

**AGREEMENT BETWEEN  
CONTRA COSTA COUNTY AND DELTA ENERGY CENTER, LLC FOR  
BUILDING INSPECTION SERVICES FOR THE  
DELTA ENERGY CENTER PROJECT IN PITTSBURG**

Effective May 16, 2017 (“Effective Date”), Contra Costa County, a political subdivision of the State of California (“County”), and Delta Energy Center, LLC, a Delaware limited liability company (“Calpine”), mutually agree and promise as follows. The County and Calpine are sometimes collectively referred to herein as the “Parties,” and each as a “Party.”

**RECITALS**

- A. Calpine owns the Delta Energy Center Project, a facility located in Pittsburg, California (the “DEC”; the DEC complex, and related property and facilities owned by Calpine at the DEC, are collectively referred to as the “Premises”). Calpine intends to install temporary safety modifications in the form of a rupture disk and associated pressure relief vents and blanking plate as outlined in the Delta Energy Center Petition for Temporary Safety Modifications, California Energy Commission (“CEC”) Order No. 17-0308-3, approved March 8, 2017 (“Approval Order”), which is incorporated herein by reference (collectively, the “Project Modifications”). The Project Modifications will allow the DEC to return to service in steam bypass mode while repairs to a steam turbine continue.
- B. The CEC has the exclusive power to certify all thermal electric power plants 50 megawatts (MW) or larger in the State of California and all sites on which power plants are located. The issuance of a certificate by the CEC is in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or required by any federal agency, to the extent permitted by federal law, for the use of a power plant and its site, and the certificate supersedes any applicable statute, ordinance, or regulation of any state, local, or regional agency, or any federal agency, to the extent permitted by law.
- C. The Project Modifications must be designed, constructed, and operated in conformity with the CEC’s Decision on the Application for Certification, Docket No. 98-AFC-3 (as amended, the “Decision”) and the Approval Order. The CEC has final authority and responsibility to enforce the terms and conditions of its Decision and the Approval Order. Pursuant to the Decision, Calpine is responsible for ensuring that the general compliance conditions and the conditions of certification are satisfied. Failure to comply with any of the conditions of certification or the general compliance conditions may result in the CEC’s revocation of certification, imposition of an administrative fine, or other action as deemed appropriate by the CEC. The ultimate responsibility for facility design, construction, and operation compliance, including with the Project Modifications, is with Calpine.
- D. The CEC has delegated its authority as Chief Building Official (“CBO”) for construction inspection services to the County, through its Deputy Director of Conservation and Development, Building Inspection Division, pursuant to the following: Title 20, California Code of Regulations, section 1770, and the CEC’s May 18, 2017 letter to Jason Crapo,

Deputy Director of Conservation and Development, Building Inspection Division (“Delegation Letter”).

- E. As the CEC’s delegate, the County, through its Deputy Director of Conservation and Development, Building Inspection Division, is authorized to perform construction inspection of all aspects of the Project Modifications, and to enforce local building codes as adopted by the County, the California Building Standards Codes, including local amendments, conditions of certification in the technical areas of facility design, geology, and transmission system engineering, and other engineering laws, ordinances, regulations, and standards of the County applicable to the Project Modifications to ensure health and life safety. As the CBO, the County, through its Deputy Director of Conservation and Development, Building Inspection Division, is authorized to provide independent review of the Project Modifications’ final design to ensure compliance with applicable laws, ordinances, regulations and standards, including the California Building Standards Codes and local amendments thereto adopted by the County, and the Project design conditions of certification.
- F. The purpose of this Agreement is to confirm the County’s authority as the CEC’s delegate for compliance verification and enforcement and as the CBO for the Project Modifications, as described in the Delegation Letter, and to otherwise specify the rights and obligations of the Parties as they pertain to the Project Modifications.

NOW, THEREFORE, the Parties agree as follows:

#### AGREEMENT

- 1. **Term.** Unless sooner terminated as provided in this Agreement, the term (“Term”) of this Agreement shall begin on the Effective Date, and it expires after the last of the following to occur: (a) the County’s completion of all of its obligations to the CEC under the Delegation Letter, and any amendments thereto issued during the Term, and (b) Calpine’s full payment of all County fees for CBO Activities (defined in Section 2) that the County performs under this Agreement.
- 2. **County Authority.** Calpine acknowledges and agrees that the County, through its Deputy Director of Conservation and Development, Building Inspection Division, is the CEC’s delegate for purposes of compliance verification, and is the CBO for the Project Modifications. The powers and duties of the CBO include those set forth in the 2010 California Building Code, Section 104.2. Calpine acknowledges and agrees that the CEC has authorized the County to take the actions described below pertaining to the Project Modifications (collectively, “CBO Activities,” and each a “CBO Activity”). Calpine agrees to cooperate with the County and to follow all County orders and directives regarding the Project Modifications.
  - A. The County has the right to enforce all local building codes, the California Building Standards Codes, conditions of certification in the technical areas of facility design, geology, and transmission system engineering, and other laws, ordinances,

regulations, and standards of the County applicable to the Project Modifications as the County determines to be necessary to ensure the health, safety, and welfare of persons and property.

- B. The County has the right to perform construction inspection of all construction modifications and equipment, whether located inside or outside of buildings, and of all structures that are within the scope of the Project Modifications.
- C. The County will provide CBO services for the Project Modifications as delegated by the CEC.
- D. The County also has the right to undertake other CEC duties and authority as may be delegated to the County by the CEC with respect to the Project Modifications.

3. **Payment of Fees and Reimbursement of Costs.**

- A. **Payment Limit.** Calpine acknowledges and agrees that the County is entitled to receive fees for performing the CBO Activities. Calpine's total payments to the County for CBO Activities shall not exceed \$100,000 ("Payment Limit"). If the County, in its sole discretion, determines that its performance of further CBO Activities would cause the Payment Limit to be exceeded, the County may suspend CBO Activities under this Agreement until this Agreement is amended to increase the Payment Limit.
- B. **Hourly Rates; Invoicing for Payment.** Subject to the Payment Limit, the County will charge Calpine for all CBO Activities at the hourly rates set forth in Attachment A. Calpine shall pay the County for CBO Activities within 30 days after Calpine receives a written demand for payment from the County that includes (i) an itemized list of the CBO Activities performed, (ii) the dates on which they were performed, (iii) the number of hours County staff spent performing the CBO Activities, and (iv) the total billing for all CBO Activities for which payment is demanded. The County will send demands for payment to Calpine no more often than monthly.
- C. **Final Payment Following Termination.** If this Agreement is terminated in accordance with Section 8, within 30 days after the termination date the County will provide Calpine a written final demand for payment for all CBO Activities performed through the termination date. Calpine shall pay the County the amount billed on that final demand for payment within 30 days after the demand is received by Calpine.
- D. **Survival.** The requirements of this Section 3 shall survive the expiration or termination of this Agreement.

4. **Right of Entry.** The County is hereby guaranteed and granted access to the Premises, including the DEC, related facilities, Calpine's and its contractors' staff, and the records

maintained by Calpine, for the purpose of conducting audits, surveys, inspections, or general site visits, or otherwise acting as the CEC's delegate. Although the County will endeavor to schedule site visits on dates and times agreeable to Calpine, the County reserves the right to make unannounced visits at any time. The County shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, delay of construction of Project Modifications, or other damage arising out of the County's entry on the Premises and performance of CBO Activities, except as otherwise provided in Section 11 of this Agreement. Any and all personnel, designees, and agents of the County shall, at all times while on the Premises, comply with all reasonable safety and security protocols of Calpine or its contractor charged with control of the site.

5. **Access to Documents and Records.** Upon the request of the County, Calpine shall give the County unrestricted access to all files and records pertaining to Project Modifications. The files and records pertaining to Project Modifications include, but are not limited to, copies of all "as-built" drawings, all documents submitted as verification for conditions, plans, specifications, engineering calculations, diagrams, soil investigation reports, special inspection and structural observation programs, and all other documents related to construction of the Project Modifications. Calpine shall maintain access to all files and records pertaining to Project Modifications on-site at the Premises during the period of construction, operation, and maintenance of the Project Modifications, until the Project Modifications are completed.
6. **Subcontracts and Assignments.** This Agreement shall inure to the benefit of and shall be binding on the Parties and their successors and assigns. The County may subcontract any portion of the CBO Activities upon written consent by Calpine, which consent shall not be unreasonably withheld. Otherwise, neither Party may assign this Agreement to another person or entity without first obtaining the written consent of the other Party.
7. **No Third Party Beneficiaries.** Nothing in this Agreement is intended, nor shall it be construed, to create rights inuring to the benefit of third parties.
8. **Termination.** This Agreement may be terminated by either Party, at its sole discretion, upon thirty (30) days' advance written notice to the other Party.
9. **Insurance.**
  - A. **Commercial General Liability.** Calpine shall, at no cost to County, obtain and maintain during the term of this Agreement, Commercial General Liability Insurance, including Automobile Liability, Broad Form Property Damage, and Blanket Contractual Liability, with minimum combined single-limit coverage of \$2 million, naming County, and its officers and employees, as additional insureds.
  - B. **Workers' Compensation.** Calpine, at no cost to the County, shall obtain and maintain during the term of this Agreement, workers' compensation insurance, as required by State law.

- C. **Evidence of Coverage.** Within 30 days after the Effective Date, Calpine shall furnish to the County certificates of coverage evidencing the coverage and requiring 30 days' advance written notice to the County of policy lapse, cancellation, or material change in coverage.

10. **Indemnification; Limitation of Liability.**

- A. **Indemnification.** Calpine shall indemnify, defend, save, protect, and hold harmless the County, its governing body, elective and appointed boards and commissioners, officers, employees, representatives, and agents (collectively, "Indemnitees"), to the fullest extent not prohibited by law, from any and all demands, losses, claims, costs suits, penalties, fines, liabilities and/or expenses for any damage, injury, or death (collectively "Liabilities") arising directly or indirectly from, or connected with, matters covered by this Agreement, including but not limited to the design, construction, maintenance, repair, reconstruction, alteration, replacement, removal, or use of any or all of the Project Modifications by Calpine, or by any other person or entity, or Calpine's breach or violation of any term or condition of this Agreement, save and except Liabilities that arise from the sole gross negligence or sole willful misconduct of any of the Indemnitees, as determined by a court. Calpine shall make good to and reimburse the Indemnitees for any expenditures, including reasonable attorney's fees, any of the Indemnitees may make by reason of such aforementioned matters.

- B. **Limitation of Liability; Release.** Under no circumstance shall the Indemnitees have any liability to Calpine, or to any other person or entity, for consequential or special damages, or for any damages based on loss of use, revenue, profits or business opportunities, arising from or in any way relating to any action taken, or failure to act, by the Indemnitees or any of them. Calpine hereby forever waives and releases the Indemnitees from any and all claims to consequential or special damages, and for any damages based on loss of use, revenue, profits, or business opportunities arising from, or in any way related to, this Agreement. Calpine expressly waives the provisions and benefits of section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

- C. **Survival.** This Section 10 shall survive the termination or expiration of this Agreement but shall only apply to Liabilities that accrue, in whole or in part, during the Term of this Agreement. Calpine's obligations under this Section 10 shall exist regardless of whether any Indemnatee has inspected the Premises or the Project Modifications, or has approved any plan(s) or specification(s) in

connection with the Project or the Project Modifications, or has insurance or other indemnification covering any of these Liabilities.

11. **Immunities.** Calpine acknowledges and agrees that the County retains the right to assert any and all applicable governmental immunities, including, but not limited to, the immunity granted under California Government Code section 818.6.
12. **Enforcement.** Any failure by Calpine to timely pay the County for fees it charges for CBO Activities in accordance with Section 4 shall constitute a material breach of this Agreement. Any failure by Calpine to comply with any other term or condition of this Agreement shall constitute a material breach of this Agreement. In the event of such a material breach, the County, at its sole discretion, may do any of the following: (a) declare this Agreement null and void and file suit to collect any amount due and owing; and/or (b) file suit to enforce this Agreement, in which case interest on any delinquent payments shall accrue from the date of delinquency at the rate provided by law, and shall continue until the delinquency and all interest thereon is fully paid; and/or (c) to the extent permitted by law, exercise any other remedy available to the CEC or allowed at law or in equity. This section shall not infringe upon the CEC's legal authority to enforce the terms and conditions of the Decision, nor preclude the CEC from exercising all remedies available to it to the extent permitted by law.
13. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflict of laws rules.
14. **Notice.** All correspondence, notices, invoices, demands, and payments given under this Agreement shall be directed to the following persons at the following addresses, and shall be personally delivered, sent by overnight delivery with deliver fees prepaid, or sent by First Class U.S. Mail, with postage prepaid:

**COUNTY:** Jason Crapo, Deputy Director  
Conservation & Development Department  
Building Inspection Division  
Contra Costa County  
300 Muir Road  
Martinez, CA 94553

**CALPINE:** Delta Energy Center, LLC  
c/o Calpine Corporation  
**Attn:** Vice President, Regional Operations  
4160 Dublin Blvd., Suite 100  
Dublin, CA 94568

With a Copy to:

Delta Energy Center, LLC  
Attn: Plant Manager

1200 Arcy Lane  
Pittsburg, CA 94565

All notices shall be deemed given on the same day if given personally, on the next business day following deposit for overnight delivery, or on the third day following mailing if given by First Class U.S. Mail. A Party may change its contact information listed above by giving the other Party written notice of the changed contact information at least 10 days before the changed contact information becomes effective.

15. **Construction.** The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the Parties to this Agreement. The section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply to the interpretation of this Agreement. The Recitals are, and shall be enforceable as, a part of this Agreement.
16. **Severability.** If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.
17. **Authorizations Obtained.** The person executing this Agreement on behalf of Calpine represents that he or she has the requisite legal authority to enter into this Agreement on behalf of Calpine and to bind Calpine to the terms of this Agreement. The person executing this Agreement on behalf of the County represents that he or she has the requisite legal authority to enter into this Agreement on behalf of the County and to bind the County to the terms of this Agreement.
18. **Entire Agreement.** This Agreement contains the entire agreement between the parties and all prior understandings or agreements, oral or written, regarding this matter are superseded. This Agreement shall not be modified except by written mutual agreement signed by the parties.

[Remainder of page intentionally left blank. Signatures on the following page]

CONTRA COSTA COUNTY

DELTA ENERGY CENTER, LLC

By: \_\_\_\_\_  
Jason Crapo  
Deputy Director, Building Inspection Division

By: \_\_\_\_\_  
Robert Parker  
Vice President

Attachment:  
Attachment A – County's Hourly Billing Rates

SMS  
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