

**AMENDMENT TO AGREEMENT  
BETWEEN THE COUNTY OF SAN MATEO AND  
CAPSTONE TURBINE CORPORATION (REGATTA SOLUTIONS, INC.)**

THIS AMENDMENT TO THE AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and CAPSTOE TURBINE CORPORATION (REGATTA SOLUTIONS, INC.), hereinafter called "Contractor";

**W I T N E S S E T H:**

WHEREAS, pursuant to Government Code Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, the parties entered into an Agreement April 1, 2013 to provide full service maintenance on the custom designed micro-turbine cogeneration system including periodic factory service, repairs for unscheduled failures and overhaul of each unit; and

WHEREAS, the parties wish to amend the Agreement due to the change in service providers as Regatta Solutions, Inc. no longer wishes to contract with Capstone Turbine Corporation; and

WHEREAS, the new full-service maintenance provider assuming full maintenance and service duties over this agreement is Cal Microturbine, Inc.; and

WHEREAS, it is necessary and desirable that Contractor, Cal Microturbine, Inc. be retained for the purpose of maintaining, repairing, and providing maintenance to the COGEN at the Youth Services Center Central Plant through the expiration of the contract term of March31, 2019; and

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO  
AS FOLLOWS:**

Exhibit A-Services  
**(see attached)**

Exhibit B-Payments  
**(see attached)**

Attachment 1 is hereby incorporated into this amendment.  
**(Assignment of Factory Protection Plan Services Contract with Regatta)**

5. All other terms and conditions of the agreement dated November 18, 2014, between the County and Contractor shall remain in full force and effect.


IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
President, Board of Supervisors  
County of San Mateo

Date: \_\_\_\_\_

Cal Microturbine, Inc.

  
\_\_\_\_\_  
Contractor's Signature

Date: October 12, 2018

## Exhibit A - Services

Contractor shall provide factory protection plan services for 8 turbines, as identified in Attachment 1, and 4 Copeland FGBs for a period of six years or 79,999 trh, Parts & Labor, with Overhaul. Scope of maintenance covered is identified in the following table under the Heading "OTHER".

### A. Description of Factory Protection Plan Services

FACTORY PROTECTION PLAN INCLUDED SERVICES	PLAN A	PLAN B	PLAN C	PLAN D	OTHER
Maintenance Parts:					
➤ Scheduled maintenance parts as needed pursuant to the then current Capstone Turbine Standard Maintenance Schedule (Capstone Turbine document number 440000 for Model C30 or Model C60, or Capstone Turbine User Manual for Model C65 or C200).	✓	✓	✓	✓	☒
➤ Unscheduled maintenance parts as needed, including:					
• Engine assembly (Engine/Generator)	✓	✓	✓	✓	☒
• All power electronics components	✓	✓	✓	✓	☒
• All fuel system components	✓	✓	✓	✓	☒
• Optional/Accessory equipment (if installed)					
- Main battery pack	✓	✓	✓	✓	☒
- Heat Recovery Module (HRM) coil	✓	✓	✓	✓	☒
- Advanced Power Server (APS)	✓	✓	✓	✓	☒
- Dual Mode Controller (DMC)	✓	✓	✓	✓	☒
- External Fuel Filter	✓	✓	✓	✓	☒
- External Regulator	✓	✓	✓	✓	☒
Maintenance Labor: <sup>1</sup>					
➤ Scheduled maintenance labor.	No	✓	No	✓	☒
➤ Unscheduled maintenance labor.	No	✓	No	✓	☒
Engine Overhaul at 40,000 trh	No	No	✓	✓	☒

	Additional Services:				
➤ Access to Capstone Turbine Call Center, including 24/7 access to Technical Support.	✓	✓	✓	✓	☒
➤ Priority response to unscheduled maintenance service requests.	No	✓	No	✓	☒
➤ System software upgrades as released by Contractor.	✓	✓	✓	✓	☒

<sup>1</sup> Normal Regatta Solutions service hours are 8:00 am to 5:00 pm (domestic) / 7:00 am to 6:00 pm (international) local time weekdays, excluding Regatta Solutions holidays.

➤ Installation of system software upgrades.	No	✓	No	✓	☒
<p>Other – Description:</p> <p><b><u>Response Time</u></b> Contractor agrees to provide a 24 response to address microturbine failures. This response may come in the form of on-site visit, remote diagnostics or phone support.</p> <p><b><u>Operating Hour Overage</u></b> In the event of a microturbine system exceeding 79,999 operating hours before contract end of services, all work performed on said microturbine, excluding warranty, will be billed on a time and material basis accordingly.</p> <p><b><u>Equipment Covered</u></b> Under this contract, all Capstone supplied equipment as defined in Exhibit 1, will be covered.</p>					

## **B. Service Conditions**

1. Sites must be clean, free of debris and any other obstructions, well lit, and operating in an environment that will not cause excessive usage, or need for replacement, of consumables and filters outside the parameters of Capstone Turbine standard service intervals.
2. Sites must be installed in accordance with all Capstone Turbine installation requirements.
3. Sites must be commissioned in accordance with Capstone Turbine specifications and Contractor must have an approved Commissioning Checklist on file.
4. Owner shall retain title to all hardware Contractor designates to be scrap. Contractor shall provide a list of approved disposal providers.
5. If CSN is checked in Section A above, then County is responsible for providing Contractor with an internet connection for CSN starting on the Start of Services Date and terminating on the End of Services Date (see Section D below).

## **C. Excluded Services**

The following are specifically excluded from the Agreement:

1. Changes to the original design and configuration (alterations from “as commissioned”).
2. Application engineering and installation; correction of latent or discovered defects or equipment failure due to application engineering, installation, settings and/or connections.
3. Operation of Covered Equipment on a day-to-day basis.
4. Emissions testing or testing of exhaust gas.
5. Fuel analysis or laboratory analysis to confirm fuel composition.
6. Operator classroom training.
7. Operation of the Covered Equipment outside of Capstone Turbine standard operating guidelines defined in the Contractor User Manual.
8. City, state, and/or federal permits, rebates, or incentive applications or filings.
9. Any services requested by County which are determined, in Contractor’ sole discretion, to be outside the scope of this Agreement.
10. Balance of plant equipment: Contractor will provide Services for the Covered Equipment listed in Exhibit 1 only, as may be amended by the parties from time to time in writing.

11. Using the CSN, Contractor may provide remote monitoring service diagnostics as a courtesy to the customer. The CSN equipment is capable of monitoring additional Balance of Plant equipment (i.e., anything outside of the housing and not included in the definition of "Covered Equipment" set forth below) which may impact the successful operation of the Covered Equipment under this Agreement. Under no circumstances is Contractor obligated to provide any Services for Balance of Plant equipment or any other equipment that is not listed as Covered Equipment.
12. Internet connection, service, maintenance, or hardware related fees.

**D. Additional Terms of Service:**

1. **Contractor' Services; Warranty.** Contractor agrees that it will comply with applicable laws and regulations relating to its provision of the Services and such Services will be provided in a professional and workmanlike manner consistent with the applicable Scope of Services and with generally accepted industry standards and practices with regard to the type of services provided hereunder. Contractor on behalf of Capstone Turbine provides the warranties with respect to Parts and labor provided by Contractor for the applicable Covered Product (the "**Service-Related Warranties**"). Notwithstanding any term contained in a Service-Related Warranty or this Agreement to the contrary, any and all Service-Related Warranties expire upon the completion of the Services.
2. **County's Obligations.** In addition to all other obligations stated in this Agreement, when requested, County shall provide Contractor with: (i) records and information concerning the Covered Equipment; and (ii) any special tools or instruments needed for the Covered Equipment which County already possesses. County shall designate an authorized representative who shall be available to Contractor at all times while Contractor is performing the Services on County's premises. County agrees that the Scope of Services excludes all trade labor work and any supervision, management or regulation of County's employees, agents or contractors and work related thereto, and it does not include responsibility for planning, scheduling, monitoring or management of the work to be performed by County. County agrees that any written or oral reports and advice provided by Contractor to County in connection with the provision of Services shall be utilized solely by County and shall not be used or conveyed by County to any third party.
3. Pursuant to this Services Agreement (the "Agreement"), County hereby authorizes Contractor to provide the services described above (the "Services"), including the provision of any necessary parts (the "Parts"), on the Capstone Turbine generator systems, controls and/or accessories identified above (the "Covered Equipment") in accordance with and subject to the terms and conditions described above and on the pages attached hereto

## Attachment 1 to Exhibit A

[illegible]

## Exhibit B – Payment

1. Payment for the Service Agreement will be made in equal ☐ Annual or ☒ Other (specify: 24 equal quarterly) installments of \$12,772.26. The first installment is due upon the Start of Services Date (see Section D above). The remaining installments will be due 30 days prior to each succeeding Anniversary (Annual or Other, whichever is specified in the first sentence of this paragraph) of the Start of Services Date.
2. Unless otherwise provided for in the payment descriptions above, payments for Services are due 30 calendar days from date of invoicing, are stated in U.S. dollars and include any fees, licenses and permits required for the performance of the Services, and exclude sales and other taxes.
3. Overdue payments shall be subject to a late charge, calculated from the date of invoice to the date of payment, equal to the lesser of 1.5% per month or the highest applicable rate allowed by law. The foregoing shall in no way limit any other remedy that may be available to Contractor.
4. County's obligations to Contractor to pay in full all amounts owed to Contractor as of the termination or expiration of this Agreement shall survive the termination for any reason or expiration of this Agreement.
5. Contractor may adjust pricing by up to 2% annually for the services provided hereunder upon written notice to County should the total Consumer Price Index (CPI) exceed 2% in the previous year of the contract.
6. County has the right to terminate this contract with 30 days prior written notice. The County will then be obligated to pay a percentage of the remaining total contract balance as listed in table A-1. Such obligation shall not apply if termination is for cause, i.e. failure to comply with all contract provisions as described in Exhibit A. Upon County cancelation, Contractor may cease performance of any services.
7. When necessary to perform services on a time and material basis, the rates in Table A-2 shall apply.

**Table A-1**  
**Payment on Contract Termination**

Contract Year	% of Total Contract Balance Owed
1	25
2	25
3	30
4	45
5	60
6	75

**Table A-2**  
**Billing Rates**

The following time, travel and material rates apply to services performed per individual Field Services Order(s).

Hourly Labor Rate - \$180.00 - Per Hour (2 Hour Minimum)

Phone Support - \$100.00 – Per Hour (1 Hour Minimum)

Travel Hours - \$75.00 - Per Hour

Mileage - \$ 1.75 cents - Per Mile

Extended Travel Costs (flight, hotel, car rental, etc.): Billed at cost plus 10% to Regatta Solutions



May 10, 2018

CAPSTONE TURBINE CORPORATION  
21211 Nordhoff Street  
Chatsworth, CA 91311

San Mateo Youth Center

Re: Assignment of Factory Protection Plan Service Contract with Regatta

Dear Mr Sipp:

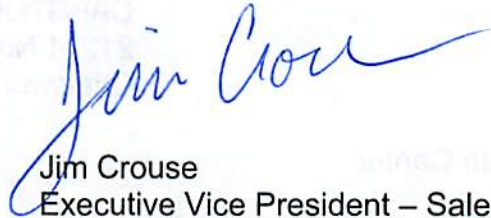
Please be advised that Capstone Turbine Corporation ("Capstone") and Regatta Solutions, Inc. ("Regatta") have mutually agreed to not renew their written distribution agreement, under which Regatta has previously performed sales and support services in connection with Capstone's Microturbine generator systems, equipment, products, and parts (collectively, "Capstone Equipment"). Effective April 2, 2018 (the "Effective Date"), Regatta will no longer sell Capstone Equipment, and, with respect to Capstone Equipment sold prior to the Effective Date, Regatta will be transitioned out of its sales and service role in a manner that will avoid undue inconvenience to Capstone Equipment end-users.

Given the change in this relationship, please be advised that all sales, aftermarket support, and service agreements, including the Factory Protection Plan ("FPP") between San Mateo Youth Center and Regatta involving or relating to Capstone Equipment will be assigned and assumed by to Cal Microturbine, Inc. The name, address and telephone number of Capstone's contact person at Cal Microturbine, Inc. is Kenda Brown – President, Suite 121, 1400 Easton Drive, Bakersfield, California 93309, (424) 256-8225.

A copy of your FPP, and acknowledged by Capstone, is attached as Exhibit A to this letter. At your earliest convenience, please review the attached FPP and confirm its accuracy or any omissions. Please then execute the Consent and Release below and return a copy of same to the undersigned so that Capstone may complete this assignment.

Thank you very much for your assistance and please contact me in the event you have any questions regarding the transition.

Very truly yours,



Jim Crouse  
Executive Vice President – Sales & Marketing

**CONSENT AND RELEASE**

I, [Name of Officer of End User], the [Title of Officer] of [Name of End User], hereby consent to the assignment and assumption of the agreement[s] listed at Exhibit A below from Regatta Solutions, Inc. to Cal Microturbine.

I further consent to unconditionally and irrevocably release and discharge Regatta and respective successors, assigns and affiliates (with the exception of Cal Microturbine, Inc. as the intended assignee of the subject FPP referenced above) from any and all actions, claims, demands, charges, complaints, suits, proceedings, setoffs, obligations, contracts, agreements, debts, damages, and liabilities whatsoever, whether known or unknown, suspected or unsuspected, both at law and in equity, arising from or in connection with services performed by Cal Microturbine, Inc., pursuant to the the FPP first referenced above, after the Effective Date

Dated: \_\_\_\_\_, 2018      Name: \_\_\_\_\_

**EXHIBIT A – Agreement[s] Between Regatta and San Mateo Youth Center Involving or  
Relating to Capstone**

1.