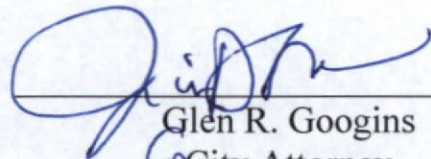


THE ATTACHED AGREEMENT HAS BEEN REVIEWED  
AND APPROVED AS TO FORM BY THE CITY  
ATTORNEY'S OFFICE AND WILL BE  
FORMALLY SIGNED UPON APPROVAL BY  
THE CITY COUNCIL

  
\_\_\_\_\_  
Glen R. Googins  
for City Attorney

Dated: 5/2/16

AGREEMENT BETWEEN  
THE CITY OF CHULA VISTA AND  
YGRENE ENERGY FUND CALIFORNIA, LLC  
AMENDING THE THIRD-PARTY ADMINISTRATION AGREEMENT

**Agreement Between the City of Chula Vista and Ygrene Energy Fund  
California, LLC Amending the Third-Party Administration Agreement**

This Amendment ("Amendment") is made and entered into as of \_\_\_\_\_, (the "Effective Date") by and between the CITY OF CHULA VISTA, a chartered municipal corporation (the "City"), and YGRENE ENERGY FUND CALIFORNIA, LLC, a California limited liability corporation with principal offices in Santa Rosa, CA ("Contractor"). The City and Contractor are sometimes referred to in this Amendment as the "Parties."

**BACKGROUND**

WHEREAS, the Parties entered into that certain Third-Party Administration Agreement dated as of the 6<sup>th</sup> day of August 2013 (the "TPA Agreement") under which the City contracted with Contractor for the administration and funding of the City's Property Assessed Clean Energy ("PACE") program (the "PROGRAM"); and

WHEREAS, numerous City residents have joined the City's PACE program since it was established; and

WHEREAS, Contractor recently began administering a statewide PACE program operated by the California Home Finance Authority ("CHFA"), a California joint powers authority; and

WHEREAS, Contractor requested that the City become a member of CHFA, thereby allowing it to run its PACE program within the City's boundaries; and

WHEREAS, the City desires to allow its residents to utilize the PACE and CHFA statewide program, and to transition away from the existing City PACE program; and

WHEREAS, the City is taking action to join CHFA as an associate member and to authorize CHFA to operate its PACE program within the City's boundaries; and

WHEREAS, the TPA Agreement provides for an initial five-year term, allows the Parties to terminate for convenience and, in such case, provides for a two-year "Transition Period," after which Contractor shall cease providing services under the TPA Agreement; and

WHEREAS, the parties desire to amend the TPA Agreement and to exercise the "Termination for Convenience" provision of the TPA Agreement in order to begin transitioning away from the City's PACE program.

**NOW, THEREFORE, the Parties agree as follows:**

1. The above recitals are incorporated into and made a part of this Amendment by this reference.

2. Paragraph 8.2 of the TPA Agreement (Termination for Convenience) is amended as follows:

“8.2 Termination for Convenience.

8.2.1 ~~“Following the Initial Term, or any successive extension term, e~~ [E]ither party may notify the other of its intent to terminate the AGREEMENT. In such event, the Parties shall begin to transition to closing the PROGRAM. Such transition shall begin on the “Transition Date,” as defined below. The AGREEMENT will terminate 180 days after the Transition Date ~~second (2nd) anniversary of the termination period~~ (the "Transition Period"), at which date CONTRACTOR shall cease providing the SERVICES ("Termination Date"). Ygrene may not enter into additional Financing Agreements for the PROGRAM after the Termination Date.

8.2.2 CONTRACTOR shall continue to offer the SERVICES during the Transition Period, including: (i) providing for on-going management of special taxes related to any projects completed under CONTRACTOR's auspices; (ii) providing all of the SERVICES, but not accepting any new project applications, in a professional manner in accordance with the AGREEMENT; and (iii) working in good faith with the CITY to provide a smooth transition for either the termination of the program or transfer to a subsequent administrator. If CONTRACTOR fails to meet these obligations at any time, the CITY may, at its discretion, direct the CONTRACTOR to cease providing SERVICES immediately. Ygrene shall insure that any Financing Agreements entered into following the Transition Date have been funded or cancelled and that relevant special taxes and/or assessments are placed on the tax rolls.

8.2.3 The Transition Date shall be the date on which the City Council of the City passes resolutions under which City elects to become an associate member of CHFA and to authorize CHFA to operate its PACE program within the City.”

3. Section 10.1. is amended to read as follows:

“10.1 General Requirement. CONTRACTOR shall defend, indemnify, protect and hold harmless the CITY, its elected and appointed officers, agents and employees, from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of CONTRACTOR, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of the SERVICES, or this AGREEMENT, or termination of this AGREEMENT. This indemnity provision does not include any claims, damages, liability, costs and expenses (including without

limitations, attorney fees) arising from the sole negligence, active negligence or willful misconduct of the CITY, its officers, or employees.”

4. All other terms of the TPA Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the Effective Date.

**CITY OF CHULA VISTA**

**ATTEST:**

By: \_\_\_\_\_  
Mary Casillas Salas, Mayor

\_\_\_\_\_  
Donna Norris, City Clerk

Date: \_\_\_\_\_, 2016

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Glen R. Googins, City Attorney

**CONTRACTOR:**

Ygrene Energy Fund California, LLC  
By: Ygrene Energy Fund, Inc., its Member

By: \_\_\_\_\_  
Stacey Lawson, President & Chief Executive Officer

Date: April 25, 2016