

PROGRAM DEVELOPMENT AGREEMENT

This PROGRAM DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this _____ () day of April 2017, between OpTerra Energy Services, Inc. ("OpTerra Energy Services"), having its principal offices at 500 Twelfth Street, Suite 300, Oakland, CA 94607, and The County of San Benito, with offices located at 481 4th Street, 1st Floor, Hollister, CA 95023-3840 ("San Benito County" and together with OpTerra Energy Services the "Parties" and each of San Benito County and OpTerra Energy Services a "Party".)

WHEREAS, OpTerra Energy Services is an energy services and solutions company with the technical and management capabilities and experience to perform an integrated energy assessment (an "Assessment") and to identify supply-side and/or demand-side energy conservation measures ("ECMs");

WHEREAS, San Benito County desires to enter into an agreement to have OpTerra Energy Services perform an Assessment in accordance with the scope of work set forth in Attachment A (the "Scope of Work") for the sites listed on Part I of Attachment B (the "Sites"), and to deliver recommendations, on an arms' length basis, identifying energy improvements and operational changes to be installed or implemented by OpTerra Energy Services at the Sites (the "Recommendations"), to personnel of San Benito County; such personnel will work together with OpTerra Energy Services, and will present the Recommendations to the Board of Supervisors for consideration and possible acceptance and approval of the desired scope of work; and

WHEREAS, the primary purpose of the Assessment and the Recommendations is to provide an engineering and economic basis for the implementation by OpTerra Energy Services of the ECMs identified in the Recommendations, in furtherance of which, if San Benito County approves a scope of work for implementation, the Parties will endeavor to negotiate and execute a contract providing for, among other things, engineering, procurement, installation, construction and training services (an "Energy Services Contract");

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

1. ASSESSMENT AND RECOMMENDATIONS

OpTerra Energy Services agrees to complete the Assessment and to present Recommendations to San Benito County within ninety (90) calendar days after the date on which OpTerra Energy Services receives the information listed in Part I of Attachment A (the "Required Information"). San Benito County agrees to make best efforts to deliver the Required Information to OpTerra Energy Services no later than thirty (30) calendar days after the date hereof.

San Benito County agrees to assist OpTerra Energy Services in performing the Assessment by (i) providing OpTerra Energy Services with access to key decision makers and stakeholders of the County of San Benito, (ii) providing OpTerra Energy Services its employees and agents, such access to the Sites and other relevant facilities of San Benito County as OpTerra Energy Services deems necessary and (iii) providing, or causing San Benito County's energy suppliers to provide, complete and accurate data concerning energy usage and costs related to the Sites and other relevant facilities. OpTerra Energy Services will be entitled to rely upon the accuracy and completeness of all information provided to OpTerra Energy Services by San Benito County and San Benito County's energy suppliers. OpTerra Energy Services will promptly provide written notice to San Benito County if OpTerra Energy Services determines there is any incorrect data included in the information provided by San Benito County or San Benito County's energy suppliers, but OpTerra Energy Services will have no obligation to correct or confirm any such information unless otherwise specified in the Scope of Work. Any change(s) in the Scope of Work will be set forth in a writing executed by the Parties.

2. COMPENSATION TO OPTERRA ENERGY SERVICES

San Benito County will compensate OpTerra Energy Services for the Assessment and the Recommendations by payment to OpTerra Energy Services of a fee (the "Assessment Fee") in the amount of Thirty-Nine Thousand Eight Hundred Seventy-Two Dollars (\$39,872).

The Assessment Fee will be due and payable thirty (30) calendar days after OpTerra Energy Services' submission of the Recommendations; *provided that* if on such thirtieth (30th) calendar day OpTerra Energy Services

and San Benito County are negotiating an Energy Services Contract in good faith, the Assessment Fee will be due ninety (90) calendar days after OpTerra Energy Services' submission of the Recommendations; *provided further*, that if OpTerra Energy Services and San Benito County execute an Energy Services Contract within ninety (90) calendar days after OpTerra Energy Services' submission of the Recommendations, the Assessment Fee, and other fees, costs, expenses, disbursements and overhead of OpTerra Energy Services incurred during the Assessment, will be incorporated into the total contract amount payable under such Energy Services Contract. San Benito County will be given credit, in the Energy Services Contract, for any payments already made to OpTerra Energy Services under this Agreement.

The Assessment Fee is not due if San Benito County decides not to pursue any project within the next two (2) years, because it has been determined not to be financially beneficially or in the best interests of San Benito County. The Assessment Fee shall be due if San Benito County determines to pursue an energy project through any party other than OpTerra Energy Services.

Each of San Benito County and OpTerra Energy Services reserves the right to terminate this Agreement at any time during the course of the Assessment, by delivery of written notice to the other. If this Agreement is terminated by San Benito County, the Assessment Fee will be payable by San Benito County to OpTerra Energy Services within thirty (30) calendar days of termination. If this Agreement is terminated by OpTerra Energy Services, San Benito County will have no obligation to pay any portion of the Assessment Fee to OpTerra Energy Services. If OpTerra Energy Services determines that the projected savings from implementation of the ECMs identified during the Assessment cannot result in a paid-from-savings project which complies with California Government Code Sections 4217.10 through 4217.18, the Assessment and this Agreement will be terminated by OpTerra Energy Services.

Any amount not paid when due will, from and after the due date, bear interest at a fluctuating rate equal to the sum of (a) The United States Prime Rate as listed from time to time in the Eastern print edition of the Wall Street Journal[®] *plus* (b) 2% per annum. Accrued and unpaid interest on past due amounts (including interest on past due interest) will be due and payable upon demand.

3. INSURANCE

OpTerra Energy Services will maintain, or cause to be maintained, for the duration of this Agreement, the insurance coverage outlined in (A) through (F) below, and all such other insurance as required by applicable law. Evidence of coverage will be provided to San Benito County via an insurance certificate.

A. Workers' Compensation/Employers Liability for states in which OpTerra Energy Services is not a qualified self-insured. Limits as follows:

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

B. Commercial General Liability insurance with limits of:

- * \$2,000,000 each occurrence for Bodily Injury and Property Damage
- * \$4,000,000 General Aggregate - other than Products/Completed Operations
- * \$4,000,000 Products/Completed Operations Aggregate
- * \$2,000,000 Personal & Advertising Injury
- * \$ 100,000 Damage to premises rented to OpTerra Energy Services

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

C. Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

D. Professional Liability insurance with limits of:

- * \$1,000,000 per occurrence
- * \$1,000,000 aggregate

Coverage to be written on a claims-made form.

E. Umbrella/Excess Liability Insurance. Limits as follows:

- * \$1,000,000 each occurrence
- * \$1,000,000 aggregate

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

F. Policy Endorsements.

- * The insurance provided for Workers Compensation and Employers Liability above will contain waivers of subrogation rights against San Benito County, but only to the extent of the indemnity obligations contained in this Agreement.
- * The insurance provided for Commercial General Liability and Auto Liability above will:
 - (1) include San Benito County as an additional insured with respect to Work performed under this Agreement, but only to the extent of the indemnity obligations contained in this Agreement, and
 - (2) provide that the insurance is primary coverage with respect to all insureds, but only to the extent of the indemnity obligations contained in this Agreement.

4. INDEPENDENT CONTRACTOR

OpTerra Energy Services, and the agents and employees of OpTerra Energy Services, its subcontractors and/or consultants, are acting in an independent capacity in the performance of this Agreement, and not as public officials, officers, employees, consultants, or agents of San Benito County for purposes of conflict of interest laws or any other applicable law. This Agreement may not be construed to represent the creation of an employer/employee or principal/agent relationship. OpTerra Energy Services will act in an independent capacity and retain sole discretion in the manner and means of carrying out its activities under this Agreement. OpTerra Energy Services is free to work for other entities while under contract with San Benito County.

5. ENERGY SERVICES CONTRACT

As it is the intent of San Benito County and OpTerra Energy Services to pursue cost effective energy retrofits and ECMs at the Sites pursuant to an Energy Services Contract. San Benito County retains discretion as to if and when such work will be performed. However, if San Benito County approves a scope of work incorporating some or all of the ECMS identified in the Recommendations, both Parties agree to endeavor to negotiate in good faith and execute an Energy Services Contract immediately following approval of the scope of work by San Benito County.

6. WORK PRODUCT

San Benito County will not, by virtue of this Agreement, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Assessment or the Recommendations. OpTerra Energy Services will be deemed the author of the Recommendations, and all data, proposals, plans, specifications, flow sheets, drawings, and other work product prepared or produced by OpTerra Energy Services hereunder ("Work Product") and furnished directly or indirectly, in writing or otherwise, to San Benito County under this Agreement. OpTerra Energy Services will retain all common law, statutory and other reserved rights, including copyrights, in the Work Product. Any use of the Work Product by San Benito County without the prior written consent of OpTerra Energy Services will be at San Benito County's sole risk and without liability to OpTerra Energy Services, and San Benito County agrees to defend, indemnify and hold harmless OpTerra Energy Services, its subcontractors, and their directors, employees, subcontractors, and agents from any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature (collectively, "Losses") associated with or resulting from such use.

7. LIMITATION OF LIABILITY

Except for third-party claims subject to Section 8 hereof, the liability of a defaulting Party, in connection with this Agreement or any analysis, report, recommendations, or other deliverables provided hereunder, will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense.

Rev. Date: _____

8. INDEMNIFICATION

To the full extent permitted by applicable laws, each Party will indemnify, hold harmless, release and defend the other Party, its officers, employees, and agents, from and against any and all Losses that may be asserted by any person or entity, to the extent arising out of that Party's negligence or willful misconduct in its performance or activities hereunder, including the performance or activities of other persons employed or utilized by that Party in the performance of this Agreement, excepting liabilities to the extent due to the negligence or willful misconduct of the indemnified party. This indemnification obligation will continue to bind the Parties after the termination of this Agreement.

9. NONDISCRIMINATION; COMPLIANCE WITH LAWS

OpTerra Energy Services will comply with all applicable laws, rules, regulations and policies, including, but not limited to, those relating to nondiscrimination, accessibility and civil rights.

The Parties acknowledge and agree that OpTerra Energy Services is not a municipal advisor and cannot give advice to San Benito County with respect to municipal securities or municipal financial products absent San Benito County being represented by, and relying upon the advice of, an independent registered municipal advisor. OpTerra Energy Services is not subject to a fiduciary duty with regard to San Benito County or the provision of information to San Benito County. San Benito County will consult with an independent registered municipal advisor about the financing option(s) appropriate for San Benito County's situation.

OpTerra Energy Services cannot guarantee that San Benito County will receive funding from any energy efficiency rebate, incentive, and/or loan program(s) (collectively, "Incentive Funds"); OpTerra Energy Services expressly disclaims any liability for San Benito County's failure to receive any portion of the Incentive Funds, and San Benito County acknowledges and agrees that OpTerra Energy Services will have no liability for any failure to receive all or any portion of the Incentive Funds.

10. FORCE MAJEURE

Neither Party will be considered to be in default in the performance of any material obligation under this Agreement (other than the obligation to make payments) when a failure of performance will be due to an event of Force Majeure. The term "Force Majeure" will mean any cause beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which, despite using commercially reasonable efforts, it has been unable to overcome. Neither Party will be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an event of Force Majeure will give prompt written notice of such fact to the other Party.

11. INTEGRATION; AMENDMENT; COUNTERPARTS

This Agreement constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement may not be amended except by a writing executed by both Parties. No oral amendment shall be enforceable, even if supported by new consideration. Except as otherwise provided herein, the terms and provisions of this Agreement will apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by email or fax shall be effective as delivery of a manually executed counterpart of this Agreement.

12. DISPUTE RESOLUTION; APPLICABLE LAW; VENUE; SEVERABILITY

If a dispute arises out of or relates to this Agreement, or the transaction contemplated by this Agreement (a "Dispute"), either Party may initiate the dispute resolution process set forth in this Section 11 by giving notice to the other Party. Senior executives for the Parties will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a

dispute. If the senior executives are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation.

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

If the Dispute is not resolved by mediation within sixty (60) calendar days after the date of filing of the request for mediation, then the exclusive means to resolve the Dispute is final and binding arbitration. Either Party may initiate arbitration proceedings by notice to the other Party and the American Arbitration Association. The following provisions apply to all arbitration proceedings pursuant to this Article: (i) The place of arbitration will be the American Arbitration Association office closest to where the Assessment was performed; (ii) one arbitrator will conduct the arbitral proceedings in accordance with the Commercial Arbitration Rules and Mediation Procedures (excluding the Procedures for Large, Complex Commercial Disputes) of the American Arbitration Association currently in effect ("Arbitration Rules") (to the extent of any conflicts between the Arbitration Rules and the provisions of this Agreement, the provisions of this Agreement prevail); (iii) the Parties will submit true copies of all documents considered relevant with their respective statement of claim or defense, and any counterclaim or reply (in the discretion of the arbitrator, the production of additional documents that are relevant and material to the determination of the Dispute may be required); (iv) the arbitrator does not have the power to award, and may not award, any damages (however denominated) inconsistent with the provisions of this Agreement; all arbitration fees and costs are to be shared equally by the parties, regardless of which Party prevails, and each Party will pay its own costs of legal representation and witness expenses; (v) the award must be in the form of a reasoned award; (vi) the Dispute will be resolved as quickly as possible, and the arbitrator will endeavor to issue the arbitration award within six (6) months after the date on which the arbitration proceedings were commenced; and (vii) the award will be final and binding and subject to confirmation and enforcement proceedings in any court of competent jurisdiction.

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

[the Parties' signatures appear on the following page]

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Agreement.

OPTERRA ENERGY SERVICES:

SAN BENITO COUNTY:

OpTerra Energy Services, Inc.

The County of San Benito

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

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ATTACHMENT A

SCOPE OF WORK

I. Required Documents (Needed to Proceed).

A. San Benito County will provide the following detailed documentation:

1. Most recent three (3) years of audited financial statements.
2. Actual utility company invoices for all utilities serving the Sites, for a minimum of two (2) years, and preferably three (3) years, immediately prior to the date hereof, with, beginning with the most recently completed month.
3. Utility company demand interval recordings of 15/30 minute electrical demand for one year, where available.
4. Record drawings (AutoCAD or hard copy) for the Sites:
 - a. Electrical
 - b. mechanical
 - c. structural
 - d. modifications and remodels
 - e. site landscaping
5. AutoCAD or hard copy of 8 ½" x 11" or 11" x 17" floor and roof plans of all Sites, as well as information on the age, type and condition of buildings and roofs.
6. A list of key contacts at each site, including San Benito County personnel knowledgeable of the electrical, HVAC, lighting and controls systems.

II. Scope of Work.

An Assessment will be performed as described below:

- A. Perform detailed review of documents delivered above.
- B. Perform site surveys to identify potential ECMs and distributed/renewable generation technologies including proposed locations and potential improvements to the working environment. Survey consists of:
 - a. Site walk to observe and capture data on energy using equipment including data regarding nameplate, condition, and operating parameters.
 - b. Shading analysis
 - c. Data logging if necessary
- C. Perform Utility Analysis and Solar Photovoltaic Production Analysis:
 - a. Identify current rate schedule and analyze electrical usage and model load profile for each site
 - b. Determine the historical site-specific rate escalation
 - c. Determine expected solar photovoltaic production curve for proposed sites
 - d. Overlay electrical load profile with expected solar photovoltaic production curve to "right size" the solar systems and identify rate restructuring opportunities
- D. Prepare a post-inspection status update to present preliminary findings.
- E. Calculate energy use and cost for all viable ECMs, with each ECM calculated separately: Calculation methodology will be determined by OpTerra Energy Services, and may include spreadsheet analysis or other accepted tools following the methodology of ASHRAE or other nationally recognized authority and shall be based on sound engineering principles. Operational and maintenance savings, if any, will be identified as a separate line item.
- F. Prepare a proposed "Project Cost" and a list of "Services to Be Provided," in anticipation of OpTerra Energy Services and San Benito County entering into an Energy Services Contract to design, construct, install, and monitor the proposed ECMs. The proposed Project Cost is conditioned on prompt execution

of the Energy Services Contract and the condition that hazardous substance or abnormal subsurface/soil condition issues are not present.

- G. Prepare preliminary measurement and verification plan, explaining how such ECM is to be measured and verified. This plan need only show intended methodologies, but is not required to identify precise instrumentation and/or formulae intended for use. This plan should be carefully enough prepared so as not to materially conflict with the final measurement and verification plan to be prepared during final negotiations of, and incorporated into, the Energy Services Contract.
- H. Provide to San Benito County the financial analysis and the draft Energy Services Contract.
- I. Meet with San Benito County to review the options proposed and assemble a package of options which is compatible with San Benito County's investment and infrastructure improvement goals and review the project cost and list of services to determine next steps.

III. Technologies to be Considered:

- A. The technologies listed below will be considered during the performance of assessments:
 - 1. LED lighting upgrades
 - 2. HVAC upgrades/replacements/addition
 - 3. Solar photovoltaic projects
 - 4. Water conservation measures
 - 5. High efficiency transformers

ATTACHMENT B**SAN BENITO COUNTY SITE INVENTORY**

(all Sites – both included and excluded – must be listed)

PART I: SITES INCLUDED IN ASSESSMENT

Building Name	Address	City	State	ZIP Code	Sq Feet
Health & HSA	1111 San Felipe Road	Hollister	CA	95023	26000
Community Services	1131 San Felipe Road	Hollister	CA	95023	26000
Homeless Shelter	1161 San Felipe Road	Hollister	CA	95023	TBD
Community Hall / Clubhouse	1221 Memorial Drive	Hollister	CA	95023	2380
UNET	1745 San Felipe Road, Ste 2	Hollister	CA	95023	2300
Sheriff Administration / County Permit Center	2301 Technology Parkway	Hollister	CA	95023	42269
County Yard	3220 Southside Road	Hollister	CA	95023	5200
County Yard – Sign / Tire Shop	3220 Southside Road	Hollister	CA	95023	4330
County Yard - Repair Shop	3220 Southside Road	Hollister	CA	95023	4000
County Yard - Agriculture Commissioner Office	3220 Southside Road	Hollister	CA	95023	3432
Public Works	3220 Southside Road	Hollister	CA	95023	2160
County Yard - Public Works Office	3220 Southside Road	Hollister	CA	95023	2043
Offices / Probation / D.A.	419 4th Street 400 Monterey Street	Hollister	CA	95023	9460
Department Of Health Offices	439 4th Street	Hollister	CA	95023	3169
County Courthouse	440 5th Street	Hollister	CA	95023	22410
Hall Of Records	440 5th Street	Hollister	CA	95023	5590
Library & Office Of Education	460 & 470 5th Street	Hollister	CA	95023	15442
911 Call Center - Offices	471 4th Street	Hollister	CA	95023	2760
Administrative-Counsel Building	481 4th Street	Hollister	CA	95023	11442
Historical Society Museum	498 5th Street	Hollister	CA	95023	5162
Day Care Center	5381 Fairview Road	Hollister	CA	95023	2680
San Benito County Juvenile Hall	708 Flynn Road	Hollister	CA	95023	7535
San Benito County Jail	710 Flynn Road	Hollister	CA	95023	32424