

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CALIFORNIA ENERGY COMMISSION
AND
CONTRA COSTA COUNTY**

**FOR DESIGN REVIEW, PLAN CHECK, AND
CONSTRUCTION INSPECTION OF THE
CROCKETT COGENERATION PROJECT AMENDMENT
92-AFC-1C**

RECITALS:

- A. On December 21, 2011, Crockett Cogeneration, a California Limited Partnership (Crockett), filed a Petition to Amend with the California Energy Commission (Energy Commission) for modifications to the existing Crockett Cogeneration Project (CCP or Project) facility. The proposed modifications include installation of electric motor-driven natural gas compression equipment weighing up to 65,000 pounds and with a maximum output of 1,500 horsepower (the "Project Amendment"). The 240-megawatt (MW) CCP is located in the unincorporated community of Crockett, adjacent to the Carquinez Strait waterfront (east of the Carquinez Bridge), in Contra Costa County, California.
- B. In the event the Energy Commission approves the amendment to the CCP, the Energy Commission must ensure that the modifications are designed, constructed, and operated in conformity with the Energy Commission's Decision (Decision); the current California Building Standards Code (CBSC); the local building codes adopted by Contra Costa County; and other applicable laws, ordinances, regulations, and standards (LORS). The CCP Decision contains the Conditions of Certification for construction and operation of the Project and subsequent amendments to the Project. Any work undertaken by the Delegate Chief Building Official (CBO) prior to the issuance of the amendment Order shall be performed at the sole risk of the CBO. The Energy Commission does not guarantee approval of the Project amendment by executing this Memorandum of Understanding (MOU).
- C. If the Project amendment is approved, Crockett or the current project owner will be required to submit engineering plans, calculations, specifications, and other information related to the Project modifications (as required by §§105.3 and 106.1 in Appendix Chapter 1 of the CBSC) to the CBO for the amended Project, for review and approval, prior to and during construction of the Project modifications. The intent of this requirement is to provide an independent review of the amended Project's final design and inspections of the amended Project's construction, to ensure compliance with applicable engineering LORS, the local building codes, the CBSC, the Facility Design, Geology, and Transmission System Engineering Conditions of Certification, and the Storm Water Pollution Prevention Plan (SWPPP) and the Drainage, Erosion and Sediment Control Plan (DESCP)¹ where applicable.

¹ The Facility Design, Geology, and Transmission System Engineering Conditions of Certification noted throughout this MOU are provided in the Decision. The Storm Water Pollution Prevention Plan and Drainage, Erosion and Sediment Control Plan are discussed in the Decision.

CONTRA COSTA COUNTY AND ENERGY COMMISSION STAFF AGREE AS FOLLOWS:

1. The above recitals are incorporated into this MOU.
2. Contra Costa County (County) shall act as the Energy Commission's delegate for enforcement of: local building codes; the CBSC; the Facility Design, Geology and Transmission System Engineering Conditions of Certification; the SWPPP and DESCP, as directed by the Compliance Project Manager (CPM); and other engineering LORS applicable to the Project amendment. The County's Building Official (the Deputy Director of the Department of Conservation and Development's Building Inspection Division), acting as the delegate CBO for the Project amendment, shall carry out these duties with all the rights and immunities afforded the CBO by applicable LORS and codes. The ultimate responsibility for facility design, construction, and operational compliance remains with Crockett. In performing its duties under this MOU, the County retains all rights and immunities, including the immunity granted under California Government Code Section 818.6.
3. Although the County will function as the Energy Commission's delegate, the Energy Commission has the final authority and responsibility to ensure that the amended Project is built in accordance with the applicable engineering LORS and the Decision and subsequent amendments. The Energy Commission's legal authority to enforce the terms and conditions of its Decision is specified in California Public Resources Code §25500 et seq. The Energy Commission may amend or revoke the certification for any facility and may impose a civil penalty upon the Project owner for any significant failure to comply with the terms or conditions of the Decision.
4. To ensure compliance with local building codes; the CBSC, the Facility Design, Geology and Transmission System Engineering Conditions of Certification, the SWPPP and the DESCP, and other applicable engineering LORS, the CBO is authorized to take any action allowed by the California Code of Regulations to ensure that the Energy Commission's interests are properly addressed and protected. If the CBO has issued, or is considering issuing, a stop-work order to ensure compliance, or to ensure that the Energy Commission's interests are protected, or for any other reason, the CBO shall seek the cooperation and assistance of the CPM. The CBO shall notify the CPM in a timely manner, preferably prior to taking the action, so that the CPM is fully aware of the action taken or under consideration and its implication to the Project. For any action taken under emergency conditions, the CPM shall be notified within 24 hours of the action.
5. In the performance of this MOU, the County, its employees and subcontractors shall act in an independent capacity and not as officers or employees of the State of California.
6. The CPM shall have the right to approve the qualifications of the CBO engineering and technical personnel and the scope of work the CBO will perform. The CBO shall notify the CPM if there is any change in personnel assigned to the amended Project team. Replacement personnel shall not work on the amended Project until they are approved by the CPM.

7. The CBO may retain the services of one or more independent qualified subcontractor(s) to supplement the CBO employees in the design review, plan check, and construction inspection of the amended Project. The subcontractor(s) will answer directly to, and be responsible to, the CBO. The CBO shall provide the qualifications and scope of work of the subcontractor(s) to the CPM for approval at least ten days prior to the execution of the contract between the County and subcontractor(s). The CBO will retain responsibility for the construction inspections required by Title 24, Part 2, Volume 1, section 110 of the CBSC and for monitoring special inspections required by Chapter 17, §§1704 and 1707, of the CBSC.
8. At the request of the CPM, the CBO, its subcontractor(s), and any special inspectors shall assist the CPM in any audits or inspections of the Project Amendment.
9. The CBO shall notify the CPM if there is any change in subcontractor(s) or subcontractor's personnel. Replacement subcontractor(s) or subcontractor's personnel shall not work on the amended Project until they are approved by the CPM.
10. The CBO shall require that its subcontractors have not previously been employed directly by the Project owner or its agents at any time during the 12 months prior to the start of this MOU. The CBO shall also require that, during the course of this MOU, neither its subcontractors nor its agents will be employed, directly or indirectly, by the Project owner or any entity of which it is a holding, subdivision, or subsidiary.
11. The County shall enter into a contract for the amended Project with Crockett on terms and conditions acceptable to the County and Crockett, for the payment of fees by Crockett to the County for the County's provision of CBO services. The County will not provide any CBO services without a contract between the County and Crockett. The fees may be based on the value of the facilities reviewed, may be based on hourly rates, or may be as otherwise agreed by the CBO and Crockett. Payments to the County for work satisfactorily completed may be paid directly to the County in advance, in arrears, or from a credit account established with the County by Crockett. The County shall provide the CPM, for review and approval, a copy of the contract together with a schedule of fees between the CBO and the Project owner ten days prior to the execution of the contract.
12. The CBO shall take all reasonable measures to accommodate Crockett's design and construction schedule, including but not limited to adding staff to its workforce and/or retaining the services of additional independent qualified subcontractor(s). The addition of staff and/or retaining the services of subcontractor(s) is at the discretion of the County.
13. The CBO shall review and approve the selection of dynamic analysis and/or alternative methods of analysis for the design of those major structures designated in Facility Design Condition of Certification GEN-2 to comply with the CBSC, if applicable to the Project modifications.

14. The CBO shall review and approve any of Crockett's proposed structural tests and special inspections required by Chapter 17 of the CBSC, and other related codes, and shall approve the qualifications and experience of the proposed special inspectors. Where appropriate, subject to CPM approval, the CBO shall accept the results of inspections performed by Crockett's special inspectors.
15. The CPM shall have the right to audit the CBO's and its subcontractors' performance to ensure that they are properly carrying out their duties and responsibilities and that Crockett is implementing the Decision requirements for the design and construction of the Project Amendment.
16. The CBO and subcontractor(s) may discuss all aspects of the amended Project with each other, the CPM, and Crockett's construction contractors and engineers. The CBO and CPM shall have access to all associated construction records, construction and inspection procedures, test equipment, and test results related to the requirements of the Decision. It is the CPM's intention to provide reasonable notice of site visits and audits and to conduct such activities at reasonable times. Circumstances may dictate that site access may be required with little or no notice.
17. The CBO shall provide weekly reports on the status of construction of the Project Amendment to be posted to the Project website, or by e-mail if a website is not available (see below). The reports shall include: executive summary of current issues; activities relating to the modifications occurring at the Project site; the completion percentage of construction for the modifications; compliance issues with applicable LORS and applicable Conditions of Certification; issues of concern with or by Crockett; scheduled activities for the following week; and potential delays to the amended Project. Many of the information requirements of the weekly status report may be satisfied by updating fields on the Project website on a weekly basis.
18. The CBO shall create and maintain a password-protected Project website for the posting of the weekly reports and other Project amendment documents. Documents on the website will be posted in a Word-compatible format or as a portable document format (pdf) file. The Project website shall include the following information in an easily navigable format: all components of the weekly status report; a minimum of ten dated Project amendment photographs of current construction activities; list and status of submitted plans; status of field inspections; new subcontractors or key CBO personnel; and documents submitted for CPM review and/or approval. The CPM will be notified of new documents posted to the Project website by e-mail with an active link to the document.
19. The CBO shall submit the results of all plan checks and construction inspections, including recommendations, to Crockett and send a copy of all transmittal letters to the CPM. The CPM shall conduct any technical audits and reviews, and present any recommendations, as expeditiously as possible. The CBO should proceed with reviews and approvals designated in the Project Amendment unless instructed otherwise by the CPM. Approved plans, specifications, calculations and marked-up as-builts shall be retained by the CBO for 90 days from the date of completion of construction on the amended Project, after which the CBO shall deliver them to the

Project owner for long-term retention at the Project site or other accessible location as required by Condition of Certification GEN-8 in the Facility Design section of the Decision. Electronic copies of the approved plans, specifications, calculations and marked-up as-builts shall be provided to the CPM, in the form of compact discs, within 90 days of completion of construction of the Project Amendment.

20. The Energy Commission, through the CPM, retains the final authority over all matters relating to interpretation of the Conditions of Certification.
21. The term of the MOU is indefinite, but shall terminate when all of the mutual obligations have been performed and satisfied. It shall also terminate at such time as Crockett fails to pay fees as required or renders the CBO's performance under this MOU impossible. Notwithstanding the foregoing, either party may terminate this MOU upon five (5) days advance written notice complying with the provisions of section 22 below.
22. All correspondence regarding this MOU, including invoices, payments, and notices, shall be directed to the following persons at the following addresses and telephone numbers:

DELEGATE CBO: Jason Crapo
Deputy Director and County Building Official
Building Inspection Division
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
(925) 674-7722 Direct
(925) 855-323-2626 Office
Jason.Crapo@dcd.cccounty.us

ENERGY COMMISSION: Joan Walter, Compliance Project Manager
California Energy Commission
1516 9th Street, MS 2000
Sacramento, CA 95814
(916) 654-5153
jwalter@energy.state.ca.us

Written correspondence shall be sent either by personal delivery (including overnight delivery service), by U.S. Mail, by fax, or by e-mail and shall be considered delivered when actually received.

23. This MOU shall be effective upon execution by all parties.
24. In the event of a conflict between this MOU and the Decision granting approval of the Application for Certification or the amendment Order, the Commission's Decision and/or Order shall take precedence.

- 25. This MOU shall be interpreted and applied in accordance with California law.
- 26. This MOU sets forth the parties' entire understanding and supersedes all prior agreements and representations, written and oral, and may be modified only by a written document signed by the CBO and the Energy Commission.

The County has reviewed this MOU and understands its duties and responsibilities.

Signed by:

COUNTY OF CONTRA COSTA

DATED: _____

JASON CRAPO, County Building Official
Deputy Director, Building Inspection Department
of Conservation and Development

CALIFORNIA ENERGY COMMISSION

DATED: _____

ROGER E. JOHNSON, Deputy Director for
Siting, Transmission & Environmental Protection
Division