

**City of Yuba City
Staff Report**

Date: January 19, 2010
To: Honorable Mayor & Members of the City Council
From: Utilities Department
Presentation By: William P. Lewis, Utilities Director

Summary

Subject: Amend ground lease, easement and guarantee agreement with Gilroy Energy Center, LLC for the Feather River Energy Center Power Plant to extend time frame for guarantee date

Recommendation: Adopt a Resolution approving amendment of Gilroy Energy Center, LLC lease. Authorize the City Manager to make minor non-substantive changes as recommended by the City Attorney.

Fiscal Impact: None

Background:

March 2002 Council approved a lease agreement with Feather River Energy Center for property east of the Wastewater Treatment Facility to construct a power plant. Power plant construction was completed in December 2002 and the plant now provides 49 megawatts of electricity on peak days as requested by California Department of Water Resources. July 2003 the lease was transferred to Gilroy Energy Center, LLC. Gilroy Energy Center consists of ten power generation facilities similar to the Yuba City facility.

Through July 31, 2011 the facilities have guaranteed contracts and revenue from the State of California Department of Water Resources. These contracts are in the process of being renegotiated and extended. The lease includes language to require Gilroy Energy Center to remove the plant at the end of the lease. The lease also includes requirements for a form of credit to be established prior to the end of the DWR power supply contracts. This guarantee is sufficient to cover the cost of removal in the event the contracts were not renewed. The current lease agreement requires that the guarantee be provided to Yuba City by January 31, 2010.

Analysis:

Gilroy Energy Center has stated that it has executed a replacement power supply contract with PG&E which will extend the date of the facilities guaranteed contracts. This power supply contract will become effective upon approval by the California Public Utilities Commission. This approval will not be completed by January 31, 2010. Gilroy Energy Center has requested that

the date for submission of the form of credit be delayed until September 30, 2010 to allow time for approval.

In the event the contracts are approved between September 30, 2010 and July 31, 2011 Yuba City will return the letter of credit to Gilroy Energy Center. If the contracts are approved prior to September 30, 2010 the letter of credit would not be supplied. The new contracts are anticipated to be in effect through December 31, 2021. Upon approval of the new power supply contract a letter of credit is required to be supplied by December 31, 2020

Fiscal Impact:

There are no fiscal impacts at this time. It is anticipated that new power supply agreements will be approved by the California Public Utilities Commission. In the event the contracts are not approved Gilroy Energy Center would be required to provide the form of credit by September 30, 2010.

Alternatives:

Do not approve the lease amendment and require Gilroy Energy Center to provide the guarantee as provided in the current Agreement and provide staff direction.

Recommendation:

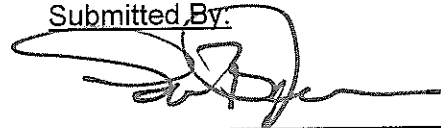
Adopt a Resolution approving amendment of Gilroy Energy Center, LLC lease. Authorize the City Manager to make minor non-substantive changes as recommended by the City Attorney.

Prepared By:



William P. Lewis
Utilities Director

Submitted By:



Steven R. Jepsen
City Manager

Reviewed By:

Finance



City Attorney

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
APPROVING AN AMENDED GROUND LEASE AND EASEMENT AGREEMENT WITH
GILROY ENERGY CENTER, LLC

WHEREAS, Gilroy Energy Center, LLC, entered into a Ground Lease and Easement Agreement with the City of Yuba City whereby Feather River Energy Center, LLC would own and operate a 45-megawatt electrical generation Facility ("Project") approved by the Yuba City Council July 15, 2003; and

WHEREAS, the Agreement was amended on September 30, 2003 and August 4, 2009; and

WHEREAS, Gilroy Energy Center, LLC request to amend the Ground Lease Easement and Guarantee Agreement for the Feather River Energy Center; and

WHEREAS, the City Council of the City of Yuba City finds that the amended Ground Lease would be in the best long-term interest of Yuba City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Yuba City as follows:

The amended Ground Lease, Easement Agreement which is attached and made a part of this Resolution is approved and the City Manager is hereby authorized and directed to execute said Ground Lease and Easement Agreement amendment subject to minor non-substantive changes as recommended by the City Attorney.

The foregoing resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 19th day of January, 2010.

AYES:

NOES:

ABSTAIN:

ABSENT:

Mayor

ATTEST:

Terrel Locke, City Clerk

THIRD AMENDMENT TO GROUND LEASE AND EASEMENT

This THIRD AMENDMENT TO GROUND LEASE AND EASEMENT ("**Third Amendment**") is made and entered into as of this ___ day of _____, 2010, by and between the City of Yuba City, California ("**Lessor**") and Gilroy Energy Center, LLC, a Delaware limited liability company ("**Lessee**") (as successor in interest to Feather River Energy Center, LLC, a Delaware limited liability company ("**Feather River**")). Lessor and Lessee and collectively referred to herein as the "**Parties**".

RECITALS

A. Lessor and Feather River entered into that certain Ground Lease and Easement, dated as of May 2, 2002 (the "**Ground Lease**"), a memorandum of which was recorded on June 6, 2002 as Document No. 2002-0011222 in the Official Records of Sutter County, California (the "**Official Records**"), and Lessor and Lessee entered into that certain First Amendment to Ground Lease and Easement, dated as of September 30, 2003 (the "**First Amendment**"), a memorandum of which was recorded on October 1, 2003 as Document No. 2003-0027541 in the Official Records, and that certain Second Amendment to Ground Lease and Easement, dated as of August 4, 2009, with respect to that certain real property (the "**Property**"). The Ground Lease, as amended by the First Amendment and Second Amendment, is herein referred to as the "**Lease**". Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.

B. Pursuant to the First Amendment, Lessee is required to deliver Acceptable Credit Support two years prior to the expiration of the long-term power purchase agreement in place at the time the First Amendment was executed.

C. Lessee intends to enter into a new long-term power purchase agreement.

D. The Parties now desire to amend the Lease to extend the date on which Acceptable Credit Support is required.

NOW, THEREFORE, incorporating the foregoing recitals and in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

1. Amendment of Article 27.

1.1 Article 27 of the Lease is hereby amended to replace the date "January 31, 2010" with the words "the later of (A) December 31, 2020 or the earlier termination of that certain Replacement Power Purchase and Sale Agreement, between Pacific Gas and Electric Company, Creed Energy Center, LLC, Goose Haven Energy Center, LLC, and Lessee, dated as of September 30, 2009, or (B) September 30, 2010 if the Power Purchase Agreement does not become effective by September 30, 2010."

1.2 Article 27 of the Lease is hereby further amended to add the following language at the end of Article 27:

If the Power Purchase Agreement becomes effective after September 30, 2010, and Lessee has provided Acceptable Credit Support pursuant to subclause (B) above, then, upon Lessee's written request and provided that no Event of Default has occurred and is continuing, (a) if the Acceptable Credit Support is in the form of cash collateral or a letter of credit, Lessor shall return such cash collateral or letter of credit to Lessee and (b) if the Acceptable Credit Support is in the form of a guaranty, Lessor shall agree to terminate such guaranty. If the Acceptable Credit Support is returned or terminated pursuant to the previous sentence, Lessee shall provide Acceptable Credit Support pursuant to subclause (A) above.

2. Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute part of this Third Amendment nor shall they affect its meaning, construction or effect.

3. Reference to Lease. Any and all notices, requests, certificates and other documents or instruments executed and delivered concurrently with or after the execution and delivery of this Third Amendment may refer to the Lease without making specific reference to this Third Amendment, but nevertheless all such references shall be deemed to include this Third Amendment, unless the context shall require otherwise.

4. Successors and Assigns. All of the covenants, terms, agreements and obligations of this Third Amendment shall extend to and bind and inure to the benefit of the successor or assigns of the Parties hereto.

5. No Other Modifications. All prior agreements, understandings, and discussions with respect to the subject matter set forth in this Third Amendment are hereby superseded by this Third Amendment. Except as modified by the terms of this Third Amendment, all provisions of the Lease shall remain unchanged and are in full force and effect, and shall continue to be binding on the Parties. Subsequent to the date of this Third Amendment, the Lease and this Third Amendment shall be read as one document.

6. Counterparts. This Third Amendment may be executed in one or more duplicate counterparts and when signed by all the Parties shall constitute a single binding agreement.

[Remainder of page intentionally left blank]

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

LESSOR:

THE CITY OF YUBA CITY, CALIFORNIA

By: _____

Name: Steven Jepsen
Its: City Manager

LESSEE:

GILROY ENERGY CENTER, LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____