

MARIPOSA ENERGY PROJECT COOPERATION AGREEMENT

This Mariposa Energy Project Cooperation Agreement (the “Agreement”) is entered into this 14th day of December, 2010, by and between the County of Contra Costa, California, a political subdivision of the State of California (“County”), and Mariposa Energy, LLC, a Delaware limited liability company and subsidiary of Diamond Generating Corporation (“Mariposa”). Hereinafter, the County and Mariposa may be referred to individually as a “Party” or collectively as “the Parties.”

RECITALS

- A. Mariposa proposes to develop a simple cycle power plant with a nominal capacity of 200 MW, to be known as the Mariposa Energy Project (“MEP” or “the Project”), on real property located southeast of the intersection of Bruns Road and Kelso Road on a 10-acre portion of a 158-acre parcel, known as “the Lee Property,” in the County of Alameda, California.
- B. Notwithstanding that MEP is located within the County of Alameda, it is located one mile south of the border of the County and therefore may have impacts within Contra Costa County.
- C. Mariposa has advised County that, under the Warren-Alquist State Energy Resources Conservation and Development Act (“Warren-Alquist Act”), beginning at Section 25500 of the Public Resources Code, construction and operation of the Project is subject to approval by the California Energy Commission (“CEC”), which is given the exclusive authority to certify (approve) sites and related facilities for any proposed thermal power plant over 50-megawatts in generating capacity. Mariposa has advised that under the Warren-Alquist Act, such approval by the CEC is in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and supersedes any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.
- D. Mariposa has advised that: pursuant to Sections 21080.5 and 25519(c) of the Public Resources Code, the power plant siting process of the CEC is a certified state regulatory program under the California Environmental Quality Act (“CEQA”); that for MEP, the CEC is the lead agency for all matters of compliance with CEQA; that the CEC is not required to issue or certify an Environmental Impact Report for the Project, but will issue a comprehensive environmental document through its staff (the “Staff Assessment”); and that the CEC’s review and permitting processes require extensive review of all environmental matters concerning the Project, including potential project impacts (such as air quality, public health, hazardous materials usage, waste management, biological and cultural resources, facility design, plant safety and reliability, land use, noise, socioeconomic effects, visual impacts, water and soils, and local system effects); conformance with local, state and federal legal requirements; and project alternatives.

- E. Mariposa anticipates that CEC will adopt a final decision certifying the MEP site and related facilities (the “**Final Decision**”), and that the Final Decision will include extensive environmental mitigation requirements, project design, construction and operation requirements, compliance verification, and other conditions of certification of the Project, which may be modified by the CEC from time to time in accordance with its rules and procedures (collectively, the “**Conditions of Certification**”). Mariposa represents that, under the Warren-Alquist Act, the Project will be required to strictly comply with all Conditions of Certification, both during construction and operation.
- F. Both Parties believe that the development of MEP will provide benefits to the County. The Contra Costa County Board of Supervisors submitted two comment letters to the CEC, one dated April 13, 2010 and another dated October 4, 2010. Both letters addressed the Project’s relationship to and compatibility with the Byron Airport located within Contra Costa County. In the October 4, 2010, letter the Board stated its support for the Project because it would provide economic benefits in the form of local spending, a community benefits package, and local high-wage jobs.
- G. The Parties shall use their best efforts to move forward so that the Project can receive a Final Decision from the CEC in a timely fashion, with the goal of the Project becoming operational by July 1, 2012.
- H. The Parties will mutually benefit from establishing a cooperative relationship for the development of MEP.

NOW THEREFORE, for good and valuable consideration, Mariposa and the County enter into this Agreement, on the terms and conditions set forth herein.

ARTICLE 1 COOPERATIVE EFFORTS

1.1 Purpose.

In addition to the purposes recited above or elsewhere in this Agreement, the primary purpose of this Agreement is to establish the terms under which the Parties will participate in a cooperative working relationship with the goal of achieving the timeline related to CEC issuance of a Final Decision on the Project and Mariposa’s desire that the Project become operational by July 1, 2012, as more specifically defined and described in this Agreement.

1.2 Timelines.

1.2.1 Project Schedule.

Mariposa desires to have CEC issue a Final Decision on or before April 6, 2011, so that the Project can become operational by July 1, 2012.

1.2.2 Processing of CEC Application.

The County shall cooperate with Mariposa in the processing of its application before CEC or other regulatory agencies in a timely manner in recognition of the Project Schedule as described in 1.2.1.

1.3 County Efforts

1.3.1 Best and Reasonable Efforts for Expedited County Staff Services and Actions.

The County shall use best and reasonable efforts to provide expedited County services and actions to meet the goal of the CEC issuing the Final Decision on or before April 6, 2011, and Mariposa starting MEP operations by July 1, 2012. The County shall also use best and reasonable efforts to provide expedited County services and actions relating to CEC's monitoring of the Project's construction and operations. As used in this Agreement, "expedite" or "expedited" means that work will be carried out quickly and efficiently, while still complying with all legal, practical and procedural requirements of the County. Mariposa acknowledges and agrees that the County's agreement to use best and reasonable efforts to provide these expedited services to Mariposa, and to perform such reasonable actions as are necessary to accomplish the purposes and intent of this Agreement, is valuable consideration and a benefit conferred to Mariposa by this Agreement.

The County will provide the following staff services and actions to Mariposa under this Agreement:

- a. Prompt responses to any inquiries by CEC regarding the Project;
- b. Senior-level planning staff attendance, or other participation at CEC proceedings, including: (i) Staff Assessment Workshops; (ii) Evidentiary Hearings; (iii) Committee Hearing on PMPD; and (iv) Final Adoption Hearing, when requested by the CEC, to answer questions pertaining to County's laws, ordinances, regulations, and standards;
- c. Sharing with Mariposa of any written County responses to CEC prior to County's submission to CEC;
- d. Confirmation, where necessary, of the County's review and evaluation of the Project's impacts, and that the Project is consistent with the County's laws, ordinances, regulations, and standards; and
- e. No action to directly or indirectly oppose the Project by the County.

1.3.2 Board Efforts

The County Board of Supervisors has provided written support for the project in a letter dated October 4, 2010. The Board of Supervisors will ensure that a representative of the Board is available to attend CEC meetings identified in section 1.3.1.b, as necessary, to reaffirm the Board's support for the project and to address questions that the CEC may have of the County.

ARTICLE 2 PROCESSING OF PERMITS AND APPLICATIONS

2.1 Review.

The County shall provide expedited acceptance of, review of, and actions on all applications, plans, permits, approvals, and plan checks submitted by Mariposa to the County in connection with MEP. Such expedited actions may include the County's engagement of such consultants to which the County and Mariposa reasonably agree ("County Consultants"). The County may also make appropriate assignments of County staff to evaluate and coordinate the work of the County Consultants.

2.2 Reimbursement.

Mariposa shall reimburse the County for all services provided by County Consultants described in Section 2.1. The County will provide written monthly invoices to Mariposa that identify the invoiced services provided by County Consultants. Mariposa shall reimburse the County within thirty (30) days after receipt of each invoice from the County. Upon written request by Mariposa, County shall provide documentation supporting the subject invoice within ten (10) days after receipt of Mariposa's request.

In addition, Mariposa shall reimburse the County Department of Conservation and Development a sum of fifteen thousand U.S. dollars (\$15,000) for County staff involved in the efforts described in Sections 1.3.1 and 2.1. Such reimbursement will occur upon satisfaction of the condition precedent described in Section 4.2.

ARTICLE 3 LINEAR FACILITIES RIGHTS OF WAY

3.1 Generally.

Mariposa currently anticipates development, construction, and operation of a natural gas pipeline, an electric transmission line and a waterline, in connection with the development, construction and operation of MEP. Such gas pipeline, electric transmission line, and water line, and any other communications lines and/or storm drain pipelines are hereinafter referred to as "Linear Facilities." The County agrees to provide an expedited review of applications or requests filed by Mariposa with the County

involving County roads or County rights-of-way necessary for Linear Facilities or road improvements related to the development, construction, and operation of MEP. In recognition that the long-range development plans for the Byron Airport depend in part on the ability to connect the airport to certain utilities, such as a waterline, Mariposa shall consider and expedite any future County request for access to the Linear Facilities for the purpose of serving the Byron Airport that is submitted after the Final Decision. This Agreement is not, however, a commitment nor an announcement of an intent by the County to acquire any real property interests that may be necessary for rights-of-way for such Linear Facilities or road improvements. Nothing in this Agreement shall be construed as approval by the County or any other governmental entity, acting in its or their governmental capacity, of any application or request by Mariposa, to require such approval, or to release Mariposa from any governmental review or requirement pertaining to any application made by Mariposa in connection with the Project. No decision of the Contra Costa County Flood Control and Water Conservation District, Contra Costa County Fire Protection District, Contra Costa County Airport Land Use Commission, or any special services district, acting in its or their governmental capacity, will constitute a breach of this Agreement, invalidate this Agreement or constitute grounds for rescinding or otherwise terminating this Agreement.

ARTICLE 4 COMMUNITY BENEFITS TO COUNTY

4.1 Mariposa's Payment to County.

Provided the conditions precedent set forth in Section 4.2 have been satisfied, Mariposa shall pay to the County the sum of Eight Hundred Thousand United States Dollars (\$800,000) (the "Payment"), as consideration for the mutual benefits provided under this Agreement. These funds may be utilized by the County for County programs and facilities as recommended by the District III Supervisor and approved by the Board of Supervisors in its sole discretion. Provided the conditions precedent to Payment set forth in Section 4.2 have been satisfied, Mariposa shall pay County the sum described above no later than thirty (30) days after the Commencement of Construction as defined in Section 4.3.

4.2 Condition Precedent to Mariposa's Obligations.

Mariposa's obligation to make the Payment described in this Article 4 shall be conditioned upon Commencement of Construction of the Project as defined in Section 4.3.

4.3 Definition of Commencement of Construction.

The Commencement of Construction of the Project shall be deemed to occur upon completion of site preparation for the MEP Site following the Final Decision, including any grading and compaction activities required, and the commencement of on-site work

to install permanent equipment or structures on the MEP Site. Construction does not include (a) the installation of environmental monitoring equipment, (b) soil or geological investigation, (c) topographical survey, (d) any other study or investigation to determine the environmental acceptability or feasibility of the use of the MEP Site for any particular facility, or (e) any work to provide access to the MEP Site for any of the purposes specified in subparts (a), (b), (c), or (d).

**ARTICLE 5
MISCELLANEOUS**

5.1 Governing Law.

This Agreement shall be governed by, construed under and enforced in accordance with the laws of the State of California.

5.2 Captions.

The captions and headings in this Agreement are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this Agreement or the intent of any provision thereof.

5.3 Authority.

The Parties hereby represent and warrant that the persons who have executed this Agreement are authorized to do so.

5.4 Notices.

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

Notices to the County:

Department of Conservation & Development
651 Pine Street, 4-th Floor North Wing
Martinez, California 94553
Attn: Director
Fax: (925) 335-1299
Phone: (925) 335-1290

Notices to Mariposa:

Mariposa Energy, LLC
333 South Grand Avenue, Suite 1570
Los Angeles, California 90071 USA
Attn: President
Fax: (213) 620-1170
Phone: (213) 473-0080

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

5.5 Entire Agreement.

This Agreement contains the entire understanding between the Parties with respect to the subject matters herein. There are no representations, agreements, or understandings whether oral or written between or among the Parties relating to the subject matter of this Agreement which are not fully expressed or referenced herein. This Agreement may not be amended except by written instrument signed by all the Parties.

5.6 No Third Party Beneficiary.

The Parties hereto mutually agree that this Agreement is for their sole benefit and is not intended by them to be, in part or in whole, for the benefit of any third party. There is no third party beneficiary to this Agreement.

5.7 Assignment.

5.7.1 Generally.

This Agreement shall be binding upon, and inure to the benefit of, each of the Parties and their respective successors and permitted assigns. Except as provided in Section 5.7.2, no Party shall assign this Agreement or its rights or interests hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

5.7.2 Certain Exceptions.

Notwithstanding the provisions of Section 5.7.1, the Parties agree that, once the Project becomes operational, Mariposa will have the right to assign its rights and delegate its duties under this Agreement to (a) an Affiliate of Mariposa, (b) a successor-in-interest by merger, consolidation or reorganization, or (c) a purchaser or other transferee of the Project, under the following conditions:

- a. Mariposa will give County's Department of Conservation and Development thirty (30) calendar days prior notice of the proposed assignment. The notice must be accompanied by written documentation that, in the reasonable discretion of County, establishes to County's satisfaction that: (i) the proposed assignee is of good financial reputation and financial responsibility and has assets sufficient to carry out Mariposa's obligations under this Agreement; (ii) the proposed assignee's use of the Project is identical to the use by Mariposa, as described in this Agreement and the documents referenced in this Agreement, and (iii) all of the representations made by Mariposa in this Agreement are still true and accurate.
- b. Upon notification from County's Department of Conservation and Development that the foregoing conditions have been met, Mariposa may

assign its rights and duties under this Agreement without further consent from County.

- c. The rights under this Section 5.7.2 are exclusive to Mariposa and do not apply to subsequent assignees. This Section 5.7.2 applies only to an assignment of the entire Project, and not to a partial assignment of interest.

As used herein, the terms “Affiliate of” or “entity affiliated with” a specified entity or person means any other entity or person that directly, or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity or person specified. For purposes of the foregoing, “control,” “controlled by,” and “under common control with,” with respect to any entity or person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity or person, whether through the ownership of voting securities, partnership or member interests, by contract or otherwise.

5.7.3 Release.

Upon the execution of a written assignment and assumption agreement, in a form approved by County’s Department of Conservation and Development, such approval not to be unreasonably delayed or denied, pursuant to which any such permitted and qualified assignee expressly assumes all of the obligations of the assignor hereunder, the assignor shall automatically be released and discharged from any and all liability and obligations arising out of or relating to this Agreement that arise after the date of such assignment, provided that, in the event of any such assignment by Mariposa occurring while any performance or payments required by Article 2, Article 3, or Article 4 are still outstanding, Mariposa shall have provided the County assurances reasonably satisfactory to the County that such obligations will be assigned to a person or entity financially capable of performing or causing said payments to be made. No Project lender shall be required to assume the obligations of Mariposa hereunder in connection with any assignment of Mariposa’s rights and obligations under this Agreement as collateral to support the Project financing contemplated in Section 5.7.2 above. Neither Mariposa nor any subsequent assignee will be released or discharged from any obligation that is not accepted in full and in writing by a permitted and qualified assignee.

5.7.4 Other Assignments Null and Void.

Any assignment in violation of this Section 5.7 will be null and void and of no force or effect whatsoever.

5.8 Development as a Private Undertaking.

No partnership, joint venture or other association of any kind by or between the County and Mariposa is formed, implied or deemed to have arisen by operation of this Agreement.

5.9 Nonwaiver.

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

5.10 Performance Criteria.

5.10.1 Use of Best Efforts.

During the term of this Agreement, the Parties shall work together in good faith using best efforts (as defined below) to carry out the purposes of this Agreement (including the purposes and Project schedule set forth or otherwise referred to in Sections 1.1 and 1.2 above). For purposes of this Agreement, the term “best efforts” means that each Party shall work together with the other Party in good faith and a spirit of cooperation in making such reasonably prompt, substantial and persistent efforts which under the circumstances are commercially, technically, legally and financially reasonable in order to achieve the purposes of this Agreement, but best efforts does not require any person or entity to take any extraordinary or unusual actions that would not be commercially, technically, legally and financially reasonable in the particular circumstances.

5.10.2 Resolution of Issues; Take All Reasonable Steps.

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

5.11 Indemnification

Mariposa or its successor in interest shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless County, and its employees, officials, and agents, from any and all direct demands, losses, claims, costs, liabilities, and expenses for any property damage, injury, or death, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Mariposa, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control, with

regard to the Project, this Agreement, or the Parties' actions pursuant to the Project or this Agreement. Mariposa's obligations under this section exist regardless of concurrent negligence, recklessness, or willful misconduct on the part of County or any other person; provided, however, that Mariposa shall not be required to indemnify, including the cost to defend, County for the proportion of liability that does not arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Mariposa, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control. This indemnification clause will survive the termination or expiration of this Agreement.

5.12 Remedies

The sole remedy for violation of this Agreement is the specific performance of this Agreement. Mariposa and County waive their respective rights to trial by jury of any claim or cause of action arising out of this Agreement.

5.13 Termination

This Agreement shall terminate on the earlier of (i) January 1, 2015, or (ii) the first anniversary of the Project's commercial operation date.

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

MARIPOSA ENERGY, LLC

CONTRA COSTA COUNTY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____