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**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CALIFORNIA ENERGY COMMISSION
AND
WEST COAST CODE CONSULTANTS, INC
FOR DESIGN REVIEW, PLAN CHECK, AND
CONSTRUCTION INSPECTION OF THE
GILROY COGENERATION PROJECT AMENDMENT
84-AFC-4C**

RECITALS:

- A. On September 13, 2010, Calpine Gilroy Cogen, L.P. (Calpine), filed an amendment application with the California Energy Commission (Energy Commission) for modifications to the existing Gilroy Cogeneration Project (GCP) facility to ensure consistency with the recent changes in Bay Area Air Quality Management District (BAAQMD) Regulation 9, Rule 9. The modifications include replacing existing combustors, combustion cans, and some fuel piping with a new multi-stage combustor, new combustion chambers, and new fuel piping to the new combustor. The 115 megawatt (MW) GCP is located 30 miles south of San Jose in the City of Gilroy, Santa Clara County, California.
- B. In the event the Energy Commission approves the amendment to the GCP, the Energy Commission must ensure that the modifications are designed, constructed, and operated in conformity with the Energy Commission's Decision (Decision); the California Building Standards Code (CBSC)¹; the local building codes adopted by the City of Gilroy; and applicable laws, ordinances, regulations, and standards (LORS). The GCP 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 the approval of the project amendment by executing this Memorandum of Understanding (MOU).
- C. If the project amendment is approved, Calpine or current project owner will be required to submit engineering plans, calculations, specifications, and other project-related information (as required by sections 105.3 and 106.1 in Appendix Chapter 1 of the CBSC) to the CBO for the 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 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

¹ The California Building Standards Code (CBSC) references the 2007 edition or the most current edition at the time of construction including, but not limited to, specific sections noted. Referenced section numbers specified may change if a more updated edition is used.

Certification, and the Storm Water Pollution Prevention Plan (SWPPP) and the Drainage, Erosion and Sediment Control Plan (DESCP)², where applicable.

- D. The design review, construction inspections, and necessary approvals prior to and during construction will be provided by West Coast Code Consultants, Inc. (WC³), a fully qualified third party contractor experienced in providing industrial building official services, acting as the Energy Commission's CBO to ensure independent review of the project.

WC³ AND ENERGY COMMISSION STAFF AGREE AS FOLLOWS:

1. The above recitals are incorporated into this agreement.
2. WC³ 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 the DESCP, as directed by the Compliance Project Manager (CPM); and other engineering LORS applicable to the project. WC³ will also be responsible for the design review, plan check, and construction inspection of the foundation, structural features, anchorage, and connections for those building and non-building structures, process-related systems and equipment required for power and steam generation, and equipment located either inside or outside of buildings that are designated in the master drawings and master specifications list described in Facility Design Condition of Certification GEN-2. Additions and deletions to the provided list will be made only with the CPM's approval. WC³, acting as the CBO for the project, 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 Calpine.
3. Although WC³ will function as the Energy Commission's delegate, the Energy Commission has the final authority and responsibility to ensure that the project is built in accordance with the applicable engineering LORS, 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 section 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 and law 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

² 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.

ensure compliance, 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 agreement, WC³, and 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 WC³ engineering and technical personnel and the scope of work they will perform. WC³ shall notify the CPM if there is any change in personnel assigned to the project team. Replacement personnel shall not work on the project until they are approved by the CPM.
7. WC³ may retain the services of one or more independent qualified subcontractor(s) to supplement WC³ employees in the design review, plan check, and construction inspection of the 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 subcontractor's expected start of work. The CBO will retain responsibility for the construction inspections required by Appendix Chapter 1, section 109 of the CBSC and for monitoring special inspections required by Chapter 17, sections 1704 and 1707, of the CBSC.
8. WC³ 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 project until they are approved by the CPM.
9. WC³ 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 agreement. WC³ shall also require that during the course of this agreement its subcontractors or its agents will not be directly, or indirectly, employed by the project owner or any entity of which it is a holding, subdivision, or subsidiary.
10. 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.
11. WC³ shall enter into a contract for the project with Calpine for the payment of CBO services provided. These fees shall be based on hourly rates, or as otherwise agreed to by the CBO and Calpine. Payments to WC³ for work satisfactorily completed may be paid directly to WC³ in advance, in arrears, or from a credit account established with WC³ by Calpine. The contract between the project owner and WC³ shall include a provision that Calpine may not terminate the contract with,

or payments to, WC³ without prior authorization of the CPM. At least ten days prior to execution of the contract between Calpine and WC³, the proposed contract must be submitted to the CPM for review and approval.

12. The CBO shall take all reasonable measures to accommodate Calpine's design and construction schedule, including, but not limited to, adding staff to its workforce and/or retaining the services of additional independent qualified subcontractors.
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.
14. The CBO shall review and approve any of Calpine's proposed special and continuous inspection edition of the reporting programs 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, WC³ may accept the results of inspections performed by Calpine's special inspectors.
15. The CPM shall have the right to audit WC³ and its subcontractors' performance to ensure that they are properly carrying out their duties and responsibilities and that Calpine is implementing the Decision requirements for the design and construction of the project modifications.
16. WC³, and subcontractor(s) may discuss all aspects of the project with each other, the CPM, and Calpine '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 to be posted to the project website (see below). The reports shall include: executive summary of current issues; general activities occurring at the project site; the completion percentage of overall construction; compliance issues with applicable LORS and applicable Conditions of Certification; issues of concern with or by Calpine; status of interconnections; scheduled activities for the following week; and potential delays to the on-line date of the 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 documents. Documents on the website will be posted in a Microsoft 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 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 Calpine 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 of all components designated in Facility Design Condition of Certification GEN-2 in accordance with any additions and deletions approved by the CPM, 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 of the 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 and other relevant submittals shall be provided to the CPM, in the form of compact discs, within 90 days of completion of construction on the project.
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 this agreement (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 Calpine fails to pay fees as required or renders WC³'s performance under this agreement impossible. Notwithstanding the foregoing, WC³ or the Energy Commission may terminate this agreement upon five (5) days advance written notice complying with the provisions below (refer to item 22).
22. All correspondence regarding this agreement, including invoices, payments, and notices, shall be directed to the following persons at the following addresses and telephone numbers:

DELEGATE CBO: Giyan Senaratne, S.E., P.E., LEED AP
West Coast Code Consultants, Inc.
2400 Camino Ramon, Suite #240
San Ramon, CA 94583
T (925) 275-1700
giyan@wc-3.com

ENERGY COMMISSION: Mary Dyas, Compliance Project Manager
California Energy Commission
1516 9th Street, MS 2000
Sacramento, CA 95814
T (916) 651-8891
mdyas@energy.state.ca.us

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

23. This memorandum of understanding shall be effective upon execution by all parties.
24. In the event of a conflict between this MOU and a Decision granting approval of an application for certification, the Decision shall take precedence.
25. This agreement shall be interpreted and applied in accordance with California law. Any litigation concerning it shall be brought in the Sacramento County Superior Court.
26. This agreement 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 WC³ and the Energy Commission.

WC³ has reviewed this MOU and understands its duties and responsibilities.

Signed by:

WEST COAST CODE CONSULTANTS, INC.

DATED: _____

GIYAN A. SENARATNE, S.E., P.E., LEED AP
President / CEO
West Coast Code Consultants, Inc.

CALIFORNIA ENERGY COMMISSION

DATED: _____

TERRENCE O'BRIEN, Deputy Director for
Siting, Transmission & Environmental
Protection