

## COMMUNITY BENEFITS AGREEMENT

This **COMMUNITY BENEFITS AGREEMENT** ("Agreement") is entered into effective as of October [\_\_\_], 2011 (the "Execution Date") by and between CONTRA COSTA COUNTY, CALIFORNIA, a California [\_\_\_\_\_] ("County") and GENON MARSH LANDING, LLC, a Delaware limited liability company ("Marsh Landing"). County and Marsh Landing are referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

This Agreement is based on the following facts:

A. Marsh Landing is constructing and plans to own and operate the Marsh Landing Generating Station, a 760 megawatt natural gas-fired electricity generating facility (the "MLGS") to be located on a 27-acre parcel of land on Wilbur Avenue in the currently unincorporated area of Contra Costa County near the City of Antioch, California (the "MLGS Property");

B. On August 25, 2010, the California Energy Commission issued a decision approving Marsh Landing's application for certification for the MLGS and authorizing construction of the MLGS (such decision, as it may be amended and modified from time to time, is the "CEC Decision");

C. The City of Antioch, California has initiated and is pursuing an annexation request before the Local Agency Formation Commission ("LAFCO") for the unincorporated area along and around Wilbur Avenue known as the Northeast Annexation, which includes the MLGS Property (the "Annexation");

D. The Parties anticipate that construction and operation of the MLGS will provide benefits to the County and the local economy, including through the generation of tax revenue, the provisions of jobs, and associated economic development, and the County accordingly has expressed its support for construction of the MLGS;

E. Marsh Landing desires to provide additional community benefits to the County and its citizens, and to work with the County to mitigate the potential impacts of this project through local organizations whose work advances and/or promotes health, welfare, economic development, or other important public interests within the local community; and

F. The Parties desire to enter into this Agreement to specify the terms and conditions that will apply to the additional community benefits to be provided by Marsh Landing, and the County's continued support for the MLGS.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1. COMMUNITY BENEFITS

1.1 Accrued Benefit. Marsh Landing agrees to make available funds in the amounts and according to the schedule and process specified in this entire Section 1. On each Funding Date as defined in Section 1.2, the Accrued Amount specified for such Funding Date shall be deemed to be part of the Accrued Benefit for purposes of this Agreement. The aggregate amount of all Accrued Amounts at any given time, less the aggregate amount of any and all disbursements made pursuant to Section 1.4 below, shall constitute the “Accrued Benefit.” The Accrued Benefit shall be available for disbursement, in whole or in part, at the County’s direction to Qualified Organizations according to the process specified in Section 1.4 below. Upon any such disbursement, the disbursed amount shall be subtracted from the total Accrued Benefit that is available for disbursement and a new Accrued Benefit shall be calculated. Marsh Landing shall maintain an accounting of the Accrued Benefit throughout the term of this Agreement. The total cumulative amount of the Accrued Benefit that may be available for the purposes of this Agreement if all benchmarks listed in Section 1.2 below are met is \$6,500,000.

1.2 Schedule and Amounts. On each of the dates specified in the table below (each a “Funding Date”), funds shall be added to the Accrued Benefit in the amounts specified in the table below (each an “Accrued Amount”):

<b>Funding Date</b>	<b>Accrued Amount</b>
Effective Date of this Agreement	\$ 1,000,000
Upon the commencement of commercial operations of the MLGS, which shall be deemed to have occurred when the Initial Delivery Date has occurred for purposes of the Power Purchase Agreement between Marsh Landing and Pacific Gas and Electric Company (the “ <u>Initial Delivery Date</u> ”).	\$ 500,000
Upon each anniversary of the Initial Delivery Date, up to and including the tenth (10th) such anniversary (after which time this Funding Date and the associated Accrued Amount shall no longer apply).	\$ 400,000 per Funding Date  \$ 4,000,000 total

Funding Date	Accrued Amount
<p>If the Annexation Date (as defined below) occurs on or before December 31, 2012, then upon the occurrence of the Annexation Date, and upon each anniversary of the Annexation Date, up to and including the ninth (9<sup>th</sup>) such anniversary (after which time this funding Date and the associated Accrued Amount shall no longer apply). The “<u>Annexation Date</u>” shall mean the date when the Annexation has been approved by LAFCO and become fully effective. For the avoidance of doubt, if the Annexation Date does not occur on or before December 31, 2012, then the amounts specified in this row of the table shall not be included in the Accrued Amounts.</p>	<p>\$ 100,000 per Funding Date \$ 1,000,000 total</p>

1.3 Disbursement. The County has the right to direct the disbursement of all or part of the Accrued Benefit to a Qualified Organization by sending written notice to Marsh Landing. Such written notice: (a) shall specify the name of the Qualified Organization and the amount of the requested disbursement (which shall never exceed the then-available Accrued Benefit); (b) may request that the disbursement be applied or used by the Qualified Organization for a particular purpose, interest or cause (a “Designation Request”); (c) shall specify any election pursuant to the penultimate sentence of this Section 1.3; and (d) shall be executed by the County’s Representative. Within sixty (60) days after receipt of such written notice, Marsh Landing shall send payment of the disbursement to the designated Qualified Organization, along with any Designation Request. Marsh Landing shall have the right to make the disbursement to the Qualified Organization in Marsh Landing’s own name and to receive any benefits or recognition that may be offered or conferred by the Qualified Organization, subject to the right of the County to elect to share the benefits or recognition that may be offered or conferred by the Qualified Organization by including such a request in any Designation Request. Marsh Landing will communicate any Designation Request to the Qualified Organization, but will have no responsibility or liability under this Agreement for ensuring that the Designation Request is actually complied with, honored or implemented.

1.4 Representatives. Each Party has designated a representative (“Representative”) to carry out the purpose of this Agreement. Each Party represents and warrants to the other Party that its Representative has the legal power, right, and actual authority to act on the Party’s behalf under Section 1.5, and that the decisions of such Representative shall be binding on such Party. As of the Execution Date, each Party shall provide documentation to the other Party demonstrating that such power, right and actual authority has been duly conveyed to its Representative. A Party may change its Representative from time to time by providing a written notice to the other Party identifying the new Representative and his or her contact information, and containing the representation and warranty and associated documentation as required above. Such written notices also shall comply with the requirements of Section 5.3 below.

For County:

Supervisor Federal D. Glover  
315 E. Leland Avenue  
Pittsburg, CA 94565  
Phone: 925-427-8138  
Fax: 925-427-8142

For Marsh Landing:

John Chillemi  
696 West 10<sup>th</sup> Street,  
PO Box 192  
Pittsburg, CA 94565  
Phone: 925-427-3560  
Fax: 925-427-3518

1.5 Qualified Organizations. As of the Execution Date, the Parties have selected and agreed upon a list of local organizations whose work advances and/or promotes health, welfare, economic development, or other important public interests within the local community. Those organizations are specified below this paragraph and each is deemed to be a “Qualified Organization” for purposes of this Agreement. The list of Qualified Organizations may be modified from time to time by mutual agreement of the Parties’ Representatives to add or remove organizations, provided that any added organizations meet the standard set forth in the first sentence of this Section 1.5. Such modifications will not be effective unless they are memorialized in a written communication between the Representatives and delivered to the Parties as specified in Section 5.3 below.

List of Qualified Organizations as of the Execution Date:

Arts & Cultural Foundation of Antioch  
Antioch Little League  
Pittsburg Creative Arts Building  
URATWORK

## **2. COUNTY SUPPORT**

The County will use best and reasonable efforts to provide expedited County services and actions to Marsh Landing to support the MLGS in post certification compliance matters associated with the CEC Decision, and to support and facilitate completion of the Annexation. As used in this Agreement, “best and reasonable efforts” means that work will be carried out quickly and efficiently, while still complying with all legal, practical and procedural requirements of the County. Marsh Landing acknowledges and agrees that the County’s agreement to use best and reasonable efforts to provide these expedited services and actions to Marsh Landing and to support and facilitate completion of the Annexation, 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 Marsh Landing by this Agreement. 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 Marsh Landing, to require such approval, or to release Marsh Landing from any governmental review or requirement pertaining to any application made by Marsh Landing in connection with the MLGS.

### **3. TERM**

This Agreement shall be in effect commencing on the Execution Date; provided, however, that Marsh Landing's obligations to make funding available pursuant to Section 1 above and the County's obligations under Section 2 above shall be conditioned on Marsh Landing first having obtained all authorizations that are required under that certain Credit Agreement for the MLGS dated as of October 8, 2010 ("MLGS Lender Approval"). Marsh Landing shall provide written notice to the County of the date when MLGS Lender Approval has been obtained and the date of such notice shall be the "Effective Date." This Agreement shall be in full force and effect commencing on the Effective Date and shall remain in effect until all possible Funding Dates have passed and the Accrued Benefit has been fully disbursed in accordance with Section 1 above, unless terminated earlier (i) by the mutual agreement of the Parties, (ii) by written notice from either Party in the event that Marsh Landing does not receive the MLGS Lender Approval within sixty (60) days of the Execution Date, or (iii) pursuant to Section 4.2 below.

### **4. EVENTS OF DEFAULT, DISPUTE RESOLUTION, AND REMEDIES**

4.1 Events of Default. A Party will be deemed to be in default under this Agreement ("Defaulting Party") upon the occurrence and continuance beyond all applicable cure periods of any of the following (each shall be an "Event of Default"): (a) the Defaulting Party fails to pay an amount due under this Agreement to the other Party (the "Non-Defaulting Party") and such failure continues for more than thirty (30) days after the date of written notice from the Non-Defaulting Party specifying the amount that is owing and past due in reasonable detail; (b) the Defaulting Party fails to perform any other material obligation under this Agreement and such failure continues for more than thirty (30) days after the date of written notice from the Non-Defaulting Party specifying such failure to perform in reasonable detail; or (c) failure of a representation or warranty set forth in this Agreement to be true in any material respect as of the date when made or required to be made under this Agreement.

4.2 Remedies. If an Event of Default occurs and continues under this Agreement, the remedies of the Non Defaulting Party will be to terminate this Agreement or to seek specific enforcement of this Agreement. County and Marsh Landing waive their respective rights to trial by jury of any claim or cause of action arising out of this Agreement. Neither County nor Marsh Landing shall have any liability or obligation to pay damages to one another or to any other person or entity as a result of or attributable to any Event of Default or other breach or violation of this Agreement.

### **5. MISCELLANEOUS**

5.1 Successors and Assigns. This Agreement inures to the benefit of and binds the Parties and their respective representatives, successors, and permitted assigns. It is not

the intention of the Parties to confer third-party beneficiary rights upon any entity or person. No Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Marsh Landing shall have the right, without obtaining County's consent, to assign its rights and obligations under this Agreement to any lender, investor, or financing party providing financing in connection with the MLGS (including any refinancing), or to any entity succeeding to Marsh Landing's ownership interest in the MLGS. County agrees to cooperate with Marsh Landing on reasonable terms to facilitate any assignment that is permitted under the previous sentence, including by executing such acknowledgment, consent and attornment instruments as may be reasonably requested by any such lender, investor, financing party, or successor in interest.

5.2 Integration. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof.

5.3 Notification. Notices provided under this Agreement shall be in writing and transmitted by mail, overnight mail service, facsimile, or electronic mail. Notice provided to a Party under this Section 5.3 shall be effective when first received by a receiving Party's representative as identified below. Either Party from time to time may change its address, facsimile number or other information for the purpose of notices to that Party by giving notice specifying such change to the other Party in accordance with the terms of this Section 5.3.

Notices to the County shall be addressed to:

Supervisor Federal D. Glover  
315 E. Leland Avenue  
Pittsburg, CA 94565  
Phone: 925-427-8138  
Fax: 925-427-8142

With a copy to:

David Twa, County Administrator  
Contra Costa County  
651 Pine St., 10th Floor  
Martinez, CA 94553  
Phone: 925-335-1080  
Fax: 925-646-1353

and to:

Sharon L. Anderson, County Counsel  
Contra Costa County  
651 Pine St., 9th Floor  
Martinez, CA 94553  
Phone: 925-335-1800  
Fax: 925-646-1078

Notices to Marsh Landing shall be addressed to:

President  
GenOn Marsh Landing, LLC  
c/o GenOn California, LLC  
696 West Tenth Street  
Pittsburg, California 94565  
Telephone: 925-427-3560  
Facsimile: 925-427-3518  
Email: [john.chillemi@genon.com](mailto:john.chillemi@genon.com)

With a copy to:

Steven B. Nickerson  
Senior Vice President and Deputy General Counsel Corporate  
GenOn Energy, Inc.  
1000 Main Street  
Houston, Texas 77002  
Telephone: 832-357-6440  
Facsimile: 678-579-5951  
Email: [steve.nickerson@genon.com](mailto:steve.nickerson@genon.com)

5.4 Amendment and Modification. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by each Party and referring specifically to this Agreement.

5.5 Governing Law. The Parties agree that the laws of the State of California shall govern the construction and implementation of this Agreement. This Agreement shall be deemed to have been entered into, and obligations hereunder to have been incurred and performed, in Contra Costa County, California.

5.6 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions or portions of them (if any) shall not be affected.

5.7 Ambiguities. Each Party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement.

5.8 Waiver. No waiver of an Event of Default, breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the Party waiving the Event of Default, breach, failure, right or remedy. No waiver of any Event of Default, breach, failure, right, or remedy shall be deemed a waiver of any other Event of Default, breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

5.9 Headings. The headings in this Agreement are included for convenience only and shall not affect the construction or interpretation of any provision in this Agreement or any of the rights or obligations of the Parties.

5.10 Expenses. Except as otherwise provided in this Agreement, each Party shall pay its own expenses and costs related to the preparation of this Agreement or the consummation of the transactions contemplated hereby.

5.11 Exhibits. The Exhibits specifically referred to herein and delivered pursuant hereto are an integral part of this Agreement.

5.13 No Recourse to Affiliates. This Agreement is solely and exclusively between the Parties and any obligations created herein shall be the sole obligations of the Parties. No Party shall have recourse to any affiliate of any other Party for performance of such obligations unless the obligations are guaranteed or assumed in writing by the person or entity against whom recourse is sought.

5.14 Representations and Warranties. Each Party represents and warrants to the other Party as of the Execution Date as follows:

a. The Party has all necessary corporate, governmental, or other power and authority and has taken all actions necessary to enter into this Agreement, to carry out the transactions contemplated hereby, and to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, subject in Marsh

Landing's case to obtaining the MLGS Lender Approval, and the Party has provided written documentation of such approvals to the other Party.

b. This Agreement has been duly and validly executed and delivered by the Party and, when executed and delivered by the Party, will constitute a legal, valid and binding obligation of the Party enforceable against it in accordance with its terms except as limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and (ii) laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

[Signatures appear on next page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Execution Date and the Parties agree that execution may be in multiple counterparts, each executed copy of which shall constitute an original of the same instrument. Each Party represents and warrants that the individual(s) executing this Agreement on such Party's behalf has the legal power, right, and actual authority to do so.

GENON MARSH LANDING, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CONTRA COSTA COUNTY, CALIFORNIA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved by:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: County Attorney