CITY of OAKLEY
A PLACE for FAMILIES in the HEART of the DELTA

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09-AFC-4
DATE 04/07/10
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3231 Main Street
Oakley, CA 94561
925 625 7000 tel
925 625 9859 fax
www.ci.oakley.ca.us

MAYOR
Pat Anderson

VICE MAYOR
Jim Frazier

COUNCILMEMBERS
Bruce Connelley
Carol Rios
Kevin Romick

April 7, 2010

Bryan J. Bertacchi, CEO
Radback Energy
P.O. Box 1690
Danville, CA 94526

Re: Oakley Generating Station Cooperation and Community Benefits Agreement

Dear Bryan:

Enclosed please find one fully executed copy of the Oakley Generating Station Cooperation and Community Benefits Agreement. Please contact me at (925) 625-7000 if you have any questions.

Sincerely,

BRYAN H. MONTGOMERY
City Manager

BM/lv

PROOF OF SERVICE (REVISED 8/13/10) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 10/20/10
MS

OAKLEY GENERATING STATION COOPERATION AND COMMUNITY BENEFITS AGREEMENT

This OAKLEY GENERATING STATION Cooperation and Community Benefits Agreement (the "Agreement") is entered into as of the 31 day of March, 2010 by and between the City of Oakley, California, a municipal corporation of the State of California ("**City**"), and Contra Costa Generating Station, LLC a Delaware limited liability company ("**CCGS**"). Hereinafter, the City and CCGS may be referred to individually as a "**party**" or collectively as "**the parties**".

RECITALS

A. CCGS proposes to develop an 614 megawatt power plant, to be known as the Oakley Generating Station (the "**Project**"), on approximately 21.95 acres near Bridgehead Road in the City of Oakley, California (the "**Project Site**").

B. The Project site is currently used as a vineyard. It is part of an approximately 500 acre site in northwestern Oakley known as the "**DuPont Site.**" The entire DuPont Site has been designated as a redevelopment zone and is viewed by the City as a prime opportunity for economic development. Accordingly, the entire DuPont Site, including the Project Site, is part of the City's proposed DuPont Specific Plan area.

C. Under the Warren-Alquist State Energy Resources Conservation and Development Act ("**Warren-Alquist Act**"), beginning at Section 25500 of the Public Resources Code, construction and operation of the Project is subject to approval by the California Energy Commission ("**CEC**"), which is given the exclusive authority to certify (approve) sites and related facilities for any proposed thermal power plant over 50-megawatts in generating capacity. Under the Warren-Alquist Act, such approval by the CEC is *in lieu of* any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and supersedes any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.

D. Pursuant to Sections 21080.5 and 25519(c) of the Public Resources Code, the power plant siting process of the CEC is a certified state regulatory program under the California Environmental Quality Act ("**CEQA**"). Thus, for power plant siting applications such as for the Project, including all related facilities, the CEC is the lead agency for all matters of compliance with CEQA. The CEC is not required to issue or certify an Environmental Impact Report for the Project, but will issue (through its staff) a comprehensive environmental document (the "**Final Staff Assessment**"), and the CEC's review and permitting processes require extensive review of all environmental matters concerning the Project, including potential project impacts (such as air quality, public health, hazardous materials usage, waste management, biological and cultural resources, facility design, plant safety and reliability, land use, noise, socioeconomic effects, visual impacts, water and soils, and local system effects); conformance with local, state and federal legal requirements; and project alternatives.

E. If the CEC approves the Project, it will adopt a final decision (the "**Final Decision**") certifying the Project on the CCGS Site and related facilities on the rights of way for overhead and underground linear facilities supporting the Project, including electrical transmission lines, fiber optic lines, gas lines, raw water lines, recycled water lines, sewer lines and storm drainage lines. The Final Decision will include extensive environmental mitigation requirements, project design, construction and operation requirements, compliance verification, and other conditions of certification of the Project, which may be modified by the CEC from time to time in accordance with its rules and procedures (collectively, the "**Conditions of Certification**"). The Final Decision, including all such Conditions of Certification, is sometimes referred to as the "**CEC Permit**" in this Agreement. CCGS and the Project will be required to strictly comply with all Conditions of Certification contained in the CEC Permit.

F. In considering CCGS's application the CEC must ensure that the project conforms to all applicable laws, ordinances, regulations and standards ("**LORS**") and further must conduct an environmental review to comply with the CEQA whereby potential significant impact to the environment are identified and to the extent feasible mitigated. If the CEC cannot make the finding that the project will comply with all applicable LORS or potential significant impacts to the environment cannot be mitigated, it must make specific findings in order to approve the project.

G. CCGS seeks the City's cooperation and support in its development of the Project in the City, and is prepared to take certain actions and provide certain funding for the benefit of the City and the Oakley Redevelopment Agency. In order to document the actions and improvements that CCGS is prepared to take and provide for the benefit of the City, and the cooperation and support that the City will provide in connection with the development of the Project, CCGS and the City wish to enter into this Agreement.

H. The City has determined that the execution of this Agreement will facilitate successful implementation of the Project and is in the best interest of its residents, and CCGS has determined that the execution of this Agreement and the City's support of the Project as detailed herein will provide substantial benefit to CCGS;

NOW THEREFORE, for good and valuable consideration, including the mutual covenants set forth herein, CCGS and the City enter into this Agreement, on the terms and conditions set forth herein.

ARTICLE 1
COOPERATIVE EFFORTS

1.1 Purposes. In addition to the purposes described in the Recitals above, which Recitals are all, in their entirety, hereby made a material part of this Agreement , the purposes of this Agreement include the following: (a) to establish a cooperative working relationship between the parties; (b) to provide certain benefits to the City; (c) to set forth the City's obligations for the timely delivery of services and actions in connection with the Project, and (d) to avoid delays and expedite the permitting of the Project, where feasible; all as more specifically described in this Agreement.

1.1.1 Support.

a. CCGS acknowledges and agrees that the City cannot, by contract, surrender its police powers or its legislative and governmental functions, or impair its ability to exercise those powers or carry out those functions. CCGS further acknowledges and agrees that these limits on the City's contractual authority constrain the City's ability to legally commit to future legislative, governmental or police power actions. This Agreement is not intended to impair the City's discretion in any manner that could be construed as an illegal or unauthorized constraint on the City's police powers, or its legislative or governmental authorities.

b. Subject to the foregoing, the City shall take such actions as are reasonably requested by CCGS in support of the Project including but not limited to (1) participating in community outreach and public relations (2) coordinating with other governmental, regulatory and administrative agencies, commissions and authorities in connection with required Project services such as water supply, waste water disposal and sanitation, and (3) providing written and oral testimony to the CEC and any other applicable governmental, regulatory or administrative agency, commission or authority as requested by CCGS.

c. The City shall expedite its review and processing of CCGS's applications for any required City approvals, permits or variances, including approvals of subdivisions and lot line adjustments if needed.

d. The City shall arrange for City staff and consultants to participate in and support one or more workshops on potential impacts of the Project in connection with the CEC approval process.

e. Upon execution of this Agreement, the City shall appoint an individual as the City's representative ("**City Representative**") to act as a single point of contact for CCGS on behalf of all City departments and consultants and to coordinate communications between City departments concerning the Project; provided, however, that the City may at any time in its sole discretion by written notice to CCGS designate a substitute City Representative. The City Representative shall receive all communications from CCGS, and shall be available during normal business hours for consultation with CCGS.

f. To the extent permitted by applicable laws, the City shall grant to CCGS, or any public utility designated by CCGS, in return for reasonable and customary fees and compensation (either one time fixed fees or recurring fees), all permits, licenses, franchises or easements as may be required for the construction and operation of the Project and all water pipelines, gas pipelines, storm drain pipelines, electric lines, communications lines and related equipment necessary to operate the Project, including but not limited to such permits, licenses, franchises or easements needed to facilitate the use of City owned or controlled property and rights of way.

g. The City shall participate in the CEC Permit process in its capacity as a public agency and shall not formally intervene with the CEC.

ARTICLE 2
COOPERATION DURING THE DEVELOPMENT PERIOD AND REIMBURSEMENT TO THE CITY

2.1 Expedited Review. The City shall utilize commercially reasonable efforts to provide expedited review of all applications, plans, permits, and plan checks submitted by CCGS in connection with the Project. Such expedited review shall include the City's engagement of consultants as the City and CCGS deem appropriate ("**City Consultants**"). Notwithstanding any other language to the contrary in this Agreement, including but not limited to Section 2.2, CCGS shall pay to the City all reasonable and customary fees normally charged by the City for review and processing of all such applications, plans, permits, plan checks, and other City processing activities required for the Project, including but not limited to fees for reviewing and processing applications for building permits, plan reviews, subdivisions, variances, and other City review and processing activities identified in Section 1.1.1.c of this Agreement.

2.2 CCGS Retainer Account. CCGS has paid the City fifteen thousand dollars ($15,000) in January 2010. CCGS shall make the following payments within 60 days of receiving an invoice for such payment. The City shall deliver an invoice for each payment during the first five days of the month specified for such payment below:

April $30,000
May $15,000
June $15,000
July $10,000

August $10,000
September $10,000
October $10,000
November $10,000
December $10,000
January $10,000
February $10,000

The total compensation to be paid under this Section 2.2 will not exceed one hundred fifty five thousand dollars ($155,000), unless the parties agree to continue such payments beyond the period specified above. The parties acknowledge and agree that the amounts that CCGS has agreed to pay to the City pursuant to this Section 2.2 constitute a fair and reasonable estimate of all internal and external costs that have been and will be incurred by the City prior to and during the Term of this Agreement and except for (i) reasonable and customary fees for the activities identified in Section 1.1.1.c of this Agreement, (ii) any additional compensation for City staff time contemplated in Section 2.3, and (iii) CCGS's payment obligation to the City under Section 2.4, shall constitute the sole and exclusive payment obligation of CCGS with respect to any such costs incurred pursuant to Article 2 of this Agreement.

2.3 City Staff Costs. CCGS shall reimburse the City on a monthly basis for all costs reasonably incurred and documented by the City for actions taken or work performed by City staff which actions or work are taken at CCGS's request and are outside the scope of activities contemplated in Article 1 and Section 2.1.

2.4 Redevelopment Zone Property Taxes. Beginning on the Effective Date, the City shall invoice CCGS five thousand dollars ($5000) a month for four months (for a total of twenty thousand dollars ($20,000)) and CCGS shall pay such invoices within sixty (60) days of receipt of each invoice. These payments are intended to offset a portion of the City's costs incurred to date and to be incurred in the future in connection with the City's support of Senate Bill No. 1398 sponsored by State Senator Mark DeSaulnier relating to the allocation of redevelopment zone property taxes. These efforts, by the City, shall include but not be limited to providing written and oral testimony to members of the State Legislature, legislative staff, committees and/or other appropriate parties, and arranging for staff to participate and support the effort. In addition to such payments, CCGS shall take commercially reasonable actions in support of Senate Bill No. 1398, to include but not be limited to, participating in efforts to solicit the support of PG&E in the process, paying for and directly contracting with Zell & Associates to help ensure the success of this proposed legislation, and coordinating with PG&E and confirming the methodology used by the State for valuing power plants for property tax and unitary tax purposes. The cost for the above described actions to be taken by CCGS, excluding the payments to the City described in this Section 2.4, shall in no event exceed twenty five thousand dollars ($25,000).

2.5 CCGS' Support of Assessments. Subject to obtaining written consent from Pacific Gas and Electric Company (the planned ultimate owner of the Project), CCGS agrees to vote for the inclusion of a new category of asset/use type and assessment in each of the following: Zone 1 Citywide Parks and Landscaping component of the City's Lighting and Landscaping District, Zone 2 Citywide Street Lighting component of the City's Lighting and Landscaping District, and the Annual P-6 Police Services tax. These Assessment Districts are placed on the annual property tax bill remitted by Contra Costa County. CCGS agrees that the continued participation in these Districts shall be a condition of sale or transfer of the Project to any other third party. The new category CCGS approves will be defined so that the amount will at this time apply solely to a property designated for a power generating facility of a certain size, and the initial annual assessments on the parcel shall be as follows: for Zone 1 - forty-five thousand dollars ($45,000); for Zone 2 - fifteen thousand dollars ($15,000); and for the P-6 Police Service Tax - thirty-five thousand dollars ($35,000). Each District would be subject to an annual infaltor not to exceed three (3) percent.

2.6 Local Sales and Use Tax. Without limiting the rights of CCGS (as owner of the Project) to employ all legally permissible strategies to minimize the amount of taxes to be paid, in connection with its development and construction of the Project, CCGS will cooperate with the City and take reasonably requested actions to cause any applicable California sales and use tax to be directed to the City as opposed to other jurisdictions in the State and County pools, provided that such cooperation and action shall not result in an increase in the total California sales and use tax that would otherwise have been payable.

ARTICLE 3
CONDITIONS PRECEDENT

3.1 Condition Precedent to CCGS's Obligations. CCGS's obligations set forth in Article 4, Article 5 and Article 6 of this Agreement shall be conditioned upon (1) issuance of a CEC Permit for the Project acceptable to CCGS in its sole discretion, (2) the City not having filed for Intervener status with the CEC and (3) CCGS having executed definitive agreements for Project Financing for the Project.

ARTICLE 4
COMMUNITY GRANT PROGRAM - ($250,000)

4.1 Program Formation and Purpose. Within sixty (60) days following satisfaction of all the conditions precedent referenced in Section 3.1 CCGS shall form a Community Grant Program and appoint a seven member Community Grant Board to administer such program, which Community Grant Board shall be comprised of at least two City representatives and two CCGS representative. The Community Grant Program's principle goal will be to fund approved qualified 501(c)(3) non-profit organizations in the Oakley community over the course of a four (4) year period following formation of the Community Grant Program. The Community Grant Board will seek proposals from and establish uniform and fair guidelines for the review and approval of proposals received from prospective non-profit recipients.

4.2 Program Funding. CCGS shall fund the Community Grant Program with two hundred fifty thousand dollars ($250,000) in one lump sum payment to be made no later than sixty (60) days following formation of the Community Grant Program.

ARTICLE 5
COMMUNITY BENEFITS ($3,030,000)

5.1 Commitment to Fund. Following satisfaction of the conditions precedent set forth in Section 3.1, and upon completion of the City projects specified below, (collectively, the "**City Projects**" and individually, a "**City Project**"), CCGS shall pay the City the amount specified below for each such City Project within thirty (30) days of the City's written request following completion. The Parties acknowledge and agree that the City Projects described in this Article 5 are not necessary to mitigate potential impacts of the Project. The Parties further acknowledge that some City Projects identified in Article 5 may be completed by the City prior to the conditions precedent set forth in Section 3.1 having been met.

5.2 CCGS Contributions to City Projects. CCGS shall contribute to the City the sum of three million and thirty thousand dollars ($3,030,000) to be utilized by the City for the City Projects, and any unused balance of the fund (up to the $3,030,000) may be deposited into the City General Fund and may be used by the City in accordance with and in any manner permitted by applicable laws.

5.2.1 DuPont Redevelopment Zone Improvements. Two hundred and fifty thousand dollars ($250,000) shall be paid to the City to provide

funding for the Oakley Redevelopment Agency's obligation to reimburse DuPont for specific plan environmental analysis and/or impact fees for the DuPont property's development.

5.2.2 Improvements at the entry "triangle" at junction of Highway 160/Highway 4 entering Oakley. Three hundred thousand dollars ($300,000) shall be paid to the City to provide funding for improvements in the design and construction of the "triangle" area.

5.2.3 Improvements to the north side of Main Street from Bridgehead Road to Big Break Road. Five hundred thousand dollars ($500,000) shall be paid to the City to provide funding for scheduled improvements in the design and construction of the north side of Main Street from Bridgehead Road to Big Break Road.

5.2.4 Improvements to the south side of Main Street from Bridgehead Road to Big Break Road. Five hundred thousand dollars ($500,000) shall be paid to the City to provide funding for scheduled improvements in the design and construction of the south side of Main Street from Bridgehead Road to Big Break Road.

5.2.5 Improvements to the median strip of Main Street from Bridgehead Road to Big Break Road. Five hundred fifty thousand dollars ($550,000) shall be paid to the City to provide funding for scheduled improvements in the design and construction of median improvements on Main Street from Bridgehead Road to Big Break Road.

5.2.6 Noise reduction to the train crossing at Big Break Road near Main Street. Fifty thousand dollars ($50,000) shall be paid to the City to provide funding for improvements in the design and construction of the train crossing system in the City to allow trains to pass without signaling horns.

5.2.7 Improvements to Sandy Lane. One hundred thousand dollars ($100,000) shall be paid to the City to provide funding for scheduled improvements in the design and construction of an improved surface of Sandy Lane near Main Street.

5.2.8 Downtown Main Street Improvements. Three-hundred thousand dollars ($300,000) shall be paid to the City to provide funding for improvements to Main Street in the Downtown area.

5.2.9 City-wide Pavement Management/Improvement Program. Two hundred and eighty thousand dollars ($280,000) shall be paid to the City to provide funding for the City's annual Pavement Management/Improvement Program.

5.2.10 New and/or improved Playground and Recreational Facilities and Equipment. Two hundred thousand dollars ($200,000) shall be paid to the City to provide funding for new and/or improved playground and recreational facilities and equipment.

5.3 Changes to Planned City Projects. If the City decides in the future not to proceed with a City Project, and provided that no governmental authority is requiring the completion of such City Project, the City may replace such City Project with an alternate project approved in writing by CCGS, which approval shall not be unreasonably withheld.

5.1 City Responsibility for City Projects. The City shall be responsible for the development, construction, completion, and future operation costs of all City Projects. CCGS's only involvement in the City Projects shall be the payments specified in this Agreement.

ARTICLE 6
OTHER CITY IMPROVEMENTS - ($2,815,000)

6.1 Improvements. If required for mitigation after completion of the CEQA review process, CCGS shall take the following actions:

6.1.1 Wetlands. Improve the 0.62 acre wetlands located on the Project Site by removing garbage and replacing non native species with native species with an approximate value of $200,000.

6.1.2 Screening Trees. Plant screening trees within the City right-of-way on the East side of Bridgehead Road in the area adjacent to APN 051-052-030 and APN 051-052-049 with an approximate value of $115,000. Subject to the mutual agreement of the Parties, CCGS may, in lieu of planting these trees, pay $115,000 to the City for the purpose of planting such trees and integrating them into the applicable city design guidelines.

6.2 Abatement. CCGS will negotiate in good faith with the CEC and the Bay Area Air Quality Management District ("**BAAQMD**") in an attempt to obtain their approval of one or more of the following abatement measures to offset PM10 and PM2.5 emissions from the Project. Such abatement measures have been approved by the CEC in other recent power plant permitting cases (See the CEC decisions for the Pico Power Project, the Metcalf Energy Center, the Tracy Peaker, Tesla Power Project, and Russell City Energy Center). If CEC and/or the BAAQMD approve one or more of these below measures, and the cost of such measure(s) do(es) not exceed, on a per tonnage basis, the cost of purchasing emission reduction credits (ERCs), then CCGS shall contribute up to Two Million Five Hundred Thousand ($2,500,000) to be used to fund such measure(s):

6.2.1 The purchase and operation, or contracted to a 3rd party, of a high efficiency street sweeper for use by the City on high traffic streets. This measure would directly benefit the City by reducing ambient PM10 and PM2.5 levels.

6.2.2 The replacement of wood fireplaces and wood stoves with refunds administered through the BAAQMD of up to $300 per fireplace and $500 per wood stove. The program would replace wood burning fireplaces with natural gas inserts with the wood stoves being replaced with current EPA certified clean pellet stoves. This program is purely voluntary for those who wish to participate and would reduce ambient PM10 and PM2.5 levels.

6.2.3 Sodding or paving high traffic areas. Areas with large off-road traffic use could be paved or planted with sod to minimize particulate emissions.

6.2.4 Tree planting programs to include participation in the landscaping of Main Street from Bridgehead Road to Big Break Road.

6.2.5 Funding the Carl Moyer program on a dollar/ton basis that would be made available to the City for a period of twenty four (24) months. The Carl Moyer program provides incentive grants for cleaner-than-required engines, equipment and other sources of pollution providing early or extra emission reductions. Eligible projects include cleaner on-road, off-road, marine, locomotive and stationary agricultural pump engines. The program achieves near-term reductions in emissions of PM10 and PM2.5. Funding could be provided on a dollar per ton basis at a rate that is similar to the current ERC market rates. If such a program is developed, CCGS will provide consulting services to assist the City in its development and implementation of the program. Such consulting services shall cease on the third anniversary of the date of the first commercial sale of electricity by the Project.

If CCGS is unable to reach agreement with the CEC and the BAAQMD on one or more of the above described abatement measures, or the cost of any such measure exceeds, on a per tonnage basis, the cost of purchasing ERCs, then CCGS may purchase ERCs to satisfy the requirements of the CEC and/or BAAQMD with respect to abatement of PM10 and PM2.5.

ARTICLE 7
MISCELLANEOUS

7.1 Governing Law. This Agreement shall be governed by, construed under and enforced in accordance with the laws of the state of California.

7.2 Jurisdiction/Venue. Any suit, action or proceeding brought relating to this Agreement shall be brought in the Superior Court of the State of California in the City of Martinez.

7.3 No Obligation to Construct. Although CCGS has every intention of obtaining its CEC Permit and constructing the Project, except as otherwise provided herein, this Agreement shall not be deemed to create any obligation on the part of CCGS to construct the Project or take any other action in relation to the development of the Project.

7.4 Joint Effort. The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any

ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment hereto.

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

7.6 Time is of the Essence. Time is of the essence with respect to the performance or observance of each of the obligations, covenants and agreements under this Agreement.

7.7 Notices. All notices to be given hereunder shall be in writing and shall be served, either personally or by mail, postage prepaid, to City or CCGS at the addresses set forth below, or to any other address provided by one (1) party to the others in writing. CCGS reserves the right to change the identity of the party to whom notices to CCGS hereunder should be sent by notifying the other parties in writing.

City:	City of Oakley City Manager City Hall 3231 Main Street Oakley, CA 94561
Copy to:	Jarvis, Fay Doporto & Gibson, LLP 475 14th Street, Suite 260 Oakland, CA 94612 Attn: Daniel P. Doporto
CCGS:	Contra Costa Generating Station LLC PO Box 1690 Danville, CA 94526 Attention: Bryan Bertacchi
Copy to:	Reed Smith LLP 101 Second Street Suite 1800 San Francisco, CA 94105-3659 Attention: Ed Rogan

The effective date of such written notice shall be the date of personal delivery or the date of receipt by certified mail.

7.8 Entire Agreement. This Agreement, together with the other agreements referenced herein, contains the entire understanding between the parties with respect to the subject matters herein. There are no representations, agreements, or understandings (whether

oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed or referenced herein. This Agreement may not be amended except by written instrument signed by all the parties.

7.9 No Third Party Beneficiary. The parties hereto mutually agree that this Agreement is for their sole benefit and is not intended by them to be, in part or in whole, for the benefit of any third party.

7.10 Project Financing Provisions.

7.10.1 "**Project Financing**" means any construction and long-term project financing or other type of financing (including leasing) as may be necessary for the Project, in each case as CCGS may determine.

7.10.2 "**Project Lenders**" means lenders and other providers from time to time of Project Financing.

7.10.3 The parties acknowledge that the development and construction of the Project may be financed by a finance facility or by other financing arranged by CCGS, or through Project Financing by Project Lenders. Each party agrees in good faith to consider changes or additions to this Agreement that may be reasonably requested by the Project Lenders in order to support the Project Financing. The parties also agree that CCGS may assign this Agreement to the Project Lenders as collateral to support the Project Financing. In connection with any such assignment, the City agrees to enter into an agreement directly with the Project Lenders under which the City shall consent to any such assignment and shall agree to other customary and reasonable provisions for the benefit of the Project Lenders (including, without limitation, provisions under which the Project Lenders or their designees (a) may exercise and receive the rights and benefits of CCGS under this Agreement, (b) shall be entitled to receive copies of any notices hereunder that the City might provide to CCGS, (c) shall be given the right to consent to any proposed changes to or modifications of this Agreement, (d) shall be entitled to receive any payments made by the City to CCGS under this Agreement, (e) may, to the extent agreed to by the City, have extended cure periods to cure any defaults by CCGS hereunder and (f) may, to the extent agreed to by the City, have other similar or related benefits or protections as reasonably requested by the Project Lenders to support the Project Financing. Without limiting the generality of the foregoing, in connection with any collateral assignment by CCGS of this Agreement to the Project Lenders as set forth above, the City further agrees to furnish the Project Lenders with such other documents as may be reasonably requested by the Project Lenders upon payment of copying costs, as well as the resolution of the City Council authorizing the execution and delivery of this Agreement and the aforementioned agreement with the Project Lenders.

7.11 Assignment.

7.11.1 Generally. This Agreement shall be binding upon, and inure to the benefit of, each of the parties and their respective successors and permitted assigns. Except as provided in Section 5.10 and this Section 5.11, no party shall assign this Agreement or its

rights or interests hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

7.11.2 Certain Exceptions. Notwithstanding the provisions of Section 5.11.1, the parties agree that CCGS may, assign its rights and delegate its duties to (a) an Affiliate of CCGS, (b) a successor-in-interest by merger, consolidation or reorganization or (c) a purchaser or other transferee of the Project once the Project becomes operational (provided that, in the event of any such transfer to a purchaser or other transferee of the Project occurring while any performance or payments required by this Agreement are still outstanding, CCGS shall have provided the City assurances reasonably satisfactory to the City that such obligations will be assigned to a person or entity financially capable of performing or causing said payments to be made). As used herein, the terms "**Affiliate of**" or "**entity affiliated with**" a specified entity or person means any other entity or person that directly, or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity or person specified. For purposes of the foregoing, "**control**", "**controlled by**", and "**under common control with**", with respect to any entity or person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity or person, whether through the ownership of voting securities, partnership or member interests, by contract or otherwise.

7.11.3 Release. Following the execution of a written assignment and assumption agreement pursuant to which a permitted assignee approved in writing by the City (which approval shall not be unreasonably withheld) expressly assumes the obligations of the assignor hereunder, the assignor shall automatically be released and discharged from any and all liability and obligations arising out of or relating to this Agreement that arise after the date of such assignment.

7.11.4 Other Assignments Null and Void. Any assignment in violation of this Section 5.11 shall be null and void and of no force or effect whatsoever.

7.12 Development as a Private Undertaking. No partnership, joint venture or other association of any kind by or between the City and CCGS is formed, implied or deemed to have arisen by operation of this Agreement.

7.13 Further Assurances. Each party shall promptly perform, execute and deliver or cause to be performed, executed and/or delivered any and all acts, deeds, and assurances, including the delivery of any documents, as either party may reasonably require in order to effect the intent and purpose of this Agreement.

7.14 Nonwaiver. Unless otherwise expressly provided in this Agreement, no waiver by a party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. No delay or omission in the exercise of any right or remedy accruing to any party shall impair such right or remedy or be construed as a waiver of any such right or remedy, whether theretofore or thereafter arising or occurring. The waiver by a party of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

7.15 Performance Criteria.

7.15.1 During the term of this Agreement, each party shall work together with the other parties in good faith using best efforts to carry out the purposes of this Agreement. "Best efforts" shall mean such reasonably prompt, substantial and persistent efforts which under the circumstances are commercially, technically, legally and financially reasonable in order to achieve the intent and purposes of this Agreement, but best efforts does not require any person or entity to take any extraordinary or unusual actions that would not be commercially, technically, legally and financially reasonable in the particular circumstances.

7.15.2 Each party agrees to attempt in good faith (a) to identify and attempt to resolve any and all problems arising with respect to the Project and the other matters described herein; and (b) to take all reasonable steps and perform all reasonable actions necessary to accomplish the purposes and intent of this Agreement.

7.16 Estoppel. The City shall, at any time upon not less than ten (10) business days' prior written notice from CCGS, execute, acknowledge and deliver to CCGS a statement in writing certifying (a) whether this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and identifying each modification); (b) whether there are, to the City's knowledge, any uncured defaults on the part of CCGS or City hereunder, and specifying such defaults if any are claimed, and (c) any other matters which CCGS or any prospective purchaser or assignee shall reasonably request.

7.17 Termination Right. At any time prior to satisfaction of all conditions precedent set forth in Section 3.1, either party shall have the right to terminate this Agreement, subject to its fulfillment of all outstanding obligations incurred prior to the date of termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above by their duly authorized representatives as follows:

THE CITY OF OAKLEY, a political subdivision of the State of California

By: _____
Name: Bryan H. Montgomery
Its: City Manager

Attest:

_____
City Clerk

Approved as to Form:

_____
City Counsel

CONTRA COSTA GENERATING STATION LLC, a Delaware limited liability company

By: _____
Name: Bryan Bertacchi
Title: President CCGS LLC

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION
FOR THE *OAKLEY GENERATING STATION*

Docket No. 09-AFC-4
PROOF OF SERVICE
(Revised 8/13/2010)

APPLICANT

Greg Lamberg, Sr. Vice President
RADBACK ENERGY
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Danville, CA 94526
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APPLICANT'S CONSULTANTS

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INTERESTED AGENCIES

California ISO
E-mail Preferred
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INTERVENORS

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*Jennifer Jennings
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*indicates change

DECLARATION OF SERVICE

I, Maria Santourdjian, declare that on October 20, 2010, I served and filed copies of the attached City of Oakley Cooperation Agreement. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[http://www.energy.ca.gov/sitingcases/contracosta/index.html].** The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(C*heck all that Apply*)

For service to all other parties:

__x__ sent electronically to all email addresses on the Proof of Service list;

____ by personal delivery;

__x__ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses NOT marked "email preferred."

AND

For filing with the Energy Commission:

__x__ **sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);**

OR

_____depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 09-AFC-4
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Originally Signed by
Maria Santourdjian