

**FIFTH AMENDMENT TO THE
AGREEMENT BETWEEN CONTRA COSTA COUNTY AND CONTRA COSTA
GENERATING STATION, LLC, FOR FEES, COMPLIANCE VERIFICATION AND
ENFORCEMENT AT OAKLEY GENERATING STATION PROJECT**

This Amendment ("Amendment") to the Agreement Between Contra Costa County and Contra Costa Generating Station LLC, for Fees, Compliance Verification and Enforcement at Oakley Generating Station Project dated March 21, 2011, as amended ("Agreement") is entered into effective January 1, 2015, between Contra Costa County, a political subdivision of the State of California ("County"), and Contra Costa Generating Station LLC, a Delaware limited liability company (Contra Costa Generating Station LLC is a wholly owned subsidiary of Radback Energy, Inc.) authorized to do business in California ("CCGS").

RECITALS

- A. Effective March 1, 2011, the County and CCGS entered into the Agreement, which concerns the planned development of a 624-megawatt, natural gas-fired, combined-cycle facility (the "Project") located at 5950 Bridgehead Road in Oakley (the "Power Plant Site").
- B. The California Energy Commission ("CEC") delegated compliance verification authority and its authority as Chief Building Official to the County through its Deputy Director of Conservation and Development, Building Inspection Division, pursuant to: Title 20 of the California Code of Regulations, section 1770; the Memorandum of Understanding between the CEC and the County for Design review, Plan Check and Construction Inspection of the Oakley Generating Station 09-AFC-4 (effective February 15, 2011).
- C. Under the Agreement and subsequent revisions (revisions 1-4), CCGS is required to pay the County a fee of \$3,150,000.00 for the services provided to the Project by the County as the CEC's delegate. CCGS and the County agreed that the fee was to be paid in successive monthly installments through May 31, 2017.
- D. CCGS reduced the scope of Project construction and its Project-related activities beginning January 1, 2012. This reduction in Project-related activities resulted in a corresponding reduction in the amount of County staff time and activities that have been necessary to verify compliance and act as the Chief Building Official on behalf of CEC.
- E. CCGS further reduced the scope of Project construction and its Project-related activities beginning July 1, 2012. This further reduction in Project-related activities resulted in a corresponding further reduction in the amount of County Staff time and activities that will be necessary to verify compliance and act as the Chief Building Official on behalf of CEC.
- F. CCGS has represented to the County that CCGS will maintain, from the effective date of this Amendment through December 31, 2016, a level of activity similar to the level of activity experienced since July 1, 2012.
- G. County and CCGS desire to amend the Agreement to (i) extend the term of the Agreement and the time for payment of the fee for an additional twenty-four (24) months, through May 31, 2019, and (iii) to increase the amount of hourly billing rates payable to the County, as specified in Attachment A.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Section 3.E of the Agreement is deleted in its entirety and replaced with the following:
 - E. During the period from January 1, 2015 through December 31, 2016, (the "Fifth Interim Period") the County will provide the Project with the services set forth in Interim Period Attachment A-1, which is attached hereto and made a part hereof by reference. If, during the Fifth Interim Period, County determines it is necessary to provide other services to the Project in addition to those listed in Interim Period Attachment A-1, County will provide those additional services, and CCGS will pay for those additional services as specified in Section 4.C. Beginning on January 1, 2017, and continuing for the remaining Term of this Agreement, the County will provide the full level of services described in this Section 3.
2. Section 3.F of the Agreement is deleted in its entirety and replaced with the following:
 - F. If, during the Fifth Interim Period, CCGS will increase its Project construction scope or the amount of Project-related activities that it will perform to pre-Interim Period levels, then CCGS will provide County 30-days' prior written notice. Upon receipt of that notice, County will provide the full level of services described in this Section 3.
3. Section 4 of the Agreement is deleted in its entirety and replaced with the following:
 4. Fees. CCGS acknowledges and agrees that the County is entitled to receive fees for the services provided to the Project by the County as the CEC's delegate. CCGS agrees to pay these fees directly to the County. The parties have agreed that the amount of the required fees shall be fixed provided that the Project reaches commercial operation on or before May 31, 2019, plus time and materials payments as described herein:
 - A. CCGS shall pay the County a fixed fee of \$3,125,000 provided in monthly installment payments, plus up to an additional \$25,000 as provided herein ("Fee"), for the services provided to the Project by the County as the CEC's delegate. CCGS and the County agree that the Fee is reasonable and is based upon the County's experience in providing these services for previous power plant projects.
 - B. For the period beginning on March 1, 2011, the effective date of the Agreement, and ending on June 30, 2012, CCGS paid ten (10) successive monthly installment payments of \$76,282.05 each and six (6) successive monthly installment payments of \$10,000.00 each. For the period beginning on July 1, 2012 and ending on June 30, 2013, CCGS paid twelve (12) successive monthly installment payments of \$5,000 each. For the period beginning on July 1, 2013 and ending on December 31, 2013, CCGS

paid six (6) successive monthly installment payments of \$5,000 each. For the period beginning on January 1, 2014 and ending on December 31, 2014, CCGS paid or will pay for all services the County provides to the Project on a time and materials basis, which shall be charged according to the hourly rates specified in the revised Attachment A, which is attached hereto and made a part hereof by reference. The remaining Fee will be payable in as follows:

1. For the Fifth Interim Period beginning on January 1, 2015 and ending on December 31, 2016, CCGS shall pay up to \$25,000 for all services that the County provides to the Project. CCGS shall be charged according to the hourly rates specified in Attachment A, which is attached hereto and made a part hereof by reference. Each payment shall be made within thirty (30) days of receipt of an invoice from the County.
 2. For the period beginning on January 1, 2017 and ending on May 31, 2019, CCGS shall pay twenty-eight (28) successive monthly installment payments of \$76,282.05, and one (1) final monthly payment of \$76,282.10 which will be billed at the same time as the first of the twenty-eight (28) successive monthly installment payments of \$76,282.05. Each payment shall be made within thirty (30) days of receipt of an invoice from the County. If the \$76,282.10 payment re-commences prior to January 1, 2017 pursuant to Section 4D below, the above contemplated 29 installment payments shall be reduced by the number of months that such payment is made in 2015 and 2016.
- C. If, during the Fifth Interim Period, CCGS notifies County pursuant to Section 3.E that it will increase the Project construction scope or the Project-related activities to pre-Interim Period levels, or if the County determines that Project-related activities have increased to pre-Interim Period levels, the monthly installment payments for the remainder of the Interim Period shall automatically be increased to \$76,282.05 per month.
- D. CCGS's obligation to make payments is not subject to conditions precedent.
- E. Subject to CCGS' right to terminate this Agreement pursuant to Section 11, CCGS agrees to pay the Fee in consideration of the County's services as delegate of the CEC so long as the terms of the MOU are in effect.
- F. The Fee may be increased if, after consulting with the CEC's

Compliance Project Manager assigned to the Project, the Deputy Director of Conservation and Development, Building Inspection Division, determines that the actual Project construction scope or activities have increased relative to the construction scope or activities contemplated in the CEC's Commission Decision issued on May 18, 2011. Any Fee increase shall be in proportion to increases in the Project construction costs resulting from the increase in the actual Project construction scope or activities.

- G. If the County determines that the Project is completed before April 30, 2019, CCGS shall not be required to pay any remaining monthly installment payments for the time between the date the County determines the Project to be completed and May 31, 2019.
- H. If Project construction continues after May 31, 2019, CCGS shall pay the County based on the hourly rates for County staff time spent working on the Project, as set forth in Attachment A. Fees paid pursuant to this paragraph shall be paid after May 31, 2019, and until the end of construction. For purposes of this Agreement "end of construction" occurs when commercial operation of the Project begins. CCGS shall pay fees pursuant to this paragraph within thirty (30) days of receipt of a monthly invoice from County.

- 4. Attachment A is deleted and replaced with Attachment A, attached hereto.
- 5. Attachment A-1 is deleted and replaced with Interim Period Attachment A-1, attached hereto.
- 6. In all other respects, the terms of the Agreement are ratified and confirmed.

CONTRA COSTA COUNTY

CONTRA COSTA GENERATING
STATION LLC

Jason Crapo
Deputy Director of Conservation and
Development, Building Inspection Division

Bryan Bertacchi
President, Radback Energy, Inc.

FORM APPROVED

Sharon L. Anderson, County Counsel

By Deputy


12/19/2014

ATTACHMENT "A"**OAKLEY GENERATING STATION - Hourly Billing Rates****Effective January 1, 2015 to December 31, 2016**

<u>PLAN CHECK</u>	<u>2015</u>	<u>2016</u>
Electrical Plan Check	\$193.00	\$201.00
Mechanical Plan Check	\$193.00	\$201.00
Plumbing Plan Check	\$193.00	\$201.00
Non Structural Plan Check	\$143.00	\$150.00
Engineering Plan Check	\$215.00	\$224.00
<u>INSPECTION SERVICES</u>		
Grading Inspection	\$154.00	\$161.00
Contruction Inspection	\$160.00	\$167.00
Inspection Supervisor	\$193.00	\$201.00
<u>Admin Support and Record Keeping</u>		
Field Admin Support	\$110.00	\$115.00
Recording Keeping	\$110.00	\$115.00

Contractor

County Dept.

Interim Period Attachment A-1
County Services to be provided to the Project between
January 1, 2015 and December 31, 2016

During the fifth interim period, the County may provide the following services to the Project:

- A. Design review and inspection of construction work to install construction power and the alternate feed for the Project.
- B. Design review of the Project's 230kV gen-tie line in accordance with the CEC's conditions of certification set forth in the Commission's Decision dated May 18, 2011.
- C. Design review and inspection of construction work to relocate the main water supply line providing water service to the Project site.
- D. Design review and inspection of construction work to connect to an existing sanitary sewer pipeline located in Main Street via a new 0.44-mile force-main in Bridgehead Road.
- E. Monitor compliance with the Storm Water Pollution Prevention Plan for the Project.
- F. Additional design review services that may be requested by CCGS during this period may be performed by the County on a time and materials basis.

Contractor

County Dept