

Plumas County Board of Supervisors

Resolution No. 17-

A RESOLUTION MAKING FINDINGS UNDER GOVERNMENT CODE SECTION 4217.10 ET SEQ. AND APPROVING CONTRACTS FOR THE DESIGN, CONSTRUCTION AND OPERATION OF A BIOMASS-FIRED COMBINED HEAT AND ELECTRIC POWER SYSTEM ON PREMISES SUBJECT TO A GROUND LEASE

WHEREAS, Plumas County has a failing geothermal heating system in place at its Health and Human Services Center (“Center”) that is energy inefficient, expensive to operate, and is in need of replacement; and

WHEREAS, California Government Code Section 4217.10 et seq. authorizes local government to enter into an energy service contract and facility ground lease without conducting a formal bid process if the determination is made at a regularly scheduled public hearing with public notice given at least two weeks in advance, and if the governing body finds that the cost to the county for thermal energy will be less than the anticipated marginal cost to the county of thermal energy that would have been consumed by the county in the absence of the energy service contract and finds that the difference between the fair rental value for the real property subject to the facility ground lease and the agreed rent, is anticipated to be offset by below-market energy purchases or other benefits provided under the energy service contract.; and

WHEREAS, the organization Sierra Institute for Community and Environment (Sierra Institute) received a certain California Energy Commission grant (Grant) number EPC-14-082 for \$2.6 million to design and construct a biomass-fired combined heat and electric power system at the Center; and

WHEREAS, the Sierra Institute will design, build, and for the first year own and operate the biomass heating system, pursuant to requirements in the Grant, and then transfer ownership to the county after one year of operations pursuant to the “Ownership Transfer Agreement;” and

WHEREAS, Plumas County has committed a \$400,000 match to the Grant for materials and construction costs associated with development of a building on County-owned real property to house the biomass heating system, pursuant to the “Match Funding Agreement;” and

WHEREAS, the biomass heating system will generate thermal energy savings to the county and address the inefficient and failing system; and

WHEREAS, Sierra Institute has executed a certain “Ground Lease and Thermal Energy Sales Agreement” between with Plumas County for that first year of ownership and operations of the biomass facility; and

WHEREAS, in accordance with Government Code section 421710 et seq., the County published a notice of public hearing in the Feather River Bulletin, a newspaper of general circulation, on July 12th and 19th, 2017.

NOW, THEREFORE, BE IT RESOLVED, that the Plumas County Board of Supervisors finds and determines:

1. That all of the recitals set forth above are true and correct.
2. That pursuant to California Government Code §4217, this Resolution is adopted following a public hearing at a regularly scheduled meeting of the Board for which a minimum of two week's public notice has been given;
3. That based on all available information, the Board finds and determines that the cost of the biomass heating system to the county will be less than the anticipated marginal cost to the County of continuing business as usual while paying for the cost of replacing heat pumps, or compared to alternative systems such as solar or other energy that would have been consumed by the county if this project was not completed;
4. That the County finds that it is in the best interest of the County to award this energy service contract to the Sierra Institute, and the Sierra Institute will be responsible for procurement, construction, installation, training, monitoring, and maintenance and operations for one (1) year pursuant to the Ownership Transfer Agreement;
5. That the County finds that one year of fair rental value of the real property subject is anticipated to be offset by below-market energy purchase based on the reduction of the costs needed to run the current failing system;
6. That the Sierra Institute will design and construct the facility, and receive grant match payments from the county during construction;
7. That the Facility Services Director is authorized to do all things necessary to give effect to and comply with terms and intent of this resolution, and to take any actions deemed necessary to protect the interest of the county.

The foregoing Resolution is duly passed and adopted by the Board of Supervisors of the County of Plumas, State of California, at a regular meeting of said Board held on the 1st day of August, 2017, by the following vote:

AYES:

NOES:

ABSENT:

Lori Simpson, Chair

ATTEST:

Clerk of the Board

Approve as to form:

R. Craig Settemire
Plumas County Counsel

Attachment A:

Energy Savings Over 25 Years for Biomass System

Year	Current Operating and Maintenance Costs*	Biomass Operating and Maintenance Costs	Revenue/ Savings from ORC and TESA	Biomass Energy Savings	Cumulative Cash Savings
1	\$62,981	\$84,234	\$51,704	\$30,451	\$30,451
2	\$64,265	\$85,623	\$52,841	\$31,483	\$61,934
3	\$65,576	\$87,039	\$54,004	\$32,540	\$94,474
4	\$66,914	\$88,484	\$55,192	\$33,622	\$128,096
5	\$68,280	\$89,958	\$56,406	\$34,728	\$162,824
6	\$69,674	\$91,462	\$57,647	\$35,859	\$196,683
7	\$71,098	\$92,997	\$58,915	\$37,016	\$235,699
8	\$72,551	\$94,564	\$60,211	\$38,199	\$273,896
9	\$74,034	\$96,163	\$61,536	\$39,408	\$313,305
10	\$75,549	\$97,196	\$62,890	\$40,643	\$353,948
15	\$83,608	\$106,507	\$70,119	\$47,221	\$576,625
20	\$92,546	\$116,242	\$78,179	\$54,483	\$834,241
25	\$102,460	\$127,194	\$87,166	\$62,431	\$1,130,230

*These projections do not consider heat pump failures and subsequent replacement costs, which can be high. Facility Services Director is confident that if the current heating system continues to operate as usual, the heat pumps will begin to fail as they are being overworked at full capacity due to the inefficient geofield.

Market Value Rent for a non-conditioned storage type structure is valued between \$2.25 and \$9.60 per square foot per year. Facility ground lease and the agreed rent, will be offset by below-market energy purchases or other benefits provided under the energy service contract.

GROUND LEASE

This GROUND LEASE (“Lease”) is entered into as of August 1, 2017 (“Effective Date”), by and between Plumas County, a political subdivision of the State of California (“Landlord”), High Sierra Community Energy Development Corporation, a California Qualified Subchapter S Corporation, and Sierra Institute for Community and the Environment, a Californian non-profit corporation (together the “Tenant”), concerning those certain premises hereinafter described located at 270 County Hospital Road, Quincy, California, the Plumas County Health and Human Services Center, Plumas County Assessor Parcel Number 115-350-003-000.

WITNESSETH

WHEREAS, Sierra Institute received a California Energy Commission Grant EPC-14-082 (“Grant”) approved on July 12, 2015 whereby Sierra Institute will administer grant funds to design, construct and commission one biomass-fired combined heat and power plant and district energy system, (“Biomass CHP Installation”) that will serve buildings at the Plumas Health and Human Services Center located in Plumas County, California;

WHEREAS, Landlord does hereby demise, lease, and let unto Tenant, and Tenant does hereby take and lease from Landlord, for the term and on the rents, conditions, and provisions herein contained that certain real property situated in Plumas County, California, and described in Exhibit A attached hereto, together with any and all rights, privileges, easements, appurtenances (collectively, the “Premises”);

WHEREAS, simultaneously herewith, Tenant and Landlord have entered into that certain Thermal Energy Services Agreement pursuant to which, among other things, Tenant has agreed to sell and Landlord has agreed to purchase thermal energy produced by Tenant (the “TESA”) the Agreement of which shall be in place until the “Project Transfer Date” (PTD) as defined herein;

WHEREAS, simultaneously herewith, Tenant and Landlord have entered into that certain Ownership Transfer Agreement (the “OTA”) pursuant to which, among other things, Tenant has agreed to sell and assign to Landlord, and Landlord has agreed to purchase and assume from Tenant, the assets, rights and obligations of Tenant to the Biomass CHP Installation, which shall become effective on the PTD, and is used to produce the thermal and electrical energy, including with regard to all existing Thermal Energy Service Agreements held by Seller, subject to the terms and conditions set forth herein;

WHEREAS, simultaneously herewith, Tenant and Landlord have entered into that certain Match Funding Agreement pursuant to which Tenant has agreed to implement the project according to the terms of the Grant, and Landlord agrees to be responsible for match described in the Grant; and

WHEREAS, the TESA, OTA, the Match Funding Agreement and this Lease shall be collectively known as the “Biomass CHP Installation Documents”, which shall all be executed simultaneously, and shall govern the Biomass CHP Installation as defined below.

NOW, THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1 DEFINITIONS

Capitalized terms used in the recitals and elsewhere in this Lease will have the meanings ascribed to them when first used either in this Lease or its Exhibits, or, if not defined when first used, in the following list of definitions:

- 1.1 **Base Rent.** The rent determined in accordance with Section 4.1.
- 1.2 **Biomass CHP Installation.** The boiler building, all equipment contained therein, all thermal energy distribution piping related to the Biomass CHP Installation, all utility connections to within ten (10) feet of the boiler building’s foundation, all related equipment, as are more particularly described in the plans and specification submitted to the Plumas County Building Department as part of permit application No. 17405 together with all future alterations, additions and attachments thereto. The Biomass CHP Installation is a woody biomass-fired combined heat and power plant and district energy system that will serve buildings at the Plumas County Health and Human Services building located in Quincy, Plumas County, California.
- 1.3 **Biomass CHP Installation Documents.** This group of documents includes this Lease, the TESA, the OTA and the Match Funding Agreement. These documents shall be approved and executed simultaneously and shall include conditions within the breach and termination clauses that link each document to the other documents. Breach or early termination of any of the documents will have an impact on the other documents, as defined within those specific documents, and for the purposes of this document, is found within Section 21.
- 1.4 **Commercial Operation Date.** The date on which Seller commences commercial operations of the Biomass CHP Installation as provided in the TESA.
- 1.5 **Common Use Area.** Areas on the Premises that are used in common, as defined in Exhibit A.
- 1.6 **Delivery Point.** The point at which the thermal energy is supplied to the buyer’s facility from the Biomass CHP Installation and becomes the responsibility of the buyer, as shown in Exhibit B, in green.

1.7 Environmental Laws. All present or future federal, state, and local laws or regulations related to the protection of health or the environment, including but not limited to the Resource Conservation and Recovery Act (RCRA) (42 USC §6901, et seq.), the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 USC §6601, et seq.), the Toxic Substances Control Act (15 USC §2601, et seq.), the Clean Water Act (33 USC §1251, et seq.), the Clean Air Act (42 USC §7401, et seq.), amendments to the foregoing, and any rules and regulations promulgated thereunder.

1.8 Exclusive Use Area. Areas on the Premises where Tenant holds exclusive use, as defined in Exhibit A.

1.9 Governmental Approvals. All approvals from state and local governmental agencies related to the construction of the Improvements or use of the Premises for Tenant's intended use.

1.10 Hazardous Material. "Hazardous Materials" means:

1.10.1. Any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Sections 25281(d) or 25316 of the California Health and Safety Code at such time;

1.10.2. Any "hazardous waste", "infectious waste" or "hazardous material" as defined in Sections 25117, 25117.5 or 25501 0) of the California Health and Safety Code at such time;

1.10.3. Any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA, Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 3900 et seq.), or California Water Code (Section 13000 et seq.) at such time; and

1.10.4. Any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Premises.

1.10.5. The term "Hazardous Materials" shall not include the following, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws: 1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds; or 2) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Premises, including, but not limited to, alcoholic beverages, aspirin,

tobacco products, nutrasweet and saccharine.

1.11 Improvements. Any and all buildings, structures, walks, and other improvements of any kind or nature located on the Premises and constructed up to the Delivery Points, including, but not limited to the construction of the new biomass boiler building and associated components (as depicted on the Site Plan as attached in Exhibit B, shown in green).

1.12 Landlord Party. Any employee, agent, contractor, invitee, or licensee of Landlord.

1.13 Legal Requirements. All applicable present and future laws, ordinances, orders, rules, regulations, codes, and requirements of all federal, state, and municipal governments, departments, commissions, boards, and officers, that now or hereafter apply to the Premises, the Improvements, or any component hereof or any activity thereon conducted, including but not limited to those pertaining to Environmental Laws.

1.14 Match Funding Agreement. The agreement by and between the Lessee, as Sierra Institute, and the Lessor, as the County, under which the Lessee will implement the Biomass CHP Installation according to the terms of a grant with the California Energy Commission, and the Buyer will contribute a portion of the work through in-kind time and funds.

1.15 Ownership Transfer Agreement (OTA). The agreement between Landlord and Tenant for the transfer of the assets, rights and obligations of the Biomass CHP Installation (as defined in such agreement) from the Tenant to the Landlord.

1.16 Project Transfer Date (PTD). The date at which the Parties agree that the TESA contract for energy sales ends, and ownership of the Biomass CHP Installation shall be transferred to the County pursuant to the OTA. This transfer shall occur within 12 (twelve) months from the Commercial Operation Date, unless otherwise agreed upon by the Parties in writing, assuming successful operation of the facility as defined within the terms of the OTA.

1.17 Rent. Base Rent and all Additional Rent, if any.

1.18 Tenant Party. Any employee, agent, contractor, invitee, or licensee of Tenant.

1.19 Term. The *Term* (defined in Section 3.1).

1.20 Thermal Energy Services Agreement (TESA). The agreement between Landlord and Tenant for the delivery of Thermal Energy (as defined in such agreement) from the Biomass CHP Installation to Landlord before the PTD.

SECTION 2 IMPROVEMENTS

2.1 Initial Improvements. The parties have agreed that certain Biomass CHP Installation improvements are to be constructed and installed on the Premises by a contractor

selected and paid by Tenant. The responsibility for the cost of the initial improvements shall be allocated between the parties as follows:

2.1.1 **Landlord:** Landlord, shall reimburse Tenant for costs to prepare the site and for the construction of the boiler building, thermal piping to and from the boiler building, and roughed-in utilities to the boiler building, all in accordance with the plans and specifications approved by the parties and submitted to the Plumas County Building Department in connection with permit application No. 17405 in an amount not to exceed \$400,000.00 Such reimbursement shall be made as provided in the Match Funding Agreement.

2.1.2 **Tenant:** Tenant shall be responsible to install all remaining initial improvements that are not the responsibility of Landlord pursuant to section 2.3.1., above, in order for the Biomass CHP Installation operational.

The construction of the Improvements shall be in the general area of the Site Plan attached hereto as Exhibit B. The Improvements shall be constructed in accordance with all applicable laws, codes, ordinances, rules and regulations of governmental authorities having jurisdiction over the Improvements. All construction services shall be undertaken and performed by qualified construction contractors and suppliers.

2.1 Tenant's Rights. Subject to any limitations provided in Biomass CHP Installation Documents, and subject to Landlord's consent (which shall not be unreasonably withheld) tenant will have the right, but not the obligation, at any time and from time to time during the term of this Lease, at its own cost and expense, to construct, reconstruct, demolish, remove, replace, remodel, or rebuild on any part or all of the Premises and/or the Improvements as Tenant considers appropriate. Without limiting the foregoing, Tenant may demolish any Improvements existing on the Premises as of the date of this Lease. Construction of any Improvements will be undertaken in compliance with all Legal Requirements and will be performed in a good and professional manner. Tenant's initial development plans are to construct a biomass boiler building and related assets, which includes equipment contained therein, a propane boiler, and all piping and utility connections described in Exhibit B Site Plan (the "Biomass CHP Installation") and consistent with California Energy Commission Grant EPC-14-082 ("Grant") approved on July 12, 2015 and the associated contracts entered into between the State and Sierra Institute.

2.4 Landlord's Obligations. Landlord will cooperate with Tenant in all respects in connection with construction of the Improvements. Landlord will execute the applications and other instruments reasonably necessary for construction of the Improvements. Landlord will appear as a witness in any legal or administrative proceedings to the extent reasonably necessary to construct the Improvements.

2.5 Cooperation with Government or Public Authority. If and when any governmental or any other public authority requires the execution and delivery of any instrument to evidence or consummate the dedication of any street adjoining the Premises, or if and when any governmental or any other public authority or any utility company requires the execution and delivery of any rights of way, easements, and grants in, over, and along any such streets or in,

over, under, or through the Premises (except any that may run under the Improvements) for the purpose of providing water, gas, steam, electricity, telephone, storm and sanitary sewer, or any other necessary or desirable service or facility for the benefit of the Premises or the Improvements, then both parties, without cost to either party, will execute, acknowledge, and deliver any instrument or document as may be required.

2.6 Ownership of Improvements After Lease Terminates. All improvements on the premises at the expiration of the term or sooner termination of this Lease shall, without compensation to Tenant, then become Landlord's property free and clear of all claims to or against them by Tenant or any third person, and Tenant shall defend and indemnify Landlord against all liability and loss arising from such claims or from Landlord's exercise of the rights conferred by this paragraph.

SECTION 3 LEASE TERM

3.1 Term. The term ("Term") of this Lease will commence on the date hereof ("Effective Date") and end when the Biomass CHP Installation has been transferred to the County pursuant to the OTA, and any residual time as agreed upon by the Parties at the time of the Project Transfer Date (PTD). Any agreement to extend the term past the PTD shall be in writing. In no event shall the Term extend beyond December 31, 2022.

3.2 Holding Over. Any holding over after the expiration of the Term, with the written consent of Landlord, will be construed to be a tenancy from month-to-month, at one hundred ten percent (110%), or \$1.10, of the Base Rent payable for the period immediately before the expiration of the Term and will otherwise be on the terms and conditions of this Lease. If Landlord consents to any such holding over, either party may thereafter terminate the tenancy at any time on sixty (60) days' advance written notice.

3.3 Lease Cancellation. This lease may be cancelled if other documents within the Biomass CHP Installation Documents are determined to be cancelled, or otherwise terminated.

SECTION 4 RENT

4.1 Base Rent.

4.1.1 Base Rent. Base Rent for the Premises will be One and 0/100 Dollars (\$1.00) per month.

4.1.2 Base Rent Commencement. Base Rent shall commence on the Effective Date.

4.2 Payment of Base Rent. Base Rent will be payable in advance, commencing on the Rent Commencement Date and thereafter on the first day of each month through the Term, without notice or demand, and without deduction or setoff of any amount except as provided otherwise in this Lease. If the Rent Commencement Date is a day other than the first day of a

month, Base Rent payable on the Rent Commencement Date will be prorated based on the number of days that will elapse during that month after the Rent Commencement Date.

4.3 Place of Payment. All Rent must be paid in lawful money of the United States at the address of Landlord set forth in this Lease, or at such other place as Landlord may from time to time designate by notice to Tenant. Rent will be deemed paid on the date received by Landlord.

SECTION 5 USE

5.1 Tenant's Rights. Except as provided for herein, Tenant will have the right to use the Premises primarily for the construction, installation, operation and maintenance of biomass-fired combined heat and power plant and district energy system that will serve buildings at the Plumas Health and Human Services Center, located in Plumas County, California, or any lawful purpose related to such project or any use not prohibited by the Prohibited Uses. Tenant shall also have access to the Premises over Landlord's property as depicted in Exhibit A. Tenant shall schedule deliveries of biomass fuel to the Premises at times other than the usual business hours of Health and Human Services Center (Monday through Friday, 7:30 AM to 5:30 PM).

5.2 Prohibited Uses. Tenant will not use or occupy, or permit or suffer all or any part of the Premises or the Improvements to be used or occupied (1) for any unlawful or illegal business, use, or purpose, (2) in any such manner to constitute a nuisance of any kind, or (3) for any purpose or in any way in violation of any Legal Requirements, including but not limited to Legal Requirements respecting Hazardous Substances, or (4) for any business, use, or purpose deemed disreputable. Any dispute between Landlord and Tenant arising under the provisions of clause (4) of the preceding sentence will be submitted to final and binding arbitration conducted in accordance with the rules of the JAMS Arbitration, Mediation, and ADR Services , if that service is available at the time or, if not available, any similar service (which may include the American Arbitration Association) selected by the party that initiates the arbitration. The award in such arbitration may be enforced on the application of either party by the order of judgment of a court of competent jurisdiction. The arbitrators will determine and award the prevailing party in the arbitration the reasonable fees and costs of its lawyers, appraisers, and any other consultants or experts incurred in connection with the arbitration.

SECTION 6 HAZARDOUS MATERIALS

6.1 Use of Premises. With the exception of all materials required to operate the Biomass CHP Installation, Tenant will not cause or permit any Hazardous Material to be brought on, kept, or used in or about the Premises or Improvements by Tenant, or any Tenant Party, which are not necessary or useful to Tenant's business. Tenant is permitted to store those Hazardous Materials needed for the Use of the Premises, provided such storage is consistent with all applicable Hazardous Materials Laws and to the extent these substances are used in furtherance of the allowable use of the Premises. As of the date of execution of this Lease, Tenant anticipates those materials to include but is not limited to mineral oil, gear oil, hydraulic oil, various types of motor oil, diesel fuel, carburetor cleaner (benzene), glycol or other

antifreeze agent. Tenant is required to provide a list of all Hazardous Materials to be stored on the Premises, in a form acceptable to the Landlord. With respect to those Hazardous Materials that are permitted under the preceding sentence, the same will be used, kept, stored and disposed of in the manner that complies with all Legal Requirements relating to the use, storage, and disposition of Hazardous Material.

6.2 Tenant Liability. If Tenant breaches the obligations stated above, or if the presence of any Hazardous Material on the Premises or Improvements caused or permitted by Tenant, or Tenant Party results in any illegal contamination of the Premises or the Improvements, or any other private or public property, including without limitation sewers or streets, or contamination of the Premises or Improvements by a Hazardous Material otherwise occurs for which Tenant is legally liable to Landlord or to any third party for damages resulting therefrom, then Tenant will indemnify, defend, and hold Landlord harmless from and against any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities, or losses (including without limitation diminution in value of the Premises or Improvements, damages for the loss or restriction on use of the Premises or Improvements, damages arising from any adverse impact on any marketing of space in the Building and sum paid in settlement of claims, attorney fees, consulting fees, and expert fees) that arise during or after the Term as a result of or in connection with such contamination. The foregoing indemnification of Landlord by Tenant includes without limitation costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required or recommended by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater or on or under the Premises or the Improvements.

6.3 Condition. Tenant will not be responsible for and will have no obligations under this Section 6 for any Hazardous Material located on or under the Premises as of the date possession is delivered to Tenant or those not introduced to the Premises by a Tenant Party. Landlord represents and warrants that to the best of its knowledge, the Premises are not currently contaminated with any Hazardous Material in any actionable quantity.

SECTION 7 SERVICES

7.1 Landlord will not be required to provide any services to the Premises or Improvements except as expressly provided herein, or in the Thermal Energy Service Agreement, except that Landlord shall allow Tenant access to all utilities necessary to operate the Biomass CHP Installation. Tenant will arrange for its own accounts with utility service providers and any other services as are necessary or appropriate for use of the Premises and Improvements by Tenant and any and all Subtenants. Tenant will be responsible for timely payment in full of all charges for utility and other services provided to the Premises and Improvements. Landlord will not be liable and responsible for any interruption of any utility or other kind of service provided by third parties except to the extent that Landlord causes the interruption and Landlord fails to avoid or cure the interruption as soon as reasonably possible after becoming aware of the interruption. With respect to any interruption for which Landlord or any Landlord Party is liable and responsible, Rent will be abated if the interruption continues for more than twenty-four (24) consecutive hours. If Landlord is unable to cure an interruption of

service(s) caused by Landlord or any Landlord Party that are essential to Tenant's intended use of the Premises and Improvements within thirty (30) days, then Tenant will have the option of terminating this Lease by providing written notice thereof to Landlord.

SECTION 8 REPAIRS AND MAINTENANCE

8.1 Tenant Obligations to Repair and Maintain. Throughout the Term, Tenant will have the obligation to repair or maintain the Premises and all Improvements in good condition and repair and in accordance with all applicable laws, rules, ordinances, orders, and regulations of federal, state, county and other governmental agencies and bodies having or claiming jurisdiction, and as described in the Thermal Energy Service Agreement Section 6.1.

8.2 Landlord's Assignment of Rights. Landlord assigns to Tenant, without recourse, such rights, if any, Landlord may have against any parties causing damage to the Improvements or the Premises to sue for and recover amounts expended by Tenant as a result of the damage.

SECTION 9 LIENS

9.1 Tenant covenants to keep the Premises and Improvements free from all construction liens and all other liens of any type whatsoever arising out of Tenant's repair, alteration, maintenance, and use of the Premises and Improvements. If a lien is filed, Tenant will, within thirty (30) days after knowledge of the filing, secure the discharge of the lien or deposit a sufficient corporate surety bond in an amount required by California law to remove the lien. If Tenant fails to discharge or bond off the lien, Landlord will have the right to pay the amount of the lien and Tenant will promptly reimburse Landlord for any such payment by Landlord, together with all costs and fees (including attorney fees) that Landlord incurred in connection with the lien. Any amount payable by Tenant under this provision should be considered Additional Rent and will bear interest at the Default Rate from the date incurred or paid by Landlord, until reimbursed in full by Tenant. Landlord expressly reserves the right to post notices of non-responsibility under the lien laws under the state of California.

SECTION 10 TAXES AND ASSESSMENTS

10.1 Tenant shall pay and keep current all real property taxes and assessments levied against the Premises. Tenant shall also pay any type of possessory interest tax on equipment.

SECTION 11 INSURANCE

11.1 Property Insurance Provision. Tenant, at Tenant's sole expense, keep all Improvements insured against loss or damage by property insurance, less a commercially reasonable deductible. In the event of loss, Tenant will be solely responsible for payment of any applicable deductible if the Tenant or any Tenant Party causes the loss.

11.2 Liability Insurance. Tenant, at its expense, will maintain at all times during the Term of this Lease commercial general liability insurance in respect of the Premises, Improvements, and the conduct or operation of its business, the following insurance coverages:

11.2.1 Comprehensive general liability, including but not limited to premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, and personal injury with a minimum policy limit of the greater of (i) the limit available on the policy or (ii) One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

11.2.2 Automobile liability for owned vehicles, hired, and non-owned vehicles, with a minimum policy limit of the greater of (i) the limit available on the policy or (ii) One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

11.2.3 Workers' compensation insurance as required by the State of California.

11.3 Additional Insurance Requirements. Tenant and Landlord agree to the following with respects to insurance provided by Tenant:

11.3.1 Each policy shall be endorsed to name the Landlord, its officers, officials, employees, representatives and agents (collectively, for the purpose of this section 9, the "Landlord") as additional insureds. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

11.3.2 All coverage available under such policy to Tenant, as the named insured, shall also be available and applicable to the Landlord, as the additional insured.

11.3.3 All of Tenant's available insurance proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the Landlord, including defense costs and damages.

11.3.4 Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement.

11.3.5 Tenant's policy shall be primary insurance as respects the Landlord, its officers, officials, employees, representatives and agents, and any insurance or self-insurance maintained by the Landlord, its officers, officials, employees, representatives and agents shall be in excess of the Tenant's insurance and shall not contribute with it, and such policy shall contain any endorsements necessary to effectuate this provision. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13.

11.3.6 To the extent that Tenant carries any excess insurance policy applicable to the work performed under this Agreement, such excess insurance policy shall also apply on a primary and non-contributory basis for the benefit of the Landlord before the

Landlord's own primary insurance policy or self-insurance shall be called upon to protect it as a named insured, and such policy shall contain any endorsements necessary to effectuate this provision..

11.3.7 Tenant agrees to require insurers to provide notice to Landlord thirty (30) days prior to cancellation of such liability coverage or any of any material alteration or non-renewal of any such coverage, other than for non-payment of premium. Tenant shall assure that this provision also applies to any subcontractors, joint venturers or any other party engaged by or on behalf of contractor in relation to this Agreement. Certificate(s) are to reflect that the issuer will provide thirty (30) days notice to Landlord of any cancellation of coverage.

11.3.8 The Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; shall include a cross-liability clause permitting suits between insureds; and shall provide that an act or omission of one of the insureds shall not reduce or avoid coverage to the other insureds.

11.3.9 No liability insurance coverage provided to comply with Agreement shall prohibit Tenant, or Tenant's employees, or agents, from waiving the right of subrogation prior to loss, Tenant waives its right to subrogation against the Landlord.

11.3.10 Tenant shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, and Tenant shall verify subcontractor's compliance.

11.4 Certificates of Insurance. Tenant shall provide to Landlord certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by Landlord, prior to performing any services under this Agreement. Landlord reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

11.5 Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Tenant may be held responsible for payments of damages to persons or property.

SECTION 12

DAMAGE AND DESTRUCTION

12.1 If any Improvements are damaged or destroyed during the Term by a casualty loss, Tenant will either (1) promptly and diligently rebuild and restore same, at its expense,

generally to the Improvements' condition before the destruction, or (2) raze any damaged or destroyed Improvements and place the Premises in a safe manner. Tenant will have full use of, and the right to apply any insurance proceeds available for such rebuilding and restoration.

SECTION 13 INDEMNIFICATION

13.1 Tenant shall defend protect, indemnify and hold harmless Landlord, its directors, officers, employees, agents and representatives at all times from and against any and all liabilities, suits, proceedings, liens, actions, penalties, losses, expenses, claims or demands of any nature, including costs and expenses for legal services and causes of action of whatever character which Landlord may incur, sustain or be subjected to arising out of or in any way connected with this Agreement, the acts or omissions of Tenant or its officers, agents, employees, guests, customers, visitors or invitees, or Tenant operations on, or use or occupancy of the property.

The foregoing indemnification excludes only liability or loss to the extent caused by the sole negligence or willful misconduct of Landlord.

Notice. Tenant agrees to notify Landlord in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which Tenant has knowledge, and to cooperate with Landlord in the investigation and defense thereof.

Landlord shall defend, protect, indemnify and hold harmless Tenant, its directors, officers, employees, agents and representatives at all times from and against any and all liabilities, suits, proceedings, liens, actions, penalties, losses, expenses, claims or demands of any nature, including costs and expenses for legal services and causes of action of whatever character which Tenant may incur, sustain or be subjected to arising out of or in any way connected with this Agreement, the sole acts or omissions of Landlord or its officers, agents, employees, guests, customers, visitors or invitees, or Landlord's operations on the property.

The foregoing indemnification excludes only liability or loss to the extent caused by the negligence or willful misconduct of Tenant.

Notice. Landlord agrees to notify Tenant in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which Landlord has knowledge, and to cooperate with Tenant in the investigation and defense thereof.

SECTION 14 EMINENT DOMAIN

14.1 Partial Taking. If a portion of the Premises or Improvements are taken or appropriated under the power of eminent domain or conveyed in lieu of condemnation, then:

14.1.1 Tenant will have the right, exercisable by providing written notice thereof to Landlord within thirty (30) days after notice of the taking, to terminate this Lease effective as of the date on which title vests in the condemning authority should any portion of the Premises

or any Improvements be taken, which, in the reasonable discretion of Tenant, materially impedes or affects the conduct of the construction of the Biomass CHP Installation as theretofore conducted on the Premises. Parties agree that this may trigger the cancellation of this lease, and in turn cause the termination of the Biomass CHP Installation Documents.

14.2 Total Taking. If the entire Premises and Improvements, or a portion thereof sufficient to render the remaining Premises or Improvements reasonably unsuitable for its intended use, are taken or appropriated under the power of eminent domain or conveyed in lieu of condemnation, then this Lease will terminate as of the date title vests in the condemning authority. Parties agree that this may trigger the cancellation of this lease, and in turn cause the termination of the Biomass CHP Installation Documents.

14.3 Award. Landlord will be entitled to the portion of the award fairly allocable to the Landlord's right to receive Rent from the Premises and its reversionary interest in both the Premises and Improvements (if any). Tenant will be entitled to receive from Landlord (or directly from the condemning authority, as the case may be), subject to the rights of any leasehold mortgagee, the balance of the award representing the Tenant's leasehold interest before any termination resulting from the taking. In addition, Tenant will be entitled to any separate awards for interruption of or damage to Tenant's business, relocation or moving costs, and the value of any of Tenant's trade fixtures or personal property taken by the condemning authority.

SECTION 15 ASSIGNMENT AND SUBLEASING

15.1 Until Tenant substantially completes construction of the Biomass CHP Installation on the Premises, Tenant will not sell, assign, or in any other manner transfer this Lease or any interest in this Lease or the estate of Tenant under this Lease without providing assurances to the Landlord that the new party can appropriately manage the Biomass CHP Installation, or without the prior consent of Landlord, which consent will not be unreasonably withheld, delayed, or conditioned.

SECTION 16 SUBORDINATION, ATTORNMENT, AND NONDISTURBANCE

16.1 This Lease will at all times be subject and subordinate to any mortgage or deed of trust (an "Encumbrance") hereafter placed on the Premises or the Improvements, or any portion thereof and to any and all modifications, renewals, or extension of an Encumbrance. If the Premises and Improvements are sold or transferred in connection with the judicial or nonjudicial foreclosure of any Encumbrance, or by deed in lieu of foreclosure, Tenant will attorn to the purchaser as Landlord, and any such successor Landlord will recognize this Lease and will not disturb the quiet enjoyment and possession of the Premises and Improvements by the Tenant under this Lease as long as Tenant is not in default of the Lease. Within thirty (30) days after request by Landlord or any prospective lender of Landlord, Tenant will execute a commercially reasonable form of subordination, nondisturbance, and attornment agreement that is consistent with this Section 16. If any act or omission of Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant will not exercise such right: (1) until it has given written notice of

the act or omission to Landlord and each Encumbrance holder whose name and address will previously have been furnished to Tenant; and (2) until a reasonable period of time for the parties to cure the condition has passed.

SECTION 17 ESTOPPEL CERTIFICATE

17.1 Within fifteen (15) days after written request from a party to this Lease, the other party will execute, acknowledge, and deliver to the requesting party an estoppel certificate certifying: (1) that this Lease is unmodified and in full force and effect (or, if there has been a modification, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification); (2) the date to which Rent and other sums payable under this Lease have been paid; (3) that no notice has been received by the other party of any default that has not been cured, except as to any default specified in the certificate; and (4) such other matters as may be reasonably requested by the other party, its lender, assignee, or purchaser (or proposed lender, assignee, or purchaser). Any such estoppel certificate may be relied on by the purchaser, lender, or assignee for estoppel purposes only and no party executing the estoppel certificate will be liable for damages or other losses as a result of inaccuracy in the information contained in the certificate.

SECTION 18 SURRENDER ON EXPIRATION

18.1 Condition of Premises and Improvements. Upon expiration of the Term or earlier termination of this Lease, Tenant will deliver all keys to Landlord and surrender the Premises and the Improvements in a state of good condition and repair and broom clean (reasonable wear and tear and casualty excepted), free and clear of all occupancies other than subleases to which Landlord will have specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by Landlord. Tenant's obligations under this Section will be subject to the provisions of Section 12 relating to damage or destruction and Section 14 relating to eminent domain.

18.2 Tenant's Property. Subject to section 2.6, before the expiration or earlier termination of this Lease, Tenant shall have the option, but not the obligation to remove all furnishings, furniture, and trade fixtures that remain Tenant's property. In no event shall Tenant remove, or be required to remove, the Biomass CHP Installation and related assets. Any remaining property that Tenant elects not to remove from the Premises will be left as is, and Tenant will have no repair obligations for such property.

SECTION 19 ENTRY BY LANDLORD

19.1 Landlord reserves and shall at any and all reasonable times, and upon reasonable notice, have the right to enter the Premises to (a) inspect the same, (b) supply any service to be provided by Landlord hereunder, and (c) post notices of non responsibility.

SECTION 20 SALE BY LANDLORD

20.1 If the original Landlord under this Lease, or any successor owner of the Premises, sells or conveys the same, and the new owner assumes the obligations of Landlord under this Lease, all liabilities and obligations on the part of the original Landlord or the successor owner under this Lease accruing thereafter will terminate, and thereupon all such liabilities and obligations will be binding on the new owner. Tenant agrees to attorn to the new owner.

SECTION 21 DEFAULT

The following will be events of default:

21.1 Default in Rent and Other Charges. Failure by Tenant to pay any Rent or other amount required to be paid by Tenant to Landlord under this Lease within ninety (90) days after the giving of written notice of such nonpayment by Landlord to Tenant.

21.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of this Lease within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this provision will be complied with if Tenant begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy and effects the remedy within two hundred seventy (270) days after Landlord's notice, inclusive of the period of delay caused by an event described in Section 28 below.

21.3 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 60 days after filing; attachment of or the levying of execution on this leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 30 days will constitute a default. If this lease has been assigned, the events of default so specified will apply only with respect to the one then exercising the rights of Tenant under this Lease.

21.4 Impact of Termination of Biomass CHP Installation Documents. If either party causes the default of one of the contracts included within the Biomass CHP Installation Documents, then the non-defaulting party shall notice the other party consistent with Section 21.2 above.

SECTION 22 REMEDIES ON DEFAULT

22.1 Damages. In the event of default, the non-defaulting party will be entitled to recover damages or for injunctive relief.

22.2 Right to Sue More than Once. Landlord may sue periodically to recover damages during the period corresponding to the remainder of the Term, and no action for damages will bar a later action for damages subsequently accruing.

22.3 Right to Cure Other Parties' Defaults. If either party fails to perform any obligation under this Lease, the non-defaulting party will have the option to cure the other party's default after 30 days' written notice to the defaulting party, or immediately in the event of an emergency. All of the expenditures to correct the other party's default including a 15% markup to cover overhead and time of the curing party will be reimbursed by the defaulting party on demand with interest at the default rate from the date of expenditure and will be considered Additional Rent in the case of Tenant. Such action will not waive any other remedies available to the non-defaulting party because of the default. Tenant will have the right to deduct such costs from the next due payments of Rent under this Lease.

22.4 Remedies Cumulative. The foregoing remedies will be in addition to and will not exclude any other remedy available to Landlord under applicable law and may be exercised concurrently or successively in such order or combination as Landlord in its sole discretion may elect.

SECTION 23

QUIET ENJOYMENT

23.1 Landlord warrants that Landlord is the owner of the Premises and has the right to lease the Premises to Tenant. As long as Tenant is not in default under this Lease, Landlord will defend Tenant's right of quiet enjoyment from the lawful claims of all persons claiming by or through Landlord during the Term, subject only to the Permitted Encumbrances and exceptions, reservations, and conditions set forth in this Lease.

SECTION 24

SUCCESSORS BOUND

24.1 The Lease and each of its covenants and conditions shall be binding upon and shall inure to the benefit of both the Landlord and Tenant and their respective heirs, successors and legal representatives and their respective assigns, subject to the provisions hereof. Whenever in this Lease a reference is made to the Landlord, such reference shall be deemed to refer to the person in whom the interest of the Landlord shall be vested and the Landlord shall have no obligation hereunder as to any claim arising after the transfer of its interest in the Premises. Any successor or assignee of Tenant who accepts an assignment or the benefit of this Lease and enters into possession or enjoyment hereunder shall thereby assume and agree to perform and be bound by the covenants and conditions hereof.

SECTION 25

FORCE MAJEURE

25.1 If the performance by either of the parties of their respective obligations under this Lease (excluding monetary obligations) is delayed or prevented in whole or in part by any Legal Requirement (and not attributable to an act or omission of the party), or by any acts of

God, fire or other casualty, floods, earthquakes, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation, or by any other cause not reasonably within the party's control, whether or not specifically mentioned, the party will be excused, discharged, and released of performance to the extent the performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind. If the condition excusing performance of a party continues for more than 180 days, then the other party may terminate this Lease by notice to the excused party.

SECTION 26 AUTHORITY

26.1 Tenant and Landlord each warrant and represent to the other that the person(s) signing this Lease on their behalf has authority to enter into this Lease and to bind Tenant and Landlord, respectively, to the terms, covenants, and conditions contained in this Lease.

SECTION 27 CONSTRUCTION AND INTERPRETATION

27.1 It is agreed and acknowledged by the parties that the provisions of this Lease have been arrived at through negotiation, and that each of the Parties has had a full and fair opportunity to review the provisions of this Lease and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Lease.

SECTION 28 NOTICE

28.1 All notices required by this Lease must be in writing addressed to the party to whom the notice is directed at the address of that party set forth below the signatures on this Lease. Any such notice will be deemed to have been given for all purposes on receipt when personally delivered; one day after being sent, when sent by recognized overnight courier service; or three days after deposit in United States mail, postage prepaid, registered or certified mail. Any party may designate a different mailing address or a different person for all future notices by notice given in accordance with this Section.

SECTION 29 ATTORNEY FEES

29.1 In any dispute involving the interpretation or enforcement of this Lease or involving issues related to bankruptcy (whether or not such issues relate to the terms of this Lease), the prevailing party will be entitled to recover from the nonprevailing party reasonable attorney fees, paralegal fees, costs, disbursements, and other expenses the prevailing party incurred in the dispute, including those arising before and at any trial, arbitration, bankruptcy, or other proceeding, and in any appeal or review thereof. In addition, the amount recoverable by the prevailing party will include an amount estimated as the fees, costs, disbursements, and other

expenses that will be reasonably incurred in collecting a monetary judgment or award, or otherwise enforcing any order, judgment, award, or decree entered in the proceeding.

SECTION 30 MODIFICATION

30.1 No modification of this Lease will be valid unless it is in writing and is signed by all of the parties.

SECTION 31 INTEGRATION

31.1 The Biomass CHP Installation Documents, including this Lease, as well as the Thermal Energy Services Agreement (TESA), Ownership Transfer Agreement (OTA), and Match Funding Agreement represent the entire agreement of the parties. No oral agreements exist between the parties.

SECTION 32 INTERPRETATION

32.1 The Section headings are for the convenience of the reader only and are not intended to act as a limitation on the scope or meaning of the Sections themselves. This Lease will not be construed against the drafting party.

SECTION 33 SEVERABILITY

33.1 The invalidity of any term or provision of this Lease will not affect the validity of any other provision.

SECTION 34 WAIVER

34.1 Waiver by any party of strict performance of any provision of this Lease will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision.

SECTION 35 BINDING EFFECT

35.1 Subject to restrictions in this Lease on assignment, this Lease will be binding on and inure to the benefit of the successors and assigns of the parties.

SECTION 36 GOVERNING LAW

36.1 This Lease will be interpreted and enforced according to the laws of the state of California.

SECTION 37
COUNTERPARTS

37.1 This Lease may be executed in multiple counterparts, each of which will constitute one agreement, even though all parties do not sign the same counterpart.

SECTION 38
TIME ESSENCE

38.1 Time is of the essence in the performance of this Lease.

SECTION 39
RECORDATION OF LEASE

39.1 Tenant may elect that a copy of this Lease or a memorandum, executed and acknowledged by both parties, be recorded in the public records of Plumas County, California.

SECTION 40
RECITALS AND EXHIBITS

40.1 The recitals to this Lease and any exhibits referred to in this Lease are incorporated by reference in this lease as if fully set forth in this Lease.

Exhibit A – Property and Legal Description

Exhibit B – Site Plan

Exhibit C – Parcel Map

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date first written above by their respective officers thereunto duly authorized.

LANDLORD

PLUMAS COUNTY

By: _____

Name: _____

Title: _____

Address: _____

Phone No.: _____

Date: _____, 20____

Approved as to form

R. Craig Settlemire

Plumas County Counsel

TENANT

SIERRA INSTITUTE FOR COMMUNITY AND ENVIRONMENT

By: _____

Address: 4438 Main St.

Name: Jonathan Kusel _____

Taylorsville, CA 95983

Title: Executive Director _____

Phone: (530) 284-1022

By: _____

Date: _____, 2016

Name: Amy Hafsrud _____

Title: Financial Manager _____

EXHIBIT A

Legal Property Description

Exclusive Use Areas on the Premises consist of the biomass CHP plant containing a biomass boiler and combustion system, propane boiler, electrical power generator, and related equipment; propane tank adjacent to the biomass CHP plant; and buried PEX hot water supply and return pipelines connecting the boiler building to the Plumas County geofield to the East as is depicted on Exhibit B in red.

Common Use Areas on the Premises consist of the geofield enclosures, parking lot and access roadways, and, during regular business hours, bathroom facilities located at the Plumas Human Health and Services building, as is depicted on Exhibit B in blue.

The Landlord's real property in Plumas County California, on which the Premises are located, is described as follows:

Beginning at a point on the division line between the Semans and Kellogg ranches, from which point the Southeast corner of Section 10, T. 24 N. R. 9 E. M. D. M., bears S. $71^{\circ}17'$ E. 2019.5 feet; thence N. 18.5° W. 709.5 feet, to the Northeast corner of said Semans ranch; thence West 1254.75 feet; thence South 672.8 feet; thence East 1479.65 feet to the place of beginning. Containing 21 acres in the SW quarter of SE quarter and SE quarter of SW quarter of said Section 10.

Also, the right-of-way for a wagon road, described as follows: Beginning at the above described point of beginning; thence S. 18.25° E. along the line fence between the Semans and Kellogg ranches, 330 feet to the County road; thence West 20 feet; thence N. 18.25° W. 330 feet to the South line of the above described tract; thence East 20 feet to the place of beginning.

Also, nine (9) inches of water measured under a four inch pressure, flowing in a ravine entering the above described tract near its Northwest corner.

Also, a right-of-way for a blind drain or sewer to a point near the North-east corner of pasture lot in said Semans ranch.

Together with the tenements, hereditaments and appurtenances thereunto belonging, or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

Site Plan

EXHIBIT B

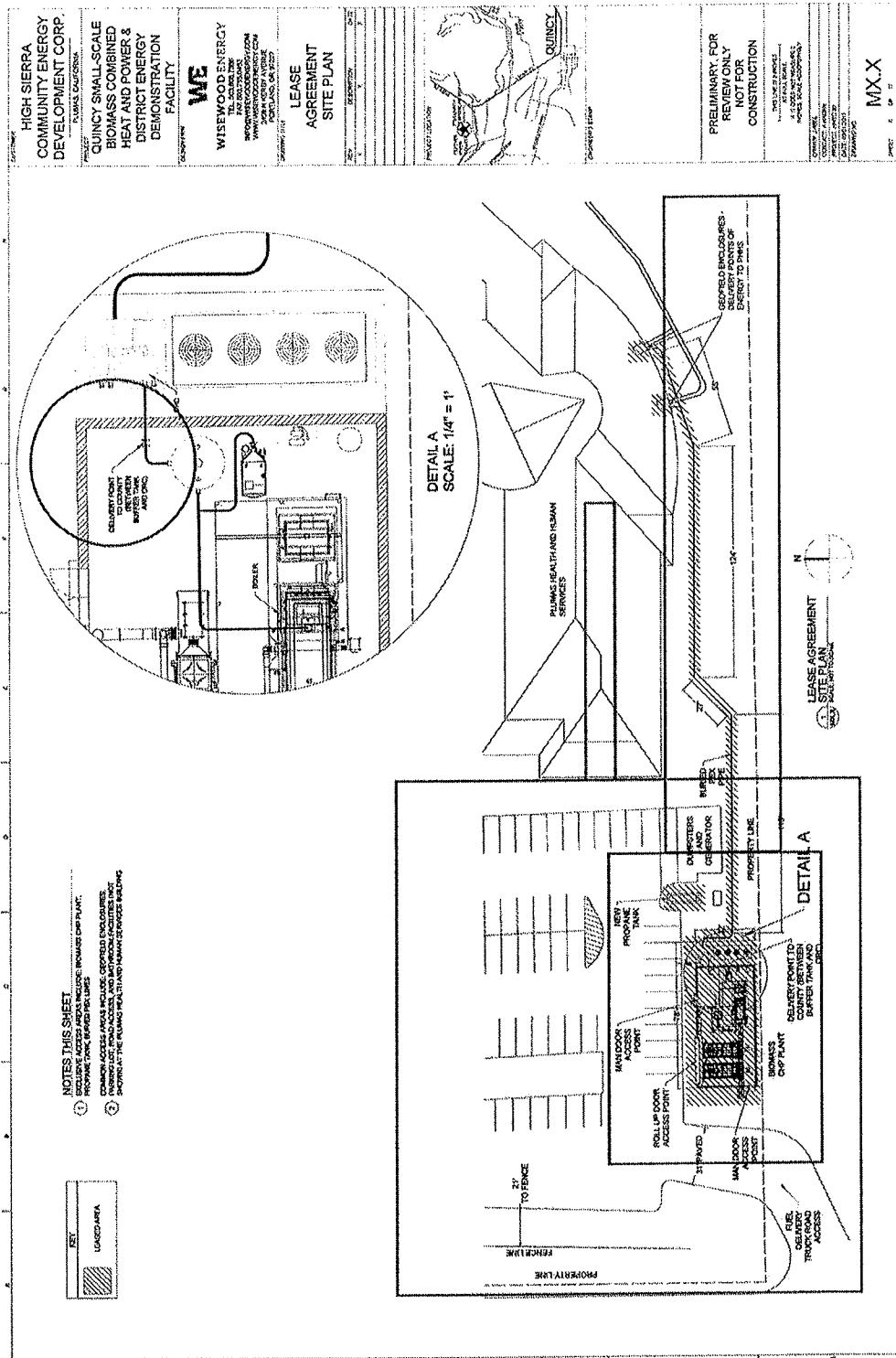
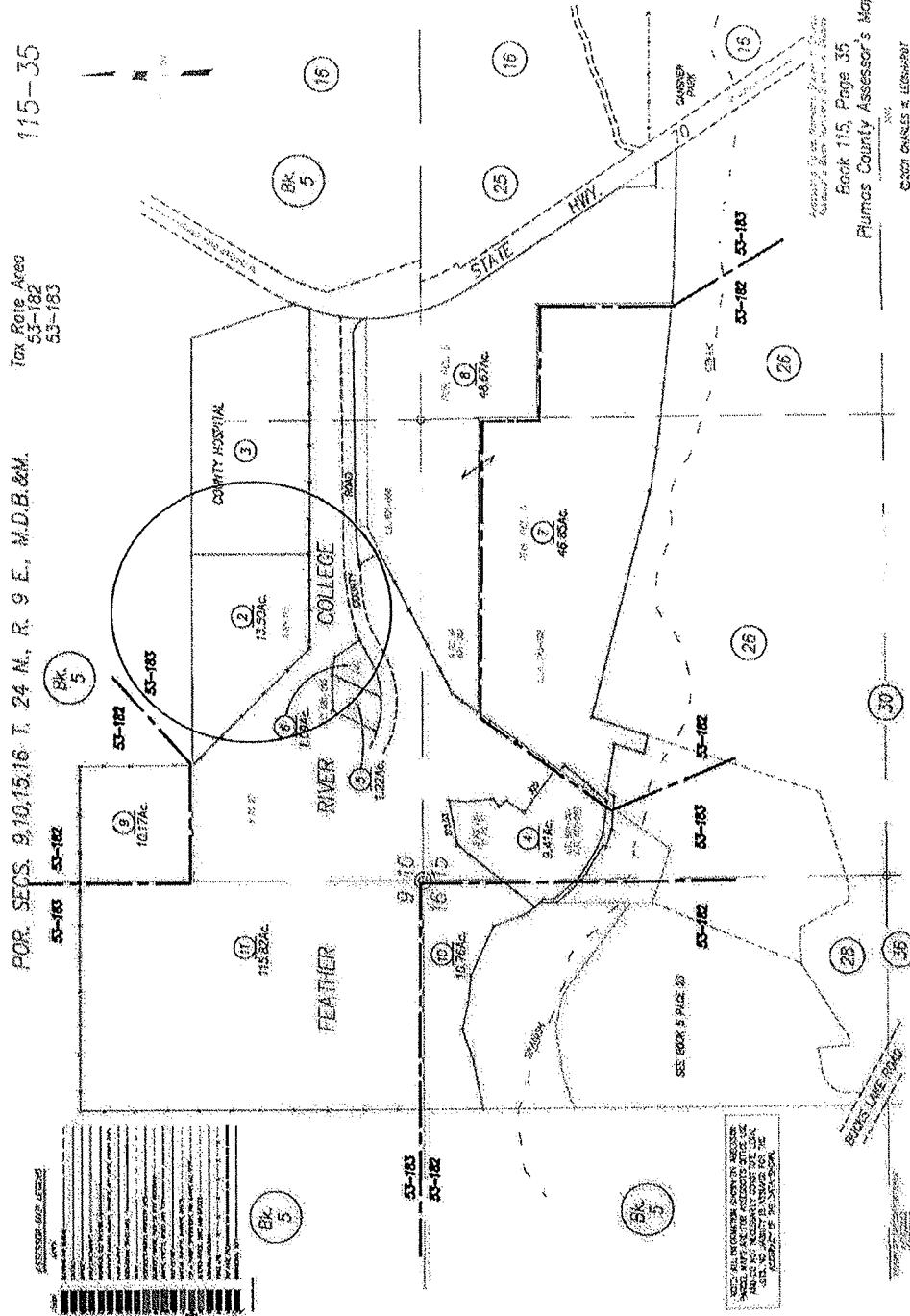


EXHIBIT C
Parcel Map

Plumas County Assessor Parcel Number 115-350-003-000



THERMAL ENERGY SERVICES AGREEMENT

This THERMAL ENERGY SERVICES AGREEMENT (“Agreement” or “TESA”) is entered into as of August 1, 2017 (“Effective Date”), by and between Sierra Institute for Community and the Environment, a California non-profit organization (“Seller”), and Plumas County, a California governmental entity (“Buyer”). Seller and Buyer are sometimes referred to each individually as a “Party” and collectively as the “Parties.”

WITNESSETH

WHEREAS, Buyer operates that certain Plumas County Health and Human Services Center (“Buyer’s Facility”), located at 270 County Hospital Road, Quincy, California, Plumas County Assessor’s Parcel Number 115-350-003-000, that will utilize Thermal Energy;

WHEREAS, Seller received a California Energy Commission grant EPC-14-082 (“Grant”) approved on July 12, 2015 whereby Seller will administer grant funds to design, construct and commission one biomass-fired combined heat and power plant and district energy system, (“Biomass CHP Installation” as defined in Exhibit C and incorporated by this reference) that will serve buildings at the Plumas County Health and Human Services Center;

WHEREAS, Seller desires to sell and Buyer desires to purchase Thermal Energy generated from primarily Biomass Fuel at Seller’s Biomass CHP Installation during the time directly following the construction of the facility, and during the time in which the facility is maintained by Seller until the Project Transfer Date;

WHEREAS, Seller and Buyer recognize that this agreement must be consistent with general terms and agreements of the contract between the Seller and the California Energy Commission standard terms and conditions which are attached here to as Exhibit B and incorporated by this reference;

WHEREAS, the Seller and Buyer recognize the Lease (“Lease”) in place between the parties at the location of the Facility will remain in place for this Agreement’s Term;

WHEREAS, simultaneously herewith, Seller and Buyer have entered into that certain Ownership Transfer Agreement (the “OTA”) pursuant to which, among other things, Seller has agreed to sell and assign to Buyer, and Buyer has agreed to purchase and assume from Seller, the assets, rights and obligations of Seller to the Biomass CHP Installation, including with regard to all existing Thermal Energy Service Agreements held by Seller, which shall become effective on the Project Transfer Date and subject to the terms and conditions set forth herein.

WHEREAS, simultaneously herewith, Seller and Buyer have entered into that certain Match Funding Agreement pursuant to which Seller has agreed to implement the project according to the terms of the Grant (as defined in Exhibit C) and Buyer agrees to be responsible for match funding described in the Grant; and

WHEREAS, the TESA, OTA, Match Funding Agreement, and Lease shall be known as the “Biomass CHP Installation Documents”, which shall all be executed simultaneously, and shall govern the Biomass CHP Installation as defined below.

NOW, THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1

TERM

1.1 The term of this Agreement ("Term") shall commence on the Effective Date and, unless earlier terminated in accordance with the terms of this Agreement, shall terminate at the Project Transfer Date ("PTD"). Provided, however, that if the Commercial Operations Date does not occur by December 31, 2022, Buyer shall have the right to terminate this Agreement upon notice to Seller.

SECTION 2 PRICING

2.1 Price for Thermal Energy. The price for the delivery of Thermal Energy shall be a Monthly Fee as set forth in Exhibit D, payable in accordance with Section 8.1 below.

SECTION 3 THERMAL ENERGY SUPPLY

3.1 Commencing upon the Commercial Operations Date and continuing throughout the Term, Seller shall deliver, and Buyer shall purchase, Thermal Energy at the Delivery Point sufficient to satisfy Buyer's Initial Capacity up to the Maximum Capacity of the Biomass CHP Installation. Buyer's Initial Capacity shall be equal to the capacity demands for the parts of Buyer's Facility that are heated by hot water as of the Effective Date. For clarification purposes, Maximum Capacity does not include any increase in demand over the Initial Capacity that arises after the Effective Date.

3.2 Buyer agrees to rely on the Biomass CHP Installation as Buyer's exclusive supplier of Thermal Energy for Buyer's Facility for the Term of this Agreement.

SECTION 4 THERMAL ENERGY QUALITY

4.1 The Thermal Energy provided under the terms of this Agreement shall comply with the standards set forth in Exhibit F hereto.

SECTION 5 DELIVERY OF THERMAL ENERGY

5.1 Seller's Responsibilities.

5.1.1. Notwithstanding those contributions made by Buyer pursuant to the Match Funding Agreement, Seller shall be solely responsible for the design, construction, installation, maintenance, repair and operation of the Biomass CHP Installation as identified in Exhibit A and defined in Exhibit C, until the assets, rights and obligations of the Biomass CHP Installation have been transferred to Buyer according to the OTA. Seller's maintenance and repair activities and obligations shall include, but are not limited to, the following: remote monitoring and data logging of system function status; continual ash bin removal on an as-needed basis; lubrication of moving parts on a monthly basis; boiler combustion chamber cleaning on a quarterly basis; boiler heating exchanger cleaning on a semi-annual basis.

5.1.2. Seller shall not be regarded as Buyer's agent, nor shall Buyer have any responsibility or liability, for Seller's design, construction, installation, maintenance, repair and operation, metering or monitoring of the Biomass CHP Installation facilities.

5.1.3 Upon receipt of written notice from Buyer, Seller shall be responsible for remedying any Hazardous Condition or violation of Technical Requirements within the Buyer's Facility created by Seller. If, after receipt of such notice, Seller fails to correct a Hazardous Condition or violation of Technical Requirements, Buyer may remedy such Hazardous Condition or violation of Technical Requirements and Seller agrees to reimburse the Buyer for any reasonable expenses incurred.

5.1.4 Seller shall, at its own expense, maintain the Biomass CHP Installation as identified in Exhibit A and defined in Exhibit C in accordance with Prudent Operating Practices.

5.1.5 Seller shall, at its own expense, install the equipment necessary to convey Thermal Energy to the Delivery Point, notwithstanding those contributions made by Buyer pursuant to the Match Funding Agreement.

5.1.6 Seller shall be fully responsible for procuring all Biomass Fuel and any other fuels or materials needed to produce the Maximum Capacity from the Biomass CHP Installation.

5.1.7 Seller shall maintain insurance for the Biomass CHP Installation as identified in the Ground Lease, Section 11.

5.2 Buyer's Responsibilities.

5.2.1. Buyer shall provide Seller and its agents, employees, representatives, and contractors with access at reasonable times, upon reasonable advance notice, to those portions of the Buyer's Facility as are reasonably necessary for the design, construction, installation, maintenance, repair, operation, monitoring and metering of the Biomass CHP Installation provided that Seller complies with Buyer's reasonable rules and regulations regarding security, sanitation and safety.

5.2.2. Upon receipt of written notice from Seller, Buyer shall be responsible for remedying any Hazardous Condition or violation of Technical Requirements within the Buyer's Facility created by Buyer. If, after receipt of such notice, Buyer fails to correct a Hazardous Condition or violation of Technical Requirements, Seller may remedy such Hazardous Condition or violation of Technical Requirements and Buyer agrees to reimburse the Seller for any reasonable expenses incurred.

5.2.3. Buyer shall be solely responsible for the maintenance of equipment not included in the Biomass CHP Installation. Buyer shall, at its own expense, install and maintain its own heating and cooling systems, including its existing geothermal field, to the Technical Requirements necessary for operation and maintenance of the Biomass CHP Installation pursuant to this Agreement, including use of the geothermal field for offloading heat from the Biomass CHP Installation. Technical Requirements of Buyer's geothermal field include the following:

- a. Buyer's geothermal field shall maintain the capacity to absorb thermal energy from the Biomass CHP Installation sufficient to return water to the Biomass CHP Installation.

5.2.4. Buyer shall not be regarded as Seller's agent, nor shall Seller have any responsibility or liability, for Buyer's design, construction, operation, maintenance, metering or monitoring of any equipment not included in the Biomass CHP Installation.

SECTION 6 COORDINATION AND SCHEDULING

6.1 General. Buyer and Seller shall each use commercially reasonable efforts to (a) coordinate operations and maintenance between the Biomass CHP Installation and Buyer's Facility and (b) to cooperate in facilitating the reliable and efficient operation of the Biomass CHP Installation and Buyer's Facility.

6.2 Schedule of Thermal Energy Deliveries.

- 6.2.1. Seller's Responsibilities.
 - (i) Seller shall provide Buyer reasonable notice of any planned changes to the flow or temperature of Thermal Energy to the Delivery Point.

- 6.2.2. Buyer's Responsibilities.
 - (i) Buyer shall provide prior written notice to Seller of any major changes to the facility's anticipated demand for Thermal Energy delivery as compared to the routine levels (including facility shutdowns).
 - (ii) Buyer shall provide prior written notice to Seller if any major changes are made to Buyer's existing heating system that will impact the demand for Thermal Energy from the Biomass CHP Installation.

6.3 Schedule of Biomass Fuel Deliveries. Seller shall provide Buyer reasonable advance notice of any scheduled delivery of Biomass Fuel at the Site. Seller shall use commercially reasonable efforts to ensure that deliveries of Biomass Fuel do not interfere with Buyer's operation of Buyer's Facility. In any event, deliveries shall not occur between the hours of 7:30 AM and 5:30 PM, Monday through Friday.

SECTION 7 THERMAL ENERGY METERING

7.1 Metering System. Seller shall install, calibrate and maintain Seller's Metering System ("Metering System") that measures the Thermal Energy delivered to the Delivery Point.

7.2 Meter Reporting. Data from the Seller's Metering System shall be stored by the Seller and made available to Buyer upon written request.

7.3 Meter Failure. In the event of a failure of any portion of the Metering System, Seller will replace or repair, at its option, the Metering System at no cost to the Buyer.

SECTION 8 BILLING, PAYMENT AND RECORDS

8.1 Payments. Buyer shall pay to Seller the price for Thermal Energy as outlined in Exhibit D on a monthly basis. Monthly payments shall be due and payable upon Buyer's receipt of Seller's invoice for Thermal Energy delivered during the previous month, commencing on the first month following the first full day of Thermal Energy delivery from the Biomass CHP Installation, and continuing each calendar month thereafter for the duration of the Term.

8.2 Records. With each monthly invoice for delivered Thermal Energy, Seller shall include a statement showing the number of British Thermal Units that was delivered to the Buyer in the month prior, as well as a statement documenting all Eligible Costs for the Biomass CHP Installation during the month prior. Seller and Buyer shall maintain and preserve for a period of at least three (3) years from the date of the preparation thereof, complete and accurate records of all data and information collected at the Delivery Point regarding appropriate metrics of the Thermal Energy delivered. Seller and Buyer shall also maintain and preserve complete and accurate records in perpetuity of all maintenance and repairs to both the Biomass CHP Installation and Buyer's Facility that has a material impact on the Buyer's use of Thermal Energy.

SECTION 9 INTEGRATION

9.1 The Biomass CHP Installation Documents, including this TESA, as well as the Lease, Ownership Transfer Agreement (OTA), and Match Funding Agreement represent the entire agreement of the parties. No oral agreements exist between the parties. A breach or default in the performance of the terms of any one agreement may, at the option of the aggrieved party, be deemed a breach or default with regard to the other agreements.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Seller:

Sierra Institute for Community and Environment

By: _____

Name: Jonathan Kusel
Title: Executive Director

By: _____

Name: Amy Hafsrud
Title: Financial Manager

Buyer:

Plumas County

By: _____

Name: _____
Title: _____

Approved as to form:

Name: R. Craig Settlemire
Title: Plumas County Counsel

EXHIBITS:

Exhibit A – Project Site Plan and Delivery Point

Exhibit B – Special Provisions in compliance with California Energy Commission Contract No. EPC 14-082

Exhibit C – Definitions

Exhibit D – Pricing Schedule

Exhibit E – General Terms and Conditions Beyond Those Required by Grant

Exhibit F – Thermal Energy Requirements

Exhibit A
Project Site Plan

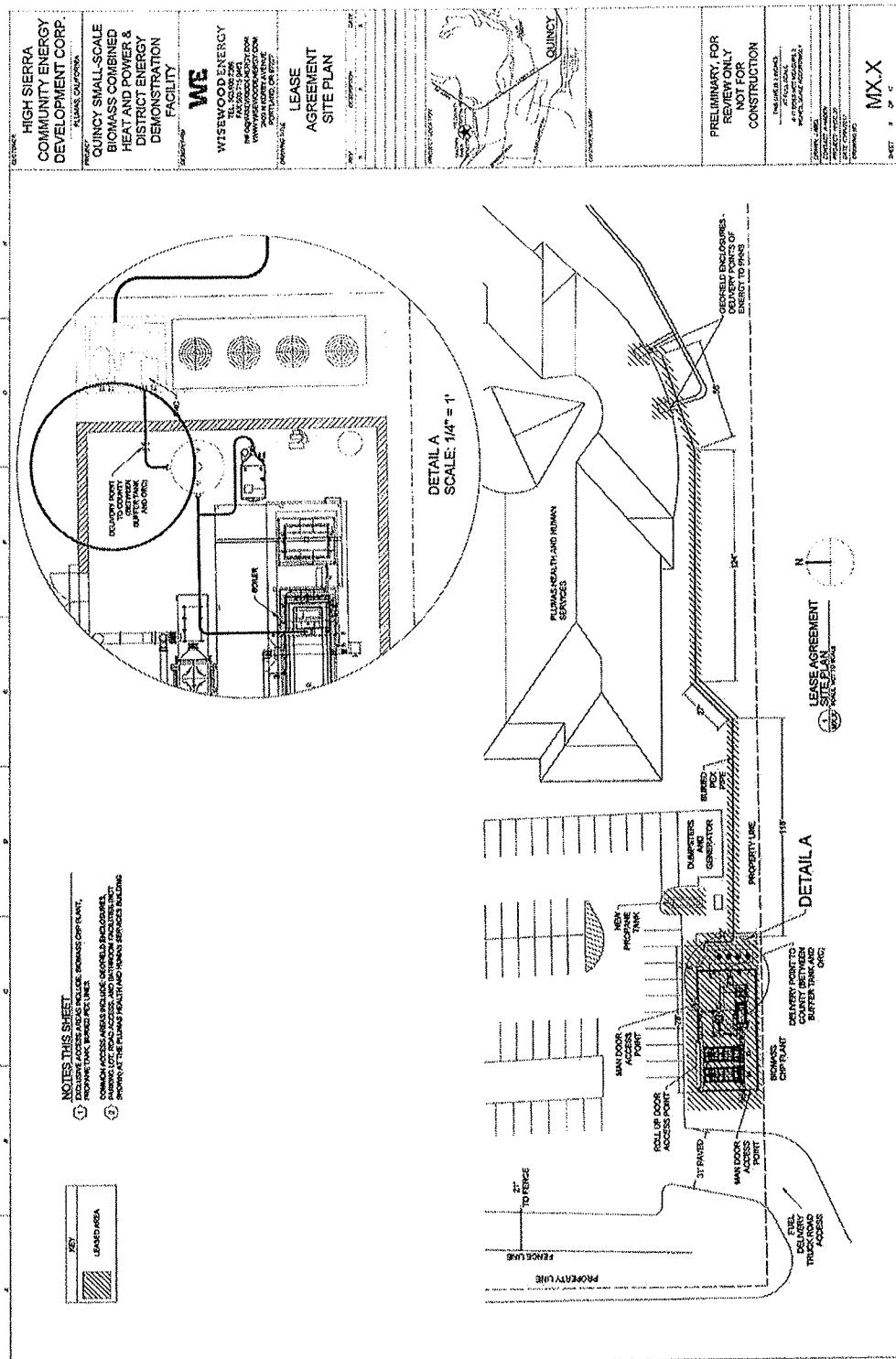


Exhibit B

Special Provisions in compliance with California Energy Commission Contract No. EPC 14-082

1. Standard of Performance

In performing work under the Agreement, the Recipient, its Subcontractors, and their employees are responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures for the type of work performed.

2. Travel and Per Diem

a. Travel not listed in the budget requires prior written authorization from the Commission Agreement Manager.

b. No reimbursement for food or beverages will be made other than for allowable per diem charges.

c. The Recipient will be reimbursed for authorized travel and per diem up to, but not to exceed, the rates allowed nonrepresented state employees. Current allowable travel reimbursement rates can be obtained from the Commission's web site at

http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF.

d. Travel expense claims must detail expenses using the allowable rates, and the Recipient must sign and date each travel expense claim before submitting it to the Commission for payment. Expenses must be listed by trip, including dates and times of departure and return. Travel expense claims supporting receipts and expense documentation must be attached to the Recipient's Payment Request. A vehicle license number is required when claiming mileage, parking, or toll charges. Questions regarding allowable travel expenses or per diem should be addressed to the Commission Agreement Manager.

3. Prevailing Wage

a. Requirement

Projects funded by the Energy Commission often involve construction, alteration, demolition, installation, repair, or maintenance work over \$1,000. Such projects might be considered "public works" under the California Labor Code (See California Labor Code Section 1720 et seq. and Title 8 California Code of Regulations, Section 16000 et seq.). Public works projects require the payment of prevailing wages. Prevailing wage rates can be significantly higher than non-prevailing wage rates.

b. Determination of Project's Status

Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction may issue legally binding determinations that a particular project is or is not a public work. If the Recipient is unsure whether the project funded by the Agreement is a "public work" as defined in the California Labor Code, it may wish to seek a timely determination from DIR or an appropriate court. As such processes can be time consuming, it may not be possible to obtain a timely determination before the date for performance of the Agreement.

By accepting this grant, the Recipient is fully responsible for complying with all California public works requirements, including but not limited to payment of prevailing wage. As a material term of this grant, the Recipient must either:

1) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work; or

2) Assume that the project is a public work and ensure that:

- Prevailing wages are paid unless and until DIR or a court of competent jurisdiction determines that the project is not a public work;
- The project budget for labor reflects these prevailing wage requirements;
- The project complies with all other requirements of prevailing wage law, including but not limited to keeping accurate payroll records and complying with all working hour requirements and apprenticeship obligations.

California Prevailing Wage law provides for substantial damages and financial penalties for failure to pay prevailing wages when such payment is required.

c. Subcontractors and Flow-down Requirements

The Recipient will ensure that its Subcontractors also comply with the public works/prevailing wage requirements above. The Recipient will ensure that all agreements with its Subcontractors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. The Recipient is responsible for any failure of its Subcontractors to comply with California prevailing wage and public works laws.

d. Indemnification and Breach

Any failure of the Recipient or its Subcontractors to comply with the above requirements will constitute breach of this Agreement which excuses the Commission's performance of this Agreement at the Commission's option, and will be at the Recipient's sole risk. In such a case, the Commission will refuse payment to the Recipient of any amount under this award and the Commission will be released, at its option, from any further performance of this Agreement or any portion thereof. The Recipient will indemnify the Energy Commission and hold it harmless for any and all financial consequences arising out of or resulting from the failure of the Recipient and/or any of its Subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

e. Budget

The Recipient's budget on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, the Recipient may wish to contact DIR or a qualified labor attorney for guidance.

f. Covered Trades

For public works projects, the Recipient may contact DIR for a list of covered trades and the applicable prevailing wage.

g. Questions

If the Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship, or other significant requirements of California prevailing wage law, the Recipient should consult DIR and/or a qualified labor attorney before entering into this Agreement.

h. Certification

The Recipient will certify to the Energy Commission on each payment request form either that: (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and the Recipient and all contractors and Subcontractors otherwise complied with all California prevailing wage laws; or (b) the project is not a public work requiring the payment of prevailing wages. In the latter case, the Recipient will provide competent proof of a

DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

Prior to the release of any retained funds under this Agreement, the Recipient will submit to the Energy Commission the above-described certificate signed by the Recipient and all contractors and Subcontractors performing public works activities on the project. Absent this certificate, the Recipient will have no right to any funds under this Agreement, and Commission will be relieved of any obligation to pay any funds.

4. Recordkeeping, Cost Accounting, and Auditing

a. Cost Accounting

The Recipient will keep separate, complete, and correct accounting of the costs involved in completing the project and any match-funded portion of the project. The Commission or its agent will have the right to examine the Recipient's books of accounts at all reasonable times, to the extent necessary to verify the accuracy of the Recipient's reports.

b. Accounting Procedures

The Recipient's costs will be determined on the basis of its accounting system procedures and practices employed as of the effective date of this Agreement, provided that the Recipient uses generally accepted accounting principles and cost reimbursement practices. The Recipient's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement will be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and that such costs may be accumulated and reported in greater detail during performance of this Agreement.

The Recipient's accounting system will distinguish between direct and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.

5. Equipment

Title to equipment acquired by the Recipient with grant funds will vest in the Recipient. The Recipient may use the equipment in the project or program for which it was acquired as long as needed, regardless of whether the project or program continues to be supported by grant funds. However, the Recipient may not sell, lease, or encumber the property (i.e., place a legal burden on the property such as a lien) during the Agreement term without the Commission Agreement Manager's prior written approval.

The Recipient may refer to the applicable federal regulations incorporated by reference in this Agreement for guidance regarding additional equipment requirements.

6. Disputes

In the event of an Agreement dispute or grievance between the Recipient and the Energy Commission, both parties may follow the procedure detailed below. The Recipient will continue with its responsibilities under this Agreement during any dispute.

a. Commission Agreement Manager/Commission Agreement Officer

- The Recipient must first discuss the problem informally with the Commission Agreement Manager.
 - If the problem cannot be resolved at this stage, the Recipient must submit a Contractor Dispute Statement, along with any evidence, to the

Commission Agreement Officer. The statement must include: (1) a summary of the issues in dispute; (2) the legal authority or other basis for the Recipient's position; and (3) the remedy sought.

Commission Agreement Officer/ Program Office Manager

b. The Commission Agreement Officer and the Program Office Manager must make a determination on the problem within ten (10) working days of receipt of the Recipient's Dispute Statement.

- The Commission Agreement Officer will submit a Dispute Finding to the Recipient that includes: (1) a decision; and (2) an explanation of the decision.
- The Recipient may appeal to the Commission's Executive Director if it disagrees with the Commission Agreement Officer's decision.

c. Executive Director

- The Recipient must submit an Appeal to the Commission's Executive Director within ten (10) working days of receipt of the Commission Agreement Officer's Dispute Finding. The Appeal must explain why the Commission Agreement Officer's decision is unacceptable. The Recipient must include the following as attachments to the Appeal: (1) the Recipient Dispute Statement; (2) any supporting documents; and (3) the Dispute Finding.
- The Executive Director or his/her designee will meet with the Recipient to review the issues raised.
- A written decision signed by the Executive Director or his/her designee will be sent to the Recipient within twenty (20) working days of receipt of the Appeal. The Executive Director may exercise the option of presenting the decision to the Commission at a business meeting.
- If the Recipient disagrees with the Executive Director's decision, it may appeal to the Commission at a regularly scheduled business meeting. The Commission Agreement Officer will inform the Recipient of the procedure for placing the appeal on a Commission Business Meeting Agenda.

7. Indemnification

To the extent allowed under California law, the Recipient will indemnify, defend, and hold harmless the state (including the Energy Commission) and state officers, agents, and employees from any and all claims and losses in connection with the performance of this Agreement.

8. Confidentiality

a. Identification of Confidential Information

- 1) Prior to the effective date of this Agreement, the Recipient will identify all products (or information contained within products) that it considers to be confidential, in addition to the legal basis for confidentiality, in Attachment 2 to this Exhibit. If the Energy Commission agrees that the information is confidential, it will not disclose it except as provided in subsection (b).
- 2) During the Agreement, if the Recipient develops additional products (or information contained within products) not originally anticipated as confidential,

it will follow the procedures for a request for designation of confidential information specified in Title 20 California Code of Regulations (CCR) Section 2505.

The Energy Commission's Executive Director will make the confidentiality determination. Following this determination, the confidential information may be added to Attachment 2 through a Letter of Agreement (see the "Amendments" section). The Energy Commission will not disclose information subject to an application for confidential designation except as provided in subsection (b).

3) When submitting products containing confidential information, the Recipient will mark each page of any document containing confidential information as "confidential", and present it in a sealed package to the Contracts, Grants, and Loans Office.

The Commission Agreement Manager may require the Recipient to submit a non-confidential version of the product, if it is feasible to separate the confidential information from the non-confidential information. The Recipient is not required to submit such products in a sealed package.

b. Disclosure of Confidential Information

The Energy Commission will only disclose confidential information under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508. All confidential information that is legally disclosed by the Recipient or any other entity will become a public record and will no longer be subject to the Energy Commission's confidentiality designation.

c. Waiver of Consequential Damages

In no event will the Energy Commission, the California Public Utilities Commission, or the state of California be liable for any special, incidental, or consequential damages based on breach of warranty, breach of contract, negligence, strict tort, or any other legal theory for the disclosure of the Recipient's confidential information, even if the Commission has been advised of the possibility of such damages.

Damages that the Energy Commission, the California Public Utilities Commission, and the state of California will not be responsible for include but are not limited to: lost profit; lost savings or revenue; lost goodwill; lost use of the product or any associated equipment; cost of capital; cost of any substitute equipment, facilities, or services; downtime; the claims of third parties including customers; and injury to property.

d. Limitations on the Recipient's Disclosure of Products

1) During the Agreement, the Recipient must receive approval from the Commission Agreement Manager prior to disclosing the contents of any draft product to a third party. However, if the Energy Commission makes a public statement about the content of any product provided by the Recipient and the Recipient believes the statement is incorrect, the Recipient may state publicly what it believes is correct.

- 2) After any document submitted has become a part of the public records of the state, the Recipient may publish or use it at its own expense.
- 3) Except as provided in Title 20 CCR Sections 2506, 2507, and 2508, the Recipient may not disclose any information provided to it by the Energy Commission for the performance of this Agreement if the information has been designated as confidential or is the subject of a pending application for confidential designation. At the election of the Commission Agreement Manager, the Recipient, its employees, and its Subcontractors must execute a confidentiality agreement provided by the Commission Agreement Manager.
- 4) The Recipient will ensure that each of its officers, employees, and Subcontractors who are involved in the performance of this Agreement are informed about these disclosure limitations and will abide by them.

9. Pre-Existing and Independently Funded Intellectual Property

a. Ownership

The Energy Commission makes no ownership, license, or royalty claims to pre-existing intellectual property, independently funded intellectual property, or project-relevant pre-existing or independently funded intellectual property. “Ownership” means exclusive possession and control of all rights to property, including the right to use and transfer property. Intellectual property licenses and royalties are discussed in Sections 21 and 22.

- 1) “**Pre-existing intellectual property**” means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the Recipient or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.
- 2) “**Independently funded intellectual property**” means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Recipient or a third party during or after the Agreement term without Energy Commission or match funds; and (b) associated proprietary rights to these items that are obtained without Energy Commission or match funds, such as patent and copyright.

Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The Commission owns such products regardless of their funding source.

- 3) “**Project-relevant pre-existing intellectual property**” and “**project-relevant independently funded intellectual property**” mean pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.

b. Project-Relevant Pre-Existing and Independently Funded Intellectual Property

1) Identification of Property

- a) The Recipient will identify all project-relevant pre-existing intellectual property in Attachment 2 to this Exhibit prior to the effective date of the Agreement, or within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement. Attachment 2 may be amended by a Letter of Agreement (see the "Amendments" section).
- b) The Recipient will identify all project-relevant independently funded intellectual property and the source of funding for the property in Attachment 2 to this Exhibit within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.
- c) Failure to identify project-relevant pre-existing or independently funded intellectual property in Attachment 2 to this Exhibit may result in the property's designation as "intellectual property" that is subject to licenses and royalties, as described in Sections 21 and 22.

2) Access to Property

The extent of Energy Commission and California Public Utilities Commission access to project-relevant pre-existing and independently funded intellectual property is limited to that reasonably necessary to: (a) demonstrate the validity of any premise, postulate, or conclusion referred to or expressed in any product; or (b) establish a baseline for repayment purposes.

Upon the Commission Agreement Manager's request, the Recipient will provide the Commission Agreement Manager and any reviewers designated by the Energy Commission or the California Public Utilities Commission with access to review the Recipient's project-relevant pre-existing and independently funded intellectual property. If the property has been designated as confidential as specified in Section 19, the Energy Commission will only disclose it under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

3) Preservation of Property

The Recipient will preserve any project-relevant pre-existing or independently funded intellectual property at its own expense for at least ten (10) years from the Agreement's end date, unless the Recipient agrees to a longer retention period.

The Energy Commission and the California Public Utilities Commission will have reasonable access to the project-relevant pre-existing or independently funded property throughout the retention period.

10. Intellectual Property

a. Ownership

- 1) The Recipient owns all intellectual property, subject to the licenses described in subsection b.

“Intellectual property” means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.

- 2) The Energy Commission owns all products identified in the Scope of Work, with the exception of products that fall within the definition of “intellectual property.”

“Product” means any tangible item specified for delivery to the Energy Commission in the Scope of Work.

b. Intellectual Property Licenses

- 1) Both the Energy Commission and the California Public Utilities Commission have a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property for governmental purposes. The licenses are transferable only to load-serving entities for the purpose described below.
- 2) Both the Energy Commission and the California Public Utilities Commission may grant load-serving entities a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property to enhance the entities’ service to EPIC ratepayers. **“Load-serving entity”** means a company or other organization that provides electricity to EPIC ratepayers.

The licenses are transferable to third parties only for the purpose of facilitating the load-serving entity’s enhancement of service to EPIC ratepayers. Load-serving entities must obtain prior written approval from the Energy Commission or California Public Utilities Commission (whichever agency granted the load-serving entity the license) in order to transfer the license to a third party.

- 3) The Recipient has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce written products created for Agreement reporting and management purposes, such as reports and summaries.
- 4) If any intellectual property that is subject to the licenses above has been designated as confidential as specified in Section 19, all license holders will only disclose the intellectual property under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

All license holders will ensure that their officers, employees, and Subcontractors who have access to the intellectual property are informed of and abide by the disclosure limitations in Section 19.

c. Energy Commission's Rights to Inventions

"Invention" means intellectual property that is patentable.

1) March-In Rights

At the Energy Commission's request, the Recipient will forfeit and assign to the Energy Commission all rights to any invention (with the exception of U.S. Department of Energy reserved rights) if the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the invention. The Energy Commission will have the unfettered right to use and/or dispose of the rights in whatever manner it deems most suitable to help transfer the invention into the marketplace, including but not limited to seeking patent protection or licensing the invention.

2) Notice of Patent

If any patent is issued for an invention, the Recipient will send the Commission Agreement Manager written notice of the issuance within three (3) months of the issuance date. The notice must include the patent title, issuance number, and a general description of the invention.

3) Legal Notice

The Recipient and all persons and/or entities obtaining an ownership interest in patentable intellectual property must include the following statement within the specification of any United States patent application, and any subsequently issued patent for the invention:

"This invention was made with State of California support under California Energy Commission grant number EPC-14-008. The Energy Commission has certain rights to this invention."

d. Access to and Preservation of Intellectual Property

1) Access to Intellectual Property

Upon the Commission Agreement Manager's request, the Recipient will provide the Commission Agreement Manager and any individuals designated by the Energy Commission or the California Public Utilities Commission with access to the Recipient's intellectual property in order to exercise the license and march-in rights described above, and to determine any royalty payments due under the Agreement.

2) Preservation of Intellectual Property

The Recipient will preserve intellectual property at its own expense for at least ten (10) years from the Agreement's end date, unless the Recipient agrees to a longer retention period.

e. Intellectual Property Indemnity

The Recipient may not, in supplying work under this Agreement, knowingly infringe or misappropriate any intellectual property right of a third party, and will take reasonable actions to avoid infringement.

The Recipient will defend and indemnify the Energy Commission and the California Public Utilities Commission from and against any claim, lawsuit, or other proceeding, loss, cost, liability, or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a product infringes any patent, copyright, trade secret, or other intellectual property right of any third party; or (ii) any third party claim arising out of the negligent or other tortious acts or omissions by the Recipient or its employees, Subcontractors, or agents in connection with or related to the products or the Recipient's performance under this Agreement.

11. Royalty Payments to the Commission

"Sale," "sales," and "sold" mean the sale, license, lease, or other transfer of intellectual property. ***"Sales Price"*** means the price at which intellectual property is sold, excluding sales tax.

- a. The Recipient will pay the Energy Commission a royalty of one and one-half percent (1.5%) of the sales price of all sales for which the Recipient receives a payment, beginning on the Agreement's effective date and extending for ten (10) years from the Agreement's end date.
- b. The Recipient will make payments in annual installments due on the first day of March in the calendar year immediately following the year during which the Recipient received any payment for sales.
- c. The Recipient is not required to make a royalty payment for any calendar year in which payments for sales are less than \$1000. Total royalty payments will be limited to three (3) times the amount of funds paid by the Energy Commission under the Agreement.
- d. If intellectual property was developed in part with match funds during the Agreement term, the royalty payment will be reduced in accordance with the percentage of intellectual property development activities that were funded with match funds. For example, if 10% of the development activities were funded with match funds during the Agreement and payments for sales totaled \$100,000 in one year, the Recipient would owe the Energy Commission \$1350 for the year (1.5% of \$100,000 = \$1500; 10% of \$1500 = \$150; \$1500 - \$150 = \$1350).

If the Energy Commission is providing funds to the Recipient under this Agreement as a project match partner and Energy Commission funds are used in part to develop intellectual property, the royalty payments will be reduced in accordance with the percentage of intellectual property development activities that were funded with non-Energy Commission funds during the Agreement term. For example, if 80% of the development activities were funded with Recipient and/or third party funds during the Agreement and payments for sales totaled \$100,000 in one year, the Recipient would owe the Energy Commission \$300 for the

year (1.5% of \$100,000 = \$1500; 80% of \$1500 = \$1200; \$1500 - \$1200 = \$300).

- e. The Recipient may make an early buyout payment to the Energy Commission without a pre-payment penalty, as an alternative to making annual royalty payments for ten (10) years following the Agreement's end date. The payment must be in a lump sum amount equal to one and a half (1.5) times the amount of funds paid by the Energy Commission under the Agreement and made within five (5) years of the Agreement's end date. The payment amount due under the early buyout option will not be reduced by the percentage of match funds as described above.
- f. The Recipient may not make any sale of intellectual property for consideration other than fair market value. Such activity constitutes breach of this Agreement, and will obligate the Recipient to repay within sixty (60) days the early buyout amount due. In the event of breach, the Energy Commission may exercise all rights and remedies available to it under law and at equity.
- g. Royalty payments not made within fifteen (15) days of the due date will constitute breach of this Agreement. The payments will become debt obligations of the Recipient to the Energy Commission, due upon demand and bearing interest at the maximum interest rate allowed by law.
- h. The Recipient will maintain separate accounts within its financial and other records for the purpose of tracking components of sales and royalties due to the Energy Commission under this Agreement.
- i. Payments to the Energy Commission are subject to audit as provided for under the Recordkeeping, Cost Accounting, and Auditing section.
- j. The Recipient will include these royalty provisions in its agreements with all Subcontractors who develop or assist with the development of intellectual property.

12. *Access to Sites and Records*

Energy Commission and California Public Utilities Commission staff and representatives will have reasonable access to all project sites and to all records related to this Agreement.

13. *Certifications and Compliance*

a. Federal, State, and Local Laws

The Recipient will comply with all applicable federal, state and local laws, rules and regulations.

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, the Recipient and its Subcontractors will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care leave. The Recipient and its Subcontractors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

The Recipient and its Subcontractors will comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Recipient and its Subcontractors will give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient will include the nondiscrimination and compliance provisions of this section in all subcontracts to perform work under this Agreement.

c. Drug-Free Workplace Certification

By signing this Agreement, the Recipient certifies under penalty of perjury under the laws of the State of California that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- 1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).
- 2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:

The dangers of drug abuse in the workplace;

The person's or organization's policy of maintaining a drug-free workplace;

- Any available counseling, rehabilitation, and employee assistance programs; and
- Penalties that may be imposed upon employees for drug abuse violations.

- 3) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:

- Will receive a copy of the company's drug-free policy statement; and
- Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future state awards if the Commission determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. National Labor Relations Board Certification (Not applicable to public entities)

The Recipient, by signing this Agreement, swears under penalty of perjury that no more than one final unappealable finding of

contempt of court by a federal court has been issued against the Recipient within the immediately preceding two year period because of the Recipient's failure to comply with an order of a federal court that orders the Recipient to comply with an order of the National Labor Relations Board.

e. Child Support Compliance Act (Applicable to California Employers)

For any agreement in excess of \$100,000, the Recipient acknowledges that:

- 1) It recognizes the importance of child and family support obligations and will fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- 2) To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

f. Air or Water Pollution Violation

Under state laws, the Recipient will not be:

- 1) In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
- 2) Subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- 3) Finally determined to be in violation of provisions of federal law relating to air or water pollution.

g. Americans With Disabilities Act

By signing this Agreement, the Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. Section 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

Exhibit C
Definitions

Except as otherwise defined in the Agreement to which this Exhibit is a part, capitalized terms shall have the meanings set forth below:

1. “Agreement” has the meaning set forth in the preamble.
2. “Biomass CHP Installation” means all equipment installed for the delivery of Thermal Energy that did not previously exist at the Buyer’s Facility, including the boiler building, all equipment contained therein, all Thermal Energy distribution piping related to the Biomass CHP Installation, all utility connections to within ten (10) feet of the boiler building’s foundation, all related equipment, and all alterations, additions and attachments thereof. The Biomass CHP Installation is a woody biomass-fired combined heat and power plant and district energy system that will serve buildings at the Plumas County Health and Human Services building, located in Plumas County, California.
3. “Biomass CHP Installation Documents” means a group of documents which includes this TESA, the Lease, the OTA and the Match Agreement. These documents shall be approved and executed simultaneously and shall include conditions within the breach and termination clauses that link each document to the other documents. Breach or early termination of any of the documents will have an impact on the other documents, as defined within those specific documents, and for the purposes of this document, is found within Exhibit E Article I.
4. “Biomass Fuel” means the fuel used to power the Biomass CHP Installation.
5. “Buyer” has the meaning set forth in the preamble.
6. “Buyer’s Facility” has the meaning set forth in the recitals.
7. “Commercial Operations Date” means the date on which Seller commences to supply Thermal Energy to the Buyer from the Biomass CHP Installation.
8. “Delivery Point” means the point at which the Thermal Energy is supplied to the Buyer’s Facility from the Biomass CHP Installation, as shown in Exhibit A of this Agreement.
9. “Dispute” has the meaning set forth in Article 2.7 of Exhibit E.
10. “Dispute Notice” has the meaning set forth in Article 2.7 of Exhibit E.
11. “Effective Date” has the meaning set forth in the preamble.
12. “Eligible Costs” means all costs required for routine operations and maintenance of the Biomass CHP Installation, including but not limited to the procurement of wood fuel, electricity, and propane, ash disposal, weekly and monthly boiler maintenance, electrical generator maintenance, remote monitoring, wood fuel handling and delivery, administration, and other reasonably required maintenance.
13. “Event of Default” has the meaning set forth in Article 1 of Exhibit E.
14. “Exhibits” means the exhibits attached to this Agreement which are hereby fully incorporated and made a part of this Agreement.
15. “Financier” means any entity providing debt or equity capital to Seller for the construction, installation or operation of the Biomass CHP Installation.
16. “Force Majeure” has the meaning set forth in Article 3.1 of Exhibit E.

17. “Grant” means the California Energy Commission grant number EPC-14-082, whereby Seller will administer grant funds to design, construct, and commission the Biomass CHP Installation.
18. “Hazardous Condition” is any condition that if allowed to persist could cause damage to the Biomass CHP Installation or the Buyer’s Facility.
19. “Heating Energy Charge” has the meaning set forth in Exhibit D.
20. “Heating Energy Charge Rate” has the meaning set forth in Exhibit D.
21. “Heating Capacity Charge” has the meaning set forth in Exhibit D.
22. “Heating Capacity Charge Rate” has the meaning set forth in Exhibit D.
23. “Initial Capacity” has the meaning set forth in Section 3.1
24. “Lease” means the lease agreement by and between Seller, as Lessee, and Buyer, as Lessor, under which Buyer leases to Seller a Site on or adjacent to Buyer’s Facility on which the Biomass CHP Installation is located.
25. “Match Funding Agreement” is the agreement by and between the Seller, as Sierra Institute, and the Buyer, as Plumas County, under which the Seller will implement the Biomass CHP Installation according to the terms of a grant with the California Energy Commission, and the Buyer will contribute a portion of the work through in-kind time and funds.
26. “Maximum Capacity” is the net output capacity of the Biomass CHP Installation.
27. “Metering System” has the meaning set forth in Section 7.1.
28. “Monthly Fee” means the amount set forth in Exhibit D to be paid by Buyer for Thermal Energy.
29. “Ownership Transfer Agreement (OTA)” means that agreement between Seller and Buyer for the transfer of the assets, rights and obligations of the Biomass CHP Installation (as defined in such agreement) from the Seller to the Buyer.
30. “Party” and “Parties” have the meanings set forth in the preamble.
31. “Party Representative” has the meaning set forth in Article 2.7 of Exhibit E.
32. “Project Transfer Date (PTD)” means the date at which the Parties agree that the TESA contract for energy sales ends, and ownership of the Biomass CHP Installation shall be transferred to the Buyer pursuant to the OTA.
33. “Proprietary Information” is defined as information in written, visual or oral form, including notes, summaries, reports, or analyses, which Seller, or its contractors, owns or lawfully possesses and treats as confidential information.
34. “Prudent Operating Practices” means practices that are consistent with those customarily and reasonably performed by operators of boilers and associated equipment similar to the Biomass CHP Installation.
35. “Seller” has the meaning set forth in the preamble.
36. “Seller’s Metering System” means a system that is located at the Delivery Point that measures appropriate metrics of the Thermal Energy.
37. “Site” means the area of real property leased to Seller pursuant to the Lease on which the Biomass CHP Installation is located.

38. "Technical Requirements" has the meaning set forth in Section 5.2.3.
39. "Term" has the meaning set forth in Section 1.
40. "Thermal Energy" means the Thermal Energy supplied under this Agreement, in the form of either heating water or steam, as specified in Exhibit F.

Exhibit D
Pricing Schedule

The TESA price payable by Buyer shall be comprised of a variable Energy Charge and a fixed Capacity Charge, as described below. A maintenance fee equal to twelve percent (12%) of the total charge shall be added to each monthly bill.

As of the Effective Date, all charges shall be calculated using the Energy Charge Rate and Capacity Charge Rate shown in Table 1 below. Rates shall be adjusted on or about May 1 of each year for the duration of the Term, if determined to be necessary by the Seller, using the calculations described below. Calculations shall be based on data from the previous year, and adjusted as necessary for anticipated costs in the subsequent year.

Energy Charge

The Energy Charge shall be billed each month, and shall vary according to actual Thermal Energy used by Buyer. The Energy Charge payable by Buyer shall be calculated by multiplying the Energy Charge Rate by the actual energy used (in MMBtu) as measured by the BTU meter located at the Delivery Point.

To adjust the Energy Charge Rate as necessary, the total operating costs shall be divided by the total BTUs of Thermal Energy generated by the Biomass CHP Installation for the previous year.

Operating costs include the following:

- Wood, electrical, propane, and other fuels
- Fuel handling
- Ash disposal

Capacity Charge

The annual Capacity Charge payable by Buyer shall be calculated by multiplying the Capacity Charge Rate by the Buyer's peak Thermal Energy demand (in MBH), as measured by the Buyer's maximum Thermal Energy demand during any fifteen-minute period. The Capacity Charge shall be billed in equal installments each month.

To adjust the Capacity Charge Rate as necessary, the total maintenance costs shall be divided by the peak Thermal Energy demand of the Buyer in the previous year.

Maintenance costs include the following:

- Biomass boiler maintenance
- ORC maintenance
- Remote monitoring
- Insurance

Table 1: TESA heating rates as of the Effective Date. Rates are subject to change as determined by the Seller and described above.

TESA Heating Rates		
Energy Charge Rate (\$/MMBtu)	\$	8.09
Capacity Charge Rate (\$/MBH)	\$	10.44

Exhibit E
General Terms and Conditions Beyond Those Required by Grant

ARTICLE I
DEFAULT AND REMEDIES

1.1 Events of Default of Seller.

(a) Any of the following shall constitute an "Event of Default" of Seller and no cure period shall be applicable:

- (i) Seller's dissolution (provided that Seller shall have a reasonable opportunity to cure any inadvertent administrative dissolution) or liquidation;
- (ii) Seller's assignment of this Agreement or any of its rights hereunder for the benefit of creditors (except for an assignment to any Financiers as security under any financing documents);
- (iii) Seller's filing of a petition in voluntary bankruptcy or insolvency under the bankruptcy laws of the United States or under any insolvency act of any state, or Seller voluntarily taking advantage of any such law or act by answer or otherwise;
- (iv) The sale by Seller to a third party, or diversion by Seller for any use, of Thermal Energy committed to Buyer by Seller other than in mitigation of damages for any breach by Buyer of this Agreement; or
- (iv) Seller's actual fraud or tampering with Buyer's Facilities.

(b) Seller's failure to comply with any other material obligation under this Agreement (other than a material obligation which constitutes a separate Event of Default under another provision of this Article 1.1) shall constitute an Event of Default of Seller if it remains uncured within sixty (60) days after the date of written notice from Buyer to Seller as provided for in Article 2.1 or, if Seller is diligently pursuing such cure and such Event of Default does not have a material adverse impact on Buyer or on Seller's performance hereunder, such longer period as reasonably necessary to effectuate such cure.

(c) Any of the following shall constitute an Event of Default of Seller if it remains uncured within sixty (60) days after the date of written notice from Buyer to Seller: Any breach of any representation or warranty made by Seller if such breach would reasonably be expected to result in a material adverse impact on Buyer;

(d) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor shall constitute an Event of Default of Seller if Seller fails to obtain a stay or dismissal of the filing within ninety (90) days after the date of such filing;

(e) The following shall constitute an Event of Default of Seller if Seller fails to cure any such failure within ten (10) days after the date of written notice from Buyer of such failure to Seller: Seller's failure to pay Buyer any monies due to Buyer under this Agreement when the same are due and such amounts are not the subject of a good faith dispute under Article 6.2.

1.2 Financier's Right to Cure Default of Seller. Seller may provide Buyer with a notice identifying the Financier(s) and providing appropriate contact information for the Financier(s). Following receipt of such notice and upon Seller's written request, Buyer shall provide notice of any Event of Default of Seller to the Financier(s), and Buyer will accept a cure to an Event of Default of Seller performed by the specified Financier(s), so long as the cure is

accomplished within the applicable cure period set forth in this Agreement, measured from the Financier's receipt of Buyer's default notice or any other period negotiated by a Financier(s) and Buyer.

1.3 Events of Default of Buyer.

- (a) Any of the following shall constitute an Event of Default of Buyer upon its occurrence and no cure period shall be applicable:
 - (i) Buyer's dissolution (provided that Buyer shall have a reasonable opportunity to cure any inadvertent administrative dissolution) or liquidation;
 - (ii) Buyer's assignment of this Agreement or any of its rights hereunder for the benefit of creditors;
 - (iii) Buyer's filing of a voluntary petition in bankruptcy or insolvency under the bankruptcy laws of the United States or under any insolvency act of any State, or Buyer voluntarily taking advantage of any such law or act by answer or otherwise;
 - (iv) Buyer's actual fraud or tampering with the Biomass CHP Installation or Seller's other equipment; or
 - (v) Buyer's assignment of this Agreement, except as permitted in accordance with Article 6.
- (b) Buyer's failure to comply with any other material obligation under this Agreement (other than a material obligation which constitutes a separate Event of Default under another provision of this Article 1.3) shall constitute an Event of Default of Seller if it remains uncured by Buyer within sixty (60) days after the date of written notice from Seller to Buyer as provided for in Article 2.1 or, if Buyer is diligently pursuing such cure and such Event of Default does not have a material adverse impact on Seller or on Buyer's performance hereunder, such longer period as reasonably necessary to effectuate such cure.
- (c) Any of the following shall constitute an Event of Default of Buyer if it remains uncured by Buyer within sixty (60) days after the date of written notice from Seller to Buyer: Any representation or warranty made by Buyer in this Agreement shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.
- (d) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer as debtor shall constitute an Event of Default of Buyer if Buyer fails to obtain a stay or dismissal of the filing within ninety (90) days after the date of such filing.
- (e) The following shall constitute an Event of Default of Buyer if Buyer fails to cure any such failure within ten (10) days after the date of written notice from Seller of such failure to Buyer as provided for in Article 2.1: Buyer's failure to pay Seller any monies due to Seller under this Agreement when the same are due and such amounts are not the subject of a good faith dispute under Article 2.7.

1.4 Damages. For all claims, causes of action and damages, including damages arising from an Event of Default, the Parties shall be entitled to the recovery of actual damages to the extent allowed by law, unless otherwise provided by this Agreement. Neither the enumeration of Events of Default in Articles 1.1 and 1.3 nor the termination of the Agreement by a non-defaulting Party pursuant to Article 1.5 shall limit the right of a non-defaulting Party to rights and remedies available at law, including, but not limited to, claims for breach of contract or

failure to perform by the other Party and for direct damages incurred by the non-defaulting Party as a result of termination of the Agreement.

1.5 Termination.

(a) Upon the occurrence and during the continuance of an Event of Default of any of the Biomass CHP Installation Documents which has not been cured within the applicable cure period (if any), the non-defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and ninety (90) days after the notice thereof, upon which this Agreement shall terminate. Neither Party shall have the right to terminate this Agreement except as provided for upon the occurrence of an Event of Default as described above or as otherwise may be explicitly provided for in this Agreement. Upon the termination of this Agreement under this Article 1.5, the non-defaulting Party shall be entitled to receive from the defaulting Party, except as otherwise provided in this Agreement, all of the damages incurred by the non-defaulting Party in connection with such termination, subject to the limitation on damages set forth in Article 1.4.

(b) In the event the existence of an Event of Default or a Party's right to terminate this Agreement is disputed, and the dispute has been submitted to dispute resolution pursuant to Article 2.7, the Party claiming that right to terminate shall not be able to exercise that right until the conclusion of dispute resolution.

(c) Notwithstanding any other provision in this Agreement to the contrary, this Agreement shall automatically terminate and have no further force or effect in the event Seller has been unable to obtain financing for the construction, installation or operation of the Biomass CHP Installation from a Financier on terms reasonably acceptable to Seller.

1.6 Specific Performance. In addition to the other remedies specified in this Article 1, in the event that any Event of Default of a Party is not cured within the applicable cure period set forth herein, the non-defaulting Party may elect to treat this Agreement as being in full force and effect and shall have the right to specific performance.

1.7 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the Agreement.

**ARTICLE II
CONTRACT ADMINISTRATION AND NOTICES**

2.1 Notices in Writing. All notices required by this Agreement shall be addressed to the other Party at the following addresses:

If to Seller:

Attention: Jonathan Kusel
P.O. Box 11
Taylorsville, CA 95983

If to Buyer:

Attention: Dony Sawchuk
198 Andy's Way, Quincy CA, 95971
With courtesy copy to: CAO/BOS Office
520 Main Street, Quincy CA, 95971

or other such address as a Party updates the other Party from time to time by written notice. Any notice, notification, request, consent, or other communication required or authorized under this Agreement to be given by one Party to the other Party shall be in writing. Real-time or routine communications concerning Biomass CHP Installation operations shall be exempt from this Article 2.1.

2.2 Representative for Notices. Each Party shall maintain a designated in Article 2.1 representative to receive notices. Either Party may, at any time without the approval of the other Party, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

2.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for its respective principals in all technical matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes. Such representatives shall not have the authority to amend or modify any provision of this Agreement.

2.4 Operating Records. Seller and Buyer shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement, including such records as may be required by a governmental authority in the prescribed format.

2.5 Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Section 9 and grant the other Party reasonable access to those records subject to the confidentiality provisions of Article 7.12.

2.6 Examination of Records. Subject to the confidentiality provisions of this Agreement, Seller and Buyer may examine the financial and operating records and data kept by the other Party relating to transactions under and administration of this Agreement, at any time during the period the records are required to be maintained, upon request and during normal business hours. Seller shall maintain a copy of all documents, permits, authorizations, manifests, data and reports, after the Term of the Agreement, for three (3) years.

2.7 Dispute Resolution.

(a) In the event of any dispute arising under this Agreement (a "Dispute"), within seven (7) days following the delivered date of a written request by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative (individually, a "Party Representative", together, the "Parties' Representatives"), and (ii) the Parties' Representatives shall confer and then meet in person within fourteen (14) days of delivery of the Dispute Notice if the dispute is not settled prior to that time. The Representatives shall meet to negotiate and attempt to resolve the Dispute quickly, informally and inexpensively with the specific goal of reconciling differences and allowing the Parties to continue in this Agreement for the mutual benefit of both Parties. In the event the Parties' Representatives cannot resolve the Dispute within fourteen (14) days after delivery of the Dispute Notice, within seven (7) days following any request by either Party at any time thereafter, each Party Representative (a) shall independently prepare a written summary of the Dispute describing the issues and claims, (b) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (c) shall submit a copy of both summaries to a senior officer of the Party Representative's Party with authority to irrevocably bind the Party to a resolution of the Dispute. The senior officers for both Parties shall

negotiate to resolve the Dispute. If the Parties have not resolved the Dispute within thirty (30) days after delivery of the Dispute Notice, either Party may seek any available legal and equitable remedies.

ARTICLE III FORCE MAJEURE

3.1 Definition of Force Majeure.

(a) The term "Force Majeure", as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure which (i) by exercise of due diligence and foresight could not have reasonably been avoided, prevented, or removed by such Party, and (ii) are not caused by or result from the negligence or breach or failure of such Party to perform its obligations hereunder and the affected Party has taken reasonable precautions, care, and alternative measures to avoid or mitigate the effects thereof in accordance with applicable law and Prudent Operating Practice. So long as the requirements of the preceding sentence are met, causes and events of Force Majeure include, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds, lightning or ice storms of sufficient strength or duration to materially damage a facility or significantly impair its operation for a period of time longer than normally encountered in the State of California; fire; sabotage; vandalism beyond that which could reasonably be prevented by the Party claiming Force Majeure; terrorism; war; riots; explosion; blockades; insurrection; employment strike against a third-party; and slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group).

(b) Notwithstanding the foregoing, the term Force Majeure does not include (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the Biomass CHP Installation that is caused by or arises from a mechanical or equipment breakdown, fire, explosion or other mishap or events or conditions attributable to normal wear and tear or flaws in the Biomass CHP Installation, unless such mishap is caused by Force Majeure; (iii) changes in economic or market conditions that affect the cost of Buyer's or Seller's supplies, or that affect demand or price for any of Buyer's or Seller's products, or that otherwise affect the cost or benefits of a Party's performance.

3.2 Applicability of Force Majeure.

(a) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- (i) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

- (iii) when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.
- (b) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

3.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Article 3.1, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) Day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) Day period, for such additional time as it, at its sole discretion, deems appropriate.

ARTICLE IV REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Seller's Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:

- (a) As of the Effective Date, Seller is a California non-profit corporation formed under the laws of the State of California, and has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.
- (b) The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary company action, and do not and will not otherwise:
 - (i) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Buyer upon its request);
 - (ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;
 - (iii) result in a breach or constitute a default under Seller's formation documents or limited liability company operating agreement, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or

(iv) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

(c) This Agreement is a valid and binding obligation of Seller.

(d) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Biomass CHP Installation.

(e) All Permits required by any governmental authority to authorize Seller's execution, delivery and performance of this Agreement have been duly obtained and are in full force and effect, with the exception those Permits which Seller anticipates will be obtained prior to the earlier of the Commercial Operation Date or commencement of construction.

(f) Seller shall comply in all material respects with all applicable local, state, and federal laws, regulations, and ordinances, including but not limited to applicable equal opportunity and affirmative action requirements and all applicable federal, state, and local environmental laws and regulations presently in effect or which may be enacted during the Term of this Agreement.

(g) Seller shall promptly after Seller has knowledge thereof, disclose to Buyer the extent of any violation of any environmental laws or regulations arising out of the construction or operation of the Biomass CHP Installation, or the presence of environmental contamination at the Biomass CHP Installation or on the Site, in either case alleged to exist by any governmental authority having jurisdiction over the Site, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of environmental contamination.

(h) No litigation, arbitration, investigation or other proceeding is pending by any governmental authority or, to the best of Seller's knowledge, threatened against Seller with respect to this Agreement and the transactions contemplated hereunder, and no other investigation or proceeding is pending or, to the best of Seller's knowledge, threatened against Seller.

(i) The Seller shall maintain insurance as described in the Ground Lease, Section 11.

4.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(a) Buyer is a Californian governmental entity, organized and existing pursuant to California law, and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer; and Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

(b) The execution, delivery, and performance of its obligations under this Agreement by Buyer have been duly authorized by all necessary governmental action and do not and will not otherwise:

- (i) require any consent or approval of Buyer's governing body other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Seller upon its request);
- (ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Buyer or violate any provision in any governing documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement;
- (iii) result in a breach or constitute a default under Buyer's organizational documents, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement; or
- (iv) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.

(c) This Agreement is a valid and binding obligation of Buyer.

(d) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(e) All approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Buyer's execution, delivery and performance of this Agreement, have been duly obtained and are in full force and effect.

(f) In connection with the performance of its obligations hereunder, Buyer shall comply in all material respects with all applicable local, state, and federal laws, regulations, and ordinances as the same relate to Buyer's obligations hereunder, including but not limited to applicable equal opportunity and affirmative action requirements and all applicable federal, state, and local environmental laws and regulations presently in effect or which may be enacted during the Term of this Agreement.

ARTICLE V INDEMNIFICATION

(a) Seller shall defend protect, indemnify and hold harmless Buyer, its directors, officers, employees, agents and representatives at all times from and against any and all liabilities, suits, proceedings, liens, actions, penalties, losses, expenses, claims or demands of any nature, including costs and expenses for legal services and causes of action of whatever character which Buyer may incur, sustain or be subjected to arising out of or in any way connected with this Agreement, the acts or omissions of Seller or its officers, agents, employees, guests, customers, visitors or invitees, or Seller operations on, or use or occupancy of the property.

The foregoing indemnification excludes only liability or loss to the extent caused by the negligence or willful misconduct of Buyer.

(b) Notice. Seller agrees to notify Buyer in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which Seller has knowledge, and to cooperate with Buyer in the investigation and defense thereof.

Buyer shall defend, protect, indemnify and hold harmless Seller, its directors, officers, employees, agents and representatives at all times from and against any and all liabilities, suits, proceedings, liens, actions, penalties, losses, expenses, claims or demands of any nature, including costs and expenses for legal services and causes of action of whatever character which Seller may incur, sustain or be subjected to arising out of or in any way connected with this Agreement, the acts or omissions of Buyer or its officers, agents, employees, guests, customers, visitors or invitees, or Buyer's operations on the property.

The foregoing indemnification excludes only liability or loss to the extent caused by the negligence or willful misconduct of Seller.

(c) Notice. Buyer agrees to notify Seller in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which Buyer has knowledge, and to cooperate with Seller in the investigation and defense thereof.

ARTICLE VI ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS

6.1 Assignment. Buyer shall not assign this Agreement or any portion hereof, without the prior written consent of the Seller, which consent shall not be unreasonably withheld, conditioned or delayed. Seller may assign this Agreement without Buyer's consent, including without limitation, by making an assignment to a Financier or in connection with the sale of all or part of Seller's assets (including the Biomass Boiler Installation and Hot Water Distribution Piping); provided, that (i) Seller's successor assumes all of Seller's obligations hereunder, and (ii) Seller provides Buyer with notice of such assignment.

6.2 Accommodation of Financier. To facilitate Seller's obtaining of financing to construct and operate the Biomass CHP Installation, Buyer shall provide such consents to assignments, certifications, representations, information, opinions, estoppels, or other documents as may be reasonably requested by Seller or any Financier in connection with the financing of the Biomass CHP Installation; provided, that in responding to any such request, Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially adversely affects any of Buyer's rights, benefits, risks and/or obligations under this Agreement. Seller shall reimburse Buyer for the incremental direct expenses (including, without limitation, the reasonable fees and expenses of external counsel) incurred by Buyer in the preparation, negotiation, execution and/or delivery of any documents requested by Seller or the Financiers, and provided by Buyer, pursuant to this Article 6.2.

6.3 Notice of Financier Action. Within ten (10) days following Seller's receipt of each written notice from the Financier of default, or Financier's intent to exercise any remedies under the financing documents, in either case where Seller reasonably believes such notice or

exercise of remedies will have a negative impact on this Agreement or Seller's performance thereunder, Seller shall deliver a copy of such notice to Buyer.

6.4 Subcontracting. Seller may subcontract its duties or obligations under this Agreement without the prior written consent of Buyer; provided, however, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder or liability for performance or nonperformance thereof.

ARTICLE VII MISCELLANEOUS

7.1 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

7.2 Relationship of the Parties.

(a) This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party. The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective.

(b) A Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons by that Party, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by a Party shall be considered employees of the other Party for any purpose; nor shall a Party represent to any person that he or she is or shall become an employee of the other Party.

(c) The relationship between Buyer and Seller shall be that of contracting party to independent contractor. Accordingly, subject to the terms of this Agreement, Buyer shall have no general right to prescribe the means by which Seller shall meet its obligations under the Agreement.

7.3 Reasonableness. This Agreement is to be performed in recognition of the obligations of good faith and fair dealing implied by law and therefore, any consent required of a Party shall not be unreasonably withheld, conditioned or delayed, any request shall be reasonable, and a Party shall be obligated to use commercially reasonable efforts in performing its obligations hereunder.

7.4 Survival of Obligations. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including without limitation warranties, remedies, or indemnities which obligation shall survive for the period of the applicable statute(s) of limitation.

7.5 Severability. In the event any of the terms, covenants, or conditions of this Agreement, its Exhibits, or the application of any such terms, covenants, or conditions, shall be

held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the Agreement and their application not adversely affected thereby shall remain in force and effect; provided, however, that Buyer and Seller shall negotiate to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

7.6 Complete Agreement; Amendments. The terms and provisions contained in this Agreement and the Biomass CHP Installation Documents constitute the entire agreement between Buyer and Seller with respect to the Biomass CHP Installation and shall supersede all previous communications, representations, or agreements, either verbal or written, between Buyer and Seller with respect to the sale of Thermal Energy and other products from the Biomass CHP Installation. This Agreement may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto.

7.7 Binding Effect. This Agreement, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in interest, legal representatives, and assigns permitted hereunder.

7.8 Headings. Captions and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

7.9 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

7.10 Governing Law. The interpretation and performance of this Agreement and each of its provisions shall be governed and construed in accordance with the laws of the State of California. The Parties hereby submit to the exclusive jurisdiction of the state courts situated within the State of California, and venue is hereby stipulated as any federal or state court located within the State of California.

7.11 Confidentiality. Buyer agrees that it shall maintain such Proprietary Information in confidence and use it exclusively in context of the Project Buyer shall not disclose proprietary information to a third party without the prior written consent of Seller. Buyer shall employ at least the same standard of care it uses to protect its own proprietary information of like importance.

The foregoing obligations of Buyer shall not apply (and such information will not be deemed proprietary) to any information that:

- (1) is or becomes publicly known through no wrongful act or omission of Buyer;
- (2) is received by Buyer from another party without similar restrictions and without breach of this Buyer;
- (3) is known by Buyer prior to such disclosure by Seller;
- (4) is at any time developed by Buyer independently without the use of the Proprietary Information disclosed hereunder; or
- (5) is furnished by the Seller to a third party without a similar restriction on the third party's rights. Buyer may make disclosure pursuant to requirements of a governmental agency or

disclosure required by operation of law, including but not limited to requirements under the Public Records Act, but shall notice the Seller if such disclosure is needed; or

(6) is not identified by Seller to Buyer that it is proprietary information.

Exhibit F
Thermal Energy Requirements

The Thermal Energy supplied under this Agreement shall be in the form of Heating Water. "Heating Water" means a closed loop system containing a solution of propylene glycol and water that circulates between the Biomass Boiler Installation and Buyer's Facility

1. Heating Water Conditions. Seller shall deliver Heating Water to the Buyer at the Delivery Point within the following limits:

- (a) Supply pressure not to exceed 30 pounds per square inch (gauge);
- (b) Temperature @ 50-80 Fahrenheit; and
- (c) Flow at up to 130 gallons per minute.

2. Heating Water Chemistry.

(a) Seller shall have the following responsibilities with respect to the Heating Water:

- (i) Seller represents that the water treatment chemicals used in the Heating Water shall be those set forth in Section 3 of this Exhibit D;
- (ii) Seller shall provide advance written notice to Buyer at least 30 days prior to using any chemicals other than those identified in Section 3 of this Exhibit D in water treatment, provided that Seller discloses to Buyer the same amount information for such other chemicals as is contained in Section 3 of this Exhibit D.

(b) Buyer's shall have the following responsibilities with respect to the Heating Water:

(i) Buyer shall be responsible for assuring upon the Commercial Operations Date that the chemicals used by the Seller to treat its Heating Water set forth in Section 3 of this Exhibit F meet or exceed standards applicable to Buyer, and Buyer shall obtain any required approvals for its use of such chemicals.

(ii) Any changes to the chemicals used by Seller shall be subject to Buyer's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Buyer shall submit written approval to Seller within fifteen (15) days of receiving Seller's notice of any proposed change in the chemicals used in the Heating Water. If Buyer fails to object to the change in such fifteen (15) day period, such change shall be deemed to have been approved by Buyer.

3. Heating Water Quality. The heating water may contain:

- Anti-freeze
- Scale inhibitors
- Corrosion inhibitors
- Dispersants
- Wetting agents
- De-scaling agents
- pH neutralizing agents

MATCH FUNDING AGREEMENT

This MATCH FUNDING AGREEMENT (“Agreement”) is entered into as of [_____], 201_____ (“Effective Date”), by and between Plumas County, a political subdivision of the State of California governmental entity (“Plumas County”), and Sierra Institute for Community and Environment, a Californian non-profit corporation (“Sierra Institute”). Plumas County and Sierra Institute are sometimes referred to each individually as a “Party” and collectively as the “Parties.”

WITNESSETH

WHEREAS, Sierra Institute is a party to that certain California Energy Commission Grant EPC-14-082 (“Grant”) approved on July 12, 2015 whereby Sierra Institute will administer grant funds to design, construct and commission one biomass-fired combined heat and power plant and district energy system that will serve buildings at the Plumas Health and Human Services building, located in Plumas County, California (“Project”); and

WHEREAS, Sierra Institute will implement the Project according to the terms of the Grant with California Energy Commission (“Grantor”) dated as of July 12, 2015. A portion of the work to be performed under the Grant is through the contribution by County of in-kind time or funds (“Match”); and

WHEREAS, the scope of work and the cost for the Project are set forth in Exhibit A; and

WHEREAS, the purpose of this Agreement is to set forth Plumas County’s agreement to be responsible for the Match as described in the Grant.

NOW THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Match. Plumas County understands and acknowledges that for Sierra Institute to implement the Project according to the terms of the Grantor, Match funding as described in Exhibit A is required. The Parties acknowledge that in implementing the Project, Sierra Institute will submit monthly invoices and reports to the Grantor, including information on the Match provided by Plumas County. Plumas County agrees to pay the full Match amount described in the Grant through in-kind time and/or cash payments. Plumas County shall provide to Sierra Institute a written, itemized explanation of the in-kind time or expenses incurred on a monthly basis in time for Sierra Institute to submit its invoices to the Grantor. Plumas County shall pay full Match amount to Sierra Institute set forth in Exhibit A by the end of the Project, herein defined as July 31 2018, to meet the requirements set forth by the Grantor.

2. Change Orders. Should Plumas County, after execution of this Agreement, request or approve change orders to the Project as described in Exhibit A which increases the cost, Plumas County shall pay such increased costs in the manner provided in a written change order.

3. Permit Fees. Because of the public nature of this project, (it is funded with state money and involves benefits to the public), the Plumas County shall waive county permit fees for this project.

4. Termination. This Agreement shall terminate at such time as the Project has been fully completed, and any obligations of Plumas County for the payment of any increased costs, as provided for in this Agreement, have been paid in full.

5. Binding Effect. This Agreement will be binding on and inure to the benefit of the successor and assigns of the Parties.

6. Governing Law. This Agreement will be interpreted and enforced in accordance with the laws of the State of California.

7. Counterparts. This Agreement may be executed in multiple counterparts, each of which will constitute one agreement, even though all parties do not sign the same counterpart. For convenience of the Parties, the signature pages of the counterparts may be detached and reattached to one or more counterparts.

8. Modification. No modification of this Agreement will be valid unless it is in writing and is signed by all the Parties.

9. Authority. Sierra Institute and Plumas County each warrant and represent to the other that the person(s) signing this Agreement on their behalf has authority to enter into this Agreement and to bind Sierra Institute and Plumas County, respectively, to the terms, covenants and conditions contained in this Agreement.

10. Integration. The Biomass CHP Installation Documents, including this Match Funding Agreement, as well as the Lease, Thermal Energy Services Agreement (TESA), and Ownership Transfer Agreement (OTA), represent the entire agreement of the parties. No oral agreements exist between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SIERRA INSTITUTE

Sierra Institute for Community and Environment

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

COUNTY

Plumas County

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

R. Craig Settlemire
Plumas County Counsel

Exhibit A
Work Tasks for Plumas County Match

Plumas County has committed a total of Four Hundred Thousand Dollars (\$400,000) match, a combination of cash and in-kind time match, to the EPC-14-082 grant project awarded to Sierra Institute by the California Energy Commission.

Cash Match:

Plumas County shall provide a cash match in an amount not to exceed the sum of Four Hundred Thousand Dollars (\$400,000) in the form of a reimbursement to Sierra Institute for ground lease initial improvements pursuant to section 2.1.1 of the Ground Lease between the parties. Sierra Institute shall provide a detailed invoice to the County, not more frequently than monthly, for the actual construction costs incurred and paid for the County share of initial lease improvements. Each invoice shall not exceed the reasonable percentage of completion.

In-kind Match:

In-kind time for general administration and oversight by Plumas County personnel as described in the Grant Application can be used to meet the remaining match amount.

OWNERSHIP TRANSFER AGREEMENT

This OWNERSHIP TRANSFER AGREEMENT (this “Agreement” or “OTA”) is entered into as of August 1, 2017 (“Effective Date”), by and between Sierra Institute for Community and the Environment, a California 501(c)(3) non-profit corporation, (“Seller”) and Plumas County, a political Subdivision of the state of California (“Buyer”), Seller and Buyer are sometimes referred to each individually as a “Party” and collectively as the “Parties.”

WITNESSETH

WHEREAS, Sierra Institute received a California Energy Commission Grant EPC-14-082 (“Grant”) approved on July 12, 2015 whereby Sierra Institute will administer grant funds to design, construct and commission one biomass-fired combined heat and power plant and district energy system, (“Biomass CHP Installation”) that will serve buildings at the Plumas Health and Human Services Center, located at 270 County Hospital Road, Quincy, California, Plumas County Assessor Parcel Number 115-350-003-000; and

WHEREAS, Sierra Institute and Plumas County discussed in 2015 that Sierra Institute would transfer ownership to Plumas County at such time as the facility was demonstrated to be functional, and Parties now wish to memorialize this intention subject to the terms and conditions set forth herein; and

WHEREAS, the Parties have entered into three other agreements; the Thermal Energy Service Agreements (“TESA”), the Match Funding Agreement, and the Ground Lease (“Lease”), as well as this OTA, which together shall be collectively known as the “Biomass CHP Installation Documents”, all of which shall be executed simultaneously, and shall govern the Biomass CHP Installation as defined below.

NOW, THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1 DEFINITIONS

Capitalized terms used in the recitals and elsewhere in this Agreement will have the meanings ascribed to them when first used, or in the following list of definitions:

1.01 Agreement. Meaning is set forth in the preamble

1.02 Assumed Contracts. All existing Thermal Energy Service Agreements held by the Seller at the time of the Project Transfer Date and previously approved in writing by Buyer, which will be transferred to the Buyer.

1.03 Biomass CHP Installation. The boiler building, all equipment contained therein, all thermal energy distribution piping related to the Biomass CHP Installation, all utility connections to within ten (10) feet of the boiler building's foundation, all related equipment, and all alterations, additions and attachments thereof, on Plumas County property. The Biomass CHP Installation is a woody biomass-fired combined heat and power plant and district energy system that will serve buildings at the Plumas County Health and Human Services building, located in Plumas County, California

1.04 Bill of Sale. Meaning set forth in Section 3.02.

1.05 Biomass CHP Installation Documents. The group of documents that includes this OTA, the TESA, the Lease, and the Match Funding Agreement. These documents shall be approved and executed simultaneously and shall include conditions within the breach and termination clauses that link each document to the other documents. Breach or early termination of any of the documents will have an impact on the other documents, as defined within those specific documents.

1.06 Buyer. Meaning set forth in preamble.

1.07 Closing. The consummation of transactions contemplated by this Agreement.

1.08 Commercial Operation Date. The date on which Seller commences commercial operations of the Biomass CHP Installation.

1.09 Continued Successful Operation. Successful operations of this project is defined as producing at least 85% of gross thermal energy from biomass sources over a twelve-month period. Successful operations shall be determined by the following:

- a) Recording the total energy produced in the biomass CHP installation building at the Delivery Point (MMbtu) during a twelve month period;
- b) Recording the quantity of propane purchased by the operator of the biomass CHP installation as gallons of propane during a twelve month period, converting to MMBtu, and multiplying by 0.9 to account for a 90% efficiency correction factor to get the total energy produced from propane;
- c) Calculating the percentage of energy produced from biomass during the twelve month period by the following equation:
$$\frac{\text{Total Energy Produced (MMBtu)} - \text{Total Energy Produced from Propane (MMBtu)}}{\text{Total Energy Produced (MMBtu)}}$$
- d) A production of 85% or more of thermal energy from biomass sources during a twelve month period will constitute successful operations.

1.10 Effective Date. Meaning set forth in the preamble.

1.11 Lease. The Lease agreement by and between the Seller, as Lessee, and Buyer, as Lessor, under which Buyer leases to Seller a site on or adjacent to Buyer's facility on which the Biomass CHP Installation is located.

1.12 Match Funding Agreement. The agreement by and between the Seller, as the Sierra Institute, and the Buyer, as the County, under which the Seller will implement the Biomass CHP Installation according to the terms of a grant with the California Energy Commission, and the Buyer will contribute a portion of the work through in-kind time or funds.

1.13 Party and Parties. Meaning set forth in preamble.

1.14 Project Transfer Date. The date at which the Parties agree that the TESA contract for energy sales and Lease end, and ownership of the Biomass CHP Installation shall be transferred to the Buyer pursuant to this Agreement. This transfer shall occur after 12 (twelve) months of Continued Successful Operation, but no longer than 18 months, from the Commercial Operation Date, assuming Successful Operation of the facility are met as defined within the terms of this Agreement.

1.15 Purchase Price. The outstanding balance of the match funds the Buyer has committed to Seller as defined in the Match Funding Agreement, if any, otherwise zero dollars (\$0.00).

1.16 Purchased Equipment. The right, title and interest in the Biomass CHP Installation.

1.17 Seller. Meaning set forth in preamble.

1.18 Thermal Energy Services Agreement (TESA). The agreement between Seller and Buyer for the delivery of Thermal Energy (as defined in such agreement) from the Biomass CHP Installation to Buyer before the Project Transfer Date.

SECTION 2 PURCHASE AND SALE

2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, all of Seller's right, title and interest in the Biomass CHP Installation, the Purchased Equipment on Plumas County property, free and clear of any mortgage, pledge, lien, charge, security interest, claim or other encumbrance.

2.02 Assumption of Contracts. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge the liabilities and obligations under all existing Thermal Energy Service Agreements held by the Seller (the "Assumed Contracts") and previously approved in writing by the Buyer. Seller shall be released from all of liabilities or obligations arising after the Closing Date under the Assumed Contracts. Other than the Assumed Contracts, Buyer shall not assume any liabilities or obligations of Seller of any kind.

2.03 Purchase Price. The aggregate purchase price for the Purchased Equipment shall be the outstanding balance, if any, of the Match funds the Buyer has committed to Seller as defined in the Match Funding Agreement (the "Purchase Price"). Buyer shall pay the Purchase Price to Seller at the Closing (as defined herein) in cash, by wire transfer of immediately available funds in accordance with the wire transfer instructions provided by Seller in advance of the Closing.

2.04 Conditions of Sale. Subject to the terms and conditions set forth herein, this Agreement shall be exercised if the project has within 12 months but no longer than

18 months from the Commercial Operation Date, as long as the project has achieved Continued Successful Operations.

SECTION 3 CLOSING

3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “Closing”) shall take place on the Project Transfer Date.

3.02 Closing Deliverables.

- (a) At the Closing, Seller shall deliver to Buyer the following:
 - (i) a bill of sale, if applicable, in form and substance satisfactory to Buyer the “Bill of Sale”) and duly executed by Seller, transferring the Purchased Equipment to Buyer;
 - (ii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

- (b) At the Closing, Buyer shall deliver to Seller the following:
 - (i) the Purchase Price, if applicable;
 - (ii) an assignment and assumption agreement in form and substance satisfactory to Buyer (the “Assignment and Assumption Agreement”) and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Assumed Contracts, and releasing Seller from all liabilities and obligations arising after the Closing Date under the Assumed Contracts; and
 - (iii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Seller, as may be required to give effect to this Agreement.

SECTION 4 REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that the statements contained in this Section 4 are true and correct. For purposes of this Section 4, “Seller’s knowledge,” “knowledge of Seller” and any similar phrases shall mean the actual or constructive knowledge of any director or officer of Seller.

4.01 Organization and Authority of Seller; Enforceability. Seller is a 501(c)(3) non-profit organization duly organized and validly existing under the laws of the State of California. Seller has full power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to

consummate the transactions contemplated hereby. The execution, delivery and performance by Seller of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Seller. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

4.02 No Conflicts; Consents. The execution, delivery and performance by Seller of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not: (a) violate or conflict with the articles of organization, operating agreement, or other organizational documents of Seller; (b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Seller or the Purchased Equipment; (c) conflict with, or result in (with or without notice or lapse of time or both) any violation of, or default under, or give rise to a right of termination, acceleration or modification of any obligation or loss of any benefit under any contract or other instrument to which Seller is a party or to which any of the Purchased Equipment are subject; or (d) result in the creation or imposition of any Encumbrance on the Purchased Equipment. No consent, approval, waiver or authorization is required to be obtained by Seller from any person or entity (including any governmental authority) in connection with the execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby.

4.03 Title to Purchased Equipment. Seller owns and has good title to the Purchased Equipment, free and clear of Encumbrances and shall maintain title in that state from the date of this Agreement until Closing.

4.04 Legal Proceedings. There is no claim, action, suit, proceeding or governmental investigation of any nature pending or, to Seller's knowledge, threatened against or by Seller (a) relating to or affecting the Purchased Equipment; or (b) that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such action.

4.05 Technical Support for Buyer's staff. While there is no obligation under any of the grants or other documents associated with this project to provide the County with staff training for operation of the Biomass CHP Installation, the Seller recognizes there is a need for such support, and it is anticipated that such training will be offered through the Seller and its contractors in a separate agreement and shall provide, at a minimum, training and support to allow for Continued Successful Operation by Seller's staff for an additional Twelve (12) months following the Closing.

SECTION 5 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this Section % are true and correct. For purposes of this Section 5, "Buyer's knowledge," "knowledge of Buyer" and any similar phrases shall mean the actual or constructive knowledge of any director or officer of Buyer.

5.01 Organization and Authority of Buyer; Enforceability. Buyer is a political subdivision of the State of California duly organized and validly existing under the laws of the state of California. Buyer has full power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Buyer of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Buyer. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms.

5.02 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not: (a) violate or conflict with the authority of the Buyer or other organizational documents of Buyer; or (b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Buyer. No consent, approval, waiver or authorization is required to be obtained by Buyer from any person or entity (including any governmental authority) in connection with the execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby.

5.03 Legal Proceedings. There is no action of any nature pending or, to Buyer's knowledge, threatened against or by Buyer that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

5.04 Available Funds. Buyer has the funds necessary, and commits to use such funds to deliver the Purchase Price on the Project Transfer Date and to consummate the transactions contemplated by this Agreement. Provided, however, is mutually agreed that if, for the current fiscal year and/or any subsequent fiscal years covered under this

Agreement, insufficient funds are appropriated to make the payments called for by this Agreement, this Agreement shall be of no further force or effect. In this event, the County shall have no liability to pay any further funds whatsoever to Contractor or furnish any other consideration under this Agreement and Contractor shall not be obligated to perform any further services under this Agreement. If funding for any fiscal year is reduced or deleted for the purposes of this program, the County shall have the option to either cancel this Agreement with no further liability incurring to the County, or offer an amendment to Contractor to reflect the reduced amount available to the program. The parties acknowledge and agree that the limitations set forth above are required by Article XVI, section 18 of the California Constitution. Contractor acknowledges and agrees that said Article XVI, section 18 of the California Constitution supersedes any conflicting law, rule, regulation or statute.

SECTION 6 COVENANTS

6.01 Further Assurances. Following the Closing, each of the Parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the documents to be delivered hereunder.

6.02 Risk of Loss. The risk of loss, damage, or destruction to any of the Purchased Equipment will be borne by Seller before the Closing. In the event of such loss, damage, or destruction, Seller, to the extent reasonable, will replace the lost property or will repair or cause to repair the damaged property to its condition before the damage. If replacement, repairs, or restorations are not completed before the Closing, then the Purchase Price will be adjusted by an amount agreed on by Buyer and Seller that will be required to complete the replacement, repair, or restoration after the Closing. If Buyer and Seller are unable to agree, then Buyer, at its sole option and notwithstanding any other provision of this Agreement, and on notice to Seller, may rescind this Agreement and declare it to be of no further force and effect, in which event there will be no closing of this Agreement and all the terms and provisions of this Agreement will be deemed null and void.

6.03 Buyer's Acceptance. Buyer represents and acknowledges that it has entered into this Agreement on the basis of its own examination, personal knowledge, and opinion of the value of the business. Buyer has not relied on any representations made by Seller other than those specified in this Agreement. Buyer further acknowledges that Seller has made no agreement or promise to repair or improve any of the Purchased Equipment and that Buyer takes all such property in an "as is" condition.

SECTION 7 INDEMNIFICATION

Seller shall defend protect, indemnify and hold harmless Buyer, its directors, officers, employees, agents and representatives at all times from and against any and all liabilities, suits, proceedings, liens, actions, penalties, losses, expenses, claims or demands of any nature, including costs and expenses for legal services and causes of action of whatever character which Buyer may incur, sustain or be subjected to arising out of or in any way connected with this Agreement, the acts or omissions of Seller or its officers, agents, employees, guests, customers, visitors or invitees, or Seller operations on, or use or occupancy of the property.

The foregoing indemnification excludes only liability or loss to the extent caused by the sole negligence or willful misconduct of Buyer.

Notice. Seller agrees to notify Buyer in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which Seller has knowledge, and to cooperate with Buyer in the investigation and defense thereof.

Buyer shall defend, protect, indemnify and hold harmless Seller, its directors, officers, employees, agents and representatives at all times from and against any and all liabilities, suits, proceedings, liens, actions, penalties, losses, expenses, claims or demands of any nature, including costs and expenses for legal services and causes of action of whatever character which Seller may incur, sustain or be subjected to arising out of or in any way connected with this Agreement, the sole acts or omissions of Buyer or its officers, agents, employees, guests, customers, visitors or invitees, or Buyer's operations on the property.

The foregoing indemnification excludes only liability or loss to the extent caused by the negligence or willful misconduct of Seller.

Notice. Buyer agrees to notify Seller in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which Buyer has knowledge, and to cooperate with Seller in the investigation and defense thereof.

SECTION 8 MISCELLANEOUS

8.01 Expenses. Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

8.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been

given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the fifth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses:

If to Seller: Sierra Institute for Community and Environment
P.O. Box 11
4438 Main St.
Taylorsville, CA 95983
Attention: Jonathan Kusel

If to Buyer: Department of Facility Services & Airports
198 Andy's Way
Quincy CA, 95971
Attn: Dony Sawchuk

8.03 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

8.04 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

8.05 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning Party of any of its obligations hereunder.

8.06 No Third-party Beneficiaries. Except as provided in Section 6, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.07 Amendment and Modification. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.

8.08 Waiver. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

8.09 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction).

8.10 Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of California in each case located in the County of Plumas, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

8.11 Waiver of Jury Trial. Each Party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

8.12 Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

8.13 Dispute Resolution.

- (a) In the event of any dispute arising under this Agreement (a “Dispute”), within seven (7) days following the delivered date of a written request by either Party (a “Dispute Notice”),
 - (i) each Party shall appoint a representative (individually, a “Party Representative”, together, the “Parties’ Representatives”), and
 - (ii) the Parties’ Representatives shall confer and then meet in person within fourteen (14) days of delivery of the Dispute Notice if the dispute is not

settled prior to that time. The Representatives shall meet to negotiate and attempt to resolve the Dispute quickly, informally and inexpensively with the specific goal of reconciling differences and allowing the Parties to continue in this Agreement for the mutual benefit of both Parties.

(b) In the event the Parties' Representatives cannot resolve the Dispute within fourteen (14) days after delivery of the Dispute Notice, within seven (7) days following any request by either Party at any time thereafter, each Party Representative:

(i) shall independently prepare a written summary of the Dispute describing the issues and claims,

(ii) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and

(iii) shall submit a copy of both summaries to a senior officer of the Party Representative's Party with authority to irrevocably bind the Party to a resolution of the Dispute. The senior officers for both Parties shall negotiate to resolve the Dispute. If the Parties have not resolved the Dispute within thirty (30) days after delivery of the Dispute Notice, either Party may seek any available legal and equitable remedies.

8.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

SECTION 9 INTEGRATION

The Biomass CHP Installation Documents, including this Ownership Transfer Agreement, as well as the Lease, TESA, and Match Funding Agreement represent the entire agreement of the parties and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. No oral agreements exist between the parties. A breach or default in the performance of the terms of any one agreement may, at the option of the aggrieved party, be deemed a breach or default with regard to the other agreements. In the event of any inconsistency between the statements in the body of this Agreement and the documents to be delivered hereunder, the Exhibits the statements in the body of this Agreement will control.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

Seller:

Sierra Institute for Community and Environment

By: _____

Name: Jonathan Kusel

Title: Executive Director

By: _____

Name: _____

Title: _____

Date: _____

Buyer:

Plumas County

By: _____

Name: _____

Title: _____

Approved as to form:

By: _____

Name: R. Craig Settlemire

Title: Plumas County Counsel

Date: _____