy and to meet the District outreach goals, the Board and staff should first develop goals. Staff proposes developing a proposed strategy with the Executive Committee that when ready would be brought to the Board for approval.

Attachments: #1 - Sample brochure on developing a community outreach program
#2 - Copy of current outreach efforts from 2018 Board Workshop



How to Create an Outreach Work Plan

It's a good idea to establish an outreach work plan to help you structure and evaluate your outreach efforts. Your staff members can use the work plan as a tool to ensure they stay focused and on target with their activities. Remember, there are different ways you can develop an outreach work plan, and people often use different terminologies to describe their plan. Feel free to use this detailed guide to get started. We've also provided two sample work plans to use as templates.

Eight Questions to Ask Yourself Before Jumping In

- 1 What goal(s) are we trying to achieve?
- 2 What strategies will we use to achieve our goal(s)?
- 3 What activities and tasks do we need to perform to succeed?
- 4 Who will be responsible for executing each activity?
- 5 What specific outcome(s) do we expect to see from each activity?
- 6 How will we measure success when evaluating each activity?
- 7 What is our timeline for each activity?
- 8 What process will we implement to track our progress?

10 Items to Check to Ensure Your Outreach Work Plan Is Practical and Successful:

- Establish an “outreach master work plan” that includes all the activities related to your outreach work for the entire department. Then, establish an individual plan for each staff member that includes the activities only he or she is responsible for. (The eight questions listed above apply to both the outreach master work plan and the individual plan.)
- Define your goals, strategies, and activities based on your target audience. Always keep your audience in mind when designing your strategies and crafting your message.
- Connect your program's outreach goals to your organization's goals. Your outreach activities should support your organization's big-picture goals.
- Include your outreach staff in the development of the outreach work plan. It's important that they feel invested in the outreach plan's success. This will also help clarify roles and responsibilities.
- Apply the SMART framework to develop your goals and activities: specific, measurable, attainable, relevant, and time-bound.

- Detail your activities as much as possible. For example, include potential partner organizations, how you will contact consumers or patients, how you will work with others in your community, and which kinds of materials you will develop and/or use.
- Consider using indicators in your evaluation that capture internal and external results when applicable. For example, you'll want to measure how many people called your organization (internal). You'll also want to know, of the referrals you made to other organizations, how many followed through and signed up for health insurance (external).
- Specify indicators that measure both *process* and *outcome* results. For example, the number of events held (process) and the number of calls received (outcome).
- Measure your results against baseline data, when possible and applicable.
- Update your work plan to reflect whether an activity is complete, incomplete, or in progress. This will help ensure that you are focused and on target. Also, update your outreach work plan to reflect any modifications you make based on your monitoring and evaluation.

Sample Template Based on the Guidance Above

Outreach Work Plan for: List your program or organizations' name—this is for the master work plan

Outreach Staff Member Name: List the staff member's name—this is the individual work plan

Goal: List what you are planning to achieve during the work plan period

Strategy: List your overall strategy to achieve the goal above

Activities	Timeline	Expected Outcomes	Staff Responsible	Measure of Effectiveness	Status/ Comments
List tasks you will perform. Include outreach methods and tools you will use. Add where and how you will conduct each activity.	Specify the timeline for completing each activity.	List what you hope to achieve with your outreach activities.	List who will implement each outreach activity.	List the indicators that will help you measure and evaluate your process and outcomes. For example, the number of events held (process) and the number of calls received (outcome).	Note if the activity is complete, incomplete, or in progress. It's also helpful to specify if this is a one-time activity or ongoing.



Agenda Item 3.2.b

Community Outreach



3.2.b Community Outreach

As a Utility of the Future...

- Our outreach program seeks to shift traditional thinking about the way utility business is conducted towards a model that fosters collective responsibility, partnerships, and transparency.
- We recognize our responsibility to provide the highest level of service at the most reasonable cost – so only the most cost effective efforts are considered core components of our program
- We are committed to collaborative efforts that minimize duplication while promoting cost- and resource- sharing



3.2.b Community Outreach

Our current outreach efforts have brought our message to the following:

Community Groups

- Fairfield-Suisun and Cordelia Rotary Clubs
- Fairfield-Suisun Chamber of Commerce (Including 3 graduates of the Chamber's "Leadership Today" Program)
- Travis Regional Armed Forces Committee (TRAFC)
- Solano Economic Development Corporation



3.2.b Community Outreach

Education Community

- Classroom programs (Sewer Science at Armijo, Solano Community College)
- Schools Water Education Foundation (in cooperation with Solano Resource Conservation District)
- Suisun Marsh Watershed Education Program (in cooperation with Solano County Water Agency and SRCD)
- The Watershed Explorers Program (in cooperation with Solano Resource Conservation District)
- Adjunct Professors in the Solano Community College Water/Wastewater Program



3.2.b Community Outreach

Community Events

- Earth Day (Community-wide at Fairfield City Hall and a Solano Community College event)
- National Coast and Creek and other cleanup days (3 events)
- Farmers Market
- Home Depot store education events



3.2.b Community Outreach

Tours

- Solano College - Intro to Engineering Tour, Chemistry Class, Biology Class, Water 100 Tour
- Sue Miller - Sewer Science, Plant Tour, And Classroom Presentations
- Solano County Office Of Education
- FSUSD District Science Fair- Armijo High School

Other

- 95.3 KUIC “Hometown Green” public service announcements for more environmentally friendly lifestyle
- Sponsor Pharmaceutical take-back events



3.2.b Community Outreach

Water / Wastewater Industry Organizations

- National Association of Clean Water Agencies
- California Association of Sanitation Agencies
- Water Environment Federation
- California Water Environment Association (Redwood Empire and San Francisco Bay)
- Bay Area Clean Water Agencies (Executive, Permits, Collection System, Air, Pretreatment Committees)
- Bay Area Pollution Prevention Group
- North Bay Engineers Club
- Pipe Users Group
- Bay Area Stormwater Management Agencies Association



3.2.b Community Outreach

Recent events covered in local papers include:

- Earth Day
- Creek Cleanups
- Classroom Activities
- Career Fairs
- Awards and other achievements

Social Media networks:

- LinkedIn
- Facebook
- FourSquare
- Twitter



3.2.b Community Outreach

Discussion

- Is the current in-house program adequate?
- If no...
 - Where and what to improve?
 - Increase resources (budget) to expand level of effort?
(Staff estimates other agencies agency budget approximately \$200,000 per year for outreach staff and resources.)



FAIRFIELD-SUISUN SEWER DISTRICT

1010 CHADBOURNE ROAD • FAIRFIELD, CALIFORNIA 94534 • (707) 429-8930 • WWW.FSSD.COM
GREGORY G. BAATRUP, GENERAL MANAGER

BOARD OF DIRECTORS

MICHAEL SEGALA, PRESIDENT

HARRY PRICE, VICE PRESIDENT

PAM BERTANI

JANE DAY

MIKE HUDSON

CATHERINE MOY

PETE SANCHEZ

CHUCK TIMM

RICK VACCARO

LORI WILSON

Board of Directors Meeting Agenda

Meeting Date: Monday, September 24, 2018
Meeting Place: 1010 Chadbourne Road, Fairfield, California
Meeting Time: 6:00 p.m.

Teleconference Notice: Pursuant to California Government Code Section 54953.b, the following will be participating by teleconference:

1. Director Jane Day from 301 Morgan Street, Suisun City, CA 94585.

1. Roll Call
2. Pledge of Allegiance
3. Public Comments
4. Board Comments/ CASA Reports
5. General Manager Comments
6. Consent Calendar Page
 - (a) Approve Minutes of Meeting on July 23, 2018 ##
7. Action Items
 - (a) Adopt Resolution 2018-xx Making Findings under California Government Code Section 4217 and Authorize the General Manager to Execute an Agreement for Energy Management Services with Advanced Microgrid Systems ##
8. Information and Discussion Items
 - (a) September 8, 2018 Workshop and Action Items ##
 - (b) Receive Report on Mission Solano Transition ##
 - (c) Receive Report on Organic Material Recovery Center ##
 - (d) General Manager Performance Evaluation Process ##
 - (e) Board Calendar ##

-- End of Agenda --

The Fairfield-Suisun Sewer District will provide reasonable disability-related modification or accommodation to a person with a disability who requires a modification or accommodation in order to participate in the meeting of the Board of Directors. Please contact us at (707) 429-8930 at least 48 hours before the meeting if you require such modification or accommodation.

Documents that are disclosable public records required to be made available under California Government Code Section 54957.5 (b) (1) and (2) are available to the public for inspection at no charge during business hours at our administrative offices located at the above address.

Members of the public may speak on any matter within the jurisdiction of the Fairfield-Suisun Sewer District by filling out a speaker's request card, available on the table adjacent to the entrance to the board meeting room, and submitting the card to the District Clerk. Comments not listed on the agenda will be taken under Public Comments. Comments on matters appearing on the agenda will be taken during consideration of the item.



FAIRFIELD-SUISUN SEWER DISTRICT

1010 CHADBOURNE ROAD • FAIRFIELD, CALIFORNIA 94534 • (707) 429-8930 • WWW.FSSD.COM
GREGORY G. BAATRUP, GENERAL MANAGER

August 9, 2018

MEMORANDUM

TO: Greg Baatrup, General Manager

THROUGH: Talyon Sortor, Assistant General Manager

FROM: Giti Heravian, Laboratory Manager

SUBJECT: Operating Data Summary – 2018

Daily Numbers:	June	July
Influent Flow Daily Average	11.13 MGD	10.79 MGD
Recycled Flow Daily Average	1.09 MGD	1.13 MGD
Permit Samples Analyzed	365	384
Permit Excursions	0	0
Percent Samples in Compliance	100%	100%
TSS Daily Average Influent	240 mg/L	234mg/L
BOD Daily Average Influent	280 mg/L	279 mg/L
TSS Daily Average Effluent	<3.0 mg/L	<3.0 mg/L
BOD Daily Average Effluent	<2.0 mg/L	<2.0 mg/L

Annual Numbers:	January – July
Influent Flow Daily Average	12.91 MGD
Recycled Flow Daily Average	0.46 MGD
Permit Samples Analyzed	2,572
Permit Excursions	0
Percent Samples in Compliance	100%



FAIRFIELD-SUISUN SEWER DISTRICT

1010 CHADBOURNE ROAD • FAIRFIELD, CALIFORNIA 94534 • (707) 429-8930 • WWW.FSSD.COM
GREGORY G. BAATRUP, GENERAL MANAGER

September 6, 2018

MEMORANDUM

TO: Greg Baatrup, General Manager

THROUGH: Talyon Sortor, Assistant General Manager

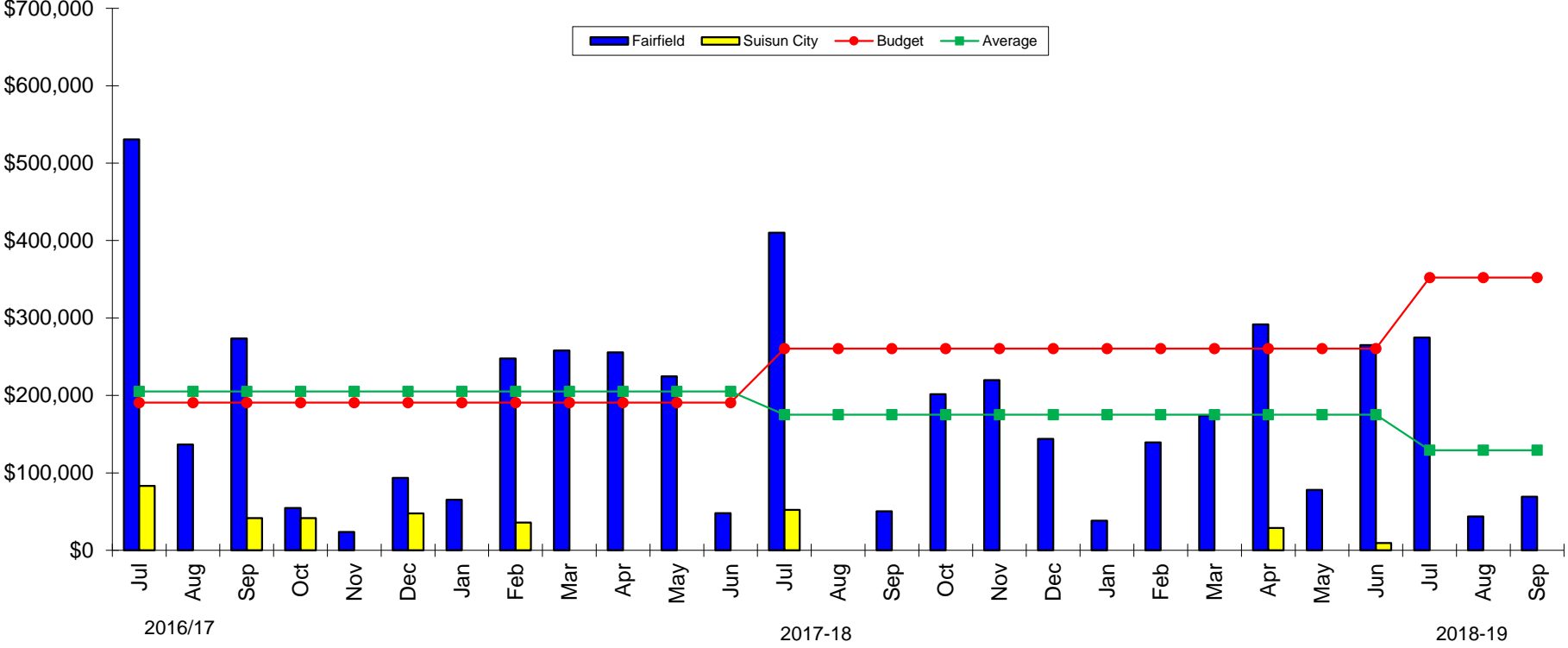
FROM: Giti Heravian, Laboratory Manager

SUBJECT: Operating Data Summary – 2018

Daily Numbers:	July	August
Influent Flow Daily Average	10.79 MGD	10.85 MGD
Recycled Flow Daily Average	1.13 MGD	0.89 MGD
Permit Samples Analyzed	384	439
Permit Excursions	0	0
Percent Samples in Compliance	100%	100%
TSS Daily Average Influent	234 mg/L	252 mg/L
BOD Daily Average Influent	279 mg/L	256 mg/L
TSS Daily Average Effluent	<3.0 mg/L	<3.0 mg/L
BOD Daily Average Effluent	<2.0 mg/L	<2.0 mg/L

Annual Numbers:	January – August
Influent Flow Daily Average	12.66 MGD
Recycled Flow Daily Average	0.52 MGD
Permit Samples Analyzed	3,011
Permit Excursions	0
Percent Samples in Compliance	100%

Fairfield-Suisun Sewer District Capacity Fee Revenue





FAIRFIELD-SUISUN SEWER DISTRICT

1010 CHADBOURNE ROAD • FAIRFIELD, CALIFORNIA 94534 • (707) 429-8930 • WWW.FSSD.COM
GREGORY G. BAATRUP, GENERAL MANAGER

September 12, 2018

MEMORANDUM

TO: Executive Committee

FROM: Greg Baatrup, General Manager

SUBJECT: Potential Presentations for Board of Director Meetings

Recommendation: Receive report and file.

Discussion: Historically, staff has provided presentations associated with actions items for projects or other issues that might impact District operations. The Executive Committee Meeting asked that a list of potential presentation topics be created and maintained.

This list is not intended to capture presentations that are already included in the Board calendar. A review and update of the list will be included in monthly Executive Committee agenda.

Potential Presentations

- Overview of District Insurance Provider and Coverages
- Show and Tell of District-owned property
- Highlights of the District Outreach program
- Summary of District services provided to City of Fairfield and City of Suisun City
- Impacts of Sea level rise on District facilities
- Update on Nutrient Watershed Permit and the regional report submitted for Bay Area wastewater agencies



FAIRFIELD-SUISUN SEWER DISTRICT

1010 CHADBOURNE ROAD • FAIRFIELD, CALIFORNIA 94534 • (707) 429-8930 • WWW.FSSD.COM
GREGORY G. BAATRUP, GENERAL MANAGER

September 12, 2018

MEMORANDUM

TO: Executive Committee

FROM: Greg Baatrup, General Manager

SUBJECT: Board Calendar

Recommendation: Review and comment as necessary on the calendar items.

Background: Attached is a listing of the contemplated agenda items for the next 12 months and a recap of the non-routine agenda items. These are provided as a recap of action from the last 12 months and as a look ahead for the next 12 months. The contemplated agenda items may vary from the table as issues and priorities change overtime.

Attachment: #1- Board Calendar

Fairfield-Suisun Sewer District

Contemplated and Recent Board of Directors Agenda Items

September 12, 2018

Month Year	Contemplated Board of Directors Meeting Agenda Items	Executive Committee	Board of Directors
September 2018	1. Special Board Meeting - Workshop		9/8/2018
	1. Review Workshop Action Items 2. Directors Report on CASA Annual Conference 3. Receive Report on Second Year OMRC	9/17/2018	9/24/2018
October 2018	1. Quarterly General Manager Report 2. Quarterly Investment Report	10/15/2018	10/22/2018
November 2018	1. Board of Directors 2019 Meeting Schedule	11/19/2018	11/26/2018
December 2018		Not Scheduled	Not Scheduled
January 2019	1. Quarterly General Manager Report 2. Quarterly Investment Report 3. Election of Officers/Executive Committee 4. Certify SSMP Update	1/21/2019	1/28/2019
February 2019		Not Scheduled	Not Scheduled
March 2019	1. Directors Report on CASA Winter Meeting 2. Directors Report on CASA DC Conference	3/18/2019	3/25/2019
April 2019	1. Quarterly General Manager Report 2. Quarterly Investment Report	4/15/2019	4/22/2019
May 2019		5/20/2019	5/27/2019
June 2019	1. General Manager Performance Evaluation	6/17/2019	6/24/2019
July 2019	1. Quarterly General Manager Report 2. Quarterly Investment Report from PFM	7/15/2019	7/22/2019
August 2019		Not Scheduled	Not Scheduled

Month Year	Recent Non-routine Agenda Items
September 2017	<ol style="list-style-type: none"> 1. Receive 1st Year Organics Material Recovery Center Operation Report 2. Report on SCR 80 (Dodd) 3. Board of Directors Report on CASA Annual Conference 4. Report on Little Hoover Commission's Report on Special Districts 5. Board topics for December 9, 2017 Workshop
October 2017	<ol style="list-style-type: none"> 1. Quarterly General Manager Report 2. Quarterly Investment Report 3. Report on Palo Alto Sludge RFP and consider Letter of Intent to participate in
November 2017	<ol style="list-style-type: none"> 1. Board 2016 Meeting Schedule 2a. Approve Award of Construction Services Agreement, Blower Project 2b. Approve Design Services during Construction Agreement, Blower Project 2c. Approve Professional Services for PLC/SCADA programming, Blower Project 3. Independent Auditors Report for FY 2016/17
December 2017	Not Scheduled
January 2018	<ol style="list-style-type: none"> 1. Quarterly Investment Report 2. Quarterly General Manager Report 3. Resolution Congratulating retirees on the occasion of their retirement 4. Resolution of Support for legislative changes to the FSSD Act 5. Report on Master Plan Update Study
February 2018	<ol style="list-style-type: none"> 1. Special Meeting - Resolution of support for legislative changes to the FSSD Act
March 2018	<ol style="list-style-type: none"> 1. Adopt Resolution approving pay rate scheduled for 2017/18 2. Presentation on Nereda Pilot Test for treating nutrients 3. Presentation on opportunities to expand Organics processing 4. Presentation on opportunities with the California Conservation Corps 5. Approval of 2018 Coatings Construction Contract 6. Approval of Construction Contract for repair sewer crossing at Ledgewood Creek 7. Directors Report on CASA Winter Meeting 8. Directors Report on CASA DC Conference
April 2018	<ol style="list-style-type: none"> 1. Quarterly General Manager Report 2. Quarterly Investment Report 3. Review of draft District videos
May 2018	Cancelled
June 2018	<ol style="list-style-type: none"> 1. General Manager Performance Evaluation 2. Report on Mission Solano Fee Agreement 3. Investment Policy Update 4. Award Consulting Services Contract for Electrical Upgrade Project 5. Board Compensation
July 2018	<ol style="list-style-type: none"> 1. Quarterly General Manager Report 2. Quarterly Investment Report from PFM 3. Award Construction Services Contract for Paving Project 4. General Manager Performance Review 5. Executive Committee recommendation on General Manager compensation 6. Approve Resolution contributing funds to CASA Education Foundation 7. Receive Report on Mission Solano Transition Agreement 8. CASA Vote 9. Discuss Items to be included in Board Workshop 10. Budget Review
August 2018	Not Scheduled