

COUNTY OF SANTA BARBARA
AGREEMENT FOR SPECIAL COUNSEL SERVICES
RESOURCE RECOVERY PROJECT

THIS AGREEMENT (“Agreement”) is made and entered into as of this 4th day of November, 2014, by and between the **COUNTY OF SANTA BARBARA**, a political subdivision of the State of California (the “County”), and **ORRICK, HERRINGTON & SUTCLIFFE LLP**, San Francisco, California (“Counsel”).

R E C I T A L S

WHEREAS, the County desires to employ Counsel to perform certain legal services as special counsel in connection with a potential Resource Recovery Project (the “Project”); and

WHEREAS, Counsel is prepared and able to provide all legal services required and necessary as special counsel incident to the Project;

C O V E N A N T S

NOW, THEREFORE, it is mutually agreed by the parties hereto as follows:

Section 1. AGREEMENT FOR SERVICES. The County employs Counsel to render and Counsel agrees to render legal services, as requested by the County, incident to the development, financing and operation of the Project pursuant to potential contractual arrangements between a proposed Resource Recovery Joint Powers Authority of Santa Barbara County (the “JPA”) and Mustang Renewable Power Ventures (the “potential Contractor”). Such services may be performed in phases (the “Phases”) as requested from time to time by the County.

Phase I of such legal services shall consist of the following:

(1) Analyzing the impact of the current structure of the proposed Project on the County's outstanding tax-exempt financings (the “Bonds”);

(2) Following the analysis described in (1) above, advising the County on its options with respect to (i) structuring the proposed Project as it relates to the Bonds, and (ii) the tax-exempt treatment of the Bonds; and

(3) When requested, advising the County on comments, if any, it may receive from the potential Contractor with respect to the bond financing provisions in any draft contract (the “Project Contract(s)”) between the JPA and the potential Contractor. Such services may include limited negotiations of the financing provisions with the potential Contractor.

The legal services described in Phase I do not include (i) any tax analysis of the financing of the Project, (ii) implementing any option (described in (2) above) the County may

choose to pursue, (iii) the review or negotiations of any provisions in the Project Contract(s) other than provisions relating to a bond financing, or (iv) any legal services not listed above.

The County and Counsel hereby acknowledge that this Agreement may be supplemented, from time to time, to provide for the terms of additional Phase I legal services or additional Phases covering other legal services in connection with the Project. The proposed Project is still subject to approval by the County and is still in the process of CEQA review as of the effective date of this Agreement. The County still retains the ability to not move forward with the proposed Project.

Section 2. LEGAL FEES AND EXPENSES. The County agrees to pay or cause to be paid fees for legal services based on Counsel's standard hourly rates. It is anticipated that the legal services in Phase I will be performed primarily by Rich Moore (\$775/Hour) and Phil Morgan (\$685/Hour). Other attorneys who may perform legal services include Roger Davis (\$980/Hour), Bob Feyer (\$770/Hour) and David Spielberg (\$875/Hour), although it is not expected that any of these other attorneys will incur significant amounts of time in performing legal services hereunder. Fees and expenses for Phase I are not expected to exceed \$50,000, assuming Phase I is completed by April 1, 2015. Counsel will undertake to inform the County if the unexpected maximum amount will be exceeded, and will not perform services that will cause such amount to be exceeded without the consent of the County. In the event Phase I is not completed by April 1, 2015, the expected maximum amount may be reset, if necessary, at an amount as may be mutually agreed upon by the County and Counsel. Amounts paid under this Agreement shall not exceed \$50,000, unless the contract is amended by the parties in writing.

Invoices for fees and expenses shall be provided on a monthly basis to the County. Invoices shall be sent to the following:

Anne Rierson
Senior Deputy County Counsel
County of Santa Barbara
105 E. Anapamu Street, Room 201
Santa Barbara, CA 93101
arierson@co.santa-barbara.ca.us

Section 3. ENTIRE AGREEMENT. This Agreement is the entire agreement between the parties relating to the matters covered herein.

Section 4. AMENDMENT. Any amendment to this Agreement shall be of no force and effect unless in writing and signed by both parties hereto.

Section 5. CONFLICT OF INTEREST. Counsel covenants that Counsel presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Counsel further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Counsel. Counsel has conducted a

conflicts evaluation and has discovered no potential conflicts, other than those disclosed to County prior to this Agreement. Counsel shall inform County immediately of any potential ethical issues or conflicts that may arise in the course of Counsel's representation of the County in this matter or at any time in the future, as soon as such an issue or conflict becomes known. County retains the right to waive a conflict of interest disclosed by Counsel if County determines it to be immaterial, and such waiver is only effective if provided by County to Counsel in writing.

The County understands that Counsel regularly performs legal services for many private and public entities in connection with a wide variety of matters. Some of these clients may have some direct or indirect relationship with the County or the County's other consultants or agents, as, for example, underwriters, financial advisors, fiscal agents, paying agents, trustees, insurers, suppliers, lenders, bankers, landlords, developers or owners of property within the jurisdiction of the County. Counsel may now or in the future represent or may have in the past represented the underwriter, fiscal agent or other participants in the proposed financing of the Project on other matters. With such varied client representation, there is always the possibility of other transactions between clients or disputes among them. It is agreed that the County does not object to Counsel performing such services now or in the future and the County waives any actual or potential conflict which may be posed by such representation; provided, that Counsel does not represent any participant other than the County in connection with the proposed financing of the Project without the consent of the County.

Section 6. INDEPENDENT CONTRACTOR. Counsel shall perform all of its services hereunder as an independent contractor and not as an employee of the County. Counsel understands it shall not be entitled to any of the benefits of a County employee. It is understood and agreed that Counsel has the professional skills and expertise necessary to perform the work agreed to be performed hereunder and that the County relies upon the expertise of Counsel to do and perform its work in a skillful and professional manner, and Counsel agrees to so perform its work hereunder.

Section 7. ASSIGNMENT. This Agreement shall not be assigned by either party without the prior written approval of the other.

Section 8. NONDISCRIMINATION. The County hereby notifies Counsel that the County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement.

Section 9. INDEMNIFICATION AND INSURANCE. Counsel agrees to defend, indemnify and save harmless the County and to procure and maintain insurance in accordance with the provisions of Exhibit A attached hereto and incorporated herein by reference.

Section 10. NOTICES. All notices and other communications hereunder shall be sufficiently given and shall be deemed given (i) if hand delivered, when delivered to the appropriate notice address, (ii) if mailed by first class mail, postage prepaid, three business days after deposit in the United States mail addressed to the appropriate notice address or (iii) if delivered by courier providing receipt of delivery, when delivered to the appropriate notice

address. The parties listed below may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent. Any notice required or permitted hereunder shall be directed to the following notice address:

As to the County:

County of Santa Barbara
105 East Anapamu Street
Santa Barbara, California 93101
Attention: County Counsel

As to Counsel:

Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105
Attention: Philip C. Morgan

Section 11. *TERM AND TERMINATION.* The term of this Agreement is from November 4, 2014 to November 3, 2015, unless earlier terminated.

A. Termination by County. County may, by written notice to Counsel, terminate this Agreement in whole or in part at any time, whether for County's convenience, for nonappropriation of funds, or because of the failure of Counsel to fulfill the obligations herein.

(1) For Convenience. County may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, Counsel shall, as directed by County, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on County from such winding down and cessation of services.

(2) For Nonappropriation of Funds. Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or County governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then County will notify Counsel of such occurrence and County may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, County shall have no obligation to make payments with regard to the remainder of the term.

(3) For Cause. Should Counsel default in the performance of this Agreement or materially breach any of its provisions, County may, at County's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, Counsel shall immediately discontinue all services affected (unless the notice directs otherwise) and notify County as to the status of its performance. The date of termination shall be the date the notice is received by Counsel, unless the notice directs otherwise.

B. Termination by Counsel. Should County fail to pay Counsel all or any part of the payment set forth in this Agreement, Counsel may, at Counsel's option terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.

C. Upon termination, Counsel shall deliver to County all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by Counsel in performing this Agreement, whether completed or in process, except such items as County may, by written permission, permit Counsel to retain. Notwithstanding any other payment provision of this Agreement, County shall pay Counsel for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Counsel be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Counsel shall furnish to County such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Counsel. In the event of a dispute as to the reasonable value of the services rendered by Counsel, the decision of County shall be final. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.

Section 12. RECORDS, AUDIT, AND REVIEW. Counsel shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Counsel's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. The County shall have the right to audit and review all such documents and records at any time during Counsel's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00) Counsel shall be subject to the examination and audit of the State Auditor General for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Counsel shall participate in any audits and review, whether by the County or the State, at no charge to the County.

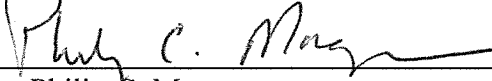
Section 13. CALIFORNIA LAW AND JURISDICTION. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

Section 14. SURVIVAL. All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement shall survive such termination or expiration.

Section 15. EXECUTION IN SEVERAL COUNTERPARTS. This Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the County and Counsel shall preserve undestroyed, shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereof have executed this Agreement as of the date and year first above written.

ORRICK, HERRINGTON & SUTCLIFFE LLP

By 
Philip C. Morgan

COUNTY OF SANTA BARBARA

By _____
Chair of the Board of Supervisors

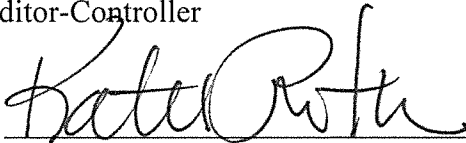
ATTEST:

Mona Miyasato,
Clerk of the Board of Supervisors

By _____

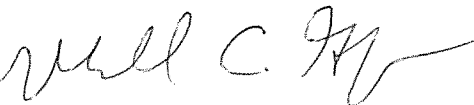
APPROVED AS TO ACCOUNTING FORM

Robert W. Geis, C.P.A.,
Auditor-Controller

By 

RECOMMENDED FOR APPROVAL AND APPROVED AS TO FORM:

Michael C. Ghizzoni,
County Counsel

By 

APPROVED AS TO FORM:

Ray Aromatorio,
Risk Manager

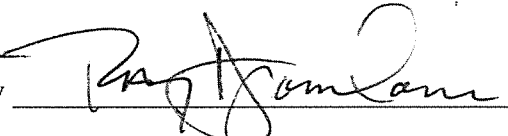
By 

EXHIBIT A

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS FOR CONTRACTS REQUIRING PROFESSIONAL LIABILITY INSURANCE

Counsel shall be referred to as CONTRACTOR throughout this Exhibit A.

INDEMNIFICATION

CONTRACTOR agrees to indemnify and hold harmless COUNTY and COUNTY's officers, employees and agents from and, if requested, defend against, any claim, demand, liability, action, proceeding, losses, damages and costs (including without limitation reimbursing all the COUNTY's costs of defense thereof) arising from the negligence or malpractice of CONTRACTOR in connection with the performance of this Agreement, or any supplement hereto. Notwithstanding the foregoing, nothing herein shall (i) serve to expand CONTRACTOR's scope of professional responsibilities as set forth in the laws and canons of ethics, (ii) extend any statute of limitations governing any claim arising from CONTRACTOR's acts or omissions, or (iii) waive any claims or defenses that CONTRACTOR may have against the COUNTY or any other party.

INSURANCE

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. **Workers' Compensation Insurance:** Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.
2. **General and Automobile Liability Insurance:** The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTORS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than

\$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

3. Professional Liability Insurance. Professional liability insurance shall include coverage for the activities of CONTRACTOR's professional staff with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation, expiration of the policy, or reduction in coverage. If the policy providing professional liability coverage is a on 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three (3) years (ten years [10] for Construction Defect Claims) following completion of the performance or attempted performance of the provisions of this agreement.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.