

RESOLUTION NO. 5330

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
APPROVING AN EXCLUSIVE OPTION AGREEMENT BETWEEN THE CITY OF
SOLEDAD AND FIRM CLEAN ENERGY, INC. TO ACQUIRE A WIND SITE LEASE
AND EASEMENTS**

WHEREAS, FIRM Clean Energy, Inc, has approached the City in regards to determining the viability of a wind project they are pursuing in the area to include discussing whether the City may deem siting of 1-2 additional wind turbines at the City's WRF as worthy of further analysis; and

WHEREAS, unlike the existing wind turbine facility, which produces electricity for the City's use at a reduced rate, an additional facility would not provide electricity to the City, but rather, would provide a significant annual source of income via rent if and when the wind turbine facility commences operation; 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 FIRM Clean Energy, Inc. 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, FIRM Clean Energy, Inc. 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, Council approves the Agreement.

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 FIRM Clean Energy, Inc, a copy of which is attached hereto as **Exhibit A** and by this reference incorporated herein, is hereby approved and the City Manager is authorized and 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 2nd day of August, 2017, by the following vote:

AYES, and in favor thereof, Councilmembers: Mayor Pro Tem Alejandro Chavez, Christopher Bourke, Anna Velazquez, Carla Stewart and Mayor Fred Ledesma

NOES, Councilmembers:


None

ABSENT, Councilmembers: None

ABSTAIN, Councilmembers: None



FRED J. LEDESMA, Mayor

ATTEST: 

MICHAEL McHATTEN, City Clerk

EXCLUSIVE OPTION AGREEMENT FOR WIND LEASE

THIS OPTION AGREEMENT (“**Option Agreement**”) is effective as of August 2, 2017 (the “**Effective Date**”) between City of Soledad, California, a public body, corporate and politic (the “**Optionor**”), and FIRM clean energy Inc. , a Delaware Corporation (“**Optionee**”).

RECITALS

A. Optionor is sole owner of certain real property (the “**Project Site**”), located at 35520 Morisoli Road, Soledad, in Monterey County, California with APN Number of 022-082-018.

B. Optionor wishes to grant to Optionee an exclusive right to i) negotiate and execute a long-term lease for a pad(s) and appurtenant easements to allow Optionor to construct, own and operate renewable generation facilities at a yet undisclosed location or locations on the Project Site and, ii i) develop the property for purposes of siting, constructing and operating renewable energy generation facilities for the delivery of electricity to Pacific Gas & Electric Company under a long-term lease (the “**Lease**”);

C. Optionor has determined that the proposed facility or facilities will be deemed 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 Optionee/Purchaser has complied with all applicable requirements of CEQA and the CEQA Guidelines.

D. Optionor and Optionee agree, 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 Optionee’s use of specified and agreed upon portions of the Project Site during the term of the Lease Agreement, subject to full compliance with all applicable permitting and CEQA requirements.

E. Optionee 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(s) 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, the Parties agree as follows:

1. **Grant of Option.** Optionor hereby grants to Optionee an exclusive option (the “**Option Agreement**”) to acquire the lease of a pad or pads s and related easements on, over, under and through the Project Site in accordance with the terms and provisions of this Option Agreement and the Lease Agreement in substantially the form as the attached Exhibit A,

such Lease Agreement, including such reasonable modifications thereto as the Parties mutually agree, being subject to final approval of the Soledad City Council.

2. **Term of Option & Exclusivity Period.** The Option shall commence on the Effective Date and end twenty four (24) months from the date thereof (the “**Initial Option Term**”).

3. **Option Agreement Consideration.** On the Effective Date, Optionee shall agree to pay to Optionor an amount of Five Hundred US Dollars (\$500.00) (the “**Initial Option Consideration**”). Thereafter, one year following the Effective Date, Optionee shall pay Optionor an additional Option Fee payment of Five Hundred Dollars (\$500.00) (the “**Option Extension Consideration**”).

4. **Execution of Option: Long Term Lease Agreement:** Optionee may exercise the Option at any time after the Effective Date during the Term of Option & Exclusivity Period by signing and delivering to Optionor written notice clearly stating its intent to exercise the Option granted hereunder (the “**Execution of Option**”). Upon completion and City Council approval of the Lease Agreement, Optionor covenants to execute two (2) originals of the Lease Agreement and one (1) Memorandum of Wind Site Lease and Easement which shall be duly acknowledged, all of which executed documents shall be delivered by Optionor to Optionee, and submitted by Optionee for recording with the office of the Monterey County Recorder-County Clerk.

5. **Long Term Lease Agreement.** On the Effective Date of the Lease, Optionee shall agree to pay to Optionor a lease payment (Annual Lease Hosting Fee) of no less than sixty five thousand US dollars (\$65,000.00) per annum.

6. **Terms and Conditions of Long Term Lease.**

(a) The duration of the Long Term Lease will be no less than 25 years. The terms of the Lease that shall apply following exercise of the Option will be more generally set forth in the referenced Lease attached hereto as *Exhibit A*. The Lease may include additional customary commercial terms and conditions as may be mutually agreed upon by the Parties.

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

CF

Site to the condition that it was in prior to any such activities conducted by the Optionee. Optionee agrees to indemnify, protect, defend and hold harmless Optionor from and against all losses, liabilities, damages, costs, claims, actions, cause of action, expenses (including reasonable attorneys' fees) and liens to the extent caused in whole or in part, by any of Optionee's investigative activities, except with respect to any loss, costs, damage, claim or liability incurred by Optionor resulting from the existence of, or the discovery by Optionee or its representatives of defects, or other adverse conditions at the Property Site and except for the negligence or willful misconduct of Optionor or its agents, employees or contractors. Optionee 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, naming Optionor and its elected and appointed officials, employees and agents as additional insureds.

7. **Notices.** Any notice required or authorized to be given hereunder or any other communications between the Parties provided for under the terms of this Option Agreement shall be in writing (unless otherwise provided) and shall be served personally or by reputable express courier service or by electronic mail including the notice as a .pdf attachment. Any notice shall be addressed as follows:

If to Optionor:

City of Soledad
248MainStreet
Soledad,CA93960

Attention: City Manager and City Attorney

If to Optionee:

FIRM Clean Energy Inc.
515 Bridgeway ,
Sausalito CA 94965

Attention: Charles Turlinski
Email: cturlinski@firm-clean-energy.com

8. **Agreement to Cooperate.** Optionor shall generally cooperate in good faith with Optionee to progress the development of the proposed project.

9. **Consents.** Optionor agrees to use commercially reasonable efforts to obtain all consents or approvals required in connection with this Agreement, provided that Optionor shall incur no out-of-pocket costs in providing such efforts.

10. **Governing Law.** This Option Agreement, and any instrument or agreement required hereunder, shall be governed by, and construed under, the Laws of the State of California, notwithstanding any conflict of law provisions to the contrary.


11. **Termination.** Without limiting the generality of the foregoing: i.) Optionee may terminate this Option at any time, upon written notice to Optionor, for any reason or no reason at all ii) Optionor may terminate this agreement and/or pursue other appropriate remedies upon the failure of Optionee to pay amounts required to be paid hereunder when due, where such failure or omission has continued for thirty (30) days after Optionor has delivered a written notice of such failure or omission to Optionee; iii) Optionor or Optionee may terminate this agreement upon 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 (6) days after receipt of written notice of such failure or omission from the other party. All rights granted to Optionee herein shall terminate upon exercise of its option rights.

IN WITNESS WHEREOF, the Parties hereto have caused this Option Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

OPTIONOR:

CITY OF SOLEDAD, CALIFORNIA

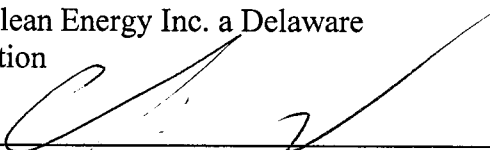
By:  _____

Name: Michael McHatten

Title: City Manager

OPTIONEE:

FIRM Clean Energy Inc. a Delaware Corporation

By:  _____

Name: Charles Turlinski

Title: President



Exhibit A

Draft Wind Site Lease and Easement

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 TBD ("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 TBD 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.

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. DO WE NEED TO FIX REFERENCES TO PPA OR DOES PPA REMAIN RELEVANT TO THE CITY LEASE/ --- SS Comment – Mike: The reference is to the PPA between FWP and PG&E. I think Don wanted us to have the lease end once the PPA with PG&E was done. We’re fine with this in or out.

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. SO JUST SO I’M CLEAR, THE LEASE IS SUBJECT TO A DOCUMENT TO WHICH THE CITY IS NOT A PARTY, IN THIS CASE A PPA WITH PG&E? SS Comment – That is correct. We will need to have site control for the term of the PPA with PG&E.

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. WE NED TO DISCUSS- IS A FACILITATING AGREEMENT NECESSARY IN THIS INSTANCE?

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:

TBD

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 Indemnitees, the Tenant Indemnitees 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:

LANDLORD:

TBD,

CITY OF SOLEDAD, CALIFORNIA

By: _____

By: _____

Its: _____

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**) prepared by Tenant's CA Licensed PLS)

EXHIBIT 3
Site Plan

To be completed by Tenant (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

Exhibit 4(b) Insert Single Line Diagram

EXHIBIT 5
Mitigation Measures Monitoring Plan