

STAFF REPORT



ITEM NO. 20
CITY OF OCEANSIDE

DATE: May 1, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **ADOPTION OF A RESOLUTION MAKING FINDINGS RELATED TO ENERGY SERVICES CONTRACTING AND APPROVING OF A POWER PURCHASE AGREEMENT FOR THE CONSTRUCTION OF THE LA SALINA WASTEWATER TREATMENT PLANT COGENERATION FACILITY PROJECT AND SUBSEQUENT ENERGY PURCHASE**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council adopt a resolution making findings that the La Salina Wastewater Treatment Plant Cogeneration Facility project will generate cost-savings, approve a Power Purchase Agreement with CHPCE La Salina, LLC, of Boston, MA, for construction of the La Salina Wastewater Treatment Plant Cogeneration Facility project and subsequent energy purchase, and authorize the City Manager to execute the agreement.

BACKGROUND

A recently completed cogeneration facility at the San Luis Rey Wastewater Treatment Plant (SLRWWTP) has proven to be beneficial and an overall cost savings for the plant in the reduction of electrical and natural gas costs. The facility uses biogas, generated as a byproduct of the wastewater treatment process, and produces electricity which is sold back to the City at a savings versus electrical purchases from San Diego Gas & Electric (SDG&E). CHP Clean Energy the parent company of CHPCE La Salina, LLC, acquired the San Luis Rey Wastewater Treatment Cogeneration Facility in 2011 and began discussing with staff their interest in a similar project for the La Salina Wastewater Treatment Facility.

The La Salina Wastewater Treatment Plant (LSWWTP), located at 1330 S. Tait Street (Exhibit A), provides wastewater treatment and disposal for approximately 20 percent of the City. The LSWWTP sewage process is similar to the SLRWWTP and is therefore a prime candidate for cogeneration.

ANALYSIS

The LSWWTP currently has two anaerobic digesters each with a diameter of 45 feet. The excess gas produced by the digesters is currently flared and not beneficially utilized. Both digesters are also heated with an existing gas boiler that uses natural gas as a fuel source. This project will consist of financing, construction, operation and maintenance of a cogeneration facility on-site at the LSWWTP by CHPCE La Salina, LLC, currently under contract for the cogeneration facility at the San Luis Rey Water

Reclamation Facility. As allowed under the Utility Code, the City selected CHPCE La Salina, LLC, from its established pool of qualified energy service companies. The cogeneration facility will be fueled by digester gas produced by the plant facility for use by the contractor. All power produced by the contractor will be sold to the City at a lower rate than what SDG&E is currently charging. The cogeneration facility will also provide supplemental heat for the digesters, offsetting the use of the onsite boiler and ultimately reducing the costs of natural gas. The cogeneration facility shall include gas treatment, heat recovery, and connections to the digester gas, natural gas, hot water, and electrical systems. Repair and reconstruction of any existing facilities affected by the work including pavement will be made by CHPCE La Salina, LLC, at no cost to the City.

The construction is anticipated to commence in May 2013, and be completed and fully operational by the end of the calendar year.

FISCAL IMPACT

The construction value of the project is \$750,000, the cost of which will also be entirely borne by CHPCE La Salina, LLC. The contractor will be funding the ongoing operation and maintenance of the cogeneration facility. Currently, the LSWWTP uses approximately 4,700,000 kilowatt hours (kwh) of power per year with a total energy cost of \$643,000. The contractor will be able to produce an average of 19 percent of this power (approximately 867,000 kwh) per year. CHPCE La Salina, LLC, will sell that electrical power back to the LSWWTP at \$.0750 per kilowatt hour, which is a cost lower than the average cost of \$.125 per kilowatt hour charged by SDG&E. Entering into a power purchase agreement will result in a total savings to the City of approximately \$21,000 annually and \$315,000 for the contract term. The agreement with CHPCE La Salina, LLC, is for 15 years and at the end of 15 years, the City has an option to extend the contract for 10 more years or negotiate for the purchase of the cogeneration facility. If at the end of 10 years, the City does not want to exercise the option or buy out the facility, the contractor is responsible for removing the facility at their expense.

As part of the operation of the cogeneration facility, heat will be produced, which will result in the cogeneration facility being able to heat the digesters part of the time. This will result in a cost savings on the purchase of natural gas. The savings in the summer will be larger than winter. The total savings to the City for natural gas is estimated to be approximately \$310,000 over the term of the contract.

CHPCE La Salina, LLC has acquired financial assistance from the California Center for Sustainable Energy through its Self Generation Incentive Program (SGIP) on behalf of the City of Oceanside which allows for them to sell the energy produced by the facility at a reduced rate. The incentives have been included in the rate structure and calculations listed above. The incentive program requires that CHPCE La Salina, LLC and the City of Oceanside execute an agreement by April 6, 2013, or the incentive will be relinquished.

With the cogeneration facility in operation, the City will save approximately \$625,000 over the next 15 years in electrical and natural gas savings.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

The Utilities Commission approved staff's recommendation during its regularly scheduled meeting on July 24, 2012.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATIONS

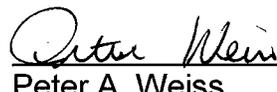
Staff and the Utilities Commission recommend that the City Council adopt a resolution making findings that the La Salina Wastewater Treatment Plant Cogeneration Facility project will generate cost-savings, approve a Power Purchase Agreement with CHPCE La Salina, LLC, of Boston, MA, for construction of the La Salina Wastewater Treatment Plant Cogeneration Facility project and subsequent energy purchase, and authorize the City Manager to execute the agreement.

PREPARED BY:



Jason Dafforn
Water Utilities Division Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Cari Dale, Water Utilities Director

Teri Ferro, Financial Services Director







- Exhibit A: Site Map
- Exhibit B: Resolution
- Exhibit C: Power Purchase Agreement

La Salina Wastewater Treatment Plant Cogeneration Site

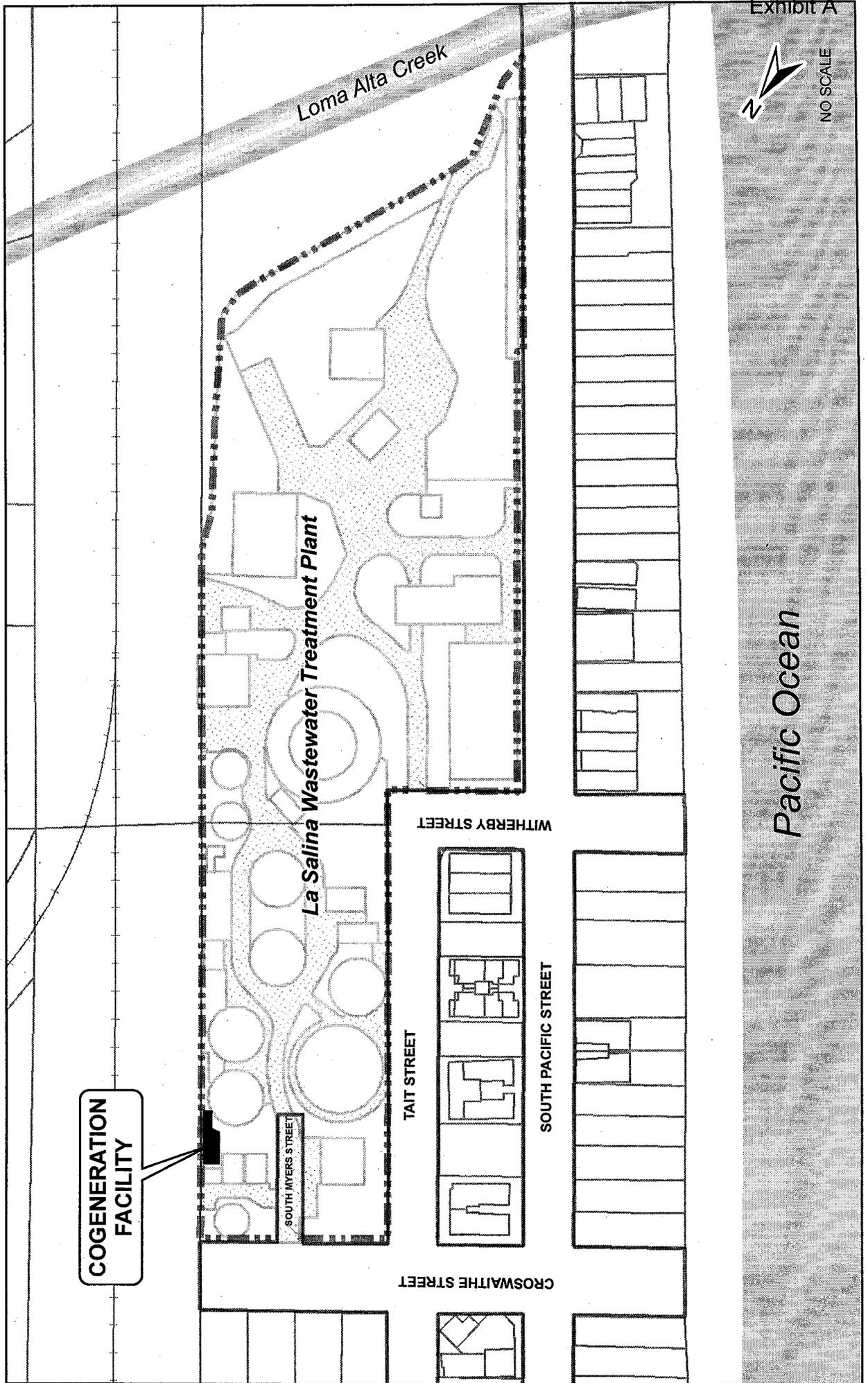


Exhibit A



NO SCALE

Pacific Ocean

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
OCEANSIDE MAKING FINDINGS FOR ENERGY SERVICES
CONTRACTING AND AUTHORIZING EXECUTION OF
POWER PURCHASE AGREEMENT

WHEREAS, the City of Oceanside ("City") owns and controls real property upon which the City desires to authorize a third party to install, operate, and maintain in good repair a cogeneration system; and

WHEREAS, City desires to purchase the output from the cogeneration system installed by a third party at a negotiated fixed rate pursuant to a power purchase agreement ("Power Purchase Agreement"); and

WHEREAS, the proposed authorization to a third party and purchase of energy from the third party would decrease City's energy costs as well as City's dependence on fossil fuel electric generating resources or other energy and promote the generation of electricity from cogeneration facilities; and

WHEREAS, Government Code section 4217 *et seq.* provides that public agencies may enter into agreements under which the public agency may purchase the energy generated from the facilities constructed on the public agency's property under an agreement so long as certain findings are made by the agency's governing body; and

WHEREAS, pursuant to Government Code section 4217.12, as a condition of entering into power purchase agreement, the governing body must make a finding that the anticipated cost to the entity for electrical energy services will be less than the anticipated marginal cost to the entity of electrical or other energy that would have been consumed by the entity; and

WHEREAS, Government Code section 4217.12 requires the governing body of a public entity to also find that the difference, if any, between the fair market value for the facility is anticipated to be offset by below-market energy purchases or other benefits provided under the proposed Power Purchase Agreement.

///

1 NOW, THEREFORE, the Oceanside City Council does hereby resolve as follows:

2 1. The recitals above are true and correct.

3 2. The Council hereby finds, pursuant to Government Code section 4217.12, that the
4 anticipated cost to City for electrical energy services to be purchased by City from a third party
5 under a Power Purchase Agreement will be less than the anticipated marginal cost to City of
6 electrical or other energy that would have been consumed by the City.

7 3. The Council hereby finds, pursuant to Government Code section 4217.12, that the
8 difference, if any, between the fair market value of the facility is anticipated to be offset by
9 below-market energy purchases or other benefits provided under the Power Purchase
10 Agreement.

11 4. The City Manager, or designee, is authorized to execute said Power Purchase
12 Agreement.

13 5. The Mayor shall sign this Resolution and the City Clerk shall attest thereto, and
14 this Resolution shall take effect and be in force on the date of its adoption.

15 PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this
16 day of _____, 2013, by the following vote

17 AYES:

18 NAYES:

19 ABSENT:

20 ABSTAIN:

21
22 ATTEST:

MAYOR, CITY OF OCEANSIDE

23
24 _____
CITY CLERK

25 APPROVED AS TO FORM:

26 
27 _____
CITY ATTORNEY

**LA SALINA WWTP COGENERATION FACILITY
POWER PURCHASE AGREEMENT**

by and between

CHPCE La Salina, LLC

and

**CITY OF OCEANSIDE
WATER UTILITIES DEPARTMENT**

This Cogeneration Energy Power Purchase Agreement (this “Agreement”) is made and entered into as of this _____ day of _____, 2013 (the “Effective Date”), by and between **CHPCE La Salina, LLC** (“System Owner”) and **CITY OF OCEANSIDE** (“Host Customer”). Each of System Owner and Host Customer shall be referred to herein as a “Party” and collectively, as the “Parties”.

RECITALS

WHEREAS, Government Code section 4217 et seq. authorizes public agencies to develop energy conservation, cogeneration, and alternate energy supply at the facilities of public agencies; and

WHEREAS, on _____, 2013, the City Council of the Host Customer made those findings required by Section 4217.12 of the Government Code that: The anticipated cost to the Host Customer for electrical energy services provided by the cogeneration system under this Agreement will be less than the anticipated marginal cost to the Host Customer of electrical energy that would have been consumed by the Host Customer in the absence of those purchases; and

WHEREAS, Host Customer desires to reduce its energy costs as well as its dependence on fossil fuel electric generating resources and to promote the generation of electricity from cogeneration facilities; and

WHEREAS, the Host Customer desires to establish an energy source which would provide electricity to help power the Host Customer’s facility;

WHEREAS, System Owner has the rights to patented technology which would allow the cogeneration system to provide electricity to the Host Customer’s facility and

WHEREAS, System Owner desires to design, install, own or lease/leaseback, operate, and maintain the cogeneration system on the Premises, as hereinafter defined, and sell the output from the system to Host Customer at those rates set forth herein; and

WHEREAS, System Owner has developed an ownership and financing structure for cogeneration, which facilitates the use of certain renewable energy credits, tax incentives, and

accelerated depreciation to reduce the expected investment returns of its investors, and which benefits Host Customer by offering a competitive Cogeneration Rate; and

WHEREAS, System Owner desires to use the Premises, based on the terms of this Agreement, for the sole purpose of installing, operating, maintaining and repairing a cogeneration facility; and

WHEREAS, as part of this agreement the System Owner shall own all available financial incentives and tax benefits associated with the development of cogeneration systems, including the installation, ownership and operation of the cogeneration system and the sale of energy from the system to the Host Customer.

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and intending to be legally bound hereby, the Parties hereby covenant and agree as follows:

1. DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions. The following terms shall have the following meanings:

1.1.1 “Business Day.” Any day other than Saturday, Sunday or a legal holiday in the State of California.

1.1.2 “BES.” The Host Customer’s existing building electrical systems that are owned, operated, maintained and controlled by the Host Customer, including the interconnection of these systems with the local utility.

1.1.3 “Cogenerated Heat” shall mean all heat produced by the system that is provided to the Customer to produce hot water on a no-charge basis.

1.1.4 “Cogeneration Electricity Price” shall have the meaning set forth in Section 8.1(Purchase Price) hereof.

1.1.5 “Comparable Value.” The equipment value of the System determined by the Parties or independent appraisers with reference to cogeneration energy facilities located in geographical proximity to the System and comparable in age, size, condition, and actual average annual energy production.

1.1.6 “Contract Year.” The consecutive twelve (12) month period commencing on the Service Commencement Date.

1.1.7 “Default.” Any event or circumstance which, with notice or lapse of time or both, would constitute an Event of Default under Section 15 (Default) hereof.

1.1.8 “Digester Gas” shall mean methane produced by the facility’s anaerobic digester system.

1.1.9 “Dispute” shall have the meaning set forth in Section 22.1 (Disputes) hereof.

1.1.10 “Due Date” shall have the meaning set forth in Section 8.4 (Payments) hereof.

1.1.11 “Early Termination Payment.” An amount equal to the positive difference obtained (with calculation as of the date of termination) by subtracting (i) the Comparable Value,

from (ii) the sum of (A) the Fair Market Value of the System, (B) the present value resulting from the loss to System Owner of any and all tax benefits associated with any Environmental Financial Attributes or System depreciation, as determined by System Owner in a commercially reasonable manner, and (C) all reasonable costs and expenses incurred by System Owner for the removal of the System from the Premises.

1.1.8.12 “Effective Date” shall have the meaning set forth in the Preamble to this agreement.

1.1.13 “Electricity.” Electrical capacity and associated electrical energy.

1.1.14 “Emergency.” Any event or condition relating to or affecting the System which poses an imminent threat of injury to persons or damage to property, including any person or property at the Premises.

1.1.15 “Energy” shall mean all Cogenerated Heat and Electricity produced by the System.

1.1.16 “Energy Audit” shall have the meaning set forth in Section 22.7 (Energy Audit) hereof.

1.1.17 “Energy Deficiency Quantity” shall have the meaning set forth in Section 9.4.2.

1.1.18 “Energy Surplus Quantity” shall have the meaning set forth in Section 9.4.2.

1.1.19 “Environmental Financial Attributes.” Each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future, excluding, however, any Renewable Energy Credits: (i) performance-based incentives under the California Self-Generation Incentive Program, incentive tax credits or other tax benefits, and accelerated depreciation (collectively, “allowances”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of cogeneration or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such allowances.

1.1.20 “Event of Default.” A Default of this Agreement, as set forth in Section 15 (Default) hereof.

1.1.21 “Fair Market Value.” The value of the System determined by the Parties or independent appraisers with reference to (a) the Comparable Value, and (b) the discounted revenue forecast for the System based on the Cogeneration Price, reasonable Output forecast for a 25 year life expectancy of the System and a discount rate of seven percent (7%).

1.1.22 “Force Majeure Event” shall have the meaning set forth in Section 16.1 (Force Majeure) hereof.

1.1.23 “Host Customer” shall have the meaning set forth in the introductory paragraph hereto.

1.1.24 “Initial Term” shall have the meaning set forth in Section 2.1 (Service Term) hereof.

1.1.25 “Interim Term” shall have the meaning set forth in Section 2.2 (Interim Term) hereof.

1.1.26 “Late Fee” shall have the meaning set forth in Section 8.5 (Late Fees) hereof.

1.1.27 “Material Adverse Effect” means an event, change or occurrence with respect to one Party which, individually or together with any other event, change or occurrence, has a material adverse effect on the financial position, business, properties, assets or results of operations of the other Party.

1.1.28 “Minimum Digester Gas Amount” means 11,826,000 cubic feet annually.

1.1.29 “Meter” The standard instrument(s) and equipment used to measure and record the Output and delivered to the Host Customer at the Point of Delivery. The Meter will be considered part of the System.

1.1.30 “Notice Date” shall have the meaning set forth in Section 18.1 (Purchase Option).

1.1.31 “Output.” Electricity produced by the System delivered by System Owner to the Host Customer at the Point of Delivery

1.1.32 “Outside Commencement Date” shall have the meaning set forth in Section 2.3 (Service Commencement Date).

1.1.33 “Person” shall mean any natural person, partnership, trust, estate, association, corporation, limited liability company, Governmental Authority or any other individual or entity.

1.1.34 “Point of Delivery.” The physical location, as set forth on Exhibit B (System), attached hereto, where the System connects to the BES, at which point custody and control of Output is transferred from System Owner to Host Customer.

1.1.35 “PPT” or “Pacific Prevailing Time” shall mean Pacific Standard Time or Pacific Daylight Time, whichever is in effect on the relevant date.

1.1.36 “Premises.” Host Customer’s property, as described in Exhibit A (Premises), upon which System Owner will install the System.

1.1.37 “Proprietary Information” means information in any form, that is available to the System Owner and that is not generally available to the public, including, without limitation, software, processes, methods, formulas, techniques, know-how and other information concerning the System Owner’s business generally, or concerning the System and its installation and operation.

1.1.38 “Prudent Industry Practice.” The practices, methods and acts engaged in or approved by a significant portion of the congeneration energy industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition.

1.1.39 “Renewal Term.” Any additional term, which shall extend the Initial Term, to the extent agreed upon by the Parties in writing pursuant to Section 2.1 (Service Term) hereof.

1.1.40 “Service Term” shall have the meaning set forth in Section 2.1 (Service Term) hereof.

1.1.41 “Service Commencement Date” shall have the meaning set forth in Section 2.3 (Service Commencement Date) hereof.

1.1.42 “Site.” Those areas on the Premises where the System is to be located, as more fully described in Exhibit A (Premises).

1.1.438 “System.” All equipment, facilities and materials, including cogenerating engines, enclosures, wiring, Meters, mounting systems, and any other property now or hereafter installed, owned, operated, or controlled by System Owner for the purpose of, or incidental or useful to maintaining the use of the System and providing Output to Host Customer through and in conjunction with the BES. The System excludes any part of the BES as shown in Exhibit B (System), attached hereto, as such Exhibit B (System) may be modified from time to time during the Service Term.

1.1.44 “System Owner” shall have the meaning set forth in the introductory paragraph hereto.

1.1.45 “System Owner Permitted Transfer” shall have the meaning in Section 21.1 herein.

1.1.46 “Third Party Monitor.” A third party unaffiliated with either Party, selected in each case by System Owner that provides, installs, operates, maintains, and/or supervises the installation, operation, and/or maintenance of the Meter.

1.1.47 “Use” shall have the meaning set forth in Section 3 (Right to Access and Occupy the Premises).

1.1.48 “Utility Rate.” The applicable all-inclusive electric service rate charged to Host Customer by the electric utility (including municipal or cooperative utility, as applicable) serving Host Customer in the service territory in which Host Customer is located and any other energy service provider serving Host Customer, as applicable. This all-inclusive rate shall include all electric charges, transmission, distribution or other delivery charges, ancillary service charges, transition or competitive service charges, taxes, and other fees and charges in place

1.2 Interpretation. In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular, words importing any gender include the other gender, any reference to a time of day shall mean the local time; references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; references to “writing” include printing, typing, lithography, facsimile reproduction and other means of reproducing words in a tangible visible form; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation” or “but not limited to” or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to those of this Agreement unless otherwise

indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits and appendices attached thereto and all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement; and references to Persons include their respective successors and permitted assigns.

2. TERM

2.1 Service Term. The term of this Agreement (the “Initial Term”) shall commence on the Effective Date and shall terminate fifteen (15) years following the Service Commencement Date (subject to the additional timeframes in certain Force Majeure Events described in Section 16.2 (Result of Force Majeure), as applicable), unless terminated earlier in accordance with the terms and conditions in this Agreement. Commencing on the date which is six (6) months prior to the end of the Initial Term or any Renewal Term, the Parties may meet and negotiate the terms and conditions on which this Agreement may be extended for one or more succeeding Renewal Terms, upon the written request of the other Party to so meet and negotiate. The Parties shall memorialize any renewals in writing specifying the term of the renewal period and any changes to the underlying Agreement. The Initial Term and any succeeding Renewal Terms combined shall be referred to herein as the “Service Term”.

2.2 Interim Term. The period commencing on the Effective Date and continuing through and until the Service Commencement Date shall be referred to herein as the “Interim Term”.

2.3 Service Commencement Date. System Owner shall provide no less than three (3) Business Days written notice prior to the Service Commencement Date to Host Customer that the System is ready for operation in accordance with Prudent Industry Practice and that service under this Agreement will begin on the date certain indicated in the notice (the “Service Commencement Date”). The Service Commencement Date shall be no later than the “Outside Commencement Date,” which is defined as the earlier of (i) eighteen (18) months from the date that all applicable environmental approvals have been obtained from the regulatory agencies as specified further in Section 10 herein or (ii) two (2) years from the Effective Date. Failure to meet the above deadlines for the Service Commencement Date shall constitute an Event of Default for which the Host Customer may terminate the Agreement, except to the extent that such failure is caused by Force Majeure events.

3. RIGHT TO ACCESS AND OCCUPY THE PREMISES

3.1 Host Customer and System Owner agree that the System Owner has the right to use the Premises for the installation, operation, maintenance, repair and removal of the System on the Premises during the term of this Agreement, in consideration of this Agreement and the parties’ respective rights and obligations hereunder. Host Customer shall be solely responsible for ensuring the System Owner has legal and physical access to the Premises adequate for the purposes described above.

4. CONSTRUCTION AND INSTALLATION OF SYSTEM

4.1 Construction of System. During the Interim Term, System Owner shall install, construct, service and test the System, pursuant to the terms and conditions set forth in Exhibit B (System), attached hereto. The System Owner must submit design plans and specifications to the

City of Oceanside Building Department for plan check and final approval. The Host Customer shall have the right to inspect all construction for the purpose of confirming that the System Owner is adhering to the approved plans and specifications.

4.2 [RESERVED]

4.3 Site Preparation. The System Owner is responsible for any grubbing, clearing and grading of project site; including obtaining the City of Oceanside Grading Permit

4.4 Aesthetic Considerations. In order to ensure that the aesthetic qualities of the Premises are not unreasonably disrupted by the construction and operation of the System, System Owner shall endeavor to utilize materials and colors for the System that are not overly discordant with the surrounding existing setting.

4.5 Contractors. System Owner may hire independent contractors to design, build, and install the System. Such independent contractors may use subcontractors for any part or all of the services contracted by System Owner. All construction of the System, including but not limited to, any site preparation, landscaping or utility installation, shall be performed only by System Owner or by competent and financially responsible independent general contractors, with demonstrated competence and experience in the construction of the various improvements and components contemplated by the System, and duly licensed as such under the laws of the State of California, and shall be performed pursuant to written contracts with such contractors. For all such improvement work to be performed on the Premises by an independent general contractor, prior to the commencement of construction, System Owner shall furnish the Host Customer with a copy of System Owner's contract with each general contractor with commercial terms and other confidential terms redacted.

4.6 Compliance with Laws. The System shall conform with all applicable governmental rules, regulations and orders, including, without limitation, obtaining all permits including Conditional Use Permit and City Building Permit or approvals required by any governmental entity. Host Customer shall bear no liability for System Owner's failure to obtain any such permit or approval. Prior to commencement of construction, System Owner shall procure at its expense, all necessary building, fire safety, conditional use and other permits. Notwithstanding the foregoing, Host Customer shall have the obligation of curing any preexisting violation of law at Host Customer's sole expense with respect to the Premises that prevents System Owner from obtaining any necessary permit or approval. Host Customer will cooperate with System Owner in obtaining such permits; provided, however, that this covenant to cooperate shall not be deemed or construed as a waiver of any right or obligation of the Host Customer acting in its governmental capacity.

4.7 Completion of Work. The System shall be deemed to have been completed upon (i) execution and delivery to the Host Customer of a written notice from System Owner certifying completion thereof and further certifying that all costs and expenses thereof have been paid and that there are no unpaid costs or expenses of any nature related thereto; and (ii) independent verification by the Host Customer or its authorized representative to be completed within fifteen (15) calendar days of receipt of such notice and copies of such permits from the System Owner; and (iii) the interconnection to the grid and all review and approvals have been provided by the applicable utility and the State of California.

4.8 LIQUIDATED DAMAGES. Failure of the System Owner to complete the System by the Outside Commencement Date, as may be extended by written agreement of the Parties, will result in damages being sustained by the Host Customer. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each consecutive calendar day beyond the Outside Commencement Date, as may be extended by written agreement of the Parties, for which the System is not completed, the System Owner shall pay to the Host Customer the difference between the proposed kilowatt rate and the City's actual kilowatt rate at the time per kilowatts used per calendar day of delay as set forth above, not to exceed 90 days of delay.

Execution of this Agreement shall constitute agreement by the Host Customer and System Owner that the difference between the Cogeneration Electricity Price and the City's actual kilowatt rate at the time per kilowatts used per calendar day of delay as set forth and capped above is the reasonable estimate of the value of the costs and actual damage caused by failure of the System Owner to complete the System by the Outside Commencement Date, as may be extended by written agreement of the Parties, that such sum is liquidated damages and shall not be construed as a penalty.

4.9 Ownership of System. Ownership of (i) the System and all structures, buildings, fixtures or System constructed by System Owner upon the Premises, and (ii) all alterations, additions or betterments thereto shall vest in System Owner for all purposes, including depreciation for federal and state tax purposes. Host Customer and System Owner agree that the System shall at all times be personal property severable from the Premises and shall not become a fixture. The Host Customer shall not acquire, pursuant to this Agreement, any interest in any Proprietary Information, or in any software, patent, trademark or copyrights in which the System Owner has rights or that is used by the System owner in connection with the System. Without limiting the foregoing, the Host Customer specifically agrees that it shall not disclose, and shall take all reasonable precautions to prevent the disclosure to third parties of, any Proprietary Information with respect to the System of which it acquires knowledge. In the event Host Customer acquires ownership of the System as provided for herein, Host Customer shall not obtain title to the Proprietary Information, but shall be granted a license to use such Proprietary Information to the extent necessary to operate the System.

4.10 Time for Completion of System. System Owner must complete the construction of the System so that the System is permitted and licensed pursuant to applicable laws and regulations and may be utilized for the purpose stated herein by the Outside Commencement Date, as may be extended by written agreement of the Parties.

4.11 Credit Support.

4.11.1 Prior to the commencement of construction of the System, System Owner shall provide, or cause its subcontractor to provide, to Host Customer a construction bond, letter of credit or other form of credit support reasonably acceptable to Host Customer in an amount to be agreed upon by the Parties, in order to secure System Owner's obligations during construction of the System. Upon completion of the construction and after acceptable start up of the System, Host Customer shall promptly return all credit support provided by System Owner or its subcontractor pursuant to this Section 4.11.1. If the completion bond is provided as a letter of credit, such letter of credit shall be substantially similar to the form of letter of credit attached hereto as Exhibit C.

4.11.2 Within seven (7) calendar days of the release of that security provided under Section 4.11.1 above, and prior to the commencement of the Service Term, in order to secure

System Owner's obligation to remove the System from the Premises upon the termination of the Service Term, System Owner shall provide to Host Customer an annuity from an insurance company with an A-rating or better with a current value equal to at least \$100,00.00, with interest generated from said amount to be reinvested into the annuity to ensure sufficient funds for removing the System at the end of the Service Term. Such annuity shall be irrevocable except upon the verification by the Host Customer that System Owner has met its obligations hereunder and draws upon the annuity shall be limited to the Host Customer until removal of the System. Such credit support shall not be available for any purpose other than the costs of the removal of the System from the Premises upon the termination of the Service Term. To the extent that System Owner does not remove the System pursuant to Section 18.2, Host Customer shall have the right to use the funds from the annuity for such removal. To the extent that there are unused funds available from the annuity after such removal (taking into account any proceeds received for the resale or salvage of the System), such funds shall be promptly returned to System Owner.

4.12 Location of System. Host Customer and System Owner agree that the System shall be situated on Host Customer's Premises at the location specified in Exhibit B (System), attached hereto.

5. INSURANCE

5.1 System Owner shall procure and maintain insurance as specified herein and as may otherwise be required under the California Self-Generation Incentive Program Contract ("SGIP Contract") with the California Center for Sustainable Energy for Reservation No. SD-SGIP-2012-0486, which insurance terms and conditions are hereby incorporated by reference. If the insurance standards of the SGIP Contract and this Agreement conflict, System Owner shall comply with the more expansive, higher standards

5.2 Builder's Risk Coverage. Prior to commencing construction and throughout the construction period, System Owner shall obtain and maintain, or shall cause each general contractor to procure and maintain, insurance coverage for "builder's risk," and worker's compensation insurance required by law covering all risks of direct physical loss, damage or destruction to real and personal property in connection with any work performed on the Premises. Such insurance shall include coverage for exposure, collapse, underground excavation and removal of lateral support.

5.3 General Liability Coverage. From the Effective Date until termination or expiration of the Service Term, System Owner agrees to maintain or cause to be maintained General Liability insurance against claims for bodily injury, loss of life or property damage occurring on the Premises (including within the buildings thereon); and on the portion of the street and the sidewalks adjacent thereto with bodily injury, loss of life and property damage coverage in a combined single limit of not less than One Million Dollar's (\$1,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence. Such insurance may be in the form of blanket liability coverage applicable to the Premises and to other property owned or occupied by System Owner, as applicable. The System Owner shall name Host Customer under the applicable policy as Additional Insured.

5.4 Automobile Coverage. System Owner or its contractors, as applicable, shall carry a business automobile policy with a combined single limit of not less than One Million Dollars (\$1,000,000). Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any

auto). The automobile liability program may utilize deductibles, but not a self insured retention, subject to written approval by the Host Customer.

5.5 Workers Compensation Coverage. System Owner or its contractors, as applicable, shall carry Workers' Compensation insurance during the full term or duration of the Agreement, to insure statutory liability for injury to his/her employees in the State of California. The policy should have limits as follows: Bodily injury by accident, \$1,000,000 each accident and each employee a \$1,000,000 policy limit.

5.6 Property Insurance. System Owner shall maintain property insurance in an amount not less than the replacement value of the System, including labor costs.

5.7 All Policies. Such insurance, excluding Worker's Compensation coverage, shall include an insurer's Waiver of Subrogation in favor of the Host Customer (excluding, however, the other Party's gross negligence or intentional misconduct) and will be in a form and with insurance companies reasonably acceptable to the Host Customer. If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by the other Party. Before beginning any improvements under this Agreement, System Owner shall furnish to Host Customer proof that System Owner has, or, as applicable, its contractors have, taken out for the period covered by the work under this Agreement, full compensation insurance for all persons employed directly by him/her or through contractors in carrying out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof.

5.8 Evidence Required. Insurance certificates and applicable endorsements for all coverage required by the Agreement shall be provided by System Owner to Host Customer within twenty (20) Business Days after the Effective Date and from time to time during the term hereof as may be reasonably requested in writing by the other Party. All of said insurance policies provided by System Owner shall be issued by companies licensed to do business in California and having not less than a general policyholder's rating of "A-; VII" as set forth in the most recent issue of A.M. Best's Key Rating Guide except for the State Fund Workers' Compensation Insurance. All insurance policies shall contain a provision that such policies shall not be canceled or terminated without thirty (30) days prior notice from the insurance company to the other Party

5.9 Indemnification. To the greatest extent permitted by applicable law, System Owner agrees to indemnify, defend, and hold harmless Host Customer, its affiliates, subsidiaries, officers, managers, directors, agents, and employees from all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise), which arise from or are in any way connected with any: (1) injury to or death of persons, including but not limited to employees of the Host Customer, System Owner, or any third party; (2) injury to property or other interests of the Administrator, Host Customer, System Owner, or any third party; (3) violation of local, state, or federal common law, statute, or regulation, including but not limited to environmental laws or regulations; or (4) strict liability imposed by any law or regulation arising due to System Owner's construction, maintenance and operation of the System, except for those claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from Host Customer's sole negligence or willful misconduct. System Owner acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any hazardous material or waste by System Operator or its contractors or subcontractors as a result of the construction or operation of the

system under this Agreement are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from strict liability, or violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs incurred as a result of such releases or spills are expressly within the scope of this indemnity. System Owner, on Host Customer request, will defend any action, claim or suit asserting a claim which might be covered by this indemnity. System Owner shall pay all costs and expenses that may be incurred by Host Customer in enforcing this indemnity, including reasonable attorney's fees. This indemnity shall survive the termination of this Agreement for any reason.

5.10 Limitation of Liability. Host Customer shall not be liable to the System Owner or to any of its respective contractors or subcontractors for any special, incidental, indirect or consequential damages whatsoever, including, without limitation, loss of profits or commitments, whether in contract, warranty, indemnity, tort (including negligence), strict liability or otherwise.

6. CONNECTION AND POINT OF DELIVERY

6.1 Point of Delivery. The Point of Delivery is the point identified in Exhibit B (System), attached hereto, which is the point of connection of the System to the BES. Title to the Output shall pass from System Owner to Host Customer at the Point of Delivery.

6.2 Connection. System Owner shall provide all necessary wiring requirements from the System to the Point of Delivery. System Owner is responsible for the interconnection of the System to the BES within the Premises and is solely responsible for all equipment, maintenance and repairs associated with such interconnection equipment in accordance with the terms and conditions of this Agreement

7. PROVISION OF DIGESTER GAS; *Provision of Digester Gas; Supplemental Natural Gas*

7.1 Sale and Delivery of Output. System Owner shall deliver the Output to the Point of Delivery, and Host Customer shall accept delivery of the Output at the Point of Delivery, beginning on the Service Commencement Date until the end of the Service Term.

7.2 System to Reduce Other Electric Purchases. The Parties intend that the Output will reduce Host Customer's purchase of Electricity from other sources, including the Host Customer's local utility. Host Customer agrees to meet its Electricity needs first, by the Output from the System, and second, by purchasing Electricity and other electric products from other sources. The System is not intended to eliminate entirely Host Customer's Electricity needs from other sources, and therefore, Host Customer shall have a contractual arrangement in place at all times during the Service Term with its local electric utility or with another provider of retail electricity which is responsible for meeting all of Host Customer's electric requirements needs, regardless of the Output from the System.

7.3 Sale Only to Host Customer. In no event shall System Owner sell directly, or be deemed to have sold directly, Output to any Person other than Host Customer. In the event that Host Customer's load is less than the total Output being delivered by System Owner to the Point of Delivery at any given time, the Parties acknowledge and agree that such Output shall have been delivered to Host Customer at the Point of Delivery in accordance with Sections 6.1 and 7.1 and

shall flow through the BES to the interconnection point between the BES and the local utility. The Parties further acknowledge and agree that in such instance, the treatment of such Output shall be determined by arrangements between Host Customer and its local utility (which arrangements are typically referred to as “Net Metering”), which shall have no impact whatsoever upon the terms and conditions of this Agreement.

7.4 Interim Term Energy. Host Customer shall accept delivery of Output, including in form of test energy, during the Interim Term. There shall be no charge imposed upon Host Customer for System Owner’s provision of this Output during the Interim Term.

7.5 Taxes. System Owner is responsible for local, state and federal income taxes attributable to System Owner for income received under this Agreement. System Owner agrees to bear and pay when due any sales or gross receipts tax, to the extent applicable, imposed upon a seller of Electricity, to the extent that the Utility Rate also includes a similar sales or gross receipts tax that is at least as high, on a kWh basis, as the sales or gross receipts tax attributable to System Owner. If such a sales or gross receipts tax is attributable to the sale of Output from System Owner to Host Customer, but not otherwise included or includable in the Utility Rate, then System Owner agrees to bear the costs of such sales or gross receipts taxes.

7.6 Revenue and Tax Code Notice. This Agreement may result in the creation of a possessory interest. (Rev. & Tax. Code § 107.6) If such a possessory interest is vested in System Owner, System Owner may be subjected to the payment of personal property taxes levied on such interest. System Owner shall be responsible for the payment of, and shall pay before becoming delinquent, all taxes, assessments, fees, or other charges assessed or levied upon System Owner. System Owner further agrees to prevent such taxes, assessments, fees, or other charges from giving rise to any lien against the Premises or any improvement located on or within the Premises. Nothing herein contained shall be deemed to prevent or prohibit System Owner from contesting the validity or amount of any such tax, assessment, or fee in the manner authorized by law. System Owner shall be responsible for payment of any real or personal property taxes, possessory interest taxes, permit fees, business license fees and any and all fees and charges of any nature levied against the Premises and the operations of System Owner at any time. If bills for taxes on the Premises, and the System thereon are received by the Host Customer, Host Customer shall immediately remit such bills to System Owner. Any fee or charge resulting from any possessory interest created hereby and/or the use and operation of the System on the Premises shall be the responsibility of the System Owner. In the event of any sale of the Premises, System Owner shall not be responsible for any taxes levied as a result of such sale.

7.7 Provision of Digester Gas; Supplemental Natural Gas

(a) The Host Customer shall make available all Digester Gas produced. The quality of the Digester Gas shall be in accordance with the Technical Specifications set forth in Exhibit F, attached hereto and incorporated herein (the “Technical Specifications”).

(b) The Host Customer shall accept gas treatment condensate for treatment. The System Owner shall be responsible for conveying the condensate to the point listed in the Technical Specifications.

(c) The amount of Digester Gas suitable for the production of Energy provided by the Host Customer to the System Owner shall be metered by industry-standard equipment and methods reasonably agreed to by Host Customer and System Owner. The System shall provide

for connection to a natural gas line for supplemental natural gas supply. System Owner shall be responsible for all costs of connection of said natural gas line with the System and any additional costs to make the System operable burning natural gas. In the event in any 24 hour calendar day period, the amount of Digester Gas suitable for the production of Energy provided by Host Customer to System Owner shall be less than the Minimum Digester Gas Amount, then System Owner shall have the right to make up any shortage below the Minimum Digester Gas Amount with natural gas and Customer shall pay the System Owner for the cost of supplemental natural gas needed to bring the total of Digester Gas and natural gas during said calendar day period to the Minimum Digester Gas Amount in the aggregate.

(d) The Host Customer shall be responsible for and pay for all permits and all standby or other costs due to the natural gas utility, if any, to ensure that System Owner has the right and ability to obtain supplemental natural gas as provided in this Section 7.7.

8. PURCHASE PRICE, PAYMENT AND BILLING

8.1 Purchase Price. System Owner will charge Host Customer the “Cogeneration Electricity Price” for each kilowatt hour (kWh) delivered to Host Customer at the Point of Delivery during the Service Term in accordance with the pricing provisions set forth in Exhibit D (Cogeneration Electricity Price), attached hereto.

8.2 Monthly Payment. Host Customer shall pay System Owner a monthly payment as set forth in the monthly invoice by System Owner, based on the Cogeneration Electricity Price provided in Exhibit D (Cogeneration Electricity Price).

8.3 Invoices. Each month, System Owner shall prepare and provide Host Customer an invoice. Delays in the issuance of any such invoice shall not constitute any waiver of Host Customer’s obligation to pay, or System Owner’s right to collect, any payment by System Owner under any such invoice. Each invoice shall set forth in reasonable detail the calculation of all amounts owed as part of the Cogeneration Electricity Price.

8.4 Payments. Subject to its contest rights set forth in Section 8.6 (Contest Rights), Host Customer shall pay the full amount of each invoice on or before the fifteenth (15th) calendar day following receipt thereof (“Due Date”). In response to a properly submitted, accurate, undisputed invoice, the Host Customer shall, at Host Customer’s option, (a) cause a check to be drawn in the undisputed amount due made payable to the System Owner, or (b) pay such amount via wire transfer to System Owner’s bank account. Unless otherwise directed in the monthly invoice, all payments must be made payable to:

CHPCE La Salina, LLC
One Liberty Square, 11th Floor
Boston, MA 02109
Attention: Accounting Department

8.5 Late Fees. If any part of a Monthly Payment is not made by Host Customer within thirty (30) calendar days following the Due Date, Host Customer agrees to pay System Owner a late fee of twelve (12) percent per annum of each such late payment (“Late Fee”), to the extent

such Late Fee is permitted by law. Host Customer agrees to pay System Owner any Late Fees not later than one (1) month following the original Due Date. The calculation of Late Fees that remain unpaid as set forth in this Section 8.5 (Late Fees) shall not constitute any waiver of Host Customer's obligation to pay such amounts when due, or System Owner's right to collect, any payment by Host Customer under any such invoice, as well as System Owner's right to exercise its rights with respect to Host Customer's Default.

8.6 Contest Rights. Host Customer shall notify System Owner in writing within ten (10) calendar days of receipt of the monthly invoice of any portion of the invoiced amount which it has a reasonable basis to dispute in accordance with Section 22.1 (Disputes) , provided, however, that such contest by Host Customer shall not affect its obligation to pay the uncontested portion of such. The Parties shall work together reasonably to resolve any dispute regarding the amount owed. In the event resolution of the dispute determines that System Owner overcharged Host Customer, System Owner shall credit Host Customer the amount of any overpayment against the next owed amounts.

9. METERING

9.1 Metering Equipment. The Parties acknowledge and agree that System Owner shall provide, install, own, operate and maintain the Meter, and System Owner shall exercise reasonable care in the installation, operation, and maintenance of the Meter so as to assure to the maximum extent reasonably practical an accurate determination of such quantities.

9.2 Measurements. Readings of the Meter shall be conclusive as to the amount of Output; provided that if the Meter is out of service, is discovered to be inaccurate pursuant to Section 9.3, or registers inaccurately, measurement of Output shall be determined in the following sequence: (a) by estimating by reference to quantities measured during periods of similar conditions when Meter was registering accurately; or (b) if no reliable information exists as to the period of time during which such Meter was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy for the purposes of the correction under Section 9.3 was equal to (i) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (ii) if the period of inaccuracy cannot be determined, one half of the period from the date of the last previous test of such Meter through the date of the adjustments; provided, however, that, in the case of clause (ii), the period covered by the correction under Section 9.3 shall not exceed six months.

9.3 Meter Reading. System Owner shall read the Meter at the end of each calendar month, and shall record the Output delivered to Host Customer. The Meter shall be used as the basis for calculating the Cogeneration Electricity Price under this Agreement. The records from each Meter shall be made available to Host Customer upon a monthly basis by the fifteenth (15th) calendar day of the next month so that Host Customer may reconcile its monthly invoice with the meter read.

9.4 Testing and Correction.

9.4.1 System Owner shall provide calibration testing of the Meter prior to its installation and at least annually thereafter to ensure the accuracy of such Meter. Host Customer may request that System Owner perform more frequent testing; provided that any such testing in excess of the minimum once-per-year tests shall be at Host Customer's expense. Each Party and its consultants and representatives shall have the right to witness each test conducted to verify the accuracy of

the measurements and recordings of the Meter. System Owner shall provide at least ten (10) Business Days' prior written notice to Host Customer of the date upon which any such test is to occur. System Owner shall prepare a written report setting forth the results of each such test, and shall provide Host Customer with copies of such written report not later than twenty (20) Business Days after completion of such test. System Owner shall bear the cost of the annual testing of the Meter and the preparation of the Meter test reports.

9.4.2 The following steps shall be taken to resolve any disputes regarding the accuracy of the Meter:

(a) If either Party disputes the accuracy or condition of the Meter, such Party shall so advise the other Party in writing.

(b) System Owner shall, within fifteen (15) Business Days after receiving such notice from Host Customer or issuing such notice to Host Customer, advise Host Customer in writing as to System Owner's position concerning the accuracy of such Meter and System Owner's reasons for taking such position.

(c) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause an independent testing agency to test the Meter.

(i) If the Meter is found to be inaccurate by not more than 2%, any previous recordings of the Meter shall be deemed accurate, and the Party disputing the accuracy or condition of the Meter under Section 9.4.2 shall bear the cost of inspection and testing of the Meter.

(ii) If the Meter is found to be inaccurate by more than 2% or if such Meter is for any reason out of service or fails to register, then (a) System Owner shall promptly cause any Meter found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, and (b) the Parties shall estimate the correct amounts of Energy delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 9.2. If as a result of such adjustment the quantity of Output for any period is decreased (such quantity, the "Energy Deficiency Quantity"), System Owner shall reimburse Host Customer for the amount paid by Host Customer in consideration for the Energy Deficiency Quantity, and shall bear the cost of inspection and testing of the Meter. If as a result of such adjustment the quantity of Output for any period is increased (such quantity, the "Energy Surplus Quantity"), Host Customer shall pay for the Energy Surplus Quantity at the Energy Payment Rate applicable during the applicable Contract Year, and shall bear the cost of inspection and testing of the Meter.

10. ENVIRONMENTAL COMPLIANCE

System Owner shall comply with any and all applicable environmental laws, including but not limited to, the California Environmental Quality Act, and shall retain the services of qualified consultants to provide all required research and documentation required for such compliance with respect to its construction, operation and maintenance of the System. To this end, System Owner shall be solely responsible for the costs of the initial study required for environmental compliance. The initial study will be performed under the direction and control of System Owner, subject to the requirements of this Section. System Owner, following the completion of such initial study, may terminate this Agreement by written notice to Host Customer should environmental compliance measures or unforeseen site conditions render the Project economically

disadvantageous for System Owner or the time required to implement any environmental compliance measures or remediation exceed System Owner's reasonable expectations. If System Owner does not obtain all required environmental approvals in form and substance acceptable to System Owner by December 1, 2013, System Owner may terminate this Agreement by written notice to Host Customer. Nothing set forth herein shall be interpreted to require either Party to undertake environmental remediation at the Premises if mandated by law, regulation or as a condition of regulatory approval prior to the construction of the System. The governing board of the Host Customer shall be the lead agency for the purposes of filing any and all required documents and obtaining the relevant approvals. System Owner shall not be required to undertake any environmental remediation measures in connection with this Agreement. Host Customer shall bear its own costs incurred as the lead agency and for review of environmental compliance.

11. ENVIRONMENTAL FINANCIAL ATTRIBUTES AND RENEWABLE ENERGY CREDITS

11.1 Title to Environmental Financial Attributes. All Environmental Financial Attributes relating to the System or the Output will be and remain property of System Owner. System Owner shall have all right, title, and interest in and to any and all Environmental Financial Attributes that relate to the Output during the Term, and Host Customer shall have no right, title or interest in or to any such Environmental Financial Attributes.

11.2 Title to Renewable Energy Credits. All Renewable Energy Credits relating to the System or the Output will be and remain property of System Owner.

11.3 Reporting of Ownership. Host Customer shall not report to any Person that any Environmental Financial Attributes relating to the Output belong to any Person other than System Owner. System Owner shall not report to any Person that any Renewable Energy Credits relating to the Output belong to any Person other than Host Customer.

11.4 Further Assurances. At each respective Party's request and expense, the other Party shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence such Party's right, title and interest in and to the Environmental Financial Attributes, as the case may be, relating to the System or the Output. If the standards used to qualify the Environmental Financial Attributes or Renewable Energy Credits to which such Party is entitled under this Agreement are changed or modified, the other Party shall at the first Party's request and expense use all reasonable efforts to cause the Environmental Financial Attributes or Renewable Energy Credits to comply with new standards as changed or modified.

12. CONDITIONS PRECEDENT TO SYSTEM OWNER'S OBLIGATIONS

12.1 Conditions to System Owner's Obligations. Subject to the terms and conditions of this Agreement, each of the following conditions precedent is required prior to System Owner's obligations to: (a) commence construction and installation of the System; and (b) commence the delivery of Output to Host Customer

12.1.1 Necessary Governmental Approvals. System Owner shall have received and retained where necessary, all applicable and material federal, state and local approvals, permits, licenses and authorizations necessary: (a) for the construction and installation of the System, prior to the commencement of construction and installation of the system; and (b) for the generation and sale of Output to the Host Customer under this Agreement, prior to the commencement of

delivery of Output to Host Customer.

12.1.2 Additional Consents and Approvals. System Owner shall have obtained from all parties any necessary easements, leases/leasebacks, licenses, consents and approvals and other rights System Owner deems necessary or desirable for the construction and installation of the System, the production and delivery of Output to the Point of Delivery, and the operation and maintenance of the System under this Agreement.

12.1.3 Ownership of Approvals. All such permits and approvals in this Section 12 (Conditions Precedent to System Owner's Obligations) shall be owned and controlled by System Owner. To the extent that any such permits or approvals must be obtained and/or owned by Host Customer, then Host Customer agrees that it will grant all material decision-making rights with respect to such permits and approvals to System Owner.

12.1.4 Diligence. System Owner shall have had the opportunity to complete proper due diligence relating to Host Customer, including but not limited to legal, accounting, environmental and technical reviews. Such diligence shall also include visits by System Owner to Host Customer's Premises, meetings between System Owner's management and Host Customer's management, and other measures deemed necessary by System Owner.

12.1.5 No Material Changes. System Owner determines that Host Customer's electricity requirements have remained consistent since the Effective Date of this Agreement, and Host Customer shall not have experienced any other material changes, including changes in its load profile.

12.1.6 Host Customer's Credit. As a public agency, Host Customer's audited financial statements are public documents available for inspection and shall be made available to System Owner upon request, if available. Prior to commencement of construction of the System, System Owner shall provide notice to Host Customer that each of the conditions precedent in this Section 12.1 has been satisfied or waived.

13. REPRESENTATIONS

13.1 Host Customer Representations. Host Customer hereby represents to System Owner that:

13.1.1 Due Authorization. Host Customer is duly authorized and empowered to enter into this Agreement and Host Customer shall deliver to System Owner certified copies of all ordinances, resolutions and other documents evidencing such authorization and empowerment to enter into this Agreement;

13.1.2 No Conflict. This Agreement is enforceable according to its terms and does not conflict with or violate the terms of any other material agreements to which Host Customer is a party, including, if applicable, any Host Customer licenses with respect to the Premises;

13.1.3 Host Customer Data. Host Customer has furnished, or caused others to furnish, to System Owner accurate and complete data concerning energy usage for and other information pertaining to the Premises, including but not limited to the following:

- (a) Utility and any other energy service provider records for the 12 month period

preceding the Effective Date;

(b) Any energy or environmental audits relating to all or any part of the Premises;

(c) Any service or maintenance agreement(s) regarding the BES, or any part thereof; and

(d) Construction drawings (“as-builts”) in existence as of the effective Date;

13.1.4 Accuracy of Information. The information provided pursuant to this Agreement as of the Effective Date is true and accurate in all material respects;

13.1.5 Ability to Perform. Host Customer has no knowledge of any facts or circumstances that, but for the passage of time, would materially, adversely affect either Party’s ability to perform its respective obligations hereunder and, if Host Customer is a Governmental Authority or instrumentality thereof, as set forth in the Recitals to this Agreement, the Host Customer has complied with all laws and regulations relative to procurement of the Output; and

13.1.6 Ownership and Control over Premises. Host Customer owns title to and controls the Premises and the real estate upon which the Premises are located, and no other parties hold a security interest in or lien or mortgage on said Premises or real estate.

13.1.7 Hazardous Materials or Contamination. Host Customer, after due diligence, has no knowledge of any hazardous materials or environmental contamination on the Site or the designated construction lay down areas.

13.2 System Owner Representations. System Owner hereby represents to Host Customer that:

13.2.1 Due Authorization. System Owner is duly authorized and empowered to enter into this Agreement;

13.2.2 No Conflict. This Agreement is enforceable according to its terms and does not conflict with or violate the terms of any other material agreements to which it is a party;

13.2.3 Accuracy of Information. The information provided pursuant to this Agreement as of the Effective Date is true and accurate in all material respects; and

13.2.4 Ability to Perform. System Owner has no knowledge of any facts or circumstances that, but for the passage of time, would materially adversely affect either Party’s ability to perform its respective obligations hereunder.

14. OBLIGATIONS OF THE PARTIES

14.1 Maintenance of System. System Owner shall maintain the System in good working order, ordinary wear and tear excepted, and shall ensure that the System performs consistent with the specifications set forth in Exhibit B (System), attached hereto. System Owner shall be the primary contractor to operate and maintain the System, and Host Customer agrees that System

readjustment, liquidation, dissolution, or other relief of the same or different kind under any provisions of the bankruptcy laws that is not dismissed within sixty (60) days of the initial filing, (ii) makes an assignment for the benefit of creditors, (iii) has a receiver appointed with respect to the business property or assets of such Party on the Premises, or (iv) otherwise is unable to pay its debts as they become due; and

(e) Either Party misrepresents a material fact as of the Effective Date or any representation and warranty made by a Party pursuant to Section 13 is not true and accurate at the time such representation and warranty is made

15.2 Right to Cure. Either Party shall, after notice, promptly and diligently commence curing a Default and shall have the period of time for cure set forth above, or with respect to matters arising under Section 15.1(c), thirty (30) days after notice is given to complete the cure of said Default; provided, however, that if the nature of the defaulting Party's failure is such that more than thirty (30) days are reasonably required for its cure, then such Party shall not be in Default if the defaulting Party begins such cure within the thirty (30) day period described in the preceding sentence, provides notice to the non-defaulting Party of the extended time required for performance, within such thirty (30) day period, and, thereafter, diligently prosecutes such cure to completion.

15.3 Notice of Default. A Party shall not be considered to be in Default under this Agreement unless (i) the non-defaulting Party has given written notice specifying the Default; and (ii) the defaulting Party has failed to cure the Default in accordance with provisions of Section 15.2 (Right to Cure).

15.4 Remedies. If an Event of Default occurs and the defaulting Party has failed to cure as set forth herein, the non-defaulting Party shall have the right to terminate this Agreement by giving written notice to the defaulting Party on a date specified in such notice. Upon the giving of such notice, the terms of this Agreement shall expire and terminate on such date of termination as fully and completely and with the same effect as if such date were the date herein fixed for the expiration of the term of this Agreement, and all rights of the defaulting Party hereunder shall expire and terminate, but the defaulting Party shall remain liable as provided herein. No expiration or termination of this Agreement, by operation of law or otherwise, and no re-entry or repossession of the Premises shall relieve System Owner or Host Customer, as the case may be, of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, re-entry or repossession.

15.5 Remedies Cumulative. The exercise by either Party of any right or remedy in connection with this Agreement shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided hereunder or now or hereafter existing at law or in equity or by statute or otherwise.

15.6 No Waiver. The non-defaulting Party's failure to enforce any provision of this Agreement with respect to an Event of Default hereunder shall not constitute a waiver of the non-defaulting Party's right to enforce such provision or any other provision with respect to any future Event of Default. The waiver of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition or of any subsequent failure to meet such term or condition.

16. FORCE MAJEURE

16.1 Force Majeure. Neither System Owner nor Host Customer shall be considered to be in default in the performance of its obligations under this Agreement (excluding Host Customer's obligations to make payment, which obligations shall not be excused except to the extent that System Owner fails to deliver Electricity to the Point of Delivery), to the extent that performance of any such obligation, including the Service Commencement Date, is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of, and not the result of the fault or negligence of, the affected Party or its affiliates (a "Force Majeure Event"), including, but not limited to by way of example, strikes or other labor disputes (other than strikes or labor disputes solely by employees of the Parties to this Agreement as a result of such Party's failure to comply with a collective bargaining agreement), supply shortages, adverse weather conditions and other acts of nature, subsurface conditions, riot or civil unrest. If Host Customer is the Party claiming a Force Majeure Event, a Force Majeure Event shall not include any action taken or not taken by Host Customer in its governmental capacity. If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by a Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable.

16.2 Result of Force Majeure. If System Owner is unable to deliver Output due to a Force Majeure Event, Host Customer shall not be obligated to make payment for such period. The Service Term of this Agreement will be extended for an equal number of days in which Host Customer payment was not required due to a Force Majeure Event affecting System Owner as described in this Section 16 (Force Majeure) but in no event to exceed ninety (90) days. Either Party shall be entitled to terminate this Agreement upon thirty (30) days' prior written notice to the other Party if any Force Majeure Event affecting the other Party has been in existence for a period of ninety (90) days or longer, unless such Force Majeure Event ceases prior to the expiration of such thirty (30) day notice period.

17. TERMINATION AND PARTIES' RIGHTS

17.1 Termination for Environmental Approvals. The Parties understand and agree that as a material condition of this Agreement, the Environmental Compliance set forth in Section 10 herein must be completed prior to the commencement of any work under this Agreement by System Owner. If environmental laws or regulations prohibit the construction of the System as set forth in Exhibit B (System), either Party may, in its sole discretion, terminate this Agreement without further obligation on its part and each Party shall bear its own costs. In addition, System Owner may terminate this Agreement in accordance with the provisions set forth in Section 10. Should a Party terminate the Agreement pursuant to this provision, such Party shall not be liable for any amounts expended by the other Party to secure environmental credits or rebates from the government or other entities.

17.2 Termination for Failure to Meet Condition Precedent. If, at any time, System Owner determines that any condition precedent provided for in Section 12 (Conditions Precedent to System Owner's Obligations) has not been met or is not capable of being met, System Owner

may waive such conditions or terminate this Agreement following twenty (20) days written notice of such termination to Host Customer.

17.2.1 Upon the occurrence and during the continuation of any Event of Default hereunder, the nondefaulting Party shall have the right to terminate this Agreement as set forth herein. If such termination occurs as a result of Host Customer's default, as specified below, then Host Customer shall pay System Owner an amount equal to the Early Termination Payment as set forth in Section 17.3 (Early Termination Payment). Any termination pursuant to this Section 17 (Termination for Default) shall not eliminate the nondefaulting Party's right to pursue any other remedy given under this Agreement now or hereafter existing at law or in equity or otherwise.

17.3 Early Termination Payment.

17.3.1 In the event that:

(a) Host Customer is in Default under this Agreement, which Default is attributable to a discretionary act or omission of the Host Customer;

(b) System Owner is not in Default under the Agreement; and

(c) System Owner elects to terminate this Agreement, System Owner shall be entitled to remove the System and require that Host Customer pay the Early Termination Payment to System Owner. In the event that System Owner elects to exercise its remedy under this Section 17.3.1, such remedy and any associated measure of damages shall be the sole and exclusive remedy available to System Owner as a result of termination of this Agreement and all other remedies or damages at law or in equity in connection with Host Customer's Default shall be waived by System Owner.

17.3.2 In the event that System Owner elects to require payment of the Early Termination Payment by Host Customer as provided in Section 17.3.1, then, as soon as practicable after calculation of the Early Termination Payment by System Owner, System Owner will notify Host Customer of the amount of the Early Termination Payment and any amount otherwise due and outstanding under this Agreement. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. Host Customer shall be required to pay the Early Termination Payment, if undisputed, and any amount otherwise due and outstanding under this Agreement to System Owner within thirty (30) Business Days after the effectiveness of such notice.

18. **OPTIONS UPON EXPIRATION OR TERMINATION**

18.1 Purchase Option. Host Customer, in its sole discretion, shall have the option to purchase the System upon the expiration of the Agreement by notifying System Owner in writing, at least sixty (60) days prior to the end of the Service Term, that Host Customer intends to exercise its option under this Section 18.1 (Purchase Option). If Host Customer exercises its option under this Section 18.1 (Purchase Option), Host Customer shall pay System Owner an amount equal to the fair market value of the System as agreed upon by the Parties or determined as set forth herein. For thirty (30) days following the date of the written notice in which the Host Customer provides the System Owner notice that Host Customer shall not agree to extend the Term ("Notice Date"), the Parties shall meet and utilize their best efforts to agree upon a fair market value of the System. If the Parties are unable to agree upon fair market value during this

thirty (30) day period, the Parties shall each retain the services of a professional appraiser to value the System. Each Party shall bear its own costs for the appraiser. The two appraisers selected by the Parties shall mutually select a third appraiser, whose services shall be equally paid for by the Parties. The three appraisers shall evaluate and determine fair market value within sixty (60) days of the Notice Date, submitting their reports to both Parties. The fair market value shall be derived by disregarding the appraiser's valuation that diverges the greatest from each of the other two appraiser's valuations, and the arithmetic means of the remaining two appraisers' valuations shall be the fair market value of the System. Upon Host Customer's payment for the System, System Owner shall furnish the System, including all components thereof, in good repair, condition and working order, normal wear and tear excepted. All applicable warranty documents and warranties shall be transferred to the Host Customer within thirty (30) days of the Host Customer's payment to the System Owner. System Owner shall complete all documentation required to transfer any warranties to Host Customer.

18.2 Non-Election/Removal. If, at the end of the Service Term, Host Customer does not exercise its option to purchase the System pursuant to Section 18.1 (Purchase Option) or the Parties cannot agree, via negotiations or the use of an appraiser, on the fair market value of the System, System Owner shall remove all of the System from Host Customer's Premises at System Owner's sole expense. To the extent that System Owner removes the System, System Owner agrees to make or have made any repairs to the Premises to the extent necessary to repair any adverse impact such removal directly causes to Host Customer's Premises so as to materially render the Premises to the condition immediately prior to the Agreement, normal wear and tear excepted.

19. LIABILITY; INDEMNIFICATION

19.1 Limitation of Liability. Unless explicitly provided in this Agreement, neither Party hereto nor any of their respective partners, officers, directors, agents, subcontractors, vendors or employees shall be liable to the other Party hereunder for any consequential or indirect loss or damage arising out of this Agreement, whether such loss or damage arise in contract, tort (including negligence), strict liability, warranty, statute or otherwise, including loss of revenues, loss of profit, cost of capital, loss of goodwill, increased operating costs or any other special or incidental damages.

19.2 Indemnification. To the fullest extent permitted by law, each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, agents, Affiliates and representatives ("Indemnitees") from and against any and all claims, demands, suits, liabilities, causes of action, losses, expenses, damages, fines, penalties, court costs and reasonable attorneys' fees (collectively, "Claims") arising out of personal injury or third party property damage and any and all fines or penalties imposed by any governmental authority, in each case to the extent they are caused by an action or inaction of the Indemnifying Party, any subcontractor of the Indemnifying Party, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, or arise or result from, or are occasioned by or in connection with: (a) the Indemnifying Party's breach of this Agreement; (b) any negligent, reckless or intentionally wrongful act or omission to act by the Indemnifying Party, any subcontractor of the Indemnifying Party, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable; and (c) violations of laws by the Indemnifying Party, any subcontractor of the Indemnifying Party, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable; provided, however, that if

an Indemnitee has contributed to such injury, damage, fines or penalties, the indemnification shall be reduced based upon the relative degree of fault of the Indemnifying Party and such Indemnitee. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence. This indemnification, defense and hold harmless obligation shall not be limited by insurance coverages and shall survive the termination or expiration of this Agreement.

19.3 Disruption in Delivery. In the event that System Owner is capable of generating and delivering Output to Host Customer, but as a result of Host Customer's willful misconduct, not caused in any way by an action or inaction of System Owner, Host Customer does not accept delivery of such Output (or as a result of Host Customer's change to the BES, Host Customer is unable to accept delivery of such Output), Host Customer agrees to pay System Owner the amount of kWh for which delivery was disrupted, on a pro rata basis, based on the Output estimates provided in Exhibit B (System) times the Cogeneration Electricity Price.

20. SYSTEM PERFORMANCE; INTERRUPTION OF SERVICE

20.1 System Performance. System Owner shall use reasonable efforts consistent with Prudent Industry Practice to operate the System so that the System provides electricity. Host Customer acknowledges that the System will not function in the event of a power outage. System Owner shall make efforts consistent with Prudent Industry Practice to ensure that the equipment contemplated by this Agreement is in good working condition throughout the term of this Agreement so that Host Customer may utilize electricity from the System. To the extent that the System does not perform properly, System Owner agrees, as part of its operation and maintenance obligations hereunder, to take such steps as necessary to bring the System into proper performance and working order. System Owner shall retain any and all rights to manufacturer's warranties and any warranties with respect to the work of contractors or subcontractors during the Service Term in order to meet its obligations to maintain the proper performance of the System.

20.1.1 The Parties agree that the System is intended to generate electricity, at a minimum, pursuant to the standard set forth on Exhibit E. To the extent that the System does not perform in accordance with such standard, excluding nonperformance due to Force Majeure or Host Owner negligence or willful misconduct, System Owner shall pay to Host Customer a penalty calculated in accordance with Exhibit E. Notwithstanding the foregoing, there shall be no penalty with respect to periods of interruption, reduction or discontinuation of the delivery of Output for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of Output or where System Owner reasonably deems it unsafe to operate as set forth in Section 20.4, provided that such interruption, reduction or discontinuation of the delivery of Output was not the result of any negligence or willful misconduct of System Owner.

20.2 Transfer to Host Customer. In the event of transfer of ownership of the System to Host Customer under this Agreement, System Owner agrees to pass-through and to transfer to Host Customer any applicable manufacturers' warranties provided on the System, as provided in Exhibit B (System), attached hereto. Such warranties include any guarantee, reflective of the passage of time, of the System nameplate rating in standard test conditions and any other express or implied warranty that may be transferable to Host Customer from the manufacturer, designer or installer of the System. Following any such transfer of ownership to Host Customer, the Service

Term shall end, and System Owner shall have no further obligation with respect to the performance of any part of the System.

20.3 Interruptions Are Expected.

20.3.1 System Owner shall use reasonable care to ensure the operation of the System and supply of Output. However, the Parties explicitly acknowledge and understand that the System is comprised of intermittent generation facilities, and will not provide Host Customer with an uninterrupted supply of Electricity. System Owner shall not be liable for any special, direct, indirect, consequential or incidental damages caused by or resulting from any interruption in Output during the Service Term, nor shall System Owner be responsible for the cost of alternative supplies of Electricity during any interruption. If Output is interrupted, System Owner will make commercially reasonable efforts to restore Output in a timely manner. OTHER THAN AS SET FORTH IN SECTION 13 AND THIS SECTION 20, THE SYSTEM OWNER MAKES NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SYSTEM OR THE ELECTRICITY. WITHOUT LIMITING THE FOREGOING, THE SYSTEM OWNER EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

20.3.2 Host Customer shall not install or permit to be installed on the Premises (or any other property owned or controlled by Host Customer) any physical obstruction to the operation of the System that reduces Output.

20.4 Reasons for System Owner's Interruption of Output. Notwithstanding anything to the contrary herein, System Owner shall have the right to interrupt, reduce or discontinue the delivery of Output for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of Output. System Owner shall use reasonable efforts to give written notice to Host Customer of any expected interruption of delivery of Output at least five (5) Business Days prior to the date of any interruption and shall use its reasonable efforts to inform Host Customer of the expected length of any interruption and to schedule such interruption to minimize disruption to Host Customer and the use of its Premises. Notwithstanding the foregoing, System Owner shall not be required to supply Output to Host Customer at any time System Owner reasonably believes BES to be unsafe. System Owner reserves the right to curtail Output if so directed by authorized governmental authorities or electric utilities. To the extent feasible and not otherwise necessitated by an emergency or immediate risk to the health and safety of persons or destruction of property, System Owner shall perform maintenance during non-peak demand time.

20.5 Cost to Restore Service Following Interruption. System Owner shall bear any costs associated with restoring service following any interruption of Output as part of System Owner's operation of the System; provided, however, that, if interruptions of Output are caused directly by the actions or inactions of Host Customer, then Host Customer agrees to bear the incremental costs associated with the restoration of the delivery of Output.

21. ASSIGNMENT; RIGHT OF FIRST REFUSAL

21.1 Consent. The Parties may not assign this Agreement without the consent of the other Party, such consent not to be unreasonably withheld or delayed; provided, however, that each

Party may, without the consent of the other Party, collaterally assign its rights and obligations under this Agreement in connection with any financing; and, provided further that System Owner may assign its rights and obligations under this Agreement without the prior written consent of Host Customer to (a) its managing entity, (b) any entity in which its managing entity is manager or general partner, (c) if the System is sold by System Owner as part of a portfolio of cogeneration systems to a financial investor or a utility, or (d) any affiliate, parent or subsidiary of System Owner (subsections (a) through (d), collectively, a "System Owner Permitted Transfer"). Any assignment or transfer not permitted by this Section shall be null and void. Any assignment or transfer made pursuant to this Section shall provide that all sureties and insurance, required under any provision of this Agreement, run to the benefit of the Host Customer, regardless of the status of the assignment and whether Host Customer seeks recourse from the assignor or assignee. Each Party agrees to execute such reasonable consents to assignment and other documents, and to provide such information, as is requested by the other Party and reasonably required in connection with any permitted assignment pursuant to this Section 21.1.

21.2 Transfer and Assignment Notice. In the event System Owner desires to assign or transfer all or any portion of the Agreement, System Owner shall deliver to the Host Customer written notice of its intention ("Transfer Notice"), which written notice shall set forth:

21.2.1 System Owner's bona fide intention to transfer the Agreement, or portion thereof; and

21.2.2 The name and address of the proposed purchaser or transferee ("Proposed Transferee").

21.2.3 The Proposed Transferee shall be bound by the same terms and conditions as set forth in this Agreement. System Owner agrees to provide the Host Customer with such information, including financial statements and tax returns, as the Host Customer may require in order to evaluate the financial net worth and liquidity and the staff, relevant business acumen and experience of any proposed transferee. Notwithstanding anything to the contrary herein, any approved transfer shall not relieve System Owner of its liability and obligations hereunder which are accrued and unpaid as of the date of the transfer and System Owner shall remain liable and obligated as to the Host Customer unless the Host Customer in writing releases System Owner therefrom.

21.3 Right of First Refusal. In the event that System Owner proposes to sell the System and assign this Agreement to a third party, excluding, however, a System Owner Permitted Transfer, System Owner hereby grants to the Host Customer a right of first refusal ("Right of First Refusal"), to purchase the System upon the terms and conditions set forth in the subsections below and in Section 18.1 (Purchase Option) herein. Upon receipt of the Transfer Notice and the accompanying documentation, in the event the Host Customer desires to exercise its right of First Refusal and purchase and acquire the System upon the terms and conditions and the purchase price set forth in the Transfer Notice (including the purchase price set forth therein), the Host Customer shall deliver to System Owner written notice of the Host Customer's election to exercise its Right of First Refusal, which written notice shall be delivered to System Owner on or before the expiration of thirty (30) calendar days after the receipt of the Host Customer of the Transfer Notice. The Host Customer's failure to deliver such written notice to System Owner of its election to exercise its Right of First Refusal within such thirty (30) calendar day period shall be deemed to constitute Host Customer's waiver of its right to exercise its Right of First Refusal. If Host Customer timely exercises the Right of First Refusal pursuant to the terms and conditions

of this Section, the amount for the purchase of the System, shall be as stated in the Transfer Notice. If the Transfer Notice expressly states that no purchase price has been agreed upon between System Owner and the proposed System purchaser, the purchase price for the System shall be calculated as set forth in Section 18.1 (Purchase Provision) herein. In the event the Host Customer timely exercises the Right of First Refusal pursuant to the terms and conditions of this Section, the closing for the purchase of the Agreement, or portion thereof, shall take place at the location and at the date and times set forth in the Transfer Notice. In the event such closing does not take place for any reason, System Owner shall not transfer the Agreement to any other party without first complying with the provisions of this Section.

21.4 Subsequent Obligations. In the event Host Customer does not timely exercise its Right of First Refusal as described herein, if the System Owner and the Proposed Transferee modify or amend the terms and conditions of the proposed transfer, System Owner shall be required to deliver a subsequent Transfer Notice to Host Customer setting forth the revised modifications and conditions in accordance with the provisions of this Section. In the event Host Customer does not timely exercise its Right of First Refusal as described herein, if System Owner and the Proposed Transferee do not consummate the transaction contemplated in the Transfer Notice, System Owner shall be required to comply with the provisions of this Section with respect to any subsequent transfers. This Right of First Refusal shall survive and apply to any subsequent transfers, excluding, however, any System Owner Permitted Transfer.

21.5 Cooperation with Financing. Host Customer acknowledges that System Owner will be financing the acquisition of the System and Host Customer agrees that it shall, at System Owner's sole cost and expense, reasonably cooperate with System Owner and its financing parties in connection with such financing for the System, including (a) the furnishing of non-confidential information reasonably required by System Owner's financing parties, and (b) the giving of such estoppel certificates; provided that the foregoing undertaking shall not obligate Host Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Host Customer, under this Agreement.

22. MISCELLANEOUS

22.1 Disputes. Any dispute, controversy or claim (each, a "Dispute") arising out of or relating to this Agreement or any breach or alleged breach hereof, upon the agreement of the Parties, first shall be submitted to mediation. Said mediation shall commence no later than 30 days after submission of the Dispute and shall be conducted at the locality where the Premises are situated and in accordance with the then **prevailing** rules of the Construction Industry Mediation Rules of the American Arbitration Association. In the event that the Dispute is not resolved pursuant to mediation or, in the event the Parties do not agree upon submission of the Dispute to mediation, each Party may pursue any rights and remedies as each may have, whether in law or at equity. Except to the extent that this Agreement expressly permits a Party to suspend performance, pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement; provided, however, in no event shall System Owner be obligated to deliver Output in the event that Host Customer is in Default of its payment obligations to System Owner hereunder.

22.2 Confidentiality.

22.2.1 Host Customer agrees that this Agreement and its performance by both Parties, particularly the costs of operations and services incurred in that performance, are proprietary and

confidential to System Owner, and that disclosure of the terms of this Agreement or of the costs incurred under this Agreement to third parties would injure System Owner's ability to compete or place it in a position of disadvantage. To the extent allowed by law, Host Customer agrees not to disclose to any third parties the terms of this Agreement or costs incurred by either Party under this Agreement, without System Owner's prior written consent, such consent not to be unreasonably withheld.

22.2.2 System Owner agrees to keep confidential all documents, utility bills, architectural and mechanical plans, and any other information provided by Host Customer during the Service Term of this Agreement and thereafter.

(a) Notwithstanding anything to the contrary herein, Host Customer acknowledges that System Owner is or may become a publicly-held company, and in conjunction with its duties as a publicly-held company, System Owner may from time to time be required to report to the public through press releases the signing of contracts and agreements or other such activities, and, to the extent consistent with applicable law, System Owner shall have given Host Customer advance notice and an opportunity to review and provide comment on such releases. On System Owner's request, Host Customer shall (a) provide a written description of information about Host Customer as it should appear in such press releases, or (b) provide written notice that Host Customer does not want its name to appear in all or certain press releases.

(b) Notwithstanding anything to the contrary herein, System Owner understands that as a public agency, the Host Customer is subject to the California Public Records Act, and, as such, may be required to provide discloseable documents in response to a California Public Records Act request. If the records are created or maintained by the System Owner pursuant to this Agreement, System Owner shall provide timely access to such documents to the Host Customer for reproduction, upon request. Should System Owner refuse to provide access to any documents requested by the Host Customer pursuant to a Public Records Act request, notwithstanding the indemnification provision of this Agreement, System Owner shall bear all legal costs in responding to the Public Records Act request and shall indemnify the Host Customer, its Board, every member of the Board, employees, volunteers and assigns against any and all claims related to such Public Records Act request.

(c) Notwithstanding anything to the contrary set forth herein or in any other agreement to which the Parties are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transaction, shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the transaction, and each Party (and any employee, representative, or agent of any Party hereto) may disclose to any and all persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the transaction. The preceding sentence is intended to cause the transaction not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each Party acknowledges that it has no proprietary or exclusive rights to the tax structure of the transaction or any tax matter or tax idea related to the transaction

22.3 Notices and Changes of Address. All notices to be given by either Party to the other shall be in writing and must be either delivered or mailed by registered or certified mail, return receipt requested, or express overnight delivery service addressed as follows:

If to System Owner:

CHPCE La Salina, LLC
One Liberty Square, 11th Floor
Boston, MA 02109
Attention: Tim Krochuk

With a copy to:

Paul C. Bauer
Bowditch & Dewey, LLP
175 Crossing Boulevard, Suite 500
Framingham, MA 01702

If to Host Customer:

City of Oceanside, Water Utilities Department
300 North Coast Highway
Oceanside, CA 92054
Attention: Water Utilities Director

or such other addresses as either Party may hereinafter designate by notice to the other. Notices are deemed delivered or given and become effective upon mailing if mailed as aforesaid and upon actual receipt if otherwise delivered.

22.4 Applicable Law and Jurisdiction. This Agreement is made and shall be interpreted and enforced in accordance with the laws of the State of California. Host Customer hereby consents and submits to the personal jurisdiction of the courts of the State of California.

22.5 Complete Agreement. This Agreement, together with any documents expressly incorporated herein by reference, shall constitute the entire Agreement between both Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, representations, and statements, whether oral or written. There are no agreements, understandings, or covenants between the Parties of any kind, expressed or implied, oral or otherwise pertaining to the rights and obligations set forth herein that have not been set forth in this Agreement.

22.6 No Amendment. This Agreement may not be amended, modified or terminated except by a writing signed by the Parties hereto.

22.7 Energy Audit. Any energy audit that may be authored by System Owner and/or its consultant(s), including any summaries, excerpts, and abstracts thereof (collectively, the "Energy Audit"), are used to show operational and consumption data and calculations and projections regarding savings, but do not reflect the savings guaranteed by System Owner; in the event of any conflict or contradiction between the Energy Audit and the provisions of this Agreement, the provisions of this Agreement shall govern.

22.8 Further Documents. The Parties shall timely execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

22.9 Severability. If any part of this Agreement is deemed to be unlawful, invalid, void or otherwise unenforceable, the rights and obligations of the Parties shall be reduced only to the extent required to remove the invalidity or unenforceability.

22.10 Counterparts. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement.

22.11 Neutral Interpretation. The Parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party. Any headings or captions contained in this Agreement are for reference purposes only and are in no way to be construed to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

22.12 No Waiver. The failure of a Party to enforce any term of this Agreement or a Party's waiver of the nonperformance of a term by the other Party shall not be construed as a general waiver or amendment of that term, but the term shall remain in effect and enforceable in the future. This Agreement can be amended only by written agreement of the Parties.

22.13 Survival. Any provisions necessary to give effect to the intent of the Parties hereunder after the termination of this Agreement shall survive the termination of this Agreement, including without limitation Section 22.1 (Disputes).

22.14 Marketing. Each Party shall have the right to promote the installation and usage of the installed System through any means, including through press releases, case studies, published material, Internet websites and sales literature, so long as the other Party is provided with the opportunity to review and approve the proposed promotion, which approval may not unreasonable be withheld.

22.15 Casualty or Condemnation Affecting Equipment

(a) In the event of (1) a casualty affecting the System for which the insurance proceeds are sufficient to restore the System and any building in which the System is installed; or (2) a condemnation or exercise of the power of eminent domain affecting the System by any governmental body or any other person, firm, or corporation acting under governmental authority, the proceeds from any award in respect of which, after payment of all expenses incurred in the collecting thereof, are sufficient to pay the costs of restoring the System, then the System Owner shall restore the System within 60 days, or such time as extended to provide for the purchase of long lead item or parts, following the last to occur of (i) (A) restoration of the Premises, if any such restoration is required, or (B) the date of the casualty or condemnation event, if restoration of the Premises is not required, or (ii) the date on which insurance or condemnation proceeds are made available to Host Customer and/or System Owner, as applicable, for such purpose.

(b) In the event of (1) a casualty affecting the System that is uninsured or for which the insurance proceeds are not sufficient to restore the System; or (2) a condemnation or exercise of

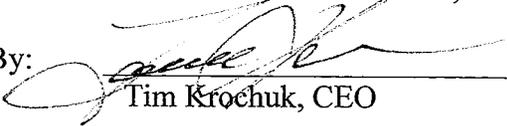
the power of eminent domain affecting the System by any governmental body or any other person, firm, or corporation acting under governmental authority, the proceeds from any award in respect of which, after payment of all expenses incurred in the collection thereof, are insufficient to pay the costs of restoring the System, then the System Owner shall restore the System within 120 days following restoration of the Premises, if any such restoration is required, or the date of the casualty or condemnation event, if restoration of the Premises is not required.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have each executed this Agreement, effective as of the date first above written.

CITY OF OCEANSIDE

CHPCE La Sañina, LLC

By: _____
Peter A. Weiss, City Manager

By:  _____
Tim Krochuk, CEO

Date: _____

Date: 4-23-2013

EXHIBIT A

Description of Premises

Site Map Attached

SITE
(Add schematic of facility)

EXHIBIT B

System

[System/BES Interconnection Diagram, including Point of Delivery and provisions applicable to construction, installation, service and testing of System]

EXHIBIT C

Irrevocable Letter of Credit

Expiration Date _____
or any automatically extended date as herein
below set forth

TO: CITY OF OCEANSIDE, WATER UTILITIES DEPARTMENT
OCEANSIDE, CA 92054

We, [INSERT NAME OF BANK/FINANCIAL INSTITUTION], do hereby establish our Irrevocable Letter of Credit in favor of you, City of Oceanside Water Utilities Department (the "City"), up to the aggregate amount of _____ Dollars (\$ _____) available by your draft(s) at sight drawn on ourselves and accompanied by the documents specified below:

1. The signed certification of the Director of the Water Utilities Department that _____ (the "System Owner") has not complied with the terms and conditions of that certain Agreement for the Cogeneration Power Purchase Agreement to be dedicated to the Water Utilities Department, dated on or about _____, 20____, pursuant to which System Owner has agreed to install and complete improvements including upon certain real property, commonly described as Tax Assessor Parcel No(s). _____, or Parcel or Tract Map No. _____, (the "Agreement"); OR

2. The signed certification of the Director of the Water Utilities Department that claims of liens or suits to enforce claims of liens have been filed to enforce payments to contractors, subcontractors, laborers and materialmen who have furnished labor or materials to System Owner for those facilities that are the subject of the Agreement.

It is a condition of this Letter of Credit that it shall be automatically extended without amendment for one (1) year renewal term(s) from the present or any future expiration date of this Letter of Credit, unless fifteen (15) calendar days prior to any such expiration date we notify you in writing that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may withdraw hereunder by means of your drafts drawn at sight on us accompanied by the signed statement of the Director of the Water Utilities Department that the Agreement is still outstanding and in full force and effect.

If the City draws upon this Irrevocable Letter of Credit, then we shall cause System Owner to restore the Irrevocable Letter of Credit, within five (5) business days of the draw, to either the original amount of this Irrevocable Letter of Credit or a reduced amount agreed upon by the City and System Owner in writing following the date that the City certifies that the improvements required by the Agreement.

In the event of a drawing, all documents must be dispatched in one lot by registered mail or courier services directly to: [INSERT ADDRESS OF BANK/FINANCIAL INSTITUTION PROVIDING LETTER OR CREDIT].

All demands for payment shall specifically state that they are drawn under this Irrevocable Letter of Credit.

This Irrevocable Letter of Credit may not be assigned, conveyed, or otherwise transferred by either party without the express written consent of the City. If there is an approved assignment or transfer, we shall ensure that the Irrevocable Letter of Credit is included in such transfer and is legally binding on our successor in interest.

No right of action shall accrue under this Irrevocable Letter of Credit to or for the use of any person or corporation other than the City as named herein.

This Irrevocable Letter of Credit shall be governed and construed in accordance with the internal laws of the State of California without giving effect to principles of conflicts of law.

This Letter of Credit is our individual obligation and is in no way contingent upon our reimbursement with respect thereto or upon our ability to perfect any lien, security interest, or any other reimbursement.

Any amendments to this Irrevocable Letter of Credit must be in writing. The signatory of this Irrevocable Letter of Credit hereby warrants that he/she is a duly authorized representative of [INSERT NAME OF BANK/FINANCIAL INSTITUTION], and has the authority to bind [INSERT NAME OF BANK/FINANCIAL INSTITUTION], to this Irrevocable Letter of Credit.

We hereby agree with the District that all draft(s) drawn under and in compliance with the terms of this letter of credit will be honored upon presentation to us as specified herein. Except as expressly stated otherwise herein, this undertaking is not subject to any condition or qualification.

Date: _____

[INSERT NAME OF BANK/FINANCIAL INSTITUTION]

By: _____

Its: _____

Mailing Address:

ACCEPTED:

CITY OF OCEANSIDE WATER UTILITIES DEPARTMENT

By: _____

Name: _____

Its: _____

EXHIBIT D

LA SALINA WWTP COGENERATION FACILITY RATES

ITEM	DESCRIPTION		UNIT	EXTENDED AMOUNT
1	Construction Value	1	Lump Sum	\$750,000
2	Cogeneration Facility Capacity	143	kilowatts	gross kW
3	Guaranteed Plant Availability	90%	Percent Time	
4	Guaranteed Heat Recovery	35%	Percent	
5	Power Rate Year 2013 (Year 1)	.075	\$/kwhr	
6	Power Rate Year 2014 (Year 2)	.077	\$/kwhr	
7	Power Rate Year 2015 (Year 3)	.080	\$/kwhr	
8	Power Rate Year 2016 (Year 4)	.082	\$/kwhr	
9	Power Rate Year 2017 (Year 5)	.084	\$/kwhr	
10	Power Rate Year 2018 (Year 6)	.087	\$/kwhr	
11	Power Rate Year 2019 (Year 7)	.090	\$/kwhr	
12	Power Rate Year 2020 (Year 8)	.092	\$/kwhr	
13	Power Rate Year 2021 (Year 9)	.095	\$/kwhr	
14	Power Rate Year 2022 (Year 10)	.098	\$/kwhr	
15	Power Rate Year 2023 (Year 11)	.101	\$/kwhr	
16	Power Rate Year 2024 (Year 12)	.104	\$/kwhr	
17	Power Rate Year 2025 (Year 13)	.107	\$/kwhr	
18	Power Rate Year 2026 (Year 14)	.110	\$/kwhr	
19	Power Rate Year 2027 (Year 15)	.113	\$/kwhr	

EXHIBIT E**Performance Guarantee**

<u>CHPCE La Salina, LLC</u>				
ITEM	DESCRIPTION		UNIT	
1	Guaranteed Cogen Output	75	kW	Net kW
2	Guaranteed Cogen Output	657,000	kWhr	Annually
3	Cogeneration Facility Capacity	143	kW	Gross kW
4	Guaranteed Plant Availability	90%	Percent Time	
5	Guaranteed Heat Recovery	35%	Percent	
6	Power Rate Year 2013 (Year 1)	.075	\$/kwhr	
7	Annual Rate Escalator	3.0%	percent	

<u>City of Oceanside</u>				
ITEM	DESCRIPTION		UNIT	
1	Guaranteed Digester Gas Production	25	SCFM	
2	Guaranteed Digester Gas Production	11,826,000	Annual SCF	
3	Guaranteed Electric Purchase from Cogen System	100%	Percent	
4	Digester Gas Quality - Methane Content	60%	Methane	

