

AMENDED AND RESTATED COORDINATION, RESILIENCY, AND ACTION
AGREEMENT

This Amended and Restated Coordination, Resiliency, and Action Agreement (the “A&R Agreement”) is entered into as of February, _____, 2023 (the “Execution Date”) by and between Russell City Energy Company, LLC, (“RCEC”), and City of Hayward, California, a municipal corporation of the State of California (the “City”) (collectively, the “Parties”).

WHEREAS, the purpose of this A&R Agreement is to set forth a summary of the understanding and agreement between RCEC and the City, regarding coordination, resiliency, and action following the May 27, 2021 steam turbine incident at RCEC’s facility.

WHEREAS, the Russell City Energy Center is a highly efficient, combined-cycle electric generating facility with advanced air emissions control technologies located in Hayward, California (the “Plant”).

WHEREAS, the Plant commenced operations in August 2013 and, at all relevant times, has been duly licensed by the California Energy Commission (~~“(“CEC”)~~).

WHEREAS, the Plant brings much-needed energy capacity to Hayward, the East Bay, and the greater Bay Area and is capable of serving the needs of 600,000 households.

WHEREAS, the California Independent System Operator (~~“(“CAISO”)~~) identified the Plant as one of two resources in the Bay Area that are best suited to provide black start capability, which mitigates the potential for catastrophic economic disruption to the region following a system-wide power outage. The Plant’s battery black start capability was commissioned in December 2020 and has significantly improved the system restoration capabilities in Northern California, including Hayward and the greater Bay Area.

WHEREAS, on May 27, 2021, the Plant experienced a mechanical failure of the steam turbine generator (the “Event”). The Event rendered the Plant temporarily inoperable in its designed configuration.

WHEREAS, the Event impacted the nearby Hayward Housing Navigation Center.

WHEREAS, immediately following the Event, RCEC engaged an independent third party to conduct a root cause analysis (RCA) to identify the cause of the Event.

WHEREAS, on July 30, 2021, the Governor of California issued an emergency proclamation finding it necessary to take immediate action to reduce the strain on the energy infrastructure, increase energy capacity, and make energy supply more resilient

to protect the health and safety of Californians and directing all state agencies to act immediately to achieve energy stability and to mitigate the risk of capacity shortages.

WHEREAS, to provide critical support to the electric grid in the summer and fall 2021, RCEC sought and obtained from the CEC and the Bay Area Air Quality Management District approval for a temporary modification to the steam turbine condenser to allow the Plant to operate in simple-cycle mode (a mode of operation where the combustion turbines are operational without the steam turbine) until repairs to the steam turbine were complete.

WHEREAS, the Plant has returned to combined-cycle operations.

WHEREAS, the safety of its colleagues and the community is a core value of RCEC, and RCEC is committed to the safe and reliable operation of the Plant.

WHEREAS, RCEC takes the concerns of the City and its relationship with the community very seriously and has committed to ensuring improved communication with the City going forward.

WHEREAS, RCEC and the City ~~have, including the Mayor, the City Manager, the Fire Chief, and the Fire Department Training Battalion Chief,~~ met on at least ten (10) separate occasions regarding the Event, and RCEC ~~plans~~intends to continue to engage in its additional cooperation, communication, and coordination efforts ~~to communicate, cooperate, and coordinate with the City. These meetings were conducted~~Hayward Fire Department as outlined in Exhibit A.

WHEREAS, on: February 13, 2023 (the "Original Execution Date"), RCEC and the City entered into the original Coordination, Resiliency, and Action Agreement (the "Original Coordination Agreement") to set forth a summary of the understanding and agreement between RCEC and the City, regarding coordination, resiliency, and action following the Event.

- ~~• August 6, 2021, with the City Manager and Fire Chief, and representatives of the CEC and California Public Utilities Commission (CPUC)~~
- ~~• August 16, 2021, with the City Mayor, City Manager and Fire Chief, and CEC Commissioners and Staff,~~
- ~~• August 19, 2021, with the City Mayor, City Manager and Fire Chief, and CEC Commissioners and Staff,~~
- ~~• August 27, 2021, with the City Mayor, City Manager and Fire Chief, and CEC Commissioners and Staff,~~
- ~~• September 8, 2021, with the City Manager and Fire Chief~~

- ~~November 30, 2021, with the City Manager and Fire Chief, CEC Staff and CPUC Staff for presentation of the RCA Report~~
- ~~December 2, 2021, with the City Manager and Fire Chief~~
- ~~March 14, 2022, with the Fire Department Training Battalion Chief~~
- ~~May 9, 2022, with the City Manager and Fire Chief~~
- ~~May 24, 2022, with the City Manager and Fire Chief~~

WHEREAS, the Original Coordination Agreement included the following benefits for the City and the Hayward Fire Department: (1) specified cooperation, communication, and coordination efforts between the City, the Hayward Fire Department, and RCEC and (2) (i) a contribution of one hundred and fifty thousand dollars (\$150,000) by RCEC to the Hayward Fire Department in support of the development of a Hazardous Materials Unit and (ii) a contribution of twenty thousand dollars (\$20,000) by RCEC to an appropriate cultural project to recognize the history of Russell City.

WHEREAS, in accordance with the Original Coordination Agreement, on February 28, 2023, RCEC paid one hundred and fifty thousand dollars (\$150,000) to the Hayward Fire Department in support of the development of a Hazardous Materials Unit and on March 6, 2023, RCEC paid twenty thousand dollars (\$20,000) to recognize the history of Russell City.

WHEREAS, On April 10, 2023, Senator Wahab and Assembly Member Ortega, two members of the California Legislature who represent the City of Hayward community, submitted comments to the Energy Commission related to the Event and expressed the desire to have further community benefits to the City of Hayward.

WHEREAS, RCEC is willing enter into this A&R Agreement and make a further community benefit contribution to the City consistent with the terms of this A&R Agreement.

NOW, THEREFORE, in exchange for the agreements and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the RCEC and the City agree as follows:

1.0 COORDINATION AGREEMENT

- 1.1 Cooperation with the Hayward Fire Department.** RCEC will engage in additional cooperation, communication, and coordination efforts with the Hayward Fire Department as outlined in Exhibit A.

- 1.2 Contribution to Hayward Fire Department HazMat Unit.** Within 30 days after the Original Execution Date, RCEC ~~will make~~made a contribution of one hundred fifty thousand dollars (\$150,000) ~~by wire transfer directly~~ to the Hayward Fire Department in support of the development of a Hazardous Materials Unit. Once the Hazardous Materials Unit is purchased, RCEC will provide opportunities to train Hayward Fire Department personnel at the RCEC facility.
- 1.3 Contribution to Recognize the History of Russell City.** The City and RCEC will work with the historic Russell City community to agree upon an appropriate cultural project to recognize the history of Russell City. Within 30 days after the Original Execution Date, RCEC will contribute up to~~contributed~~ twenty thousand dollars (\$20,000) to the City of Hayward for the selected project. ~~Payment will be made via wire transfer within 30 days after the Execution Date.~~
- 1.4 Further Contribution to the City.** Upon approval of the Hayward City Council and upon execution by both RCEC and the CEC of the separate Settlement Agreement and Release between those parties, RCEC will make a contribution of one million two hundred fifty thousand dollars (\$1,250,000) by wire transfer directly to the City to fund projects of the City's selection, limited to clean energy efficiency projects in the City, projects to support grid resiliency, including microgrids, solar energy, and/or battery storage installations. The City asserts that it will publicly report the progress of these projects on a quarterly basis.

2.0 GENERAL PROVISIONS

- 2.1 No Public Statement.** Neither Party shall issue any press or media releases nor make any other public statements or disclosures with respect to this A&R Agreement or the transactions contemplated hereby, without the prior written consent of the other Party, except as required by applicable law. Each Party shall make all reasonable efforts to consult with the other Party prior to making any public statements required by applicable law.
- 2.2 Insurance Payments.** The City acknowledges and agrees that RCEC's insurer has paid all property damage claims submitted in connection with the Event.
- 2.3 Amendment.** This document may not be modified or amended in any way unless done in writing and signed by all Parties to this A&R Agreement.
- 2.4 Sole Agreement.** This A&R Agreement is the sole and exclusive agreement made by the Parties in connection with this matter.

- 2.5 **City Approvals.** City of Hayward has or will obtain all necessary approvals for this [A&R](#) Agreement.
- 2.6 **Notices.** Any notice as required under this [A&R](#) Agreement shall be made, in writing, as follows:

For the City of Hayward:

City of Hayward
777 B Street
Hayward, CA 94541
Attention: City Manager
Telephone: (510) 583-4305
E-mail: Kelly.McAdoo@hayward-ca.gov

For RCEC:

Russell City Energy Company, LLC
3862 Depot Road
Hayward, CA 94545
Attn: Plant Manager
Telephone: (510) 731-1403
E-mail: Jason.jin@calpine.com

With a copy to:

Russell City Energy Company, LLC

3003 Oak Road, Suite 400

Walnut Creek, CA 94597

Attn: ~~Rosemary Antonopoulos, VP and Deputy General~~Jessica L. Grossman, Senior Counsel, West Region

Telephone: (925) 557-~~2283~~2318

E-mail: ~~Rosemary.Antonopoulos@calpine.com~~

E-mail: jessica.grossman@calpine.com

3.0 RELEASE OF CLAIMS

3.1 Release of Claims. Except for the agreements, obligations, and promises set forth in this A&R Agreement and the exception to released claims set forth in section 3.2 of this A&R Agreement, each Party (each a "Releasing Party") hereby irrevocably and unconditionally RELEASES, ACQUITS, AND FOREVER DISCHARGES the other Party, and all of the other Party's successors, predecessors, current and prior subsidiary and affiliated companies and entities, and all of the other Party's officers, directors, shareholders, partners, limited partners, agents, assigns, employees, representatives, independent contractors, attorneys, and insurers (all of which and whom are collectively referred to as "Releasees"), from any and all claims, demands, rights, liens, actions, suits, causes of action, counterclaims (whether compulsory or not), obligations, debts, costs, expenses, attorneys' fees, damages, judgments, and liabilities, of whatever kind or nature in law, equity, or otherwise, whether now known or unknown, suspected or unsuspected, which the Releasing Party may own or hold against said Releasees that have accrued prior to the Effective Date and that arise from, concern, or relate to the Event ("Released Claims").

3.2 Exception to Released Claims. Notwithstanding the release of claims described in Section 3.1 of this A&R Agreement, nothing in this A&R Agreement operates as a waiver, release, estoppel, and/or discharge between the Parties of each Party's prospective obligations established by this A&R Agreement or any other agreement between the City and RCEC.

3.3 Waiver of California Civil Code Section 1542. With regard to the release of claims set forth in section 3.1 of this A&R Agreement, the Parties agree as follows:

3.3.1 This A&R Agreement is the result of a compromise and shall not be deemed an admission of the truth or correctness of the claims or contentions of any Party against any other Party. The Parties understand the risks associated with this A&R Agreement, including

the risk that, after the execution of this A&R Agreement, a Party may discover that a Released Claim may be of greater or less value than any Party now expects or anticipates. Each Party assumes this risk, and the release included in this A&R Agreement shall apply to all unknown, undiscovered, or unanticipated results, as well as those that are known, discovered, and anticipated. The Parties expressly waive and relinquish all rights and benefits afforded by section 1542 of the California Civil Code with respect to all Released Claims, and they do so understanding and acknowledging the significance and consequence of such specific waiver of section 1542. Section 1542 of the California Civil Code states as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Each Party has read and understands California Civil Code section 1542 and acknowledges and agrees that, although it may later discover facts other than or different from those that it knows or believes to be true with respect to the Released Claims, it hereby expressly waives the benefits of California Civil Code section 1542 and any similar statutory provision or common law rule under California law or the law of any other applicable jurisdiction.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, each Party has executed this A&R Agreement as of the Execution Date.

City of Hayward

Russell City Energy Company, LLC

By: _____

By: _____

Printed Name: Kelly McAdoo

Printed Name: Charlie Gates

Title: City Manager

Title: Vice President

Attest: _____

Printed Name: Miriam Lens

Title: City Clerk

Approved as to form:

By: _____

Printed Name: Michael Lawson

Title: City Attorney

Exhibit A

Cooperation with the Hayward Fire Department and RCEC

- Notify the HFD in advance (two weeks' notice) of any planned emergency drills or tabletop exercises performed in compliance with its EAP.
- Coordinate with the HFD on at least two general emergency drills and one mock rescue drill annually
- Invite the HFD to participate in any roundtable discussions that take place following the drills
- Provide notice to the HFD of any plant management changes within RCEC and making the appropriate introductions to HFD
- Meet annually with HFD and City Manager to review information for the Knox Box (non-destructive emergency Fire Department key access to the property) and providing any necessary updates