

**Agreement for Demolition and Remediation
of the Ormond Beach Generating Station**

This Agreement for Demolition and Remediation (“Agreement”) is made and entered into as of January ____, 2020 by and between GenOn California South, GP (“GenOn”), a Delaware general partnership, and the City of Oxnard (the “City,” and each of GenOn and the City individually a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, GenOn owns and operates the Ormond Beach Generating Station (“Ormond Beach”), a natural gas fired power plant that utilizes once-through cooling (“OTC”) located within the City;

WHEREAS, the California State Water Resources Control Board (“Water Board”) has adopted a policy referred to as the Once-Through Cooling Policy (“OTC Policy”), which implements the State of California’s obligation to meet, in part, Section 316(b) of the federal Clean Water Act;

WHEREAS, under the OTC Policy, Ormond Beach is scheduled to cease operations on December 31, 2020;

WHEREAS, on November 7, 2019, the California Public Utility Commission (“CPUC”), in CPUC Proceeding R.16-02-007 (the “CPUC IRP Proceeding”), approved a Decision Requiring Electric System Reliability Procurement for 2021-2023 (the “Reliability Procurement Decision”), including (a) a recommendation to the Water Board to extend the compliance deadline for Ormond Beach under the OTC Policy by up to one year (that is, up to and including December 31, 2021), and (b) waiving the provisions of CPUC Decision 12-04-046, barring the signing of power purchase agreements beyond the OTC compliance deadline for Ormond Beach, for calendar year 2021;

WHEREAS, the State Advisory Committee on Cooling Water Intake Structures (“SACCWIS”) has initiated a proceeding (“SACCWIS Proceeding”) to consider, based on the CPUC’s identification of future electric system need, whether to recommend to the Water Board an extension of the OTC Policy retirement dates for generating stations, like Ormond Beach, that are scheduled to cease operations under the OTC Policy on or before December 31, 2020;

WHEREAS, the City has intervened in the CPUC IRP Proceeding and has filed objections to the possible extension of the OTC Policy retirement date for Ormond Beach;

WHEREAS, the City and GenOn have agreed to a plan, set forth below, which will establish a timetable and funding commitment for the orderly retirement of the Ormond Beach Generating Station, remediation of the related property owned by GenOn (the “Ormond Beach Site” or “Site”) and a framework for cooperation and advocacy within existing and future regulatory proceedings to secure market based contracts and OTC extensions for Ormond Beach through December 31, 2023, and up to December 31, 2024 if necessary for grid reliability and to fund the Site Plan Costs as defined herein;

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WHEREAS, the City and GenOn agree that the steps set forth below provide significant benefits to the residents of Oxnard and the surrounding communities and will further enhance the City's plans for wetlands restoration at or around the Site;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, GenOn and the City agree to the following terms and conditions.

AGREEMENT

1. Site Demolition and Remediation.

a. Ormond Demolition and Remediation. GenOn shall arrange for and ensure completion of all of the following work (the "Ormond Site Plan" or "Site Plan") at the Ormond Beach Site: (i) demolition, decontamination and removal of the above ground structures located at the Ormond Beach Site as set forth in the Facility Demolition Estimate dated January 17, 2020, by ERM-West, Inc., attached as Exhibit A; and (ii) the remediation, to the extent required by applicable law or regulation for the existing permitted use of the Site under the Oxnard City Code (EC – Coastal Energy Facilities), of any soil or groundwater conditions that are known or identified as a result of or during the course of implementing the Site Plan.

b. Ormond Site Plan Costs. GenOn has estimated the costs associated with the Ormond Site Plan to be \$25,000,000 (Twenty-Five Million Dollars) after salvage of scrap material. The Parties agree that GenOn's obligation to contribute funds to the Trust Fund pursuant to Section 2 of this Agreement shall not exceed \$25,000,000 (Twenty-Five Million Dollars) (the "Site Plan Costs").

c. Ormond Beach Demolition and Remediation Trust Fund. GenOn and the City shall establish a fund that shall be held in trust by the Ventura County Community Foundation as fiduciary (the "Trust Fund"). The Trust Fund shall be funded by GenOn pursuant to the funding schedule in Section 2 below and by any third parties from which funding is obtained pursuant to Section 1.d below. The funds in the Trust Fund shall be used solely and exclusively to pay for implementing the Site Plan and any excess funds, once the Site Plan work has been completed, shall be returned to GenOn and any third parties who contributed funds to the Trust in proportion to their respective contributions.

d. Third Party Commitments. GenOn and the City shall work together in good faith to obtain any available public or private funding or other third-party commitments to contribute to the Trust Fund to support the Site Plan.

2. Trust Funding. Subject to Section 1.b:

a. If Ormond Beach is the subject of a resource adequacy or other market-based contract ("RA Contract") with a California load-serving entity ("LSE") for all or any portion of calendar year 2021, then, starting with the first month in which GenOn receives 2021 RA Contract revenue, and continuing until

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January 31, 2022, GenOn shall make equal monthly contributions to the Trust Fund totaling \$8,333,333.33 for the year (“GenOn’s 2021 Contribution”).

b. If Ormond Beach is the subject of an RA Contract with an LSE for all or any portion of calendar year 2022, then, starting with the first month in which GenOn receives 2022 RA Contract revenue in 2022, and continuing until January 31, 2023, GenOn shall make equal monthly contributions to the Trust Fund totaling \$8,333,333.33 for the year (“GenOn’s 2022 Contribution”).

c. If Ormond Beach is the subject of an RA Contract with an LSE for all or any portion of calendar year 2023, then, starting with the first month in which GenOn receives 2023 RA Contract revenue in 2023, and continuing until January 31, 2024, GenOn shall make equal monthly contributions to the Trust Fund totaling \$8,333,333.33 for the year (“GenOn’s 2023 Contribution”).

d. For a given month in which GenOn receives 2021, 2022 or 2023 RA Contract revenue, GenOn shall make its monthly contribution to the Trust Fund pursuant to Sections 3.a, 3.b or 3.c of this Agreement, as applicable, within thirty (30) calendar days of the end of that month.

e. For the avoidance of doubt, the Parties agree that the meaning of RA Contract(s) in this Agreement excludes any use of the Reliability Must Run (“RMR”) or Capacity Procurement Mechanism (“CPM”) with respect to Ormond Beach.

3. Site Plan Completion Dates.

a. If Ormond Beach is the subject of one or more RA Contracts for all or any portions of calendar years 2021, 2022, and 2023, then GenOn shall complete the work contemplated by the Site Plan by December 31, 2025.

b. If Ormond Beach is the subject of one or more RA Contracts for all or any portions of calendar years 2021 and 2022, but not 2023, then GenOn shall complete the work contemplated by the Site Plan by December 31, 2026.

c. In all other cases where Ormond Beach is granted an OTC extension by the Water Board beyond December 31, 2020 and the City has fully performed its obligations under Sections 1 and 6 of this Agreement, GenOn shall complete the work contemplated by the Site Plan by December 31, 2027.

d. GenOn may use any and all funds contributed to the Trust Fund, whether contributed by GenOn pursuant to Section 2 or a third party pursuant to Section 1.d, to fund its completion of the Site Plan under this Section 3 by the applicable deadline. If the costs of fully completing the Site Plan exceed the total funds contributed to the Trust Fund pursuant to Section 1.d and Section 2 of this Agreement, GenOn shall be responsible for funding the remaining costs of Site Plan completion but shall not be obligated to do so through contributions to the Trust Fund.

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e. If the CPUC, CAISO, or any other regulatory body requires GenOn to operate either of the Ormond Beach generating units after December 31, 2023, then the applicable Site Plan completion date in Sections 3.a through 3.c above shall be extended beyond December 31, 2023 for the period during which either of the Ormond Beach generating units is required to run.

4. Future Use and Ownership of the Ormond Beach Site.

a. GenOn and the City shall work together on a plan for the ownership and use of the Site after the Site Plan work has been completed (“Post-Demo Plan”). The Parties will work in good faith to agree on the Post-Demo Plan in writing on or before December 31, 2021. The Post-Demo Plan will include, among other things, zoning and permitted uses of the Site, public use and access to the Site, property taxes, and future ownership. Nothing in this Agreement or the Post-Demo Plan, however, shall be construed as constraining the City’s future exercise of its police power or its other governmental functions.

b. At any time prior to completion of the work contemplated by the Site Plan, GenOn may sell or otherwise transfer, directly or indirectly, all or any portion of its interest in the Ormond Beach site provided that (i) the balance of the Trust Fund prior to closing of such transfer is no less than the remaining amount of the estimated Site Plan Costs yet to be paid on Site Plan implementation and (ii) either (a) subject to the City’s consent under Section 7.d of this Agreement, the transferee agrees to assume all of the obligations of GenOn under this Agreement, including, for the avoidance of doubt, the completion of all work contemplated by the Site Plan and all obligations of GenOn under any Post-Demo Plan agreed to by the Parties under Section 4.a of this Agreement; or (b) the City and GenOn agree to an alternative form of the transferee’s assumption of GenOn’s obligations under this Agreement.

5. Agreed Regulatory Objectives.

a. The City and GenOn agree on the following regulatory objectives (the “Joint Regulatory Objectives”).

i. LSEs should be authorized and required by the CPUC to enter into one or more RA Contracts with GenOn for the full capacity at Ormond Beach for the period starting on January 1, 2021, through December 31, 2023;

ii. The Water Board should extend Ormond Beach’s OTC Policy retirement date to December 31, 2023;

iii. To the extent Ormond Beach is required to be available to support system or local grid reliability, the Parties agree and will so advocate that RA Contracting is the best way for the City and GenOn to secure the joint objectives of this Agreement; and

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iv. Should the CPUC, CAISO, or any other regulatory body determine that one or more of the Ormond Beach generating units is needed to support system or local grid reliability, for any period after December 31, 2023, then the City and GenOn will work in good faith to discuss how to address California's electric reliability needs consistent with this Agreement. For the avoidance of doubt, however, if the CPUC, CAISO, or any other regulatory body requires GenOn to operate either of the Ormond Beach generating units after December 31, 2023, then the applicable Site Plan completion date in Section 3 above shall be extended pursuant to Section 3.e of this Agreement.

6. City of Oxnard's Commitments.

a. In consideration for the commitments of GenOn in this Agreement, the City shall:

i. No later than five (5) calendar days after executing this Agreement, file papers in the CPUC IRP Proceeding, withdrawing its previous objections to OTC Policy compliance deadline extensions for Ormond Beach and affirmatively supporting the Joint Regulatory Objectives;

ii. Support GenOn in seeking modification of the Reliability Procurement Decision such that the CPUC recommends (i) that the Water Board extend the Ormond Beach OTC retirement date to at least December 31, 2023; and (ii) that LSEs be authorized to enter into RA Contracts with Ormond for the period beginning January 1, 2021, through no earlier than December 31, 2023;

iii. Support the Joint Regulatory Objectives in the SACCWIS Proceeding to consider the OTC Policy retirement date for Ormond Beach, and in any future CPUC, SACCWIS, Regional or State Water Board, or other agency proceeding relating to Ormond Beach;

iv. Work to secure support for the objectives contemplated by this Agreement from Oxnard residents and community organizations, public interest organizations, as well as state and local regulators and legislators; and

v. As set forth in Section 1.d, work together in good faith with GenOn to obtain any available public or private funding or other third-party commitments to (1) contribute to the Trust Fund or (2) otherwise support the Site Plan Costs or the Post-Demo Plan.

7. Standard Terms and Conditions.

a. Nothing in the Demolition Plan, Site Plan, or this Agreement shall relieve GenOn of any of its obligations under any federal, state or local statute, ordinance, code, policy, rule, regulation, order, consent decree, judgment or common law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to: (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees, to hazardous substances or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by products, wastes, emissions, discharges or releases of chemical substances from

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industrial or commercial activities; or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal, including the National Environmental Policy Act (42 U.S.C. §4321 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), as amended by the Hazardous and Solid Waste Amendments of 1984, the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Clean Water Act (33 U.S.C. §1321 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §3808 et seq.), and the provisions of any other federal, state or local law, statute, ordinance, or regulation now in effect or hereafter enacted or promulgated which pertains to health, industrial hygiene, or the regulation, protection or remediation of the environment, including, without limitation, ambient air, soil, groundwater, surface water, and/or land use.

b. Breach; Remedies. The Parties acknowledge that if this Agreement is breached by one Party, the other Party could be irreparably harmed and could not be made whole by monetary damages. Accordingly, each Party, in addition to any other remedy to which that Party may be entitled to by law or in equity, shall be entitled to seek an injunction or similar remedy to prevent a breach or threatened breach of this Agreement by the other Party and an order or injunction compelling specific performance by the other Party of its obligations under this Agreement. In no instance, however, shall the Parties be entitled to monetary damages.

c. Interpretation; Severability. The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it was or may have been prepared by counsel for one of the Parties hereto, it being recognized that both GenOn and the City have contributed substantially and materially to the preparation of this Agreement. If one or more of the provisions of this Agreement or the application thereof shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions or any other application thereof shall in no way be affected or impaired.

d. Assignment; Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and any successors and assigns of GenOn. In no event shall the respective rights and obligations of the City under this Agreement be assignable to any third party. The respective rights and obligations of GenOn under this Agreement shall not be assignable without the prior written consent of the City, not to be unreasonably withheld, provided that such consent may only be withheld by the City on the grounds that the assignee has not assumed all of GenOn's rights and obligations

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under this Agreement or that the assignee has not demonstrated the financial capacity to complete the Site Plan work. Upon a valid assignment of this Agreement by GenOn pursuant to this Section, GenOn will have no further obligations under this Agreement and the City agrees that it will thereafter only look to GenOn's assignee for performance of GenOn's obligations hereunder.

e. Governing Law; Venue; Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to any otherwise applicable principles of conflicts of laws. To the extent permitted by applicable law, each Party to this Agreement hereby consents to the exclusive jurisdiction of the state courts of California located in the county where the Ormond Beach Site is located (the "County") or the United States Federal District Court with jurisdiction in the County, waives any objections to such venue, waives personal service of any and all process upon it, consents to service of process by registered mail directed to it at the address stated in Section 7.f of this Agreement, and acknowledges that service so made shall be deemed to be completed upon actual delivery thereof (whether accepted or refused). TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO.

f. Notice. Any request, consent, notice or other communication to be delivered to a Party hereunder shall be deemed delivered and received when made in writing and transmitted to the applicable Party either by receipted courier service, or by the United States Postal Service, first class registered or certified mail, postage prepaid, return receipt requested, or by email, at the address or addresses indicated for such Party below:

If to GenOn:

1360 Post Oak Blvd. Suite 2000
Houston, TX 77056
Attn: Daniel McDevitt, General Counsel
Phone: (832) 910-9140
E-mail: Daniel.Mcdevitt@Genon.com

If to the City:

305 W. Third Street Suite 100E
Oxnard, CA 93030
Attention: Stephen Fischer, City Attorney
Phone: (805) 385-7483
Email: Stephen.Fischer@Oxnard.org

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g. Authorization. Any person executing this Agreement on behalf of a Party hereto warrants and represents that he or she has the authority to do so on behalf of the respective Party and has the authority to bind that Party to the performance of its obligations hereunder.

h. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties hereto, and supersedes all previous agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the Parties, with respect to the demolition, remediation, or retirement of the Ormond Beach site. No modification, amendment or supplement to this Agreement shall be binding on the Parties unless written and signed by both Parties' duly authorized representative.

i. No Third Party Beneficiaries. This Agreement is solely for the benefit of GenOn, its successors and assigns with respect to the obligations of the City under this Agreement, and for the benefit of the City with respect to the obligations of GenOn, its successors and assigns under this Agreement. This Agreement shall not be deemed to confer upon or give to any other party any remedy, claim, liability, reimbursement, cause of action, or other right.

j. Counterparts and Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which, when assembled to include an original signature for each Party contemplated to sign this Agreement, will constitute a complete and fully executed original. All such fully executed original counterparts will collectively constitute a single agreement. Hand signatures transmitted by electronic mail are also permitted as binding signatures to this Agreement and shall be deemed to constitute original signatures.

k. Termination. Following completion of all work contemplated by the Site Plan, this Agreement shall terminate 60 calendar days after written notice from GenOn to the City, provided in accordance with Section 7.f, that all work contemplated by the Site Plan is complete.

Signed and agreed to on this ____ day of _____, 2020, by

GENON CALIFORNIA SOUTH, GP	THE CITY OF OXNARD, CALIFORNIA
_____	_____
Signature	Signature
_____	_____
[Name and Title]	[Name and Title]