


THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL



for Glen R. Coogins
City Attorney

Dated: 5/2/16

INDEMNIFICATION AND INSURANCE AGREEMENT
BETWEEN
THE CITY OF CHULA VISTA AND
YGRENE ENERGY FUND CALIFORNIA, LLC

**INDEMNIFICATION AND INSURANCE AGREEMENT
BY AND BETWEEN
THE CITY OF CHULA VISTA
AND
YGRENE ENERGY FUND CA, LLC**

This Indemnification and Insurance Agreement (“Agreement”) is entered into by and between the City of Chula Vista, a municipal corporation (“City”) and Ygrene Energy Fund CA, LLC, a California limited liability company (“Administrator”), the administrator of the California Home Finance Authority’s PACE Program and the California Home Finance Authority’s Community Facilities District No. 2014-1 (Clean Energy).

RECITALS

WHEREAS, the California Home Finance Authority (“Authority”) is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the California Government Code (Section 6500 *et. seq.*) and the Joint Exercise of Powers Agreement entered into on July 1, 1993, as amended from time to time (“Authority JPA”); and

WHEREAS, the Authority is in the process of amending the Authority JPA to formally change its name to the Golden State Finance Authority; and

WHEREAS, the Authority has established a property-assessed clean energy (“PACE”) Program (“Authority PACE Program”) to provide for the financing of renewable energy generation, energy and water efficiency improvements, and electric vehicle charging infrastructure (the “Improvements”) pursuant to Chapter 29 of Division 7 of the California Streets and Highways Code (“Chapter 29”), within counties and cities throughout the State of California that elect to participate in the Program; and

WHEREAS, in addition, the Authority has established the Community Facilities District No. 2014-1(Clean Energy) in accordance with the Mello-Roos Community Facilities Act, set forth in sections 53311 through 53368.3 of the California Government Code (“Act”) and particularly in accordance with sections 53313.5(l) and 53328.1(a) (“District”); and

WHEREAS, the City Council of the City of Chula Vista has approved the City joining the Authority, has consented to the inclusion in the Authority PACE Program of all of the properties in the jurisdictional boundaries of the City and to the acquisition, construction, and installation of the Improvements, upon the request by and voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations applicable to the Program, and has consented to the inclusion in Community Facilities District No. 2014-1(Clean Energy) of all of the properties in the City’s jurisdiction and to the construction and installation of the Authorized Improvements, upon the request of, and execution of the Unanimous Approval Agreement by,

the owners of such properties when such properties are annexed, in compliance with the laws, rules and regulations applicable to the District; and

WHEREAS, the Authority and the Administrator have entered into a Third Party Administration Agreement, dated March 2015, in which the Administrator agrees to administer the Authority PACE Program and/or Community Facilities District No. 2014-1(Clean Energy) on behalf of the Authority; and

WHEREAS, the Administrator agrees to indemnify the City and to provide insurance in connection with the administration of the Authority PACE Program and/or Community Facilities District No. 2014-1(Clean Energy) in the City of Chula Vista.

NOW, THEREFORE, in consideration of the Recitals above and of the City's agreement to join the Authority and to participate in the Authority's PACE Program and/or Community Facilities District No. 2014-1(Clean Energy), the parties agree as follows:

1. Agreement to Indemnify. The Administrator agrees to defend, indemnify, and hold harmless the City, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands, and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses, and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with the Authority's PACE Program or Community Facilities District No. 2014-1 (Clean Energy), except such loss or damage which was caused by the sole negligence or willful misconduct of the City. The Administrator will conduct all defenses at its sole cost and expense, and the City shall reasonably approve selection of the Administrator's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of the Administrator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of the Administrator, its affiliates or other parties are not a limitation upon the obligation of the Administrator, including without limitation, the amount of indemnification to be provided by the Administrator. The provisions of this section shall survive the termination of this Agreement.

2. Insurance. The Administrator agrees that, at no cost or expense to the City, at all times during the administration of the Authority's PACE Program and Community Facilities District No. 2014-1 (Clean Energy), to maintain the insurance coverage set forth in Exhibit "A" to this Agreement.

3. Amendment/Interpretation of this Agreement. This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. No supplement, modification, or amendment of this

Agreement shall be binding unless executed in writing by both parties hereto. This Agreement shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

4. Section Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

5. Waiver. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

6. Severability and Governing Law. If any provision or portion thereof of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

7. Notices. All notices, demands and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed certified or registered mail and addressed as follows:

If to the Administrator: Bart Van Voorhis
Executive Vice President, Corporate Development
Ygrene Energy Fund CA, LLC
815 5th Street
Santa Rosa, CA 95404

If to the City: City Clerk
City of Chula Vista
276 Fourth Ave
Chula Vista, CA 91910

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, which together shall constitute the same instrument.

9. Effective Date. This Agreement will be effective as of the date of the signature of City's representative as indicated below in the City's signature block.

IN WITNESS HEREOF, the parties hereto duly executed this Agreement as of the date below.

CITY

CITY OF CHULA VISTA

By: _____
Mary Casillas Salas, Mayor

Date: _____

ADMINISTRATOR

YGRENE ENERGY FUND CA, LLC
By: Ygrene Energy Fund, Inc. its Member

By: _____
Stacey Lawson, President/CEO

Date: April 25, 2016

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

INSURANCE

Administrator shall procure and maintain for the duration of the contract insurance, *and for three years thereafter*, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Administrator, his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the Chula Vista Risk Manager.

B. Minimum Limits of Insurance

Administrator shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by the Chula Vista Risk Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and contractors; or Administrator shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the Chula Vista Risk Manager.

Claims Made Policies

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided *for at least three (3) years after completion of the contract of work.*
3. If coverage is canceled or non-renewed, and not replaced *with another claims-made policy form with a Retroactive Date prior to* the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages.
 - a. Chula Vista, its officers, employees, agents, and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of Administrator; products and completed operations of Administrator; premises owned, leased, or used by Administrator; and automobiles owned, leased, hired or borrowed by Administrator. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents, and contractors.
 - b. Administrator's insurance coverage shall be primary insurance as respects the City, its officers, employees, agents, and contractors. Any insurance

or self-insurance maintained by City, its officers, employees, agents, or contractors shall be excess of Administrator's insurance and shall not contribute with it.

- c. Any failure to comply with reporting provisions of the policies by Administrator shall not affect coverage provided to the City, its officers, employees, agents, or contractors.
- d. Coverage shall state that Administrator'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.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents, and contractors.

2. Workers' Compensation and Employers' Liability.

Coverage shall contain waiver of subrogation in favor of Chula Vista , its officers, employees, agents, and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers.

Insurance is to be placed with insurers acceptable to the Chula Vista Risk Manager.

F. Verification of Coverage.

Administrator shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Conservation@chulavistaca.gov or mailed to the following postal address or any subsequent address as may be directed in writing by the Chula Vista Risk Manager:

Risk Manager
City of Chula Vista
276 Fourth Ave.
Chula Vista, CA 91910

G. Subcontractors

Administrator shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.