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From Appellate Mr. Wall

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CITY COUNCIL

CITY OF SANGER, CA

VINCENT WALL, JOSEPH VILLALOBOS, DONNA BAILEY, EFREN RUBIO, MELISSA BEASELY, AND HENRY PROVOST,

Appellants,

vs.

CITY OF SANGER PLANNING COMMISSION,

Appellee

PROPOSED REQUIREMENT TO THE
CONDITIONAL USE PERMIT RESOLUTION 2018-07

The undersigned Appellant propose the following actions to remedy the deficiencies in the conditional use permit ("CUP") 2018-07 approved by the Planning Commission. The undersigned Appellant took these from the settlement agreement between the City of Sanger, the Power Plant, and the previous individuals/groups who believed the City of Sanger had no imposed adequate remedies to protect the public health, safety, and welfare. The settlement agreement can be found in Appendix A.

1. Tree Planting, Appendix A at page 6

Algonquin Power will plant up to 250 trees per year in city parks, property, and/or right of ways or as many trees, irrigation systems, and planting that can be accomplished for \$27,252 per year including labor cost for each year the power plant is in operation. In the event that operational hours are changed from 3,600 hours the cost will adjusted up or down based at a rate of \$7.57 per hour of operation. The rate of \$7.57 per hour of operation was calculated by taking the original hours allowed, 3300, and dividing it by \$25,000 per year. Every ten years this cost will be readjusted for inflation. If less than 250 trees are planted, for any reason, the difference between the amount already paid, and the amount left to pay will be paid to the City of Sanger for the exclusive use of the parks and recreation department to expand the amount of parks and open space ("new parks") for the Citizens of Sanger. The money may also be used for maintenance only for the new parks once the City has the amount of park acreage described in the general plan. The acreage by Kings River shall not be included.

2. NOx offset.

Condition 4 of CUP 93-4 will be amended to remove the \$10,000 annual cap.

1 3. Public education and pollution control, Appendix A, page 8 at paragraph 7

2 Algonquin Power will provide \$3.79 per hour of operation per year to Sanger Unified School District
3 for purposes of public education and pollution control within the sang Sanger Unified School District.

4 The amount per hour was calculated in the same way as numbered paragraph 1 above, but is half the
5 amount per hour. The other half of the amount per hour will be going to number 4 below.

6 4. Low Income Solar Cell Initiative.

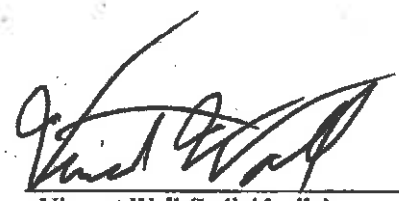
7 Algonquin Power will provide \$3.75 per hour of operation per year to create with the City of Sanger a
8 low income solar cell initiative that will provide rebates to low income residents a rebate for installing
9 solar cells. The City will hold public meetings and take public input to develop the program.

10
11 The undersigned Appellant believes that there is a nexus between the four conditions above and the
12 reduction of pollution caused by the Power Plant. Further, since the amounts are in a per hour cost this would reduce
13 future issues. The nexus between number 1 above and pollution is that extra trees and parks will absorb some of the
14 pollution from the Power Plant, will reduce surface heating in the city thereby cooling the city, and will improve the
15 public health of the citizens by allowing them to enjoy additional recreational spaces. The second condition has a
16 nexus as it removes an artificial barrier to reducing NOx emission in the city. Condition 3 has a nexus because
17 Sanger Unified School District is the largest employer in the City. As such during the hot summers it uses the most
18 electricity to cool the classrooms for students and the offices for administrators. Thus, condition three will allow
19 Sanger Unified to Reduce the pollution caused by their above average need for electricity. Further, it allows Sanger
20 Unified School District to further instruct the students on how one can reduce pollution and improve their
21 environment. The four condition will allow low income residents of the city to be able to offset their electrical needs
22 with solar panels thereby reducing the need for large stationary power plants to run longer, thus it would reduce
23 pollution.

24 As shown all four conditions have a nexus between the power plant hours and protecting the safety,
25 welfare, and health of the Citizens of Sanger.

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Dated this 18 of October, 2018.



Vincent Wall (Individually)

Appendix A.

AGREEMENT OF SETTLEMENT, MUTUAL RELEASE
AND COVENANT NOT TO CONTEST

Phase II 128-01-42
for Sanger
property

This Agreement, effective as of 5:00 P.M. P.S.T. . .
December 18, 1989 is by and between DYNAMIS INCORPORATED, a
California corporation ("Dynamis"), and SAVE OUR SANGER, an
unincorporated nonprofit public benefit association ("SOS"),
and CITIZENS FOR A HEALTHY ENVIRONMENT, a California nonprofit
public benefit corporation ("CHE").

WHEREAS, SOS has filed Petitions for Writs of
Mandate in the Fresno County Superior Court, State of
California, Docket Nos. 404625-6 and 408383-8 against the City
of Sanger and Dynamis concerning the Strambi Farms property
and the Hudson property, respectively, and

WHEREAS, SOS and CHE have lodged letter requests for
hearing before the full board of the Fresno County Air
Pollution Control District with respect to Authorities to
Construct issued to Dynamis for construction of their Sanger
Biomass/Cogeneration Project ("Facility") located on what is
commonly referred to the Hudson site in the City of Sanger.

Mutual Release: Except for the obligations
undertaken to each other herein, and in addition to any other
releases provided herein, Petitioners and Defendants, and each
of them, hereby releases, fully discharges and covenants not
to sue the other with respect to any and all claims, demands,
actions, causes of action, costs and liabilities of whatever
kind or nature, which any party now has or may have hereafter

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against any other party arising out of or in any way connected to the subject matter of the Actions, including but not limited to the approvals of City of Sanger CUP Nos. 8801 and 8901, and any and all transactions which are or could have been alleged in the pleadings on file in any of the Actions, or arising from or in connection with them. This release pertains to disputed claims, and does not constitute an admission by any party of liability of any factual matter. It is expressly understood and agreed by each party that this Settlement Agreement constitutes a full, final and complete resolution of all claims related to the approval of the Project by any government agency, and each party hereby waives the benefits of Section 1542 of the California Civil Code which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

NOW, THEREFORE, in consideration of the following, SOS, CHE and each of them hereby agree as follows:

1. To dismiss with prejudice their Petitions for Writs of Mandate in the matter of Friends of the Lower Kings River and Save Our Sanger v. City of Sanger, et al., Docket No. 404625-6, and SOS v. City of Sanger, et al., Docket No. 408383-8, Fresno County Superior Court, State of California;

2. Withdraw all requests for appeal or other demonstrations of opposition to Authorities to Construct issued to Dynamis, allowing construction and operation pursuant to said permits of the biomass/cogeneration facility proposed to be constructed on the Hudson site; and

3. Covenant not to sue, administratively appeal, or otherwise oppose any governmental permitting procedure or authority reasonably required by Dynamis to construct and operate the subject biomass/cogeneration facility so long as said Project remains materially unchanged from that currently permitted or as contemplated in this Settlement Agreement.

WHEREAS, the parties hereto desire to compromise their differences and settle all claims between and among them, including without limitation those which are alleged or could have been alleged in any court or administrative proceeding with respect to the Sanger Project;

WHEREAS, this Agreement is conditioned upon the following:

(i) that no further administrative or judicial appeals are commenced by any person, whether or not a party to this Agreement over which SOS or CHE has direct or indirect involvement and/or control, including, but not limited to, the Law Offices of Harriman & Gabrielli, contesting issuance of the Authorities to Construct the Sanger Project;

(ii) any and all revenues payable by Dynamis pursuant to this Agreement are payable solely from the gross revenues of the Project constructed and operating on the Hudson site;

(iii) assuming the Project is fully and finally permitted to allow construction on the Hudson site, Dynamis covenants that, upon its obtaining all necessary final approvals for construction of its biomass/cogeneration facility at the location commonly known as the Hudson site, it will cause to be cancelled, rescinded or otherwise rendered without force, each and all of its permits to construct a facility on the property commonly known as the Strambi site. Dynamis further covenants, promises and agrees not to transfer to any third party for development of a similar or any facility, any permits which it has previously obtained, for use on the so-called Strambi site.

NOW, THEREFORE, in consideration of the mutual covenants of promises and representations set forth herein, and other good and valuable consideration it is hereby agreed by and between the parties hereto, as follows:

1. As currently configured and permitted, the power generation portion of the Project will include an agwaste combustor in addition to gas and steam turbines. The parties, including the City of Sanger, have agreed to work

together, subject to the reasonable approval of PG&E to eliminate that sewage combustor. In order to facilitate negotiations with PG&E, SOS will not oppose a request by Dynamis for the City of Sanger to modify the CUP by increasing facility operating hours from 3,300 to 5,000. It is understood that Dynamis will continue to negotiate with PG&E in an attempt to obtain an amendment to the Power Purchase Agreement between Dynamis and PG&E for the purpose of deleting the agricultural waste combustor from the Project. In the event PG&E does not amend the Power Purchase Agreement, Dynamis shall be entitled to operate the Project up to 5,000 hours or as allowed by the City of Sanger Conditional Use Permit No. 89-1, not to exceed 5,000 hours.

2. Tertiary Water Treatment Facility: Under the terms of its CUP, Dynamis is required to fund a portion of the cost of a tertiary water treatment plant to be constructed by the City of Sanger, including the construction of associated lines and a lift station. This document is not intended to modify, in any way, the terms of the CUP, but is to restate the understanding of the parties hereto that Dynamis is bound by the terms of that CUP to pay such pro rata share as required thereunder.

3. Source Separation Containers: Dynamis will contribute \$22,000 per year for five years to the Sanger Environmental Trust Fund ("SETF"), a private nonprofit public benefit corporation, for the purpose of financing acquisition

of source separation and recycling containers for use within the City of Sanger.. The appropriate sizing of the containers is to be determined by the City of Sanger.

4. Tree Planting: Dynamis will purchase and plant, including installation of necessary irrigation systems, up to 250 trees per year or as many trees, irrigation systems, and planting as can be accomplished for \$25,000 per year including labor costs that may be provided by Dynamis, for a period of ten years on City of Sanger property and streets, as designated by the City of Sanger. If less than 250 trees are planted and irrigated, and if the amount expended on trees, irrigation and labor does not reach \$25,000 in any year, the difference between that amount and \$25,000 shall be paid to SETF.

5. Stationary Source/Steam Users Within City Limits: Dynamis agrees to cooperate with City Staff on a best efforts basis to identify industrial steam users within the city limits to supply them with steam from the cogeneration facility thus reducing their need to burn fossil fuel within their plants. The decision to install a steam line to potential steam users will be based on a cost analysis and technical feasibility study to be done by Dynamis engineers within 180 days of execution of this Settlement Agreement. Said review shall be subject to review by City staff and, in order to be feasible, the cost analysis must indicate that Dynamis will realize a reasonable internal rate of return of

not less than 20% on its investment after tie-in of the steam line. The maximum amount of investment required by Dynamis pursuant to this Agreement for this item is \$350,000. It is understood and agreed that the first potential connection is Western Kraft in the City of Sanger. If a steam line is constructed to Western Kraft and actual installation cost for the tie-in and steam line to Western Kraft is less than \$350,000, Dynamis shall pay the difference between that cost and the \$350,000 to the SETF and that sum shall be eligible for use on pollution control projects for stationary sources located within the Sanger Unified School District and/or public education efforts within the Sanger Unified School District.

6. Sanger Environmental Trust Fund: Funds will be contributed to the Sanger Environmental Trust Fund ("SETF"), which shall be formed as a private nonprofit public benefit corporation. The purpose for which the monies can be spent are as generally outlined herein and to implement additional pollution control programs and/or public education programs within the Sanger Unified School District. Money shall not be spent for lobbying or litigation. Each of the following may designate one representative as trustee for the private trust. In the event a listed organization ceases to exist, it shall designate a successor organization.

- a. Save Our Sanger
- b. Friends of Lower Kings River
- c. Dynamis Incorporated

- d. City of Sanger City Council
- e. Fresno County Air Pollution Control District
- f. Fresno Farm Bureau
- g. Sanger Chamber of Commerce
- h. Comites Civico
- i. Center for Rural Human Development

Bylaws and the scope of the trust's activities, including provision for an annual reporting on the activities of Dynamis and SETF, will be provided in a trust document and shall be consummated within 180 days of date of execution of the Settlement Agreement, subject to the approval of Dynamis Incorporated, City of Sanger and SOS, which approval shall not be unreasonably withheld.

7. A payment of \$25,000 per year for 20 years to SETF for purposes of public education and pollution control within the Sanger Unified School District. Funds shall not be used for lobbying or litigation, except in normal business-related defense matters. Payments shall be annual, commencing 180 days after synchronization of the facility to the PG&E system or June 30, 1991, whichever is sooner, and continuing on that same day, each year.

8. Payment of attorneys' fees to Harriman & Gabrielli in the amount of \$15,000, payable from the initial drawdown on construction financing for the Sanger Project, and in no event later than January 31, 1990.

9. It is further understood and agreed that Dynamis Incorporated shall not participate in any future

waste-to-energy project in the City of Sanger or County of Fresno.

10. This Agreement shall be binding on the parties, their successors in interest or assigns.

11. Following construction of the agwaste combustor and modification of the CUF to allow Dynamis to operate up to 5,000 hours per year, then, Dynamis will do the following:

(i) expend funds in support of a pilot

demonstration program to be implemented by Dynamis of a hydroponic method for removing air emissions from the agwaste combustor. Said funds shall be in an amount not to exceed \$25,000 per year for four years; and

(ii) shall pay to SETF for 30 years, the sum of \$20,000 per year or, shall pay 5% of the after tax net income from the power generation portion of the project from operation of the project in excess of 3,300 hours, calculated after including an allowance of 20% for return on equity, whichever is more. Said 5% amount shall be subject to verification by SOS and CHE through examination of Dynamis's operating records by a CPA mutually agreed upon by CHE, SOS and Dynamis and one individual representing both CHE and SOS. Said verification shall be conducted through visual examination of Dynamis's records and all information shall remain

confidential. Said accountant and representative may only report the ultimate result of their review.

12: One individual representing both CHE and SOS shall be allowed to monitor negotiation meetings between Dynamis and PG&E with respect to amendment of the Power Purchase Agreement. Said representative shall not participate in the negotiations and may be present only for conversations dealing with the agwaste combustor.

13. The City of Sanger shall place on the agenda of the City Council an agenda item requiring review and rezoning to agricultural land use of the location known as the Strambi Farms, Inc. property (Strambi site). Said matter shall be placed on the agenda as soon as

Reasonably possible but in no event later than 90 days from the date of this Agreement.

14. This Agreement may be executed in counterparts.

The individuals executing this document are duly authorized to execute the foregoing Agreement.

Dated: December 17, 1989 SAVE OUR SANGER (SOS),
a California nonprofit public
benefit association

By: [Signature]
Its duly authorized agent

Dated: _____ CITIZENS FOR A HEALTHY
ENVIRONMENT (CHE),
a California nonprofit public
benefit corporation

By: _____
MARCIS WILLIAMS
President

Dated: _____ HARRINAN & GABRIELLI

By: _____
RICHARD L. HARRINAN
Attorneys for SOS and CHE

Dated: _____ CITY OF SANGER

By: _____
SUE TSUDA,
City Manager

reasonably possible but in no event later than 90 days from the date of this Agreement.

14. This Agreement may be executed in counterparts. The individuals executing this document are duly authorized to execute the foregoing Agreement.

Dated: _____ SAVE OUR SANGER (SOS),
a California nonprofit public
benefit association

By: _____
its duly authorized agent

Dated: 12-19-89 CITIZENS FOR A HEALTHY
ENVIRONMENT (CHE),
a California nonprofit public
benefit corporation

By: Patty Robbins
~~PATTY ROBBINS~~
Vice-President & Chairman
of the Board

Dated: 12/17/89 HARRIMAN & GABRIELLI

By: Richard E. Harriman
RICHARD E. HARRIMAN
Attorneys for SOS and CHE

Dated: 12-17-89 CITY OF SANGER

By: Sue Tsuda
SUE TSUDA,
City Manager

Dated: 12/17/89

J. Steven Lempel

J. STEVEN LEMPEL
City Attorney
City of Sanger

Dated: Dec 24, 1989

DYNAMIS INCORPORATED,
a California corporation,

By: J.R. Sicotte
JACQUES R. SICOTTE
Executive Vice President

Dated: Dec 21, 1989

ORRICK, HERRINGTON & SUTCLIFFE

By: David R. Pigott
DAVID R. PIGOTT
Attorneys for Dynamis
Incorporated