

ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

AGENDA ITEM NO. \_\_\_\_\_ November 20, 2012

Chris Bazar  
Agency Director

November 6, 2012

224  
West Winton Avenue  
Room 110  
  
Hayward  
California  
94544-1215

Alameda County Board of Supervisors  
Administration Building  
Oakland, CA 94612

Dear Board Members:

phone  
510.670.5333  
fax  
510.670.6374

**SUBJECT:    MODIFICATION OF MARIPOSA ENERGY PROJECT  
COOPERATION AGREEMENT OF JUNE 8, 2012 (June 8, 2010,  
Contract C-2010-76)**

www.acgov.org/cda

**RECOMMENDATION:**

That the Board consider and approve the proposed revision to the 2012 Mariposa Energy Project Cooperation Agreement, (June 8, 2010, Contract C-2010-76) (“Agreement”), which would broaden the scope of projects for which Community Benefit fees may be used, and direct the Board President to enter into the revised Agreement. The proposed revised language is consistent with all other language and criteria set forth in the Mariposa LLC Energy Project Cooperation Agreement (June 8, 2010).

**DISCUSSION/SUMMARY:**

Planning staff has revised the language of the Agreement to reflect district changes in the priorities for funding of projects by the Agreement. Staff proposes a broadening of the language to allow consideration of a variety of possible projects that could benefit from these funds, and that the funds could be distributed as either basic grants or loans. The only pertinent language to be changed other than revision of the Agreement date is as follows: (new language is underlined, removed language is ~~struck out~~):

**4.2 MEP Contribution to County Programs and Facilities.** Provided the conditions precedent set forth in Section 4.3 have been satisfied, Mariposa shall contribute to the County in one or more installments, the sum of One Million Two Hundred Thousand United States Dollars (\$1,200,000) (the “Contribution”). Such funds are expected to be utilized by the County as delineated below. However, the County is authorized to reallocate the funds as necessary among these County Programs.

- 1) \$600,000 to be used at the discretion of the County for one or more projects of community benefit for a health care facility or youth center in the Tri Valley area, details to be determined by the County. Funds may be used in the East Alameda County area and may be used for either grants or repayable loans, and may be used either in the unincorporated area or within affected communities as determined appropriate by the County.

Diamond Generating / Mariposa LLC made application to the California Energy Commission (CEC) in July 2009 to construct a new gas-fired peaker power plant in eastern Alameda County near the community of Mountain House. The CEC, under State Law, typically acts lead agency and approves the project with local input. Traditionally the power operator and the County enter into an agreement to provide local benefits. Local benefit funds are discretionary funds that may be used to fund local programs and allow the county to promote and approve community benefit projects that otherwise might be unfunded.

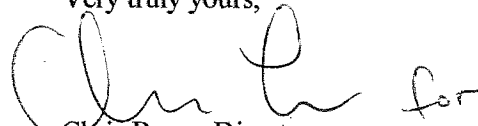
Alameda County and Mountain House LLC entered into such an agreement in June, 2010. Article 4 of the Agreement provides for several categories of funding, including a line item of \$600,000 to support youth education and health programs in the East County. The County has the discretion to program funds in these areas to meet current and future needs.

Since the adoption of the Agreement, priorities in the District have changed and the necessity for use of the funds has shifted to other potential projects; thus the new language broadens the possible uses of the moneys to include a wider range of projects with a community benefit. For some of these projects, the ability of the Board to allow the funds to be used for loans, in addition to the original ability to simply grant fees for projects, would be of benefit. The language of the proposed revision reflects this flexibility. Finally, the new language recognizes that community benefit projects may include projects elsewhere in the East County area.

**FINANCING:**

There is no Net County Cost as a result of this action. The source of all funding for this request would be the Fund Account established by the Mariposa Energy Project Cooperation Agreement (June 8, 2010, Contract C-2010-76).

Very truly yours,

  
Chris Bazar, Director  
Community Development Agency

cc: Susan Muranishi, County Administrator  
Donna R. Ziegler, County Counsel  
Patrick O'Connell, Auditor-Controller  
Richard Conway, County Administrator's Office  
Brian Washington, County Counsel  
U.B. Singh, CDA

**FIRST AMENDMENT TO  
MARIPOSA ENERGY PROJECT COOPERATION AGREEMENT**

This FIRST AMENDMENT TO MARIPOSA ENERGY PROJECT COOPERATION AGREEMENT (this "*Amendment*") is entered into as of this \_\_\_ day of November, 2012, by and between the County of Alameda, California, a political subdivision of the State of California (the "*County*"), and Mariposa Energy, LLC, a Delaware limited liability company and subsidiary of Diamond Generating Corporation ("*Mariposa*"). Except as otherwise specified, capitalized terms used in this Amendment have the meanings assigned to them in the Cooperation Agreement (as defined below).

**RECITALS**

- A. On June 8, 2010, the County and Mariposa entered into that certain cooperation agreement (the "*Cooperation Agreement*").
- B. The Parties desire to amend the allocation of certain funds pursuant to Section 4.2(1) of the Cooperation Agreement.
- C. The parties hereto deem it to be in their respective best interests to enter into this Amendment to amend the Cooperation Agreement as more particularly set forth below.

NOW, THEREFORE, the Parties agree as follows:

**AGREEMENT**

**ARTICLE 1. AMENDMENTS AND AGREEMENTS**

1.1 Amendment to Section 4.2(1). Section 4.2(1) of the Cooperation Agreement is hereby amended and replaced in its entirety as follows:

- 1) \$600,000 to be used at the discretion of the County for one or more projects of community benefit, details to be determined by the County. Funds may be used in the East Alameda County area and may be used for either grants or repayable loans, and may be used either in the unincorporated area or within affected communities as determined appropriate by the County.

**ARTICLE 2. MISCELLANEOUS**

2.1 References. Any reference to the Cooperation Agreement contained in any document shall be deemed to include this Amendment unless the context shall otherwise require. Each reference in the Cooperation Agreement to "hereunder", "hereof", "herein" or words of like import referring to the Cooperation Agreement shall mean and be a reference to the Cooperation Agreement as amended by this Amendment.

2.2 Governing Law; Counterparts; Miscellaneous.

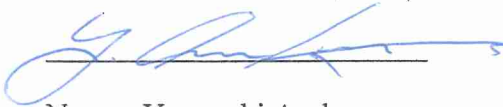
- (a) THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA.
- (b) This Amendment may be executed in any number of counterparts and by the different parties on separate counterparts, each of which counterparts when executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.
- (c) Section captions used in this Amendment are for convenience only and shall not affect the construction of this Amendment.
- (d) In the event that any provision of this Amendment is deemed to be invalid, illegal or unenforceable by reason of the operation of any law or by reason of the interpretation placed thereon by any court or governmental authority, the validity, legality and enforceability of the remaining provisions of this Amendment shall not in any way be affected or impaired thereby, and the affected provision shall be modified to the minimum extent permitted by law so as most fully to achieve the intention of this Amendment.

2.3 Continuing Effect; No other Amendments. Except as expressly amended hereby, all of the terms and provisions of the Cooperation Agreement are, and shall remain, in full force and effect. Notwithstanding anything contained herein, the terms of this Amendment are not intended to and do not serve to effect a novation as to the Cooperation Agreement. The parties hereto expressly do not intend to extinguish the Cooperation Agreement. The amendments and consents contained herein shall not constitute an amendment or a waiver of any other provision of the Cooperation Agreement or for any purpose except as expressly set forth herein.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Cooperation Agreement as of the date first above written.

MARIPOSA ENERGY, LLC

County of Alameda

By:   
Name: Yasuyuki Asakura  
Title: President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to Form:

By:   
County Counsel

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.