

RESOLUTION NO. 5168

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
APPROVING AN EXCLUSIVE OPTION AGREEMENT BETWEEN THE CITY OF
SOLEDAD AND FOUNDATION WINDPOWER LLC TO ACQUIRE A WIND SITE
LEASE AND EASEMENTS**

WHEREAS, Foundation Windpower, LLC (“Foundation”), the entity responsible for the construction of the existing wind turbine facility in the City, has proposed to construct an additional wind turbine facility on City of Soledad property located at the City’s Water Reclamation Facility (“WRF”); and

WHEREAS, on March 4, 2015, the City Council provided Staff with direction to commence negotiations with Foundation and, if appropriate, to prepare necessary approval documents related to the establishment of a new wind turbine facility; and

WHEREAS, unlike the existing wind turbine facility, which produces electricity for the City’s use at a reduced rate, the new facility will not provide electricity to the City, but rather, will provide a significant annual source of income via rent when the wind turbine facility commences operation; and

WHEREAS, on April 1, 2015, the City Council considered and approved by minute motion the rental schedule to be charged for the proposed facility lease; and

WHEREAS, in order to engage with PG&E in the preparation of an interconnection study for the electricity to be produced at the proposed wind turbine facility, Foundation must prove “site exclusivity” by possessing some form of property interest in the proposed facility site by no later than the first week of April, 2016; and

WHEREAS, due to the fact that an analysis of the wind turbine facility project pursuant to the California Environmental Quality Act has not commenced, and the project has not been brought before the Planning Commission or City Council for appropriate permitting and processing, the City is unable to enter into a direct lease for the property with Foundation at this time; and

WHEREAS, notwithstanding the foregoing, the Parties have determined that an option agreement, basically a right to enter into a lease at a subsequent time, will suffice for establishing site exclusivity; and

WHEREAS, Foundation and City Staff have worked on the preparation of an “Exclusive Option Agreement to Acquire a Wind Site Lease and Easements” and Staff is recommending that after review and consideration, the Council approve the Agreement.

NOW THEREFORE, be it hereby resolved by the City Council of the City of Soledad that the “Exclusive Option Agreement to Acquire a Wind Site Lease and Easements” between

the City and Foundation Windpower, LLC, a California limited liability company, a copy of which is attached hereto as Exhibit A and by this reference incorporated herein, is hereby approved and the City's Mayor directed to execute the same on behalf of the City of Soledad.

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 6th day of April, 2016, by the following vote:

AYES, and in favor thereof, Councilmembers: Christopher K. Bourke, Patricia D. Stephens, Mayor Pro Tem Alejandro Chavez, Richard J. Perez and Mayor Fred J. Ledesma

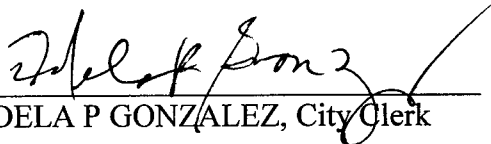
NOES, Councilmembers: None

ABSTAIN, Councilmembers: None

ABSENT, Councilmembers: None


FRED J. LEDESMA, MAYOR

Attest:


ADELA P GONZALEZ, City Clerk

OPTION AGREEMENT – CITY OF SOLEDAD AND FOUNDATION WINDPOWER, LLC

THIS EXCLUSIVE OPTION AGREEMENT TO ACQUIRE WIND SITE LEASE AND EASEMENT (this “**Option Agreement**”) is made and entered into as of the 7th day of April, 2016 (“**Effective Date**”), by and between the City of Soledad, California, a public body, corporate and politic (the “**City**” or “**Grantor**”) and Foundation Windpower, LLC, a California limited liability company (“**FWP**” or “**Grantee**”).

RECITALS

A. The City is owner of all that certain real property commonly known as Assessor's Parcel No. 022-082-018, located at 35520 Morisoli Road, Soledad, in Monterey County, California (the “**Property**”).

B. FWP desires to lease from the City and the City desires to rent to FWP a pad consisting of approximately 4800 square feet (the “**Premises**”) located on the Property as depicted in Exhibit 1 attached hereto for the purpose of building and operating one (1) wind turbine and ancillary equipment (the “**Facility**”) for the delivery of electricity to Pacific Gas & Electric Company (“**PG&E**” or “**Utility**”) pursuant to the terms of the Utility’s applicable Renewable Market Adjusting Tariff Power Purchase Agreement between FWP or Project LLC and PG&E (“**PPA**”).

C. In conjunction with the lease of the Premises, FWP desires to acquire certain easements and rights coinciding with the term of a lease of the Premises, some of which are depicted in Exhibit 1 attached hereto for the purpose of building, operating and maintaining the Facility (the “**Easements**”).

D. Grantee desires to obtain and Grantor desires to grant an exclusive option to lease the Premises and acquire the Easements from Grantor set forth in the Wind Site Lease and Easement to be signed by the parties in substantially the form attached hereto as Exhibit 2 and incorporated herein by this reference (together, the “**Lease Agreement**”) at the time and in the manner set forth below, in order to have access to and from, to construct, install, operate, maintain, repair and replace the Facility.

E. City has determined that the proposed Facility is a “project” under the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*) (hereafter, “**CEQA**”) and its implementing regulations (California Code of Regulations, Title 14, Chapter 3, § 15000 *et seq.*) (hereafter, the “**CEQA Guidelines**”) which the City cannot carry out, authorize or approve unless and until Purchaser has complied with all applicable requirements of CEQA and the CEQA Guidelines, as described in and required by Section 12 of this Option Agreement.

F. For the foregoing reasons, this Option Agreement is intended to preserve the City’s full and unfettered discretion to carry out its obligations as a municipal corporation in the State of California with land use authority over the site of the proposed Facility and as a lead agency for purposes of CEQA, and to establish the terms and conditions of FWP’s use of the Premises and the Property during the term of the Lease Agreement, subject to full compliance with all applicable permitting and CEQA requirements.

G. FWP intends to assign its rights and obligations under the proposed Lease to a project-specific limited liability company (the “**Project LLC**”) immediately prior to placing the Facility in service.

NOW, THEREFORE, IN CONSIDERATION of the respective agreements hereinafter set forth and for other mutual consideration the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. **Basic Provisions.** The following terms shall have the meanings set forth below:

1.1 **Exclusivity Period.** The period during commencing on the Effective Date (the “**Exclusivity Commencement Date**”) and continuing for three (3) years thereafter (the “**Option Period**”).

1.2 **Exercise Period.** The period during which the Option may be exercised commencing on the date upon which the statutory limitations period for any legal challenges to such City Council actions expires without any legal action being filed as set forth in Sections 12.2, 12.3 and 12.4 of this Option Agreement (the “**Exercise Period Commencement Date**”) and continuing until the last day of the Option Period.

1.3 **Addresses for Notices**

Grantor: City of Soledad
248 Main Street
Soledad, CA 93960
Attention: City Manager
and City Attorney

Grantee: Foundation Windpower, LLC
505 Sansome Street, Suite 450
San Francisco, CA 94111
Attention: General Counsel

1.4 **Other Definitions.** Any capitalized terms not otherwise defined herein shall have the meaning as set forth in the Easement Agreement (defined below) and incorporated herein by reference.

2. **Grant of Option.** Grantor hereby grants to Grantee an exclusive option (the “**Option**”) to acquire the lease to the Premises and the Easements on, over, under and through the Property in accordance with the terms and provisions of this Option Agreement and the Lease Agreement in substantially the form as the attached Exhibit 2, such Lease Agreement, including such reasonable modifications thereto as the City and FWP mutually agree, being subject to final approval of the Soledad City Council. Grantor further agrees to execute and deliver such other documents as may be reasonably requested by Grantee not inconsistent with the terms of this Option Agreement and the form of Lease Agreement in substantially the form as the attached Exhibit 2, such Lease Agreement, including such reasonable modifications thereto as the City and FWP mutually agree, being subject to final approval of the Soledad City Council.

3. **Option Consideration.** Within five (5) business days of the Exclusivity Commencement Date, Grantee shall pay to the City an option fee for the first year of the Option Period of Five Hundred and no/100 Dollars (\$500.00) (the “**Initial Option Payment**”). Thereafter, on the first (1st) anniversary of the Exclusivity Commencement Date and every year following such anniversary during the Option Period, Grantee shall pay to the City an option fee of Five Hundred and no/100 Dollars (\$500.00) (each payment and collectively, the “**Option Payment**” and collectively with the Initial Option Payment, the “**Option Consideration**”).

4. **Exercise of Option: Exercise of Lease Agreement.** Grantee may exercise the Option at any time after the Exercise Period Commencement Date during the Option Period by signing and delivering to Grantor a written notice clearly stating its intent to exercise the Option granted hereunder (the “**Notice of**

Exercise of Option”). Upon completion and City Council approval of the Lease Agreement, Grantor covenants to execute two (2) originals of the Lease Agreement and one (1) Memorandum of Wind Site Lease and Easement (“**MOL**”), which shall be duly acknowledged, all of which executed documents shall be delivered by Grantor to Grantee, which MOL will be submitted by Grantee for recording with the office of the Monterey County Recorder-County Clerk.

5. **Review of Property.**

5.1. Beginning on the Effective Date and throughout the Option Period, Grantee and its employees, agents and independent contractors shall have the right to enter on the Property, upon reasonable prior notice to Grantor, to perform, at Grantee's expense, such investigations of the Premises and Property as Grantee deems appropriate in its sole and absolute discretion, which may include, without limitation, structural, soil, hydrological, archeological, environmental site assessment, engineering and geotechnical soils testing (the “**Investigations**”), and to make any surveys, title work, subdivision and planning and any other reports as Grantee deems appropriate in its sole and absolute discretion.

5.2. Grantee agrees to indemnify, protect, defend and hold harmless Grantor from and against all losses, liabilities, damages, costs, claims, actions, causes of action, expenses (including reasonable attorneys' fees) and liens to the extent caused in whole or part, by any of the foregoing activities conducted by or for Grantee; except with respect to any loss, cost, damage, claim or liability incurred by Grantor resulting from the existence of, or the mere discovery by Grantee or its representatives of, defects or other adverse conditions at the Property and except for the negligence or willful misconduct of Grantor or its agents, employees or contractors. Upon the completion by Grantee of any and all Investigations of the Property, Grantee shall promptly restore the Property to the condition that it was in prior to any such activities conducted by Grantee. Notwithstanding anything to the contrary provided in this paragraph, Grantee shall not be liable to Grantor with respect to any environmental or physical condition that is merely discovered, as opposed to caused, by Grantee. Grantee's obligations hereunder shall survive termination of this Option Agreement for one (1) year after the date of such termination.

5.3. Prior to any visit to the Property, Grantee will provide Grantor with five (5) days written notice of its intention and purpose to visit the Property. Grantor agrees to cooperate fully with Grantee in assisting Grantee to complete its Investigations, including without limitation, executing applications or consents as may be required by the Utility or governmental agencies in connection with any application filed by Grantee, clearing areas of the Property where samples will be taken (upon mutual agreement of Grantor and Grantee), promptly arranging entry upon the Property and access to all parts of the buildings, if any, on the Property, and making available knowledgeable personnel from Grantor to answer questions regarding the Property and, if desired by Grantor, to accompany Grantee's representatives during the Investigations, provided that Grantor shall incur no out-of-pocket costs in providing such assistance.

6. **Insurance.** During any period of access on the Property, Grantee agrees to maintain policies of general liability insurance, providing limits of not less than \$1,000,000 bodily injury and property damage per occurrence and \$1,000,000 general aggregate and, upon Grantor's request, shall provide Grantor a copy of a certificate of insurance reflecting such coverage. Grantor, and its elected and appointed officials, employees and agents shall be named as additional insureds on any and all policies.

7. **Termination.**

7.1 **Defaults.** Each of the following events shall constitute an event of default by the applicable party and shall permit the non-defaulting party to terminate this Option Agreement and/or pursue all other appropriate remedies.

7.1.1 The failure or omission by Grantee to pay amounts required to be paid hereunder

when due, where such failure or omission has continued for thirty (30) days after Grantor has delivered a written notice of such failure or omission to Grantee;

7.1.2 The failure or omission by either party to observe, keep or perform any of the other terms, agreements or conditions set forth or incorporated by reference in this Option Agreement, where such failure or omission has continued for sixty (60) days (or such longer period required to cure such failure or omission, not to exceed one hundred eighty (180) days, if such failure or omission cannot reasonably be cured within such sixty (60) day period) after receipt of written notice or such failure or omission from the other party;

7.1.3 The failure of Grantor to grant the lease to the Premises and to the Easements as provided herein upon Grantee's proper exercise of option; or

7.1.4 A party files for protection or liquidation under the bankruptcy laws of the United States or any other jurisdiction or has an involuntary petition in bankruptcy or a request for the appointment of a receiver filed against it, where such involuntary petition or request is not dismissed within ninety (90) days after filing.

7.2 **Termination by Grantee Absent Default by Grantor.** If during the Option Period, Grantee determines, in its sole and absolute discretion, that the Property or any aspect thereof is unsuitable or undesirable for Grantee's acquisition of the Premises or Easements or for any other reason, Grantee shall have the right to terminate this Option Agreement by giving not less than fifteen (15) days' written notice thereof to Grantor and this Option Agreement shall terminate on the date specified in Grantee's written notice. If the Option is terminated during the Option Period pursuant to the preceding sentence, then neither party shall have any further rights or obligations hereunder (except for any indemnity or other obligations of either party that survive termination pursuant to the provisions of this Option Agreement), and each party shall bear its own costs incurred hereunder; provided that Grantor shall retain all Option Consideration it shall have received hereunder prior to the date of termination of the Option Agreement.

8. **Effect of Option Agreement: Interest in Real Property.** The Parties intend that this Option Agreement is given by Grantor to Grantee as an option to acquire interests in the Property as described herein. The Parties intend that this Option Agreement creates a valid and present interest in the Property in favor of Grantee. Therefore, this Option shall be deemed an interest in and encumbrance upon the Property, and shall be binding upon and inure to the benefit of each of the Parties hereto and their respective heirs, legal representatives, successors and assigns. To the extent that any act or omission of Grantor or Grantors' agents or representatives has caused Grantee's interest in the Property and its rights and benefits under this Option Agreement to be diminished or challenged in any way, Grantor shall always protect and defend such interest in the Property and such rights and benefits.

9. **Assignment.** This Option Agreement shall be binding upon and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. Grantee shall have the right to assign the right, title, and interest in and to this Option Agreement to one or more assignees, and in such event, upon written proof that said assignee or assignees have agreed to be bound by all of the terms and conditions herein, the party originally designated as Grantee shall be relieved of any and all obligations under this Option Agreement and any other instruments executed pursuant hereto, and such assignee(s) shall be substituted in its place. Any and all assignments must be approved by Grantor, which approval shall not be unreasonably withheld.

10. **Grantor's Representations and Warranties.** Grantor makes the following representations, warranties and covenants, based on its reasonable knowledge and without further inquiry, which shall be true as of the Effective Date, unless a different date is specified:

10.1. Grantor shall reasonably assist and cooperate with Grantee in applying for, complying with or obtaining any land use permits and approvals, building permits, environmental reviews, or any other permits, licenses, approvals or consents required for the financing, construction, installation, replacement, relocation, maintenance, repair, operation or removal of the Facility and any other improvements contemplated in the Lease Agreement; provided that Grantor shall incur no out-of-pocket costs in providing such assistance. Grantor and Grantee recognize and acknowledge that many of the aforesaid entitlements and/or actions are subject to discretionary approval, and by this representation and covenant, Grantor is not providing pre-approval or guaranteeing the outcome of any discretionary action within its purview or the purview of any other body or entity with jurisdiction over the proposed project.

10.2. The City is the sole owner of the Property, has good and marketable title to the Property and, has the unrestricted authority to execute this Option Agreement and to perform its obligations hereunder. Grantee shall have the right, if it chooses to exercise such an Option, to quietly and peaceably hold, possess and enjoy the Premises and Easements, without hindrance or molestation, and each Grantor shall defend Grantee's right of use and occupancy to the same against the claims of all persons. When executed by Grantor, this Option Agreement constitutes a valid and binding agreement enforceable against Grantor in accordance with its terms.

10.3. Except as disclosed in the official records of Monterey County, California, or as otherwise set forth herein, or as disclosed in writing by Grantor to Grantee prior to the Effective Date, (i) to the best of the City's knowledge, the City's fee simple title to the Property is free and clear of all liens, encumbrances, easements, mortgages, deeds of trust, security interests, mineral, oil or gas rights, options to purchase, claims and disputes.

10.4. Neither the Property nor Grantor is or has been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Grantor has not received any notice or other communication from any governmental authorities alleging that the Property is in violation of any such Environmental Laws. Neither Grantor, nor to the best of Grantor's knowledge any third party, has used, manufactured, generated, treated, stored, disposed of, or released any Hazardous Material (as defined below) on, under or about the Property or transported any Hazardous Material over the Property. Neither Grantor, nor to the best of Grantor's knowledge any third party has installed, used or removed any storage tank on, from or in connection with the Property, except in full compliance with all Environmental Laws, and to the best of Grantor's knowledge there are no storage tanks, trash or refuse fills or dumps or wells (whether existing or abandoned) located on, under or about the Property.

10.5. Grantor is the only entity or person with a legal or beneficial ownership interest or with a leasehold interest in the Property.

11. **Grantor's Covenants.** Grantor hereby covenants and agrees that, from and after the Effective Date, throughout the Option Period:

11.1. To the greatest extent possible, Grantor agrees not to grant or permit actions on the Property, grant any possessory rights in the Property, or commit waste or nuisance on the Property that would (i) cause the Property to be unsuitable for the proposed leasehold and Easements that Grantee has herein optioned, (ii) cause the Property to fail to comply with any applicable laws, rules, regulations, permits, approvals or consents of any governmental authority having jurisdiction over the Property, or (iii) cause a material negative impact on the Grantee's Facility.

11.2. Grantor shall remove all of Grantor's personal property from the Premises within thirty (30) days after Grantee exercises the Option. In the event such Grantor fails to so remove all of such Grantor's personal property from the Premises prior to such time, Grantee shall have the right to remove and dispose

of said personal property. Grantee shall be responsible for removing all debris, trash and refuse at Grantee's sole expense, except to the extent that any of such debris, trash or refuse constitutes "Hazardous Materials" (which shall mean any asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation), in which event the removal shall be made at Grantor's expense.

11.3. Grantor shall make all payments required under any loan secured by a deed of trust encumbering the Property and pay all real property taxes and assessments before any of the same become delinquent.

12. **CEQA.** FWP understands, acknowledges and agrees that the City will be the lead agency pursuant to CEQA for purposes of all environmental review required for the Facility. FWP further understands, acknowledges and agrees that, as the lead agency, the City retains its sole, absolute and unfettered discretion to comply with all CEQA requirements applicable to the Facility, including without limitation the discretion to: (1) consider, impose and adopt all feasible mitigation measures for and alternatives to the proposed Facility, as required by CEQA, including but not limited to the "no project" alternatives; and (2) otherwise decline to approve a use permit or any other necessary permits or entitlements for the Facility, consistent with the City's obligations and duties as a municipal corporation in the State of California, and consistent with all applicable CEQA requirements as set forth in the CEQA statute and the CEQA Guidelines, and as interpreted by the California Supreme Court in the matter of *Save Tara v. City of West Hollywood*, 45 Cal. 4th 116 (2008)

12.1. Consistent with the foregoing, upon FWP's submittal to the City of a complete application for a use permit pursuant to and in compliance with the requirements of the City of Soledad Zoning Ordinance, including execution of a reimbursement agreement and a deposit of fees to cover City costs, the City shall prepare an initial study for the Facility, as provided by Section 15063 of the CEQA Guidelines to determine if construction and operation of the Facility would have a significant effect on the environment.

12.2. If the City determines, in the City's sole and exclusive discretion and based on the initial study described in Section 12.1, that the Facility, as proposed by FWP or with modifications to the proposed Facility that are agreed to by FWP, would not have a significant effect on the environment, then the City shall prepare a negative declaration for the Facility as provided by Section 21080(c) of CEQA and Section 15070 of the CEQA Guidelines to be considered by the City of Soledad City Council together with a use permit for the Facility as required by the City of Soledad Zoning Ordinance. If the City of Soledad City Council approves and adopts such negative declaration and issues such use permit, the City shall, within five (5) days following such actions by the City Council, file a Notice of Determination for the Facility, the filing of which shall constitute completion of the CEQA process for the Facility. Following said completion of the CEQA process for the Facility, the date upon which the statutory limitations period for any legal challenges to such City Council actions expires without any legal action being filed shall be the date upon which the "Exercise Period" of this Option Agreement commences, as defined in Section 1.2 of this Option Agreement.

12.3. If the City determines, in the City's sole and exclusive discretion and based on the initial study described in Section 12.1, that the Facility may have a significant effect on the environment such that an environmental impact report ("EIR") must be prepared for the Facility, the City shall notify FWP of such determination and FWP shall have five (5) days to terminate this Option Agreement without further liability, except that FWP shall remain liable to reimburse the City for all of the City's costs incurred in negotiating, preparing, and executing this Option Agreement, and all of the City's costs incurred in receiving, processing and considering FWP's applications for such land use and zoning permits for the Facility, including but not limited to costs for third party consultants and professionals (including engineering and legal professionals), and costs for staff time for staff of the City of Soledad. If FWP

declines to terminate this Option Agreement, the City shall prepare an EIR for the Facility as provided by Section 21080(d) of CEQA and Section 15063(b)(1)(A) of the CEQA Guidelines, to be considered by the City of Soledad City Council together with a use permit for the Facility as required by the City of Soledad Zoning Ordinance. All costs associated with the preparation, consideration and certification of such EIR shall be borne by FWP. If the City of Soledad City Council certifies such EIR and issues such use permit, the City shall, within five (5) days following such actions by the City Council, file a Notice of Determination for the Facility, the filing of which shall constitute completion of the CEQA process for the Facility. Following said completion of the CEQA process for the Facility, the date upon which the statutory limitations period for any legal challenges to such City Council actions expires without any legal action being filed shall be the date upon which the "Exercise Period" of this Option Agreement commences, as defined in Section 1.2 of this Option Agreement.

12.4. Following the completion of the CEQA process for the Facility, as described in Sections 12.2 and 12.3 above, if any legal challenge to the City Council's actions is filed by any third party or parties, FWP shall have the option of: (i) terminating this Option Agreement without further liability, except that FWP shall remain liable to reimburse the City for all of the City's costs incurred in negotiating, preparing, and executing this Option Agreement, and all of the City's costs incurred in receiving, processing and considering FWP's applications for such land use and zoning permits for the Facility, including but not limited to costs for third party consultants and professionals (including engineering and legal professionals), and costs for staff time for staff of the City of Soledad; or (ii) providing notice to the City of FWP's election not to terminate this Option Agreement, in which case FWP shall indemnify and hold the City harmless from all costs and expenses of any defense, appeal, or settlement of such legal challenge. In the event of such legal challenge, then the date on which such challenge is fully and finally determined, including and considering all available appeals, shall be the date upon which the "Exercise Period" of this Option Agreement commences, as defined in Section 1.2 of this Agreement.

13. **Broker's Commission.** Grantee represents and warrants that it has not dealt with any broker or agent and Grantee agrees to indemnify and save Grantor harmless from any claims made by any brokers or agents claiming to have dealt with Grantee. Grantor represents and warrants that it has not dealt with any brokers or agents, and Grantor agrees to indemnify and save Grantee harmless from any claims made by any brokers or agents claiming to have dealt with Grantor. The terms and provisions of this Section 13 shall survive the expiration or termination of this Option Agreement or the exercise of the Option.

14. **Notices.** All notices or other communications required or permitted hereunder shall, unless otherwise provided herein, be in writing, shall be personally delivered, delivered by reputable overnight courier, or sent by registered or certified mail, return receipt requested, and postage prepaid, addressed to the parties at the addresses set forth on the first page of the Option Agreement. Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Notice of change of address shall be given by written notice in the manner detailed in this Section 14.

15. **Miscellaneous.**

15.1 **Construction.** The parties acknowledge that each party and its counsel have reviewed, commented on and approved this Option Agreement and the rule of construction that provides ambiguities within this Option Agreement are to be resolved against the drafting party shall not be employed in the interpretation of this Option Agreement.

15.2 **Time Periods.** In the event that any time period set forth in this Option Agreement would otherwise expire on a Saturday, Sunday or holiday, such time period shall be deemed to be automatically extended to the next business day.

15.3 **Attorneys' Fees.** In the event of any arbitration, litigation, or other proceeding between the parties with respect to this Option Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, together with its other reasonable out-of-pocket costs and expenses, including expert witness fees, accounting and other professional fees, incurred in connection with such dispute or the prosecution or defense of such action, whether an action is actually filed or is prosecuted to a final judgment, as a part of its damages.

15.4 **Governing Law.** This Option Agreement shall be governed by and construed in accordance with the laws of the State of California.

15.5 **Force Majeure - Delays.** Except as otherwise expressly provided in this Option Agreement, should the performance of any act required by this Option Agreement to be performed by either Grantee or Grantor be prevented or delayed by reason of any act of God, strike, lock-out, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused.

15.6 **Entire Option Agreement.** This Option Agreement and the Lease Agreement, if fully executed by the parties, together with the exhibits, schedules and addendums attached hereto and thereto, contain the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, discussions or understandings, written or oral, are superseded by this Option Agreement and shall be of no force or effect. No addition or modification of any term or provision of this Option Agreement shall be effective unless set forth in writing and signed by the authorized representatives of the parties.

15.7 **Partial Invalidity.** If any term or provision of this Option Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Option Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be effected thereby, and each remaining term and provision of this Option Agreement shall be valid and enforceable to the fullest extent permitted by law.

15.8 **Headings.** The section headings contained in this Option Agreement are for purposes of references and convenience only and shall not limit or otherwise affect in any way the meaning of this Lease.

15.9 **Counterparts: Signatures.** This Option Agreement may be executed in counterparts. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. Grantor and Grantee hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Option Agreement had been delivered. Grantor and Grantee hereto (i) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (ii) are aware that the other party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Option Agreement based on the foregoing forms of signature.

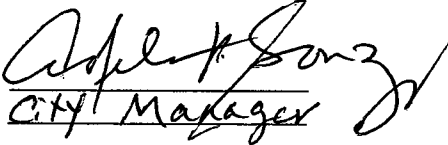
15.10 **Recording of Memorandum.** Concurrent with the execution of this Option Agreement, the parties shall execute, acknowledge and record a Memorandum of Option Agreement to Acquire Wind Site Lease and Easement in the official records of Monterey County, California.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Option Agreement to be duly executed as of the Effective Date.

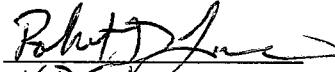
GRANTOR:

CITY OF SOLEDAD, CALIFORNIA

By: 
Its: City Manager

GRANTEE:

FOUNDATION WINDPOWER, LLC

By: 
Its: VP Sales

15.4 **Governing Law.** This Option Agreement shall be governed by and construed in accordance with the laws of the State of California.

15.5 **Force Majeure - Delays.** Except as otherwise expressly provided in this Option Agreement, should the performance of any act required by this Option Agreement to be performed by either Grantee or Grantor be prevented or delayed by reason of any act of God, strike, lock-out, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused.

15.6 **Entire Option Agreement.** This Option Agreement and the Lease Agreement, if fully executed by the parties, together with the exhibits, schedules and addendums attached hereto and thereto, contain the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, discussions or understandings, written or oral, are superseded by this Option Agreement and shall be of no force or effect. No addition or modification of any term or provision of this Option Agreement shall be effective unless set forth in writing and signed by the authorized representatives of the parties.

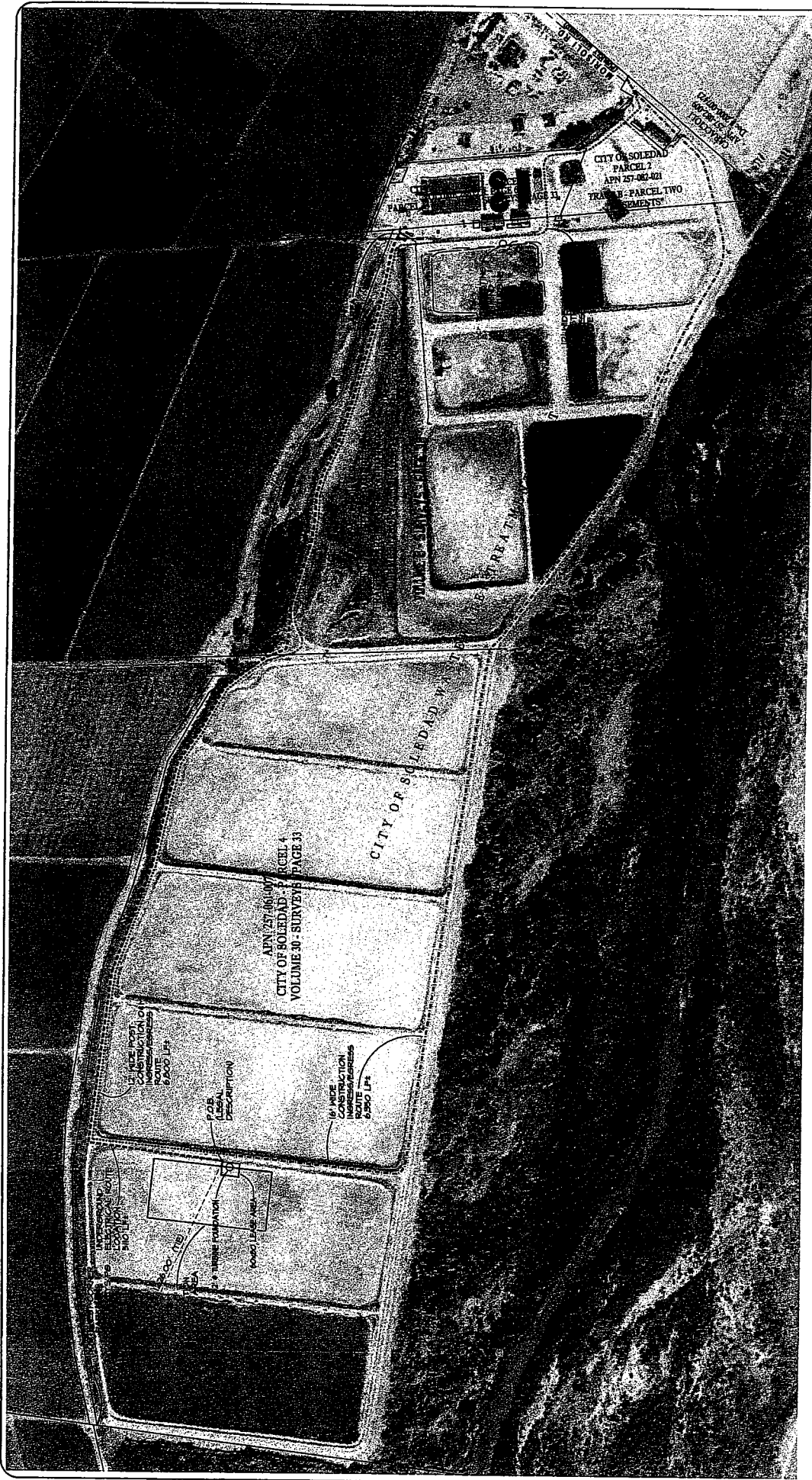
15.7 **Partial Invalidity.** If any term or provision of this Option Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Option Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be effected thereby, and each remaining term and provision of this Option Agreement shall be valid and enforceable to the fullest extent permitted by law.

15.8 **Headings.** The section headings contained in this Option Agreement are for purposes of references and convenience only and shall not limit or otherwise affect in any way the meaning of this Lease.

15.9 **Counterparts: Signatures.** This Option Agreement may be executed in counterparts. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. Grantor and Grantee hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Option Agreement had been delivered. Grantor and Grantee hereto (i) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (ii) are aware that the other party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Option Agreement based on the foregoing forms of signature.

15.10 **Recording of Memorandum.** Concurrent with the execution of this Option Agreement, the parties shall execute, acknowledge and record a Memorandum of Option Agreement to Acquire Wind Site Lease and Easement in the official records of Monterey County, California.

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SHEET
1
 OF

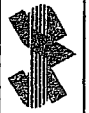
SCALE: As Shown DRAWN: BGO JOB NO.
 DATE: Feb. 27, 2016 DESIGNED: NJ FILE NO.

CITY OF SOLEDAD 3.0 MW FOUNATION WIND TURBINE PROJECT
 SHOWING
 LOCATION OF DESCRIBED LEASE PARCEL,
 INGRESS/EGRESS & UTILITY CONFIGURATION

PREPARED FOR:
FOUNDATION WINDPOWER, LLC
 505 SANSOME STREET, SUITE 450
 SAN FRANCISCO, CA 94111

CONSTRUCTION
 STAKING &
 SUBDIVISION
 DESIGN

BOUNDARY &
 TOPOGRAHIC
 SURVEYING

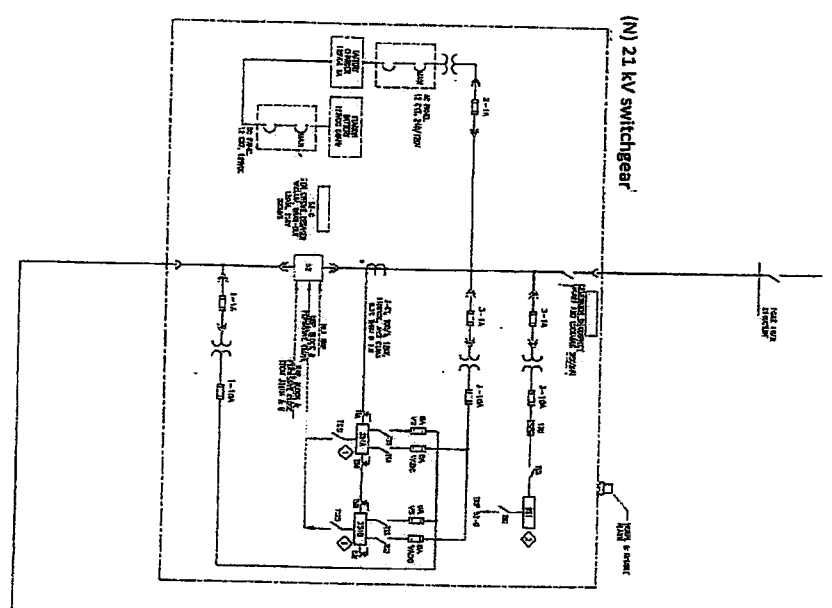


**SALINAS
 VALLEY
 SURVEYORS**

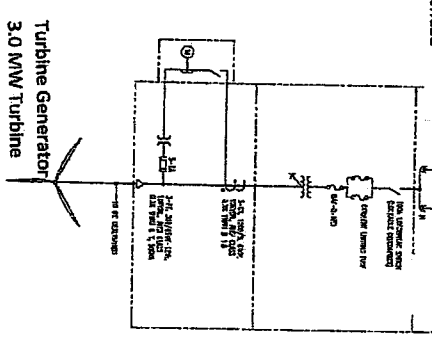
Exhibit 1
Premises



(N) 21 KV switchgear



3000 KVA 3-phase
Pad Mounted Transformer



Turbine Generator
3.0 MW Turbine

GENERAL NOTES

1. IMPORTANT: READ ENTIRE DRAWING AND SPECIFICATIONS IN ORDER TO OBTAIN FULL MEANING TO THE DRAWING.
2. ALL THE DIMENSIONS IN THIS DRAWING ARE IN METERS.
3. DIMENSIONS ARE GIVEN IN METERS AND MILLIMETERS.
4. DIMENSIONS ARE GIVEN IN METERS AND MILLIMETERS.
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RELAY DEVICE LIST

NO.	RELAY TYPE	MANUFACTURER	MODEL	SETTING
1	OVERCURRENT	ABB	REF 630	1.0
2	DIFFERENTIAL	ABB	REF 630	1.0
3	UNDERVOLTAGE	ABB	REF 630	1.0
4	OVERVOLTAGE	ABB	REF 630	1.0
5	TEMPERATURE	ABB	REF 630	1.0
6	WIND SPEED	ABB	REF 630	1.0
7	WIND DIRECTION	ABB	REF 630	1.0
8	WIND TURBINE	ABB	REF 630	1.0
9	WIND TURBINE	ABB	REF 630	1.0
10	WIND TURBINE	ABB	REF 630	1.0

FWP
City of Soledad
3.0 MW REWAT

Wind Turbine Project
3452 Morisoli Rd
Soledad CA 93960

NO.	REVISION	DATE	BY	CHKD
1	ISSUED FOR CONSTRUCTION	10/15/01	J. B. BROWN	J. B. BROWN
2	REVISED	10/15/01	J. B. BROWN	J. B. BROWN
3	REVISED	10/15/01	J. B. BROWN	J. B. BROWN
4	REVISED	10/15/01	J. B. BROWN	J. B. BROWN
5	REVISED	10/15/01	J. B. BROWN	J. B. BROWN
6	REVISED	10/15/01	J. B. BROWN	J. B. BROWN
7	REVISED	10/15/01	J. B. BROWN	J. B. BROWN
8	REVISED	10/15/01	J. B. BROWN	J. B. BROWN
9	REVISED	10/15/01	J. B. BROWN	J. B. BROWN
10	REVISED	10/15/01	J. B. BROWN	J. B. BROWN

ELECTRICAL SINGLE
LINE DIAGRAM -
MV UTILITIES &
GENERATORS

DATE: 10/15/01
DRAWN BY: J. B. BROWN
CHECKED BY: J. B. BROWN
PROJECT NO: E2.2

Wind Turbine Project - 3.0 MW REWAT - 3452 Morisoli Rd - Soledad - CA - 93960

Powering the world...responsibly.

For more information please visit www.ge-energy.com/wind.

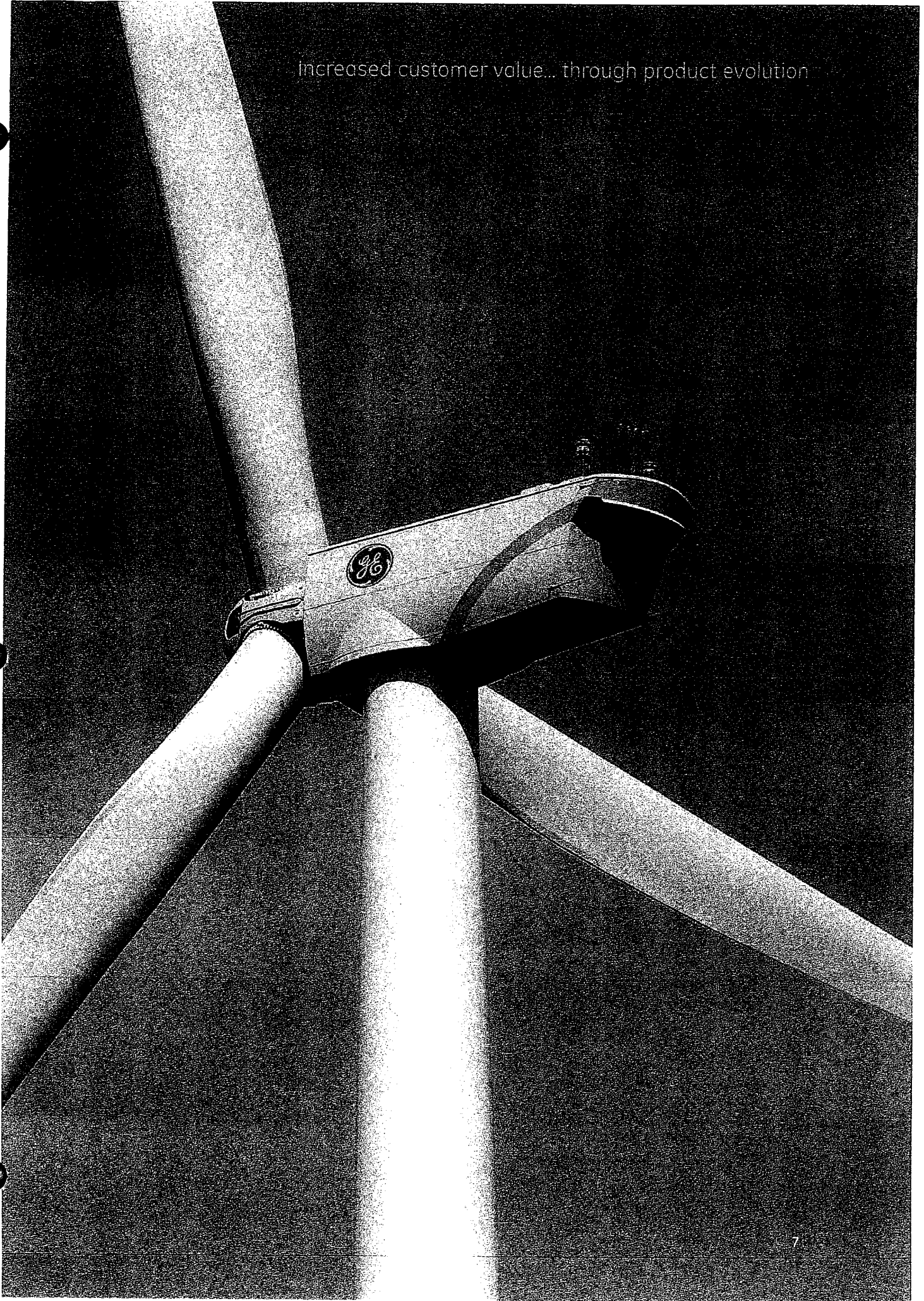


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GEA36475 (04/2013)

Increased customer value... through product evolution



Introducing GE's 2.85-100 and 2.85-103

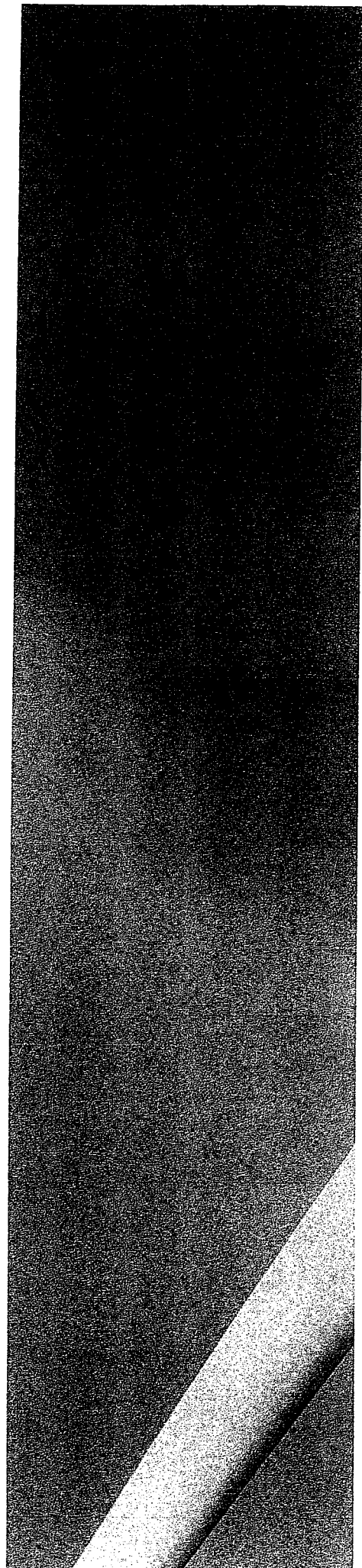
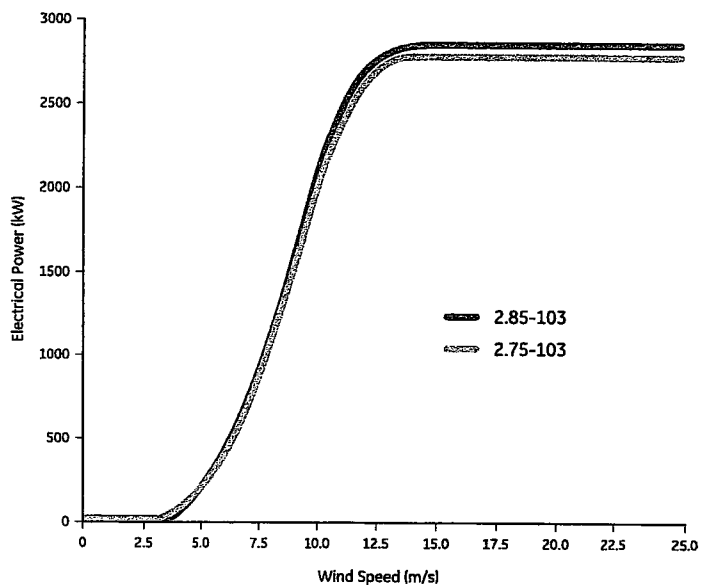
GE's 2.85 MW Turbines

- **Continual investment.** Focused on increasing customer value
- **Evolutionary development strategy.** Built on the world's best running fleet
- **Portfolio flexibility.** Value where you need it, even in sound sensitive locations

Higher Efficiency

The 2.85 MW wind turbine is equipped with a double fed induction generator that enables higher efficiency. Leveraging this power conversion technology from GE's proven 1.x model has reduced the electrical losses in both converter cable systems, improving power generation performance.

Performance



Construction

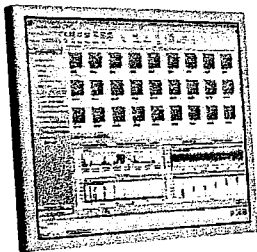
Towers: tubular steel sections provide hub heights of 75 (50 Hz only), 85 or 98.3 meters.

Blades: GE's propriety 48.7 and 50.2 meter blades provide high energy capture without sacrificing acoustic performance.

Drivetrain components: GE's 2.85-100/2.85-103 use proven design gearboxes, mainshaft and generators to enable the uprate from 2.75 MW to 2.85 MW.

Condition Monitoring System

GE's Condition Monitoring System (CMS) and SCADA Anomaly Detection Services, a complementary suite of advanced condition monitoring solutions, proactively detect impending drive train and whole-turbine issues enabling increased availability and decreased maintenance expenses. Built upon half-a-century of power generation drivetrain and data anomaly monitoring experience, this service solution is available as an option on new GE Units and as an upgrade.



Features and Benefits

- Higher AEP compared to 2.75 MW predecessors
- Designed to meet or exceed the 1.5 MW platform's historic high availability
- Grid friendly options are available
 - Enhanced Reactive Power, Voltage Ride Thru, Power Factor Control
- Wind Farm Control System; WindSCADA*
- Sharing of components within GE's product family
- GE proprietary 50.2 and 48.7 meter blades
- Ultra-quiet power production Low Noise Trailing Edge serrations as an acoustic enhancement for the 2.85-103
- Available in both 50 Hz and 60 Hz versions for global suitability
- Noise Reduced Operation (NRO)
- Whisper package addresses sound where it occurs
- WindBOOST and WindReserve optimize energy output on wind farm

Technical Description

GE's 2.85-100 and 2.85-103 are three-blade, upwind, horizontal-axis wind turbines with 100-meter and 103-meter rotor diameters, respectively. The turbine rotor and nacelle are mounted on top of a tubular steel tower providing hub heights of 75 (50 Hz only), 85, and 98.3 meters. The machine uses active yaw control to keep the rotor facing into the wind. The new 2.85 wind turbine is designed to operate at variable speed and utilizes a double fed induction generator partial power conversion system. The Transformer, Switch Gear and Auxiliary Equipment can be supplied internal to the base of the tower, or mounted in external housing.

Specifications

2.85-100 Wind Turbine:

- Designed to IEC 61400-1
 - TC S: 8.5 m/s average wind speed; B-turbulence for 85 meter tower
 - TC S: 8.5 m/s average wind speed; B-turbulence for 98.3 meter tower
- Standard and cold weather extreme (60 Hz only) options
- Tower corrosion protection, standard C2 internal and C3 external with optional C4 internal and C5 external available
- Rotational direction: Clockwise viewed from an upwind location
- Speed regulation: Electric drive pitch control with battery backup
- Aerodynamic brake: Full feathering

2.85-103 Wind Turbine:

- Same as the 2.85-100 with the following changes
- Low Noise Trailing Edge serrations for ultra-quiet power production
- Larger 103 meter rotor to capture more energy

Enhanced Controls Technology

The 2.85-100 and 2.85-103 wind turbines employ two enhanced control features:

- GE's patented Advanced Loads Control reduces loads on turbine components by measuring stresses and individually adjusting blade pitch
- Controls developed by GE Global Research minimize loads including at near rated wind speeds to improve Annual Energy Production (AEP)



EXHIBIT 5
Mitigation Measures Monitoring Plan

GE's 2.85-100 Wind Turbine

GE's 2.85-100 wind turbine offers a 3% increase in Annual Energy Production (AEP) at 8.5 m/s when compared to the 2.75-100 wind turbine. This nameplate rating increase allows greater energy capture and improved project economics for wind developers. GE's proprietary 48.7 meter blade uses the same proven aerodynamic shape found on the 2.75-100.

GE's 2.85-103 Wind Turbine

GE's 2.85-103 wind turbine offers a 6% increase in swept area and a 3% increase in AEP at 8.5 m/s when compared to the 2.85-100. This increase in blade swept area allows greater energy capture and improved project economics for wind developers. GE's proprietary 50.2 meter blade uses the same proven aerodynamic shape as the 48.7 meter blades found on the 2.85-100. Our new, Low Noise Trailing Edge serrations are employed on this turbine to enable siting in sound sensitive areas at full rated power. Testing has shown this design for the blade enables improved turbine acoustics. Low Noise Trailing Edge technology allows increased tip speed tolerance to capture more energy.

GE's 2.85-100 and 2.85-103 wind turbines are available with 75 (50 Hz only), 85, and 98.3 meter hub heights that provide flexible options for Class II and III wind sites, allowing customers to capture the most free fuel in the wind.

GE's stringent design procedures result in a turbine designed for high performance, reliability and availability. Building on the exceptional turbine performance of its predecessors, coupled with selected minimal electrical component modifications, GE's 2.85-100 and 2.85-103 wind turbines provide increased nameplate rating and AEP, with the same reliable performance as the 2.5-100 turbine.

Building Upon the Proven 1.5 MW and 2.5 MW Platforms

The evolution of GE's multi-megawatt turbine design began with the 2.5s turbine introduced in 2004. The 88-meter rotor diameter turbine was soon increased to 100 meters for the 2.5xl turbine, introduced in 2006. GE's 2.5-100 and 2.75-103 built upon the maturity of their predecessors, and the 2.85-100 and 2.85-103 wind turbines leverage power conversion technology from GE's proven 1.x product line to take the next evolutionary step. These changes help ensure increased capacity factor and availability.

Designed with high reliability to ensure continued operation in the field, GE's 2.85-100 and 2.85-103 can provide greater return on investment.

Introducing GE's 2.85-100 and 2.85-103

Product evolution. It's one of the things GE does best. Especially when it comes to the next generation of wind turbines. Building on a strong power generation heritage spanning more than a century, our onshore wind turbines deliver proven performance, availability and reliability—creating more value for our customers.

As one of the world's leading wind turbine suppliers, GE's current product portfolio includes wind turbines with rated capacities ranging from 1.5 MW–4.1 MW and support services extending from development assistance to operation and maintenance.

DRAFT-SUBJECT TO REVISION AND FINAL CITY COUNCIL APPROVAL

WIND SITE LEASE AND EASEMENT

This Wind Site Lease and Easement (this "Lease"), is made this __ day of _____, 2016 ("Effective Date"), by and between Foundation Windpower, LLC, a California limited liability company ("Tenant") and the City of Soledad, California a public body, corporate and politic ("Landlord"). Landlord and Tenant are sometimes referred to herein individually as a "Party" and collectively as "Parties".

RECITALS

- A. Landlord is the owner of that certain real property commonly known as Assessor's Parcel No. 022-082-018, located at 35520 Morisoli Road, Soledad, in Monterey County, California, more particularly described in Exhibit 1 attached hereto and incorporated herein by this reference (the "Property").
- B. Tenant desires to lease from Landlord and Landlord desires to rent to Tenant a pad consisting of approximately 4800 square feet (the "Premises") located on the Property for the purpose of building and operating one (1) wind turbine and ancillary equipment (the "Facility") for the delivery of electricity to Pacific Gas & Electric Company ("PG&E" or "Utility") pursuant to the terms of the Utility's applicable Renewable Market Adjusting Tariff Power Purchase Agreement between Foundation Windpower, LLC or Project LLC and PG&E ("PPA").
- C. Tenant intends to assign its rights and obligations under this Lease to a project specific limited liability company (the "Project LLC") immediately prior to placing the facility in service.
- D. NOW THEREFORE, in consideration of the mutual obligations and undertakings contained herein, the receipt and sufficiency of which is acknowledged, the Parties hereto agree as follows:

**ARTICLE I
LEASED PREMISES AND RIGHTS**

Section 1.1 Lease of Premises. Landlord hereby leases to Tenant the Premises for the purpose of developing, constructing, owning and operating the Facility pursuant to the terms of this Lease .

Section 1.2 Location of Premises. The metes and bounds legal description of the Premises is depicted on Exhibit 2 attached hereto and incorporated herein by this reference.

Exhibit 2
Form of Lease Agreement

Section 1.3 Other Rights. Landlord also grants to Tenant the following rights for a period coinciding with the term of this Lease:

- (a) an easement to construct, install, operate, maintain and improve the Facility on the Premises and to make such modifications to the Property as are approved by Landlord's Representative in writing, for the installation of electrical conduits and communication lines from the Facility to the electrical panel and other areas of the Property as appropriate for the operation, maintenance, and monitoring of the Facility;
- (b) an easement to construct and maintain interconnection facilities (below ground, if reasonably feasible), to connect the Facility with Pacific Gas & Electric Company ("Utility") service, as delineated on Exhibit 3.
- (c) an easement for right of way and access to the Property and the Premises across or through the Property as delineated on Exhibit 3, passage through which is necessary or convenient to gain access to the Facility or the Premises;
- (d) exclusive occupancy of the Premises (subject to Landlord access) and the right to access the Premises at all times during the Lease, twenty-four (24) hours a day, seven (7) days a week;
- (e) the right to use electric and water service as necessary during the construction and operation of the Facility, provided that such electric and water service is paid for by Tenant in accordance with Section 4.3 below; and,
- (f) in addition to the rights described in Section 4.1 below, the right to temporary use of certain areas of the Property (not to exceed thirty (30) days each year, as delineated on Exhibit 3), for laydown, construction staging, and operations and maintenance, as may be required during construction and during operation from time to time.

ARTICLE II TERM

Section 2.1 Initial Term. The initial term of this Lease shall commence on the Effective Date and shall terminate on the date that is one hundred and twenty (120) days after the date that is twenty (20) years after the first day of the month following the date on which the Facility achieves commercial operation and begins delivering electricity to the Utility pursuant to the PPA (the "Term"). Tenant shall provide Landlord written notice confirming the date on which the Facility achieves commercial operation and begins delivering electricity to the Utility pursuant to the PPA (the "Commercial Operation Date") and termination date within thirty (30) days of the Commercial Operation Date, provided that failure to provide such notice shall not affect the Term. Except as provided in Section 2.3 herein, and notwithstanding any other

provision herein, this Lease shall terminate, unless renewed or earlier terminated as set forth herein, at 12:00 pm (noon) on the date that is one-hundred and twenty (120) days after expiration or termination of the PPA.

Section 2.2 Extension of Term. Either party shall have the option to extend the Term for in periods of five (5) years per extension, coincident with a power sales agreement to be determined prior to any extension. All provisions of this Lease shall remain in effect during any extension term(s).

Section 2.3 Power Purchase Agreement Term. Except as provided in this Section 2.3, this Lease is intended to be coincident with the initial PPA, with additional reasonable time before for construction, and after for removal, of the Facility. Notwithstanding anything to the contrary contained herein, under no circumstances shall this Lease terminate prior to the expiration or termination of the PPA, unless a successor lease agreement or other agreement allowing Tenant the use of the Premises has been executed by the Parties. In the event that the PPA is terminated, this Lease shall automatically terminate one hundred and twenty (120) days thereafter. Upon expiration or other termination of this Lease, Tenant shall leave the Premises in neat and clean order and re-graded to its original elevation.

ARTICLE III RENT

Section 3.1 Rent. Tenant shall pay Landlord \$1.00 (one dollar) per year for the portion of the Term beginning on _____, __, 2016 and ending on the day before the first day of site excavation for the turbine foundation ("Construction Start"). Tenant shall pay Landlord one thousand dollars (\$1,000.00) per month for the portion of the Term beginning with Construction Start and ending with the Commercial Operation Date. Tenant shall pay Landlord sixty-five thousand dollars (\$65,000.00) per year for the portion of the Term beginning on the Commercial Operation Date and ending on the day before the seventh (7th) anniversary of the Commercial Operation Date. Tenant shall pay Landlord seventy thousand dollars (\$70,000.00) per year for the portion of the Term beginning on the seventh (7th) anniversary of the Commercial Operation Date and ending on the day before the fourteenth (14th) anniversary of the Commercial Operation Date. Tenant shall pay Landlord seventy-five thousand dollars (\$75,000.00) per year for the portion of the Term beginning on the fourteenth (14th) anniversary of the Commercial Operation Date and ending on the day before the fourteenth (20th) anniversary of the Commercial Operation Date. The Parties agree to renegotiate the foregoing rental amounts upon the tenth (10th) anniversary of the Commercial Operation Date. To the extent the Term is extended, the Rent shall be adjusted proportionately by the same percentage that Tenant's projected annual revenue changes over its average annual revenue over the term of the PPA. . In addition to the foregoing payment obligations (collectively "Base Rent"), Tenant shall pay to Landlord any and all charges and other amounts required under this Lease as additional rent (collectively, "Additional Charges"). All such Additional Charges shall be payable to Landlord at the same place and the same manner as the Base Rent is payable. Landlord shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. As used in this Lease, the term "Rent" shall include the Base Rent,

Additional Charges and any other amounts Tenant is obligated to pay hereunder, whether or not any such amounts are specifically characterized as rent.

Section 3.2 Taxes. Commencing on the Effective Date, Tenant shall pay the Taxes and Assessments, as hereinafter defined, which accrue during the Term and are attributable to this Lease or to Tenant's construction and operation of the Facility. "Taxes and Assessments" shall mean all taxes, assessments or other impositions, general or special, ordinary or extraordinary, of every kind or nature, which may be levied, assessed or imposed upon or with respect to the Premises or any part thereof, or upon the Facility or any buildings, improvements, fixtures, equipment or personal property of Tenant at any time situated thereon, including, but not limited to, any possessory interest taxes, ad valorem and inventory taxes. Commencing on the Effective Date, Tenant shall pay Taxes and Assessments as they become due and payable and, upon request, shall provide Landlord with appropriate evidence of their payment. Nothing in this Lease shall be interpreted to constitute a waiver or agreement with respect to any increase, diminishment or alteration of Landlord's authority to levy Taxes and Assessments.

Section 3.3 Payment. All Rent for the first two years during the Term following the Commercial Operation Date shall be paid on the 1st anniversary of the Commercial Operation Date in legal tender at the address designated by Landlord in Section 13.3 below, or at such other places as Landlord may hereafter designate in writing. Thereafter, for the remainder of the Term Rent shall be paid to Landlord annually in advance on each successive anniversary of the Commercial Operation Date.

ARTICLE IV USE

Section 4.1 Installation and Removal of Facility. Landlord hereby consents to the construction, installation, operation, maintenance, repair, replacement and, as applicable, the removal of the Facility, including all supporting equipment and structures, on or, as applicable, from the Premises pursuant to the plans and specifications set forth on Exhibit 4 and approved by Landlord's Representative. During installation and removal, Landlord will provide an area of additional space as delineated on Exhibit 3 on a temporary basis not to exceed thirteen (13) months consisting of approximately three-and-a-half (3.5) acres labeled "Temp. Laydown Yard" for storage of construction materials, and for staging of a crane that will install and/or remove the turbine which is part of the Facility. Tenant will coordinate construction and removal so as to minimize disruption to other occupants, employees, contractors, licensees and invitees who use or access the Property and afterwards will return the temporary use areas to the condition they were in prior to Tenant's use of them.

Section 4.2 Use of Premises. Tenant shall have the right during the Term to use the Premises for the construction, installation, operation, maintenance, repair and replacement of the Facility. Such right of use shall include, but not be limited to: (a) activities necessary or convenient to operate, monitor, maintain, clean, repair, replace and dispose of part or all of the Facility; and (b) the performance by Tenant, through its own employees or through other agents

or contractors, of any and all tasks necessary or convenient, as reasonably determined by Tenant, to carry out the activities set forth in this Article IV.

Section 4.3 Utilities. Landlord shall provide Tenant with Station Power during the Term of this Lease, provided that such power is paid for by Tenant. For purposes of this Lease "Station Power" shall mean electric energy consumed in the start-up and operation of the Facility, which is distinct from the alternating current output of the Facility. Tenant is responsible for all connection costs.

Section 4.4 Compliance with Laws. Tenant shall perform its obligations under this Lease in accordance with all applicable laws, rules, codes, ordinances regulations, Permits and authorizations (collectively, "Laws").

Section 4.5 Permits. Tenant will obtain and comply with all governmental permits, licenses, certificates, approvals, variances and other entitlements (collectively, "Permits") necessary for the construction, installation, operation, maintenance, repair and replacement of the Facility. Tenant understands and agrees that the City of Soledad, a public body corporate and politic ("City"), as Landlord, is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency with certain police powers. Landlord's legal status as a City shall in no way limit the obligation of Tenant to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises. By entering into this Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises to be used and occupied in accordance with all Laws. Landlord shall reasonably cooperate with Tenant in applying for any such Permits, and to the extent reasonable and necessary, agrees to join or otherwise acknowledge any application or filing for the same at Tenant's sole cost and expense.

ARTICLE V OWNERSHIP OF FACILITY

Section 5.1 Ownership of Facility. The Facility shall be and remain Tenant's personal property at all times and shall not be a fixture on the Property. The Facility and its components may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Landlord with Landlord's fee interest to the Property. Except as relating to the terms of any bonded indebtedness for the City of Soledad Treatment Plant Expansion Projects and any future modification or amendment to such documents, Landlord shall not cause or permit the Facility or any part thereof to become subject to any lien, encumbrance, pledge, levy or attachment arising by, under or through Landlord. Tenant shall not cause or permit Landlord's fee interest in the Premises, the Property or any part thereof to become subject to any lien, encumbrance, pledge, levy or attachment arising by, under or through Tenant; provided, however, that Tenant shall have the limited right to assign the leasehold estate created by this Lease as security for financing the Facility, as provided in Section 12.2 below.

ARTICLE VI
REPRESENTATIONS, WARRANTIES AND COVENANTS OF LANDLORD

Section 6.1 Authorization; Enforceability. Landlord is duly created, validly existing and in good standing under the Law. The execution and delivery by Landlord of, and the performance of its obligations under, this Lease have been duly authorized by resolution of Landlord's governing board.

Section 6.2 Landlord's Title to Property. Landlord represents and warrants that Landlord has lawful title to the Property and the Premises, and covenants to maintain the same during the term of this Lease. To the actual knowledge of Landlord's Representative, there are no existing conditions or use restrictions that prevent the construction, installation or operation of the Facility on the Premises.

Section 6.3 No Interference with Wind Resource. Landlord acknowledges that access to wind is essential to the value to Tenant of the leasehold interest granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not interfere, or permit any interference by a third party having rights on the Property, with the speed or direction of wind over the Premises. Landlord will obtain Tenant's written approval prior to taking any action on the Property which might reasonably interfere with the speed or direction of wind over the Premises, or which might reasonably cause a decrease in the output or efficiency of the Facility, including but not limited to, modifying the Property or constructing any building or structure on the Property. Approval shall be based on whether, in Tenant's reasonable discretion, the proposed activity, modification or construction might interfere with wind speed or wind direction over any portion of the Premises, cause a decrease in the output or efficiency of the Facility, or interfere in any other way with Tenant's operations on the Premises. Tenant acknowledges that Landlord operates and maintains a Waste Water Treatment Facility ("WWTF") on the Property, and agrees that over the Term of this Lease, modification of the WWTF or construction of additional structures on the Property may be necessary or advisable. Tenant agrees to cooperate with Landlord when any maintenance, repair, replacement, modification, or construction of the WWTF (collectively, "WWTF Repair") is necessary or advisable, and will not unreasonably withhold, delay or condition its consent to any such WWTF Repair. Tenant acknowledges that the existing improvements on the Property and current uses of the Property, including the WWTF, do not interfere with the speed or direction of wind over the Premises.

Section 6.4 Protection of Facility. Landlord will not conduct activities on, in or about the Property or the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Facility. Landlord shall implement and maintain reasonable and appropriate security measures on the Property to prevent Landlord's employees, invitees, agents and representatives, and other unrelated third-parties, from having access to the Premises or the Facility, and to prevent from occurring any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Facility. Notwithstanding the foregoing, Landlord shall not be required to take any steps to limit access to the Premises or implement any other security measures that are in excess of or more

burdensome than Landlord has undertaken as of the Effective Date with respect to the Property and the Premises.

Section 6.5 Hazardous Materials. Prior to the Commercial Operation Date, Tenant may enter the Property to perform testing or other investigations of the Property pursuant to the terms and conditions of a permit to enter in form and substance satisfactory to Landlord. As used in this Lease, "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. During the Term, Landlord shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the Property or the Premises in violation of any applicable law or regulation. If Landlord becomes aware of any such violation, Landlord shall promptly notify Tenant of the type and location of such materials in writing.

ARTICLE VI REPRESENTATIONS, WARRANTIES AND COVENANTS OF TENANT

Section 7.1 Authorization; Enforceability. The execution and delivery by Tenant of, and the performance of its obligations under, this Lease have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Tenant or any valid order of any court, or regulatory agency or other body having authority to which Tenant is subject. This Lease constitutes a legal and valid obligation of Tenant, enforceable against Tenant in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law.

Section 7.2 No Interference with Waste Water Treatment Facility. Tenant acknowledges that continuous and smooth operation of the WWTF is of essential importance to Landlord. Accordingly, Tenant will not interfere, or permit any interference by any of Tenant's agents, invitees or licensees, with the operation of the WWTF. Tenant will obtain Landlord's written approval prior to taking any action which might interfere with the operation of the WWTF, which approval will not be unreasonably withheld, conditioned or delayed.

Section 7.3 Protection of WWTF. Tenant will not conduct activities on, in or about the Property or the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the WWTF. Tenant shall take all reasonable steps to limit access to the Premises to Tenant and Tenant's employees, invitees, agents and representatives. Tenant will implement and maintain reasonable and appropriate security measures on the Premises to prevent Landlord's employees, invitees, agents and representatives, and other unrelated third-parties, from having access to the Premises and the Facility, and to prevent any theft, vandalism or other actions that may cause damage, impairment or otherwise adversely affecting the Facility. Tenant will implement and maintain reasonable and appropriate security measures on the Premises and the Property, approved by Landlord's Representative, to prevent Tenant's employees, invitees, agents and representatives, from having access to the WWTF, and to

prevent from occurring any theft, vandalism or other actions that may cause damage, impairment or otherwise adversely affecting the WWTF.

Section 7.4 Hazardous Materials. Tenant shall not introduce or use any Hazardous, Materials on, in or under the Property or the Premises in violation of any applicable law or regulation. If Tenant becomes aware of any such Hazardous Material, Tenant shall promptly notify Landlord of the type and location of such materials in writing. Tenant shall be responsible for the identification, cleanup, removal, remediation and disposal in accordance with applicable laws of any Hazardous Materials (a) used, generated, treated, stored, or transported to or from the Property or Premises by Tenant, its agents or contractors, or (b) generated or otherwise created by Tenant, its agents or contractors. Tenant shall indemnify and hold the Landlord harmless for any and all losses, including but not limited to any costs of remediation relating to the foregoing.

ARTICLE VIII ENTRY; BONDS; CONSTRUCTION TIME

Section 8.1 Entry. Landlord and its authorized agents shall have the right at all reasonable times during normal business hours and after forty-eight (48) hours written notice to Tenant (except in the event of an emergency when no written notice is required), to go on the Premises for the purpose of inspecting the same or for the purpose of posting notices of nonresponsibility, or for police or fire protection.

Section 8.2 Performance and Payment Bonds. Prior to commencement of construction of the Facility, Tenant shall deliver to Landlord performance and payment bonds, each for the full value of the cost of construction of the Facility provided by Tenant's general and/or prime contractors, which bonds shall name Tenant and Project LLC as co-obligees and which bonds shall be in the form of American Institute of Architects AIA Document A312-1984 or such similar form as is customary in the construction industry. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Section 8.3 Time for Construction. Tenant agrees to use commercially reasonable efforts to complete construction of the Facility according to the schedule set forth in the PPA, if any, subject to force majeure and other exceptions set forth in the PPA, unless the Utility or Landlord extends such dates.

ARTICLE IX CONDITION OF PREMISES – "AS IS"

Section 9.1 As Is Condition of Premises. Neither Landlord, nor any employee, agent or representative of Landlord has made any representation, warranty or covenant, expressed or implied, with respect to the Premises or the Property, its physical condition, the condition of any improvements, any environmental laws or regulations, or any other matter, affecting the use, value, occupancy or enjoyment of the Premises or the Property other than as set forth explicitly in this Lease, and Tenant understands and agrees that Landlord is making no such representation,

warranty or covenant, expressed or implied; it being expressly understood that the Premises is being leased in an "AS IS" condition with respect to all matters except as specifically set forth herein.

ARTICLE X LIABILITY AND INDEMNITY

Section 10.1 Tenant Indemnity. Tenant shall indemnify, protect, defend and hold harmless Landlord, its principals, employees, agents, representatives, lenders and bondholders (the "Landlord Indemnitees") of and from any claim, liability, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Tenant or Landlord, and damage or destruction of property, including, but not limited to, property of either Tenant, Landlord or any utility company, or other loss or damage incurred by Landlord, arising out of (a) negligent acts or omissions or willful misconduct of Tenant, its principals, employees, agents, representatives, permittees or invitees; (b) the material breach by Tenant of any of its obligations under this Lease.

The obligation to indemnify shall extend to and encompass all costs incurred by Landlord and any Landlord Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Tenant's obligations pursuant to this Section 10.1 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Landlord, the Landlord Indemnitees, or their respective principals, employees, agents and representatives, or to the acts of any third parties. Tenant shall pay any cost that may be incurred by Landlord or the Landlord Indemnitees in enforcing this indemnity, including reasonable attorney fees.

Section 10.2 Landlord Indemnity. Landlord shall indemnify, protect, defend and hold harmless Tenant, its principals, employees, agents, lenders and representatives (the "Tenant Indemnitees") of and from any claim, liability, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Tenant or Landlord, and damage or destruction of property, including, but not limited to, property of either Tenant, Landlord or any utility company, or other loss or damage incurred by Tenant, arising out of: (a) negligent acts or omissions or willful misconduct of Landlord, its principals, employees, agents and representatives; or (b) the material breach by Landlord of any of its obligations under this Lease. The obligation to indemnify shall extend to and encompass all costs incurred by Tenant and any Tenant Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Landlord's obligations pursuant to this Section 10.2 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Tenant, the Tenant Indemnitees, or their respective principals, employees, agents and representatives, or the acts of any third parties. Landlord shall pay any cost that may be incurred by Tenant or the Tenant Indemnitees in enforcing this indemnity, including reasonable attorney fees.

Section 10.3 No Consequential Damages. Notwithstanding any provision in this Lease to the contrary, neither Tenant nor Landlord shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out of this Lease whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Lease.

Section 10.4 Casualty or Condemnation. In the event the Premises shall be so condemned, damaged or destroyed, through no fault of the Tenant, so as to make the use of the Premises impractical as determined by a qualified engineering consultant retained by Landlord and reasonably acceptable to Tenant, then either Party may elect to terminate this Lease on not less than twenty (20) days' prior notice to the other Party effective as of a date specified in such notice, and on the date so specified, this Lease shall expire as fully as if such date were the date set forth above for the expiration this Lease. If neither party elects to terminate this Lease pursuant to the previous sentence, Tenant shall exercise commercially reasonable efforts to repair the damage to the Premises and the Facility and return the Premises to its condition prior to such damage or destruction. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated as well as any damages suffered thereby.

ARTICLE XI DEFAULT

Section 11.1 Default. In the event of any default in the performance or breach of any representation, warranty, covenant or term of this Lease, the non-defaulting Party shall provide the defaulting Party with written notice of the default, which notice shall describe the default in reasonable detail. If an event of default or breach is not cured within ninety (90) days of receipt of written notice of default, the non-defaulting Party may at its discretion: (a) suspend performance under this Lease; (b) seek damages or specific performance from a court of appropriate jurisdiction; and/or (c) terminate this Lease and exercise such other remedies as are available to it under applicable law for the breach of this Lease by the defaulting Party. Notwithstanding any termination of this Lease, all obligations that have accrued under this Lease prior to termination shall survive until paid or satisfied.

ARTICLE XII ASSIGNMENT

Section 12.1 Assignment by Tenant. Except as provided below, Tenant may assign its rights under this Lease only upon the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed, provided that any such assignee assumes in writing the obligations of Tenant hereunder and under the PPA, to the extent the same continues to survive. Notwithstanding the foregoing, Tenant may assign its rights under this Lease without Landlord's consent to (i) the Project LLC, (ii) an affiliate of Tenant, (iii) to any person or entity

succeeding to all or substantially all of the assets of Tenant, or (iv) as security in connection with any financing transaction entered into by Tenant. No transfer or assignment shall relieve Tenant of its obligations under this Lease unless Landlord shall otherwise agree in writing, any such agreement to be on terms acceptable to Landlord in its sole and absolute discretion.

Section 12.2 Assignment by Tenant for Financing Purposes. In the event Tenant assigns its rights under this Lease as security in connection with any financing transaction entered into by Tenant, Tenant may mortgage or grant a security interest in this Lease and the Facility, and may assign this Lease and the Facility to any mortgagees or holders of security interests, including their successors or assigns, (hereinafter collectively referred to as "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. Landlord agrees to execute any consent or estoppel agreement related to such financing transaction as may reasonably be required by such Mortgagees. Landlord agrees to notify Tenant and any Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant or to remove any property of Tenant located on the Premises, if such rights are requested. Any such notices to Mortgagees shall be sent to Mortgagee at the address specified in writing to Landlord by Tenant or any Mortgagees. Failure by Landlord to give Mortgagee such notice shall not diminish Landlord's rights against Tenant, but shall preserve all rights of Mortgagee to cure any default and to remove any property of Tenant located on the Leased Premises.

Section 12.3 Assignment by Landlord or Transfer of Property by Landlord. Landlord agrees that this Lease, including the easements granted in Article I, shall run with the Property, may not be separately transferred or assigned, and shall survive any transfer of the Property. Landlord shall give Tenant at least thirty (30) days written notice prior to any transfer of all or a portion of the Property, identifying the transferee, the portion of the Property to be transferred and the proposed date of transfer, and provided, further, that any such transferee or assignee assumes in writing the obligations of Landlord hereunder. No transfer or assignment shall relieve Landlord of its obligations under this Lease unless Tenant shall otherwise agree in writing, any such agreement to be on terms acceptable to Tenant in its sole and absolute discretion. If any mortgage or other encumbrance exists on the Property as of the Effective Date, Landlord shall deliver to Tenant, no later than thirty (30) days after the Effective Date, a recordable Non-Disturbance Agreement in a form agreeable to Tenant in its commercially reasonable discretion, duly executed by Landlord and the holder of the encumbrance. Similarly, if any mortgage or other encumbrance is placed on the Property after the date of this Lease, Landlord shall deliver to Tenant a recordable Non-Disturbance Agreement in a form agreeable to Tenant in its commercially reasonable discretion, duly executed by Landlord and the holder of the encumbrance within five (5) business days after such mortgage or other encumbrance is placed on the Property.

ARTICLE XIII INSURANCE

Section 13.1 Property and Liability Coverage.

(a) Required Types and Amounts of Insurance. Tenant shall, at no cost to Landlord, obtain, maintain and cause to be in effect at all times from the Effective Date to the last day of the Term, the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times prior to completion of the Facility, and during any subsequent period of repair or replacement of the Facility, Tenant shall maintain, on a form reasonably approved by Landlord, builders' risk insurance in the amount of 100% of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated into the Facility, and in transit or storage off-site, against hazards including earthquakes (subject to the provisions of Section 13.1(b)(iii)(A)), water damage, and floods, and including as named insureds Landlord and Landlord Indemnitees, Tenant and Tenant's contractors and subcontractors, with deductibles not to exceed Fifty Thousand Dollars (\$50,000) (except as to earthquake insurance); provided, however, that as to earthquake insurance separate sublimits of the insurance required under this Section 13.1(a)(i) and the insurance required under Section 13.1(a)(vii) may be required in order to comply with the requirements of Section 13.1(b)(iii)(A).

(ii) Property Insurance; Earthquake and Flood Insurance. Upon completion of the Facility, and upon completion of any subsequent repair or replacement of the Facility, Tenant shall maintain, or shall cause to be maintained, property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 95 ("Causes of Loss - Special Form"), including earthquake, subject to the provisions of Section 13.1(b)(iii)(B), in an amount not less than 100% of the then-current full replacement cost of the Facility and other property being insured pursuant thereto (including building code upgrade coverage) (and, solely with respect to earthquake insurance, the cost of any foundations, pilings, excavations and footings) with any deductible not to exceed Fifty Thousand Dollars (\$50,000) (except as to earthquake insurance); provided, however, that as to earthquake insurance separate sublimits of the insurance required under this Section 13.1(a)(ii) may be required in order to comply with the requirements of Section 13.1(b)(iii)(B).

(iii) Commercial General Liability Insurance. Tenant shall, and shall cause Manager to, maintain "Commercial General Liability" insurance policies with coverage at least as broad as ISO form CG 00 01 10 93, insuring against claims for bodily injury (including death), property damages, personal injury, advertising liability, contractual liability and products and completed operations, occurring upon, in or about the Premises (including the Facility and improvements and portions thereof that are located thereon or upon, in or about the adjoining land, streets and passageways thereof), and operations incidental or necessary thereto, such insurance to afford protection in an amount not less than Ten Million Dollars (\$10,000,000) each occurrence covering bodily injury and broad form property damage including contractual liability (which includes coverage of the indemnity in Section 10.2 and any other indemnity of Landlord by Tenant) independent contractors, explosion, collapse, underground (XCU), and products and completed operations coverage.

(iv) Workers' Compensation Insurance. Tenant shall maintain policies of workers' compensation insurance, including employer's liability coverage with limits not less than the greater of those limits required under applicable Law, and One Million Dollars (\$1,000,000) each accident (except that such insurance in excess of One Million Dollars (\$1,000,000) each accident may be covered by a so-called "umbrella" or "excess coverage" policy, covering all persons employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements.

(v) Boiler and Machinery Insurance. Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and

equipment located on the Premises or in the Improvements used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

(vi) Business Automobile Insurance. Tenant shall maintain policies of business automobile liability insurance covering all non-owned or hired motor vehicles to be used in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than One Million Dollars (\$1,000,000) per occurrence.

(vii) Business Interruption Insurance. Tenant shall maintain business interruption insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to the Property Related Insurance provisions, with a coverage period of not less than twelve (12) months, and, following completion of the Facility, with an annual limit not less than the Rent applicable immediately prior to the hazard causing the loss, plus an amount sufficient to cover the costs to the Landlord of obtaining and maintaining electricity service during any interruption in Energy Output from the Facility, adjusted annually by the amount of the Index.

(viii) Environmental Liability Insurance. During the course of any construction activities taking place prior to completion of the Facility, Tenant shall maintain, or cause its contractor or consultant to maintain, environmental pollution or contamination liability insurance, on an occurrence form, with limits of not less than Two Million Dollars (\$2,000,000) each occurrence combined single liability for Bodily Injury, Property Damage and clean-up costs, with the prior written approval of Landlord (such approval not to be unreasonably withheld, conditioned or delayed).

(ix) Professional Liability. Tenant shall maintain or require to be maintained, professional liability (errors or omissions) insurance, with limits not less than One Million Dollars (\$1,000,000) each claim and aggregate, with respect to all professional services, including, without limitation, engineering, geotechnical and environmental, reasonably necessary or incidental to Tenant's activities under this Lease, with any deductible not to exceed Fifty Thousand Dollars (\$50,000) each claim during any period for which such professional services are engaged and for five (5) years following the completion of any such professional services.

(x) Other Insurance. Tenant shall obtain such other insurance as is reasonably requested by Landlord's Risk Manager and is customary for a wind turbine facility.

(b) General Requirements. All insurance required under this Lease:

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A:VIII or better (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(ii) As to property and liability insurance and boiler and machinery insurance, all such insurance shall name Landlord and Landlord Indemnitees as

additional insureds and Tenant shall cause such additional insured endorsements to be issued on Form CG2010(1185).

(iii) As to earthquake insurance only:

(A) during the Term of this Lease, such insurance shall be in an amount at least equal to the lesser of (i) the maximum amount as is available at commercially reasonable rates from recognized carriers (with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Facility or other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, excavations and footings and without any deduction being made for depreciation), except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates), and (ii) one hundred percent (100%) of the maximum probable loss that would be sustained by the Property and the Premises (based on the full value of the Facility) as a result of the occurrence of an earthquake measuring 8.3 on the Richter scale (which maximum probable loss shall be determined not less frequently than every five (5) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to Landlord), with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, excavations and footings and without any deduction being made for depreciation);

(B) rates for all earthquake insurance required under this Lease shall be deemed to be commercially reasonable in the event that they are less than or equal to one third of one percent (.33%) of the then-current full replacement cost of the Improvements;

(iv) Shall be evaluated by Landlord and Tenant for adequacy not less frequently than every five (5) years from the anniversary date of Completion of the Initial Improvements. Following consultation with Tenant, Landlord may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the Landlord's risk manager it is the general commercial practice in other cities or counties around the country to carry insurance for facilities similar to the Premises in amounts substantially greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises. If the Landlord's risk manager determines that insurance limits required under this Section may be decreased in light of such commercial practice and the risks associated with use of the Premises, Landlord shall notify Tenant of such determination, and Tenant shall have the right to decrease the insurance coverage required under this Lease accordingly. In any such event, Tenant shall promptly deliver to Landlord a certificate evidencing such new insurance amounts and meeting all other requirements under this Lease with respect thereto.

(v) Shall provide that no cancellation, reduction in coverage, or termination of such insurance for any reason shall be effective until at least thirty (30) days after mailing or otherwise sending written notice of such cancellation, modification or termination to Landlord;

(vi) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to additional insureds specified

hereunder, with respect to claims insured by such policy, and that insurance applies separately to each insured against whom claim is made or suit is brought;

(vii) Shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 13.1(a)(i), (ii) and (v);

(viii) Shall be subject to the approval of Landlord, which approval shall be limited to whether or not such insurance meets the terms of this Lease; and

(ix) Except for professional liability insurance which shall be maintained in accordance with Section 13.1(a)(ix), if any of the insurance required hereunder is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, Tenant shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Lease, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Lease.

(x) Shall for property related insurance only, provide that all losses payable under all such policies that are payable to Landlord shall be payable notwithstanding any act or negligence of Tenant.

(c) Certificates of Insurance; Right of Landlord to Maintain Insurance. Tenant shall furnish Landlord certificates with respect to the policies required under this Section, together with (if Landlord so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy. If at any time Tenant fails to maintain the insurance required pursuant to Section 13.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon five (5) business days' written notice to Tenant, Landlord may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Landlord. Within ten (10) business days following demand, Tenant shall reimburse Landlord for all amounts so paid by Landlord, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) Insurance of Others. If Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies include Tenant and Landlord, as their respective interests may appear.

13.2. Landlord Entitled to Participate.

With respect to property related insurance, Landlord shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of One Million Dollars (\$1,000,000) covered by the insurance required to be carried hereunder; provided, however, that Landlord's consent shall not be unreasonably withheld, conditioned or delayed.

13.3. Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such

Party, which losses and damages are of the type covered under the property policies required by Sections 13.1(a)(i), (ii) or (v) to the extent that such loss is reimbursed by an insurer.

**ARTICLE XVI
MISCELLANEOUS**

Section 14.1 Quiet Enjoyment. Tenant shall, so long as it performs its obligations hereunder, have quiet and peaceful possession of the Premises throughout the Term of this Lease; provided, however, that Tenant's possession and use of the Premises shall not, in any manner, interfere with Landlord's operation of the Waste Water Treatment Facility.

Section 14.2 Amendments. This Lease may be amended only in writing signed by both Tenant and Landlord or their respective successors in interest.

Section 14.3 Notices. Any notice required or permitted to be given in writing under this Lease shall be given or delivered by personal service, telecopy, Federal Express or comparable overnight delivery service, or by deposit in the United States Post Office, postage prepaid, by registered or certified mail, addressed to the Party receiving notice as specified below, which shall be updated by the Parties as required. Changes in such address and/or contact persons named shall be made by notice similarly given. Notices given by personal service or sent by telecopy shall be deemed given the day so given or sent. Notices mailed or sent by a delivery service or by registered or certified mail as provided herein shall be deemed given on the third business day following the date so mailed or on the date of actual receipt, whichever is earlier.

IF TO LANDLORD:

City of Soledad
248 Main Street
Soledad, CA 93960
Phone: (831) 223-5000
Fax: (831) 678-3965
Attention: City Manager and City Attorney

IF TO TENANT:

Foundation Windpower, LLC
Attention: General Counsel
505 Sansome Street, Suite 450
San Francisco, CA 94111
Phone: (415) 320-9342
Facsimile: (415) 358-4506

IF TO MORTGAGEE pursuant to Section 12.2:

Section 14.4 Waiver. The failure, delay or forbearance by either party to exercise any of its rights or remedies under this Lease or to provide written notice of any default to a defaulting party, will not constitute a waiver of such rights or remedies. No party will be deemed to have waived any right or remedy resulting unless it has made such waiver specifically in writing. The waiver by either party of any default or breach of any term, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same term, condition or provision, or any other term, condition, or provision contained herein.

Section 14.5 Remedies Cumulative. Unless specifically provided to the contrary, no remedy herein conferred upon or reserved to Tenant or Landlord shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 14.6 Headings. The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease.

Section 14.7 Reserved.

Section 14.8 Choice of Law. This Lease shall be construed in accordance with the laws of the State of California (without regard to its conflict of laws principles).

Section 14.9 Binding Effect. This Lease and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties hereto, together with their respective successors and permitted assigns.

Section 14.10 No Third Party Beneficiaries. This Lease is solely for the benefit of the parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a party hereto, other than the Landlord Indemnites, the Tenant Indemnites and any Mortgagees.

Section 14.11 Counterparts. This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile signatures shall have the same effect as original signatures and each party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the parties.

Section 14.12 Disputes. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof ("Dispute") shall be resolved in accordance with this Section 14.12.

(a) If either Party wishes to commence resolution of a Dispute, it shall deliver a written notice of Dispute ("Notice of Dispute") to the other Party describing with reasonable

clarity the nature of the Dispute, the amount involved, if any, and the remedies sought. Upon receipt of any Notice of Dispute, the Parties shall attempt in good faith to resolve the Dispute promptly by negotiations between senior representatives of the Parties who have authority to settle the Dispute. If the Parties have not resolved the Dispute within ninety (90) days of the date of the Notice of Dispute, any Party may seek to avail itself of such remedies as are available to the Parties pursuant to Section 11.1 of this Lease.

(b) The Parties may, by written agreement signed by the Parties, elect to use the services of a neutral mediator to assist in resolving any Dispute under this Lease.

(c) Any costs or fees associated with utilizing the services of a mediator under this Lease shall be borne equally by the Parties, and each Party shall be responsible for its own expenses.

Section 14.13 Further Assurances. Upon the receipt of a written request from the other Party, each party shall execute and deliver such additional documents, instruments, estoppels, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof, provided that Landlord shall not be required to expend any funds for or otherwise bear any expense for improvements to the Property or the Facility in connection therewith, all of which expenditures and expenses shall be the responsibility of Tenant. Neither party shall unreasonably withhold condition or delay its compliance with any reasonable request made pursuant to this Section 14.13.

Section 14.14 Memorandum of Lease. Landlord consents to and hereby appoints Tenant as its attorney in fact for the purpose of recording a memorandum of this Lease in the land registry or title records of the county where the Premises are located or other applicable government office.

Section 14.15 Entire Agreement. This instrument represents the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between said Parties with respect to said subject matter.

[SIGNATURE PAGE FOLLOWS]

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

TENANT:

**FOUNDATION WINDPOWER,
A California limited liability company.**

LANDLORD:

CITY OF SOLEDAD, CALIFORNIA

By: _____

Its: _____

By: _____

Its: _____

EXHIBIT 1
Description of the Property
APN 022-082-018

Assessor's Parcel No. 022-082-018, located at 35520 Morisoli Road, Soledad, in Monterey
County

Exhibit 2

Description of Premises (metes and bounds)

See document from Phil Pearman (surveyor)

EXHIBIT 3
Site Plan

To be completed by Steve Grant (with measurements to be included in Section 4.1)

Must include access easement, construction laydown areas, interconnection easement, electrical conduits and communication lines easements, and maintenance staging area

EXHIBIT 4
Facility Specifications

Exhibit 4(a) turbine specifications for GE 2.85 – 103

Exhibit 4(b) Insert Single Line Diagram

GE Power & Water
Renewable Energy

Introducing GE's 2.85 MW Wind Turbines 2.85-100 2.85-103

Increased customer value...
through product evolution

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