

4-5-2015

Fagen, Inc. v. Rogerson Flats Wind Park, LLC Clerk's Record Dckt. 42684

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,)	
)	
Plaintiff/Respondent,	)	SUPREME COURT NO. 42684
	)	CASE NOS. CV 13-573,
vs	)	CV 13-574, CV 13-575,
	)	CV 13-576
)	
ROGERSON FLATS WIND PARK, LLC, an)	
Idaho Limited Liability Company; EXERGY)	
DEVELOPMENT GROUP OF IDAHO, LLC)	
an Idaho Limited Liability Company; XRG)	
DEVELOPMENT PARTNER, LLC, an Idaho)	
Limited Liability Company; COTTONWOOD)	
WIND PARK, LLC, an Idaho Limited Liability)	
Company; SALMON CREEK WIND PARK,)	
LLC, an Idaho Limited Liability Company;)	
DEEP CREEK WIND PARK, LLC, an Idaho)	
Limited Liability Company; NOTCH BUTTE)	
WIND PARK, LLC, an Idaho Limited Liability)	
Company,)	
)	
Defendants/Appellants.)	
)	
and)	
)	
J.R. SIMPLOT SELF-DECLARATION OF)	
REVOCABLE TRUST; JACK RANCH)	
WIND LAND HOLDINGS, LLC, a Delaware)	
Limited Liability Company; and JOHN)	
DOES 1-10,)	
)	
Defendants.)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District
of the State of Idaho, in and for the County of Twin Falls

HONORABLE RANDY J. STOKER
District Judge

ANGELO L. ROSA
Marsh Rosa LLP
P.O. Box 1605
Boise, Idaho 83701

JOHN R. GOODELL,
Racine, Olsen, Nye, Budge
& Baily, Chtd.
101 South Capitol Blvd, Ste. 300
Boise, Idaho 83702

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

Date	Code	User	Judge
2/8/2013	NCOC	SCHULZ	New Case Filed-Other Claims
	APER	SCHULZ	Plaintiff: Fagen, Inc., A Minnesota Corporation Appearance John R Goodell
		SCHULZ	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Racine, Olson, Nye, Budge & Bailey Receipt number: 1303241 Dated: 2/8/2013 Amount: \$96.00 (Check) For: Fagen, Inc., A Minnesota Corporation (plaintiff)
	COMP	SCHULZ	Complaint Filed
	SMIS	SCHULZ	Summons Issued
6/24/2013		SCHULZ	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Meuleman Mollerup Receipt number: 1316154 Dated: 6/24/2013 Amount: \$66.00 (Check) For: J.R. Simplot Self-Declaration Of Revocable Trust (defendant)
	NOAP	SCHULZ	Notice Of Appearance
6/25/2013	APER	SCHULZ	Defendant: J.R. Simplot Self-Declaration Of Revocable Trust Appearance Richard L Stacey
6/27/2013	ACSV	PIERCE	Acceptance Of Service
8/2/2013	HRSC	MCMULLEN	Hearing Scheduled (Status 09/09/2013 10:00 AM)
		MCMULLEN	Notice Of Hearing
8/5/2013	ACSV	PIERCE	Acceptance Of Service
	NOFG	PIERCE	Plaintiff's Notice of Filing of Acceptance of Service
8/7/2013	ACSV	PIERCE	Acceptance Of Service
	NOFG	PIERCE	Plaintiff's Notice of Filing of Acceptance of Service
		MCMULLEN	Notice Of Hearing
8/13/2013	NINT	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Notice of Intent to Appear by Telephone
9/3/2013		SCHULZ	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Angelo L. Rosa Receipt number: 1322337 Dated: 9/3/2013 Amount: \$66.00 (Credit card) For: Exergy Development Group Of Idaho, LLC (defendant), Rogerson Flats Wind Park, LLC (defendant) and XRG Development Partners, LLC (defendant)
		SCHULZ	Filing: Technology Cost - CC Paid by: Angelo L. Rosa Receipt number: 1322337 Dated: 9/3/2013 Amount: \$3.00 (Credit card) For: Exergy Development Group Of Idaho, LLC (defendant), Rogerson Flats Wind Park, LLC (defendant) and XRG Development Partners, LLC (defendant)

Date	Code	User		Judge
9/3/2013	NOAP	SCHULZ	Notice Of Appearance	Randy J. Stoker
9/4/2013	APER	SCHULZ	Defendant: Rogerson Flats Wind Park, LLC Appearance Angelo L Rosa	Randy J. Stoker
	APER	SCHULZ	Defendant: Exergy Development Group Of Idaho, LLC Appearance Angelo L Rosa	Randy J. Stoker
	APER	SCHULZ	Defendant: XRG Development Partners, LLC Appearance Angelo L Rosa	Randy J. Stoker
9/6/2013	MOAM	PIERCE	Plaintiff's Motion for Leave to Amend Complaint	Randy J. Stoker
	MOCT	PIERCE	Plaintiff Fagen's Motion for Rule 56(f) Continuance	Randy J. Stoker
	MEMO	PIERCE	Plaintiff Fagen's Memorandum in Support of Motion for Rule 56(f) Continuance	Randy J. Stoker
	AFFD	PIERCE	Affidavit of John R. Goodell in Support of Motion for Rule 56(f) Continuance	Randy J. Stoker
	MDIS	PIERCE	Omnibus Motion To Dismiss Complaint	Randy J. Stoker
	MEMO	PIERCE	Memorandum in Support of Omnibus Motion to Dismiss Complaint	Randy J. Stoker
	CESV	PIERCE	Certificate Of Service (Omnibus Motion to Dismss)	Randy J. Stoker
9/9/2013	DCHH	MCMULLEN	Hearing result for Status scheduled on 09/09/2013 11:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: By Phone, Mr. Stacey to initiate to 735-4384	Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes	Randy J. Stoker
9/20/2013	APER	NICHOLSON	Defendant: Jack Ranch Wind Land Holdings, Llc, A Delaware Lim Appearance Richard H Greener	Randy J. Stoker
	NOAP	NICHOLSON	Notice Of Appearance	Randy J. Stoker
		NICHOLSON	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Jack Ranch Wind Land Holdings, Llc, A Delaware Lim (defendant) Receipt number: 1323847 Dated: 9/20/2013 Amount: \$66.00 (Credit card) For: Jack Ranch Wind Land Holdings, Llc, A Delaware Lim (defendant)	Randy J. Stoker
		NICHOLSON	Filing: Technology Cost - CC Paid by: Jack Ranch Wind Land Holdings, Llc, A Delaware Lim (defendant) Receipt number: 1323847 Dated: 9/20/2013 Amount: \$3.00 (Credit card) For: Jack Ranch Wind Land Holdings, Llc, A Delaware Lim (defendant)	Randy J. Stoker
9/23/2013	NOHG	PIERCE	Notice Of Hearing	Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Motion to Amend 10/21/2013 10:00 AM)	Randy J. Stoker

Date	Code	User		Judge
9/26/2013	NOHG	PIERCE	Notice Of Hearing	Randy J. Stoker
10/1/2013	MEMO	PIERCE	Plaintiff Fagen Inc.'s Memorandum Opposing Defendants' Omnibus Motion to Dismiss Complaint	Randy J. Stoker
10/2/2013	NOTC	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Notice of Non-Opposition to Plaintiff's Motion for Leave to Amend Complaint	Randy J. Stoker
10/7/2013	NOCA	PIERCE	Notice Of Change Of Address	Randy J. Stoker
10/15/2013	NOHG	PIERCE	Notice Of Hearing on J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss and Notice of Intent to Appear by Telephone	Randy J. Stoker
	NINT	PIERCE	J.R. Simplot Self-Declaration of Revocable Trusts's Notice of Intent to Appear by Telephone	Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Motion to Dismiss 12/02/2013 10:00 AM) Simplot's Motion to Dismiss	Randy J. Stoker
	NOWD	PIERCE	Notice Of Withdrawal of Intent to Appear by Telephone [Re: October 21 & December 2, 2013, Hearings]	Randy J. Stoker
	NOSV	PIERCE	Notice Of Service	Randy J. Stoker
10/18/2013	NOHG	MCMULLEN	Amended Notice of Hearing	Randy J. Stoker
	HRVC	MCMULLEN	Hearing result for Motion to Amend scheduled on 10/21/2013 10:00 AM: Hearing Vacated	Randy J. Stoker
	NOHG	PIERCE	Amended Notice Of Hearing	Randy J. Stoker
	AFFD	PIERCE	Second Affidavit of John R. Goodell in Support of Motion for Rule 56(f) continuance	Randy J. Stoker
	NOTC	PIERCE	Notice of Non-Opposition to Motion to Amend Complaint	Randy J. Stoker
11/15/2013	NOHG	PIERCE	Notice Of Hearing on J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss	Randy J. Stoker
	MDIS	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss	Randy J. Stoker
	MEMO	PIERCE	Memorandum in Support of J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss	Randy J. Stoker
11/26/2013	STIP	MCMULLEN	Stipulation for Dismissal with Prejudice of Defendant Jack Ranch Wind Land Holdings LLC	Randy J. Stoker
	ORDR	MCMULLEN	Order for Dismissal with Prejudice of Defendant Jack Ranch Wind Land Holdings LLC	Randy J. Stoker
	CDIS	MCMULLEN	Civil Disposition/Judgment entered: entered for: Jack Ranch Wind Land Holdings, Llc, A Delaware Lim, Defendant; Fagen, Inc., A Minnesota Corporation, Plaintiff. Filing date: 11/26/2013	Randy J. Stoker

Date	Code	User	Judge
11/27/2013	NOWD	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Notice of Withdrawal of Motion to Dismiss and Notice of Non-Opposition
11/29/2013	STIP	MCMULLEN	Stipulation for Dismissal with Prejudice (Fagen Claims Against Defendant J.R. Simplot Self-Declaration of Revocable Trust Only)
12/2/2013	ORDR	MCMULLEN	Order for Dismissal with Prejudice (J.R. Simplot Self-Revocable Trust Only)
	CDIS	MCMULLEN	Civil Disposition/Judgment entered: entered for: J.R. Simplot Self-Declaration Of Revocable Trust, Defendant; Fagen, Inc., A Minnesota Corporation, Plaintiff. Filing date: 12/2/2013
	ORDR	MCMULLEN	Order for Leave to File First Amended Complaint
	DCHH	MCMULLEN	Hearing result for Motion to Dismiss scheduled on 12/02/2013 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Also Simplot's Motion to Dismiss, Motion to Amend
	ADVS	MCMULLEN	Case Taken Under Advisement
	CMIN	MCMULLEN	Court Minutes
12/4/2013	ORDR	MCMULLEN	Order Re Consolidation, Motion to Amend, Motion to Continue and Motion to Dismiss
	ORDR	MCMULLEN	Order for Scheduling Conference
	ORDR	MCMULLEN	Civil Pre-Trial Order
12/5/2013	HRSC	AGUIRRE	Hearing Scheduled (Scheduling Conference 01/06/2014 09:00 AM) Parties appearing by Telephone
12/9/2013	ANSW	SCHULZ	Defendants' Answer To First Amended Complaint
1/3/2014	MOWD	PIERCE	Motion To Withdraw as Counsel
1/6/2014	NOTC	PIERCE	Notice of Errata in Motion to Withdraw as Counsel
	DCHH	AGUIRRE	District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated:
	CMIN	AGUIRRE	Court Minutes
	HRSC	AGUIRRE	Hearing Scheduled (Motion to Withdraw 01/21/2014 11:00 AM) Mr. Rosa to initiate conference call to court.
		AGUIRRE	Notice Of Hearing
	CONT	AGUIRRE	Continued (Motion to Withdraw 01/31/2014 09:00 AM) Mr. Rosa to initiate conference call to court.

Date	Code	User	Judge
1/9/2014	MOTN	MCMULLEN	Plaintiff Fagen Inc's Motion for Order to Compel Discovery
	AFFD	MCMULLEN	Affidavit of John R. Goodell in Support of Plaintiff's Motion to Compel Discovery Responses
	NOHG	MCMULLEN	Notice Of Hearing (by telephone conference call)
1/31/2014	DCHH	MCMULLEN	Hearing result for Motion to Withdraw scheduled on 01/31/2014 09:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Mr. Rosa to initiate conference call to court. Also plaintiff's motion to compel
	CMIN	MCMULLEN	Court Minutes
	ORDR	MCMULLEN	Order Denying Defendant's Counsel's Motion to Withdraw and Granting Plaintiff's Motion to Compel Discovery Responses and Award of Expenses
2/5/2014	HRSC	MCMULLEN	Hearing Scheduled (Motion to Withdraw 03/31/2014 10:00 AM)
	MOTN	MCMULLEN	Renewed Motion to Withdraw as Counsel
	NOHG	MCMULLEN	Notice Of Hearing on Renewed Motion to Withdraw as Counsel
2/6/2014	HRSC	MCMULLEN	Hearing Scheduled (Motion to Withdraw 03/03/2014 08:30 AM) by phone, Mr. Rosa to initiate
2/10/2014	NOHG	COOPE	Amended Notice Of Hearing on Renewed Motion to Withdraw as Counsel
3/3/2014	NOTC	MCMULLEN	Notice of Withdrawal of Renewed Motion to Withdraw as Counsel
	HRVC	MCMULLEN	Hearing result for Motion to Withdraw scheduled on 03/31/2014 10:00 AM: Hearing Vacated
	DCHH	MCMULLEN	Hearing result for Motion to Withdraw scheduled on 03/03/2014 08:30 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: by phone, Mr. Rosa to initiate
	CMIN	MCMULLEN	Court Minutes
	HRSC	MCMULLEN	Hearing Scheduled (Scheduling Conference 04/14/2014 10:00 AM)
	ORDR	MCMULLEN	Order for Scheduling Conference
3/5/2014	AMCO	MCMULLEN	First Amended Complaint - Rogerson Flats
	AMCO	MCMULLEN	First Amended Complaint - Cottonwood
	AMCO	MCMULLEN	First Amended Complaint - Deep Creek
	AMCO	MCMULLEN	First Amended Complaint - Salmon Creek

Date	Code	User		Judge
3/5/2014	AMCO	MCMULLEN	First Amended Complaint - Notch Butte, Lincoln	Randy J. Stoker
	APER	COOPE	Defendant: Notch Butte Wind Park Llc Appearance Angelo L Rosa	Randy J. Stoker
4/14/2014	DCHH	MCMULLEN	Hearing result for Scheduling Conference scheduled on 04/14/2014 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated:	Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes	Randy J. Stoker
4/22/2014	STIP	MCMULLEN	Stipulation for Scheduling and Planning	Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Pretrial Conference 09/29/2014 09:00 AM)	Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Court Trial 10/28/2014 08:30 AM)	Randy J. Stoker
	ORDR	MCMULLEN	Order Approving Stipulated Scheduling Order, Pretrial and Court Trial Notice	Randy J. Stoker
4/24/2014	ORDR	MCMULLEN	Amended Order Approving Stipulated Scheduling Order, Pretrial and Court Trial Notice	Randy J. Stoker
4/28/2014	NOTC	MCMULLEN	Notice of Service of Plaintiff's Discovery Responses	Randy J. Stoker
7/30/2014	MISC	MCMULLEN	Plaintiff Fagen Incs Disclosure of Fact and Expert Witnesses	Randy J. Stoker
	MISC	MCMULLEN	Plaintiff Fagen Incs Certification of Service	Randy J. Stoker
	MEMO	MCMULLEN	Plaintiff Fagen Inc's Memorandum of Law in Support of Motions for Summary Judgment	Randy J. Stoker
	MOTN	MCMULLEN	Plaintiff Fagen Inc's Motion for Summary Judgment	Randy J. Stoker
	AFFD	MCMULLEN	Affidavit of Samuel Ewald in Suppor of Fagen Inc's Motion for Summary Judgment	Randy J. Stoker
	AFFD	MCMULLEN	Affidavit of Jennifer A. Johnson in Support of Fagen Inc's Motion for Summary Judgment	Randy J. Stoker
	AFFD	MCMULLEN	Affidavit of Bradley Borman in Support of Fagen Inc's Motion for Summary Judgment	Randy J. Stoker
	AFFD	MCMULLEN	Affidavit of Kirsten Tjosaas in Support of Fagen Inc's Motion for Summary Judgment	Randy J. Stoker
	AFFD	MCMULLEN	Affidavit of Lori Anderson in Support of Fagen Inc's Motion for Summary Judgment	Randy J. Stoker
	NOHG	COOPE	Notice Of Hearing	Randy J. Stoker
7/31/2014	HRSC	MCMULLEN	Hearing Scheduled (Motion for Summary Judgment 09/02/2014 10:00 AM)	Randy J. Stoker
8/4/2014	CERT	MCMULLEN	Plaintiff's Fagen Inc's Certificate of Service	Randy J. Stoker
8/5/2014	MISC	PIERCE	Declaration of Angelo L. Rosa in support of Motion to Compel Depositions	Randy J. Stoker

Date	Code	User	Judge
8/15/2014	MOTN	MCMULLEN	Motion for Pro Hac Vice Admission
	ORDR	MCMULLEN	Order Granting Motion for Pro Hac Vice Admission (Moheban)
	ORDR	MCMULLEN	Order Granting Motion for Pro Hac vice Admission (Kelley)
	APER	MCMULLEN	Plaintiff: Fagen, Inc., A Minnesota Corporation Appearance Keith S Moheban
	APER	MCMULLEN	Plaintiff: Fagen, Inc., A Minnesota Corporation Appearance Timothy M Kelley
	MOTN	MCMULLEN	Motion for Pro Hac Vice Admission
8/18/2014	MOTN	MCMULLEN	Defendant's Ex Parte Motion for Rule 56(F) Continuance and Motion for Order Shortening Time for Ruling Thereupon
	MISC	MCMULLEN	Declaration of Angelo L. Rosa in Support of Defendants' Ex Parte Motion for Rule 56(F) Continuance and Motion for Order Shortening Time for Ruling Thereupon
	MEMO	MCMULLEN	Plaintiff Fagen Inc's Memorandum of Law in Opposition to Defendants Ex Parte Motion for Rule 56(F) Continuance and Motion for Order Shortening Time for Ruling Thereupon
8/19/2014	AFFD	MCMULLEN	Affidavit of John R. Goodell
	MEMO	MCMULLEN	Plaintiff Fagen Inc's Memorandum of Law in Response to Defendants' Motion for Summary Judgment
	REPL	PIERCE	Reply to Plaintiff's Opposition to Defendants' Ex Parte Motion for Rule 56(f) Continuance and Motion for Order shortening Time for Ruling Thereupon
	MEMO	PIERCE	Memorandum in Opposition to Plaintiff's Motion for Summary Judgment
	MISC	PIERCE	Declaration of James T. Carkulis in Opposition to Plaintiff's Motion for Summary Judgment
	MISC	PIERCE	Exhibits to Declaration of James T. Carkulis in Opposition to Plaintiff's Motion for Summary Judgment
8/21/2014		MMILLER	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Mary Taddicken / Madison Underwood Receipt number: 1421276 Dated: 8/21/2014 Amount: \$8.00 (Credit card)
		MMILLER	Miscellaneous Payment: Fax Fee Paid by: Mary Taddicken / Madison Underwood Receipt number: 1421276 Dated: 8/21/2014 Amount: \$2.50 (Credit card)

Date	Code	User		Judge
8/21/2014		MMILLER	Miscellaneous Payment: Technology Cost - CC Paid by: Mary Taddicken / Madison Underwood Receipt number: 1421276 Dated: 8/21/2014 Amount: \$3.00 (Credit card)	Randy J. Stoker
8/25/2014	NOWD	PIERCE	Notice Of Withdrawal of Motion to Compel Deposition	Randy J. Stoker
	MEMO	PIERCE	Memorandum in Reply to Opposition to Defendants' Motion for Summary Judgment	Randy J. Stoker
	MISC	PIERCE	Declaration of Angelo L. Rosa in Reply to Fagen Inc.'s Opposition to Defendants' Motion for summary Judgment	Randy J. Stoker
	MOTN	MCMULLEN	Plaintiff Fagen Inc's Motion for Judicial Notice Pursuant to IRCP 44(d)	Randy J. Stoker
	AFFD	MCMULLEN	Second Affidavit of John R. Goodell	Randy J. Stoker
	NOHG	MCMULLEN	Notice Of Hearing	Randy J. Stoker
8/26/2014	MISC	MCMULLEN	Plaintiff Fagen Inc's Reply Memorandum of Law in Support of Motion for Summary Judgment	Randy J. Stoker
8/28/2014	MISC	PIERCE	Supplemental Declaration of Angelo L. Rosa in Support of Defendants' Ex Parte Motion for Rule 56(F) Continuance and Motion for Order Shortening time for Ruling Thereupon	Randy J. Stoker
8/29/2014	ORDR	COOPE	Order Re: Defendants' Ex Parte Motion for Rule 56(f) Continuance and Motion for Order Shortening Time for Ruling Thereupon	Randy J. Stoker
9/2/2014	MISC	PIERCE	Declaration of Chuck Dickerson in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Moving Defendants' Rule 56(f) Motion	Randy J. Stoker
	DCHH	MCMULLEN	Hearing result for Motion for Summary Judgment scheduled on 09/02/2014 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Motion re Judicial Notice	Randy J. Stoker
	CONT	MCMULLEN	Continued (Pretrial Conference 09/29/2014 01:30 PM)	Randy J. Stoker
		MCMULLEN	Amended Notice Of Hearing	Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes	Randy J. Stoker
9/9/2014	ORDR	MCMULLEN	Order Granting and Denying Motions on Hearing Held 9-2-14	Randy J. Stoker
9/23/2014	MOTN	MCMULLEN	Plaintiff Fagen Inc's Motion to Exclude Defendants' Expert and Lay Witnesses	Randy J. Stoker
	MEMO	PIERCE	Pre-Trial Memorandum I.R.C.P. 16(d)	Randy J. Stoker
9/25/2014	MOTN	MCMULLEN	Plaintiff Fagen Incs Motion to Shorten time and Request for Hearing on Fagens Motion to Exclude Defendants Expert and Lay Witnesses	Randy J. Stoker

Date	Code	User	Judge
9/25/2014	MEMO	MCMULLEN	Plaintiff Fagen Incs Memorandum in Support of Motion to Exclude Defendants Expert and Lay Witnesses
	MISC	MCMULLEN	Plaintiff Fagen Incs Errate Motion to Exclude Defendants Expert and Lay Witnesses
	ORDR	MCMULLEN	Order Granting Plaintiff Fagen Incs Motion to Shorten Time, Order Setting Hearing
9/26/2014	OBJC	PIERCE	Objection to Motion for Order Shortening Time
9/29/2014	STMT	PIERCE	Defendants' Pre-Trial Statement
	DCHH	AGUIRRE	Hearing result for Pretrial Conference scheduled on 09/29/2014 01:30 PM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated:
	CMIN	AGUIRRE	Court Minutes Hearing type: Pretrial Conference Hearing date: 9/29/2014
9/30/2014	ORDR	AGUIRRE	Order on Plaintiff's Motions to Shorten Time and To Exclude Defendants' Expert and Lay Witnesses and Pre-Trial Order
10/21/2014	HRSC	MCMULLEN	Hearing Scheduled (Hearing Scheduled 10/23/2014 09:00 AM)
10/22/2014	STIP	MCMULLEN	Stipulation for Entry of Judgment and to Vacate Trial Setting
10/23/2014	HRVC	MCMULLEN	Hearing result for Court Trial scheduled on 10/28/2014 08:30 AM: Hearing Vacated
	HRVC	MCMULLEN	Hearing result for Hearing Scheduled scheduled on 10/23/2014 09:00 AM: Hearing Vacated
	JDMT	MCMULLEN	Judgment
	CDIS	MCMULLEN	Civil Disposition/Judgment entered: entered for: Exergy Development Group Of Idaho, LLC, Defendant; J.R. Simplot Self-Declaration Of Revocable Trust, Defendant; Jack Ranch Wind Land Holdings, Llc, A Delaware Lim, Defendant; John Does 1-10,, Defendant; Rogerson Flats Wind Park, LLC, Defendant; XRG Development Partners, LLC, Defendant; Fagen, Inc., A Minnesota Corporation, Plaintiff. Filing date: 10/23/2014
10/27/2014	SCND	PIERCE	Scanned
10/30/2014	NTOA	COOPE	Notice Of Appeal
	APSC	COOPE	Appealed To The Supreme Court
11/6/2014	MOTN	PIERCE	Plaintiff Fagen, Inc.'s Motion for Award of Prejudgment Interest, Costs and Attorneys Fees

Date	Code	User	Judge
11/6/2014	MOFC	PIERCE	Plaintiff Fagen, Inc.'s Memorandum Of Costs and Fees
	AFFD	PIERCE	Affidavit of Timothy M. Kelley
	AFFD	PIERCE	Affidavit of John R. Goodell supporting Award of Prejudgment Interest, Costs and Attorney Fees
11/12/2014	CCOA	COOPE	Clerk's Certificate Of Appeal
11/14/2014		SCHULZ	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Angelo L Rosa Receipt number: 1428084 Dated: 11/14/2014 Amount: \$129.00 (Credit card) For: Exergy Development Group Of Idaho, LLC (defendant), Rogerson Flats Wind Park, LLC (defendant) and XRG Development Partners, LLC (defendant)
		SCHULZ	Filing: Technology Cost - CC Paid by: Angelo L Rosa Receipt number: 1428084 Dated: 11/14/2014 Amount: \$3.00 (Credit card) For: Exergy Development Group Of Idaho, LLC (defendant), Rogerson Flats Wind Park, LLC (defendant) and XRG Development Partners, LLC (defendant)
		SCHULZ	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Angelo M Rosa Receipt number: 1428089 Dated: 11/14/2014 Amount: \$100.00 (Credit card)
		SCHULZ	Miscellaneous Payment: Technology Cost - CC Paid by: Angelo M Rosa Receipt number: 1428089 Dated: 11/14/2014 Amount: \$3.00 (Credit card)
11/18/2014	HRSC	MCMULLEN	Hearing Scheduled (Motion for Attorney fees and Costs 02/09/2015 10:00 AM)
	NOHG	COOPE	Notice Of Hearing
11/19/2014	OBJC	BANYAI	Objection to Fagen, Inc.'s Motion for Fees and Costs
12/5/2014	SCDF	COOPE	Supreme Court -- Filed Notice of Appeal. Clerk's Record & Reporter's Transcript Due 02-04-15
12/9/2014		BAGRAMYAN	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Joseph Pirtle Receipt number: 1429792 Dated: 12/9/2014 Amount: \$50.00 (Credit card)
		BAGRAMYAN	Miscellaneous Payment: Fax Fee Paid by: Joseph Pirtle Receipt number: 1429792 Dated: 12/9/2014 Amount: \$2.50 (Credit card)
		BAGRAMYAN	Miscellaneous Payment: Technology Cost - CC Paid by: Joseph Pirtle Receipt number: 1429792 Dated: 12/9/2014 Amount: \$3.00 (Credit card)
12/15/2014	SCDF	COOPE	Supreme Court -- Entered Order RE: Reporter's Transcript Fee Payment Due in 7 Days

Date	Code	User	Judge
12/15/2014	SCDF	COOPE	Supreme Court Document Filed- Order RE: Reporter's Transcript Randy J. Stoker
12/31/2014	SCDF	COOPE	Supreme Court Set Due Date - Transcript and Clerk's Record Due 03-11-15 Randy J. Stoker
1/6/2015	SCDF	COOPE	Supreme Court -- Entered Notice of Defect Order. Amended Notice of Appeal Reflecting Date, Title of Documents and Service to Reporter to be Filed Within 14 Days or this Appeal will Proceed on the Clerk's Record Only Pursuant to I.A.R. 28 Randy J. Stoker
	SCDF	COOPE	Supreme Court Document Filed- Order of Defect Randy J. Stoker
1/14/2015	NTOA	COOPE	Amended Notice Of Appeal Randy J. Stoker
1/27/2015	SCDF	COOPE	Supreme Court -- 01-21-15: Filed Amended Notice of Appeal Due Date for Transcript and Clerk's Record Reset for 03-26-15 Randy J. Stoker
2/6/2015	NOTC	COOPE	Notice of Lodging, Tracy Barksdale; Status Conference September 9, 2013; Motion to Amend Complaint Motion to Dismiss December 2, 2013; Status Conference January 6, 2014, Motion to Withdraw, Motion to Compel January 31, 2014; Motion to Withdraw March 3, 2014; Scheduling Conference April 14, 2014; Motion for Summary Judgment September 2, 2014; Pretrial Conference September 29, 2014 Randy J. Stoker
	LODG	COOPE	Lodged: Transcript on Appeal Randy J. Stoker
2/9/2015	DCHH	MCMULLEN	Hearing result for Motion for Attorney fees and Costs scheduled on 02/09/2015 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes Randy J. Stoker
2/10/2015	ORDR	MCMULLEN	Order for Award of Prejudgment Interest, Costs and Attorney Fees Randy J. Stoker
	JDMT	MCMULLEN	Amended Judgment Randy J. Stoker
2/12/2015		BAGRAMYAN	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Racine, Olson, Nye, Budge & Bailey, Chtd Receipt number: 1503823 Dated: 2/12/2015 Amount: \$16.00 (Check) Randy J. Stoker
		BAGRAMYAN	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Racine, Olson, Nye, Budge & Bailey, Chtd Receipt number: 1503823 Dated: 2/12/2015 Amount: \$4.00 (Check) Randy J. Stoker
		BAGRAMYAN	Miscellaneous Payment: Authentication Paid by: Racine, Olson, Nye, Budge & Bailey, Chtd Receipt number: 1503823 Dated: 2/12/2015 Amount: \$2.00 (Check) Randy J. Stoker

John R. Goodell (ISB#: 2872)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109
Attorneys for Plaintiff Fagen, Inc.

DISTRICT COURT
 TWIN FALLS CO., IDAHO
 FILED

2013 FEB -8 PM 3: 34

BY _____ CLERK
 PS _____ DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
 Plaintiff,)
)
 vs.)
)
 ROGERSON FLATS WIND PARK, LLC,)
 an Idaho limited liability company;)
 EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMENT)
 PARTNERS, LLC, an Idaho limited liability)
 company; J. R. SIMPLOT)
 SELF-DECLARATION OF REVOCABLE)
 TRUST, an Idaho revocable trust; and JACK)
 RANCH WIND LAND HOLDINGS, LLC,)
 a Delaware limited liability company; and)
 "JOHN DOES 1-10,")
)
 Defendants.)
 _____)

Case No. CV-1013-573

COMPLAINT

Fee Code: (A)(\$96.00)

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and for its
 Complaint against the above-named Defendants, and any other persons or entities claiming any right
 to possession or interest of the subject property, states and alleges as follows:

1. Plaintiff Fagen is a corporation duly organized under the laws of the State of
 Minnesota. Fagen is a registered contractor pursuant to Idaho Code § 54-5204, license number RCE-

26001, and in good standing.

2. Defendant J. R. Simplot Self-declaration of Revocable Trust (“Simplot Trust”), an Idaho revocable trust, is the owner or reputed owner and lessor of real property and improvements thereon (hereinafter described as the “Property”), as more fully described in Exhibit A-1 attached to the Claim of Lien recorded as Instrument No. 2012014945 on 8/8/2012 in the Twin Falls County Recorder’s Office.

A true and correct copy of said Claim of Lien is attached as Exhibit One hereto and adopted by reference as though fully set forth herein (“Claim of Lien”).

3. Defendant Jack Ranch Wind Land Holdings, LLC (hereinafter “Jack Ranch Wind Land Holdings”), an Idaho limited liability company, is an assignee under a Partial Assignment of Lease (Substation Property), from Rogerson Flats Wind Park, LLC, assignor, and is a tenant or reputed tenant of real property and improvements for an electric substation facility and related improvements tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust.

4. Defendant Exergy Development Group of Idaho, LLC (hereinafter described as “Exergy”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with XRG and/or Rogerson Flats Wind Park, LLC.

5. Defendant XRG Development Partners, LLC (hereinafter described as “XRG”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or

affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or Rogerson Flats Wind Park, LLC.

6. Defendant Rogerson Flats Wind Park, LLC (hereinafter described as Rogerson Flats Wind Park”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to lease(s) entered with the with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or XRG.

7. Exergy, XRG, Rogerson Flats Wind Park, and/or Jack Ranch Wind Land Holdings are the owner(s) or reputed owner(s) of certain improvements, facilities, and structures being constructed on the Property (“hereinafter described as the “Project”).

8. Fagen claims an interest in the Property pursuant to its Claim of Lien in the amount of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law.

9. Defendants “John Does 1-10” are additional unnamed persons or parties may claim and interest in the property who are presently unknown. Fagen reserves the right to amend this Complaint to add such additional persons or parties at a later time.

10. Jurisdiction is proper in this Court pursuant to Idaho Code § 5-514 as the Defendants have transacted business and/or this action relates to ownership, use or possession of real property located within the State of Idaho.

11. Venue is proper in this Court pursuant to Idaho Code § 5-401.

12. In 2011 Fagen entered into agreements and/or memorandum of understanding(s) to supply labor, materials, and engineering, procurement and construction services with Exergy, upon, and for the benefit, of the Property.

13. Fagen supplied labor, materials, and services upon and for the benefit of the Property, commencing work in 2011.

14. Fagen continued to provide labor, furnish materials, and supply services for the improvement to the Property until July 31, 2012, when it ceased doing so due to non-payment by Exergy.

15. Fagen performed this work in a conforming, workmanlike manner pursuant to its agreement with Exergy.

16. As a result of Exergy's failure to pay Fagen for labor, materials and services supplied for improvements to the Property, Fagen filed its Claim of Lien as described above.

17. The reasonable value of the benefit to the Property is equivalent to the labor, materials, and services supplied by Fagen as the amount due stated in its Claim of Lien.

18. True and correct copies of Fagen's Claim of Lien were timely served by certified mailing on Defendants.

19. Fagen is entitled to a judgment foreclosing its Claim of Lien for the amount thereof, together with accrued interest pursuant to law; a determination that its Claim of Lien is superior and has priority to any interest claimed by all Defendants, and each of them; and for foreclosure sale with application of the proceeds of sale to amount due to Fagen.

20. Fagen is entitled to recover costs and reasonable attorney fees to maintain this action, pursuant to Idaho Code § 45-501 *et seq.* The sum of \$10,000 is reasonable should this matter be resolved by default.

WHEREFORE, Fagen prays for judgment against Defendants as follows:

- A. An order foreclosing Fagen's Claim of Lien against the Property, and declaring the amount due of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law;
- B. An order declaring the Defendants, and all persons or entities claiming an interest in the Property or any part thereof, to be barred and foreclosed of all right, title, interest, claim or equity of redemption in and to the Property;
- C. An order for sale of the Property according to law and directing the proceeds of sale be applied to the amount due Fagen;
- D. An award of costs incurred;
- E. An award of reasonable attorney fees;
- F. Such further relief as the Court deems just in the premises.

DATED this 6th day of February, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: John R. Goodell
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

John R. Goodell (ISB #2872)
Daniel C. Green (ISB #3213)
Ferrell S. Ryan, III (ISB # 8414)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

TWIN FALLS COUNTY
RECORDED FOR:
FIRST AMERICAN TITLE - TWIN FA
12:38:45 PM 08-08-2012
2012014945
NO. PAGES 14 FEE: \$49.00
KRISTINA GLASCOCK
COUNTY CLERK
DEPUTY: DJW
Electronically Recorded by Simplifile

Attorneys for Claimant Fagen, Inc.

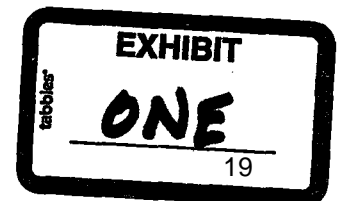
_____)
FAGEN, INC., a Minnesota corporation,)
Claimant,)
vs.)
ROGERSON FLATS WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC (ID), an Idaho limited)
liability company; J. R. SIMPLOT)
SELF-DECLARATION OF REVOCABLE)
TRUST, an Idaho revocable trust; and JACK)
RANCH WIND LAND HOLDINGS, LLC, a)
Delaware limited liability company,)
Owners/Reputed Owners.)
_____)

CLAIM OF LIEN (I.C. § 45-507)

NOTICE IS HEREBY GIVEN:

That FAGEN, INC., 501 W. Highway 212, P. O. Box 159, Granite Falls, MN 56241, hereby claims the benefit of the law relative to liens of mechanics and materialmen upon real property as provided by the laws of the State of Idaho, I.C. § 45-501 *et seq.*, and does hereby claim a lien upon that certain tract of land and improvements thereon as hereinafter described, and in the following amounts:

ROGERSON FLATS WIND PARK - CLAIM OF LIEN (I.C. § 45-507) - Page 1



John R. Goodell (ISB #2872)
 Daniel C. Green (ISB #3213)
 Ferrell S. Ryan, III (ISB # 8414)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109

2012014945
 Twin Falls
 8/8/12 12:38:45

Attorneys for Claimant Fagen, Inc.

_____)
 FAGEN, INC., a Minnesota corporation,)
)
 Claimant,)
)
 vs.)
)
 ROGERSON FLATS WIND PARK, LLC,)
 an Idaho limited liability company;)
 EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMENT)
 PARTNERS, LLC (ID), an Idaho limited)
 liability company; J. R. SIMPLOT)
 SELF-DECLARATION OF REVOCABLE)
 TRUST, an Idaho revocable trust; and JACK)
 RANCH WIND LAND HOLDINGS, LLC, a)
 Delaware limited liability company,)
)
 Owners/Reputed Owners.)
 _____)

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1. That the principal sum of **\$1,412,774.81** in accordance with the Accounts Receivable History By Customer statement attached hereto as **Exhibit B** and adopted by reference, is owed for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment for the ROGERSON FLATS WIND PARK, LLC, a wind park project, located at or near Rogerson, Twin Falls, County, Idaho.

In addition, prejudgment interest is owed on the above principal installment amounts from the indicated due date on the invoices listed in **Exhibit B** pursuant to the parties' underlying written contract, and/or Idaho's statutory rate @ 12% per annum, until paid or entry of judgment; plus costs and attorney fees incurred in collection.

2. That said amounts are due, and owing, after deducting all just credits and offsets, for said claim for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, in and for those certain improvements of said land located at Twin Falls County, Idaho, more particularly described in **Exhibit A-1 and A-2** attached hereto and adopted by reference, commonly known as ROGERSON FLATS WIND PARK, LLC, located at or near Rogerson, Twin Falls, County, Idaho, being the subject of the subject of lease(s) to ROGERSON FLATS WIND PARK, LLC and/or EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, and/or XRG DEVELOPMENT PARTNERS, LLC (ID), Lessees, and/or partial assignment of lease (for substation property) to JACK RANCH WIND LAND HOLDINGS, LLC; and said land also being owned by the J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, Lessor.¹

¹Said Lessor's Trust established by written instrument dated December 21, 1989, and registered in the Fourth Judicial District of the State of Idaho, Ada County, as No. 3T-788.

In addition, **Exhibit C** attached hereto and adopted by reference are two color-coded maps and engineering drawings which locate and identify ROGERSON FLATS WIND FARM, LLC.

3. That the name(s) and address(es) of the person(s) and/or entity(ies) who/which contracted with claimant and for whom claimant performed labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, are:

ROGERSON FLATS WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

ROGERSON FLATS WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

ROGERSON FLATS WIND PARK, LLC
Attn: Peter J. Richardson, Registered Agent
515 N. 27th St.
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

JACK RANCH WIND LAND HOLDINGS, LLC
3000 El Camino Real
5 Palo Alto Square, Suite 700
Palo Alto, CA 943306

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

4. Claimant's last item of labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment occurred on July 31, 2012.

5. That the owner(s) or reputed owner(s) of said property to be charged with said lien are:

ROGERSON FLATS WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

ROGERSON FLATS WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

ROGERSON FLATS WIND PARK, LLC
Attn: Peter J. Richardson, Registered Agent
515 N. 27th St.
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

JACK RANCH WIND LAND HOLDINGS, LLC
3000 El Camino Real
5 Palo Alto Square, Suite 700
Palo Alto, CA 943306

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

6. That the description of the property to be charged with said lien, and upon which said improvements were made, and which is situated Twin Falls County, Idaho, is more fully described in **Exhibits A-1, A-2 and C** attached hereto and adopted by reference.


7. That the mailing address for this Claimant is:

FAGEN, INC.
Attn: Jennifer A. Johnson,
Chief Financial Officer
501 W. Highway 212
P. O. Box 159
Granite Falls, MN 56241

8. That the undersigned certifies that a true and correct copy of this Claim of Lien following recording will either be served personally, or served by mailing a copy thereof by U.S. mail, certified - return receipt requested, within the time prescribed by statute for doing so, upon the owners or reputed owners who/which are identified above.

Dated this 3rd day of August, 2012.

CLAIMANT:
FAGEN, INC.

By: 
JOHN R. GOODELL
Attorney and Authorized Representative for
Claimant

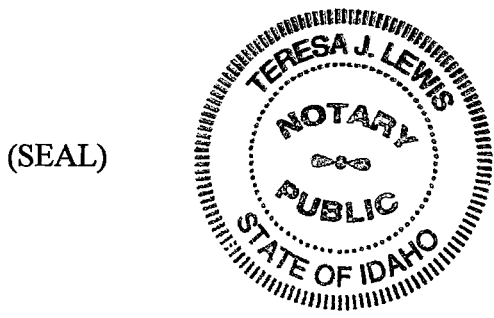
STATE OF IDAHO)
: ss.
County of Bannock)

JOHN R. GOODELL, being duly sworn, on oath, says that he is the attorney and authorized signatory on behalf of claimant, FAGEN, INC., in the foregoing Claim of Lien, that he has read the same and knows the contents thereof; and that the same is true, and that it contains a correct statement of his/her/its demands after deducting all just credits and offsets; and affiant believes the same to be just.

John R. Goodell

JOHN R. GOODELL
Attorney for Claimant

SUBSCRIBED AND SWORN TO before me this 3rd day of August, 2012.



Teresa J. Lewis

NOTARY PUBLIC FOR IDAHO
Residing at: POCATELLO IDAHO
My Commission Expires: 7-20-18

Rogerson Flats

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 7: GOV'T. LOTS 2, 3, 4, 5, 6, 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:

TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., TWIN FALLS COUNTY, IDAHO
SECTION 7:

BEGINNING AT A POINT ON THE SECTION LINE 763 FEET, MORE OR LESS, SOUTH OF
THE WEST QUARTER CORNER OF SECTION 7, WHICH POINT IS STATION 252+85 OF
"A" LATERAL AS LOCATED;

THENCE NORTH 65° 58' EAST 89.4 FEET;

THENCE ON A 20° CURVE TO THE LEFT, 157.2 FEET;

THENCE NORTH 34° 32' EAST 422.7 FEET;

THENCE ON A 20° CURVE TO THE RIGHT 80.8 FEET;

THENCE NORTH 50° 42' EAST 580.7 FEET;

THENCE ON A 10° CURVE TO THE RIGHT, 210 FEET;

THENCE NORTH 71° 42' EAST 457.6 FEET;

THENCE ON A 10° CURVE TO THE LEFT, 180 FEET, TO STATION 274+63.4 WHICH

POINT IS ON THE LAST EAST LINE OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ BEING GOV'T LOT 7 OF

SECTION 7 AND 865 FEET, MORE OR LESS, SOUTH OF THE NORTHEAST CORNER OF
SAID SW $\frac{1}{4}$ NW $\frac{1}{4}$ GOV'T LOT 7 OF SECTION 7, ALL SITUATED IN THE W $\frac{1}{2}$ OF SECTION
7, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M..

AND EXCEPT

THAT PORTION OF THE SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 7, TOWNSHIP 14 SOUTH, RANGE 16
EAST, B.M., AS DESCRIBED:

BEGINNING AT A POINT WHICH IS THE CORNER COMMON TO SECTIONS 7, 8, 17
AND 18, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M.;

THENCE NORTH FOR 141 FEET;

THENCE SOUTH 76° 46' 32" WEST FOR 610 FEET;

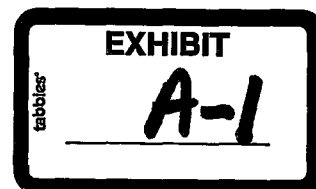
THENCE EAST FOR 600 FEET TO THE CORNER COMMON TO SECTIONS 7, 8, 17 AND
18, WHICH IS THE POINT OF BEGINNING.

SECTION 8: NE $\frac{1}{4}$ SW $\frac{1}{4}$; S $\frac{1}{2}$ SW $\frac{1}{4}$

SECTION 17: GOV'T. LOTS 1 AND 2, EXCEPT THE NORTH 300 FEET OF SAID LOTS;
S $\frac{1}{2}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$; S $\frac{1}{2}$ SE $\frac{1}{4}$; W $\frac{1}{2}$ OF SECTION NORTHWEST OF RAILROAD; 6.93
ACRES RAILROAD RIGHT OF WAY; W $\frac{1}{2}$ OF SECTION SOUTH AND EAST OF RAILROAD.

AND EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHEAST CORNER OF SECTION 17 ALL IN TOWNSHIP 14
SOUTH, RANGE 16 EAST, B.M., WHICH BEARS SOUTH 00° 09' 24" WEST A DISTANCE
OF 2640.66 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 17; THENCE
ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 1320.33 FEET ALONG
THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 26'
58" WEST A DISTANCE OF 450.00 FEET ALONG THE 1/16TH LINE;



Rogerson Flats

**THENCE ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF SOUTH 89° 26' 58" EAST A DISTANCE OF 450.00 FEET TO
THE EAST BOUNDARY OF SAID SECTION 17;
THENCE ON A BEARING OF SOUTH 00° 09' 24" WEST A DISTANCE OF 120.00 FEET
ALONG THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF
BEGINNING.**

SECTION 20: ALL

SECTION 29: ALL

Exhibit A-2

Substation Property Description

"PARCEL 1"

A PARCEL OF LAND IN THE NE¼, SECTION 29 ALL IN TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO AND BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 29 ALL IN TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., WHICH BEARS NORTH 00° 26' 14" EAST A DISTANCE OF 5277.76 FEET FROM THE SOUTHEAST CORNER; THENCE ON A BEARING OF SOUTH 00° 26' 14" WEST A DISTANCE OF 662.00 FEET ALONG THE EAST BOUNDARY OF THE NE¼ SECTION 29 TO THE REAL POINT OF BEGINNING;

THENCE FROM THIS REAL POINT OF BEGINNING CONTINUING ON A BEARING OF SOUTH 00° 26' 14" WEST A DISTANCE OF 615.00 FEET ALONG THE EAST BOUNDARY OF THE NE¼ SECTION 29;

THENCE ON A BEARING OF NORTH 89° 33' 46" WEST A DISTANCE OF 500.00 FEET;

THENCE ON A BEARING OF NORTH 00° 26' 14" EAST A DISTANCE OF 615.00 FEET PARALLEL WITH THE EAST BOUNDARY OF THE NE¼ SECTION 29;

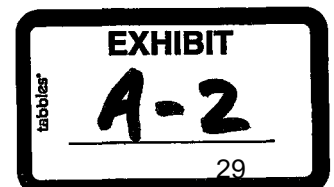
THENCE ON A BEARING OF SOUTH 89° 33' 46" EAST A DISTANCE OF 500.00 FEET TO THE REAL POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL 1 CONTAINS 7.06 ACRES MORE OR LESS.

(BASIS OF BEARINGS: SECTION LINE FROM THE NORTHEAST CORNER OF SECTION 29, T. 14 S., R. 16 E., B.M. TO THE SOUTHEAST CORNER OF SECTION 29, T. 14 S., R. 16 E., B.M., ALL IN TWIN FALLS COUNTY, IDAHO. SAID SECTION LINE BEING SOUTH 00° 26' 14" WEST.)

As described on the attached survey.

Partial Assignment of Lease (Substation Property)
(Jack Ranch)
sf-3122531



DATE 7/30/12 ARP064
 *** SUMMARY ***

01 000 Fagen Inc

ACCOUNTS RECEIVABLE HISTORY BY CUSTOMER

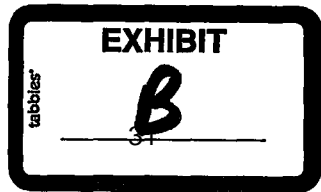
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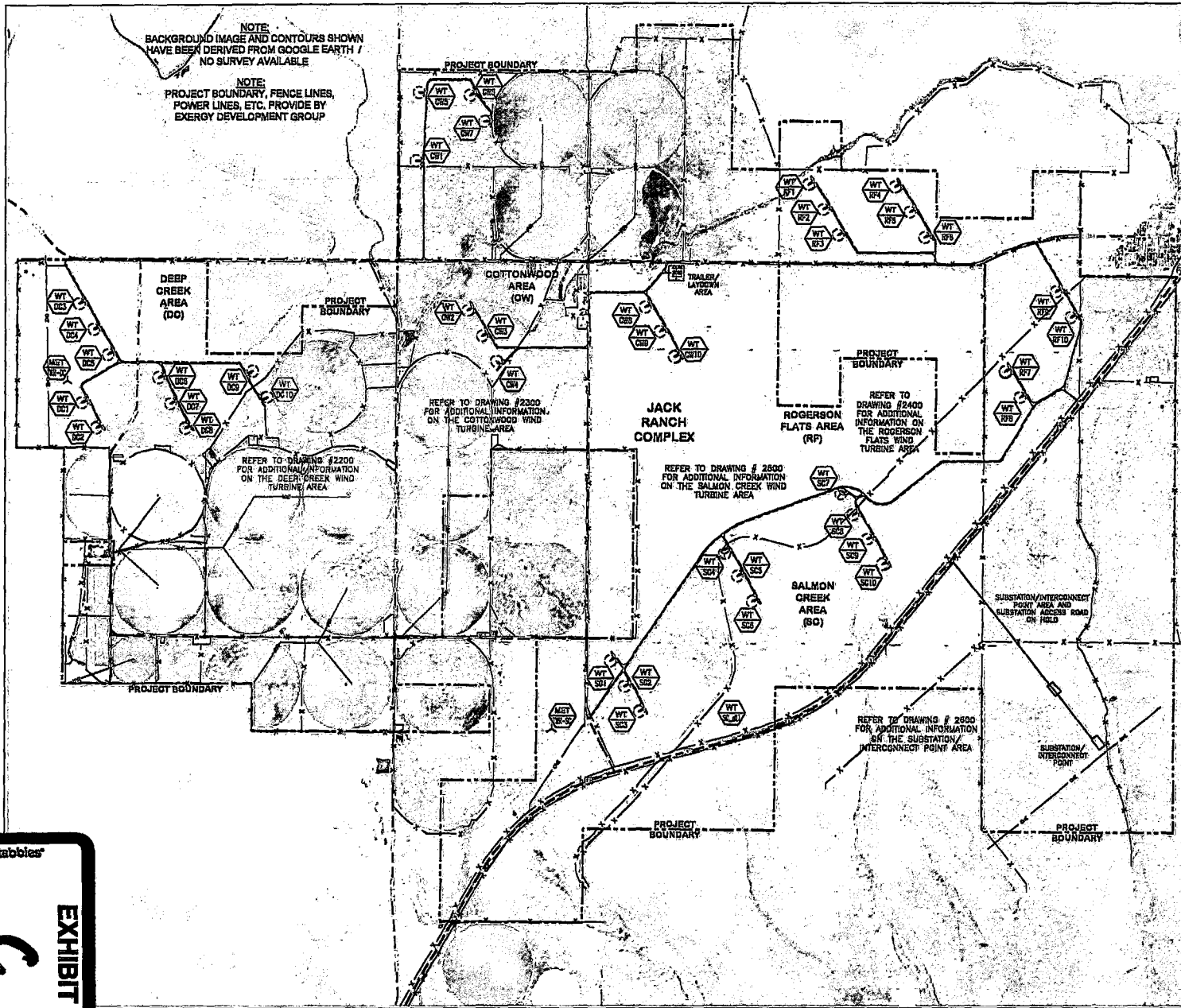
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INVOICE DATES 00/00/0000 - 99/99/9999

CHECK DATES 00/00/0000 - 99/99/9999

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00010	12/27/2011	APPLICATION #1	114034	603			398503.75			.00
00002	02/03/2012	APPLICATION #2	114034	603			88359.58			.00
00003	03/16/2012	APPLICATION #3	114034	603			.00	03/16/2012	999999	.00
00030	03/16/2012	APPLICATION #3	114034	603			19114.00			.00
00004	04/25/2012	APPLICATION #4	114034	603			220281.78			.00
00005	05/25/2012	APPLICATION #5	114034	603			420708.40			.00
00006	06/29/2012	APPLICATION #6	114034	603			168438.62			.00
00007	07/27/2012	APPLICATION #7	114034	603			97268.68			.00
*** SUBJOB TOTAL ***							1,412,774.81			.00
** BALANCE **										1,412,774.81
*** JOB TOTAL ***							1,412,774.81			.00
** BALANCE **										1,412,774.81





NOTE:
BACKGROUND IMAGE AND CONTOURS SHOWN
HAVE BEEN DERIVED FROM GOOGLE EARTH /
NO SURVEY AVAILABLE

NOTE:
PROJECT BOUNDARY, FENCE LINES,
POWER LINES, ETC. PROVIDE BY
EXERGY DEVELOPMENT GROUP

**WIND TURBINE LOCATIONS
DEEP CREEK AREA (DC)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
DC1	N 42.20468457	W 114.70698999
DC2	N 42.20270901	W 114.70448269
DC3	N 42.21218888	W 114.70832269
DC4	N 42.21028228	W 114.70490269
DC5	N 42.20830572	W 114.7033912
DC6	N 42.20896328	W 114.8920792
DC7	N 42.20464565	W 114.8988844
DC8	N 42.20269842	W 114.8983472
DC9	N 42.20710623	W 114.8984801
DC10	N 42.20516988	W 114.8988928
RF-SCHN	N 42.20833010	W 114.7074978
RF-SCHN	N 42.20241979	W 114.8891663

**WIND TURBINE LOCATIONS
COTTONWOOD AREA (CW)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
CW1	N 42.2338794	W 114.8718328
CW2	N 42.21188374	W 114.8849008
CW3	N 42.20800717	W 114.8849438
CW4	N 42.20789081	W 114.883428
CW5	N 42.2282278	W 114.8718888
CW6	N 42.22831488	W 114.8883012
CW7	N 42.22838031	W 114.8849438
CW8	N 42.21220201	W 114.8482148
CW9	N 42.21033728	W 114.8488874
CW10	N 42.20838071	W 114.84818
RF-SCHN	N 42.20782608	W 114.84477081

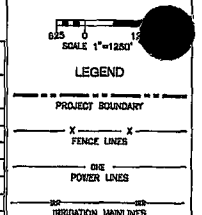
**WIND TURBINE LOCATIONS
ROGERSON FLATS AREA (RF)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
RF1	N 42.22177882	W 114.8316189
RF2	N 42.21882386	W 114.8301022
RF3	N 42.21787730	W 114.8288848
RF4	N 42.22182342	W 114.827918
RF5	N 42.21897685	W 114.8212741
RF6	N 42.21773028	W 114.8197888
RF7	N 42.20748472	W 114.811484
RF8	N 42.20883816	W 114.8099488
RF9	N 42.2138889	W 114.8083188
RF10	N 42.21188323	W 114.8047881
RF-SCHN	N 42.20780348	W 114.81211072

**WIND TURBINE LOCATIONS
SALMON CREEK AREA (SC)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
SC1	N 42.18403031	W 114.8818104
SC2	N 42.18289174	W 114.8498837
SC3	N 42.18104817	W 114.8484770
SC4	N 42.18348008	W 114.841204
SC5	N 42.19180382	W 114.8388634
SC6	N 42.18856698	W 114.8370588
SC7	N 42.18918028	W 114.8281908
SC8	N 42.18837883	W 114.8288788
SC9	N 42.18443220	W 114.8283388
SC10	N 42.18246889	W 114.8238418
RF-SCHN	N 42.17888600	W 114.8073708
RF-SCHN	N 42.18243331	W 114.8232089

NO.	REVISION	BY	DATE
1	ISSUE FOR CONSTRUCTION	MDX	02/14/2011
2	REVISED FOR FIELD CONDITIONS	MDX	02/14/2011



LEGEND

- PROJECT BOUNDARY
- X-X- FENCE LINES
- ONE POWER LINES
- IRRIGATION MAINLINES

The original of this drawing was issued and sealed by **JERRILL BROWN**,
Date: 02/22/01, Registration No: 2226,
and is in the of Fagen Engineering LLC,
corporate office in Grants Falls, Idaho.



FAGEN ENGINEERING LLC
Civil - Structural - Mechanical - Electrical -
Environmental

100 8th Avenue, P.O. Box 180
Grants Falls, WI 82421 Tel. 330-584-1330

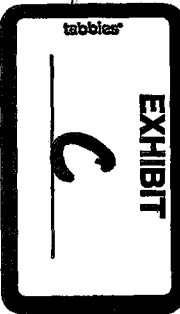
This drawing was prepared for use on a specific site and is not intended for use on different project sites or at a later date. It is the user's responsibility to verify all data and information on site before use. The user agrees to indemnify and hold Fagen Engineering LLC harmless from all claims, damages, and expenses, including reasonable attorneys' fees, arising from any use of this drawing.

**EXERGY DEVELOPMENT GROUP
USA, IDAHO**

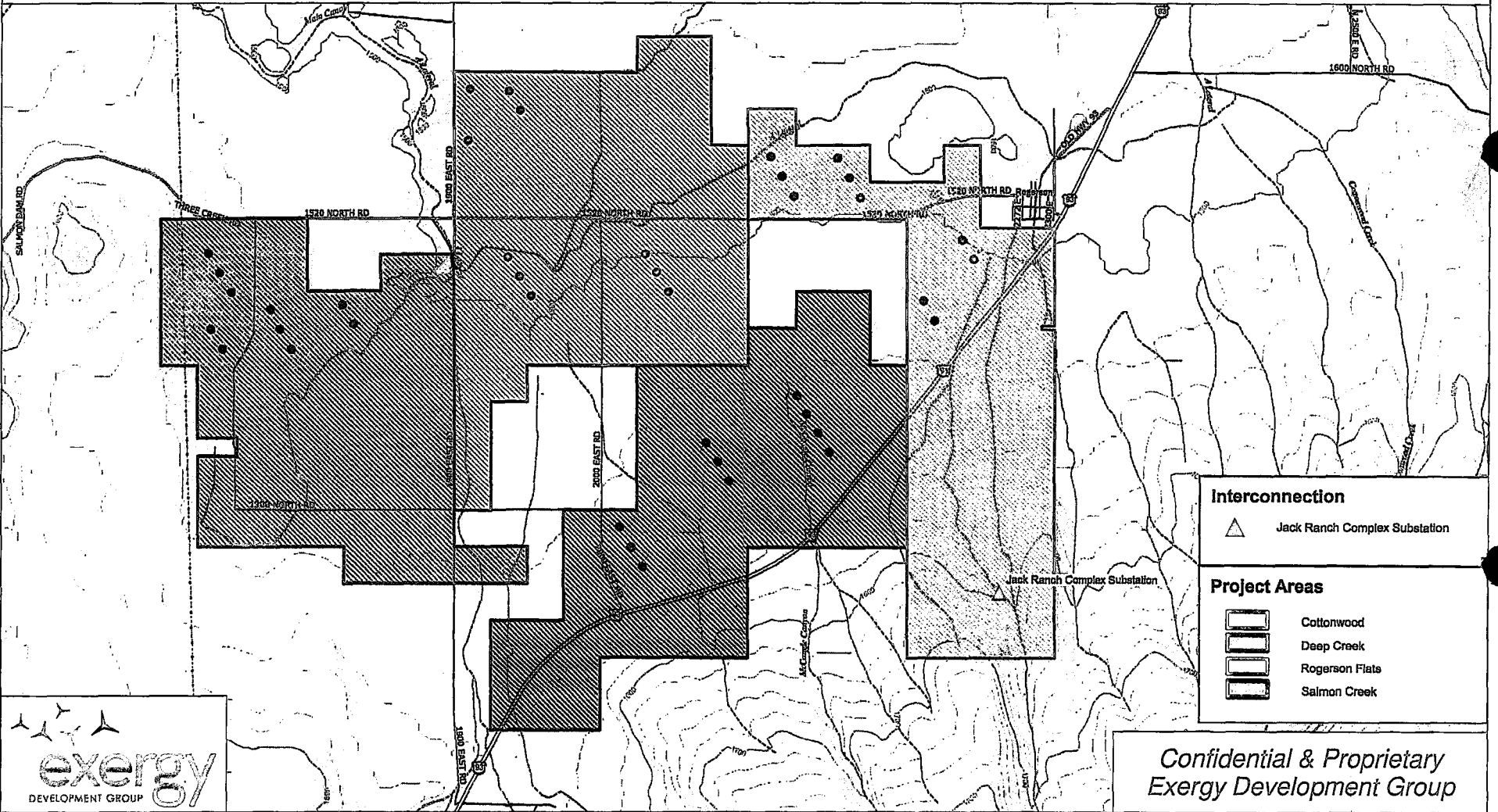
**JACK RANCH COMPLEX
PROJECT LAYOUT**

DATE	BY	REVISION
02/14/2011	MDX	ISSUE FOR CONSTRUCTION
02/14/2011	MDX	REVISED FOR FIELD CONDITIONS

JOB NUMBER: EG0202







Jack Ranch Complex



Interconnection

△ Jack Ranch Complex Substation

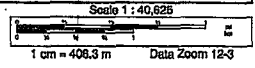
Project Areas

-  Cottonwood
-  Deep Creek
-  Rogerson Flats
-  Salmon Creek



Confidential & Proprietary
 Exergy Development Group

Data use subject to license.
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 www.delorme.com



132
John R. Goodell (ISB#: 2872)
Daniel C. Green (ISB#: 3213)
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BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109
Emails: jrg@racinelaw.net
dan@racinelaw.net

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 SEP -6 AM 10: 35

BY _____
CLERK
DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
ROGERSON FLATS WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited liability)
company; J. R. SIMPLOT)
SELF-DECLARATION OF REVOCABLE)
TRUST, an Idaho revocable trust; and JACK)
RANCH WIND LAND HOLDINGS, LLC,)
a Delaware limited liability company; and)
"JOHN DOES 1-10,")
)
Defendants.)
_____)

Case No. CV-2013-573

**PLAINTIFF'S MOTION FOR LEAVE TO
AMEND COMPLAINT**

COMES NOW, Plaintiff, FAGEN, INC. ("Fagen") by and through its counsel of record and pursuant to Rule 15 of the Idaho Rules of Civil Procedure hereby moves this Court for leave to amend its Complaint in the form that is attached hereto as **Exhibit "A"**. The reasons for Fagen

seeking to amend its Complaint are as follows:

1. Fagen seeks to amend its Complaint to add alternative causes of action for breach of contract. (See proposed First Amended Complaint paragraphs 22-25) and for Quantum Meruit. (See proposed First Amended Complaint paragraphs 26-30). The alternative causes of action are based on the same facts alleged in the current Complaint filed by Fagen on February 8, 2013.

2. All other allegations in the proposed First Amended Complaint are the same as in the current Complaint.

3. This case has only recently begun in earnest with Defendants, Rogerson Flats Wind Pack, LLC, Exergy Development Group of Idaho LLC and XRG Development Partners, LLC, accepting service of the Complaint on August 5, 2013 and discovery having not yet commenced.

4. A motion for leave to amend a complaint shall be freely given when justice so requires (IRCP 15(a)).

5. The proposed First Amended Complaint will not cause delay or prejudice any of the Defendants.

WHEREFORE, Fagen respectfully requests that the Court grant its Motion for Leave to Amend and allow it to file the proposed First Amended Complaint in the form attached hereto.

DATED this 5th day of September, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: John R. Goodell
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of September, 2013, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
Attorney for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; and Rogerson Flats Wind Park, LLC


- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

Richard L. Stacey
Joe Meuleman
MEULEMAN MOLLERUP, LLP
755 W Front Street, Suite 200
Boise, Idaho 83702
Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

Paul Lion
MORRISON & FOERSTER, LLP
755 Page Mill Road
Palo Alto, CA 94304-1018
Attorney for Jack Ranch Wind Land Holdings, LLC

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile



JOHN R. GOODELL

John R. Goodell (ISB#: 2872)
Daniel C. Green (ISB#: 3213)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109
Emails: jrg@racinelaw.net
dan@racinelaw.net

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)

Case No. CV-2013-573

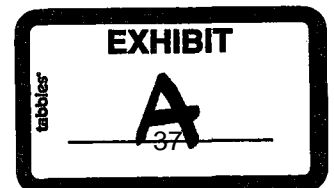
vs.)

FIRST AMENDED COMPLAINT

)
ROGERSON FLATS WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited liability)
company; J. R. SIMPLOT)
SELF-DECLARATION OF REVOCABLE)
TRUST, an Idaho revocable trust; and JACK)
RANCH WIND LAND HOLDINGS, LLC,)
a Delaware limited liability company; and)
"JOHN DOES 1-10,")

)
Defendants.)
)
_____)

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and for its
Complaint against the above-named Defendants, and any other persons or entities claiming any right
to possession or interest of the subject property, states and alleges as follows:



PARTIES

1. Plaintiff Fagen is a corporation duly organized under the laws of the State of Minnesota. Fagen is a registered contractor pursuant to Idaho Code § 54-5204, license number RCE-26001, and in good standing.

2. Defendant J. R. Simplot Self-declaration of Revocable Trust (“Simplot Trust”), an Idaho revocable trust, is the owner or reputed owner and lessor of real property and improvements thereon (hereinafter described as the “Property”), as more fully described in Exhibit A-1 attached to the Claim of Lien recorded as Instrument No. 2012014945 on 8/8/2012 in the Twin Falls County Recorder’s Office. A true and correct copy of said Claim of Lien is attached as **Exhibit One** hereto and adopted by reference as though fully set forth herein (“Claim of Lien”).

3. Defendant Jack Ranch Wind Land Holdings, LLC (hereinafter “Jack Ranch Wind Land Holdings”), an Idaho limited liability company, is an assignee under a Partial Assignment of Lease (Substation Property), from Rogerson Flats Wind Park, LLC, assignor, and is a tenant or reputed tenant of real property and improvements for an electric substation facility and related improvements which tenant or reputed tenant claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust.

4. Defendant Exergy Development Group of Idaho, LLC (hereinafter described as “Exergy”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with XRG and/or Rogerson Flats Wind Park, LLC.

5. Defendant XRG Development Partners, LLC (hereinafter described as “XRG”), an

Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or Rogerson Flats Wind Park, LLC.

6. Defendant Rogerson Flats Wind Park, LLC (hereinafter described as Rogerson Flats Wind Park”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to lease(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or XRG.

7. Exergy, XRG, Rogerson Flats Wind Park, and/or Jack Ranch Wind Land Holdings are the owner(s) or reputed owner(s) of certain improvements, facilities, and structures being constructed on the Property (“hereinafter described as the “Project”).

8. Fagen claims an interest in the Property pursuant to its Claim of Lien in the amount of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law.

9. Defendants “John Does 1-10” are additional unnamed persons or parties may claim and interest in the property who are presently unknown. Fagen reserves the right to amend this Complaint to add such additional persons or parties at a later time.

10. Jurisdiction is proper in this Court pursuant to Idaho Code § 5-514 as the Defendants have transacted business and/or this action relates to ownership, use or possession of real property located within the State of Idaho.

11. Venue is proper in this Court pursuant to Idaho Code § 5-401.

FACTUAL ALLEGATIONS

12. In 2011 Fagen entered into an Engineering, Procurement and Construction Services Agreement (the "Agreement") and/or other agreements and memorandum of understanding(s) to supply labor, materials, and engineering, procurement and construction services with Exergy, upon, and for the benefit, of the Property. A true and correct copy of the relevant portions of the Agreement are attached hereto as **Exhibit Two** and adopted by reference as though fully set forth herein.

13. Fagen supplied labor, materials, and services upon and for the benefit of the Property, commencing work in 2011.

14. Fagen continued to provide labor, furnish materials, and supply services for the improvement to the Property until July 31, 2012, when it ceased doing so due to non-payment by Exergy.

15. Fagen performed this work in a conforming, workmanlike manner pursuant to its agreement with Exergy.

16. As a result of Exergy's failure to pay Fagen for labor, materials and services supplied for improvements to the Property, Fagen filed its Claim of Lien as described above.

17. The reasonable value of the benefit to the Property is equivalent to the labor, materials, and services supplied by Fagen as the amount due stated in its Claim of Lien.

18. True and correct copies of Fagen's Claim of Lien were timely served by certified mailing on Defendants.

FIRST CAUSE OF ACTION
(Lien Foreclosure)

19. Fagen realleges the allegations contained in paragraphs 1-18 and incorporates the same herein by reference.

20. Fagen is entitled to a judgment foreclosing its Claim of Lien for the amount thereof, together with accrued interest pursuant to law; a determination that its Claim of Lien is superior and has priority to any interest claimed by all Defendants, and each of them; and for foreclosure sale with application of the proceeds of sale to amount due to Fagen.

21. Fagen is entitled to recover costs and reasonable attorney fees to maintain this action, pursuant to Idaho Code § 45-501 *et seq.* The sum of \$10,000 is reasonable should this matter be resolved by default.

SECOND CAUSE OF ACTION
(Breach of Contract)

22. Fagen realleges the allegations contained in paragraphs 1-21 and incorporates the same herein by reference.

23. Fagen has performed all of its obligations under the Agreement.

24. Exergy has breached the Agreement in that it has failed and refused to pay Fagen in full for labor, services and materials furnished by Fagen.

25. Fagen has suffered damages as a direct and proximate result of Exergy's breach of contract in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Quantum Meruit)

26. Fagen realleges the allegations contained in paragraphs 1-25 and incorporates the same herein by reference.

27. Fagen provided valuable labor, services and materials that were necessary for Exergy to perform and complete its obligations.

28. Exergy benefitted from Fagen's labor, services and materials, including, but not limited to the fact that Exergy could not have fully performed its obligations in the absence of the labor, services and materials that Fagen provided.

29. Exergy has failed and refused to pay Fagen for the labor, services and materials it provided.

30. Fagen has suffered damages and Exergy has been unjustly enriched as a result of Exergy's failure to pay Fagen for the labor, materials and services provided by Fagen in an amount to be proved at trial.

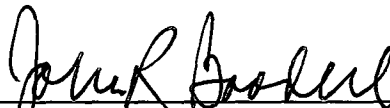
WHEREFORE, Fagen prays for judgment against Defendants as follows:

- A. An order foreclosing Fagen's Claim of Lien against the Property, and declaring the amount due of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law;
- B. An order declaring the Defendants, and all persons or entities claiming an interest in the Property or any part thereof, to be barred and foreclosed of all right, title, interest, claim or equity of redemption in and to the Property;
- C. An order for sale of the Property according to law and directing the proceeds of sale be applied to the amount due Fagen;

- D. Damages for breach of contract, and/or for Quantum Meruit in at least the amount of \$1,412,774.81 or such other amounts to be determined at trial;
- E. An award of costs incurred;
- F. An award of reasonable attorney fees in the amount of \$10,000 if this matter is resolved by default, or if not resolved by default in such amount as the Court deems reasonable;
- G. Such further relief as the Court deems just in the premises.

DATED this 5th day of September, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of September, 2013, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
*Attorney for Exergy Development Group of
Idaho, LLC; XRG Development Partners,
LLC; and Rogerson Flats Wind Park, LLC*

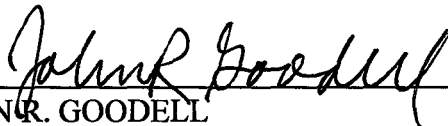
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Richard L. Stacey
Joe Meuleman
MEULEMAN MOLLERUP, LLP
755 W Front Street, Suite 200
Boise, Idaho 83702
*Attorneys for Defendant J. R. Simplot Self-
Declaration of Revocable Trust*

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Paul Lion
MORRISON & FOERSTER, LLP
755 Page Mill Road
Palo Alto, CA 94304-1018
*Attorney for Jack Ranch Wind Land
Holdings, LLC*

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- Overnight Mail
- Facsimile



JOHN R. GOODELL

John R. Goodell (ISB #2872)
 Daniel C. Green (ISB #3213)
 Ferrell S. Ryan, III (ISB # 8414)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109

TWIN FALLS COUNTY
 RECORDED FOR:
 FIRST AMERICAN TITLE - TWIN FA
 12:38:45 PM 08-08-2012
2012014945
 NO. PAGES 14 FEE: \$49.00
 KRISTINA GLASCOCK
 COUNTY CLERK
 DEPUTY: DJW
 Electronically Recorded by Simplifile

Attorneys for Claimant Fagen, Inc.

 FAGEN, INC., a Minnesota corporation,)
)
 Claimant,)
)
 vs.)
)
 ROGERSON FLATS WIND PARK, LLC,)
 an Idaho limited liability company;)
 EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMENT)
 PARTNERS, LLC (ID), an Idaho limited)
 liability company; J. R. SIMPLOT)
 SELF-DECLARATION OF REVOCABLE)
 TRUST, an Idaho revocable trust; and JACK)
 RANCH WIND LAND HOLDINGS, LLC, a)
 Delaware limited liability company,)
)
 Owners/Reputed Owners.)

CLAIM OF LIEN (I.C. § 45-507)

NOTICE IS HEREBY GIVEN:

That FAGEN, INC., 501 W. Highway 212, P. O. Box 159, Granite Falls, MN 56241, hereby claims the benefit of the law relative to liens of mechanics and materialmen upon real property as provided by the laws of the State of Idaho, I.C. § 45-501 *et seq.*, and does hereby claim a lien upon that certain tract of land and improvements thereon as hereinafter described, and in the following amounts:



John R. Goodell (ISB #2872)
 Daniel C. Green (ISB #3213)
 Ferrell S. Ryan, III (ISB # 8414)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109

2012019945
 Twin Falls
 818112 12:38:45

Attorneys for Claimant Fagen, Inc.

_____)
 FAGEN, INC., a Minnesota corporation,)
)
 Claimant,)
)
 vs.)
)
 ROGERSON FLATS WIND PARK, LLC,)
 an Idaho limited liability company;)
 EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMENT)
 PARTNERS, LLC (ID), an Idaho limited)
 liability company; J. R. SIMPLOT)
 SELF-DECLARATION OF REVOCABLE)
 TRUST, an Idaho revocable trust; and JACK)
 RANCH WIND LAND HOLDINGS, LLC, a)
 Delaware limited liability company,)
)
 Owners/Reputed Owners.)
 _____)

CLAIM OF LIEN (I.C. § 45-507)

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1. That the principal sum of \$1,412,774.81 in accordance with the Accounts Receivable History By Customer statement attached hereto as **Exhibit B** and adopted by reference, is owed for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment for the ROGERSON FLATS WIND PARK, LLC, a wind park project, located at or near Rogerson, Twin Falls, County, Idaho.

In addition, prejudgment interest is owed on the above principal installment amounts from the indicated due date on the invoices listed in **Exhibit B** pursuant to the parties' underlying written contract, and/or Idaho's statutory rate @ 12% per annum, until paid or entry of judgment; plus costs and attorney fees incurred in collection.

2. That said amounts are due, and owing, after deducting all just credits and offsets, for said claim for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, in and for those certain improvements of said land located at Twin Falls County, Idaho, more particularly described in **Exhibit A-1 and A-2** attached hereto and adopted by reference, commonly known as ROGERSON FLATS WIND PARK, LLC, located at or near Rogerson, Twin Falls, County, Idaho, being the subject of the subject of lease(s) to ROGERSON FLATS WIND PARK, LLC and/or EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, and/or XRG DEVELOPMENT PARTNERS, LLC (ID), Lessees, and/or partial assignment of lease (for substation property) to JACK RANCH WIND LAND HOLDINGS, LLC; and said land also being owned by the J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, Lessor.¹

¹Said Lessor's Trust established by written instrument dated December 21, 1989, and registered in the Fourth Judicial District of the State of Idaho, Ada County, as No. 3T-788.

In addition, Exhibit C attached hereto and adopted by reference are two color-coded maps and engineering drawings which locate and identify ROGERSON FLATS WIND FARM, LLC.

3. That the name(s) and address(es) of the person(s) and/or entity(ies) who/which contracted with claimant and for whom claimant performed labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, are:

ROGERSON FLATS WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

ROGERSON FLATS WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

ROGERSON FLATS WIND PARK, LLC
Attn: Peter J. Richardson, Registered Agent
515 N. 27th St.
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

JACK RANCH WIND LAND HOLDINGS, LLC
3000 El Camino Real
5 Palo Alto Square, Suite 700
Palo Alto, CA 943306

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

4. Claimant's last item of labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment occurred on July 31, 2012.

5. That the owner(s) or reputed owner(s) of said property to be charged with said lien are:

ROGERSON FLATS WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

ROGERSON FLATS WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

ROGERSON FLATS WIND PARK, LLC
Attn: Peter J. Richardson, Registered Agent
515 N. 27th St.
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

JACK RANCH WIND LAND HOLDINGS, LLC
3000 El Camino Real
5 Palo Alto Square, Suite 700
Palo Alto, CA 943306

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST

Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

6. That the description of the property to be charged with said lien, and upon which said improvements were made, and which is situated Twin Falls County, Idaho, is more fully described in Exhibits A-1, A-2 and C attached hereto and adopted by reference.

7. That the mailing address for this Claimant is:

FAGEN, INC.
Attn: Jennifer A. Johnson,
Chief Financial Officer
501 W. Highway 212
P. O. Box 159
Granite Falls, MN 56241

8. That the undersigned certifies that a true and correct copy of this Claim of Lien following recording will either be served personally, or served by mailing a copy thereof by U.S. mail, certified - return receipt requested, within the time prescribed by statute for doing so, upon the owners or reputed owners who/which are identified above.

Dated this 3rd day of August, 2012.

CLAIMANT:
FAGEN, INC.


By: _____

John R. Goodell
JOHN R. GOODELL

Attorney and Authorized Representative for
Claimant

STATE OF IDAHO)
: ss.
County of Bannock)

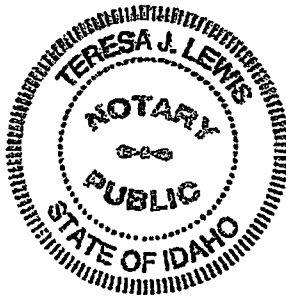
JOHN R. GOODELL, being duly sworn, on oath, says that he is the attorney and authorized signatory on behalf of claimant, FAGEN, INC., in the foregoing Claim of Lien, that he has read the same and knows the contents thereof; and that the same is true, and that it contains a correct statement of his/her/its demands after deducting all just credits and offsets; and affiant believes the same to be just.




JOHN R. GOODELL
Attorney for Claimant

SUBSCRIBED AND SWORN TO before me this 3rd day of August, 2012.

(SEAL)





NOTARY PUBLIC FOR IDAHO
Residing at: POCATELLO IDAHO
My Commission Expires: 7-20-18

Rogerson Flats

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 7: GOV'T. LOTS 2, 3, 4, 5, 6, 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:

TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., TWIN FALLS COUNTY, IDAHO

SECTION 7:

BEGINNING AT A POINT ON THE SECTION LINE 763 FEET, MORE OR LESS, SOUTH OF
THE WEST QUARTER CORNER OF SECTION 7, WHICH POINT IS STATION 252+85 OF
"A" LATERAL AS LOCATED;

THENCE NORTH 65° 58' EAST 89.4 FEET;

THENCE ON A 20° CURVE TO THE LEFT, 157.2 FEET;

THENCE NORTH 34° 32' EAST 422.7 FEET;

THENCE ON A 20° CURVE TO THE RIGHT 80.8 FEET;

THENCE NORTH 50° 42' EAST 580.7 FEET;

THENCE ON A 10° CURVE TO THE RIGHT, 210 FEET;

THENCE NORTH 71° 42' EAST 457.6 FEET;

THENCE ON A 10° CURVE TO THE LEFT, 180 FEET, TO STATION 274+63.4 WHICH

POINT IS ON THE EAST EAST LINE OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ BEING GOV'T LOT 7 OF

SECTION 7 AND 865 FEET, MORE OR LESS, SOUTH OF THE NORTHEAST CORNER OF

SAID SW $\frac{1}{4}$ NW $\frac{1}{4}$ GOV'T LOT 7 OF SECTION 7, ALL SITUATED IN THE W $\frac{1}{2}$ OF SECTION
7, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M..

AND EXCEPT

THAT PORTION OF THE SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 7, TOWNSHIP 14 SOUTH, RANGE 16
EAST, B.M., AS DESCRIBED:

BEGINNING AT A POINT WHICH IS THE CORNER COMMON TO SECTIONS 7, 8, 17
AND 18, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M.;

THENCE NORTH FOR 141 FEET;

THENCE SOUTH 76° 46' 32" WEST FOR 610 FEET;

THENCE EAST FOR 600 FEET TO THE CORNER COMMON TO SECTIONS 7, 8, 17 AND
18, WHICH IS THE POINT OF BEGINNING.

SECTION 8: NE $\frac{1}{4}$ SW $\frac{1}{4}$; S $\frac{1}{2}$ SW $\frac{1}{4}$

SECTION 17: GOV'T. LOTS 1 AND 2, EXCEPT THE NORTH 300 FEET OF SAID LOTS;
S $\frac{1}{2}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$; S $\frac{1}{2}$ SE $\frac{1}{4}$; W $\frac{1}{2}$ OF SECTION NORTHWEST OF RAILROAD; 6.93
ACRES RAILROAD RIGHT OF WAY; W $\frac{1}{2}$ OF SECTION SOUTH AND EAST OF RAILROAD.

AND EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHEAST CORNER OF SECTION 17 ALL IN TOWNSHIP 14
SOUTH, RANGE 16 EAST, B.M., WHICH BEARS SOUTH 00° 09' 24" WEST A DISTANCE
OF 2640.66 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 17; THENCE
ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 1320.33 FEET ALONG
THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 26'
58" WEST A DISTANCE OF 450.00 FEET ALONG THE 1/16TH LINE;



Rogerson Flats

THENCE ON A BEARING OF NORTH 007° 09' 24" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF SOUTH 897° 26' 58" EAST A DISTANCE OF 450.00 FEET TO
THE EAST BOUNDARY OF SAID SECTION 17;
THENCE ON A BEARING OF SOUTH 007° 09' 24" WEST A DISTANCE OF 120.00 FEET
ALONG THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF
BEGINNING.

SECTION 20: ALL

SECTION 29: ALL

Exhibit A-2

Substation Property Description

"PARCEL 1"

A PARCEL OF LAND IN THE NE¼, SECTION 29 ALL IN TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO AND BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 29 ALL IN TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., WHICH BEARS NORTH 00° 26' 14" EAST A DISTANCE OF 5277.76 FEET FROM THE SOUTHEAST CORNER; THENCE ON A BEARING OF SOUTH 00° 26' 14" WEST A DISTANCE OF 662.00 FEET ALONG THE EAST BOUNDARY OF THE NE¼ SECTION 29 TO THE REAL POINT OF BEGINNING;

THENCE FROM THIS REAL POINT OF BEGINNING CONTINUING ON A BEARING OF SOUTH 00° 26' 14" WEST A DISTANCE OF 615.00 FEET ALONG THE EAST BOUNDARY OF THE NE¼ SECTION 29;

THENCE ON A BEARING OF NORTH 89° 33' 46" WEST A DISTANCE OF 500.00 FEET;

THENCE ON A BEARING OF NORTH 00° 26' 14" EAST A DISTANCE OF 615.00 FEET PARALLEL WITH THE EAST BOUNDARY OF THE NE¼ SECTION 29;

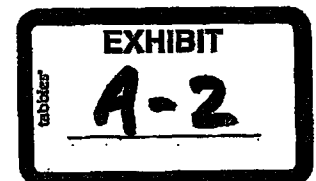
THENCE ON A BEARING OF SOUTH 89° 33' 46" EAST A DISTANCE OF 500.00 FEET TO THE REAL POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL 1 CONTAINS 7.06 ACRES MORE OR LESS.

(BASIS OF BEARINGS: SECTION LINE FROM THE NORTHEAST CORNER OF SECTION 29, T. 14 S., R. 16 E., B.M. TO THE SOUTHEAST CORNER OF SECTION 29, T. 14 S., R. 16 E., B.M., ALL IN TWIN FALLS COUNTY, IDAHO. SAID SECTION LINE BEING SOUTH 00° 26' 14" WEST.)

As described on the attached survey.

Partial Assignment of Lease (Substation Property)
(Jack Ranch)
sf-3122531



DATE 7/30/12 ARPOS4
 *** SUMMARY ***

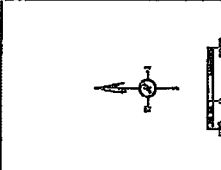
01 000 Eagen Inc
 ACCOUNTS RECEIVABLE HISTORY BY CUSTOMER
 INVOICE DATES 00/00/0000 - 99/99/9999

TIME 16.52 PAGE
 CHECK DATES 00/00/0000 - 99/99/9999

-----INVOICE-----			JOB	SUB	REFERENCE	INVOICE	DISCT	CHECK	CHECK	CHECK	
NUMBER	DATE	DESCRIPTION	NUMBER	JOB	NUMBER	DATE	AMT	DATE	NUMBER	AMOUNT	
02208 Rogerson Flats Wind Farm,											
00001	12/27/2011	APPLICATION #1	114034	603			.00	12/27/2011	999999	.00	
00010	12/27/2011	APPLICATION #1	114034	603			398803.75			.00	
00002	02/03/2012	APPLICATION #2	114034	603			88359.58			.00	
00003	03/16/2012	APPLICATION #3	114034	603			.00	03/16/2012	999999	.00	
00030	03/16/2012	APPLICATION #3	114034	603			19114.00			.00	
00004	09/25/2012	APPLICATION #4	114034	603			220281.78			.00	
00005	05/25/2012	APPLICATION #5	114034	603			420708.40			.00	
00006	06/29/2012	APPLICATION #6	114034	603			168438.62			.00	
00007	07/27/2012	APPLICATION #7	114034	603			97268.68			.00	
*** SUBJECT TOTAL ***							1,412,774.81	.00		.00	
** BALANCE **										1,412,774.81	
*** JOB TOTAL ***							1,412,774.81	.00			.00
** BALANCE **										1,412,774.81	



NO.	DATE	DESCRIPTION
1	10/20/11	ISSUED FOR PERMITTING
2	11/15/11	REVISED TO ADD TOWER HEIGHT
3	12/15/11	REVISED TO ADD TOWER HEIGHT
4	01/15/12	REVISED TO ADD TOWER HEIGHT
5	02/15/12	REVISED TO ADD TOWER HEIGHT
6	03/15/12	REVISED TO ADD TOWER HEIGHT
7	04/15/12	REVISED TO ADD TOWER HEIGHT
8	05/15/12	REVISED TO ADD TOWER HEIGHT
9	06/15/12	REVISED TO ADD TOWER HEIGHT
10	07/15/12	REVISED TO ADD TOWER HEIGHT
11	08/15/12	REVISED TO ADD TOWER HEIGHT
12	09/15/12	REVISED TO ADD TOWER HEIGHT
13	10/15/12	REVISED TO ADD TOWER HEIGHT
14	11/15/12	REVISED TO ADD TOWER HEIGHT
15	12/15/12	REVISED TO ADD TOWER HEIGHT



LEGEND

PROJECT BOUNDARY

POWER LINE

PROPERTY LINE

ROADWAY

WIND TURBINE

WIND TURBINE FOUNDATION

THE OFFICE OF THE ENGINEER HAS REVIEWED AND APPROVED THE DESIGN OF THE WIND TURBINE FOUNDATIONS AND TOWER FOUNDATIONS FOR THE PROJECT DESCRIBED HEREIN. THIS REVIEW IS LIMITED TO THE FOUNDATIONS AND TOWER FOUNDATIONS AND DOES NOT CONSTITUTE A GUARANTEE OF THE ACCURACY OF THE INFORMATION PROVIDED OR THE ADEQUACY OF THE DESIGN FOR THE PROJECT DESCRIBED HEREIN.

FRESH ENGINEERING LLC
 CIVIL - STRUCTURAL - GEOTECHNICAL - CONSTRUCTION
 1001 W. 10th St. Suite 100
 Oklahoma City, Oklahoma 73101
 Phone: (405) 241-1111
 Fax: (405) 241-1112
 Website: www.fresh-engineering.com

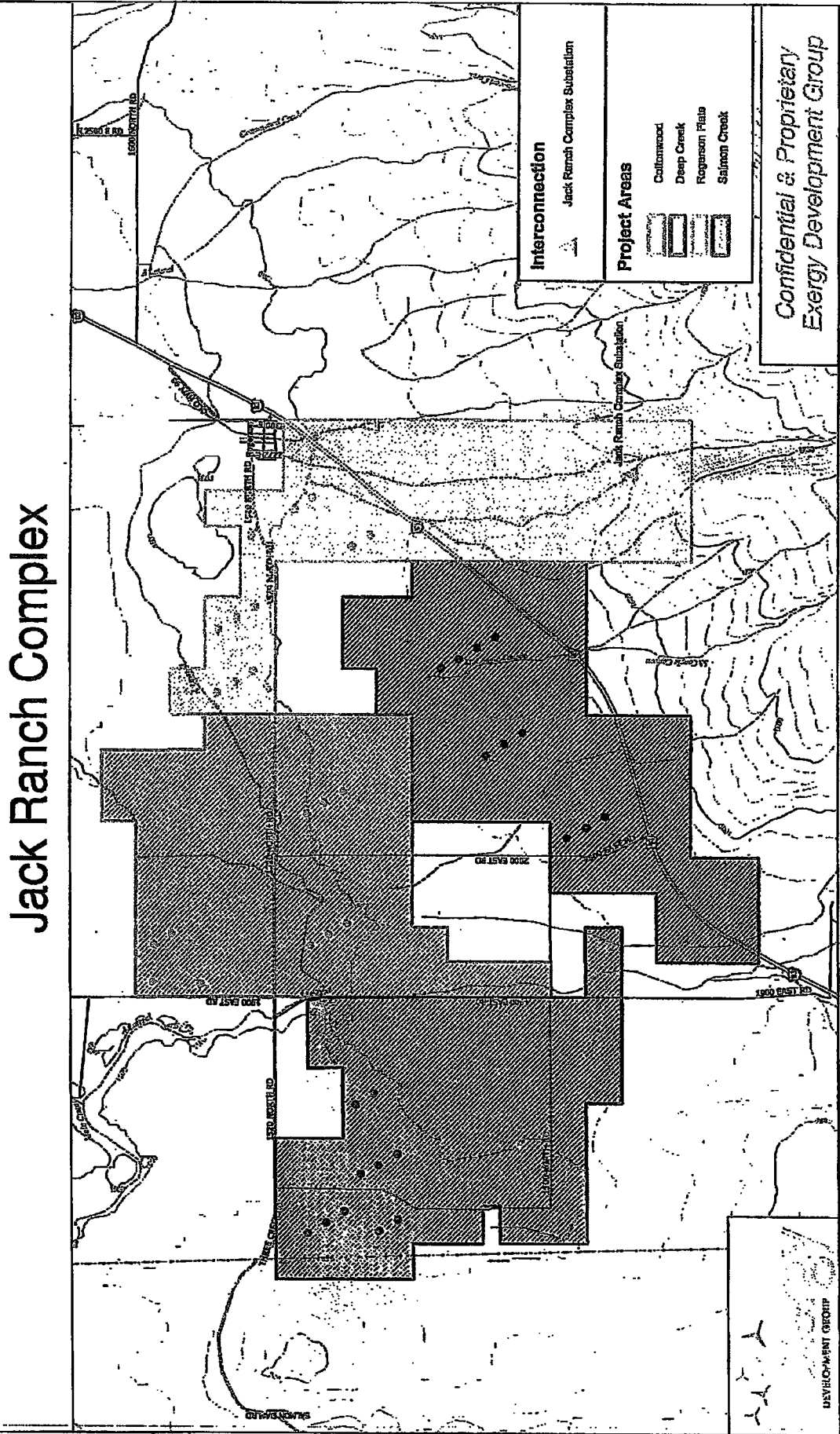
1012
 PROJECT LANDSCAPE
 LAND DESIGN

PROJECT BOUNDARY
 POWER LINE
 PROPERTY LINE
 ROADWAY
 WIND TURBINE
 WIND TURBINE FOUNDATION

WIND TURBINE LOCATIONS DEEP CREEK AREA (DC)		
WT	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
DC1	36.248365287	114.238228287
DC2	36.248365287	114.238228287
DC3	36.248365287	114.238228287
DC4	36.248365287	114.238228287
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DC99	36.248365287	114.238228287
DC100	36.248365287	114.238228287

WIND TURBINE LOCATIONS COTTORWOOD AREA (CW)		
WT	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
CW1	36.248365287	114.238228287
CW2	36.248365287	114.238228287
CW3	36.248365287	114.238228287
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CW100	36.248365287	114.238228287

WIND TURBINE LOCATIONS ADDERSON PLATS AREA (AP)		
WT	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
AP1	36.248365287	114.238228287
AP2	36.248365287	114.238228287
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AP22	36.248365287	114.238228287
AP23	36.248365287	114.238228287
AP24	36.248365287	114.238228287
AP25	36.248365287	



Jack Ranch Complex

Interconnection

Jack Ranch Complex Substation

Project Areas

- Cottonwood
- Deep Creek
- Rogerson Flats
- Salmon Creek

Confidential & Proprietary
Energy Development Group



**BALANCE OF PLANT
ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

FOR THE

EXERGY IDAHO SIX WINDS WIND PARK

BY AND BETWEEN

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.,

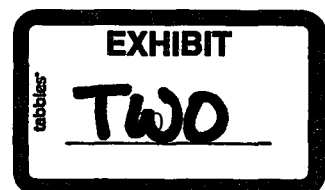
as Owner

and

FAGEN, INC.,

as Contractor

Dated December 31, 2011



**BALANCE OF PLANT ENGINEERING,
PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

This Balance of Plant Engineering, Procurement and Construction Agreement is entered into on December 30, 2011 by and between Fagen, Inc., a corporation organized and existing under Minnesota law ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company organized and existing under Idaho law ("Owner") (each of Contractor and Owner, a "Party", and together, the "Parties").

WITNESSETH:

A. Owner is developing, financing and constructing the aggregate 116MW wind generation Project (as herein defined) located at the six (6) Project Sites (as herein defined) in the State of Idaho.

B. Owner desires to contract with Contractor for the provision of engineering, procurement, construction and other services and supply of materials and equipment for the Balance of Plant (as herein defined) on a single point responsibility, and firm and lump sum basis, all as described in, and subject to the terms and conditions of, this Agreement, and Contractor desires to provide such goods and services.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth below, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following definitions:

"Affiliate" means, with respect to a Person, any other Person, directly or indirectly, in control of, controlled by, or under common control with, that Person. For purposes of this Agreement, "control," "controlled" and their derivatives, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person so controlled, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Balance of Plant Engineering, Procurement and Construction Services Agreement, including all Exhibits, appendices and attachments hereto and thereto, as the same may be amended, modified or supplemented, from time to time, in accordance with the terms hereof.

"All-Risk Builder's Risk" has the meaning set forth in Section 18.3.1.

"Applicable Laws" means all federal, state and local laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations having the force of law and permits of any Governmental Authority having jurisdiction over a Party, the Project, any Project Site, the performance of the Work, the Contract Documents and

buildings and all facilities and roads situated on or near the Project Sites, all as further described in the Exhibits to this Agreement.

“Project Final Completion” means, with respect to the whole Project, that Project Site Final Completion of each, and all, of the Project Sites has been successfully achieved pursuant to the terms of Section 7.6.

“Project Interconnection Facilities” means the electrical system of Idaho Power Company, connecting each Project Site to the electric transmission grid, a single line drawing of which is set forth in Exhibit Q (which, for the avoidance of doubt, shall not mean to include the communications cabling, which shall be the responsibility of Contractor).

“Project Site” means in the singular, the site of the High Voltage Substation and each and any of the following six (6) wind generation project sites referred to as or named (a) “Cottonwood”, (b) “Rogerson Flats”, (c) “Salmon Creek”, (d) “Deep Creek,” (e) “Lava Beds”, and (f) “Notch Butte” as described and set forth in Exhibit B-1 and Exhibit B-5, Appendix 3, including the location of each Turbine on each such Project Site.

“Project Site Final Completion” has the meaning set forth in Exhibit A-1, Appendix 6.

“Project Site Final Completion Certificate” has the meaning set forth in Section 7.6.

“Project Site Mechanical Completion” has the meaning set forth in Exhibit A-1, Appendix 4.

“Project Site Mechanical Completion Certificate” has the meaning set forth in Section 7.4.

“Project Site Nameplate Capacity” means, with respect to each and any Project Site, the aggregate sum of the Nameplate Capacities of all the Turbines located or planned (pursuant to this Agreement) to be located at such Project Site.

“Project Site Substantial Completion” has the meaning set forth in of Exhibit A-1, Appendix 5.

“Project Site Substantial Completion Certificate” has the meaning set forth in Section 7.5(b).

“Project Site Underground Collection System Completion” has the meaning set forth in Exhibit A-1, Appendix 2.

“Project Site Underground Collection System Completion Certificate” has the meaning set forth in Section 7.2.

“Project Substantial Completion” means, with respect to the whole Project, that Project Site Substantial Completion of each, and all, of the Project Sites has been successfully achieved pursuant to the terms of Section 7.5.

include the plural, and vice versa; (c) the terms "hereof," "herein," "hereunder," "hereto," and similar terms refer to the entire agreement in which they appear (including any attachments, schedules, annexes, exhibits and appendices to such agreement) and not to any particular provision of such agreement; (d) references to a "day" shall mean a calendar day, unless the term "Business Day" is used; (e) references to a Party shall be deemed to include references to its successors and permitted assigns; (f) the terms "include" and "including" shall be deemed to be followed by the words "without limitation", whether or not so followed; (g) unless otherwise stated, where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day; and (h) a reference to time is a reference to the time in effect in the State of Idaho, unless otherwise indicated.

ARTICLE III THE WORK

3.1 Scope of Work.

(a) Commencing on the Commencement Date, Contractor shall perform the scope of work set forth in Exhibit A-1 and its obligations under and pursuant to this Agreement and the other Contract Documents. Contractor shall provide, furnish and perform on a single point responsibility basis all necessary design, engineering, procurement, supplies, vehicles, transportation, equipment, materials, consumables, supervision, installation, erection, construction, labor, personnel, quality assurance and inspection, and testing and other services, activities and work (including all correction, rectification, remedial, repair and replacement services, work, supplies and activities relating to defects, deficiencies in the Work not conforming to the Requirements) that are required, necessary and appropriate for Contractor to deliver and install a fully complete, and functioning and operable, Balance of Plant pursuant to the terms of this Agreement and the other Contract Documents, including the Technical Documents. Contractor shall, among other things, (i) furnish or procure, handle and store, as necessary, all materials, equipment, machinery, tools, consumables, labor and transportation; (ii) perform the construction, supervision, administration and other services and items described in the Contract Documents; (iii) perform the engineering and design services as set forth in the Contract Documents; (iv) perform the testing services required described in the Contract Documents; and (v) perform quality control checks, including inspection, of all materials, services and equipment to be used or incorporated into the Balance of Plant, and rejection of those items determined not to be in compliance with the Requirements.

(b) After Turbine Mechanical Completion of each Turbine, Contractor shall, if requested by Owner, provide advisory assistance in connection with the electrical and communications aspects of the operation and maintenance of such Turbine. Contractor shall provide all necessary and sufficient experienced personnel having the requisite expertise for the prompt performance of any correction, rectification, remedial, repair and replacement work required in accordance with this Agreement.

3.2 Compliance. Contractor shall ensure that the Work conforms to, and is in accordance with, the Contract Documents, Prudent Industry Practices, Applicable Laws,

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

CONTRACTOR:

**EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

FAGEN, INC.

By:  _____

By: _____

Name: James T. Carkulis

Name:

Title: President

Title:

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

**EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

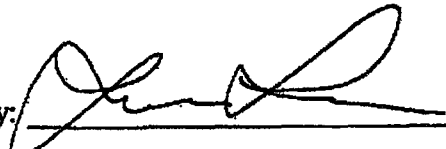
CONTRACTOR:

FAGEN, INC.

By: _____

Name:

Title:

By:  _____

Name: *Larry Lindeman*

Title: *Vice President - W.R.D.*

reasonable time to conduct discovery, and the time for Fagen to submit its opposition, pursuant to Rules 12(b) and 56(f), I.R.C.P.

Fagen's Motion is based on the following grounds and reasons:

1. Defendant's Motion to Dismiss alleges factual matters outside the pleadings, but fails to support such allegations with any affidavits or other admissible evidence or materials. Therefore the Motion To Dismiss should be treated as a Motion For Summary Judgment under governing case law.

2. Fagen is entitled to conduct discovery before any dispositive motion(s) are heard. Given the early stage of the proceedings, Fagen has not yet had an opportunity to conduct reasonable discovery in the case. A Rule 56(f) continuance is justified to allow Fagen to do so.

Several specific subject areas, which are intended to be illustrative only, not exhaustive, are set forth in the Affidavit of John R. Goodell In Support of Motion for Rule 56(f) Continuance filed herewith.

3. The Motion to Dismiss is premature.

4. No trial setting or scheduling order has yet been issued in the case. A status and scheduling conference is now set for September 9, 2013 by telephone conference call, which will presumably address such matters.

5. The other Defendants have not filed responsive pleadings to the Complaint. Fagen has extended indefinitely the time for them to do so based on informal contacts between counsel. However, given the Motion To Dismiss, it appears desirable that the other Defendants now be requested to file their respective Answers or other responsive pleadings in the near future. Such can be discussed at the forthcoming status and scheduling conference on September 9, 2013.

6. In addition, Fagen also files its Motion for Leave To File Amended Complaint, and proposed First Amended Complaint, herewith. The First Amended Complaint adds additional causes of action for breach of contract and for quantum meruit against Defendant Exergy Development Group of Idaho, LLC. It would be desirable and appropriate that pleadings be amended before Defendant's Motion To Dismiss is heard in the interests of judicial economy and minimizing unnecessary costs and expenses to the parties.

RECORD RELIED ON

Plaintiff Fagen relies on the entire pleadings and record herein, and the following filed herewith:

- A. Affidavit of John R. Goodell In Support of Motion for Rule 56(f) Continuance;
- B. Plaintiff Fagen's Memorandum In Support of Motion For Rule 56(f) Continuance;
- C. Plaintiff Fagen's Motion For Leave File First Amended Complaint;
- D. Proposed Plaintiff Fagen's First Amended Complaint.

ORAL ARGUMENT REQUESTED.

DATED this 5th day of September, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: _____


JOHN R. GOODELL

Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of September, 2013, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
Attorney for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; and Rogerson Flats Wind Park, LLC

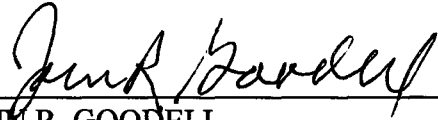
- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

Richard L. Stacey
Joe Meuleman
MEULEMAN MOLLERUP, LLP
755 W Front Street, Suite 200
Boise, Idaho 83702
Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

Paul Lion
MORRISON & FOERSTER, LLP
755 Page Mill Road
Palo Alto, CA 94304-1018
Attorney for Jack Ranch Wind Land Holdings, LLC

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile



JOHN R. GOODELL

132

John R. Goodell (ISB#: 2872)
Daniel C. Green (ISB#: 3213)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109
Emails: jrg@racinelaw.net
dan@racinelaw.net

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 SEP -6 AM 10:35

BY _____
CLERK
DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

ROGERSON FLATS WIND PARK, LLC,)

an Idaho limited liability company;)

EXERGY DEVELOPMENT GROUP OF)

IDAHO, LLC, an Idaho limited liability)

company; XRG DEVELOPMENT)

PARTNERS, LLC, an Idaho limited liability)

company; J. R. SIMPLOT)

SELF-DECLARATION OF REVOCABLE)

TRUST, an Idaho revocable trust; and JACK)

RANCH WIND LAND HOLDINGS, LLC,)

a Delaware limited liability company; and)

“JOHN DOES 1-10,”)

Defendants.)

Case No. CV-2013-573

**PLAINTIFF FAGEN’S MEMORANDUM
IN SUPPORT OF MOTION FOR RULE
56(f) CONTINUANCE**

COMES NOW Plaintiff Fagen, Inc. (“Fagen”), by and through counsel of record, and hereby
submits its Memorandum In Support Of Motion For Rule 56(f) Continuance as follows:

ARGUMENT

Plaintiff Fagen's Motion For Rule 56(f) Continuance should be granted. Consistent therewith, Defendants' Omnibus Motion To Dismiss Complaint ("Motion to Dismiss") should be indefinitely continued or denied. It is properly treated as a motion for summary judgment in either case and is premature absent a reasonable time for discovery having occurred.

In addition, Fagen's Motion For Leave To Amend Complaint and proposed First Amended Complaint are submitted contemporaneously herewith. The interests of judicial economy and avoiding unnecessary costs and expense to the parties support determining such Motion For Leave To Amend Complaint before considering any potentially dispositive motion(s).

I. DEFENDANTS MOTION TO DISMISS SHOULD BE TREATED AS A MOTION FOR SUMMARY JUDGMENT

The Defendants' Motion to Dismiss should be considered as a motion for summary judgment because it presents matters outside of the pleadings.

Rule 12(b), I.R.C.P., provides in part:

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, "matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

In *Hellickson v. Jenkins*, 118 Idaho 273, 276, 796 P.2d 150 (Ct. App. 1990), the Idaho Court of Appeals stated that "the only facts which a court may properly consider on a motion to dismiss for failure to state a claim are those appearing in the complaint..." and "[i]f a trial court considers factual allegations outside the pleading on a Rule 12(b)(6) motion, it errs if it fails to convert the motion to one for summary judgment."

In addition, a court may grant a motion to dismiss for failure to state a claim under Rule 12(b)(6) *only* “when it appears beyond doubt that the plaintiff can prove no set of facts in support of [the] claim which would entitle [the plaintiff] to relief.” *Harper v. Harper*, 122 Idaho 535, 835 P.2d 1346 (Ct. App. 1992). Furthermore, it need *not* appear that the plaintiff can obtain the particular relief prayed for, as long as the court can ascertain that some relief may be granted. *Id.*

Defendants’ Motion to Dismiss and supporting Memorandum assert a broad array of alleged “facts,” which are outside the pleadings, i.e., *not* derived from or appearing in Fagen’s Complaint.

For example, Defendants’ Memorandum, at page 3, discusses in detail alleged “facts” regarding:

- Relationship between Fagen and various of the Defendants;
- Quality, type, and value of work performed on the property;
- Timing when such work ended.

Another example: Defendants’ Memorandum, at page 9, alleges that neither the owner nor its agent or lessee ordered professional services to be performed on the property. No such allegations are stated in Fagen’s Complaint and therefore must be disregarded in considering Defendants’ Motion To Dismiss.

Moreover, Defendants submit no affidavits or other evidence in proper form which, if done, necessarily converts the Motion to Dismiss to a motion for summary judgment, which is premature where no opportunity for discovery has occurred.

Fagen’s initial Complaint alleges a lien foreclosure action only against one or more of the Defendants on the ground that one or more *may* claim an “interest in the real property” where engineering and/or construction work for the Wind Parks were done by Fagen. Such “interest,”

whether claimed, and by whom, are plainly “factual issues” which remain to be determined by discovery. There can be no doubt that such allegations on their face as state in Fagen’s Complaint state a valid cause of action for foreclosure of Fagen’s lien claim and, if true and proved, establish a basis for relief against any such Defendants which claim an “interest” in the subject real property of the various Wind Parks locations.

In addition, Defendants asserts many alleged “facts” in support of its contentions, which are *not plead* in Fagen’s Complaint, and otherwise lack evidentiary support in the record now before the Court. Such alleged “facts” are therefore merely “argument,” which provides no basis for the Court to grant Defendants’ Motion To Dismiss. Such “facts,” or other circumstances, remain to be established through discovery as actual “evidence,” before they Court may rely on them in granting any potential dispositive motion relief.

Moreover, since the factual allegations are strictly confined to those stated in Fagen’s Complaint on a motion to dismiss under Rule 12(b)(6), any asserted or alleged “facts” to the contrary submitted in Defendants’ mere “argument” are also immaterial and should also be disregarded. They provide no basis to support Defendants’ Motion To Dismiss.

II. A RULE 56(f) CONTINUANCE IS JUSTIFIED TO ENABLE FAGEN A REASONABLE TIME TO CONDUCT DISCOVERY

In addition to the foregoing, Defendants’ Motion To Dismiss is clearly premature or summarily denied where Fagen’s Complaint states a valid mechanic’s lien foreclosure cause of action on its face. Absent summary denial, the Motion To Dismiss should be converted to a motion for summary judgment, and Fagen’s Motion for Rule 56(f) Continuance granted to allow a reasonable opportunity for discovery before being heard at a minimum. The status and scheduling

order expected to result from the September 9, 2013 telephone status conference can readily address appropriate deadlines and timeframe for such case management in the usual manner.

Rule 56(f), I.R.C.P., provides:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

The rule is intended to ensure that a non-moving party has adequate time to conduct necessary discovery, and it should be liberally construed to secure the just, speedy and inexpensive determination of every action and proceeding. *Boise Mode, LLC v. Donahoe Pace & Partners Ltd.*, – Idaho – , 294 P.3d 1111 (2013).

In *Doe v. Garcia*, 126 Idaho 1036, 1039 (Ct. App. 1995), the Court of Appeals held that a ruling on summary judgment must be vacated until such time as discovery can be conducted on potentially relevant issues in the litigation.

As explained above, the Defendants' allege purported "facts" in their Motion to Dismiss and supporting Memorandum that are *not* stated in Fagen's Complaint.

Moreover, Defendants' submit to affidavits or other evidence in support of many such alleged "facts."

Defendants also asserts a general principle of lien law, e.g., a lienable interest does not exist unless the owner requests the improvement, which is mere argument. Equally true are *exceptions* to such general rule that a lien claim is recognized where an owner has knowledge of, consents to, or ratifies construction of improvements on his land. *See, e.g., Bunt v. Roberts*, 76 Idaho 158, 161,

279 P.2d 629, 630 (1955). This is another significant set of issues where discovery is necessary to determine the actual facts, and applicability of the general rule or one or more exceptions thereto.

To date, no discovery has occurred. Additional time is needed to do so.

For example, Plaintiff seeks discovery regarding the following specific areas before being in a position to respond to motions to dismiss and/or for summary judgment, including but not limited to:

- Facts regarding the authorization to Fagen to do work given by Defendant Exergy or its affiliated entities which did so;
- Facts regarding the validity of the leases from the lessors to Defendant Exergy or affiliated entities;
- Facts regarding knowledge, consent, and ratification by lessors for engineering work and improvements made for the various Wind Parks under the parties' contract;
- Facts regarding representations made by Exergy to Fagan relative to control of the site and permission from lessors to proceed with engineering work and improvements for construction of the six (6) Wind Parks under the parties' contract;
- Facts regarding the extent of Exergy's interest in the real property upon which the wind parks were to be constructed;
- Facts regarding the timeliness of the lien filed by Fagen; and
- Facts regarding the value of the labor, materials and services provided by Fagen.

The above areas are examples of factual areas for which discovery is now considered necessary, and illustrative, but not intended to be exhaustive, and sufficient to make the point for current purposes.

III. DEFENDANTS' MOTION TO DISMISS SHOULD BE DENIED WHERE FAGEN'S MOTION FOR LEAVE TO AMEND COMPLAINT IS PENDING

Finally, Defendants' Motion To Dismiss should be denied where Fagen's Motion For Leave To File Amended Complaint is pending as submitted contemporaneously herewith.

Fagen's proposed Amended Complaint seeks to add causes of action for breach of contract and quantum meruit against Defendant Exergy Development Group of Idaho, LLC only.

Leave to file an amended complaint "shall be freely given when justice so requires." Rule 15(a), I.R.C.P.; *Wickstrom v. North Idaho College*, 111 Idaho 450, 725 P.2d 155 (1986).


There is no doubt that a breach of contract action between Fagen and Defendant Exergy Development Group of Idaho, LLC, or an alternative quantum meruit action, as sought to be alleged in the proposed Amended Complaint, state valid causes of action under the alleged facts and law. Allowance of the proposed Amended Complaint is proper and should be granted. Such will require denial of Defendants' Motion To Dismiss.

CONCLUSION

Based on the foregoing and entire records herein, Plaintiff Fagen respectfully requests the Court grant its Motion for Leave To File Amended Complaint; grant its Motion for Rule 56(f) Continuance; and/or deny Defendants' Motion To Dismiss as premature and lacking factual or legal support under the circumstances.

DATED this 5th day of September, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of September, 2013, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
*Attorney for Exergy Development Group of
Idaho, LLC; XRG Development Partners,
LLC; and Rogerson Flats Wind Park, LLC*

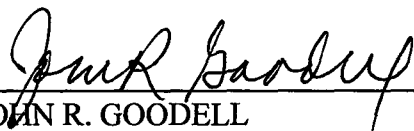
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Richard L. Stacey
Joe Meuleman
MEULEMAN MOLLERUP, LLP
755 W Front Street, Suite 200
Boise, Idaho 83702
*Attorneys for Defendant J. R. Simplot Self-
Declaration of Revocable Trust*

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Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile

Paul Lion
MORRISON & FOERSTER, LLP
755 Page Mill Road
Palo Alto, CA 94304-1018
*Attorney for Jack Ranch Wind Land
Holdings, LLC*

U. S. Mail
Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile


JOHN R. GOODELL

132

John R. Goodell (ISB#: 2872)
Daniel C. Green (ISB#: 3213)
RACINE, OLSON, NYE,
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P.O. Box 1391
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Fax: (208)232-6109
Emails: jrg@racinelaw.net
dan@racinelaw.net

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

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BY _____
CLERK
JR
DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)

Case No. CV-2013-573

vs.)

**AFFIDAVIT OF JOHN R. GOODELL IN
SUPPORT OF MOTION FOR RULE 56(f)
CONTINUANCE**

ROGERSON FLATS WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited liability)
company; J. R. SIMPLOT)
SELF-DECLARATION OF REVOCABLE)
TRUST, an Idaho revocable trust; and JACK)
RANCH WIND LAND HOLDINGS, LLC,)
a Delaware limited liability company; and)
"JOHN DOES 1-10,")

Defendants.)
)
_____)

STATE OF IDAHO)
: ss.
County of Bannock)

JOHN R. GOODELL, being first duly sworn, deposes and states as follows:

1. Your Affiant is a citizen of the United States, a resident of Bannock County, Idaho, of legal age, and competent to be a witness. I am an attorney licensed to practice law in the State of Idaho, and lead counsel of record for the Plaintiff herein. I hereby affirm the following facts and matters based on my personal knowledge. This Affidavit is submitted in support of Plaintiff Fagen's Motion For Rule 56(f) Continuance filed herewith.

2. Attached hereto as Exhibit "A" is the record of actions for Twin Falls County Case No. 2013-573 from the Idaho Supreme Court Data Repository.

3. As the repository reflects, this case has only recently begun in earnest with Defendants Rogerson Flats Wind Park, LLC, Exergy Development Group of Idaho, L.L.C. and XRG Development Partners, LLC (collectively "Defendants Exergy"), accepting service of the Complaint on August 5, 2013.

4. This matter has not yet been set for trial, and a status conference hearing is set for September 9, 2013.

5. Discovery in this matter is still open, and in fact, due to the early state of this litigation, has not yet begun.

6. Defendants Exergy have filed an Omnibus Motion to Dismiss Complaint, which appears to allege factual matters outside the pleadings, but without affidavits or other admissible evidence in proper form.

7. As discussed in Plaintiff's Motion for Rule 56(f) relief and its supporting Memorandum, the Motion to Dismiss should be treated as a motion for summary judgment.

8. Plaintiff requires more time to begin and conduct discovery to properly prepare its

defense to the Defendants' motion before the motion is ruled upon by the Court.

For example, Plaintiff seeks discovery regarding the following specific areas before being in a position to respond to motions to dismiss and/or for summary judgment, including but not limited to:

- Facts regarding the authorization to Fagen to do work given by Defendant Exergy or its affiliated entities which did so;
- Facts regarding the validity of the leases from the lessors to Defendant Exergy or affiliated entities;
- Facts regarding knowledge, consent, and ratification by lessors for engineering work and improvements made for the various Wind Parks under the parties' contract;
- Facts regarding representations made by Exergy to Fagan relative to control of the site and permission from lessors to proceed with engineering work and improvements for construction of the six (6) Wind Parks under the parties' contract;
- Facts regarding the extent of Exergy's interest in the real property upon which the wind parks were to be constructed;
- Facts regarding the timeliness of the lien filed by Fagen; and
- Facts regarding the value of the labor, materials and services provided by Fagen.

The above areas are examples of factual areas for which discovery is now considered necessary, and illustrative, but not exhaustive.

9. In addition, Plaintiff Fagen's Motion For Leave To Amend Complaint and proposed First Amended Complaint are filed contemporaneous herewith. The proposed First Amended Complaint adds causes of action for breach of contract and quantum meruit against Defendant

Exergy Development Group of Idaho, L.L.C.

The interests of judicial economy and avoiding unnecessary costs and expense of the parties is supported by determining the Motion For Leave To Amend Complaint before any potential dispositive motions for any of the Defendants.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

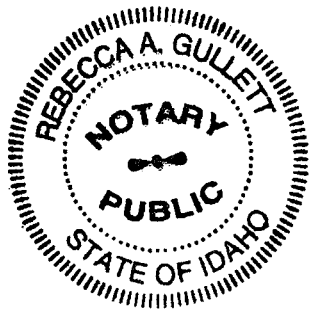
DATED this 5th day of September, 2013.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

By: *John R. Goodell*
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

SUBSCRIBED AND SWORN TO before me this 5th day of September, 2013.

(SEAL)



Rebecca A Gullett
NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello, ID
My Commission Expires: 2-26-2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of September, 2013, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
Attorney for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; and Rogerson Flats Wind Park, LLC

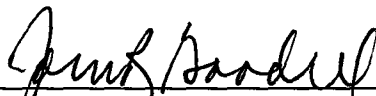
- U. S. Mail
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Richard L. Stacey
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755 W Front Street, Suite 200
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Palo Alto, CA 94304-1018
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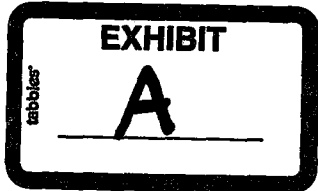
JOHN R. GOODELL

Case Number Result Page

Twin Falls

1 Cases Found.

Fagen, Inc., A Minnesota Corporation vs. Rogerson Flats Wind Park, LLC, etal.			
Case: CV-2013-0000573	District Filed: 02/08/2013	Subtype: Other Claims	Judge: J. Randy Stoker Status: Pending
Defendants: Exergy Development Group Of Idaho, LLC J.R. Simplot Self-Declaration Of Revocable Trust Jack Ranch Wind Land Holdings, Llc, A Delaware Lim John Does 1-10, Rogerson Flats Wind Park, LLC XRG Development Partners, LLC			
Plaintiffs: Fagen, Inc., A Minnesota Corporation			
Pending hearings:	Date/Time	Judge	Type of Hearing
	09/09/2013 11:00 AM	Randy J. Stoker	Status
Register Date of actions:			
	02/08/2013 New Case Filed-Other Claims		
	02/08/2013 Plaintiff: Fagen, Inc., A Minnesota Corporation Appearance John R Goodell		
	02/08/2013 Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Racine, Olson, Nye, Budge & Bailey Receipt number: 1303241 Dated: 2/8/2013 Amount: \$96.00 (Check) For: Fagen, Inc., A Minnesota Corporation (plaintiff)		
	02/08/2013 Complaint Filed		
	02/08/2013 Summons Issued		
	06/24/2013 Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Meuleman Mollerup Receipt number: 1316154 Dated: 6/24/2013 Amount: \$66.00 (Check) For: J.R. Simplot Self-Declaration Of Revocable Trust (defendant)		
	06/24/2013 Notice Of Appearance		
	06/25/2013 Defendant: J.R. Simplot Self-Declaration Of Revocable Trust Appearance Richard L Stacey		
	06/27/2013 Acceptance Of Service		
	08/02/2013 Hearing Scheduled (Status 09/09/2013 10:00 AM)		
	08/02/2013 Notice Of Hearing		
	08/05/2013 Acceptance Of Service		
	08/05/2013 Plaintiff's Notice of Filing of Acceptance of Service		
	08/07/2013 Acceptance Of Service		
	08/07/2013 Plaintiff's Notice of Filing of Acceptance of Service		
	08/07/2013 Notice Of Hearing		
	08/13/2013 J.R. Simplot Self-Declaration of Revocable Trust's Notice of Intent to Appear by Telephone		
	09/03/2013 Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Angelo L. Rosa Receipt number: 1322337 Dated: 9/3/2013 Amount: \$66.00 (Credit card) For: Exergy Development Group Of Idaho, LLC (defendant),		



Rogerson Flats Wind Park, LLC (defendant) and
XRG Development Partners, LLC (defendant)
Filing: Technology Cost - CC Paid by: Angelo L.
Rosa Receipt number: 1322337 Dated: 9/3/2013
Amount: \$3.00 (Credit card) For: Exergy
09/03/2013 Development Group Of Idaho, LLC (defendant),
Rogerson Flats Wind Park, LLC (defendant) and
XRG Development Partners, LLC (defendant)
09/03/2013 Notice Of Appearance
09/04/2013 Defendant: Rogerson Flats Wind Park, LLC
Appearance Angelo L Rosa
09/04/2013 Defendant: Exergy Development Group Of Idaho,
LLC Appearance Angelo L Rosa
09/04/2013 Defendant: XRG Development Partners, LLC
Appearance Angelo L Rosa

Connection: Public

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 SEP -6 PM 1:26

BY _____
CLERK
DEPUTY

Angelo L. Rosa (ISB No. 7546)
1168 E. 1700 S.
Salt Lake City, Utah 84105
Telephone: (801) 440-4400
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Attorney for Defendants
ROGERSON FLATS WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO,
L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,	)	Case No. CV2013-573
)	
Plaintiff,)	
)	
vs.)	
)	
ROGERSON FLATS WIND PARK,	)	OMNIBUS MOTION TO DISMISS
LLC, an	)	COMPLAINT
Idaho limited liability company;)	
EXERGY DEVELOPMENT GROUP OF)	
IDAHO, LLC, an Idaho limited liability	)	[I.R.C.P. 12(b)(6), 12(b)(8)]
company; XRG DEVELOPMENT)	
PARTNERS, LLC, an Idaho limited)	
liability company; J. R. SIMPLOT SELF-)	
DECLARATION OF) REVOCABLE)	
TRUST, an Idaho revocable) trust; and)	
"JOHN DOES 1- 10",)	
)	
Defendants.)	

COME NOW Defendants ROGERSON FLATS WIND PARK, LLC, EXERGY
DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

OMNIBUS MOTION TO DISMISS COMPLAINT – Page 1

(collectively, “Moving Defendants”), by and through their counsel of record, Angelo L. Rosa, Esq. and hereby move this Honorable Court pursuant to Idaho Rule of Civil Procedure 12(b) for an Order dismissing the Complaint as to all Defendants.

Good cause exists to grant the relief requested for the following reasons:

1. The lien that Plaintiff seeks to foreclose upon is invalid because of the following incurable defects:

a. The Claim of Lien was recorded but never filed as required by Idaho Code Section 45-507(1);

b. Even if the date of recordation was considered a date of “filing”, this action was not timely filed within six (6) months of the such date as required by Idaho Code Section 45-510; and

c. There is no allegation pled in the Complaint that Plaintiff’s Claim of Lien was timely served upon the landowner and landlord in question, J.R. Simplot Self-Declaration of Revocable Trust, as required by Idaho Code Section 45-507(5).

2. Plaintiff has attempted to lien a greater interest than it is entitled to. Under Idaho law, a prospective lienholder may only attach the interest to which the obligor-party is entitled. Here, neither Owner nor lessee RogersonFlats Wind Park, LLC (“Lessee”) were parties to any agreement between Plaintiff and certain of the Moving Defendants, nor did they direct Plaintiff to undertake any such matters. Plaintiff cannot reach to the fee interest held by Owner or the leasehold interest held by Lessee. Moreover, Plaintiff’s contract was with Exergy Development Group of Idaho, L.L.C., which does hold any interest in the real property that is liened. XRG Development Partners, LLC was not a

party to the agreement with Plaintiff and has no interest in the property. Finally, the only lessee of the property, RogersonFlats Wind Park, LLC was not a party to the contract between Exergy Development Group of Idaho, L.L.C. Plaintiff therefore has no legitimate property interest to foreclose.

3. There is an ongoing dispute involving Plaintiff's and certain of the Moving Defendants pending before the United States District Court for the District of Minnesota. Many of the issues in that matter embrace the facts and legal issues in this proceeding, including the security interests that Plaintiff may purport to have over the Moving Defendants' assets. The federal lawsuit pre-dates the present action and is a more appropriate forum for the adjudication of such issues. Under I.R.C.P. 12(b)(8), dismissal is warranted.

This Motion is not filed for any frivolous or improper purpose and its based upon this Motion, the Memorandum of Points and Authorities filed concurrently herewith, the pleadings and papers on file with the Court, and such other an further documentary and/or testimonial evidence that may be presented prior to or at the hearing on this Motion.

Oral argument is requested.

DATED: 18 August 2013

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

132

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED
2013 SEP -6 PM 1:26
BY _____
CLERK
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L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,	)	Case No. CV2013-573
)	
Plaintiff,)	
)	
vs.)	
)	
ROGERSON FLATS WIND PARK,	)	MEMORANDUM IN SUPPORT OF
LLC, an	)	OMNIBUS MOTION TO DISMISS
Idaho limited liability company;	)	COMPLAINT
EXERGY DEVELOPMENT GROUP OF)	
IDAHO, LLC, an Idaho limited liability)	
company; XRG DEVELOPMENT)	
PARTNERS, LLC, an Idaho limited)	
liability company; J. R. SIMPLOT SELF-)	
DECLARATION OF) REVOCABLE)	
TRUST, an Idaho revocable) trust; and)	
"JOHN DOES 1- 10",)	
)	
Defendants.)	

COME NOW Defendants ROGERSON FLATS WIND PARK, LLC, EXERGY
DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

MEMORANDUM IN SUPPORT OF OMNIBUS MOTION TO DISMISS COMPLAINT –
Page 1

(collectively, "Moving Defendants"), by and through their counsel of record, Angelo L. Rosa, Esq. and hereby submits their memorandum in support of their Omnibus Motion to Dismiss Complaint.

I INTRODUCTION

Plaintiff's Complaint to foreclose upon its Claim of Lien should be dismissed as to all Defendants. There are three reasons for this: **First**, the lien in question is defective in that (a) the Claim of Lien was recorded but never filed as required by Idaho Code Section 45-507(1); (b) even if the date of recordation was considered a date of "filing", this action was not timely filed within six (6) months of the such date as required by Idaho Code Section 45-510, thereby depriving this Court of jurisdiction to entertain any request for foreclosure; and (c) there is no allegation pled in the Complaint that Plaintiff's Claim of Lien was timely served upon the landowner and landlord in question, J.R. Simplot Self-Declaration of Revocable Trust ("Owner") as required by Idaho Code Section 45-507(5). **Second**, even if the lien were not defective, Owner and lessee Rogerson Flats Wind Park, LLC ("Lessee") were neither parties to any agreement with Plaintiff nor did they direct Plaintiff to undertake any such matters. Plaintiff cannot reach to the fee interest held by Owner or the leasehold interest held by Lessee. Furthermore, Plaintiff's contract was with Exergy Development Group of Idaho, L.L.C., which does hold any interest in the real property that is liened. XRG Development Partners, LLC was not a party to the agreement with Plaintiff and has no interest in the property. **Third**, there is an ongoing dispute involving Plaintiff's and certain of the Moving Defendants pending before the United States District Court for the District of Minnesota. Many of the issues in that matter embrace the facts and legal issues in this proceeding, including the security interests that Plaintiff may purport to have over the Moving Defendants' assets. The federal lawsuit pre-dates the

present action and is a more appropriate forum for the adjudication of such issues. Thus, as a matter of law, Plaintiff's Complaint fails to state a claim for lien foreclosure upon which relief can be granted and, given the expiration of the statutory deadline and the pendency of the federal action referenced herein, granting leave to amend would be wholly improper.

II. STATEMENT OF RELEVANT FACTS

In or around December 2011, Plaintiff and Defendant Exergy Development Group of Idaho entered into an Engineering, Procurement and Construction Agreement for the provisions of engineering and construction services to be performed by Plaintiff. *See* Complaint at ¶ 2. The objective of these services was to complete design and construct a wind energy facility. Both Plaintiff and Defendant are experienced in the development, design, and construction of such facilities. The services that Plaintiff provided did not follow a traditional (or previously employed) schedule or methodology. Given the unique attributes of the project, both Plaintiff and Defendant Exergy Development Group of Idaho agreed it was appropriate to demonstrate continuous construction from beginning to completion. Plaintiff structured the schedule of services to be tendered over a longer period of time than is typical for such a project. This modification was abused by Plaintiff in that the work undertaken was repetitive, arbitrary, and compulsory activities that became abusive of the parties' intent. The land upon which Plaintiff's services were rendered is, and all times relevant hereto, was owned by Defendant J.R. Simplot Self-Declaration of Revocable Trust. *See id.* at ¶ 11. The land was, in part, leased to Defendant Rogerson Flats Wind Park, LLC. *See id.* at ¶ 5. At no time relevant to this action did the Exergy-named Defendants hold any interest in the properties in question.

Plaintiff's rendering of substantive improvements upon the property in general ended prior to the alleged end date of 31 July 2012. Little to no actual modification or improvement to

the property was performed at the end of Plaintiff's period of work. On or about 3 August 2012, Plaintiff recorded (but did not file) a Claim of Lien against the property in question, *See id.* at Exhibit 1. The language of the Claim of Lien states that the lien is to secure payment "for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment." The Complaint states that this monumental amount is "The reasonable value of the benefit to the Property is equivalent to the labor, materials, and services supplied by Fagen as the amount due stated in its Claim of Lien." *See* Complaint at ¶ 16. Moving Defendants contend that the total cost of services rendered by Plaintiff is far less than the amount identified on the Claim of Lien and that the work undertaken by Plaintiff may have been substandard and therefore degraded the property rather than improved it. By operation of Idaho Code Section 45-507, the ninety (90)-day deadline for amending Plaintiff's Claim of Lien has since expired. No such amendments are referenced in Plaintiff's Complaint. *See id.* at ¶¶ 49-52. **Plaintiff filed a number other Claims of Lien in this and other counties in the State of Idaho, to foreclose upon the same lien for identical or similar amounts, yet concerning distinct and different properties.**

The six-month deadline for filing a foreclosure action ran on 7 February 2013. On or about 8 February 2013, more than six months after the filing of its Claim of Lien, Plaintiff filed the present action. Plaintiff has filed five (5) other lawsuits in this and other counties in the State of Idaho, to foreclose upon the same or similar liens.

III. STATEMENT OF APPLICABLE LEGAL STANDARD

A. Standard for Motion to Dismiss

Idaho Rule of Civil Procedure 12(b) sets forth the standard upon which a motion to dismiss may be properly granted and states, in pertinent part:

**MEMORANDUM IN SUPPORT OF OMNIBUS MOTION TO DISMISS COMPLAINT –
Page 4**

“Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses shall be made by motion: (1) lack of jurisdiction over the subject matter, **(2) lack of jurisdiction over the person**, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, **(6) failure to state a claim upon which relief can be granted**, (7) failure to join an indispensable party, **(8) another action pending between the same parties for the same cause**. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief.”

I.R.C.P.12(b)(boldfaceemphasisadded).

B. Standard for Claiming Materialmen’s Lien.

Idaho Code Sections 45-501 and 45-505 identify the right to assert a materialmen’s lien and the property interest that may be lawfully attached. Idaho Code Section 45-501 states:

“RIGHT TO LIEN. Every person performing labor upon, or furnishing materials to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who grades, fills in, levels, surfaces or otherwise improves any land, or who performs labor in any mine or mining claim, and every professional engineer or licensed surveyor under contract who prepares or furnishes designs, plans, plats, maps, specifications, drawings, surveys, estimates of cost, on-site observation or supervision, or who renders any other professional service whatsoever for which he is legally authorized to perform in connection with any land or building development or improvement, or to establish boundaries, has a lien upon the same for the work or labor done or professional services or materials furnished, whether done or furnished at the instance of the owner of the building or other improvement or his agent...”

Idaho Code § 45-501 (boldfaceemphasisadded). Further, Idaho Code Section 45-505 states, in pertinent part:

“LAND SUBJECT TO LIEN. The land upon which or in connection with which any professional services are performed or any building, improvement or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof...for the same, the land belonged to the person who caused said professional services to be performed or said building, improvement or structure to be constructed, altered or repaired, or such person was acting as the agent of the owner, but

if such person owns less than a fee simple estate in such land, then only the interest of the person or persons causing the services or improvement therein is subject to such lien.”

Idaho Code § 45-505 (boldface emphasis added). Idaho Code Section 45-507 defines the procedure for asserting a claim of lien and states:

“CLAIM OF LIEN. (1) Any person claiming a lien pursuant to the provisions of this chapter must file a claim for record with the county recorder for the county in which such property or some part thereof is situated..

(2) The claim shall be filed within ninety (90) days after the completion of the labor or services, or furnishing of materials.

(3) The claim shall contain:

(a) A statement of his demand, after deducting all just credits and offsets;

(b) The name of the owner, or reputed owner, if known;

(c) The name of the person by whom he was employed or to whom he furnished the materials; and

(d) A description of the property to be charged with the lien, sufficient for identification.

(4) Such claim must be verified by the oath of the claimant, his agent or attorney, to the effect that the affiant believes the same to be just.

(5) A true and correct copy of the claim of lien shall be served on the owner or reputed owner of the property either by delivering a copy thereof to the owner or reputed owner personally or by mailing a copy thereof by certified mail to the owner or reputed owner at his last known address. Such delivery or mailing shall be made no later than five (5) business days following the filing of said claim of lien.”

Idaho Code § 45-507 (boldface emphasis added). Finally, Idaho Code Section 45-510 states:

“ DURATION OF LIEN. No lien provided for in this chapter binds any building, mining claim, improvement or structure for a longer period than six (6) months after the claim has been filed, unless proceedings be commenced in a proper court within that time to enforce such lien; or unless a payment on account is made, or extension of credit given with expiration date thereof, and such payment or credit and expiration date, is endorsed on the record of the lien, then six (6) months after the date of such payment or expiration of extension...”

Idaho Code § 45-510 (boldface emphasis added).

IV. ARGUMENT

The relief requested by Moving Defendants must be granted for three reasons: First, the lien in question is defective and cannot be cured, thereby prohibiting Plaintiff from foreclosing upon its purported interest. Second, assuming *arguendo* that a valid lien existed (and none does exist), no recourse can be had against Owner because the work in question was not done at the instance or direction of Owner or its agents. Plaintiff's only recourse would possibly be against Lessee, except that Lessee was not a party to the agreement with Plaintiff either. Third, because there is another matter between Plaintiff and the Exergy Defendants in federal court that pre-dates the present action, there is a procedural ground for dismissing this action.

A. Plaintiff's Lien is Defective and Void as a Matter of Law.

Plaintiff's Claim of Lien is defective on three (3) independent bases, each of which separately mandates that this Court deny any request for foreclosure.

1. Plaintiff Never "Filed" its Claim of Lien as Required by §45-507(1).

Idaho Code Section 45-507(1) measures the date of accrual of a cause of action for foreclosure as measured from the date of "filing". Here, Plaintiff did not file its Claim of Lien, but instead recorded it with the Twin Falls County Recorder. This is a critical distinction. The Idaho Attorney General's Recorder's Law Manual, illustrates this distinction:

"While the Idaho Code does not specifically define the concept of "recording," it has traditionally been differentiated from "filing" based upon the concept that the original document is either transcribed or copied, and then returned to the requesting depositor, with the recorder being the custodian of the copy. Idaho Code § 31-2402 states that the recorder shall "record separately, in large and well-bound separate books or through approved electronic storage systems, in legible handwriting, typewriting, photographic reproduction," the recordable documents. The Idaho courts have made the following comments about recording:

To record an instrument means to transcribe it, repeat it, or recite it in a book of record kept for the purpose of perpetuating the terms and recitals contained in the instrument or document so recorded.

Lincoln Cnty. vs. Twin Falls Land Co., 23 Idaho 433, 130 P. 788 (1913).”
See Idaho Recorder’s Law Manual, § I(B)(3), at p. 2. Plaintiff recorded its Claim of Lien, but it did not file that Claim of Lien. As such, it cannot assert a claim on an instrument that it failed to properly file. Because the Claim of Lien was not timely filed, it is void.

2. Plaintiff Filed the Present Action After the Six-Month Limitations Period Defined in Idaho Code § 45-510 Lapsed.

Plaintiff recorded its Claim of Lien on 8 August 2013. Even assuming that such a recordation constituted a “filing” under Idaho Code Section 45-507(1), Plaintiff failed to foreclose its Claim of Lien within the statutory six (6) month period following recordation.

The computation of time under Idaho law is governed by three guiding principles: (1) Under Idaho Code Section 45-510, an action must be commenced within six (6) months after the claim has been filed. Idaho Code § 45-510. (2) Under Idaho Code Section 73-114, which defines statutory terms, ““Month” means a calendar month, unless otherwise expressed.” Idaho Code § 73-114(2)(b). (3) A calendar month, as the name suggests, consists of “the period of time running from the beginning of a certain numbered day up to, but not including, the corresponding numbered day of the next month, and if there is not a sufficient number of days in the next month, then up to and including the last day of that month.” 74 Am. Jur. 2d Time § 8 (2012).¹ By operation of these provisions, the last day to file the present Action was 7 February 2013. Instead, the present action was filed on 8 February 2013: one day after the limitations period lapsed. There are no facts pled in the Complaint that permit computation of the Claim of Lien from a later date. Failure to commence suit within the time period mandated by Idaho Code Section 45-510 bars this Court from adjudicating the lien. In plain terms, Plaintiff is too late.

¹ This principal is well established in Idaho law. See, e.g. Idaho Code § 34-116 (stating “In computing time for any act to be done before any election, **the first day shall be included and the last, or election day, shall be excluded...**”)(boldface emphasis added).

3. Plaintiff Fails to Affirmatively Show that the Claim of Lien was Served in Conformity with Idaho Code § 45-507(5).

Plaintiff alleges in its Complaint that “True and correct copies of Fagen's Claim of Lien were timely served by certified mailing on Defendants.” See Complaint at ¶ 17. Idaho Code Section 45-507(5) requires that “Such delivery or mailing shall be made no later than five (5) business days following the filing of said claim of lien.” No proof of service or allegation is made that service was performed within the statutory timeframe in this action. This *prima facie* failure to affirmatively show compliance with the service requirement gives this Court with an independent basis for dismissing Plaintiff's Complaint.

B. Plaintiff's Work was Not Done at the Instance of Owner or the Lessee and is Therefore Not Liable.

Idaho Code Sections 45-501 and 45-505 clearly states that a lienable interest exist if the land belonged to the person who caused said professional services to be performed or said building, improvement or structure to be constructed, altered or repaired, or such person was acting as the agent of the owner. Here, Owner did not order any such work to be done, nor did the Lessee. Further, Idaho Code Section 45-505 states that “if such person owns less than a fee simple estate in such land, then only the interest of the person or persons causing the services or improvement therein is subject to such lien.” Thus, in order for a valid lien to exist against the property, the improvement must have been requested by the owner of the property. *Gem State Lumber Co. v. Union Grain & Elevator Co.*, 47 Idaho 747, 278 P. 775, 776 (1929). There are no facts alleged in the Complaint that indicate the work undertaken by Plaintiff was done at the instance of the owner of the properties in question. This is because the owner did not order the work undertaken by Plaintiff. Furthermore, no agency relationship between Owner and the Moving Defendants existed to allow Plaintiff to claim a lien against the property. An owner's

mere knowledge or acquiescence in the improvements on property is insufficient to justify a lien thereupon. *Idaho Lumber, Inc. v. Buck*, 109 Idaho 737, 741, 710 P.2d 647, 651 (1985). Further, if a contract merely gives a vendee the right to make the improvements, but does not give the owner the right to require a particular improvement, the work is not done at the "instance" of the owner. *Id.* at 742, 652. Knowledge that the improvements were taking place (as is the case here) where a vendee has complete control over the work to be done similarly bars a lien on the property. *Id.* at 740, 650. Plaintiff's assertion of a purported right to lien the properties in question is contrary to the statutory law and appellate guidance on this issue. Accordingly, this is a separate basis for dismissing Plaintiff's claim for lien foreclosure on jurisdictional grounds.

C. A Pre-Existing Federal Action Between Plaintiff and Defendant Exergy Development Group of Idaho, L.L.C. Precludes an Adjudication of this Matter.

As stated above, there is a federal action pending in the United States District Court for the District of Minnesota, many of the issues in that matter embrace the causes of action in this proceeding, and that matter pre-dates this action. Under I.R.C.P. 12(b)(8), dismissal of this action is required.

**V.
CONCLUSION**

For the foregoing reasons, the Moving Defendants respectfully submit that this Honorable Court should dismiss Plaintiff's Complaint without leave to amend.

DATED: 18 August 2013

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 SEP -6 PM 1:26

BY _____
CLERK
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Attorney for Defendants
ROGERSON FLATS WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO,
L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
Plaintiff,)
vs.)
ROGERSON FLATS WIND PARK,)
LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited)
liability company; J. R. SIMPLOT SELF-)
DECLARATION OF) REVOCABLE)
TRUST, an Idaho revocable) trust; and)
"JOHN DOES 1- 10",)
Defendants.)

Case No. CV2013-573

**CERTIFICATE OF SERVICE
(OMNIBUSMOTION TODISMISS)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 18 August 2013, I caused a true and correct copy of the documents:

- 1. Omnibus Motion to Dismiss;
- 2. Memorandum in Support of Omnibus Motion to Dismiss; and
- 3. Certificate of Service (Omnibus Motion to Dismiss).

to be served by the method indicated below, and addressed to the following:

Richard L. Stacy
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 755 West Front Street, Suite 200
 Boise, Idaho 83702

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- Overnight Courier
- Facsimile
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- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
 Angelo L. Rosa

132

John R. Goodell (ISB#: 2872)
Daniel C. Green (ISB#: 3213)
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DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED
2013 SEP 23 PM 1:45
BY _____
CLERK
DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
ROGERSON FLATS WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited liability)
company; J. R. SIMPLOT)
SELF-DECLARATION OF REVOCABLE)
TRUST, an Idaho revocable trust; and JACK)
RANCH WIND LAND HOLDINGS, LLC,)
a Delaware limited liability company; and)
"JOHN DOES 1-10,")
)
Defendants.)
_____)

Case No. CV-2013-573

NOTICE OF HEARING

TO: THE ABOVE-NAMED PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that the undersigned will bring on for hearing Plaintiff Fagen's
Motion For Leave to Amend Complaint and Motion For Rule 56(f) Continuance at the Twin Falls

County Courthouse, 427 Shoshone Street N, Twin Falls, Idaho 83303 before the Hon. Randy J. Stoker, District Judge, on Monday, October 21, 2013, at the hour of 10:00 a.m., or as soon thereafter as counsel can be heard.

DATED this 20th day of September, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: _____


JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of September, 2013, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
Attorney for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; and Rogerson Flats Wind Park, LLC

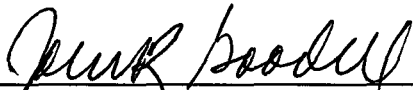
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Richard L. Stacey
Joe Meuleman
MEULEMAN MOLLERUP, LLP
755 W Front Street, Suite 200
Boise, Idaho 83702
Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

- U. S. Mail
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Richard H. Green
Tara Martens Miller
GREENER BURKE SHOEMAKER
OBERRECHT, P.A.
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Boise, Idaho 83702
Attorneys for Jack Ranch Wind Land Holdings, LLC

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JOHN R. GOODELL

BB
132

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

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Angelo L. Rosa (ISB No. 7546)
1168 E. 1700 S.
Salt Lake City, Utah 84105
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants
ROGERSON FLATS WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO,
L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
Plaintiff,)
vs.)
ROGERSON FLATS WIND PARK,)
LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited)
liability company; J. R. SIMPLOT SELF-)
DECLARATION OF) REVOCABLE)
TRUST, an Idaho revocable) trust; and)
"JOHN DOES 1- 10",)
Defendants.)

Case No. CV 2013-573

NOTICE OF HEARING

PLEASE TAKE NOTICE that the **Omnibus Motion to Dismiss** filed by Defendants ROGERSON FLATS WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC, by and through their counsel of record, Angelo L. Rosa, will be heard by the Honorable Randy J. Stoker of the above-captioned court on **21 October 2013 at 10:00 a.m.** at the Twin Falls County Courthouse, located at **427 Shoshone Street N. in Twin Falls, Idaho 83301.**

DATED: 26 September 2013

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 26 September 2013, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

Richard L. Stacy
MEULEMAN MOLLERUP, LLC
755 West Front Street, Suite 200
Boise, Idaho 83702

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
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John R. Goodell
RACINE, OLSEN, NYE, BUDGE & BAILY,
CHTD.
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- Electronic Mail



Signed _____

Angelo L. Rosa

32
 John R. Goodell (ISB#: 2872)
 Daniel C. Green (ISB#: 3213)
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DISTRICT COURT
 TWIN FALLS CO., IDAHO
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Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
 Plaintiff,)
)
 vs.)
)
 ROGERSON FLATS WIND PARK, LLC,)
 an Idaho limited liability company;)
 EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMENT)
 PARTNERS, LLC, an Idaho limited liability)
 company; J. R. SIMPLOT)
 SELF-DECLARATION OF REVOCABLE)
 TRUST, an Idaho revocable trust; and JACK)
 RANCH WIND LAND HOLDINGS, LLC,)
 a Delaware limited liability company; and)
 "JOHN DOES 1-10,")
)
 Defendants.)
 _____)

Case No. CV-2013-573

**PLAINTIFF FAGEN, INC.'S
 MEMORANDUM OPPOSING
 DEFENDANTS' OMNIBUS MOTION TO
 DISMISS COMPLAINT**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and hereby
 submits this Memorandum Opposing Defendants Rogerson Flats Wind Park, LLC's, Exergy

Development Group of Idaho, L.L.C.'s, and XRG Development Partners, LLC's (collectively "Exergy") Omnibus Motion to Dismiss Complaint (motion to dismiss) filed herein.

INTRODUCTION

Exergy's motion to dismiss is without merit and/or premature and should be denied for one or more of the following reasons:

The initial Complaint clearly states a valid cause of action for foreclosure of Fagen's mechanic's lien against all Defendants who, based on information and belief, do or may claim an interest in the real property involved. Since only the face of the Complaint is considered in ruling on a motion to dismiss, the Court need look no further in summarily denying Exergy's motion to dismiss in its entirety.

In addition, Fagen's pending Motion For Leave To Amend Complaint, which seeks to add additional causes of action for breach of contract and quantum meruit against Exergy Development Group of Idaho, L.L.C. only, should be determined before Exergy's motion to dismiss as a procedural matter, since the latter is in the nature of a dispositive motion.

In addition, Fagen's Motion For Rule 56(f) Continuance is pending and should be addressed before Exergy's motion to dismiss or any other dispositive motion. Fagen submits that Exergy's motion is in effect a motion for summary judgment, since matters are asserted outside the pleadings (albeit without evidentiary support). Since discovery had not occurred, Fagen is entitled to an opportunity to do so before dispositive motions are raised.

Exergy's motion to dismiss and briefing assert arguments and/or factual allegations contrary to what is stated on the face of Fagen's Complaint, but lack supporting affidavits or other evidentiary support. They also go to the merits. They should be raised by a motion for summary judgment and,

as a matter of timing, only *after* a reasonable opportunity for discovery, which has *not* yet occurred. They are premature and procedurally inappropriate now.

In addition, Exergy's motion to dismiss alleging "defects" in Fagen's lien claim recording, filing, notice or service, or lack of basis for liening the fee interests of the Landowners, are without merit. Such are also prematurely raised on a motion to dismiss, and should be deferred to a later time after a reasonable time for discovery has occurred, as challenges on the merits.

In addition, Exergy's motion to dismiss based on IRCP Rule 12(b)(8) is without merit. Only the Idaho court has jurisdiction to foreclose a mechanic's lien claim where the real property involved is located. The Minnesota court has no such jurisdiction. The fact that another lawsuit is pending in Minnesota between Fagen and Exergy, *relating to a completely different wind park located in Minnesota*, has nothing to do with the wind parks located in Idaho. Each of the several wind park disputes must be adjudicated in the state where located to the extent a mechanic's lien foreclosure action is stated. It is not the "same cause" being litigated in the Idaho suits versus the Minnesota suits since different wind parks are at issue. Thus Rule 12(b)(8) does not apply.

ARGUMENT

I. EXERGY'S MOTION TO DISMISS BASED ON IRCP RULE 12(b)(6) FOR "FAILURE TO STATE A CLAIM" SHOULD BE DENIED BECAUSE THE COMPLAINT STATES A VALID MECHANIC'S LIEN FORECLOSURE ACTION

Exergy's motion to dismiss based on IRCP Rule 12(b)(6) for "failure to state a claim upon which relief can be granted" should be denied. Fagen's initial Complaint states a valid cause of action for mechanic's lien foreclosure on its face.

The standard of review of a motion to dismiss for failure to state a claim is well settled. The

only acts which a court may properly consider on a motion to dismiss for failure to state a claim are those appearing in the complaint, supplemented by those facts of which the court may properly take judicial notice. *Hellickson v. Jenkins*, 118 Idaho 273, 796 P.2d 150 (Ct. App. 1990).

In addition, a party opposing a motion to dismiss is entitled to have all inferences from the record viewed in his favor and only then may the question be asked whether a claim for relief has been stated. *Miles v. Idaho Power Co.*, 116 Idaho 635, 778, 757 (1989).

For a complaint to be dismissed under Rule 12(b)(6) for failure to state a claim, it must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief; therefore where there were genuine issues of material fact presented, the trial court was correct in not granting summary judgment. *Ernst v. Hemenway & Moser Co.*, 120 941, 821 P2d 996 (Ct. App. 1991).

Here, Exergy makes no request for this Court to take judicial notice of any facts. Thus the Court herein need only look to the allegations stated on the face of Fagen's Complaint to ascertain whether a cause of action is stated. Such allegations clearly state a cause of action for mechanic's lien foreclosure against all the Defendants who, on information and belief, claim or may claim an interest in the real property at issue. On such basis, standing alone, Exergy's motion based on Rule 12(b)(6) should be denied.

The same is true with respect to the additional causes of action for breach of contract and quantum meruit Fagen seeks to add against Defendant Exergy Development Group of Idaho, LLC under its proposed Amended Complaint. Assuming the Amended Complaint is allowed, the causes of action for breach of contract and quantum meruit also state valid causes which are not subject to dismissal under Rule 12(b)(6).

II. EXERGY'S MOTION TO DISMISS SHOULD BE DENIED BECAUSE FAGEN'S MOTION FOR LEAVE TO AMEND COMPLAINT ADDS VALID CAUSES OF ACTION FOR BREACH OF CONTRACT AND QUANTUM MERUIT

Fagen has a pending Motion for Leave to Amend Complaint to add alternative causes of action against Defendant Exergy Development Group of Idaho, LLC only. Such state valid causes of action against that Defendant on the face of the Complaint, based on the contract entered with Fagen. What is stated above relative to the lien foreclosure claim is also true with regard to the additional breach of contract and quantum meruit claims against said Defendant. There is no basis to dismiss such claims under Rule 12(b)(6). Fagen's Motion For Leave To Amend Complaint should be granted. Such Amended Complaint also provides the basis to deny Exergy's motion to dismiss for reasons stated in Part I above.

III. IF EXERGY'S MOTION IS TREATED AS A MOTION FOR SUMMARY JUDGMENT, IT SHOULD BE DENIED OR CONTINUED BECAUSE OF FAGEN'S MOTION FOR RULE 56(f) CONTINUANCE

Exergy's motion to dismiss, if considered a motion for summary judgment, is premature where no discovery has occurred. Thus Fagen's Motion For Rule 56(f) filed herein should be granted to allow a reasonable time for discovery, which has not occurred.

Rule 12(b)(6) also provides:

"If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56."

Rule 56(f) provides that a "court may refuse the application for judgment or may order a

continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.”

Rule 56(f) is intended to ensure that a non-moving party has adequate time to conduct necessary discovery, and it should be liberally construed to secure the just, speedy and inexpensive determination of every action and proceeding. *Boise Mode, LLC v. Donahoe Pace & Partners Ltd.*, 294 P.3d 1111 (Idaho 2013); *Doe v. Garcia*, 126 Idaho 1036, 895 P.2d 1229 (Ct. App. 1995).

The Affidavit of John R. Goodell In Support of Motion For Rule 56(f) Continuance (“Goodell Affidavit”) complies with the rule in setting forth reasons and subject matters for which discovery needs exist before Fagen should be called upon to respond to multiple factual and/or arguments asserted by Exergy challenging the validity of Fagen’s lien. They include:

- Facts regarding the authorization to Fagen to do work given by Defendant Exergy or its affiliated entities which did so;
- Facts regarding the validity of the leases from the lessors to Defendant Exergy or affiliated entities;
- Facts regarding knowledge, consent, and ratification by lessors for engineering work and improvements made for the various Wind Parks under the parties’ contract;
- Facts regarding representations made by Exergy to Fagan relative to control of the site and permission from lessors to proceed with engineering work and improvements for construction of the six (6) Wind Parks under the parties’ contract;
- Facts regarding the extent of Exergy’s interest in the real property upon which the wind parks were to be constructed; and
- Facts regarding the timeliness of the lien filed by Fagen;

The above areas are examples of factual areas for which discovery is now considered necessary, and illustrative, but not exhaustive.

Goodell Affidavit, p. 3.

Failure to allow a reasonable time for discovery is an abuse of discretion. *See Doe v. Garcia*, *supra*.

Here, no discovery has yet occurred. The Defendants have only recently entered their appearances or, in Exergy's case, filed its motion to dismiss as a responsive pleading.

IV. IF EXERGY'S MOTION TO DISMISS IS TREATED AS A MOTION FOR SUMMARY JUDGMENT UNDER IRCP RULE 56, THEN IT SHOULD BE DENIED BECAUSE THERE IS NO ADMISSIBLE EVIDENCE PROVIDING AN EVIDENTIARY RECORD TO SUPPORT ITS UNSUPPORTED ASSERTIONS OF PURPORTED "FACTS"

Exergy's motion to dismiss should be denied not only because it purports to assert and rely on "facts" outside the pleadings, but for the additional reason that such "facts" lack evidentiary support in the record. Exergy supplies no affidavits, depositions, or other evidentiary basis in support of its motion to dismiss and memorandum. Absent evidentiary support, such alleged "facts" constitute mere "argument."

In *Hellickson*, the Court of Appeals stated that if a trial court considers factual allegations outside the pleadings on a motion pursuant to Rule 12(b)(6), it errs if it fails to convert the motion to one for summary judgment.

Where a trial court considered affidavits filed in opposition to a motion to dismiss for failure to state a claim, the motion was converted to a motion for summary judgment. *Glaze v. Deffenbaugh*, 144 Idaho 829, 172 P.3d 1104 (2007).

For example, Exergy's "Statement of Relevant Facts" portion of its supporting Memorandum alleges "facts" purporting to explain the relationship between Fagen and one or more Defendants; the quality, type, and value of work performed on the property; the timing when such work occurred. Exergy Memorandum, p. 3. Further, Exergy's Memorandum alleges as "fact" that the owner and its agent or lessee did not order professional services to be performed on the property. *Id.* at p. 9.

However, such allegations of “fact” are not stated in the Complaint. Exergy submits no affidavits alleging such “facts.” Such “facts” are nowhere located or supported by admissible evidence in the record before the Court. Evidentiary support for such allegations of “fact” are lacking; are mere argument; and must be disregarded.

Even *assuming arguendo* Exergy had supplied admissible evidence in support of its alleged “facts,” which is lacking, Fagen is *still* entitled to a reasonable opportunity for discovery, to oppose what is in such circumstances a motion for summary judgment under Rule 56, not a motion to dismiss under Rule 12(b)(6).

Frankly, Exergy appears confused about the standards and/or necessity for admissible evidence being established by the records as between a motion to dismiss for failure to state a claim as compared to a motion for summary judgment. Such is underscored by Exergy’s several arguments challenging the validity of Fagen’s lien claim on the substantive merits, relying on its version of alleged “facts” *not* established by the existing evidentiary record. Such challenges may be properly and timely raised by a motion for summary judgment, after a reasonable opportunity for discovery is afforded Fagen, but are premature at the current time.

Fagen submits these challenges are prematurely raised now in view of its Motion For Leave To Amend Complaint and Motion for Rule 56(f) Continuance, which should be addressed as procedural matters first; a reasonable time for discovery allowed; and then raised by Exergy at a subsequent time under a motion for summary judgment, if raised at all.

V. EXERGY’S ARGUMENTS CHALLENGING THE VALIDITY OF FAGEN’S LIEN CLAIM ARE WITHOUT MERIT

Fagen responds here to Exergy’s arguments challenging the validity of Fagen’s lien claim given uncertainty as to the Court’s handling of the conflicting procedural motions and posture of the case. Such arguments are also without merit, and should be denied, or continued to a summary judgment motion hearing after discovery has occurred. Nonetheless, such arguments are briefly addressed below.

A. Fagen’s Lien Was Properly “Filed” By “Recording” It In The County Recorder’s Office:

In what must be acknowledged as a most *novel* argument not previously encountered in 30+ years of Idaho mechanic’s lien foreclosure litigation, Exergy argues the “recording” of Fagen’s mechanic’s lien in the county recorder’s office does *not* constitute proper “filing.” Fagen disagrees. Exergy appears to be playing semantics.

Idaho Code § 45-507 directs as follows:

- (1) Any person claiming a lien pursuant to the provisions of this chapter must **file a claim for record with the county recorder** for the county in which such property or some part thereof is situated.
- (2) The claim shall be **filed** within ninety (90) days after the completion of the labor or services, or furnishing of materials.

(emphasis added).

The plain language of the statute defines the “filing” of a claim of lien in the county recorder’s office. Such “filing” obviously is equivalent to “recording” it there. Indeed, that is the function of the county recorder’s office – as the name plainly suggests. The “filing” of a lien in the county recorder’s office is, by definition, “recording” it there. The reason for doing so is to give

public notice to all the world of the claim of lien and its filing date, which may impact other claims or conduct of parties in relation to the affected real property. Such has been well settled legal practice for decades.

Nowhere in Idaho Code § 45-507 does it provide that a claim of lien must be filed with the court. Indeed such an interpretation would make a subsequent section in the chapter, Idaho Code § 45-510, contradictory and nonsensical, which provides in part:

No lien provided for in this chapter binds any building, mining claim, improvement or structure **for a longer period than six (6) months after the claim has been filed, unless proceedings be commenced in a proper court** within that time to enforce such lien...

(emphasis added).

The explicit reference to a properly “filed” lien expiring in six months unless “proceedings be commenced in a proper court” within such timeframe establishes the first “filing” in any court which must be done to perfect and pursue a valid lien claim. Clearly, this is the next step and requirement to do so by filing suit in court, *after* the “filing” (i.e., recording) of the lien claim in the county recorder’s office.

Thus, consistent with the above statutory requirements plainly stated in Idaho Code §§ 45-507 and 45-510 as discussed above, in *Boise Payette Lumber Co. v. Weaver*, 40 Idaho 516, 519, 234 P. 150 (1925) and *Cather v. Kelso*, 103, Idaho 684, 685, 652, P.3d 188 (1982) (*Cather*), the Idaho Supreme Court recites the facts of each case in the context that the plaintiffs filed a claim of lien with the recorder’s office within ninety (90) days of the completion of work and moved to foreclose upon the lien in the district court within six (6) months of filing the claim of lien in the county recorder’s office.

Here, Fagen fully complied with the requirements of the Idaho Code § 45-507. Fagen did file its lien claim on the subject property within ninety (90) days from providing labor, furnishing materials, and supplying services. Fagen's Complaint alleges it ceased doing so on July 31, 2012. The claim of lien was filed in the Twin Falls County Recorder's Office on August 8, 2012, well within the ninety (90) day time limit. See Exhibit One to Fagen's Complaint.

B. Fagen's Suit Was Properly Commenced Within Six (6) Months of Filing the Claim of Lien:

Exergy next argues Fagen failed to commence suit within six (6) months after filing the claim of lien with the county recorder's office as required by Idaho Code § 45-510. Fagen disagrees. Exergy appears unfamiliar with how to calculate the applicable six month time frame.

Idaho Code § 45-510, quoted above, provides a suit to enforce a lien claim must be filed "within six months" of the filing of the lien claim in the county recorder's office. Fagen did so.

Chapter 1 of Title 73 in the Idaho Code provides for the general "construction of statutes," with Idaho Code § 73-109 providing, "[t]he time in which any act provides by law is to be done is computed by excluding the first day, and including the last unless the last is a holiday and then it is also excluded."

Similarly, Idaho Code of Civil Procedure 6(a) provides, in relevant part, as follows:

In computing any period of time prescribed or allowed by these rules, by order of the court, or by an applicable statute, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or a legal holiday....

In *Cather* Court specifically held that the formulas for calculating time provided in I.R.C.P. 6(a) and I.C. § 73-109 applied to the six (6) month statute of limitations contained in I.C. § 45-510,

finding that a plaintiff that filed his claim of lien on October 12, 1979, and began the foreclosure action with the district court on April 14, 1980, complied with the six (6) month requirement in I.C. § 45-510 because the last day for him to file – April 12, 1979, fell on a Saturday, and therefore, pursuant to Rule 6(a) was not counted. 103 Idaho at 688.¹

Here, Fagen filed the claim of lien with the Twin Falls County Recorder's Office on August, 8, 2012, and commenced this foreclosure suit on February 8, 2013, which is exactly six months later. Such suit filing is timely.

C. Plaintiff Complied with the Notice and Service Requirements:

Exergy argues Fagan did not provide a proof of service or an allegation in its Complaint that it complied with the notice requirements of Idaho Code § 45-507(5). Again, Fagen disagrees. Exergy appears to be reading into the statute or form of pleadings requirements which are non-existent.

Fagan's lien notice and service fully complied with Idaho Code § 45-507(5)'s following requirements:

A true and correct copy of the claim of lien shall be served on the owner or reputed owner of the property either by delivering a copy thereof to the owner or reputed owner personally or by mailing a copy thereof by certified mail to the owner or reputed owner at his last known address. Such delivery or mailing shall be made no later than five (5) business days following the filing of said claim of lien.

Nowhere in Idaho Code § 45-507(5), or any other section of Title 45, Chapter 5, is there a requirement that the proof of service or specific "allegation" of same be referenced in a complaint

¹ In support of their argument that Plaintiff filed a day late, Exergy cite to secondary sources or Idaho Code that applies to only certain chapters (i.e., elections), rather than generally applicable rules and law. See Plaintiff's Memorandum in Support of Omnibus Motion to Dismiss Complaint, p. 8, fn1. Such authorities are inapposite.

for mechanic's lien foreclosure. Exergy purports to "invent" such requirement where none exists. Such a purported "requirement" would also be contrary to the very concept and spirit of "notice" pleading under the modern rules of civil procedure. See IRCP Rules 1(a) and 2.

Notwithstanding the *absence* of such requirement existing in the law, which Exergy asserts is lacking, in fact, Fagen's Complaint, ¶ 18, actually *does* allege proper notice and service, stating: "true and correct copies of Fagen's Claim of Lien were timely served by certified mailing on Defendants." Further, Fagen's Claim of Lien, ¶ 8, attached to and adopted by reference as Exhibit One to Complaint, also states:

That the undersigned certifies that a true and correct copy of this Claim of Lien following recording will either be served personally, or served by mailing a copy thereof by U.S. mail, certified-return receipt requested, within the time prescribed by statute for doing so, upon the owners or reputed owners who/which are identified above.

Exergy's legal argument of a purported "requirement" which does not exist is flawed. Even if such a requirement existed, Fagen's Complaint and attached lien claim exhibit fulfills it. It is not clear why Exergy raised a non-existent pleading requirement, or misread Fagen's Complaint. Regardless, Exergy's argument on the point is not well founded and appears regrettably disingenuous.

D. Fagen's Work Was Done At The Request Of The Owner, Or A Factual Question Exists:

Exergy argues that Fagen's work was not done at the instance of the "owner or his agent." Fagen disagrees. At minimum, a factual issue potential exists that should be the subject of further discovery to ascertain the facts on this relatively complex issue.

Idaho Code § 45-501 of the Idaho Code states that every person performing labor or professional engineer who prepares or furnishes designs, plans, specs, etc. in connection with any land, building, or improvement has a lien upon the same for the work, labor or professional services, “*whether done or furnished at the instance of the owner...or his agent.*”

The same section further provides who may constitute an “agent of the owner,” stating:

any person having charge of any mining claim, or of the construction, alteration or repair, either in whole or in part, of any building or other improvement, as aforesaid, shall be held to be the agent of the owner for the purpose of this chapter.

Id. (emphasis supplied).

Fagen acknowledges the general rule of law a tenant or lessee is not an agent merely by the existence of a landlord/tenant relationship. *Bunt v. Roberts*, 76 Idaho 158, 279 P.2d 629 (1955). The general rule does not necessarily end all inquiry however.

It is *also* well settled law in Idaho that where “the owner does some act in ratification of, or consent to, the work done and the furnishing of the material or labor,” the owner’s interest in land becomes subject to mechanic’s or materialman’s liens for materials or services furnished. *Id.* Many different factual circumstances may support holding the landowner’s fee interest subject to a lien claim.

For example, “a landlord's interest in real property may be subjected to a lien, for work performed by agreement with the tenant, if the lease specifically requires the tenant to see that the work is done.” *Christensen v. Idaho Land Developers*, 104 Idaho 458 (Idaho Ct. App. 1983).

Another example: “where the lease or a contract of purchase requires the lessee (or vendee) to make certain improvements, then the lessee (or vendee) is said to become the agent of the owner,

and in those cases the interest of the owner as well as the interest of the lessee or vendee will become subject to the lien.” *Idaho Lumber v. Buck*, 109 Idaho 737 (Ct. App. 1985).

Another example: “the landlord's interest may be subjected to a lien if he requests the work to be done.” *Christensen v. Idaho Land Developers*, 104 Idaho 458 (Idaho Ct. App. 1983), citing *Parker v. Northwestern Investment Co.*, 44 Idaho 68, 255 P. 307 (1927). This is the case “where the landlord has done some act in ratification of, or consent to [,] the work done and the furnishing of material and labor.” *Id.*, citing to *Bunt v. Roberts*, 76 Idaho 158, 161, 279 P.2d 629, 630 (1955).

In *Christensen*, the lease provided that the tenants were to maintain the premises, and the landlord subsequently forwarded the tenant a list from the city of certain corrections that needed to be made to the electrical system. The court held that based upon these facts and circumstances that the act of forwarding the letter was sufficient to establish ratification or consent that the work be done, and held that the landlord’s interest was lienable. The Court also distinguished the *Christensen* case from the result in *Bunt*, which held the landlord’s interest was not lienable, by noting that in *Bunt* there was no evidence to suggest that the landlord had any knowledge of the improvements until after they were made. Therefore, it appears that a landlord’s knowledge prior to the improvement being made is relevant to the factual determination of agency, ratification, or consent.

Moreover, if there is conflicting evidence regarding whether a lessee is an agent of the landlord, then the question is one of fact, and not one of law. *Idaho Lumber v. Buck*, 109 Idaho 737 (Idaho Ct. App. 1985). Where the questions turns solely on the interpretation of an unambiguous lease, the question may be deemed a question of law. *Id.* However, “where the question of agency

turns on the acts and conduct of the parties, as well as upon the provisions of a written lease, the issue is a mixed one of fact and of law.” *Id.*

Here, the sole purpose and scope of the lease was for the construction of a wind energy project. A true and correct copy of the lease entered into between the Landlord, as Lessor, and Rogerson Flats Wind Park, LLC (“Rogerson Flats”), as Lessee, is attached to the Complaint (the “Lease”). Rogerson Flats is owned by, or is otherwise under the direct control of, XRG Development Partners, LLC, which is owned by, or otherwise under the direct control of, Exergy Development Group of Idaho, LLC. The work that Fagen performed with respect to the development of the wind park on the Landowner’s property was pursuant to a contract with Exergy Development Group of Idaho, LLC. Based upon the common ownership and control of Rogerson Flats, XRG Development and Exergy Development, the services that Fagen performed were ultimately done at the instance of Rogerson Flats, which was the Landowner’s tenant.

In addition to the purpose of the Lease being the development of the wind park, the Landowner ultimately stood to benefit from the development of the wind park and the creation of wind energy on its property. The rental payments to be made under the Lease were tied to the development of a wind energy park and to the total amount of wind energy produced. Based upon the fact that the Landowner stood to benefit from the development of the wind energy park, and wanted the wind energy park to be developed in order to create additional revenues, the work performed by Fagen could be construed as being done at the instance of the Landowner. The Landowner was aware that Rogerson Flats intended to develop the wind energy park on its property, and by entering into the Lease, ultimately consented to such development being performed. Had the Landowner directly contracted with Fagen to perform the services that it rendered, Fagen would

clearly be entitled to a lien against the Landowner's property. The result should be no different where the Landowner contracted with Rogerson Flats to arrange for such services to be performed.

The facts of this case are akin to a general contractor (Rogerson Flats) and sub-contractor (Fagen) situation, which would clearly allow for the sub-contractor to obtain a lien in the underlying real property. The Lease contemplated that the work and services performed in connection with the development of the wind energy park could potentially result in liens against the underlying real property, and charged the Lessee with the responsibility of keeping the Property free of such liens.

In addition to the Lease evidencing the Landowner's consent or ratification of the services performed by Fagen, Exergy Development warranted and represented to Fagen that it had the Landowner's consent for Fagen to enter upon the real property to perform services upon the land. Exergy Development also represented that it would notify the Landowner prior to the date that Fagen would begin work to ensure that Fagen would have access to the real property.

Such facts and circumstances support a findings of fact or, at a minimum, create issues of fact of whether the Landowner authorized, consented, or ratified Fagen's work, materials, and services rendered as covered by its lien claim, and are therefore entitled to foreclose its lien against its fee interest in the property. Such an issue is certainly not subject to dismissal for failure to state a claim under Rule 12(b)(6) at this procedural juncture; and likely not even subject to dismissal on summary judgment under Rule 56 after discovery ensues.

It is also not clear on what basis Exergy, the lessee, has standing to assert the rights, interests, or defenses of the fee owners, who are represented by other counsel separately herein.

VI. EXERGY'S MOTION TO DISMISS BASED ON IRCP RULE 12(b)(8) FOR "ANOTHER ACTION PENDING" IN MINNESOTA SHOULD BE DENIED BECAUSE THE IDAHO WIND PARKS LIEN FORECLOSURE ACTIONS MUST BE DETERMINED IN THE IDAHO COURTS

Exergy also relies on Rule 12(b)(8)'s "another action pending" in support of its motion to dismiss. Such basis is without merit and should also be denied.

Rule 12(b)(8) provides that an action may be subject to dismissal on such ground where there is "another action pending between the same parties *for the same cause*" (italics added). Construing Rule 1(a), the Supreme Court has stated: "This rule is a constant reminder that the rules are to be liberally construed and a just result is always the ultimate goal to be accomplished." *Sines v. Blaser*, 98 Idaho 435, 566 P.2d 758 (1977).

This action is to foreclose Fagen's interest in real property located in Idaho. Since the property is located in Idaho it cannot be foreclosed in the Minnesota actions. In addition, the landowners in the Minnesota cases are different. Accordingly, Rule 12(b)(8) is inapplicable because the Minnesota and Idaho actions are not between the same parties for the same cause.

DATED this 30 day of September, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
for JOHN R. GOODELL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30 day of September, 2013, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
Attorney for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; and Rogerson Flats Wind Park, LLC


- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

Richard L. Stacey
Joe Meuleman
MEULEMAN MOLLERUP, LLP
755 W Front Street, Suite 200
Boise, Idaho 83702
Attorneys for Defendant J.R. Simplot Self-Declaration of Revocable Trust

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

Richard H. Green
Tara Martens Miller
GREENER BURKE SHOEMAKER
OBERRECHT, P.A.
950 W. Bannock ST, Suite 950
Boise, Idaho 83702
Attorneys for Jack Ranch Wind Land Holdings, LLC

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

for 

JOHN R. GOODELL

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2013 OCT -2 PM 5: 10

BY _____ CLERK

_____  DEPUTY

Richard L. Stacey, ISB #6800
Joe Meuleman, ISB #8029
MEULEMAN MOLLERUP LLP
755 W. Front Street, Suite 200
Boise, Idaho 83702
(208) 342-6066 Telephone
(208) 336-9712 Fax
stacey@lawidaho.com

I:\10268.006\PLD\Notice of Non-Opposition (Plaintiff's Motion to Amend Complaint) 131002.DOC

Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,

Plaintiff,

v.

ROGERSON FLATS WIND PARK, LLC, an Idaho limited liability company; EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, an Idaho limited liability company; XRG DEVELOPMENT PARTNERS, LLC, an Idaho limited liability company; J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, an Idaho revocable trust; JACK RANCH WIND LAND HOLDINGS, LLC, a Delaware limited liability company; and "JOHN DOES 1-10",

Defendants.

Case No. CV-2013-573

**J.R. SIMPLOT SELF-DECLARATION
OF REVOCABLE TRUST'S NOTICE OF
NON-OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO AMEND
COMPLAINT**

(Judge Randy J. Stoker)

COMES NOW, Defendant J.R. Simplot Self-Declaration of Revocable Trust ("Simplot"), by and through its counsel of record, Meuleman Mollerup LLP, and gives notice

J.R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST'S NOTICE OF NON-OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT - Page 1

that Simplot does not oppose Plaintiff's Motion for Leave to Amend Complaint filed herein on or about September 5, 2013.

DATED this 2nd day of October 2013.

MEULEMAN MOELLERUP LLP

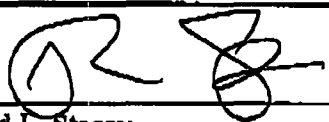


By: Richard L. Stacey
Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of October 2013, a true and correct copy of the foregoing document was served by the method indicated below to the following parties:

<p>John R. Goodell Racine, Olson, Nye, Budge & Bailey, Chartered P.O. Box 1391 Pocatello, Idaho 83204-1391 Telephone: (208) 232-6101 Facsimile: (208) 232-6109 <i>Counsel for Plaintiff</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email jrg@racinelaw.net</p>	<p>Richard E. Greener Tara Martens Miller Greener Burke Shoemaker Oberrecht P.A. 950 W. Bannock St., Suite 950 Boise, ID 83702-6102 Telephone: (208) 319-2600 Facsimile: (208) 319-2601 <i>Counsel for Jack Ranch Wind Land Holdings, LLC</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email rgreener@greenerlaw.com tmiller@greenerlaw.com</p>
<p>Angelo L. Rosa 1168 E. 1700 S. Salt Lake City, Utah 84105 Telephone: 801/440-4400 Facsimile: 801/415-1773 <i>Counsel for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email arosa@exergydevelopment.com</p>	


Richard L. Stacey

132

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2013 OCT 15 AM 8:40

BY _____ CLERK

_____ SP _____ DEPUTY

Richard L. Stacey, ISB #6800
Joe Meuleman, ISB #8029
Brian J. Holleran, ISB #8437
MEULEMAN MOLLERUP LLP
755 W. Front Street, Suite 200
Boise, Idaho 83702
(208) 342-6066 Telephone
(208) 336-9712 Fax
stacey@lawidaho.com
I:\10268.006\PLD\Dismiss (NOH) 131010.DOC

Attorneys for Defendant J.R. Simplot Self-Declaration of Revocable Trust

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,

Plaintiff,

v.

ROGERSON FLATS WIND PARK, LLC, an Idaho limited liability company; EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, an Idaho limited liability company; XRG DEVELOPMENT PARTNERS, LLC, an Idaho limited liability company; J.R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, an Idaho revocable trust; JACK RANCH WIND LAND HOLDINGS, LLC, a Delaware limited liability company; and "JOHN DOES 1-10",

Defendants.

Case No. CV-2013-573

NOTICE OF HEARING ON J.R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST'S MOTION TO DISMISS AND NOTICE OF INTENT TO APPEAR BY TELEPHONE

(Judge Randy J. Stoker)

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

NOTICE IS HEREBY GIVEN that J.R. Simplot Self-Declaration of Revocable Trust (the "Trust"), by and through its counsel of record, Meuleman Mollerup LLP, will call its *Motion to Dismiss* for hearing before the Honorable Judge Randy J. Stoker on December 2, 2013, at 10:00 a.m. at the Twin Falls County Courthouse in Twin Falls, Idaho. The Motion to Dismiss and supporting documents will be filed in accordance with Rule 7.

The Trust further notifies the Court and parties hereto of its intent to appear by telephone at the above-referenced hearing pursuant to Rule 7(b)(4) of the Idaho Rules of Civil Procedure.

The Trust will initiate the telephone call to the Court and advises the other parties to this action that they may join the conference call by dialing (866) 249-5279 and entering participant code 168678.

DATED this 14th day of October 2013.

MEULEMAN MOLLERUP LLP



By: Brian J. Holleran

Attorneys for Defendant J.R. Simplot Self-
Declaration of Revocable Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of October 2013, a true and correct copy of the foregoing document was served by the method indicated below to the following parties:

<p>John R. Goodell Racine, Olson, Nye, Budge & Bailey, Chartered 101 S. Capitol Blvd. U.S. Bank Plaza Building, Ste. 300 Boise, Idaho 83702 Telephone: (208) 395-0011 Facsimile: (208) 433-0167 Counsel for Plaintiff <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email jrg@racinelaw.net</p>	<p>Richard H. Greener Tara Martens Miller Greener Burke Shoemaker Oberrecht P.A. 950 W. Bannock St., Suite 950 Boise, ID 83702-6102 Telephone: (208) 319-2600 Facsimile: (208) 319-2601 Counsel for Jack Ranch Wind Land Holdings, LLC <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email rgreener@greenerlaw.com tmiller@greenerlaw.com</p>
<p>Angelo L. Rosa 1168 E. 1700 S. Salt Lake City, Utah 84105 Telephone: 801/440-4400 Facsimile: 801/415-1773 Counsel for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email arosa@exergydevelopment.com</p>	


 Brian J. Holleran

John R. Goodell (ISB#: 2872)
Daniel C. Green (ISB#: 3213)
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED
101 S. Capitol Blvd.
U.S. Bank Plaza Building, Ste. 300
Boise, Idaho 83702
Office Main Phone: 208-395-0011
Emails: jrg@racinelaw.net
dan@racinelaw.net
Attorneys for Plaintiff Fagen, Inc.

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 OCT 15 PM 2:33

BY _____
CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)

Case No. CV-2013-573

vs.)

NOTICE OF SERVICE

)
ROGERSON FLATS WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited liability)
company; J. R. SIMPLOT)
SELF-DECLARATION OF REVOCABLE)
TRUST, an Idaho revocable trust; and JACK)
RANCH WIND LAND HOLDINGS, LLC,)
a Delaware limited liability company; and)
"JOHN DOES 1-10,")
)
Defendants.)

NOTICE IS HEREBY GIVEN that on the 10th day of October, 2013, I served *Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Defendant Rogerson Flats Wind Park, LLC, Exergy Development Group of Idaho, LLC and XRG Development Partners, LLC* via

U.S. mail to the following:

Angelo L. Rosa

1168 E. 1700 S.

Salt Lake City, UT 84105

Attorney for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; and Rogerson Flats Wind Park, LLC

DATED this 10 day of October, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 

JOHN R. GOODELL

Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10 day of October, 2013, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
Attorney for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; and Rogerson Flats Wind Park, LLC

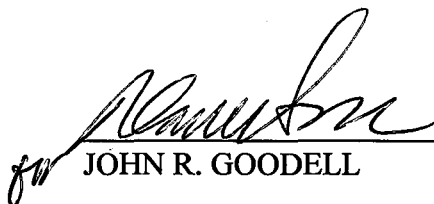
- U. S. Mail *+ Email*
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

Richard L. Stacey
Joe Meuleman
MEULEMAN MOLLERUP, LLP
755 W Front Street, Suite 200
Boise, Idaho 83702
Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

- U. S. Mail *+ Email*
- Postage Prepaid
- Hand Delivery
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- Facsimile

Richard H. Green
Tara Martens Miller
GREENER BURKE SHOEMAKER
OBERRECHT, P.A.
950 W. Bannock ST, Suite 950
Boise, Idaho 83702
Attorneys for Jack Ranch Wind Land Holdings, LLC

- U. S. Mail *+ Email*
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile



JOHN R. GOODELL

OCT 18 2013

By _____ 2:30 PM.
Clerk

Deputy Clerk

Angelo L. Rosa (ISB No. 7546)
1168 E. 1700 S.
Salt Lake City, Utah 84105
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants
ROGERSON FLATS WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO,
L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
Plaintiff,)
vs.)
ROGERSON FLATS WIND PARK,)
LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited)
liability company; J. R. SIMPLOT SELF-)
DECLARATION OF) REVOCABLE)
TRUST, an Idaho revocable) trust; and)
"JOHN DOES 1- 10",)
Defendants.)

Case No. CV 2013-573

AMENDED NOTICE OF HEARING

PLEASE TAKE NOTICE that the **Omnibus Motion to Dismiss** filed by Defendants ROGERSON FLATS WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC, by and through their counsel of record, Angelo L. Rosa, will be heard by the Honorable Randy J. Stoker of the above-captioned court on **2 December 2013 at 10:00 a.m.** at the Twin Falls County Courthouse, located at **427 Shoshone Street N. in Twin Falls, Idaho 83301.**

DATED: 18 October 2013

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 18 October 2013, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

Richard L. Stacy
MEULEMAN MOLLERUP, LLC
755 West Front Street, Suite 200
Boise, Idaho 83702

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

John R. Goodell
RACINE, OLSEN, NYE, BUDGE & BAILY,
CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____

Angelo L. Rosa

132

John R. Goodell (ISB#: 2872)
 Daniel C. Green (ISB#: 3213)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109
 Emails: jrg@racinelaw.net
dan@racinelaw.net

DISTRICT COURT
 Fifth Judicial District
 County of Twin Falls - State of Idaho

OCT 18 2013 4:16 PM

By _____ Clerk
 _____ Deputy Clerk

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
 Plaintiff,)

Case No. CV-2013-573

vs.)

AMENDED NOTICE OF HEARING

ROGERSON FLATS WIND PARK, LLC,)
 an Idaho limited liability company;)
 EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMENT)
 PARTNERS, LLC, an Idaho limited liability)
 company; J. R. SIMPLOT)
 SELF-DECLARATION OF REVOCABLE)
 TRUST, an Idaho revocable trust; and JACK)
 RANCH WIND LAND HOLDINGS, LLC,)
 a Delaware limited liability company; and)
 "JOHN DOES 1-10,")
)
 Defendants.)

TO: THE ABOVE-NAMED PARTIES AND THEIR COUNSEL OF RECORD

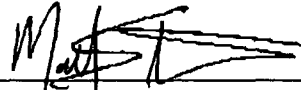
PLEASE TAKE NOTICE that the undersigned will bring on for hearing Plaintiff Fagen's
 Motion For Leave to Amend Complaint and Motion For Rule 56(f) Continuance at the Twin Falls

County Courthouse, 427 Shoshone Street N, Twin Falls, Idaho 83303 before the Hon. Randy J. Stoker, District Judge, on Monday, December 2, 2013, at the hour of 10:00 a.m., or as soon thereafter as counsel can be heard.

DATED this 18 day of October, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: _____



JOHN R. GOODELL

For

Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of October, 2013, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
Attorney for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; and Rogerson Flats Wind Park, LLC

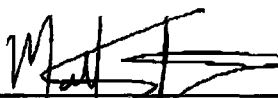
- U. S. Mail
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- Overnight Mail
- Facsimile
- Email

Richard L. Stacey
Joe Meuleman
MEULEMAN MOLLERUP, LLP
755 W Front Street, Suite 200
Boise, Idaho 83702
Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

- U. S. Mail
- Postage Prepaid
- Hand Delivery
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- Facsimile
- Email

Richard H. Green
Tara Martens Miller
GREENER BURKE SHOEMAKER
OBERRECHT, P.A.
950 W. Bannock ST, Suite 950
Boise, Idaho 83702
Attorneys for Jack Ranch Wind Land Holdings, LLC

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
- Email

for 

JOHN R. GOODELL

132

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

John R. Goodell (ISB#: 2872)
Daniel C. Green (ISB#: 3213)
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED
101 S. Capitol Blvd.
U.S. Bank Plaza Building, Ste. 300
Boise, Idaho 83702
Office Main Phone: 208-395-0011
Emails: jrg@racinelaw.net
dan@racinelaw.net

2013 OCT 18 PM 2: 28

BY _____
CLERK
[Signature] _____
DEPUTY

ORIGINAL

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
ROGERSON FLATS WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited liability)
company; J. R. SIMPLOT)
SELF-DECLARATION OF REVOCABLE)
TRUST, an Idaho revocable trust; and JACK)
RANCH WIND LAND HOLDINGS, LLC,)
a Delaware limited liability company; and)
"JOHN DOES 1-10,")
)
Defendants.)
_____)

Case No. CV-2013-573

**SECOND AFFIDAVIT OF JOHN R.
GOODELL IN SUPPORT OF MOTION
FOR RULE 56(f) CONTINUANCE**

STATE OF IDAHO)
 : ss.
County of Ada)

JOHN R. GOODELL, being first duly sworn, deposes and states as follows:

1. Your Affiant is a citizen of the United States, a resident of Ada County, Idaho, of legal age, and competent to be a witness. I am an attorney licensed to practice law in the State of Idaho, and lead counsel of record for the Plaintiff herein. I hereby affirm the following facts and matters based on my personal knowledge. This Affidavit is submitted in support of Plaintiff Fagen's Motion For Rule 56(f) Continuance that was filed with the Court on September 6, 2013.

2. On October 9, 2013 the undersigned served Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Defendant Rogerson Flats Wind Park, LLC, Exergy Development Group of Idaho, LLC and XRG Development Partners, LLC. A Notice of Service of the same date was mailed for filing with the Court. Counsel does not submit a copy of the Discovery request as unnecessary.

3. Defendant's Omnibus Motion to Dismiss is set for hearing on October 21, 2013.

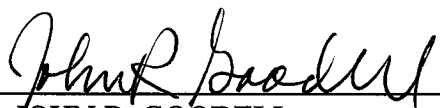
4. Discovery Answers and Responses will not be due by the Defendants until well after the hearing on Defendant's Omnibus Motion to Dismiss.

5. Without review of Defendants' answers and responses to discovery, Plaintiff will not be able to properly prepare its defense to the Defendants' motion before the motion is heard by the Court.

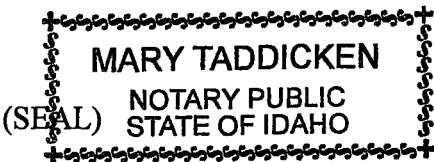
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 17th day of October, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc

SUBSCRIBED AND SWORN TO before me this 17th day of October, 2013.



Mary Taddicken
NOTARY PUBLIC FOR IDAHO
Residing at: Boise
My Commission Expires: 9-20-19

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of October, 2013, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
Attorney for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; and Rogerson Flats Wind Park, LLC

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

Richard L. Stacey
Joe Meuleman
MEULEMAN MOLLERUP, LLP
755 W Front Street, Suite 200
Boise, Idaho 83702
Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

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- Postage Prepaid
- Hand Delivery
- Overnight Mail
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Richard H. Greener
Tara Martens Miller
GREENER BURKE SHOEMAKER
OBERRECHT, P.A.
950 W. Bannock ST, Suite 950
Boise, Idaho 83702
Attorneys for Jack Ranch Wind Land Holdings, LLC

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- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

John R. Goodell
JOHN R. GOODELL

132

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Angelo L. Rosa (ISB No. 7546)
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Salt Lake City, Utah 84105
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants
ROGERSON FLATS WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO,
L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)	Case No. CV2013-573
)	
Plaintiff,)	
)	
vs.)	
)	
ROGERSON FLATS WIND PARK,)	NOTICE OF NON-OPPOSITION TO MOTION TO AMEND COMPLAINT
LLC, an)	
Idaho limited liability company;)	
EXERGY DEVELOPMENT GROUP OF)	
IDAHO, LLC, an Idaho limited liability)	
company; XRG DEVELOPMENT)	
PARTNERS, LLC, an Idaho limited)	
liability company; J. R. SIMPLOT SELF-)	
DECLARATION OF) REVOCABLE)	
TRUST, an Idaho revocable) trust; and)	
"JOHN DOES 1- 10",)	
Defendants.)	

PLEASE TAKE NOTICE that Defendants ROGERSON FLATS WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC, do not oppose the Motion of Plaintiff Fagen, Inc. to amend its complaint in this matter.

DATED: 18 October 2013

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 18 October 2013, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

Richard L. Stacy
MEULEMAN MOLLERUP, LLC
755 West Front Street, Suite 200
Boise, Idaho 83702

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

John R. Goodell
RACINE, OLSEN, NYE, BUDGE & BAILY,
CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____

Angelo L. Rosa

132

DISTRICT COURT
TWIN FALLS CO., IDAHO
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BY _____ CLERK
 sp _____ DEPUTY

Richard L. Stacey, ISB #6800
Joe Meuleman, ISB #8029
Brian J. Holleran, ISB #8437
MEULEMAN MOLLERUP LLP
755 W. Front Street, Suite 200
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(208) 342-6066 Telephone
(208) 336-9712 Fax
stacey@lawidaho.com
I:\10268.006\PLD\Dismiss (NOH) 131010.DOC

Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,

 Plaintiff,

v.

ROGERSON FLATS WIND PARK, LLC, an
Idaho limited liability company; EXERGY
DEVELOPMENT GROUP OF IDAHO,
LLC, an Idaho limited liability company;
XRG DEVELOPMENT PARTNERS, LLC,
an Idaho limited liability company; J. R.
SIMPLOT SELF-DECLARATION OF
REVOCABLE TRUST, an Idaho revocable
trust; JACK RANCH WIND LAND
HOLDINGS, LLC, a Delaware limited
liability company; and "JOHN DOES 1-10",

 Defendants.

Case No. CV-2013-573

**NOTICE OF HEARING ON J. R.
SIMPLOT SELF-DECLARATION OF
REVOCABLE TRUST'S MOTION TO
DISMISS**

(Judge Randy J. Stoker)

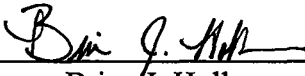
ORIGINAL

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

NOTICE IS HEREBY GIVEN that J. R. Simplot Self-Declaration of Revocable Trust (the "Trust"), by and through its counsel of record, Meuleman Mollerup LLP, will call its *Motion to Dismiss* for hearing before the Honorable Judge Randy J. Stoker on **December 2, 2013, at 10:00 a.m.** at the Twin Falls County Courthouse in Twin Falls, Idaho.

DATED this 14th day of November 2013.

MEULEMAN MOLLERUP LLP

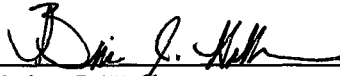


By: Brian J. Holleran
Attorneys for Defendant J. R. Simplot Self-
Declaration of Revocable Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of November 2013, a true and correct copy of the foregoing document was served by the method indicated below to the following parties:

<p>John R. Goodell Racine, Olson, Nye, Budge & Bailey, Chartered 101 S. Capitol Blvd. U.S. Bank Plaza Building, Ste. 300 Boise, Idaho 83702 Telephone: (208) 395-0011 Facsimile: (208) 433-0167 <i>Counsel for Plaintiff</i> <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email jrg@racinelaw.net</p>	<p>Richard H. Greener Tara Martens Miller Greener Burke Shoemaker Oberrecht P.A. 950 W. Bannock St., Suite 950 Boise, ID 83702-6102 Telephone: (208) 319-2600 Facsimile: (208) 319-2601 <i>Counsel for Jack Ranch Wind Land Holdings, LLC</i> <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email rgreener@greenerlaw.com tmiller@greenerlaw.com</p>
<p>Angelo L. Rosa 1168 E. 1700 S. Salt Lake City, Utah 84105 Telephone: 801/440-4400 Facsimile: 801/415-1773 <i>Counsel for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC</i> <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email arosa@exergydevelopment.com</p>	



Brian J. Holleran

132

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stacey@lawidaho.com
I:\10268.006\PLD\Dismiss (Motion) 131010.DOC

BY _____
 sl CLERK
_____ DEPUTY

Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,
Plaintiff,

v.

ROGERSON FLATS WIND PARK, LLC, an
Idaho limited liability company; EXERGY
DEVELOPMENT GROUP OF IDAHO,
LLC, an Idaho limited liability company;
XRG DEVELOPMENT PARTNERS, LLC,
an Idaho limited liability company; J.R.
SIMPLOT SELF-DECLARATION OF
REVOCABLE TRUST, an Idaho revocable
trust; JACK RANCH WIND LAND
HOLDINGS, LLC, a Delaware limited
liability company; and "JOHN DOES 1-10",

Defendants.

Case No. CV-2013-573

**J. R. SIMPLOT SELF-DECLARATION
OF REVOCABLE TRUST'S MOTION
TO DISMISS**

(Judge Randy J. Stoker)

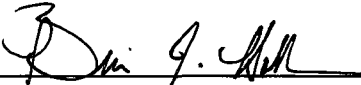
ORIGINAL

COMES NOW, Defendant J. R. Simplot Self-Declaration of Revocable Trust (the “Trust”), by and through its counsel of record, Meuleman Mollerup LLP, and moves this Court for an order dismissing the Complaint herein as to the Trust under Rule 12(b)(6) of the Idaho Rules of Civil Procedure.

This motion is made and based upon papers and pleadings on file herein, the memorandum filed in support hereof, and all other and further evidence and arguments presented at the hearing of this matter. Oral argument is requested.

DATED this 14th day of November 2013.

MEULEMAN MOLLERUP LLP


By: Brian J. Holleran
Attorneys for Defendant J. R. Simplot Self-
Declaration of Revocable Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14 day of November 2013, a true and correct copy of the foregoing document was served by the method indicated below to the following parties:

<p>John R. Goodell Racine, Olson, Nye, Budge & Bailey, Chartered 101 S. Capitol Blvd. U.S. Bank Plaza Building, Ste. 300 Boise, Idaho 83702 Telephone: (208) 395-0011 Facsimile: (208) 433-0167 <i>Counsel for Plaintiff</i> <input checked="" type="checkbox"/> <i>Mail</i> <input type="checkbox"/> <i>Fax</i> <input type="checkbox"/> <i>Overnight</i> <input type="checkbox"/> <i>Hand Delivery</i> <input type="checkbox"/> <i>Email</i> jrg@racinelaw.net</p>	<p>Richard H. Greener Tara Martens Miller Greener Burke Shoemaker Oberrecht P.A. 950 W. Bannock St., Suite 950 Boise, ID 83702-6102 Telephone: (208) 319-2600 Facsimile: (208) 319-2601 <i>Counsel for Jack Ranch Wind Land Holdings, LLC</i> <input checked="" type="checkbox"/> <i>Mail</i> <input type="checkbox"/> <i>Fax</i> <input type="checkbox"/> <i>Overnight</i> <input type="checkbox"/> <i>Hand Delivery</i> <input type="checkbox"/> <i>Email</i> rgreener@greenerlaw.com tmiller@greenerlaw.com</p>
<p>Angelo L. Rosa 1168 E. 1700 S. Salt Lake City, Utah 84105 Telephone: 801/440-4400 Facsimile: 801/415-1773 <i>Counsel for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC</i> <input checked="" type="checkbox"/> <i>Mail</i> <input type="checkbox"/> <i>Fax</i> <input type="checkbox"/> <i>Overnight</i> <input type="checkbox"/> <i>Hand Delivery</i> <input type="checkbox"/> <i>Email</i> arosa@exergydevelopment.com</p>	



Brian J. Holleran

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DISTRICT COURT
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stacey@lawidaho.com
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BY _____ CLERK
 SR DEPUTY

Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,

 Plaintiff,

v.

ROGERSON FLATS WIND PARK, LLC, an
Idaho limited liability company; EXERGY
DEVELOPMENT GROUP OF IDAHO,
LLC, an Idaho limited liability company;
XRG DEVELOPMENT PARTNERS, LLC,
an Idaho limited liability company; J. R.
SIMPLOT SELF-DECLARATION OF
REVOCABLE TRUST, an Idaho revocable
trust; JACK RANCH WIND LAND
HOLDINGS, LLC, a Delaware limited
liability company; and "JOHN DOES 1-10",

 Defendants.

Case No. CV-2013-573

**MEMORANDUM IN SUPPORT OF J. R.
SIMPLOT SELF-DECLARATION OF
REVOCABLE TRUST'S MOTION TO
DISMISS**

(Judge Randy J. Stoker)

ORIGINAL

COMES NOW, Defendant J. R. Simplot Self-Declaration of Revocable Trust, by and through its counsel of record, Meuleman Mollerup LLP, and files with this Court its memorandum in support of its Motion to Dismiss.

I. INTRODUCTION

Fagen, Inc. (“Fagen”) has recorded a claim of lien (“Lien”) seeking recovery for alleged “labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment” at real property located in Twin Falls County, Idaho. First Amended Complaint (“FAC”), Exhibit One. Said real property (“Property”) is owned by Ronald N. Graves, Trustee of the J. R. Simplot Self-Declaration of Revocable Trust. Fagen has not named Mr. Graves as a defendant in this lawsuit. However, the J. R. Simplot Self-Declaration of Revocable Trust has been named as a defendant. For the sake of clarity, Ronald N. Graves will hereinafter be referred to as “Trustee Graves,” and the J. R. Simplot Self-Declaration of Revocable Trust will hereinafter be referred to as the “Trust.”

Fagen has alleged that it is an Idaho registered contractor. FAC, ¶ 1. However, it is undisputed that Fagen is not licensed to practice engineering in the State of Idaho. Accordingly, Fagen does not have any lien rights with regard to the alleged engineering work it performed at the Property. *See* I.C. §§ 45-501, 54-1201, 54-1235. Likewise, the Property itself is not subject to Fagen’s Lien. Fagen’s work was not performed on behalf of or at the direction of the Property owner – Trustee Graves – nor was Fagen’s work performed on behalf of or at the direction of Trustee Graves’ tenant, Rogerson Flats Wind Park, LLC (“Rogerson”). FAC, ¶ 12. Instead, Fagen’s alleged work was performed on behalf of and at the direction of Defendant Exergy Development Group of Idaho, LLC (“Exergy”), with whom Rogerson apparently had an agreement to develop and construct a wind farm at the Property. FAC, ¶ 12; Exhibit Two. Further,

neither Rogerson nor Exergy was acting as Trustee Graves' agent, Trustee Graves did not ratify nor consent to the work performed by Exergy, and the lease between Trustee Graves and Rogerson did not require Rogerson or Exergy to perform the work allegedly performed by Exergy. Fagen's FAC does not allege otherwise. *See generally* FAC. Accordingly, the Property is not subject to Fagen's Lien. *See Idaho Lumber, Inc. v. Buck*, 109 Idaho 737, 710 P.2d 647 (Ct. App. 1985); *Christensen v. Idaho Land Developers, Inc.*, 104 Idaho 458, 660 P.2d 70 (Ct. App. 1983) (overruled on other grounds); *Bunt v. Roberts*, 76 Idaho 158, 279 P.2d 629 (1955).

Nevertheless, even assuming, *arguendo*, that Fagen performed lienable work on the Property and that the Property is subject to the Lien, the FAC must be dismissed as to the Trust because the Trust is not an entity, and thus does not have the capacity to be sued. Accordingly, Fagen's FAC against the Trust must be dismissed.

II. LEGAL STANDARD

In reviewing a motion to dismiss pursuant to Rule 12(b)(6), Idaho Courts will consider "whether the non-movant has alleged sufficient facts in support of his claim, which if true would entitle him to relief." *Orrock v. Appleton*, 147 Idaho 613, 618, 213 P.3d 398, 403 (2009) quoting *Rincover v. Dep't of Fin.*, 128 Idaho 653, 656, 917 P.2d 1293, 1296 (1996)). Courts "look only to the complaint to determine whether the plaintiff has stated a claim for relief. Where a claim for relief is stated, the complaint survives the motion to dismiss and the plaintiff is entitled to offer evidence in support of its claim." *Indep. Sch. Dist. V. Harris Family Ltd. P'ship*, 150 Idaho 583, 587 (2011). The Court must "draw all reasonable inferences in favor of the non-moving party." *Taylor v. Maile*, 142 Idaho 253, 257, 127 P.3d 156, 160 (2005) (citation omitted). "After drawing all reasonable inferences in favor of the non-moving party, the Court then examines whether a claim for relief has been stated." *Id.* "A motion to dismiss for failure to state a claim should not

be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.” *Shelton v. Shelton*, 148 Idaho 560, 565, 225 P.3d 693, 698 (2009) (citations omitted).

III. ARGUMENT

A. Fagen’s FAC Must Be Dismissed As To The Trust Because The Trust Is Not An Entity And Does Not Have The Capacity To Be Sued.

“Under Idaho law, a trust is not a separate legal entity; rather, a trust is no being at all.” *Indian Springs LLC v. Indian Springs Land Inv., LLC*, 147 Idaho 737, 745, 215 P.3d 457, 465 (2009). A trust “is but a name, representing no being, real or artificial, and possessing no powers or privileges whatsoever....” *State v. Cosgrove*, 36 Idaho 278, ---, 210 P. 395 (1922).

As a trust is not an entity or being, it lacks the capacity to be sued. In *Millennium Square Residential Ass'n v. 2200 M St. LLC*, — F. Supp. 2d —, 2013 WL 3462573 (D.D.C. July 10, 2013), the Millennium Trust moved to dismiss a complaint filed against it, “arguing that as a trust, it is not a legal entity that can sue or be sued.” *Id.* at 4 (D.D.C. July 10, 2013). The *Millennium* Court agreed, finding that “the general rule is that ‘[a] trust is not an entity distinct from its trustees and capable of legal action on its own behalf, but merely a fiduciary relationship with respect to property.’” *Id.* citing 76 Am Jur 2d Trusts § 3 (2005). Likewise, in *Limouze v. M. M. & P. Mar. Advancement, Training, Ed. & Safety Program*, 397 F. Supp. 784, 789 (D. Md. 1975), the Court granted the trust’s motion to dismiss, finding that “the weight of authority is clear that the trust estate is not a person in the eyes of the law and does not have the capacity to be sued as an entity.” *Id.* at 789. *See also N. Sec. Ins. Co. v. Doherty*, 186 Vt. 598, 600, 987 A.2d 253, 256 (2009) (“trusts are not independent legal entities with the capacity to sue or be sued”).

As indicated above, a trust does not have the capacity to be sued. As such, any suit with respect to a trust or trust property must be brought against the respective trustee(s). *See Coverdell*

v. Mid-South Farm Equip. Ass'n, 335 F.2d 9, 14 (6th Cir. 1964) (“The Court therefore concludes that this action cannot be maintained against the trust, and that the trust could be sued only through its trustees.”); Am.Jur., Trusts § 611 (“The trustee is the legal owner of trust property, and as such the trustee is the proper party for actions affecting trust property. Thus, a trustee is a necessary party to any suit or proceeding involving a disposition of trust property or funds.”).

In Idaho, as in the cases of *Millennium*, *Limouze*, and *Doherty*, the law is that “a trust is not a separate legal entity; rather, a trust is no being at all.” *Indian Springs* at 745, 215 P.3d 465. Accordingly, the Trust here is without the capacity to be sued. Likewise, as indicated in *Coverdell* and *Rittenberry*, Fagen is required to sue the trustee of the Trust, Trustee Graves, to assert the priority of its Lien against the Trust Property. See *Hogg v. Wolske*, 142 Idaho 549, 558, 130 P.3d 1087, 1096 (2006) (wherein the Idaho Supreme Court alluded to the fact that the plaintiff improperly proceeded against the trust, as opposed to the trustee, but expressing no opinion on the issue because it was not raised). Accordingly, Fagen’s FAC against the Trust must be dismissed because the Trust is not an entity and thus lacks the capacity to be sued.

B. Fagen’s FAC Must Be Dismissed As To The Trust Because The Trust Does Not Have An Interest In The Property.

Fagen’s FAC alleges a cause of action against the Trust for foreclosure of the Lien. Proper defendants in a lien foreclosure case are those having an interest in the real property allegedly improved by the lien claimant. I.C. § 45-510; *ParkWest Homes, LLC v. Barnson*, 154 Idaho 678, 302 P.3d 18 (2013).

In the case at bar, the Trust does not have an interest in the Property. “The trust property is owned by the trustee.” *Indian Springs* at 745, 215 P.3d 465. “A trustee is a man who is the owner of the property and deals with it as principal, as owner and as master, subject only to an equitable obligation to account to some person to whom he stands in the relation of trustee, who

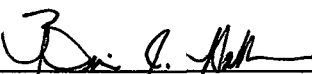
are his *cestuis que trustent*.” *Id.* citing *Cosgrove* at ---, 210 P. 395 (emphasis added). The Property at issue is owned by Trustee Graves, not the Trust. Without an interest in the Property, Fagen can prove no set of facts in support of its foreclosure claim that would entitle it to relief against the Trust. *Shelton v. Shelton*, 148 Idaho 560, 565, 225 P.3d 693, 698 (2009) (citations omitted). As such, Fagan’s FAC must be dismissed as to the Trust. *Id.*

IV. CONCLUSION

The Trust is not an entity with capacity to be sued, and the Trust does not own an interest in the Property. Accordingly, Fagen’s FAC must be dismissed as to the Trust under Rule 12(b)(6).

DATED this 14th day of November 2013.

MEULEMAN MOLLERUP LLP



By: Brian J. Holleran
Attorneys for Defendant J. R. Simplot Self-
Declaration of Revocable Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of November 2013, a true and correct copy of the foregoing document was served by the method indicated below to the following parties:

<p>John R. Goodell Racine, Olson, Nye, Budge & Bailey, Chartered 101 S. Capitol Blvd. U.S. Bank Plaza Building, Ste. 300 Boise, Idaho 83702 Telephone: (208) 395-0011 Facsimile: (208) 433-0167 <i>Counsel for Plaintiff</i> <input checked="" type="checkbox"/> <i>Mail</i> <input type="checkbox"/> <i>Fax</i> <input type="checkbox"/> <i>Overnight</i> <input type="checkbox"/> <i>Hand Delivery</i> <input type="checkbox"/> <i>Email</i> jrg@racinelaw.net</p>	<p>Richard H. Greener Tara Martens Miller Greener Burke Shoemaker Oberrecht P.A. 950 W. Bannock St., Suite 950 Boise, ID 83702-6102 Telephone: (208) 319-2600 Facsimile: (208) 319-2601 <i>Counsel for Jack Ranch Wind Land Holdings, LLC</i> <input checked="" type="checkbox"/> <i>Mail</i> <input type="checkbox"/> <i>Fax</i> <input type="checkbox"/> <i>Overnight</i> <input type="checkbox"/> <i>Hand Delivery</i> <input type="checkbox"/> <i>Email</i> rgreener@greenerlaw.com tmiller@greenerlaw.com</p>
<p>Angelo L. Rosa 1168 E. 1700 S. Salt Lake City, Utah 84105 Telephone: 801/440-4400 Facsimile: 801/415-1773 <i>Counsel for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC</i> <input checked="" type="checkbox"/> <i>Mail</i> <input type="checkbox"/> <i>Fax</i> <input type="checkbox"/> <i>Overnight</i> <input type="checkbox"/> <i>Hand Delivery</i> <input type="checkbox"/> <i>Email</i> arosa@exergydevelopment.com</p>	



Brian J. Holleran

2013 NOV 26 PM 1:45

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GREENER BURKE SHOEMAKER OBERRECHT P.A.
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Emails: rgreener@greenerlaw.com
tmiller@greenerlaw.com

BY _____ CLERK
[Signature] DEPUTY

Attorneys for Jack Ranch Wind Land Holdings, LLC

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

FAGEN, INC., a Minnesota corporation,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC, an Idaho limited liability company; EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, an Idaho limited liability company; XRG DEVELOPMENT PARTNERS, LLC, an Idaho limited liability company; J.R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, an Idaho revocable trust; and JACK RANCH WIND LAND HOLDINGS, LLC, a Delaware limited liability company; and "JOHN DOES 1-10,"

Defendants.

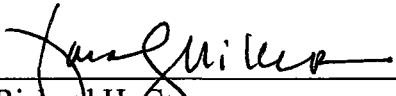
Case No. CV-2013-0000573

**STIPULATION FOR DISMISSAL WITH
PREJUDICE OF DEFENDANT JACK
RANCH WIND LAND HOLDINGS, LLC**

COMES NOW, the Plaintiff Fagen Inc., ("Plaintiff") by and through its counsel of record, Racine, Olson, Nye, Budge & Bailey, Chartered and the Defendant, Jack Ranch Wind Land Holdings, LLC ("Defendant") by and through its counsel of record, Greener Burke Shoemaker Oberrecht P.A., and hereby request that Defendant be dismissed with prejudice, the parties to bear

their own costs and attorneys' fees. This Stipulation is made and entered upon the grounds and for the reasons that the matter has been resolved as between Plaintiff and Defendant, Jack Ranch Wind Land Holdings, LLC.

DATED this ___ day of November, 2013. GREENER BURKE SHOEMAKER OBERRECHT P.A.


 Richard H. Greener
 Tara Martens Miller

Attorneys for Defendant Jack Ranch Wind Land Holdings, LLC

DATED this ___ day of November, 2013. Racine, Olson, Nye, Budge & Bailey, Chartered

 John R. Goodell

Attorney for Plaintiff Fagen Inc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ___ day of November, 2013, a true and correct copy of the within and foregoing instrument was served upon:

<p>John R. Goodell Racine, Olson, Nye, Budge & Bailey, Chartered 101 S. Capitol Boulevard U.S. Bank Plaza Building, Suite 300 Boise, ID 83702</p> <p><i>Attorneys for Plaintiff Fagen, Inc.</i></p>	<p><input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile: 208/433-0167 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email: <i>jrg@racinelaw.net</i></p>
<p>Richard H. Greener (ISB No. 1191) Tara Martens Miller (ISB No. 5773) Greener Burke Shoemaker Oberrecht p.a. 950 W. Bannock St., Suite 950 Boise, ID 83702-6102</p> <p><i>Attorneys for Defendant for Jack Ranch Wind Land Holdings, LLC</i></p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: 208/319-2601 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email: <i>tmiller@greenerlaw.com</i></p>


their own costs and attorneys' fees. This Stipulation is made and entered upon the grounds and for the reasons that the matter has been resolved as between Plaintiff and Defendant, Jack Ranch Wind Land Holdings, LLC.

DATED this ___ day of November, 2013. GREENER BURKE SHOEMAKER OBERRECHT P.A.

Richard H. Greener
Tara Martens Miller

Attorneys for Defendant Jack Ranch Wind Land Holdings, LLC

DATED this 22nd day of November, 2013. Racine, Olson, Nye, Budge & Bailey, Chartered


John R. Goodell

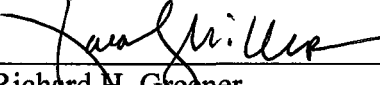
Attorney for Plaintiff Fagen Inc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ___ day of November, 2013, a true and correct copy of the within and foregoing instrument was served upon:

<p>John R. Goodell Racine, Olson, Nye, Budge & Bailey, Chartered 101 S. Capitol Boulevard U.S. Bank Plaza Building, Suite 300 Boise, ID 83702</p> <p><i>Attorneys for Plaintiff Fagen, Inc.</i></p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: 208/433-0167 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email: <i>jrg@racinelaw.net</i></p>
<p>Richard H. Greener (<i>ISB No. 1191</i>) Tara Martens Miller (<i>ISB No. 5773</i>) Greener Burke Shoemaker Oberrecht p.a. 950 W. Bannock St., Suite 950 Boise, ID 83702-6102</p> <p><i>Attorneys for Defendant for Jack Ranch Wind Land Holdings, LLC</i></p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: 208/319-2601 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email: <i>tmiller@greenerlaw.com</i></p>

<p>Angelo L. Rosa 1168 E. 1700 S. Salt Lake City, UT 84105</p> <p><i>Attorney for Defendants Exergy Development Group of Idaho, LLC, XRG Development Partners, LLC and Rogerson Flats Wind Park, LLC</i></p>	<p><input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile: 801/415-1773 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email:</p>
<p>Richard L. Stacey Joe Meuleman Meuleman Mollerup, LLP 755 W. Front Street, Suite 200 Boise, ID 83702</p> <p><i>Attorneys for Defendant J.R. Simplot Self-Declaration of Revocable Trust</i></p>	<p><input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile: 208/336-9712 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email: <u>stacey@lawidaho.com</u></p>


 Richard M. Greener
 Tara Martens Miller

NOV 26 2013

By _____ 2:45 P.M.
Clerk

Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

FAGEN, INC., a Minnesota corporation,

Plaintiff,

vs.

**ROGERSON FLATS WIND PARK, LLC,
an Idaho limited liability company;
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, an Idaho limited liability
company; XRG DEVELOPMENT
PARTNERS, LLC, an Idaho limited liability
company; J.R. SIMPLOT
SELF-DECLARATION OF REVOCABLE
TRUST, an Idaho revocable trust; and JACK
RANCH WIND LAND HOLDINGS, LLC,
a Delaware limited liability company; and
"JOHN DOES 1-10,"**

Defendants.

Case No. CV-2013-0000573

**ORDER GRANTING STIPULATION
FOR DISMISSAL OF DEFENDANT
JACK RANCH WIND LAND
HOLDINGS, LLC, WITH PREJUDICE**

The Stipulation for Dismissal of Defendant Jack Ranch Wind Land Holdings, LLC with Prejudice, having come before this Court and good causing appearing,

IT IS HEREBY ORDERED AND THIS COURT DOES ORDER that Defendant Jack Ranch Wind Land Holdings, LLC in the above-entitled action shall be dismissed with prejudice, for the reason that the parties have resolved the matter as between them, each party to bear its own attorneys' fees and costs.

DATED this 26 day of Nov, 2013.

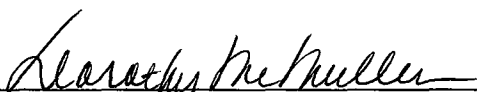

The Honorable Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26 day of Nov, 2013, a true and correct copy of the within and foregoing instrument was served upon:

<p>John R. Goodell Racine, Olson, Nye, Budge & Bailey, Chartered 101 S. Capitol Boulevard U.S. Bank Plaza Building, Suite 300 Boise, ID 83702</p> <p><i>Attorneys for Plaintiff Fagen, Inc.</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: 208/433-0167 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email:</p>
<p>Angelo L. Rosa 1168 E. 1700 S. Salt Lake City, UT 84105</p> <p><i>Attorney for Defendants Exergy Development Group of Idaho, LLC, XRG Development Partners, LLC and Rogerson Flats Wind Park, LLC</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: 801/415-1773 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email:</p>
<p>Richard H. Greener (<i>ISB No. 1191</i>) Tara Martens Miller (<i>ISB No. 5773</i>) Greener Burke Shoemaker Oberrecht P.A. 950 W. Bannock St., Suite 950 Boise, ID 83702-6102</p> <p><i>Attorneys for Defendant Jack Ranch Wind Land Holdings, LLC</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: 208/319-2601 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email:</p>

<p>Richard L. Stacey Joe Meuleman Meuleman Mollerup, LLP 755 W. Front Street, Suite 200 Boise, ID 83702</p> <p><i>Attorneys for Defendant J.R. Simplot Self-Declaration of Revocable Trust</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: 208/336-9712 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email</p>
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Clerk of the Court

132

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 NOV 27 PM 4: 04

Richard L. Stacey, ISB #6800
Joe Meuleman, ISB #8029
Brian J. Holleran, ISB #8437
MEULEMAN MOLLERUP LLP
755 W. Front Street, Suite 200
Boise, Idaho 83702
(208) 342-6066 Telephone
(208) 336-9712 Fax
stacey@lawidaho.com
I:\10268.006\PLD\Dismiss (Withdraw) 131127.docx

BY _____
CLERK
_____ *JS* _____
DEPUTY

Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,

Plaintiff,

v.

ROGERSON FLATS WIND PARK, LLC, an Idaho limited liability company; EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, an Idaho limited liability company; XRG DEVELOPMENT PARTNERS, LLC, an Idaho limited liability company; J.R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, an Idaho revocable trust; JACK RANCH WIND LAND HOLDINGS, LLC, a Delaware limited liability company; and "JOHN DOES 1-10",

Defendants.

Case No. CV-2013-573

J. R. SIMPLOT SELF-DECLARATION
OF REVOCABLE TRUST'S NOTICE OF
WITHDRAWAL OF MOTION TO
DISMISS AND NOTICE OF NON-
OPPOSITION

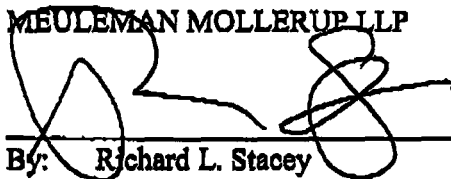
(Judge Randy J. Stoker)

COMES NOW, Defendant J. R. Simplot Self-Declaration of Revocable Trust (the "Trust"), by and through its counsel of record, Meuleman Mollerup LLP, and hereby withdraws its Motion to Dismiss ("Motion") filed herein on November 15, 2013, and vacates the hearing on the Motion set for December 2, 2013, at 10:00 a.m.

The Trust further gives notice that, pursuant to the Stipulation for Dismissal with Prejudice (Fagen Claims Against Defendant J. R. Simplot Self-Declaration of Revocable Trust Only), it does not oppose Plaintiff's Motion for Leave to Amend Complaint, Plaintiff's Motion for Rule 56(f) Continuance, and Exergy Development Group of Idaho, LLC's, XRG Development Partners, LLC's, and Rogerson Flats Wind Park, LLC's Omnibus Motion to Dismiss Complaint. As such, the Trust will not attend the hearings on those motions set for December 2, 2013.

DATED this 27th day of November 2013.

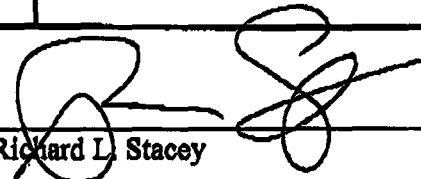
MEULEMAN MOLLERUP LLP


By: Richard L. Stacey
Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of November 2013, a true and correct copy of the foregoing document was served by the method indicated below to the following parties:

<p>John R. Goodell Racine, Olson, Nye, Budge & Bailey, Chartered 101 S. Capitol Blvd. U.S. Bank Plaza Building, Ste. 300 Boise, Idaho 83702 Telephone: (208) 395-0011 Facsimile: (208) 433-0167 <i>Counsel for Plaintiff</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email jrg@racinelaw.net</p>	<p>Richard H. Greener Tara Martens Miller Greener Burke Shoemaker Oberrecht P.A. 950 W. Bannock St., Suite 950 Boise, ID 83702-6102 Telephone: (208) 319-2600 Facsimile: (208) 319-2601 <i>Counsel for Jack Ranch Wind Land Holdings, LLC</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email rgreener@greenerlaw.com tmiller@greenerlaw.com</p>
<p>Angelo L. Rosa 1168 E. 1700 S. Salt Lake City, Utah 84105 Telephone: 801/440-4400 Facsimile: 801/415-1773 <i>Counsel for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC</i> <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Overnight <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email arosa@exergydevelopment.com</p>	


Richard L. Stacey

NOV 29 2013

By _____ 10:00 AM
Clerk
Deputy Clerk

John R. Goodell
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED
101 S. Capitol Blvd.
U.S. Bank Plaza Building, Ste. 300
Boise, Idaho 83702
Office Main Phone: 208-395-0011
Fax: 208-433-0167
Email: jrg@racinelaw.net

Attorneys for Plaintiff Fagen, Inc.

ORIGINAL



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)

Case No. CV-2013-573

vs.)

**STIPULATION FOR DISMISSAL WITH
PREJUDICE (FAGEN CLAIMS
AGAINST DEFENDANT J. R. SIMPLOT
SELF-DECLARATION OF REVOCABLE
TRUST ONLY)**

ROGERSON FLATS WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited liability)
company; J. R. SIMPLOT)
SELF-DECLARATION OF REVOCABLE)
TRUST, an Idaho revocable trust; and JACK)
RANCH WIND LAND HOLDINGS, LLC,)
a Delaware limited liability company; and)
"JOHN DOES 1-10,")
)
Defendants.)

COME NOW Plaintiff Fagen, Inc. ("Fagen"), and Defendant J. R. Simplot Self-Declaration of Revocable Trust ("Simplot Revocable Trust"), by and through their respective undersigned counsel of record, and hereby stipulate and agree that the above-entitled action be dismissed with

 **COPY**

prejudice, each party to bear their own cost and fees. This Stipulation is made on the ground and for the reason that the matter has been fully resolved between Plaintiff Fagen and Defendant Revocable Simplot Trust.

Plaintiff Fagen's claims against the other named Defendants are reserved and shall remain unaffected.

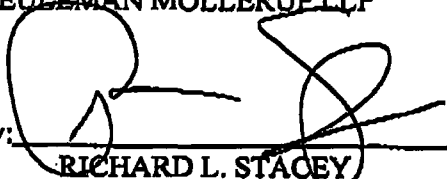
DATED this ___ day of November, 2013.

**RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED**

By: _____
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

DATED this 27th day of November, 2013.

MEULEMAN MOLLERUP LLP

By:  _____
RICHARD L. STACEY
Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust


**STIPULATION FOR DISMISSAL WITH PREJUDICE (FAGEN CLAIMS AGAINST
DEFENDANT J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST ONLY)- Page 2- Page 2**

prejudice, each party to bear their own cost and fees. This Stipulation is made on the ground and for the reason that the matter has been fully resolved between Plaintiff Fagen and Defendant Revocable Simplot Trust.

Plaintiff Fagen's claims against the other named Defendants are reserved and shall remain unaffected.

DATED this 27th day of November, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

DATED this ___ day of November, 2013.

MEULEMAN MOLLERUP LLP

By: _____
RICHARD L. STACEY
Attorneys for Defendant J. R. Simplot Self-
Declaration of Revocable Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21th day of November, 2013, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
Attorney for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; and Rogerson Flats Wind Park, LLC


- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

Richard L. Stacey
Joe Meuleman
MEULEMAN MOLLERUP, LLP
755 W Front Street, Suite 200
Boise, Idaho 83702
Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

Richard H. Greener
Tara Martens Miller
GREENER BURKE SHOEMAKER
OBERRECHT, P.A.
950 W. Bannock St., Suite 950
Boise, ID 83702-6102
Attorney for Jack Ranch Wind Land Holdings, LLC

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile



JOHN R. GOODELL

DEC - 2 2013

By _____ 8:00 AM
Clerk
Deputy Clerk:

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

ORIGINAL

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)

Case No. CV-2013-573

vs.)

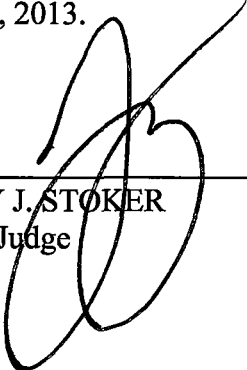
**ORDER FOR DISMISSAL WITH
PREJUDICE (J. R. SIMPLOT SELF-
DECLARATION OF REVOCABLE
TRUST ONLY)**

ROGERSON FLATS WIND PARK, LLC,)
)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited liability)
company; J. R. SIMPLOT)
SELF-DECLARATION OF REVOCABLE)
TRUST, an Idaho revocable trust; and JACK)
RANCH WIND LAND HOLDINGS, LLC,)
a Delaware limited liability company; and)
"JOHN DOES 1-10,")
)
)
Defendants.)
_____)

Based on the Stipulation for Dismissal With Prejudice (J. R. Simplot Self-Declaration of Revocable Trust Only), and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-entitled action be and hereby is DISMISSED WITH PREJUDICE against Defendant J. R. Simplot Self-Declaration of Revocable Trust Only, each party to bear their own cost and attorney fees.

DATED this 2 day of Dec, 2013.



RANDY J. STOKER
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2 day of Dec, 2013, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
Attorney for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; and Rogerson Flats Park, LLC

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

Richard L. Stacey
Joe Meuleman
MEULEMAN MOLLERUP, LLP
755 W Front Street, Suite 200
Boise, Idaho 83702
Attorneys for Defendant J. R. Simplot Self-Declaration of Revocable Trust

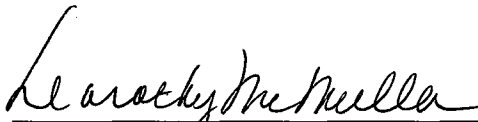
- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

Richard H. Greener
Tara Martens Miller
GREENER BURKE SHOEMAKER
OBERRECHT, P.A.
950 W. Bannock St., Suite 950
Boise, ID 83702-6102
Attorney for Jack Ranch Wind Land Holdings, LLC

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

John R. Goodell
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED
101 S. Capitol Blvd.
U.S. Bank Plaza Building, Ste. 300
Boise, Idaho 83702
Attorneys for Plaintiff Fagen, Inc.

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile



CLERK/Deputy Clerk

DEC - 2 2013

By _____ 8:00 AM
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)

Case No. CV-2013-573

**ORDER FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT**

vs.)

ROGERSON FLATS WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited liability)
company; J. R. SIMPLOT)
SELF-DECLARATION OF REVOCABLE)
TRUST, an Idaho revocable trust; and JACK)
RANCH WIND LAND HOLDINGS, LLC,)
a Delaware limited liability company; and)
"JOHN DOES 1-10,")

Defendants.)
)
_____)

THE COURT, having reviewed Plaintiff's Motion for Leave to File First Amended
Complaint, with Notices of Non-Objection filed by Defendants¹, and good cause appearing therefor,

IT IS HEREBY ORDERED that pursuant to IRCP 15(a) Plaintiff is granted leave to file its
First Amended Complaint in the form attached to its Motion for Leave to File Amended Complaint.
DATED this 2 day of ~~November~~, 2013.

¹In lieu on filing a Non-Objection to the filing of the First Amended Complaint, Defendant Jack Ranch
Wind Land Holdings, LLC and Plaintiff Fagen filed a Stipulation for Dismissal with Prejudice of Defendant Jack
Ranch Wind Land Holdings on November 25, 2013.

By: 
HONORABLE RANDY J. STOKER
District Judge

CLERK'S CERTIFICATE OF SERVICE

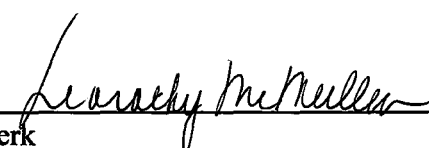
I HEREBY CERTIFY that on the 2 day of ^{Dec} November, 2013, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa [] U. S. Mail
1168 E. 1700 S. Postage Prepaid
Salt Lake City, UT 84105 [] Hand Delivery
Attorney for Exergy Development Group of [] Overnight Mail
Idaho, LLC; XRG Development Partners, [] Facsimile
LLC; and Rogerson Flats Wind Park, LLC

Richard L. Stacey [] U. S. Mail
Joe Meuleman Postage Prepaid
MEULEMAN MOLLERUP, LLP [] Hand Delivery
755 W Front Street, Suite 200 [] Overnight Mail
Boise, Idaho 83702 [] Facsimile
Attorneys for Defendant J. R. Simplot Self-
Declaration of Revocable Trust

Richard H. Greener [] U. S. Mail
Tara Martens Miller Postage Prepaid
GREENER BURKE SHOEMAKER [] Hand Delivery
OBERRECHT, P.A. [] Overnight Mail
950 W. Bannock ST, Suite 950 [] Facsimile
Boise, Idaho 83702
Attorneys for Jack Ranch Wind Land
Holdings, LLC

John R. Goodell [] U. S. Mail
RACINE, OLSON, NYE, BUDGE Postage Prepaid
& BAILEY, CHARTERED [] Hand Delivery
101 S. Capitol Blvd. [] Overnight Mail
U.S. Bank Plaza Building, Ste. 300 [] Facsimile
Boise, Idaho 83702
Attorneys for Plaintiff Fagen


Clerk

DEC - 4 2013

By _____ *[Signature]*
Clerk

Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,
Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, AND XRG
DEVELOPMENT PARTNERS, LLC.

Defendants.

Case No. CV 2013-573 (Roger Flats)
CV 2013-574 (Cottonwood)
CV 2013-575 (Salmon Creek)
CV 2013-576 (Deep Creek)

**ORDER RE CONSOLIDATION,
MOTION TO AMEND, MOTION TO
CONTINUE, AND MOTION TO
DISMISS**

John Goodell for Plaintiff(s).

Angelo L. Rosa for Defendants.

INTRODUCTION

By agreement dated December 31, 2011 Plaintiff Fagen, Inc. ("Fagen") entered into a written contract with Defendant Exergy Development Group of Idaho, LLC ("Exergy") to assist in developing four wind park projects in Twin Falls County. Those four projects, Rogerson Flats, Cottonwood, Salmon Creek and Deep Creek ("the projects"), are the subject of the four cases listed above. On August 8, 2012 Fagen filed

**ORDER RE CONSOLIDATION, MOTION TO AMEND, MOTION TO CONTINUE,
AND MOTION TO DISMISS - 1**

four separate, but identical liens in Twin Falls County, claiming \$1,412,774.81 plus interest, plus attorney fees, for sums claimed unpaid on the projects. Other than as to several parties which have been dismissed from this lawsuit each lien is identical except for reference to the name of the project. Each lien claims that the last work on each project was completed on July 31, 2012. Each lien claims that the owner or reputed owner of each property is each wind park defendant and Defendant Exergy and Defendant XRG.

Fagen filed suit in each case on February 8, 2013. In each complaint Fagen alleged each of the foregoing statements with one partial exception. In the Amended Complaint Fagen alleges that Exergy, XRG and each respective wind farm defendant "are the owner(s) or reputed owner(s) of certain improvements, facilities and structures on the property identified in each lien." At hearing on December 2, 2013 the parties stipulated that these cases should be consolidated, that Fagen could file an amended complaint, that Defendant's Motion to Dismiss, previously filed, would be deemed to apply to the First Cause of Action (lien foreclosure) of the First Amended Complaint and argued that motion as well as Fagan's motion to continue the motion to dismiss for the purpose of conducting discovery. The Court took the Motion to Dismiss and the Motion to Continue under advisement on the date of hearing.

ANALYSIS AND DECISION

Defendant's Motion to Dismiss, which the parties agree applies only to Fagen's First Cause of Action in the Amended Complaint, asserts three primary reasons why the complaints in each of these cases should be dismissed: 1) the liens are defective; 2) none of the defendants have a lienable interest in any of the properties; and 3) there is

a pending action in Federal Court in Minnesota involving the same subject matter as these complaints. Fagen asserts that it lien cause of action states a valid claim, that the motion is in reality one for summary judgment, and that the Court should continue decision on the motion to permit discovery in this case because Defendants are making factual assertions most appropriately resolved in the summary judgment process. The Court finds that portions of Defendant's Motion to Dismiss may be properly resolved at this time, but that other aspects of the Motion must be deferred pending discovery.

A motion pursuant to I.R.C.P. 12(b)(6) only permits the Court to consider the facts alleged in the complaint or those of which the Court may properly take judicial notice. *Hellickson v. Jenkins*, 118 Idaho 273 (Ct. App. 1990). The Court does not find any facts in this case that are subject to judicial notice. If matters outside of the pleadings are considered "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56." I.R.C.P. 12(b)(6). Utilizing these standards the Court will address each of the issues raised by Defendants.

1. The liens were recorded but never filed. Defendants assert that the liens were "recorded" but not "filed." Neither Plaintiff nor this Court understands this argument. Recording of a document with the county recorder and filing that document with the county recorder are synonymous concepts. Each lien, attached to each Amended Complaint, shows that each lien was recorded in Twin Falls County as appears from the filing stamp on each lien document. These acts are sufficient to satisfy the filing requirement of the statute. Defendants' Motion to Dismiss on this ground is DENIED.

2. Fagen timely filed suit as required by I.C. §45-510. Defendants are correct that a lien claimant must file suit within 6 months of the filing of a lien. The time calculation provided for in I.R.C.P. 6(a) and I.C. §73-109 applies to the six month statute of limitations contained in I.C. §45-510. *Cather v. Kelso*, 103 Idaho 684 (1982). The complaint was timely filed. Defendants' Motion to Dismiss on this ground is DENIED.
3. Fagen properly pled that the lien was properly served. The Amended Complaint asserts that true and correct copies of the liens were timely served. This is sufficient to satisfy notice pleading requirements. If Defendants challenge the accuracy of this service, that is a matter for summary judgment or trial. Defendants' Motion to Dismiss on this ground is DENIED.
4. Do the liens attach to the real estate? The relationship between these parties and the actual landowner is not clear in this record beyond the written documents appended to the Amended Complaint. If there is an agency relationship as Fagen asserts then I.C. §45-501 may permit a lien to attach to the subject properties. If there is ratification by the owner, the same result may follow. The allegation in the Amended Complaint that Defendants "are the owner(s) or reputed owner(s) of certain improvements, facilities and structures on the property identified in each lien" is sufficient as a matter of notice pleading to withstand a motion to dismiss. The Court agrees with Fagen that a decision on this aspect of the motion should await further discovery. Fagen's Motion to Continue ruling on this issue is GRANTED and Defendants' Motion to Dismiss is at this time DENIED without prejudice to renew this motion in a summary judgment proceeding.
5. Another action pending argument. I.R.C.P. 12(b)(8) provides for dismissal if there is "another action pending between the same parties for the same cause." Defendants

represent that many of the issues in the Minnesota case embrace the factual and legal issues in this proceeding. There is no evidence in the record of the scope or nature of that proceeding. It seems highly unlikely that the federal case involves the same issues involved in these cases. This motion to dismiss applies only to the lien claims. Lien foreclosures must be filed in the county where the subject land is located. It is highly unlikely that a Federal Court in Minnesota would have jurisdiction to litigate the lien foreclosures before this Court. Without further information that the Minnesota action involves the same parties, issues and facts, the Court in its discretion DENIES Defendants' Motion to Dismiss on this ground.

CONCLUSION

These four actions are consolidated. The heading for these cases shall be as above stated. All future filings shall be placed in the CV 2013-573 file. Recognizing that there are four wind park defendants all filings shall be deemed to apply to all named defendants unless otherwise specified. Fagen shall forthwith file its Amended Complaint and Defendants shall file an answer thereto by December 20, 2013. A scheduling conference shall be held at 9:00 A.M. on January 6, 2014 unless the parties shall file the proposed stipulation transmitted with this order.

DATED this 4th day of December, 2013.



Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

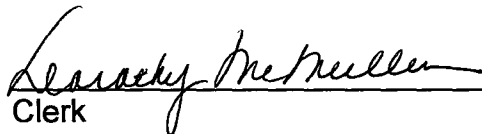
I hereby certify that on the 5 day of December 2013, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

John Goodell
101 S. Capitol Blvd.
Boise, Idaho 83702

U.S. Mail
 Hand delivered
 Faxed
 Court Folder

Angelo Rosa
1168 E. 1700 S.
Salt Lake City, Utah 84105

U.S. Mail
 Hand delivered
 Faxed
 Court Folder


Clerk

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 DEC -5 AM 8:29

BY _____
CLERK
DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

FAGEN, INC.,

Plaintiff(s),

vs.

ROGERSON FLATS WIND PARK, LLC, et al.,

Defendant(s).

Case No. CV-2013-573

**ORDER FOR SCHEDULING
CONFERENCE—Civil Cases**

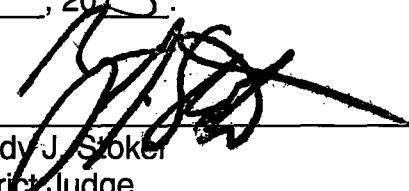
(Effective 4/1/11)

IT IS HEREBY ORDERED that the above-captioned case is scheduled for a scheduling conference to commence on January 6, 2014, at 9:00 am. The purpose of the conference will be to enter a scheduling order regarding the deadlines contained in the attached schedule. **All parties must appear at this time in person or by counsel.** Counsel must be the handling attorney, or be fully familiar with the case and have authority to bind his/her client and law firm on all matters set forth in I.R.C.P. 16(a) and 16(b).

In lieu of this scheduling conference, all parties may stipulate to deadlines and other information required in the enclosed **Stipulation for Scheduling and Planning**. This stipulation must be completed and signed by all parties, and filed with the court at **least three (3) working days before** the scheduling conference. The hearing will not be vacated until: 1) the attached stipulation is received by the court; and 2) counsel has

contacted the court's clerk at the number set forth below to confirm that the hearing is vacated. The foregoing notwithstanding, THE STIPULATION MAY NOT ALTER THE SPECIFIC TIME REQUIREMENTS SET FORTH IN THE COURT'S **PRE-TRIAL ORDER**.

DATED this 5th day of Dec, 2013.




Randy J. Stoker
District Judge

CERTIFICATE OF MAILING/DELIVERY

I hereby certify that on the 5th day of December 2013, I caused to be served a true and correct copy of the foregoing **ORDER FOR SCHEDULING CONFERENCE**, by the method indicated below, and addressed to the following:

John Goodell 101 S. Capitol Blvd. Boise, ID 83702	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand delivered <input type="checkbox"/> Faxed <input type="checkbox"/> Court Folder
Angelo Rosa 1168 E 1700 S Salt Lake City, UT 84105	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand delivered <input type="checkbox"/> Faxed <input type="checkbox"/> Court Folder


Angela Aguirre
Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

FAGEN, INC.,

Plaintiff(s),

vs.

ROGERSON FLATS WIND PARK, LLC, et al.,

Defendant(s).

Case No. CV-2013-573

**STIPULATION FOR
SCHEDULING AND PLANNING**

The above parties hereby stipulate to the following scheduling deadlines:

A. EXPERT WITNESSES

(Plaintiff's experts)

1. _____ days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.

2. _____ days before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.

3. _____ days before trial, defendant shall complete any depositions of the plaintiff's initial expert witnesses.

(Defendant's experts)

4. _____ days before trial, defendant shall disclose each person defendant intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.

5. _____ days before trial, defendant shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.

6. _____ days before trial, plaintiff shall complete any depositions of the defendant's expert witnesses.

(Plaintiff's rebuttal experts)

7. _____ days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial to rebut new information or issues disclosed or raised by the defendant.

8. _____ days before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding the rebuttal expert witnesses.

9. _____ days before trial, defendant shall complete any depositions of the plaintiff's rebuttal expert witnesses.

B. LAY WITNESSES

1. _____ days before trial, plaintiff shall disclose each person plaintiff intends to call as a lay witness at trial (excluding impeachment witnesses).

2. _____ days before trial, defendant shall disclose each person defendant intends to call as a lay witness at trial (excluding impeachment witnesses).

3. _____ days before trial, plaintiff shall disclose each lay witness (excluding impeachment witnesses) plaintiff intends to call at trial to rebut new information or issues disclosed or raised by the defendant.

4. _____ days before trial, all parties shall complete any depositions of lay witnesses.

C. DEADLINES FOR INITIATING DISCOVERY

1. _____ days before trial is the last day for serving interrogatories, requests for production, requests to permit entry upon land or other property, and requests for admission.

2. _____ days before trial is the last day for filing motions for a physical or mental examination.

D. DEADLINE FOR SUPPLEMENTAL RESPONSES TO DISCOVERY

1. _____ days before trial, all parties must serve any supplemental response to discovery required by Rule 26(e) of the Idaho Rules of Civil Procedure.

E. DEADLINE FOR DISCLOSURE OF EXHIBITS

1. _____ days before trial all parties must disclose all proposed trial exhibits.

F. PRETRIAL MOTIONS

1. _____ days before trial is the last day to file motions to add additional parties to the lawsuit.

2. _____ days before trial is the last day to file a motion to amend the claims between existing parties to the lawsuit, including to add a claim for punitive damages.

G. TRIAL SETTING

1. This case can be set for a trial to commence on or after _____.
Note, that absent extremely compelling circumstances, no case will be set for trial more than 510 days from the date of filing the complaint.

2. It is estimated that the trial will take _____ days.

3. This case is to be tried as a:
_____ court trial
_____ jury trial

4. Parties preference for trial dates: **(Please confer and complete. Do not attach "unavailable dates")**.

- (a) Week of Tuesday, _____, 20__.
- (b) Week of Tuesday, _____, 20__.
- (c) Week of Tuesday, _____, 20__.

H. MEDIATION

1. The parties agree to mediation: Yes ___ No ___

2. If yes:

- a. The parties agree to submit to mediation with a mediator mutually agreed upon.
- b. Mediation shall begin _____ days prior to trial.
- c. Unless otherwise agreed in writing between the parties, the cost of mediation shall be equally divided between the parties.

The parties reserve the right to amend this stipulation by agreement of all parties, subject to Court approval; each party reserves the right to seek amendment hereof by Court order, and to request further status conferences for such purpose, in accordance with I.R.C.P. 16(a) and 16(b).

Counsel for Plaintiff(s):

_____ Date: _____

Counsel for Defendant(s):

_____ Date: _____

Counsel for Other Parties:

_____ Date: _____

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 DEC -5 AM 8:29

BY _____
 d CLERK
 DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

FAGEN, INC.,
Plaintiff(s),

vs.

ROGERSON FLATS WIND PARK, LLC, et al.,
Defendant(s).

)
)
) Case No. CV-2013-573
)
) **CIVIL PRE-TRIAL ORDER**
)
) **(Effective 4/1/11)**
)

Pursuant to I.R.C.P. 16 and 40, **IT IS HEREBY ORDERED:**

- 1. TRIAL:** The trial date will be set by separate notice. On the first day of trial, counsel shall report to the Court's chambers at 8:15 a.m. for a brief final pre-trial conference. Unless otherwise ordered, other than the first and last day of trial, proceedings will convene at 8:30 a.m. each morning, and adjourn at approximately 5:00 p.m. each afternoon.
- 2. ALTERNATE JUDGES:** Notice is hereby given that the presiding judge assigned to this case intends to utilize the provisions of I.R.C.P. 40(d)(1)(G). Notice is also given that if there are multiple parties, any disqualification pursuant to I.R.C.P. 40(d)(1)(A) is subject to a prior determination under I.R.C.P. 40(d)(1)(C). The panel of alternate judges consists of the following judges who have otherwise not been

disqualified in this action: Judges Bevan, Brody, Butler, Crabtree, Elgee, Hurlbutt, McDermott, Schroeder, Stoker, Wildman and Williamson.

3. PRE-TRIAL CONFERENCES: A pre-trial conference will be conducted pursuant to I.R.C.P. 16. The date of the pre-trial conference will be set by separate notice. Counsel for each party is to complete a "Pre-trial Memorandum" pursuant to Rule 16(d) for the pre-trial conference. The memorandum shall be filed with the Clerk no later than 7 days before the pre-trial conference. In lieu of the pre-trial conference the parties may file a pre-trial stipulation pursuant to I.R.C.P. 16.

4. SCHEDULING AND HEARINGS: The Court holds its regular civil law and motion calendar on alternating Mondays commencing at 9:00 A.M. Scheduling conferences, status conferences, pre-trial conferences and miscellaneous matters are heard starting at 8:30 A.M. Motions are heard commencing at 10:00 A.M. Telephone conferences must be pre-arranged with the Court's clerk, as these will be set at a specific time. Absent an order shortening time, all motion practice other than motions for summary judgment will be governed by I.R.C.P. 7. As a matter of courtesy, counsel are expected to contact the Court's Deputy Clerk, Dorothy McMullen (phone 208-736-4036) to schedule hearings and to confirm the availability of opposing counsel for proposed hearing dates. ANY MATTER REQUIRING TESTIMONY TOTALING MORE THAN 30 MINUTES SHALL NOT BE SCHEDULED ON THE COURT'S REGULAR MOTION CALENDAR.

4.A. Telephone conferences other than status conferences: As an accommodation to out-of-town counsel and parties, hearings on any pretrial motion (except scheduling conferences, motions for summary judgment, motions in limine or

hearings at which testimony is to be offered) may be conducted by telephone conference call pursuant to I.R.C.P. 7(b) (4). Unless otherwise ordered by the court, telephone conferences will be held ONLY if all counsel so stipulate and the court approves that stipulation. Counsel requesting a hearing by conference call will be responsible for arranging for placement of the call through the Court Call program or by placing the call to the Court's direct line at 208-735-4384. The telephone conference must be pre-arranged by the time the motion is scheduled for hearing. All Counsel must appear by telephone conference on a "land line." No cell phone appearances are permitted.

4.B. Telephone status conferences: The Court routinely uses status conference to monitor its cases. Out of town counsel may appear at these conferences telephonically, subject to these conditions:

A. Appearance by telephone must be arranged with the Court's clerk at least two weeks in advance.

B. Counsel requesting to appear telephonically shall arrange the conference call at their expense.

C. Cell phone appearances shall not be allowed.

D. Counsel not wishing to appear telephonically, may appear in person in court.

5. PRE-TRIAL MOTIONS: All motions to join parties or amend the pleadings (except motions pertaining to punitive damages under I.C. §6-1604) must be filed and heard so as not to require the continuance or vacation of the trial date, and in no event less than 120 days before trial. All motions to add claims for punitive damages pursuant to I.C. §6-1604 must be filed and served so as to be heard not later than 120 days before trial. All motions for summary judgment must be filed and served so as to be

heard not later than 75 days before trial. All other non-dispositive pre-trial motions (including, but not limited to motions *in limine*) must be filed and scheduled for hearing not less than 14 days before trial. Exceptions will be granted infrequently, and only when justice so requires.

5.A. MOTIONS GENERALLY (applies to every motion).

- a. One additional copy marked or stamped “**Judge’s Copy**” of any motion and opposing papers (including affidavits, and briefs) must be submitted to the judge’s chambers when such documents are filed or lodged with the clerk of the court. If a party relies upon any case decided by an appellate court outside of Idaho, a copy of such case must be attached to the copy of the brief submitted to the judge’s chambers.
- b. The amount of time each side will be allotted for oral argument on a motion will be set by the court.
- c. If a notice of hearing is not filed simultaneously with the motion (other than motions for summary judgment as discussed below), the motion will be deemed withdrawn.

5.B. MOTIONS REGARDING DISCOVERY:

- a. The Court will not entertain any discovery motion unless accompanied by a written certification signed by counsel, which confirms that a reasonable effort has been made to voluntarily resolve the dispute with opposing counsel certification as required by IRCP 37(a) (2). A party’s obligation to fully and timely respond to discovery requests is distinct from any obligation imposed by this order, and no party may rely upon the Order or any deadline it imposes as justification for failing to timely respond to discovery requests or to supplement prior responses. A motion to compel must SPECIFICALLY ADDRESS THAT PORTION OF THE DISCOVERY AT ISSUE and CONTAIN A STATEMENT OF REQUESTED RELIEF.
- b. Absent a stipulation and approval by the Court, all discovery shall be propounded and served such that responses are due no later than 60 days before trial. Any supplemental responses a party is required to make pursuant to I.R.C.P. 26(e) or the terms of an earlier discovery request shall also be served at least 60 days before trial. Any supplementation of discovery required by the rule shall be made in a timely manner.

c. Reasonable expenses incurred when successfully prosecuting or opposing a motion to compel discovery shall be awarded as provided in Rule 37(a)(4) of the Idaho Rules of Civil Procedure.

d. **MOTIONS TO COMPEL DISCOVERY MUST BE SCHEDULED AND ARGUED AT LEAST 45 DAYS BEFORE TRIAL.**

5.C. MOTIONS FOR FULL OR PARTIAL SUMMARY JUDGMENT:

a. The party moving for summary judgment shall prepare as **separate** documents: (a) a motion; (b) a legal memorandum containing a written statement of reasons and legal authority in support of the motion, and (c) a concise statement of the claimed undisputed material facts alleged by movant. Each statement of facts shall include a reference to the particular place in the record which supports the claimed fact. The legal memorandum shall ALSO include a statement, supported by authority, of the elements of any claim or defense relevant to the motion.

b. The party opposing a motion for summary judgment shall prepare as **separate** documents: (a) a legal memorandum containing a written statement of reasons in opposition to the motion, and (b) a concise statement of claimed genuine issues of material fact and/or which are material facts omitted from the moving party's statement of facts. Each statement of a fact shall include a reference to the particular place in the record which supports the factual dispute. The legal memorandum shall include a statement, supported by authority, of the elements of any claim or defense relevant to the motion.

c. The schedule for serving briefs and affidavits shall be as set forth in Idaho Rule of Civil Procedure 56(c). THESE TIME REQUIREMENTS SHALL BE STRICTLY COMPLIED WITH. **IN ADDITION, ALL SUMMARY JUDGMENT MOTIONS MUST BE SCHEDULED SUCH THAT THE MOTION IS FULLY SUBMITTED FOR DECISION AT LEAST 75 DAYS BEFORE TRIAL.**

d. The hearing on a motion for summary judgment will be set **AFTER** the moving party has submitted the motion, legal memorandum and statement of facts. The hearing date can be obtained from the judge's court clerk.

6. **WITNESS DISCLOSURES:** Each party shall disclose the existence and identity of intended or potential expert or lay witnesses to the extent required by

interrogatories or other discovery requests propounded by another party. There is no independent duty to disclose expert or lay witnesses except as required to adequately respond to discovery requests or supplement prior responses. If discovery requests seeking disclosure of expert witnesses are propounded, a plaintiff upon whom such requests are served shall, in good faith, disclose the existence and identity of potential or intended expert witnesses at the earliest opportunity, and in accordance with the Court's Scheduling Order. A defendant upon whom such requests are served shall, in good faith, identify any potential or intended expert witnesses at the earliest opportunity, and in accordance with the Court's Scheduling Order.

Any party upon whom discovery is served who intends or reserves the right to call any expert witness in rebuttal or surrebuttal shall, in good faith, identify such experts at the earliest opportunity and in accordance with the Court's Scheduling Order.

7. **EXHIBITS AND EXHIBIT LISTS:** When and to the extent required to respond to interrogatories, requests for production or other discovery requests propounded by another party, a party must identify and disclose any documentary, tangible or other exhibits that party intends or reserves the right to offer at trial. Absent a showing of good cause any exhibit which has not been timely disclosed will be excluded. Without regard to whether discovery concerning a party's exhibits has been propounded, at or before the pre-trial conference, each party shall: (A) lodge with the Clerk a completed exhibit list in the form attached to this order (Exhibit. 1 attached) **and the proposed exhibits** together with one complete, duplicate marked set of that party's **proposed** exhibits for the Judge's use during trial; and (B) deliver to counsel for each other party a copy of the completed exhibit list and duplicate copy of that party's

marked exhibits. The exhibit list and duplicate copies need not include exhibits which will be offered solely for the purpose of impeachment. Unless otherwise ordered, the plaintiff shall identify exhibits beginning with number "1," and the defendant shall utilize exhibits beginning with the letter "A". The failure to list a proposed exhibit shall not preclude a party from offering other exhibits that have been otherwise disclosed in accordance with the Court's Scheduling Order. **At the Pretrial Conference the parties shall be prepared to advise the Court whether proposed exhibits are or are not objected to.**

8. **AUDIO-VISUAL AND OTHER EQUIPMENT:** Counsel is expected to notify the Court no later than the pre-trial conference of any need for audio-visual or other special equipment. The Court provides, an overhead projector with svga and hdmi inputs, an audio input, a dvd player, a portable television and VHS-format VCR, a small x-ray viewer, easel, ELMO, and podium. The formats supported by the equipment issued by the Idaho Supreme Court and the Court are unfortunately limited. Therefore, any audio or video entered into evidence, by stipulation or otherwise, on a CD or DVD disc must be submitted as a .wma (Windows Media Audio) file for audio recordings or as a .mpg file for video recordings. Video recording may also be submitted in commercial DVD-Video format, however it is counsel's obligation to ensure that the format of the DVD disc is compatible with the Court's equipment. The Court will not accept evidence in any other formats. Counsel may furnish and utilize any additional equipment but must make all such equipment available for use by opposing counsel. Counsel who furnishes their own equipment should make appropriate arrangements to set it up in advance so that prolonged delays are not required. The Court will not look

favorably on delays caused by unfamiliarity with equipment or technical problems that should have been discovered prior to the proceeding.

9. **JURY SELECTION AND VOIR DIRE:** Unless otherwise ordered, the struck jury selection method will be utilized. It is the Court's intention to "pre number" the panel by random computer selection unless objection to this procedure is raised at the pre-trial conference. The number of alternate jurors will be determined at the pre-trial conference. A list of the names and selected information concerning prospective jurors can be obtained from Jerry Woolley, Twin Falls County Jury Commissioner, P.O. Box 126, Twin Falls, Idaho 83303 (phone: 208-736-4136) approximately one week before trial. Any requests for pre voir dire statements to the panel as authorized by I.R.C.P. 47(i) must be made at the pre-trial conference or such request shall be deemed waived. The Court will conduct brief initial *voir dire* examination designed to confirm that all summoned jurors are qualified to serve, and cannot be disqualified for obvious bias or lack of impartiality. Thereafter, plaintiff will *voir dire* the entire jury panel, followed by defendant. In cases involving multiple parties the method of *voir dire* examination will be determined at the pre-trial conference. Challenges for cause may be made at any time while examining a prospective juror, but in no event later than the conclusion of questioning of the challenged juror. Pursuant to I.R.C.P. 47(j) each party shall have four peremptory challenges, plus one additional preemptory challenge for each additional/alternate juror to be selected provided that multiple co-plaintiffs or co-defendants may be required to share a given number of peremptory challenges as determined at the pre-trial conference. Unless otherwise ordered, the parties will not be subject to any fixed or arbitrary time limit for *voir dire*, provided, however, that the Court

may, in its discretion, limit or terminate *voir dire* which is excessive, repetitious, unreasonable, or argumentative.

10. **JURY INSTRUCTIONS:** Jury instructions and verdict forms requested by a party shall be prepared in conformity with I.R.C.P. 51(a), and shall be filed with the Clerk (with copies to Chambers) not less than 10 days before trial, or as ordered at the pre-trial conference. In addition copies of proposed instructions in Microsoft Word format shall be emailed to the Court's law clerk at **stokerlawclerk@co.twin-falls.id.us**. Requested instructions not timely submitted may not be included in the court's preliminary or final charge. Parties may submit additional or supplemental instructions to address unforeseen issues or disputes arising during trial. To the extent possible, proposed instructions and verdict forms shall be submitted in 12-point, "Arial" typeface. The Court utilizes "stock" instructions, copies of which can be obtained from the Court's law clerk. The parties may, but are not required to submit additional stock instructions.

11. **JUROR QUESTIONS:** In accordance with I.R.C.P. 47(q), the Court will determine at the pre-trial conference whether to permit jurors to submit written questions to be posed to trial witnesses in accordance with the Rule. Counsel are permitted to review all questions before they are posed to a witness, and register any objection or comment on the record in the absence of the jury before any juror questions are posed. After a witness has responded to any juror questions, counsel are permitted (beginning with the party who called the witness) to pose follow-up questions.

12. **TRIAL BRIEFS:** The Court encourages (but does not require) the submission of trial briefs which address important substantive or evidentiary issues each party expects to arise during trial. Any trial briefs shall be prepared, exchanged

between the parties, and lodged with the Clerk (with copies to Chambers) at least 10 days prior to trial.

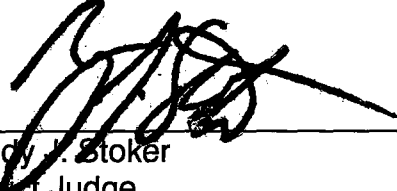
13. **PROPOSED FINDINGS AND CONCLUSIONS**: If the trial is to the Court without a jury, each party shall, within 14 days before trial, file with the Clerk (with copies to Chambers) and serve upon all other parties Proposed Findings of Fact and Conclusions of Law which support that party's position concerning the appropriate resolution of the case.

14. **REQUEST TO VACATE TRIAL SETTING**: In setting cases for trial, the Court has taken into account the needs of the parties and the case, availability and convenience of counsel, as well as its own personnel, facilities and the interests of counsel and parties in other pending cases and any stipulations of the parties for trial dates as set forth in the Court's Scheduling Order. A request to vacate or continue an existing trial setting works inconveniences and hardships on the Court, its staff and other litigants, and impairs the Court's ability to efficiently manage its docket and calendar. For these reasons, requests (including stipulations) to vacate or continue a trial will be granted only in the face of unusual and unforeseen circumstances, and when the interests of substantial justice to the litigants so require. Any party requesting *or stipulating* to vacate a trial setting must submit a specific written statement concerning the reasons for the request, and must certify, in writing, that the request or stipulation has been discussed with the parties represented by counsel, and such parties have no objection to the request or stipulation. An order granting a request to vacate or continue a trial setting may be conditioned upon terms (including orders that the requesting party or attorney reimburse other parties or their attorneys for attorney's

fees incurred for preparation which must be repeated or expenses advanced in anticipation of the trial setting which cannot be avoided or recovered). An order vacating or continuing a trial setting shall not serve to alter the deadlines set forth in this order, or the Scheduling Order, and unless otherwise stipulated or ordered, the specific calendar dates associated with any deadlines shall be adjusted in reference to the new or amended trial date.

15. SANCTIONS FOR NON-COMPLIANCE: A failure to comply with this order or the deadlines it imposes in a timely manner subject a non-compliant party and/or counsel to an award of sanctions pursuant to I.R.C.P. 16(i) and/or other applicable rules, statutes or case precedent.

DATED this 5 day of Dec, 2013



Randy J. Stoker
District Judge

CERTIFICATE OF MAILING/DELIVERY

I hereby certify that on the 5th day of December 2013, I caused to be served a true and correct copy of the foregoing **PRE-TRIAL ORDER**, by the method indicated below, and addressed to the following:

John Goodell 101 S. Capitol Blvd. Boise, ID 83702	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand delivered <input type="checkbox"/> Faxed <input type="checkbox"/> Court Folder
Angelo Rosa 1168 E 1700 S Salt Lake City, UT 84105	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand delivered <input type="checkbox"/> Faxed <input type="checkbox"/> Court Folder



Angela Aguirre
Deputy Clerk

EXHIBIT LIST

_____, DISTRICT JUDGE

CASENO.

_____, DEPUTY CLERK

_____, COURT REPORTER

DATE:

CASE: _____
VS. _____

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 DEC -9 AM 8:13

BY _____ CLERK
PS _____ DEPUTY

Angelo L. Rosa (ISB No. 7546)
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants

ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)

vs.)

ROGERSON FLATS WIND PARK,)
LLC, an Idaho limited liability company,)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company, XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company, and "JOHN DOES 1-)
10",)

Defendants.)

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)

vs.)

COTTONWOOD WIND PARK, LLC, an)
Idaho limited liability company,)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

**DEFENDANTS' ANSWER TO FIRST
AMENDED COMPLAINT**

EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMEN)
 PARTNERS, LLC, an Idaho limited)
 liability company; and "JOHN DOES 1-)
 10",)
)
 Defendants.)

FAGEN, INC., a Minnesota corporation,)
)
 Plaintiff,)
)

vs.)

SALMON CREEK WIND PARK, LLC,)
 an Idaho limited liability company;)
 EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMEN)
 PARTNERS, LLC, an Idaho limited)
 liability company; and "JOHN DOES 1-)
 10",)
)
 Defendants.)

FAGEN, INC., a Minnesota corporation,)
)
 Plaintiff,)
)

vs.)

DEEP CREEK WIND PARK, LLC, an)
 Idaho limited liability company;)
 EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMEN)
 PARTNERS, LLC, an Idaho limited)
 liability company; and "JOHN DOES 1-)
 10",)
)
 Defendants.)

COME NOW Defendants ROGERSONFLATS WIND PARK, LLC, COTTONWOOD WIND PARK, LLC, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC (collectively, the “Defendants”), by and through their counsel of record, Angelo L. Rosa, Esq. and answer the First Amended Complaint (“Complaint”) on file as follows:

I

GENERAL DENIAL

All matters not herein specifically admitted are denied. In addition, the Defendants make a general objection to those statements that call for legal, rather than factual, conclusions. Finally, the Defendants reserve the right to amend this or any other answer or denial stated herein once they have had the opportunity to complete discovery regarding any of the claims and allegations in the Complaint.

II.

RESPONSE TO INDIVIDUAL ALLEGATIONS

1. The Defendants lack information to respond to the allegations in Paragraph 1 of the Complaint and, therefore, each of the Defendants denies those allegations.
2. The Defendants admit the allegations in Paragraph 2 of the Complaint.
3. The Defendants lack information to respond to the allegations in Paragraph 3 of the Complaint and, therefore, each of the Defendants denies those allegations.
4. The Defendants admit in part and deny in part the allegations in Paragraph 4 of the Complaint. Admit that Exergy is an Idaho limited liability company. Deny as to the balance of allegations.
5. The Defendants deny the allegations in Paragraph 5 of the Complaint.
6. The Defendants deny the allegations in Paragraph 6 of the Complaint.

7. The Defendants deny the allegations in Paragraph 7 of the Complaint.
8. The Defendants deny the allegations in Paragraph 8 of the Complaint.
9. The Defendants lack information to respond to the allegations in Paragraph 9 of the Complaint and, therefore, each of the Defendants denies those allegations.
10. The Defendants admit the allegations in Paragraph 10 of the Complaint.
11. The Defendants admit the allegations in Paragraph 11 of the Complaint.
12. The Defendants admit the allegations in Paragraph 12 of the Complaint.
13. The Defendants lack information to respond to the allegations in Paragraph 13 of the Complaint and, therefore, each of the Defendants denies those allegations.
14. The Defendants lack information to respond to the allegations in Paragraph 14 of the Complaint and, therefore, each of the Defendants denies those allegations.
15. The Defendants lack information to respond to the allegations in Paragraph 15 of the Complaint and, therefore, each of the Defendants denies those allegations.
16. The Defendants lack information to respond to the allegations in Paragraph 16 of the Complaint and, therefore, each of the Defendants denies those allegations.
17. The Defendants lack information to respond to the allegations in Paragraph 17 of the Complaint and, therefore, each of the Defendants denies those allegations.
18. The Defendants deny the allegations in Paragraph 18 of the Complaint.
19. The Defendants re-allege and incorporate by reference each of their responses to the allegations in Paragraphs 1 through 18 of the Complaint in response to the allegations in Paragraph 19 of the Complaint.
20. The Defendants deny the allegations in Paragraph 20 of the Complaint.
21. The Defendants deny the allegations in Paragraph 21 of the Complaint.
22. The Defendants re-allege and incorporate by reference each of their responses to the

allegations in Paragraphs 1 through 21 of the Complaint in response to the allegations in Paragraph 22 of the Complaint.

23. The Defendants deny the allegations in Paragraph 23 of the Complaint.

24. The Defendants deny the allegations in Paragraph 24 of the Complaint.

25. The Defendants deny the allegations in Paragraph 25 of the Complaint.

26. The Defendants re-allege and incorporate by reference each of their responses to the allegations in Paragraphs 1 through 25 of the Complaint in response to the allegations in Paragraph 26 of the Complaint.

27. The Defendants deny the allegations in Paragraph 27 of the Complaint.

28. The Defendants deny the allegations in Paragraph 28 of the Complaint.

29. The Defendants deny the allegations in Paragraph 29 of the Complaint.

30. The Defendants deny the allegations in Paragraph 30 of the Complaint.

III.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiff's Complaint does not state facts sufficient to constitute a cause of action against the Defendants.

SECOND AFFIRMATIVE DEFENSE

(Burden of Proof)

As a second and separate affirmative defense, the Defendants allege in answering the Complaint that they do not assume any burden of proof attributable to Plaintiff as to any matter at issue in this litigation.

THIRD AFFIRMATIVE DEFENSE

(Unclean Hands)

As a third and separate affirmative defense, the Defendants allege that Plaintiff's equitable claims are barred by the doctrines of laches and/or unclean hands.

FOURTH AFFIRMATIVE DEFENSE**(Failure to Mitigate Damages)**

As an fourth and separate affirmative defense, the Defendants allege that Plaintiff has failed to mitigate its damages, if any. By asserting this defense, the Defendants do not admit that Plaintiff has been damaged.

FIFTH AFFIRMATIVE DEFENSE**(Estoppel)**

As a fifth and separate affirmative defense, the Defendants allege that Plaintiff has waived, or by its conduct, is estopped from asserting the causes of action in its Complaint.

SIXTH AFFIRMATIVE DEFENSE**(Offset)**

As a sixth and separate affirmative defense, the Defendants allege that they have suffered damage by reason of Plaintiff's conduct; that they have the right of offset if any amount of money is owed to Plaintiff or due to Plaintiff by way of damage.

SEVENTH AFFIRMATIVE DEFENSE**(Failure to Comply with Title 45, Chapter 5, Idaho Code)**

As a seventh and separate affirmative defense, the Defendants allege that Plaintiff has failed to comply with the requirements of Title 45, Chapter 5 of the Idaho Code and, therefore, is barred from seeking remedies pertaining to lien foreclosure or attachment by way of lis pendens.

EIGHTH AFFIRMATIVE DEFENSE**(Express Contract)**

DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT – Page 6

As an eighth and separate affirmative defense, Plaintiff's quantum meruit/unjust enrichment claim fails to the extent an express contract between the parties addresses that claim's subject matter.

NINTHAFFIRMATIVEDEFENSE

(Unknown Defenses)

As a ninth and separate affirmative defense, the Defendants presently have insufficient knowledge and information as to whether it may have additional, as yet unidentified, defenses available. The Defendants reserve the right to assert additional defenses in the event discovery reveals or indicates that such defenses would be appropriate.

DATED: 8 December 2013

ANGELO L. ROSA, ESQ.




Angelo L. Rosa
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 8 December 2013, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail


Signed _____
Angelo L. Rosa

ORIGINAL

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

JAN - 9 2014

By [Signature] 9:45 AM
Clerk
Deputy Clerk

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,
Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",
Defendants.

Consolidated Cases Nos:
CV 2013-573 (Rogerson Flats WP)
CV 2013-574 (Cottonwood WP)
CV 2013-575 (Salmon Creek WP)
CV 2013-576 (Deep Creek WP)

CV-2013-26 (Notch Butte WP)
(Lincoln County)

**PLAINTIFF FAGEN, INC.'S MOTION
FOR ORDER TO COMPEL
DISCOVERY RESPONSES**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and hereby moves the Court pursuant to I.R.C.P. 37(a) for an Order in this consolidated action to compel responses to discovery by ALL of the above-named Defendants (excepting the "John Does 1-10").

PLAINTIFF'S FAGEN, INC.'S MOTION FOR ORDER
TO COMPEL DISCOVERY RESPONSES - Pg. 1


The reasons for this Motion are based upon the facts and circumstances set forth in my supporting Affidavit filed concurrently herewith. See *Affidavit of John R. Goodell In Support Of Plaintiff's Motion to Compel Discovery Responses*, ¶¶ 2-15.

The trial court has jurisdiction to issue an order compelling discovery responses. I.R.C.P. 37(a)(2). Plaintiff respectfully requests such an Order since informal attempts to secure the responses have been unsuccessful. To date, no responses have been served despite several informal extensions, and Defendants' counsel's representation to the Court at the prior December hearing that Defendants' responses *would* be served on or before December 31, 2013. See *Affidavit of John R. Goodell In Support Of Plaintiff's Motion to Compel Discovery Responses*, ¶¶ 8-10. Fagen appreciates that Mr. Rosa's Motion to Withdraw identifies lack of cooperation of Defendants as a reason such has not occurred. See *Affidavit of John R. Goodell In Support Of Plaintiff's Motion to Compel Discovery Responses*, ¶ 11.

Pursuant to I.R.C.P. 37(a)(4), Plaintiff Fagen further requests an award of attorney fees and costs incurred in obtaining this Order.

DATED this 8th day of January, 2014.

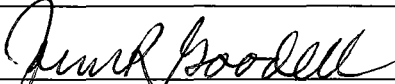
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January, 2014, I served a true and correct copy of the foregoing was served by the method indicated below, and addressed as stated:

Angelo Rosa 1168 E. 1700 S. Salt Lake City, UT 84105	<input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
--	--



JOHN R. GOODELL

MAR - 3 2014

By _____ 9:15 AM,
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC,

Plaintiff(s),

vs.

ROGERSON FLATS WIND PARK etal,

Defendant(s)

Case No. CV 13-573

**ORDER FOR SCHEDULING
CONFERENCE—Civil Cases**

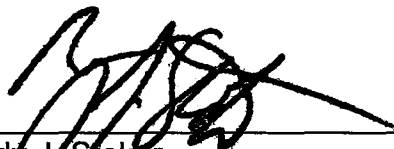
(Effective 4/1/11)

IT IS HEREBY ORDERED that the above-captioned case is scheduled for a scheduling conference to commence on April 14, 2014, at 10:00 am. The purpose of the conference will be to enter a scheduling order regarding the deadlines contained in the attached schedule. **All parties must appear at this time in person or by counsel.** Counsel must be the handling attorney, or be fully familiar with the case and have authority to bind his/her client and law firm on all matters set forth in I.R.C.P. 16(a) and 16(b).

In lieu of this scheduling conference, all parties may stipulate to deadlines and other information required in the enclosed **Stipulation for Scheduling and Planning**. This stipulation must be completed and signed by all parties, and filed with the court at **least three (3) working days before** the scheduling conference. The hearing will not

be vacated until: 1) the attached stipulation is received by the court; and 2) counsel has contacted the court's clerk at the number set forth below to confirm that the hearing is vacated. The foregoing notwithstanding, THE STIPULATION MAY NOT ALTER THE SPECIFIC TIME REQUIREMENTS SET FORTH IN THE COURT'S **PRE-TRIAL ORDER**.

DATED this 3rd day of March, 2014.

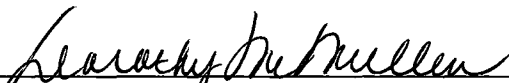


Randy J. Stoker
District Judge

CERTIFICATE OF MAILING/DELIVERY

I hereby certify that on the 3rd day of March, 2014, I caused to be served a true and correct copy of the foregoing **ORDER FOR SCHEDULING CONFERENCE**, by the method indicated below, and addressed to the following:

John R. Goodell Attorney at Law P.O. Box 1391 Pocatello, Idaho 83204-1391	U.S. Mail
James T. Carkulis 40 W 14th St, Suite 4A Helena, Montana 59601	U.S. Mail
Angelo L. Rosa Attorney at Law P.O. Box 1605 Boise, Idaho 83701	U.S. Mail



Dorothy McMullen,
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN INC.,

Plaintiff.

Case No. CV-13-573

**STIPULATION FOR
SCHEDULING AND PLANNING**

Vs

ROGERSON FLATS WIND PARK etal,

Defendant.

The above parties hereby stipulate to the following scheduling deadlines:

A. EXPERT WITNESSES

(Plaintiff's experts)

1. _____ days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.

2. _____ days before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.

3. _____ days before trial, defendant shall complete any depositions of the plaintiff's initial expert witnesses.

(Defendant's experts)

4. _____ days before trial, defendant shall disclose each person defendant intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.

5. _____ days before trial, defendant shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.

6. _____ days before trial, plaintiff shall complete any depositions of the defendant's expert witnesses.

(Plaintiff's rebuttal experts)

7. _____ days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial to rebut new information or issues disclosed or raised by the defendant.

8. _____ days before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding the rebuttal expert witnesses.

9. _____ days before trial, defendant shall complete any depositions of the plaintiff's rebuttal expert witnesses.

B. LAY WITNESSES

1. _____ days before trial, plaintiff shall disclose each person plaintiff intends to call as a lay witness at trial (excluding impeachment witnesses).

2. _____ days before trial, defendant shall disclose each person defendant intends to call as a lay witness at trial (excluding impeachment witnesses).

3. _____ days before trial, plaintiff shall disclose each lay witness (excluding impeachment witnesses) plaintiff intends to call at trial to rebut new information or issues disclosed or raised by the defendant.

4. _____ days before trial, all parties shall complete any depositions of lay witnesses.

C. DEADLINES FOR INITIATING DISCOVERY

1. _____ days before trial is the last day for serving interrogatories, requests for production, requests to permit entry upon land or other property, and requests for admission.

2. _____ days before trial is the last day for filing motions for a physical or mental examination.

D. DEADLINE FOR SUPPLEMENTAL RESPONSES TO DISCOVERY

1. _____ days before trial, all parties must serve any supplemental response to discovery required by Rule 26(e) of the Idaho Rules of Civil Procedure.

E. DEADLINE FOR DISCLOSURE OF EXHIBITS

1. _____ days before trial all parties must disclose all proposed trial exhibits.

F. PRETRIAL MOTIONS

1. _____ days before trial is the last day to file motions to add additional parties to the lawsuit.

2. _____ days before trial is the last day to file a motion to amend the claims between existing parties to the lawsuit, including to add a claim for punitive damages.

G. TRIAL SETTING

1. This case can be set for a trial to commence on or after _____.
Note, that absent extremely compelling circumstances, no case will be set for trial more than 510 days from the date of filing the complaint.

2. It is estimated that the trial will take _____ days.

3. This case is to be tried as a:
_____ court trial
_____ jury trial

4. Parties preference for trial dates: **(Please confer and complete. Do not attach "unavailable dates")**.

- (a) Week of Tuesday, _____, 20__.
- (b) Week of Tuesday, _____, 20__.
- (c) Week of Tuesday, _____, 20__.

H. MEDIATION

1. The parties agree to mediation: Yes ___ No ___

2. If yes:

- a. The parties agree to submit to mediation with a mediator mutually agreed upon.
- b. Mediation shall begin _____ days prior to trial.
- c. Unless otherwise agreed in writing between the parties, the cost of mediation shall be equally divided between the parties.

The parties reserve the right to amend this stipulation by agreement of all parties, subject to Court approval; each party reserves the right to seek amendment hereof by Court order, and to request further status conferences for such purpose, in accordance with I.R.C.P. 16(a) and 16(b).

Counsel for Plaintiff(s):

_____ Date: _____

Counsel for Defendant(s):

_____ Date: _____

Counsel for Other Parties:

_____ Date: _____

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2014 MAR -5 AM 10:00

BY _____
CLERK

DEPUTY

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

ORIGINAL

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, XRG DEVELOPMENT
PARTNERS, LLC, and "JOHN DOES 1-
10",

Defendants.

Case No. CV 2013-573

Consolidated Cases:

Twin Falls Co. Case No. CV 2013-573
Twin Falls Co. Case No. CV 2013-574
Twin Falls Co. Case No. CV 2013-575
Twin Falls Co. Case No. CV 2013-576
Lincoln Co. Case No. CV 2013-26.

**FIRST AMENDED COMPLAINT
(ROGERSON FLATS WP, et al.)**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and for its
Complaint against the above-named Defendants, ROGERSON FLATS WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, XRG DEVELOPMENT PARTNERS
OF IDAHO, LLC, AND "JOHN DOES 1-10" as any other persons or entities claiming any right
to possession or interest of the subject property, states and alleges as follows:

PARTIES

1. Plaintiff Fagen is a corporation duly organized under the laws of the State of Minnesota. Fagen is a registered contractor pursuant to Idaho Code § 54-5204, license number RCE-26001, and in good standing.

2. Defendant J. R. Simplot Self-declaration of Revocable Trust (“Simplot Trust”), an Idaho revocable trust, is the owner or reputed owner and lessor of real property and improvements thereon (hereinafter described as the “Property”), as more fully described in Exhibit A-1 attached to the Claim of Lien recorded as Instrument No. 2012014945 on 8/8/2012 in the Twin Falls County Recorder’s Office. A true and correct copy of said Claim of Lien is attached as **Exhibit One** hereto and adopted by reference as though fully set forth herein (“Claim of Lien”).

3. Defendant Jack Ranch Wind Land Holdings, LLC (hereinafter “Jack Ranch Wind Land Holdings”), an Idaho limited liability company, is an assignee under a Partial Assignment of Lease (Substation Property), from Rogerson Flats Wind Park, LLC, assignor, and is a tenant or reputed tenant of real property and improvements for an electric substation facility and related improvements which tenant or reputed tenant claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust.

4. Defendant Exergy Development Group of Idaho, LLC (hereinafter described as “Exergy”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with XRG and/or Rogerson Flats Wind Park, LLC.

5. Defendant XRG Development Partners, LLC (hereinafter described as “XRG”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or Rogerson Flats Wind Park, LLC.

6. Defendant Rogerson Flats Wind Park, LLC (hereinafter described as Rogerson Flats Wind Park”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to lease(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or XRG.

7. Exergy, XRG, Rogerson Flats Wind Park, and/or Jack Ranch Wind Land Holdings are the owner(s) or reputed owner(s) of certain improvements, facilities, and structures being constructed on the Property (“hereinafter described as the “Project”).

8. Fagen claims an interest in the Property pursuant to its Claim of Lien in the amount of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law.

9. Defendants “John Does 1-10” are additional unnamed persons or parties may claim and interest in the property who are presently unknown. Fagen reserves the right to amend this Complaint to add such additional persons or parties at a later time.

10. Jurisdiction is proper in this Court pursuant to Idaho Code § 5-514 as the Defendants have transacted business and/or this action relates to ownership, use or possession of real property located within the State of Idaho.

11. Venue is proper in this Court pursuant to Idaho Code § 5-401.

FACTUAL ALLEGATIONS

12. In 2011 Fagen entered into an Engineering, Procurement and Construction Services Agreement (the "Agreement") and/or other agreements and memorandum of understanding(s) to supply labor, materials, and engineering, procurement and construction services with Exergy, upon, and for the benefit, of the Property. A true and correct copy of the relevant portions of the Agreement are attached hereto as **Exhibit Two** and adopted by reference as though fully set forth herein.

13. Fagen supplied labor, materials, and services upon and for the benefit of the Property, commencing work in 2011.

14. Fagen continued to provide labor, furnish materials, and supply services for the improvement to the Property until July 31, 2012, when it ceased doing so due to non-payment by Exergy.

15. Fagen performed this work in a conforming, workmanlike manner pursuant to its agreement with Exergy.

16. As a result of Exergy's failure to pay Fagen for labor, materials and services supplied for improvements to the Property, Fagen filed its Claim of Lien as described above.

17. The reasonable value of the benefit to the Property is equivalent to the labor, materials, and services supplied by Fagen as the amount due stated in its Claim of Lien.

18. True and correct copies of Fagen's Claim of Lien were timely served by certified mailing on Defendants.

FIRST CAUSE OF ACTION

(Lien Foreclosure)

19. Fagen realleges the allegations contained in paragraphs 1-18 and incorporates the same herein by reference.

20. Fagen is entitled to a judgment foreclosing its Claim of Lien for the amount thereof, together with accrued interest pursuant to law; a determination that its Claim of Lien is superior and has priority to any interest claimed by all Defendants, and each of them; and for foreclosure sale with application of the proceeds of sale to amount due to Fagen.

21. Fagen is entitled to recover costs and reasonable attorney fees to maintain this action, pursuant to Idaho Code § 45-501 *et seq.* The sum of \$10,000 is reasonable should this matter be resolved by default.

SECOND CAUSE OF ACTION

(Breach of Contract)

22. Fagen realleges the allegations contained in paragraphs 1-21 and incorporates the same herein by reference.

23. Fagen has performed all of its obligations under the Agreement.

24. Exergy has breached the Agreement in that it has failed and refused to pay Fagen in full for labor, services and materials furnished by Fagen.

25. Fagen has suffered damages as a direct and proximate result of Exergy's breach of contract in an amount to be proven at trial.

THIRD CAUSE OF ACTION

(Quantum Meruit)

26. Fagen realleges the allegations contained in paragraphs 1-25 and incorporates the same herein by reference.

27. Fagen provided valuable labor, services and materials that were necessary for Exergy to perform and complete its obligations.

28. Exergy benefitted from Fagen's labor, services and materials, including, but not limited to the fact that Exergy could not have fully performed its obligations in the absence of the labor, services and materials that Fagen provided.

29. Exergy has failed and refused to pay Fagen for the labor, services and materials it provided.

30. Fagen has suffered damages and Exergy has been unjustly enriched as a result of Exergy's failure to pay Fagen for the labor, materials and services provided by Fagen in an amount to be proved at trial.


WHEREFORE, Fagen prays for judgment against Defendants as follows:

- A. An order foreclosing Fagen's Claim of Lien against the Property, and declaring the amount due of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law;
- B. An order declaring the Defendants, and all persons or entities claiming an interest in the Property or any part thereof, to be barred and foreclosed of all right, title, interest, claim or equity of redemption in and to the Property;
- C. An order for sale of the Property according to law and directing the proceeds of sale be applied to the amount due Fagen;

- D. Damages for breach of contract, and/or for Quantum Meruit in at least the amount of \$1,412,774.81 or such other amounts to be determined at trial;
- E. An award of costs incurred;
- F. An award of reasonable attorney fees in the amount of \$10,000 if this matter is resolved by default, or if not resolved by default in such amount as the Court deems reasonable;
- G. Such further relief as the Court deems just in the premises.

DATED this 3rd day of March, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

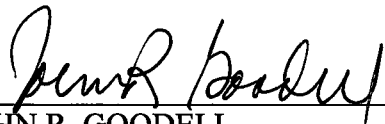
By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of March, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
*Attorney for Exergy Development Group
of Idaho, LLC; XRG Development Partners, LLC;
and Rogerson Flats Wind Park, LLC*

- U. S. Mail *& Email*
Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

John R. Goodell (ISB #2872)
Daniel C. Green (ISB #3213)
Ferrell S. Ryan, III (ISB # 8414)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

TWIN FALLS COUNTY
RECORDED FOR:
FIRST AMERICAN TITLE - TWIN FA
12:38:45 PM 08-08-2012
2012014945
NO. PAGES 14 FEE: \$49.00
KRISTINA GLASCOCK
COUNTY CLERK
DEPUTY: DJW
Electronically Recorded by Simplifile

Attorneys for Claimant Fagen, Inc.

FAGEN, INC., a Minnesota corporation,

Claimant,

vs.

ROGERSON FLATS WIND PARK, LLC,
an Idaho limited liability company;
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, an Idaho limited liability
company; XRG DEVELOPMENT
PARTNERS, LLC (ID), an Idaho limited
liability company; J. R. SIMPLOT
SELF-DECLARATION OF REVOCABLE
TRUST, an Idaho revocable trust; and JACK
RANCH WIND LAND HOLDINGS, LLC, a
Delaware limited liability company,

Owners/Reputed Owners.

CLAIM OF LIEN (I.C. § 45-507)

NOTICE IS HEREBY GIVEN:

That FAGEN, INC., 501 W. Highway 212, P. O. Box 159, Granite Falls, MN 56241, hereby claims the benefit of the law relative to liens of mechanics and materialmen upon real property as provided by the laws of the State of Idaho, I.C. § 45-501 *et seq.*, and does hereby claim a lien upon that certain tract of land and improvements thereon as hereinafter described, and in the following amounts:

ROGERSON FLATS WIND PARK - CLAIM OF LIEN (I.C. § 45-507) - Page 1



John R. Goodell (ISB #2872)
 Daniel C. Green (ISB #3213)
 Ferrell S. Ryan, III (ISB # 8414)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109

2012014945
 Granite Falls
 818112 123845

Attorneys for Claimant Fagen, Inc.

_____)
 FAGEN, INC., a Minnesota corporation,)
)
 Claimant,)
)
 vs.)
)
 ROGERSON FLATS WIND PARK, LLC,)
 an Idaho limited liability company;)
 EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMENT)
 PARTNERS, LLC (ID), an Idaho limited)
 liability company; J. R. SIMPLOT)
 SELF-DECLARATION OF REVOCABLE)
 TRUST, an Idaho revocable trust; and JACK)
 RANCH WIND LAND HOLDINGS, LLC, a)
 Delaware limited liability company,)
)
 Owners/Reputed Owners.)
 _____)

CLAIM OF LIEN (I.C. § 45-507)

NOTICE IS HEREBY GIVEN:

That FAGEN, INC., 501 W. Highway 212, P. O. Box 159, Granite Falls, MN 56241, hereby claims the benefit of the law relative to liens of mechanics and materialmen upon real property as provided by the laws of the State of Idaho, I.C. § 45-501 *et seq.*, and does hereby claim a lien upon that certain tract of land and improvements thereon as hereinafter described, and in the following amounts:

1. That the principal sum of \$1,412,774.81 in accordance with the Accounts Receivable History By Customer statement attached hereto as **Exhibit B** and adopted by reference, is owed for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment for the ROGERSON FLATS WIND PARK, LLC, a wind park project, located at or near Rogerson, Twin Falls, County, Idaho.

In addition, prejudgment interest is owed on the above principal installment amounts from the indicated due date on the invoices listed in **Exhibit B** pursuant to the parties' underlying written contract, and/or Idaho's statutory rate @ 12% per annum, until paid or entry of judgment; plus costs and attorney fees incurred in collection.

2. That said amounts are due, and owing, after deducting all just credits and offsets, for said claim for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, in and for those certain improvements of said land located at Twin Falls County, Idaho, more particularly described in **Exhibit A-1 and A-2** attached hereto and adopted by reference, commonly known as ROGERSON FLATS WIND PARK, LLC, located at or near Rogerson, Twin Falls, County, Idaho, being the subject of the subject of lease(s) to ROGERSON FLATS WIND PARK, LLC and/or EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, and/or XRG DEVELOPMENT PARTNERS, LLC (ID), Lessees, and/or partial assignment of lease (for substation property) to JACK RANCH WIND LAND HOLDINGS, LLC; and said land also being owned by the J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, Lessor.¹

¹Said Lessor's Trust established by written instrument dated December 21, 1989, and registered in the Fourth Judicial District of the State of Idaho, Ada County, as No. 3T-788.

In addition, Exhibit C attached hereto and adopted by reference are two color-coded maps and engineering drawings which locate and identify ROGERSON FLATS WIND FARM, LLC.

3. That the name(s) and address(es) of the person(s) and/or entity(ies) who/which contracted with claimant and for whom claimant performed labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, are:

ROGERSON FLATS WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

ROGERSON FLATS WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

ROGERSON FLATS WIND PARK, LLC
Attn: Peter J. Richardson, Registered Agent
515 N. 27th St.
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

JACK RANCH WIND LAND HOLDINGS, LLC
3000 El Camino Real
5 Palo Alto Square, Suite 700
Palo Alto, CA 943306

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

4. Claimant's last item of labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment occurred on July 31, 2012.

5. That the owner(s) or reputed owner(s) of said property to be charged with said lien are:

ROGERSON FLATS WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

ROGERSON FLATS WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

ROGERSON FLATS WIND PARK, LLC
Attn: Peter J. Richardson, Registered Agent
515 N. 27th St.
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

JACK RANCH WIND LAND HOLDINGS, LLC
3000 El Camino Real
5 Palo Alto Square, Suite 700
Palo Alto, CA 943306

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

6. That the description of the property to be charged with said lien, and upon which said improvements were made, and which is situated Twin Falls County, Idaho, is more fully described in Exhibits A-1, A-2 and C attached hereto and adopted by reference.

7. That the mailing address for this Claimant is:

FAGEN, INC.
Attn: Jennifer A. Johnson,
Chief Financial Officer
501 W. Highway 212
P. O. Box 159
Granite Falls, MN 56241

8. That the undersigned certifies that a true and correct copy of this Claim of Lien following recording will either be served personally, or served by mailing a copy thereof by U.S. mail, certified - return receipt requested, within the time prescribed by statute for doing so, upon the owners or reputed owners who/which are identified above.

Dated this 3rd day of August, 2012.

CLAIMANT:
FAGEN, INC.

By: _____



JOHN R. GOODELL
Attorney and Authorized Representative for
Claimant

STATE OF IDAHO)
: ss.
County of Bannock)

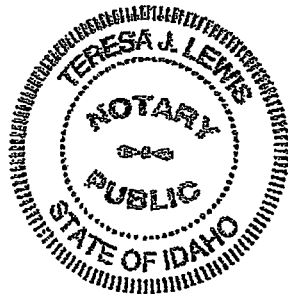
JOHN R. GOODELL, being duly sworn, on oath, says that he is the attorney and authorized signatory on behalf of claimant, FAGEN, INC., in the foregoing Claim of Lien, that he has read the same and knows the contents thereof; and that the same is true, and that it contains a correct statement of his/her/its demands after deducting all just credits and offsets; and affiant believes the same to be just.

John R. Goodell

JOHN R. GOODELL
Attorney for Claimant

SUBSCRIBED AND SWORN TO before me this 3rd day of August, 2012.

(SEAL)



Teresa J. Lewis

NOTARY PUBLIC FOR IDAHO
Residing at: POCATELLO IDAHO
My Commission Expires: 7-20-18

Rogerson Plus

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO.

SECTION 7: GOV'T. LOTS 2, 3, 4, 5, 6, 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., TWIN FALLS COUNTY, IDAHO
SECTION 7:

BEGINNING AT A POINT ON THE SECTION LINE 763 FEET, MORE OR LESS, SOUTH OF THE WEST QUARTER CORNER OF SECTION 7, WHICH POINT IS STATION 252+85 OF "A" LATERAL AS LOCATED;

THENCE NORTH 65° 58' EAST 89.2 FEET;

THENCE ON A 20° CURVE TO THE LEFT, 197.2 FEET;

THENCE NORTH 34° 32' EAST 422.7 FEET;

THENCE ON A 20° CURVE TO THE RIGHT 80.8 FEET;

THENCE NORTH 50° 42' EAST 580.7 FEET;

THENCE ON A 10° CURVE TO THE RIGHT, 210 FEET;

THENCE NORTH 71° 22' EAST 457.6 FEET;

THENCE ON A 10° CURVE TO THE LEFT, 180 FEET, TO STATION 274+63.4 WHICH POINT IS ON THE EAST EAST LINE OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ BEING GOV'T LOT 7 OF SECTION 7 AND 865 FEET, MORE OR LESS, SOUTH OF THE NORTHEAST CORNER OF SAID SW $\frac{1}{4}$ NW $\frac{1}{4}$ GOV'T LOT 7 OF SECTION 7, ALL SITUATED IN THE W $\frac{1}{2}$ OF SECTION 7, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M..

AND EXCEPT

THAT PORTION OF THE SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 7, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., AS DESCRIBED:

BEGINNING AT A POINT WHICH IS THE CORNER COMMON TO SECTIONS 7, 8, 17 AND 18, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M.;

THENCE NORTH FOR 141 FEET;

THENCE SOUTH 76° 46' 32" WEST FOR 610 FEET;

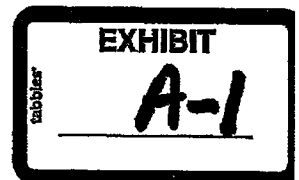
THENCE EAST FOR 600 FEET TO THE CORNER COMMON TO SECTIONS 7, 8, 17 AND 18, WHICH IS THE POINT OF BEGINNING.

SECTION 8: NE $\frac{1}{4}$ SW $\frac{1}{4}$; S $\frac{1}{2}$ SW $\frac{1}{4}$

SECTION 17: GOV'T. LOTS 1 AND 2, EXCEPT THE NORTH 300 FEET OF SAID LOTS; S $\frac{1}{2}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$; S $\frac{1}{2}$ SE $\frac{1}{4}$; W $\frac{1}{2}$ OF SECTION NORTHWEST OF RAILROAD; 6.93 ACRES RAILROAD RIGHT OF WAY; W $\frac{1}{2}$ OF SECTION SOUTH AND EAST OF RAILROAD.

AND EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SECTION 17 ALL IN TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., WHICH BEARS SOUTH 00° 09' 24" WEST A DISTANCE OF 2640.66 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 17; THENCE ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 1320.33 FEET ALONG THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 26' 58" WEST A DISTANCE OF 450.00 FEET ALONG THE 1/16TH LINE;



Rogerson Flats

THENCE ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF SOUTH 89° 26' 58" EAST A DISTANCE OF 450.00 FEET TO
THE EAST BOUNDARY OF SAID SECTION 17;
THENCE ON A BEARING OF SOUTH 00° 09' 24" WEST A DISTANCE OF 120.00 FEET
ALONG THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF
BEGINNING.

SECTION 20: ALL

SECTION 29: ALL

Exhibit A-2

Substation Property Description

"PARCEL 1"

A PARCEL OF LAND IN THE NE¼, SECTION 29 ALL IN TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO AND BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 29 ALL IN TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., WHICH BEARS NORTH 00° 26' 14" EAST A DISTANCE OF 5277.76 FEET FROM THE SOUTHEAST CORNER; THENCE ON A BEARING OF SOUTH 00° 26' 14" WEST A DISTANCE OF 662.00 FEET ALONG THE EAST BOUNDARY OF THE NE¼ SECTION 29 TO THE REAL POINT OF BEGINNING;

THENCE FROM THIS REAL POINT OF BEGINNING CONTINUING ON A BEARING OF SOUTH 00° 26' 14" WEST A DISTANCE OF 615.00 FEET ALONG THE EAST BOUNDARY OF THE NE¼ SECTION 29;

THENCE ON A BEARING OF NORTH 89° 33' 46" WEST A DISTANCE OF 500.00 FEET;

THENCE ON A BEARING OF NORTH 00° 26' 14" EAST A DISTANCE OF 615.00 FEET PARALLEL WITH THE EAST BOUNDARY OF THE NE¼ SECTION 29;

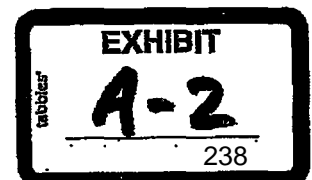
THENCE ON A BEARING OF SOUTH 89° 33' 46" EAST A DISTANCE OF 500.00 FEET TO THE REAL POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL 1 CONTAINS 7.06 ACRES MORE OR LESS.

(BASIS OF BEARINGS: SECTION LINE FROM THE NORTHEAST CORNER OF SECTION 29, T. 14 S., R. 16 E., B.M. TO THE SOUTHEAST CORNER OF SECTION 29, T. 14 S., R. 16 E., B.M., ALL IN TWIN FALLS COUNTY, IDAHO. SAID SECTION LINE BEING SOUTH 00° 26' 14" WEST.)

As described on the attached survey.

Partial Assignment of Lease (Substation Property)
(Jack Ranch)
sf-3122531



DATE 7/30/12 ARPD64

01 000 Eagen, Inc

ACCOUNTS RECEIVABLE HISTORY BY CUSTOMER

TIME 16.52

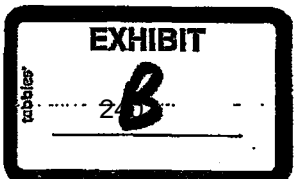
PAGE

*** SUMMARY ***

INVOICE DATES 00/00/0000 - 99/99/9999

CHECK DATES 00/00/0000 - 99/99/9999

INVOICE		JOB	SUB	REFERENCE	INVOICE	DISC	CHECK	CHECK	CHECK		
NUMBER	DATE	DESCRIPTION	NUMBER	JOB	NUMBER	DATE	AMOUNT	DATE	NUMBER	AMOUNT	
02208 Rogerson Flats Wind Farm,											
00001	12/27/2011	APPLICATION #1	114034	603			.00	12/27/2011	999999	.00	
00010	12/27/2011	APPLICATION #1	114034	603	398503.75		.00			.00	
00002	02/03/2012	APPLICATION #2	114034	603	88359.58		.00			.00	
00003	03/16/2012	APPLICATION #3	114034	603			.00	03/16/2012	999999	.00	
00030	03/16/2012	APPLICATION #3	114034	603	12114.00		.00			.00	
00004	04/25/2012	APPLICATION #4	114034	603	220281.78		.00			.00	
00005	05/25/2012	APPLICATION #5	114034	603	420708.20		.00			.00	
00006	06/29/2012	APPLICATION #6	114034	603	168438.62		.00			.00	
00007	07/27/2012	APPLICATION #7	114034	603	97268.68		.00			.00	
*** SUBJOB TOTAL ***							1,412,774.81			.00	
** BALANCE **										1,412,774.81	.00
*** JOB TOTAL ***							1,412,774.81				.00
** BALANCE **										1,412,774.81	.00



DATE	12/12/2011
PROJECT	WIND ENERGY DEVELOPMENT GROUP
SCALE	1" = 1200'

WT	DEGREE	MINUTE	SECOND
10	11	11	00
11	11	11	00
12	11	11	00
13	11	11	00
14	11	11	00
15	11	11	00
16	11	11	00
17	11	11	00
18	11	11	00
19	11	11	00
20	11	11	00
21	11	11	00
22	11	11	00
23	11	11	00
24	11	11	00
25	11	11	00
26	11	11	00
27	11	11	00
28	11	11	00
29	11	11	00
30	11	11	00



SCALE 1" = 1200'

LEGEND

POWER BOUNDARY

POWER LINE

POWER POLE

PROPERTY BOUNDARY

The North of this sheet has been used and used by adjacent proprietors.

Date drawn: September 12th 2011

Scale: 1" = 1200' (Horizontal) & 1" = 2400' (Vertical)



FISHEN ENGINEERING LLC
 604 - 910-6000
 10001 10th Street NE, Ste. 200
 Redmond, WA 98073

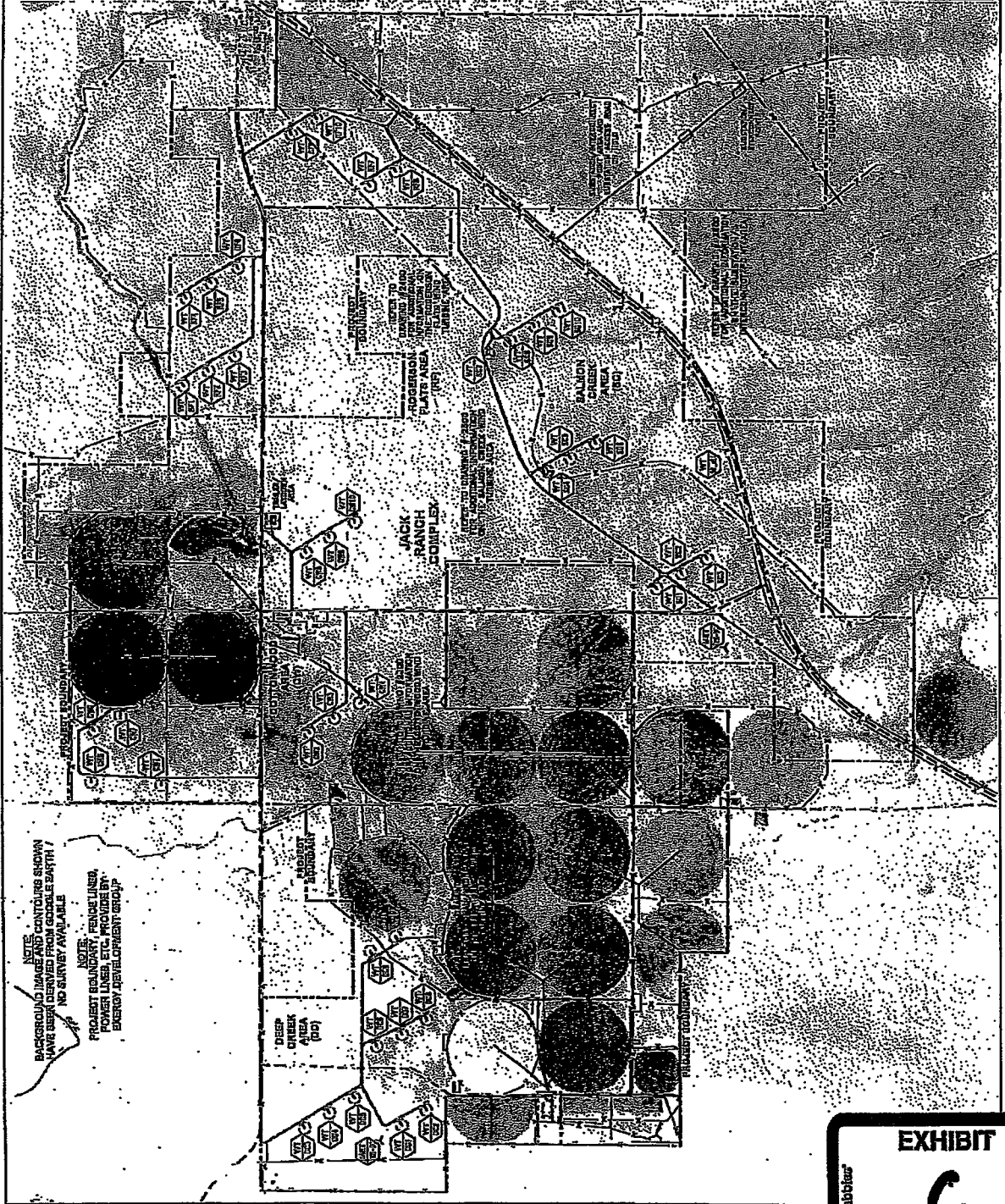
WIND ENERGY DEVELOPMENT GROUP
 1000 1st Ave
 Everett, WA 98201

WIND TURBINE LOCATIONS DEEP CREEK AREA (DC)			
WT	LATITUDE (DEGREE)	LONGITUDE (DEGREE)	HEIGHT (FEET)
10	42.31868299	114.32070000	112
11	42.31868299	114.32070000	112
12	42.31868299	114.32070000	112
13	42.31868299	114.32070000	112
14	42.31868299	114.32070000	112
15	42.31868299	114.32070000	112
16	42.31868299	114.32070000	112
17	42.31868299	114.32070000	112
18	42.31868299	114.32070000	112
19	42.31868299	114.32070000	112
20	42.31868299	114.32070000	112
21	42.31868299	114.32070000	112
22	42.31868299	114.32070000	112
23	42.31868299	114.32070000	112
24	42.31868299	114.32070000	112
25	42.31868299	114.32070000	112
26	42.31868299	114.32070000	112
27	42.31868299	114.32070000	112
28	42.31868299	114.32070000	112
29	42.31868299	114.32070000	112
30	42.31868299	114.32070000	112

WIND TURBINE LOCATIONS COTTONWOOD AREA (CW)			
WT	LATITUDE (DEGREE)	LONGITUDE (DEGREE)	HEIGHT (FEET)
31	42.31868299	114.32070000	112
32	42.31868299	114.32070000	112
33	42.31868299	114.32070000	112
34	42.31868299	114.32070000	112
35	42.31868299	114.32070000	112
36	42.31868299	114.32070000	112
37	42.31868299	114.32070000	112
38	42.31868299	114.32070000	112
39	42.31868299	114.32070000	112
40	42.31868299	114.32070000	112
41	42.31868299	114.32070000	112
42	42.31868299	114.32070000	112
43	42.31868299	114.32070000	112
44	42.31868299	114.32070000	112
45	42.31868299	114.32070000	112
46	42.31868299	114.32070000	112
47	42.31868299	114.32070000	112
48	42.31868299	114.32070000	112
49	42.31868299	114.32070000	112
50	42.31868299	114.32070000	112

WIND TURBINE LOCATIONS ROBERSON FLATS AREA (RF)			
WT	LATITUDE (DEGREE)	LONGITUDE (DEGREE)	HEIGHT (FEET)
51	42.31868299	114.32070000	112
52	42.31868299	114.32070000	112
53	42.31868299	114.32070000	112
54	42.31868299	114.32070000	112
55	42.31868299	114.32070000	112
56	42.31868299	114.32070000	112
57	42.31868299	114.32070000	112
58	42.31868299	114.32070000	112
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63	42.31868299	114.32070000	112
64	42.31868299	114.32070000	112
65	42.31868299	114.32070000	112
66	42.31868299	114.32070000	112
67	42.31868299	114.32070000	112
68	42.31868299	114.32070000	112
69	42.31868299	114.32070000	112
70	42.31868299	114.32070000	112

WIND TURBINE LOCATIONS SALMON CREEK AREA (SC)			
WT	LATITUDE (DEGREE)	LONGITUDE (DEGREE)	HEIGHT (FEET)
71	42.31868299	114.32070000	112
72	42.31868299	114.32070000	112
73	42.31868299	114.32070000	112
74	42.31868299	114.32070000	112
75	42.31868299	114.32070000	112
76	42.31868299	114.32070000	112
77	42.31868299	114.32070000	112
78	42.31868299	114.32070000	112
79	42.31868299	114.32070000	112
80	42.31868299	114.32070000	112
81	42.31868299	114.32070000	112
82	42.31868299	114.32070000	112
83	42.31868299	114.32070000	112
84	42.31868299	114.32070000	112
85	42.31868299	114.32070000	112
86	42.31868299	114.32070000	112
87	42.31868299	114.32070000	112
88	42.31868299	114.32070000	112
89	42.31868299	114.32070000	112
90	42.31868299	114.32070000	112

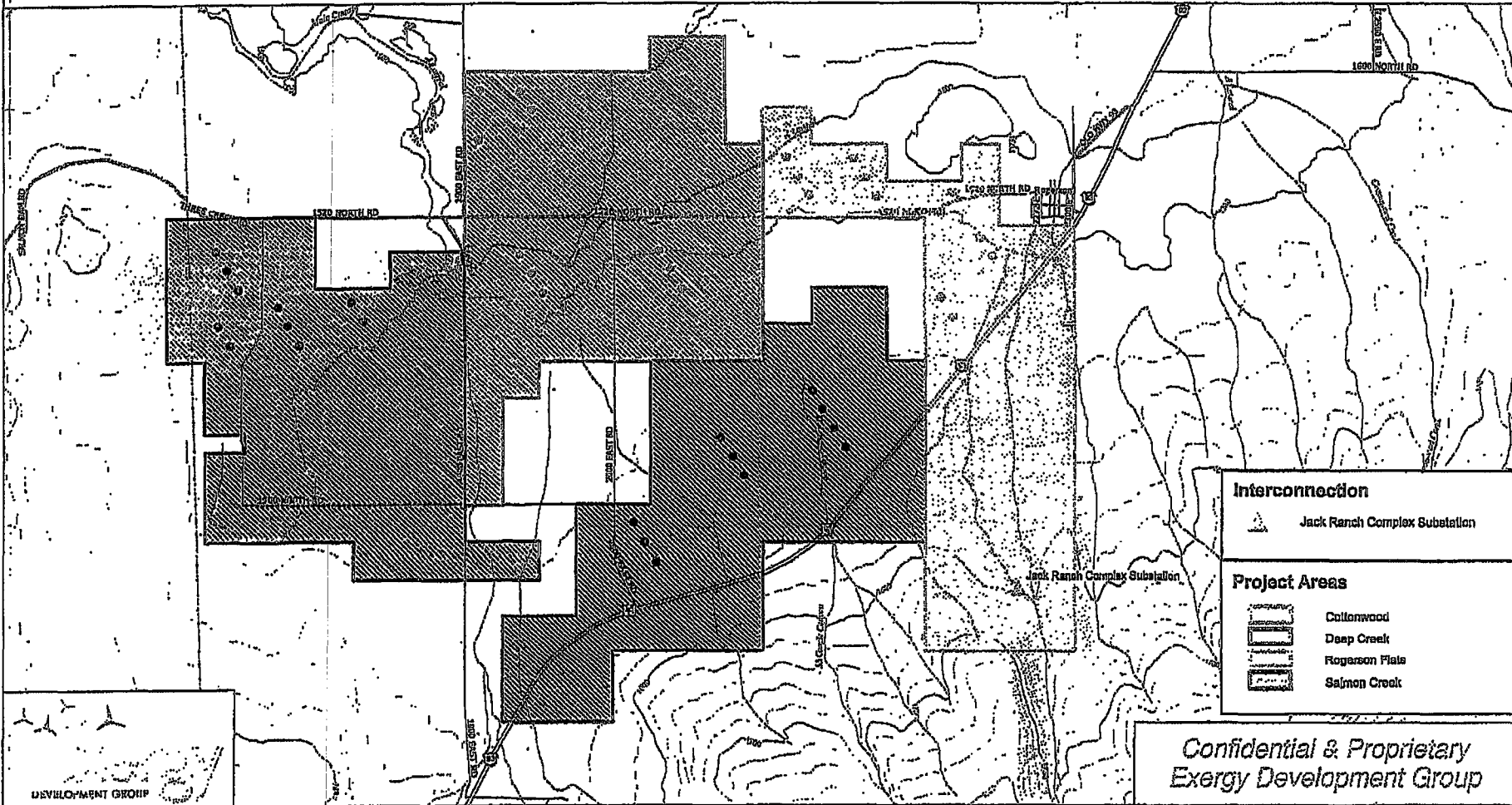


EXHIBIT

C

241

Jack Ranch Complex



Interconnection

- Jack Ranch Complex Substation

Project Areas

- Cottonwood
- Deep Creek
- Rogerson Flats
- Salmon Creek

Confidential & Proprietary
Exergy Development Group



Data use subject to license.
© DeLorme, XMap07.
www.delorme.com



**BALANCE OF PLANT
ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

FOR THE

EXERGY IDAHO SIX WINDS WIND PARK

BY AND BETWEEN

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.,

as Owner

and

FAGEN, INC.,

as Contractor

Dated December 31, 2011



**BALANCE OF PLANT ENGINEERING,
PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

This Balance of Plant Engineering, Procurement and Construction Agreement is entered into on December 30, 2011 by and between Fagen, Inc., a corporation organized and existing under Minnesota law ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company organized and existing under Idaho law ("Owner") (each of Contractor and Owner, a "Party", and together, the "Parties").

WITNESSETH:

A. Owner is developing, financing and constructing the aggregate 116MW wind generation Project (as herein defined) located at the six (6) Project Sites (as herein defined) in the State of Idaho.

B. Owner desires to contract with Contractor for the provision of engineering, procurement, construction and other services and supply of materials and equipment for the Balance of Plant (as herein defined) on a single point responsibility, and firm and lump sum basis, all as described in, and subject to the terms and conditions of, this Agreement, and Contractor desires to provide such goods and services.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth below, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following definitions:

"Affiliate" means, with respect to a Person, any other Person, directly or indirectly, in control of, controlled by, or under common control with, that Person. For purposes of this Agreement, "control," "controlled" and their derivatives, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person so controlled, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Balance of Plant Engineering, Procurement and Construction Services Agreement, including all Exhibits, appendices and attachments hereto and thereto, as the same may be amended, modified or supplemented, from time to time, in accordance with the terms hereof.

"All-Risk Builder's Risk" has the meaning set forth in Section 18.3.1.

"Applicable Laws" means all federal, state and local laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations having the force of law and permits of any Governmental Authority having jurisdiction over a Party, the Project, any Project Site, the performance of the Work, the Contract Documents and

include the plural, and vice versa; (c) the terms "hereof," "herein," "hereunder," "hereto," and similar terms refer to the entire agreement in which they appear (including any attachments, schedules, annexes, exhibits and appendices to such agreement) and not to any particular provision of such agreement; (d) references to a "day" shall mean a calendar day, unless the term "Business Day" is used; (e) references to a Party shall be deemed to include references to its successors and permitted assigns; (f) the terms "include" and "including" shall be deemed to be followed by the words "without limitation", whether or not so followed; (g) unless otherwise stated, where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day; and (h) a reference to time is a reference to the time in effect in the State of Idaho, unless otherwise indicated.

ARTICLE III THE WORK

3.1 Scope of Work.

(a) Commencing on the Commencement Date, Contractor shall perform the scope of work set forth in Exhibit A-1 and its obligations under and pursuant to this Agreement and the other Contract Documents. Contractor shall provide, furnish and perform on a single point responsibility basis all necessary design, engineering, procurement, supplies, vehicles, transportation, equipment, materials, consumables, supervision, installation, erection, construction, labor, personnel, quality assurance and inspection, and testing and other services, activities and work (including all correction, rectification, remedial, repair and replacement services, work, supplies and activities relating to defects, deficiencies in the Work not conforming to the Requirements) that are required, necessary and appropriate for Contractor to deliver and install a fully complete, and functioning and operable, Balance of Plant pursuant to the terms of this Agreement and the other Contract Documents, including the Technical Documents. Contractor shall, among other things, (i) furnish or procure, handle and store, as necessary, all materials, equipment, machinery, tools, consumables, labor and transportation; (ii) perform the construction, supervision, administration and other services and items described in the Contract Documents; (iii) perform the engineering and design services as set forth in the Contract Documents; (iv) perform the testing services required described in the Contract Documents; and (v) perform quality control checks, including inspection, of all materials, services and equipment to be used or incorporated into the Balance of Plant, and rejection of those items determined not to be in compliance with the Requirements.

(b) After Turbine Mechanical Completion of each Turbine, Contractor shall, if requested by Owner, provide advisory assistance in connection with the electrical and communications aspects of the operation and maintenance of such Turbine. Contractor shall provide all necessary and sufficient experienced personnel having the requisite expertise for the prompt performance of any correction, rectification, remedial, repair and replacement work required in accordance with this Agreement.

3.2 Compliance. Contractor shall ensure that the Work conforms to, and is in accordance with, the Contract Documents, Prudent Industry Practices, Applicable Laws,

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

CONTRACTOR:

**EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

FAGEN, INC.

By: 

By: _____

Name: James T. Carkulis

Name:

Title: President

Title:

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

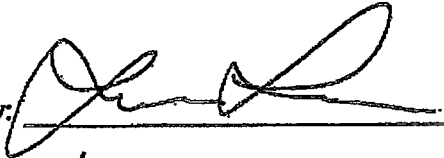
OWNER:

CONTRACTOR:

**EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

FAGEN, INC.

By: _____

By:  _____

Name:

Name: *Larry Lindeman*

Title:

Title: *Vice President - W.R.D.*

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2014 MAR -5 AM 10:00

BY _____ CLERK

_____ DEPUTY

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

ORIGINAL

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, XRG DEVELOPMENT
PARTNERS, LLC, and "JOHN DOES 1-
10",

Defendants.

Case No. CV 2013-573

Consolidated Cases:

- Twin Falls Co. Case No. CV 2013-573
- Twin Falls Co. Case No. CV 2013-574
- Twin Falls Co. Case No. CV 2013-575
- Twin Falls Co. Case No. CV 2013-576
- Lincoln Co. Case No. CV 2013-26.

**FIRST AMENDED COMPLAINT
(COTTONWOOD WP, et al.)**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and for its
Complaint against the above-named Defendants, COTTONWOOD WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, XRG DEVELOPMENT PARTNERS
OF IDAHO, LLC, and "JOHN DOES 1-10" as any other persons or entities claiming any right to
possession or interest of the subject property, states and alleges as follows:

PARTIES

1. Plaintiff Fagen is a corporation duly organized under the laws of the State of Minnesota. Fagen is a registered contractor pursuant to Idaho Code § 54-5204, license number RCE-26001, and in good standing.

2. Defendant J. R. Simplot Self-declaration of Revocable Trust (“Simplot Trust”), an Idaho revocable trust, is the owner or reputed owner and lessor of real property and improvements thereon (hereinafter described as the “Property”), as more fully described in Exhibit A attached to the Claim of Lien recorded as Instrument No. 2012014944 on 8/8/2012 in the Twin Falls County Recorder’s Office.

A true and correct copy of said Claim of Lien is attached as Exhibit One hereto and adopted by reference as though fully set forth herein (“Claim of Lien”).

3. Defendant Exergy Development Group of Idaho, LLC (hereinafter described as “Exergy”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with XRG and/or Cottonwood Wind Park, LLC.

4. Defendant XRG Development Partners, LLC (hereinafter described as “XRG”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or Cottonwood Wind Park, LLC.

5. Defendant Cottonwood Wind Park, LLC (hereinafter described as “Cottonwood Wind Park”), an Idaho limited liability company, is a tenant or reputed tenant which claims an

interest in the Property pursuant to lease(s) entered with the with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or XRG.

6. Exergy, XRG, and/or Cottonwood Wind Park, are the owner(s) or reputed owner(s) of certain improvements, facilities, and structures being constructed on the Property (“hereinafter described as the “Project”).

7. Fagen claims an interest in the Property pursuant to its Claim of Lien in the amount of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law.

8. Defendants “John Does 1-10” are additional unnamed persons or parties may claim and interest in the property who are presently unknown. Fagen reserves the right to amend this Complaint to add such additional persons or parties at a later time.

9. Jurisdiction is proper in this Court pursuant to Idaho Code § 5-514 as the Defendants have transacted business and/or this action relates to ownership, use or possession of real property located within the State of Idaho.

10. Venue is proper in this Court pursuant to Idaho Code § 5-401.

FACTUAL ALLEGATIONS

11. In 2011 Fagen entered into agreements and/or memorandum of understanding(s) to supply labor, materials, and engineering, procurement and construction services with Exergy, upon, and for the benefit, of the Property.

12. Fagen supplied labor, materials, and services upon and for the benefit of the Property, commencing work in 2011.

13. Fagen continued to provide labor, furnish materials, and supply services for the improvement to the Property until July 31, 2012, when it ceased doing so due to non-payment by Exergy.

14. Fagen performed this work in a conforming, workmanlike manner pursuant to its agreement with Exergy.

15. As a result of Exergy's failure to pay Fagen for labor, materials and services supplied for improvements to the Property, Fagen filed its Claim of Lien as described above.

16. The reasonable value of the benefit to the Property is equivalent to the labor, materials, and services supplied by Fagen as the amount due stated in its Claim of Lien.

17. True and correct copies of Fagen's Claim of Lien were timely served by certified mailing on Defendants.

FIRST CAUSE OF ACTION
(Lien Foreclosure)

18. Fagen realleges the allegations contained in paragraphs 1-17 and incorporates the same herein by reference.

19. Fagen is entitled to a judgment foreclosing its Claim of Lien for the amount thereof, together with accrued interest pursuant to law; a determination that its Claim of Lien is superior and has priority to any interest claimed by all Defendants, and each of them; and for foreclosure sale with application of the proceeds of sale to amount due to Fagen.

20. Fagen is entitled to recover costs and reasonable attorney fees to maintain this action, pursuant to Idaho Code § 45-501 *et seq.* The sum of \$10,000 is reasonable should this matter be resolved by default.

SECOND CAUSE OF ACTION
(Breach of Contract)

21. Fagen realleges the allegations contained in paragraphs 1-20 and incorporates the same herein by reference.

22. Fagen has performed all of its obligations under the Agreement.

23. Exergy has breached the Agreement in that it has failed and refused to pay Fagen in full for labor, services and materials furnished by Fagen.

24. Fagen has suffered damages as a direct and proximate result of Exergy's breach of contract in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Quantum Meruit)

26. Fagen realleges the allegations contained in paragraphs 1-24 and incorporates the same herein by reference.

27. Fagen provided valuable labor, services and materials that were necessary for Exergy to perform and complete its obligations.

28. Exergy benefitted from Fagen's labor, services and materials, including, but not limited to the fact that Exergy could not have fully performed its obligations in the absence of the labor, services and materials that Fagen provided.

29. Exergy has failed and refused to pay Fagen for the labor, services and materials it provided.

30. Fagen has suffered damages and Exergy has been unjustly enriched as a result of Exergy's failure to pay Fagen for the labor, materials and services provided by Fagen in an amount to be proved at trial.

WHEREFORE, Fagen prays for judgment against Defendants as follows:

- A. An order foreclosing Fagen's Claim of Lien against the Property, and declaring the amount due of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law;
- B. An order declaring the Defendants, and all persons or entities claiming an interest in the Property or any part thereof, to be barred and foreclosed of all right, title, interest, claim or equity of redemption in and to the Property;
- C. An order for sale of the Property according to law and directing the proceeds of sale be applied to the amount due Fagen;
- D. Damages for breach of contract, and/or for Quantum Meruit in at least the amount of \$1,412,774.81 or such other amounts to be determined at trial;
- E. An award of costs incurred;
- F. An award of reasonable attorney fees in the amount of \$10,000 if this matter is resolved by default, or if not resolved by default in such amount as the Court deems reasonable;
- G. Such further relief as the Court deems just in the premises.

DATED this 3rd day of March, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN K. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of March, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
*Attorney for Exergy Development Group
of Idaho, LLC; XRG Development Partners, LLC;
and Rogerson Flats Wind Park, LLC*

- U. S. Mail *& Email*
Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

John R. Goodell (ISB #2872)
 Daniel C. Green (ISB #3213)
 Ferrell S. Ryan, III (ISB # 8414)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109

TWIN FALLS COUNTY
 RECORDED FOR:
 FIRST AMERICAN TITLE - TWIN FA
 12:38:39 PM 08-08-2012
2012014944
 NO. PAGES 13 FEE: \$46.00
 KRISTINA GLASCOCK
 COUNTY CLERK
 DEPUTY: DJW
 Electronically Recorded by Simplifile

Attorneys for Claimant Fagen, Inc.

 FAGEN, INC., a Minnesota corporation,)

Claimant,)

vs.)

COTTONWOOD WIND PARK, LLC, an)
 Idaho limited liability company; EXERGY)
 DEVELOPMENT GROUP OF IDAHO,)
 LLC, an Idaho limited liability company;)
 XRG DEVELOPMENT PARTNERS, LLC)
 (ID), an Idaho limited liability company;)
 J. R. SIMPLOT SELF-DECLARATION OF)
 REVOCABLE TRUST, an Idaho revocable)
 trust,)

Owners/Reputed Owners.)
 _____)

CLAIM OF LIEN (I.C. § 45-507)

NOTICE IS HEREBY GIVEN:

That FAGEN, INC., 501 W. Highway 212, P. O. Box 159, Granite Falls, MN 56241, hereby claims the benefit of the law relative to liens of mechanics and materialmen upon real property as provided by the laws of the State of Idaho, I.C. § 45-501 *et seq.*, and does hereby claim a lien upon that certain tract of land and improvements thereon as hereinafter described, and in the following amounts:



John R. Goodell (ISB #2872)
 Daniel C. Green (ISB #3213)
 Ferrell S. Ryan, III (ISB # 8414)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109

2012014944
 10 in fall
 8/8/12 17:38:39

Attorneys for Claimant Fagen, Inc.

 FAGEN, INC., a Minnesota corporation,)
)
 Claimant,)
)
 vs.)
)
 COTTONWOOD WIND PARK, LLC, an)
 Idaho limited liability company; EXERGY)
 DEVELOPMENT GROUP OF IDAHO,)
 LLC, an Idaho limited liability company;)
 XRG DEVELOPMENT PARTNERS, LLC)
 (ID), an Idaho limited liability company;)
 J. R. SIMPLOT SELF-DECLARATION OF)
 REVOCABLE TRUST, an Idaho revocable)
 trust,)
)
 Owners/Reputed Owners.)

CLAIM OF LIEN (I.C. § 45-507)

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1. That the principal sum of \$1,412,774.81 in accordance with the Accounts Receivable History By Customer statement attached hereto as **Exhibit B** and adopted by reference, is owed for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment for the COTTONWOOD WIND PARK, LLC, a wind park project, located at or near Rogerson, Twin Falls, County, Idaho.

In addition, prejudgment interest is owed on the above principal installment amounts from the indicated due date on the invoices listed in **Exhibit B** pursuant to the parties' underlying written contract, and/or Idaho's statutory rate @ 12% per annum, until paid or entry of judgment; plus costs and attorney fees incurred in collection.

2. That said amounts are due, and owing, after deducting all just credits and offsets, for said claim for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, in and for those certain improvements of said land located at Twin Falls County, Idaho, more particularly described in **Exhibit A** attached hereto and adopted by reference, commonly known as COTTONWOOD WIND PARK, LLC, located at or near Rogerson, Twin Falls, County, Idaho, said land being the subject of lease(s) to COTTONWOOD WIND PARK, LLC and/or EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, and/or XRG DEVELOPMENT PARTNERS, LLC (ID), Lessees; and said land also being owned by the J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, Lessor.¹

¹Said Lessor's Trust established by written instrument dated December 21, 1989, and registered in the Fourth Judicial District of the State of Idaho, Ada County, as No. 3T-788.

In addition, **Exhibit C** attached hereto and adopted by reference are two color-coded maps and engineering drawings which locate and identify COTTONWOOD WIND FARM, LLC.

3. That the name(s) and address(es) of the person(s) and/or entity(ies) who/which contracted with claimant and for whom claimant performed labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, are:

COTTONWOOD WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

COTTONWOOD WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

COTTONWOOD WIND PARK, LLC
Attn: Mark A. Ellison, Registered Agent
205 N. 10th St., 4th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

4. Claimant's last item of labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment occurred on July 31, 2012.

5. That the owner(s) or reputed owner(s) of said property to be charged with said lien are:

COTTONWOOD WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

COTTONWOOD WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

COTTONWOOD WIND PARK, LLC
Attn: Mark A. Ellison, Registered Agent
205 N. 10th St., 4th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.

Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

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Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

6. That the description of the property to be charged with said lien, and upon which said improvements were made, and which is situated Twin Falls County, Idaho, is more fully described in **Exhibits A and C** attached hereto and adopted by reference.

7. That the mailing address for this Claimant is:

FAGEN, INC.
Attn: Jennifer A. Johnson,
Chief Financial Officer
501 W. Highway 212
P. O. Box 159
Granite Falls, MN 56241

8. That the undersigned certifies that a true and correct copy of this Claim of Lien following recording will either be served personally, or served by mailing a copy thereof by U.S. mail, certified - return receipt requested, within the time prescribed by statute for doing so, upon the owners or reputed owners who/which are identified above.

Dated this 3rd day of August, 2012.

CLAIMANT:
FAGEN, INC.

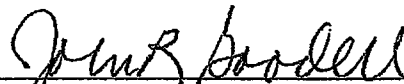
By:



JOHN R. GOODELL
Attorney and Authorized Representative
for Claimant

STATE OF IDAHO)
: ss.
County of Bannock)

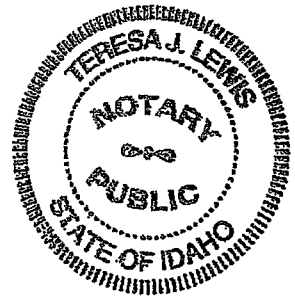
JOHN R. GOODELL, being duly sworn, on oath, says that he is the attorney and authorized signatory on behalf of claimant, FAGEN, INC., in the foregoing Claim of Lien, that he has read the same and knows the contents thereof; and that the same is true, and that it contains a correct statement of his/her/its demands after deducting all just credits and offsets; and affiant believes the same to be just.



JOHN R. GOODELL
Attorney for Claimant

SUBSCRIBED AND SWORN TO before me this 3rd day of August, 2012.

(SEAL)



Teresa J. Lewis

NOTARY PUBLIC FOR IDAHO
Residing at: *Pocatello Idaho*
My Commission Expires: *7-20-18*

Cottonwood

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 1: SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

SECTION 11: ALL

SECTION 12: W $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$; W $\frac{1}{2}$

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE;

BEGINNING AT A POINT ON THE SECTION LINE, 1799 FEET, MORE OR LESS, EAST OF
SECTION CORNER COMMON TO SECTIONS 11, 12, 13 AND 14, TOWNSHIP 14 SOUTH,
RANGE 15 EAST, B.M., WHICH POINT IS STATION 210+62 OF "A" LATERAL AS
LOCATED;

THENCE NORTH 00° 28' EAST 37.3 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET;

THENCE NORTH 22° 28' EAST, 238.5 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 120.8 FEET;

THENCE NORTH 46° 38' EAST, 47.6 FEET;

THENCE ON A 30° CURVE TO THE RIGHT, 174.4 FEET;

THENCE SOUTH 81° 02' EAST, 407.5 FEET;

THENCE ON A 40° CURVE TO THE LEFT, 177.1 FEET;

THENCE NORTH 28° 08' EAST, 171.6 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 189.2 FEET;

THENCE NORTH 65° 58' EAST 2549 FEET TO STATION 252+85 WHICH POINT IS ON
THE EAST SECTION LINE OF SECTION 12, TOWNSHIP 14 SOUTH, RANGE 15 EAST,
B.M., AND 763 FEET, MORE OR LESS, SOUTH OF THE EAST $\frac{1}{4}$ CORNER OF SAID
SECTION 12, ALL SITUATED IN THE S $\frac{1}{2}$ OF SAID SECTION 12.

SECTION 13: ALL

EXCEPT

A NINE (9) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE WEST QUARTER CORNER OF SECTION 13 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 26' 46" EAST A
DISTANCE OF 2646.88 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 13;
THENCE ON A BEARING OF SOUTH 00° 26' 46" WEST A DISTANCE OF 34.00 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING;

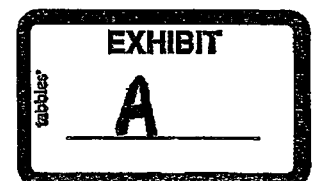
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 57° 01'
03" EAST A DISTANCE OF 1900.00 FEET;

THENCE ON A BEARING OF SOUTH 32° 58' 57" EAST A DISTANCE OF 200.00 FEET;

THENCE ON A BEARING OF SOUTH 57° 01' 03" WEST A DISTANCE OF 2032.02 FEET
TO THE WEST BOUNDARY OF SAID SECTION 13;

THENCE ON A BEARING OF NORTH 00° 26' 46" EAST A DISTANCE OF 239.64 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING.

SECTION 14: ALL



Cottonwood

EXCEPT

BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14,
TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET MORE OR LESS;
THENCE NORTH 81° 31' EAST, 80 FEET;
THENCE NORTH 8° 29' WEST, 505 FEET, MORE OR LESS TO THE PLACE OF
BEGINNING.

AND EXCEPT

A STRIP OF LAND 100 FEET WIDE LYING 50 FEET ON EACH SIDE OF THE CENTERLINE
OF "A" LATERAL AS LOCATED AND DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SAID SECTION 14;
THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET, MORE OR LESS;
THENCE NORTH 81° 31' EAST, 30 FEET TO THE POINT OF BEGINNING, WHICH IS PC
STATION 117+79.8 OF "A" LATERAL AS LOCATED;
THENCE ON A 40° CURVE TO THE LEFT FROM SEMI-TANGENT SOUTH 8° 29' EAST, A
DISTANCE OF 200 FEET;
THENCE SOUTH 88° 29' EAST, 206.2 FEET;
THENCE ON A 40° CURVE TO THE LEFT, 165 FEET;
THENCE NORTH 25° 31' EAST, 449 FEET;
THENCE NORTH 27° 01' EAST, 180 FEET TO A POINT ON THE NORTH LINE OF THE
SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SAID SECTION 14, 805 FEET MORE OR LESS, EAST OF THE
NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14, ALL SITUATED IN THE
SW $\frac{1}{4}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:
BEGINNING AT STATION 129+80 OF "A" LATERAL SURVEY AS LOCATED WHICH
POINT IS ON THE SOUTH BOUNDARY LINE OF THE NW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND
805 FEET, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF SAID FORTY;
THENCE NORTH 37° 01' EAST, 224.9 FEET;
THENCE ON A 20° CURVE TO THE RIGHT, 310 FEET;
THENCE SOUTH 80° 59' EAST 1440.1 FEET TO STATION 149+55 WHICH STATION IS
A POINT ON THE EAST LINE OF THE NE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND 1260 FEET,
MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SECTION 14, ALL LYING IN
THE N $\frac{1}{2}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:
BEGINNING AT A POINT ON THE WEST BOUNDARY LINE OF THE NE $\frac{1}{4}$ OF SECTION
14, 1260 FEET, MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SAID SECTION
14, WHICH POINT IS STATION 149+55 OF "A" LATERAL SURVEY AS LOCATED;
THENCE SOUTH 80° 59' EAST, 366.1 FEET MORE OR LESS;
THENCE ON A 20° CURVE TO THE RIGHT, 190 FEET;
THENCE SOUTH 42° 59' EAST, 685.5 FEET;
THENCE ON A 40° CURVE TO THE LEFT, 280.8 FEET;
THENCE NORTH 24° 41' EAST, 693.3 FEET;
THENCE ON A 40° CURVE TO THE RIGHT 165 FEET;
THENCE SOUTH 89° 19' EAST 220.5 FEET;
THENCE ON A 50° CURVE TO THE LEFT, 155.7 FEET;
THENCE NORTH 12° 51' EAST, 312 FEET;
THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET;
THENCE NORTH 34° 51' EAST, 708.6 FEET;
THENCE ON A 50° CURVE TO THE RIGHT, 110.2 FEET;

Cottonwood.

THENCE NORTH 89° 58' EAST, 53 FEET TO STATION 189+86, WHICH POINT IS ON THE EAST LINE OF SAID SECTION 14 AND 45 FEET SOUTH OF THE NORTHEAST CORNER, SITUATED IN THE NE¼ OF SECTION 14.

AND ALSO EXCEPT

A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 40' 16" WEST A DISTANCE OF 2640.52 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 1370.00 FEET ALONG THE NORTH BOUNDARY OF SECTION 14 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 00° 00' 00" WEST A DISTANCE OF 445.00 FEET; THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 200.00 FEET PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF NORTH 00° 00' 00" EAST A DISTANCE OF 445.00 FEET TO THE NORTH BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 89° 40' 16" EAST A DISTANCE OF 200.00 FEET ALONG THE NORTH BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING.

AND ALSO EXCEPT

A TWELVE (12) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 21' 12" EAST A DISTANCE OF 2649.57 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 1008.00 FEET ALONG THE EAST BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 884.00 FEET; THENCE ON A BEARING OF NORTH 89° 38' 48" WEST A DISTANCE OF 590.00 FEET; THENCE ON A BEARING OF NORTH 00° 21' 12" EAST A DISTANCE OF 884.00 FEET PARALLEL WITH THE EAST BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 89° 38' 48" EAST A DISTANCE OF 590.00 FEET TO THE EAST BOUNDARY OF SAID SECTION 14 AND THE REAL POINT OF BEGINNING. SECTION 23; W½W½; NE¼NW½

01 000 Fagen Inc

DATE 7/30/12 ARF064
*** SUMMARY ***

ACCOUNTS RECEIVABLE HISTORY BY CUSTOMER
INVOICE DATES 00/00/0000 - 99/99/9999

TIME 16.52

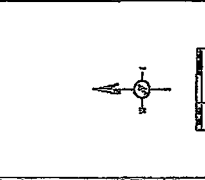
PAGE 2

CHECK DATES 00/00/0000 - 99/99/9999

-----INVOICE-----			JOB	SUB	-----REFERENCE-----	INVOICE	DISCT	CHECK	CHECK	CHECK	
NUMBER	DATE	DESCRIPTION	NUMBER	JOB	NUMBER	DATE	AMT	DATE	NUMBER	AMOUNT	
02210 Cottonwood Wind Park, LLC											
00001	12/27/2011	APPLICATION #1	114034	605			.00	12/27/2011	999999	.00	
00010	12/27/2011	APPLICATION #2	114034	605			398603.75			.00	
00002	02/03/2012	APPLICATION #2	114034	605			88359.58			.00	
00003	03/16/2012	APPLICATION #3	114034	605			.00	03/16/2012	999999	.00	
00030	03/16/2012	APPLICATION #3	114034	605			19114.00			.00	
00004	04/25/2012	APPLICATION #4	114034	605			220281.78			.00	
00005	05/25/2012	APPLICATION #5	114034	605			420708.40			.00	
00006	06/29/2012	APPLICATION #6	114034	605			168438.59			.00	
00007	07/27/2012	APPLICATION #7	114034	605			97268.71			.00	
*** SUBJOB TOTAL ***							1,412,774.81	.00		1,412,774.81	.00
** BALANCE **											
*** JOB TOTAL ***							1,412,774.81	.00		1,412,774.81	.00
** BALANCE **											
** CUSTOMER TOTAL **							1,412,774.81	.00		1,412,774.81	.00
** BALANCE **											



DATE	BY	REVISION



LEGEND

- PROJECT BOUNDARY
- POWER LINES
- PROJECT DRAIN
- TERRAIN BOUNDARY

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JACK RANCHO COMPLEX
PROJECT LAYOUT

DATE: 10/12/2011
SCALE: 1" = 200'

ENERGY DEVELOPMENT GROUP
USA, DPHO

JACK RANCHO COMPLEX
PROJECT LAYOUT

DATE: 10/12/2011
SCALE: 1" = 200'

WIND TURBINE LOCATIONS

DEEP CREEK AREA (DC)

WT	DIVISION	LATITUDE (NAD83)	LONGITUDE (NAD83)
DC01	N	42.20854567	W 114.782692
DC02	N	42.20854567	W 114.782692
DC03	N	42.20854567	W 114.782692
DC04	N	42.20854567	W 114.782692
DC05	N	42.20854567	W 114.782692
DC06	N	42.20854567	W 114.782692
DC07	N	42.20854567	W 114.782692
DC08	N	42.20854567	W 114.782692
DC09	N	42.20854567	W 114.782692
DC10	N	42.20854567	W 114.782692
DC11	N	42.20854567	W 114.782692
DC12	N	42.20854567	W 114.782692
DC13	N	42.20854567	W 114.782692
DC14	N	42.20854567	W 114.782692
DC15	N	42.20854567	W 114.782692
DC16	N	42.20854567	W 114.782692
DC17	N	42.20854567	W 114.782692
DC18	N	42.20854567	W 114.782692
DC19	N	42.20854567	W 114.782692
DC20	N	42.20854567	W 114.782692

WIND TURBINE LOCATIONS

COTTONWOOD AREA (CW)

WT	DIVISION	LATITUDE (NAD83)	LONGITUDE (NAD83)
CW01	N	42.20854567	W 114.782692
CW02	N	42.20854567	W 114.782692
CW03	N	42.20854567	W 114.782692
CW04	N	42.20854567	W 114.782692
CW05	N	42.20854567	W 114.782692
CW06	N	42.20854567	W 114.782692
CW07	N	42.20854567	W 114.782692
CW08	N	42.20854567	W 114.782692
CW09	N	42.20854567	W 114.782692
CW10	N	42.20854567	W 114.782692
CW11	N	42.20854567	W 114.782692
CW12	N	42.20854567	W 114.782692
CW13	N	42.20854567	W 114.782692
CW14	N	42.20854567	W 114.782692
CW15	N	42.20854567	W 114.782692
CW16	N	42.20854567	W 114.782692
CW17	N	42.20854567	W 114.782692
CW18	N	42.20854567	W 114.782692
CW19	N	42.20854567	W 114.782692
CW20	N	42.20854567	W 114.782692

WIND TURBINE LOCATIONS

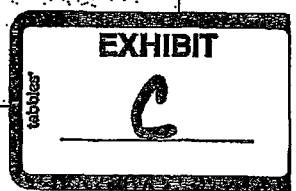
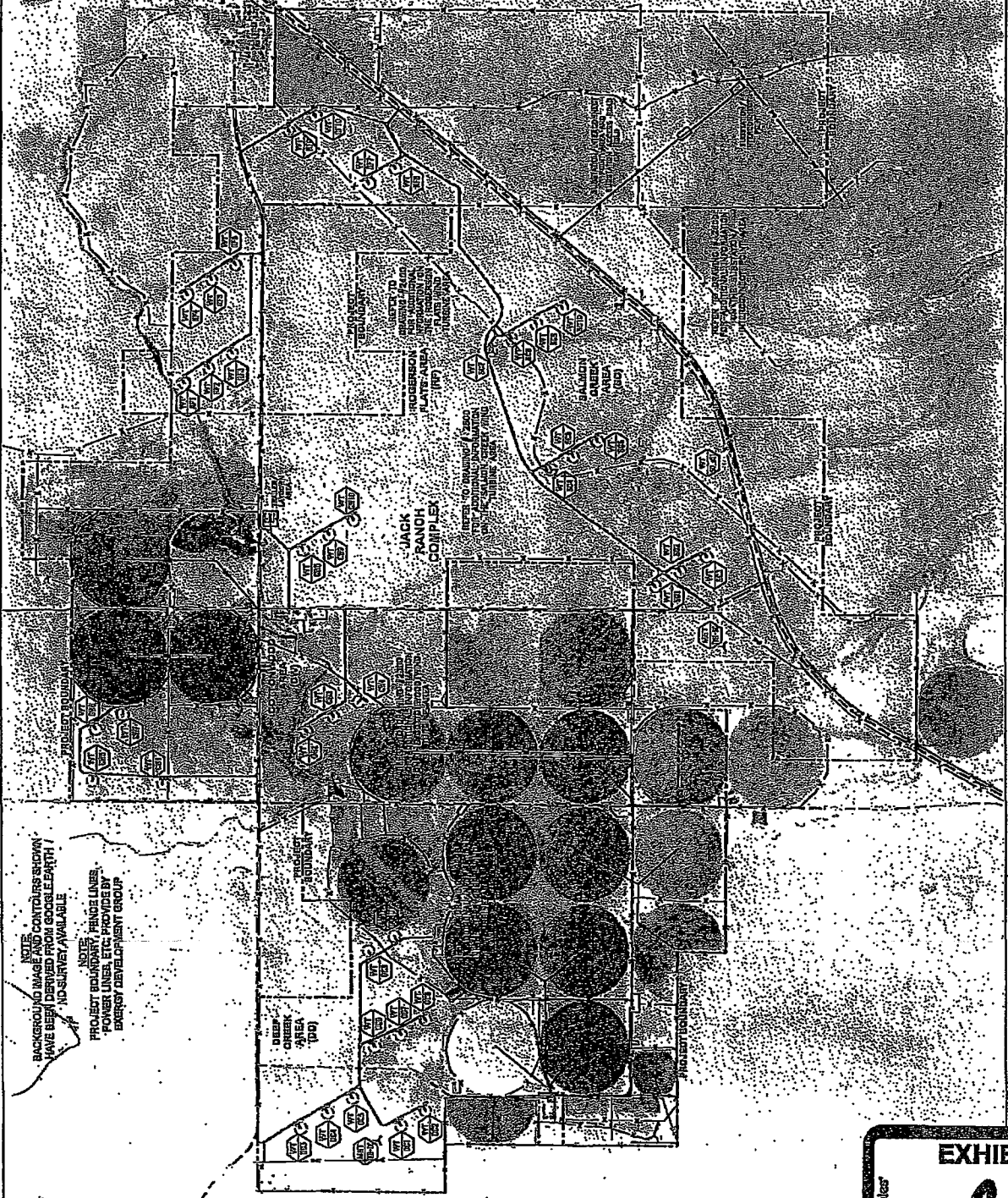
ROPPERSON PLATS AREA (RP)

WT	DIVISION	LATITUDE (NAD83)	LONGITUDE (NAD83)
RP01	N	42.20854567	W 114.782692
RP02	N	42.20854567	W 114.782692
RP03	N	42.20854567	W 114.782692
RP04	N	42.20854567	W 114.782692
RP05	N	42.20854567	W 114.782692
RP06	N	42.20854567	W 114.782692
RP07	N	42.20854567	W 114.782692
RP08	N	42.20854567	W 114.782692
RP09	N	42.20854567	W 114.782692
RP10	N	42.20854567	W 114.782692
RP11	N	42.20854567	W 114.782692
RP12	N	42.20854567	W 114.782692
RP13	N	42.20854567	W 114.782692
RP14	N	42.20854567	W 114.782692
RP15	N	42.20854567	W 114.782692
RP16	N	42.20854567	W 114.782692
RP17	N	42.20854567	W 114.782692
RP18	N	42.20854567	W 114.782692
RP19	N	42.20854567	W 114.782692
RP20	N	42.20854567	W 114.782692

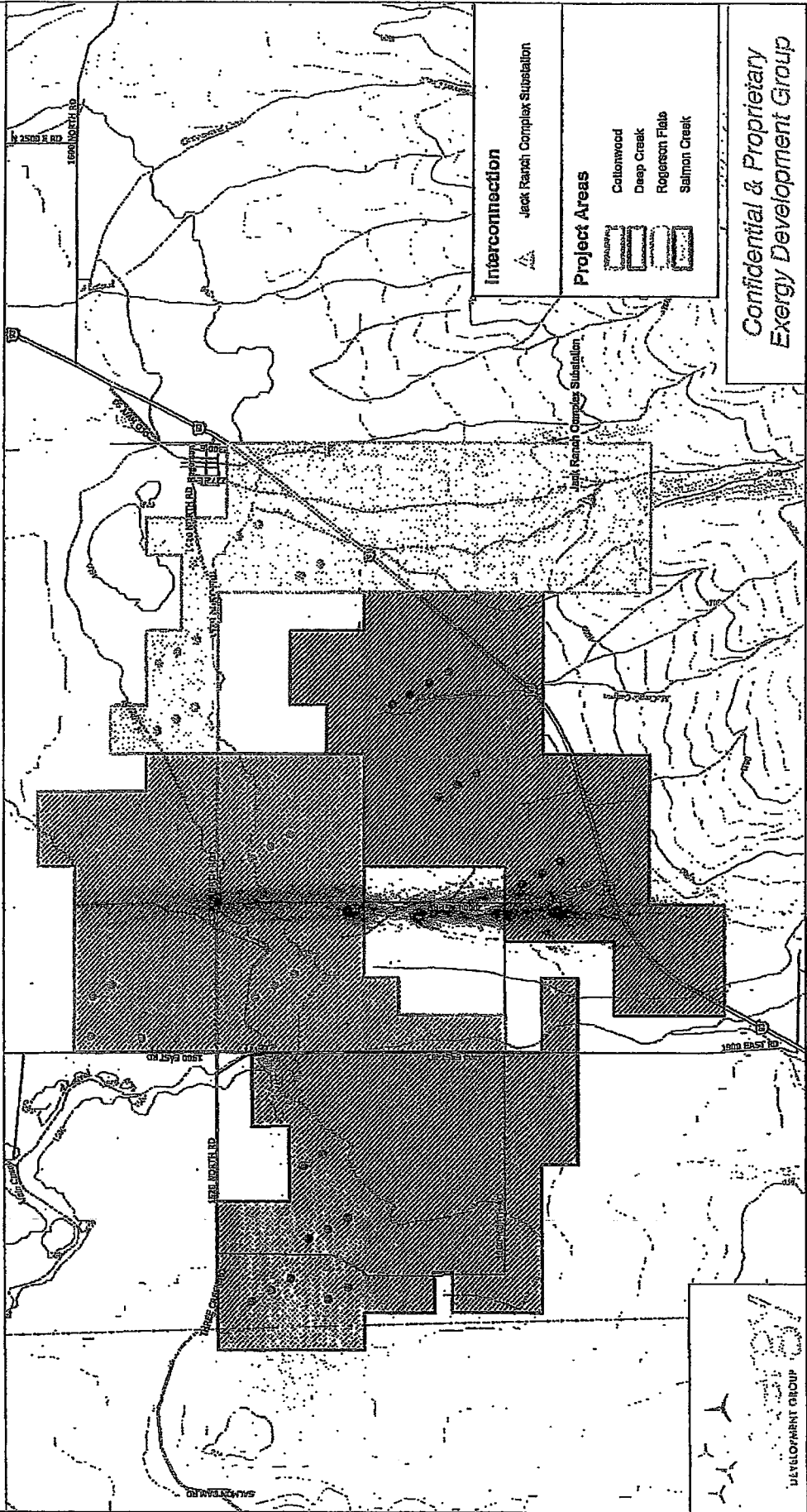
WIND TURBINE LOCATIONS

SALMON CREEK AREA (SC)

WT	DIVISION	LATITUDE (NAD83)	LONGITUDE (NAD83)
SC01	N	42.20854567	W 114.782692
SC02	N	42.20854567	W 114.782692
SC03	N	42.20854567	W 114.782692
SC04	N	42.20854567	W 114.782692
SC05	N	42.20854567	W 114.782692
SC06	N	42.20854567	W 114.782692
SC07	N	42.20854567	W 114.782692
SC08	N	42.20854567	W 114.782692
SC09	N	42.20854567	W 114.782692
SC10	N	42.20854567	W 114.782692
SC11	N	42.20854567	W 114.782692
SC12	N	42.20854567	W 114.782692
SC13	N	42.20854567	W 114.782692
SC14	N	42.20854567	W 114.782692
SC15	N	42.20854567	W 114.782692
SC16	N	42.20854567	W 114.782692
SC17	N	42.20854567	W 114.782692
SC18	N	42.20854567	W 114.782692
SC19	N	42.20854567	W 114.782692
SC20	N	42.20854567	W 114.782692



Jack Ranch Complex



**BALANCE OF PLANT
ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

FOR THE

EXERGY IDAHO SIX WINDS WIND PARK

BY AND BETWEEN

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.,

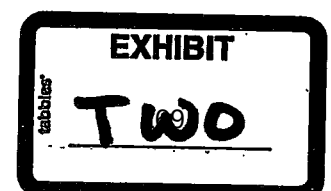
as Owner

and

FAGEN, INC.,

as Contractor

Dated December 31, 2011



**BALANCE OF PLANT ENGINEERING,
PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

This Balance of Plant Engineering, Procurement and Construction Agreement is entered into on December 30, 2011 by and between Fagen, Inc., a corporation organized and existing under Minnesota law ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company organized and existing under Idaho law ("Owner") (each of Contractor and Owner, a "Party", and together, the "Parties").

WITNESSETH:

A. Owner is developing, financing and constructing the aggregate 116MW wind generation Project (as herein defined) located at the six (6) Project Sites (as herein defined) in the State of Idaho.

B. Owner desires to contract with Contractor for the provision of engineering, procurement, construction and other services and supply of materials and equipment for the Balance of Plant (as herein defined) on a single point responsibility, and firm and lump sum basis, all as described in, and subject to the terms and conditions of, this Agreement, and Contractor desires to provide such goods and services.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth below, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following definitions:

"Affiliate" means, with respect to a Person, any other Person, directly or indirectly, in control of, controlled by, or under common control with, that Person. For purposes of this Agreement, "control," "controlled" and their derivatives, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person so controlled, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Balance of Plant Engineering, Procurement and Construction Services Agreement, including all Exhibits, appendices and attachments hereto and thereto, as the same may be amended, modified or supplemented, from time to time, in accordance with the terms hereof.

"All-Risk Builder's Risk" has the meaning set forth in Section 18.3.1.

"Applicable Laws" means all federal, state and local laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations having the force of law and permits of any Governmental Authority having jurisdiction over a Party, the Project, any Project Site, the performance of the Work, the Contract Documents and

buildings and all facilities and roads situated on or near the Project Sites, all as further described in the Exhibits to this Agreement.

“Project Final Completion” means, with respect to the whole Project, that Project Site Final Completion of each, and all, of the Project Sites has been successfully achieved pursuant to the terms of Section 7.6.

“Project Interconnection Facilities” means the electrical system of Idaho Power Company, connecting each Project Site to the electric transmission grid, a single line drawing of which is set forth in Exhibit Q (which, for the avoidance of doubt, shall not mean to include the communications cabling, which shall be the responsibility of Contractor).

“Project Site” means in the singular, the site of the High Voltage Substation and each and any of the following six (6) wind generation project sites referred to as or named (a) “Cottonwood”, (b) “Rogerson Flats”, (c) “Salmon Creek”, (d) “Deep Creek,” (e) “Lava Beds”, and (f) “Notch Butte” as described and set forth in Exhibit B-1 and Exhibit B-5, Appendix 3, including the location of each Turbine on each such Project Site.

“Project Site Final Completion” has the meaning set forth in Exhibit A-1, Appendix 6.

“Project Site Final Completion Certificate” has the meaning set forth in Section 7.6.

“Project Site Mechanical Completion” has the meaning set forth in Exhibit A-1, Appendix 4.

“Project Site Mechanical Completion Certificate” has the meaning set forth in Section 7.4.

“Project Site Nameplate Capacity” means, with respect to each and any Project Site, the aggregate sum of the Nameplate Capacities of all the Turbines located or planned (pursuant to this Agreement) to be located at such Project Site.

“Project Site Substantial Completion” has the meaning set forth in of Exhibit A-1, Appendix 5.

“Project Site Substantial Completion Certificate” has the meaning set forth in Section 7.5(b).

“Project Site Underground Collection System Completion” has the meaning set forth in Exhibit A-1, Appendix 2.

“Project Site Underground Collection System Completion Certificate” has the meaning set forth in Section 7.2.

“Project Substantial Completion” means, with respect to the whole Project, that Project Site Substantial Completion of each, and all, of the Project Sites has been successfully achieved pursuant to the terms of Section 7.5.

include the plural, and vice versa; (c) the terms "hereof," "herein," "hereunder," "hereto," and similar terms refer to the entire agreement in which they appear (including any attachments, schedules, annexes, exhibits and appendices to such agreement) and not to any particular provision of such agreement; (d) references to a "day" shall mean a calendar day, unless the term "Business Day" is used; (e) references to a Party shall be deemed to include references to its successors and permitted assigns; (f) the terms "include" and "including" shall be deemed to be followed by the words "without limitation", whether or not so followed; (g) unless otherwise stated, where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day; and (h) a reference to time is a reference to the time in effect in the State of Idaho, unless otherwise indicated.

ARTICLE III THE WORK

3.1 Scope of Work.

(a) Commencing on the Commencement Date, Contractor shall perform the scope of work set forth in Exhibit A-1 and its obligations under and pursuant to this Agreement and the other Contract Documents. Contractor shall provide, furnish and perform on a single point responsibility basis all necessary design, engineering, procurement, supplies, vehicles, transportation, equipment, materials, consumables, supervision, installation, erection, construction, labor, personnel, quality assurance and inspection, and testing and other services, activities and work (including all correction, rectification, remedial, repair and replacement services, work, supplies and activities relating to defects, deficiencies in the Work not conforming to the Requirements) that are required, necessary and appropriate for Contractor to deliver and install a fully complete, and functioning and operable, Balance of Plant pursuant to the terms of this Agreement and the other Contract Documents, including the Technical Documents. Contractor shall, among other things, (i) furnish or procure, handle and store, as necessary, all materials, equipment, machinery, tools, consumables, labor and transportation; (ii) perform the construction, supervision, administration and other services and items described in the Contract Documents; (iii) perform the engineering and design services as set forth in the Contract Documents; (iv) perform the testing services required described in the Contract Documents; and (v) perform quality control checks, including inspection, of all materials, services and equipment to be used or incorporated into the Balance of Plant, and rejection of those items determined not to be in compliance with the Requirements.

(b) After Turbine Mechanical Completion of each Turbine, Contractor shall, if requested by Owner, provide advisory assistance in connection with the electrical and communications aspects of the operation and maintenance of such Turbine. Contractor shall provide all necessary and sufficient experienced personnel having the requisite expertise for the prompt performance of any correction, rectification, remedial, repair and replacement work required in accordance with this Agreement.

3.2 Compliance. Contractor shall ensure that the Work conforms to, and is in accordance with, the Contract Documents, Prudent Industry Practices, Applicable Laws,

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

CONTRACTOR:

ENERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.

FAGEN, INC.

By: 

By: _____

Name: James T. Carkulis

Name: _____

Title: President

Title: _____

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

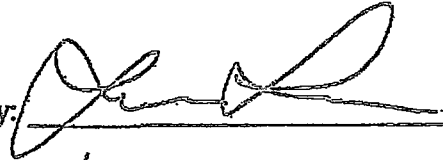
OWNER:

CONTRACTOR:

EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.

FAGEN, INC.

By: _____

By:  _____

Name:

Name: *Larry Lindeman*

Title:

Title: *Vice President - W.R.D.*

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2014 MAR -5 AM 10:00

BY _____
CLERK
DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

ORIGINAL

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, XRG DEVELOPMENT
PARTNERS, LLC, and "JOHN DOES 1-
10",

Defendants.

Case No. CV 2013-573

Consolidated Cases:

Twin Falls Co. Case No. CV 2013-573
Twin Falls Co. Case No. CV 2013-574
Twin Falls Co. Case No. CV 2013-575
Twin Falls Co. Case No. CV 2013-576
Lincoln Co. Case No. CV 2013-26.

**FIRST AMENDED COMPLAINT
(DEEP CREEK WP, et al.)**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and for its
Complaint against the above-named Defendants, DEEP CREEK WIND PARK, LLC, EXERGY
DEVELOPMENT GROUP OF IDAHO, LLC, XRG DEVELOPMENT PARTNERS OF
IDAHO, LLC, and "JOHN DOES 1-10" as any other persons or entities claiming any right to
possession or interest of the subject property, states and alleges as follows:

PARTIES

1. Plaintiff Fagen is a corporation duly organized under the laws of the State of Minnesota. Fagen is a registered contractor pursuant to Idaho Code § 54-5204, license number RCE-26001, and in good standing.

2. Defendant J. R. Simplot Self-declaration of Revocable Trust (“Simplot Trust”), an Idaho revocable trust, is the owner or reputed owner and lessor of real property and improvements thereon (hereinafter described as the “Property”), as more fully described in Exhibit A attached to the Claim of Lien recorded as Instrument No. 2012014942 on 8/8/2012 in the Twin Falls County Recorder’s Office.

A true and correct copy of said Claim of Lien is attached as Exhibit One hereto and adopted by reference as though fully set forth herein (“Claim of Lien”).

3. Defendant Exergy Development Group of Idaho, LLC (hereinafter described as “Exergy”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with XRG and/or Deep Creek Wind Park, LLC.

4. Defendant XRG Development Partners, LLC (hereinafter described as “XRG”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or Deep Creek Wind Park, LLC.

5. Defendant Deep Creek Wind Park, LLC (hereinafter described as “Deep Creek Wind Park”), an Idaho limited liability company, is a tenant or reputed tenant which claims an

interest in the Property pursuant to lease(s) entered with the with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or XRG.

6. Exergy, XRG, and/or Deep Creek Wind Park, are the owner(s) or reputed owner(s) of certain improvements, facilities, and structures being constructed on the Property (“hereinafter described as the “Project”).

7. Fagen claims an interest in the Property pursuant to its Claim of Lien in the amount of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law.

8. Defendants “John Does 1-10” are additional unnamed persons or parties may claim and interest in the property who are presently unknown. Fagen reserves the right to amend this Complaint to add such additional persons or parties at a later time.

9. Jurisdiction is proper in this Court pursuant to Idaho Code § 5-514 as the Defendants have transacted business and/or this action relates to ownership, use or possession of real property located within the State of Idaho.

10. Venue is proper in this Court pursuant to Idaho Code § 5-401.

FACTUAL ALLEGATIONS

11. In 2011 Fagen entered into agreements and/or memorandum of understanding(s) to supply labor, materials, and engineering, procurement and construction services with Exergy, upon, and for the benefit, of the Property.

12. Fagen supplied labor, materials, and services upon and for the benefit of the Property, commencing work in 2011.

13. Fagen continued to provide labor, furnish materials, and supply services for the improvement to the Property until July 31, 2012, when it ceased doing so due to non-payment by Exergy.

14. Fagen performed this work in a conforming, workmanlike manner pursuant to its agreement with Exergy.

15. As a result of Exergy's failure to pay Fagen for labor, materials and services supplied for improvements to the Property, Fagen filed its Claim of Lien as described above.

16. The reasonable value of the benefit to the Property is equivalent to the labor, materials, and services supplied by Fagen as the amount due stated in its Claim of Lien.

17. True and correct copies of Fagen's Claim of Lien were timely served by certified mailing on Defendants.

FIRST CAUSE OF ACTION

(Lien Foreclosure)

18. Fagen realleges the allegations contained in paragraphs 1-17 and incorporates the same herein by reference.

19. Fagen is entitled to a judgment foreclosing its Claim of Lien for the amount thereof, together with accrued interest pursuant to law; a determination that its Claim of Lien is superior and has priority to any interest claimed by all Defendants, and each of them; and for foreclosure sale with application of the proceeds of sale to amount due to Fagen.

20. Fagen is entitled to recover costs and reasonable attorney fees to maintain this action, pursuant to Idaho Code § 45-501 *et seq.* The sum of \$10,000 is reasonable should this matter be resolved by default.

SECOND CAUSE OF ACTION
(Breach of Contract)

21. Fagen realleges the allegations contained in paragraphs 1-20 and incorporates the same herein by reference.

22. Fagen has performed all of its obligations under the Agreement.

23. Exergy has breached the Agreement in that it has failed and refused to pay Fagen in full for labor, services and materials furnished by Fagen.

24. Fagen has suffered damages as a direct and proximate result of Exergy's breach of contract in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Quantum Meruit)

26. Fagen realleges the allegations contained in paragraphs 1-24 and incorporates the same herein by reference.

27. Fagen provided valuable labor, services and materials that were necessary for Exergy to perform and complete its obligations.

28. Exergy benefitted from Fagen's labor, services and materials, including, but not limited to the fact that Exergy could not have fully performed its obligations in the absence of the labor, services and materials that Fagen provided.

29. Exergy has failed and refused to pay Fagen for the labor, services and materials it provided.

30. Fagen has suffered damages and Exergy has been unjustly enriched as a result of Exergy's failure to pay Fagen for the labor, materials and services provided by Fagen in an amount to be proved at trial.

WHEREFORE, Fagen prays for judgment against Defendants as follows:

- A. An order foreclosing Fagen's Claim of Lien against the Property, and declaring the amount due of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law;
- B. An order declaring the Defendants, and all persons or entities claiming an interest in the Property or any part thereof, to be barred and foreclosed of all right, title, interest, claim or equity of redemption in and to the Property;
- C. An order for sale of the Property according to law and directing the proceeds of sale be applied to the amount due Fagen;
- D. Damages for breach of contract, and/or for Quantum Meruit in at least the amount of \$1,412,774.81 or such other amounts to be determined at trial;
- E. An award of costs incurred;
- F. An award of reasonable attorney fees in the amount of \$10,000 if this matter is resolved by default, or if not resolved by default in such amount as the Court deems reasonable;
- G. Such further relief as the Court deems just in the premises.

DATED this 3rd day of March, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of March, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
*Attorney for Exergy Development Group
of Idaho, LLC; XRG Development Partners, LLC;
and Rogerson Flats Wind Park, LLC*

- U. S. Mail *& Email*
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

By: *John R. Goodell*
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

John R. Goodell (ISB #2872)
Daniel C. Green (ISB #3213)
Ferrell S. Ryan, III (ISB # 8414)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

TWIN FALLS COUNTY
RECORDED FOR:
FIRST AMERICAN TITLE - TWIN FA
12:38:26 PM 08-08-2012
2012014942
NO. PAGES 12 FEE: \$43.00
KRISTINA GLASCOCK
COUNTY CLERK
DEPUTY: DJW
Electronically Recorded by Simplifile

Attorneys for Claimant Fagen, Inc.

FAGEN, INC., a Minnesota corporation,)

Claimant,)

vs.)

DEEP CREEK WIND PARK, LLC, an Idaho)
limited liability company; EXERGY)
DEVELOPMENT GROUP OF IDAHO,)
LLC, an Idaho limited liability company;)
XRG DEVELOPMENT) PARTNERS, LLC)
(ID), an Idaho limited) liability company;)
J. R. SIMPLOT SELF-DECLARATION OF)
REVOCABLE) TRUST, an Idaho revocable)
trust,)

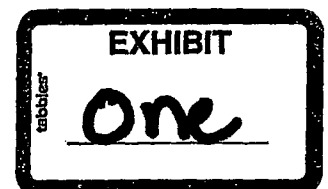
Owners/Reputed Owners.)
_____)

CLAIM OF LIEN (I.C. § 45-507)

NOTICE IS HEREBY GIVEN:

That FAGEN, INC., 501 W. Highway 212, P. O. Box 159, Granite Falls, MN 56241, hereby claims the benefit of the law relative to liens of mechanics and materialmen upon real property as provided by the laws of the State of Idaho, I.C. § 45-501 *et seq.*, and does hereby claim a lien upon that certain tract of land and improvements thereon as hereinafter described, and in the following amounts:

DEEP CREEK WIND PARK - CLAIM OF LIEN (I.C. § 45-507) - Page 1



1. That the principal sum of \$1,412,774.81 in accordance with the Accounts Receivable History By Customer statement attached hereto as **Exhibit B** and adopted by reference, is owed for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment for the DEEP CREEK WIND PARK, LLC, a wind park project, located at or near Rogerson, Twin Falls, County, Idaho.

In addition, prejudgment interest is owed on the above principal installment amounts from the indicated due date on the invoices listed in **Exhibit B** pursuant to the parties' underlying written contract, and/or Idaho's statutory rate @ 12% per annum, until paid or entry of judgment; plus costs and attorney fees incurred in collection.

2. That said amounts are due, and owing, after deducting all just credits and offsets, for said claim for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, in and for those certain improvements of said land located at Twin Falls County, Idaho, more particularly described in **Exhibit A** attached hereto and adopted by reference, commonly known as DEEP CREEK WIND PARK, LLC, located at or near Rogerson, Twin Falls, County, Idaho, said land being the subject of lease(s) to DEEP CREEK WIND PARK, LLC and/or EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, and/or XRG DEVELOPMENT PARTNERS, LLC (ID), Lessees; and said land also being owned by the J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, Lessor.¹

¹Said Lessor's Trust established by written instrument dated December 21, 1989, and registered in the Fourth Judicial District of the State of Idaho, Ada County, as No. 3T-788.

In addition, **Exhibit C** attached hereto and adopted by reference are two color-coded maps and engineering drawings which locate and identify DEEP CREEK WIND FARM, LLC.

3. That the name(s) and address(es) of the person(s) and/or entity(ies) who/which contracted with claimant and for whom claimant performed labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, are:

DEEP CREEK WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

DEEP CREEK WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

DEEP CREEK WIND PARK, LLC
Attn: Mark A. Ellison, Registered Agent
205 N. 10th St., 4th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

4. Claimant's last item of labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment occurred on July 31, 2012.

5. That the owner(s) or reputed owner(s) of said property to be charged with said lien are:

DEEP CREEK WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

DEEP CREEK WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

DEEP CREEK WIND PARK, LLC
Attn: Mark A. Ellison, Registered Agent
205 N. 10th St., 4th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
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XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

6. That the description of the property to be charged with said lien, and upon which said improvements were made, and which is situated Twin Falls County, Idaho, is more fully described in Exhibits A and C attached hereto and adopted by reference.

7. That the mailing address for this Claimant is:

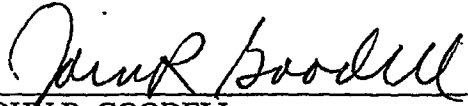
FAGEN, INC.
Attn: Jennifer A. Johnson,
Chief Financial Officer
501 W. Highway 212
P. O. Box 159
Granite Falls, MN 56241

8. That the undersigned certifies that a true and correct copy of this Claim of Lien following recording will either be served personally, or served by mailing a copy thereof by U.S. mail, certified - return receipt requested, within the time prescribed by statute for doing so, upon the owners or reputed owners who/which are identified above.

Dated this 3rd day of August, 2012.

CLAIMANT:
FAGEN, INC.

By: _____


JOHN R. GOODELL
Attorney and Authorized Representative
for Claimant

STATE OF IDAHO)
: ss.
County of Bannock)

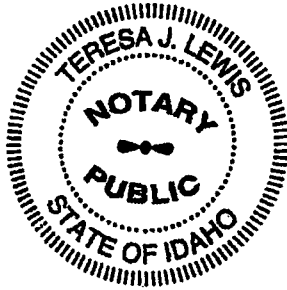
JOHN R. GOODELL, being duly sworn, on oath, says that he is the attorney and authorized signatory on behalf of claimant, FAGEN, INC., in the foregoing Claim of Lien, that he has read the same and knows the contents thereof; and that the same is true, and that it contains a correct statement of his/her/its demands after deducting all just credits and offsets; and affiant believes the same to be just.



JOHN R. GOODELL
Attorney for Claimant

SUBSCRIBED AND SWORN TO before me this 3rd day of August, 2012.

(SEAL)



NOTARY PUBLIC FOR IDAHO

Residing at: Pocatello, Idaho

My Commission Expires: 7-20-18

Deep Creek

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

SECTION 15: S½; S½NE¼

EXCEPT
BEGINNING AT SURVEY STATION 115+74 OF "A" LATERAL SURVEY AS LOCATED WHICH POINT IS ON SECTION LINE 1620.8 FEET SOUTH OF SECTION CORNER COMMON TO SECTION 10, 11, 14 AND 15, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE NORTH ALONG SAID SECTION LINE, 300.8 FEET, MORE OR LESS TO THE NORTHEAST CORNER OF THE SE¼NE¼ OF SECTION 15;
THENCE WEST ALONG THE NORTH BOUNDARY OF SAID FORTY (FORTH), 100 FEET;
THENCE SOUTH 8° 29' EAST 681.3 FEET, TO A POINT ON THE EAST SECTION LINE OF SECTION 15;
THENCE NORTHERLY ALONG SAID SECTION LINE 380.5 FEET, TO THE POINT OF BEGINNING.

SECTION 16: ALL

SECTION 21: E½W½; E½

EXCEPT
A TWENTY-TWO (22) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 21 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A DISTANCE OF 2638.50 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 21;
THENCE ON A BEARING OF NORTH 00° 22' 02" EAST A DISTANCE OF 1963.97 FEET TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 42' 09" WEST A DISTANCE OF 1319.23 FEET;
THENCE ON A BEARING OF NORTH 00° 22' 03" EAST A DISTANCE OF 680.00 FEET;
THENCE ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF 1319.23 FEET TO THE CENTER QUARTER CORNER OF SAID SECTION 21;
THENCE CONTINUING ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF 100.00 FEET;
THENCE ON A BEARING OF SOUTH 00° 17' 51" WEST A DISTANCE OF 680.00 FEET;
THENCE ON A BEARING OF NORTH 89° 42' 09" WEST A DISTANCE OF 100.83 FEET TO THE REAL POINT OF BEGINNING.

SECTION 22: ALL

EXCEPT
A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 22 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS SOUTH 89° 32' 27" EAST A DISTANCE OF 2642.45 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 22;
THENCE ON A BEARING OF NORTH 89° 30' 21" WEST A DISTANCE OF 370.00 FEET ALONG THE SOUTH BOUNDARY OF SAID SECTION 22 TO THE REAL POINT OF BEGINNING;



Deep Creek

THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF NORTH 89° 32' 27" WEST A DISTANCE OF 410.00 FEET;
THENCE ON A BEARING OF NORTH 00° 27' 33" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF NORTH 61° 56' 10" EAST A DISTANCE OF 261.77 FEET;
THENCE ON A BEARING OF SOUTH 89° 32' 27" EAST A DISTANCE OF 180.00 FEET
PARALLEL WITH THE SOUTH BOUNDARY OF SAID SECTION 22;
THENCE ON A BEARING OF SOUTH 00° 27' 33" WEST A DISTANCE OF 245.00 FEET TO
THE SOUTH BOUNDARY OF SAID SECTION 22 AND THE REAL POINT OF BEGINNING.

SECTION 26: S½NW¼

SECTION 27: NE¼; N½NW¼; SE¼NW¼

SECTION 28: N½NE¼; NE¼NW¼

EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 28 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2638.80 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 28
AND BEING THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 89° 42'
57" EAST A DISTANCE OF 275.00 FEET ALONG THE NORTH BOUNDARY OF SAID
SECTION 28;
THENCE ON A BEARING OF SOUTH 00° 23' 55" WEST A DISTANCE OF 155.00 FEET;
THENCE ON A BEARING OF NORTH 89° 42' 57" WEST A DISTANCE OF 275.00 FEET
PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 28;
THENCE ON A BEARING OF NORTH 00° 23' 55" EAST A DISTANCE OF 155.00 FEET TO
THE REAL POINT OF BEGINNING.

DATE 7/30/12 ARPO64
 *** SUMMARY ***

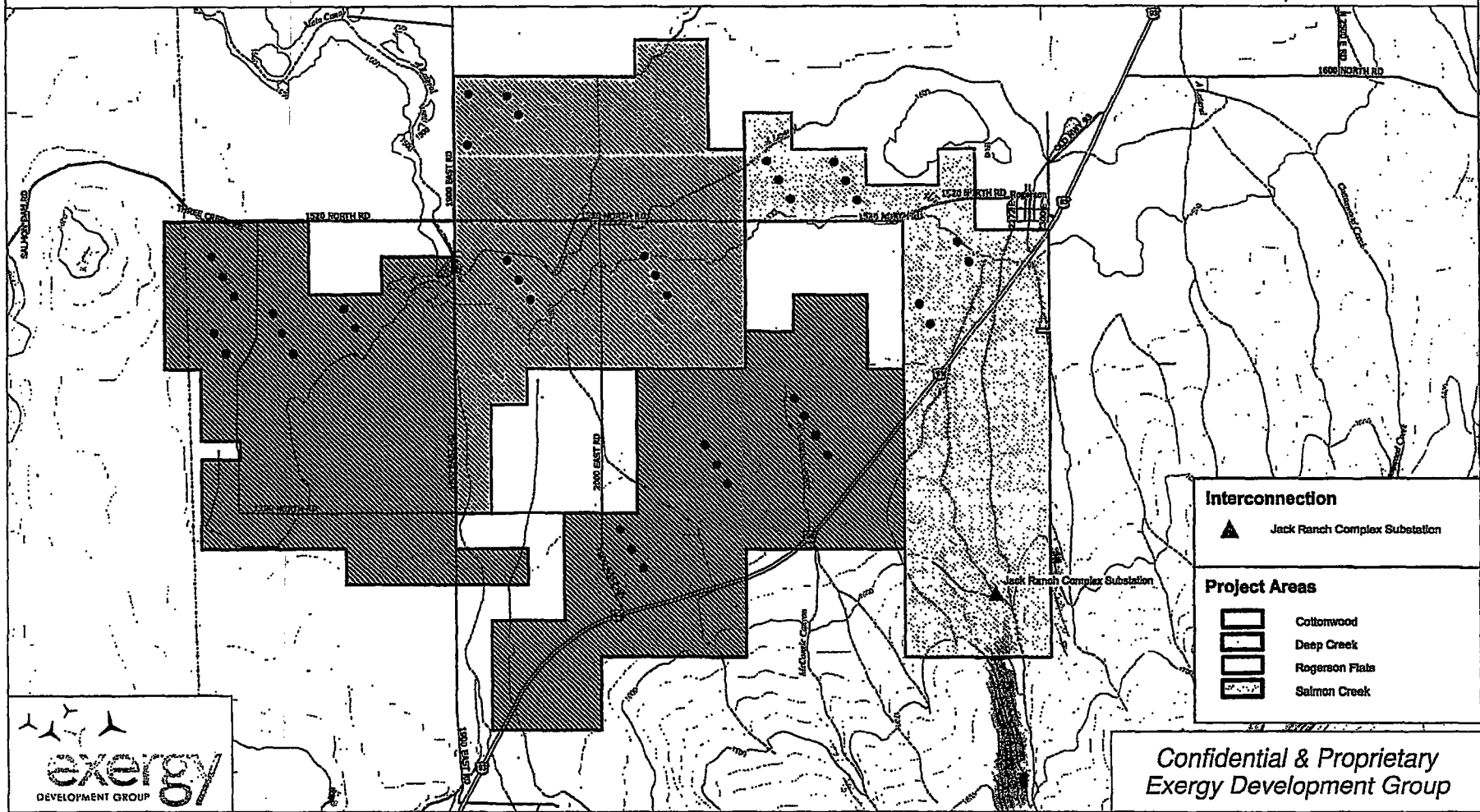
01 000 Fagen Inc
 ACCOUNTS RECEIVABLE HISTORY BY CUSTOMER
 INVOICE DATES 00/00/0000 - 99/99/9999

TIME 16.52 PAGE
 CHECK DATES 00/00/0000 - 99/99/9999

-----INVOICE-----			JOB SUB	-----REFERENCE-----	INVOICE	DSCT	CHECK	CHECK	CHECK
NUMBER	DATE	DESCRIPTION	NUMBER	JOB	NUMBER	DATE	AMT	DATE	NUMBER
					AMOUNT				AMOUNT
02211 Deep Creek Wind Park, LLC									
00001	12/27/2011	APPLICATION #1	114034	606	.00	.00	12/27/2011	999999	.00
00010	12/27/2011	APPLICATION #1	114034	606	398603.75	.00			.00
00002	02/03/2012	APPLICATION #2	114034	606	88359.56	.00			.00
00003	03/16/2012	APPLICATION #3	114034	606	.00	.00	03/16/2012	999999	.00
00030	03/16/2012	APPLICATION #3	114034	606	19114.00	.00			.00
00004	04/25/2012	APPLICATION #4	114034	606	220281.79	.00			.00
00005	05/25/2012	APPLICATION #5	114034	606	420708.38	.00			.00
00006	06/29/2012	APPLICATION #6	114034	606	168438.60	.00			.00
00007	07/27/2012	APPLICATION #7	114034	606	97268.71	.00			.00
*** SUBJOB TOTAL ***					1,412,774.79		.00		.00
** BALANCE **								1,412,774.79	

EXHIBIT
 B





Jack Ranch Complex



Interconnection

▲ Jack Ranch Complex Substation

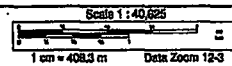
Project Areas

-  Cottonwood
-  Deep Creek
-  Rogerson Flats
-  Salmon Creek



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www.delorme.com

Confidential & Proprietary
Exergy Development Group



**BALANCE OF PLANT
ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

FOR THE

EXERGY IDAHO SIX WINDS WIND PARK

BY AND BETWEEN

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.,

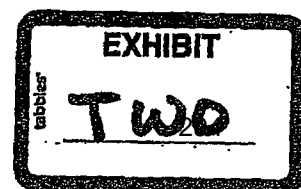
as Owner

and

FAGEN, INC.,

as Contractor

Dated December 31, 2011



**BALANCE OF PLANT ENGINEERING,
PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

This Balance of Plant Engineering, Procurement and Construction Agreement is entered into on December 30, 2011 by and between Fagen, Inc., a corporation organized and existing under Minnesota law ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company organized and existing under Idaho law ("Owner") (each of Contractor and Owner, a "Party", and together, the "Parties").

WITNESSETH:

A. Owner is developing, financing and constructing the aggregate 116MW wind generation Project (as herein defined) located at the six (6) Project Sites (as herein defined) in the State of Idaho.

B. Owner desires to contract with Contractor for the provision of engineering, procurement, construction and other services and supply of materials and equipment for the Balance of Plant (as herein defined) on a single point responsibility, and firm and lump sum basis, all as described in, and subject to the terms and conditions of, this Agreement, and Contractor desires to provide such goods and services.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth below, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following definitions:

"Affiliate" means, with respect to a Person, any other Person, directly or indirectly, in control of, controlled by, or under common control with, that Person. For purposes of this Agreement, "control," "controlled" and their derivatives, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person so controlled, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Balance of Plant Engineering, Procurement and Construction Services Agreement, including all Exhibits, appendices and attachments hereto and thereto, as the same may be amended, modified or supplemented, from time to time, in accordance with the terms hereof.

"All-Risk Builder's Risk" has the meaning set forth in Section 18.3.1.

"Applicable Laws" means all federal, state and local laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations having the force of law and permits of any Governmental Authority having jurisdiction over a Party, the Project, any Project Site, the performance of the Work, the Contract Documents and

buildings and all facilities and roads situated on or near the Project Sites, all as further described in the Exhibits to this Agreement.

"Project Final Completion" means, with respect to the whole Project, that Project Site Final Completion of each, and all, of the Project Sites has been successfully achieved pursuant to the terms of Section 7.6.

"Project Interconnection Facilities" means the electrical system of Idaho Power Company, connecting each Project Site to the electric transmission grid, a single line drawing of which is set forth in Exhibit Q (which, for the avoidance of doubt, shall not mean to include the communications cabling, which shall be the responsibility of Contractor).

"Project Site" means in the singular, the site of the High Voltage Substation and each and any of the following six (6) wind generation project sites referred to as or named (a) "Cottonwood", (b) "Rogerson Flats", (c) "Salmon Creek", (d) "Deep Creek," (e) "Lava Beds", and (f) "Notch Butte" as described and set forth in Exhibit B-1 and Exhibit B-5, Appendix 3, including the location of each Turbine on each such Project Site.

"Project Site Final Completion" has the meaning set forth in Exhibit A-1, Appendix 6.

"Project Site Final Completion Certificate" has the meaning set forth in Section 7.6.

"Project Site Mechanical Completion" has the meaning set forth in Exhibit A-1, Appendix 4.

"Project Site Mechanical Completion Certificate" has the meaning set forth in Section 7.4.

"Project Site Nameplate Capacity" means, with respect to each and any Project Site, the aggregate sum of the Nameplate Capacities of all the Turbines located or planned (pursuant to this Agreement) to be located at such Project Site.

"Project Site Substantial Completion" has the meaning set forth in of Exhibit A-1, Appendix 5.

"Project Site Substantial Completion Certificate" has the meaning set forth in Section 7.5(b).

"Project Site Underground Collection System Completion" has the meaning set forth in Exhibit A-1, Appendix 2.

"Project Site Underground Collection System Completion Certificate" has the meaning set forth in Section 7.2.

"Project Substantial Completion" means, with respect to the whole Project, that Project Site Substantial Completion of each, and all, of the Project Sites has been successfully achieved pursuant to the terms of Section 7.5.

include the plural, and vice versa; (c) the terms "hereof," "herein," "hereunder," "hereto," and similar terms refer to the entire agreement in which they appear (including any attachments, schedules, annexes, exhibits and appendices to such agreement) and not to any particular provision of such agreement; (d) references to a "day" shall mean a calendar day, unless the term "Business Day" is used; (e) references to a Party shall be deemed to include references to its successors and permitted assigns; (f) the terms "include" and "including" shall be deemed to be followed by the words "without limitation", whether or not so followed; (g) unless otherwise stated, where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day; and (h) a reference to time is a reference to the time in effect in the State of Idaho, unless otherwise indicated.

ARTICLE III THE WORK

3.1 Scope of Work.

(a) Commencing on the Commencement Date, Contractor shall perform the scope of work set forth in Exhibit A-1 and its obligations under and pursuant to this Agreement and the other Contract Documents. Contractor shall provide, furnish and perform on a single point responsibility basis all necessary design, engineering, procurement, supplies, vehicles, transportation, equipment, materials, consumables, supervision, installation, erection, construction, labor, personnel, quality assurance and inspection, and testing and other services, activities and work (including all correction, rectification, remedial, repair and replacement services, work, supplies and activities relating to defects, deficiencies in the Work not conforming to the Requirements) that are required, necessary and appropriate for Contractor to deliver and install a fully complete, and functioning and operable, Balance of Plant pursuant to the terms of this Agreement and the other Contract Documents, including the Technical Documents. Contractor shall, among other things, (i) furnish or procure, handle and store, as necessary, all materials, equipment, machinery, tools, consumables, labor and transportation; (ii) perform the construction, supervision, administration and other services and items described in the Contract Documents; (iii) perform the engineering and design services as set forth in the Contract Documents; (iv) perform the testing services required described in the Contract Documents; and (v) perform quality control checks, including inspection, of all materials, services and equipment to be used or incorporated into the Balance of Plant, and rejection of those items determined not to be in compliance with the Requirements.

(b) After Turbine Mechanical Completion of each Turbine, Contractor shall, if requested by Owner, provide advisory assistance in connection with the electrical and communications aspects of the operation and maintenance of such Turbine. Contractor shall provide all necessary and sufficient experienced personnel having the requisite expertise for the prompt performance of any correction, rectification, remedial, repair and replacement work required in accordance with this Agreement.

3.2 Compliance. Contractor shall ensure that the Work conforms to, and is in accordance with, the Contract Documents, Prudent Industry Practices, Applicable Laws,

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

CONTRACTOR:

**ENERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

FAGEN, INC.

By: 

By: _____

Name: James T. Carkulis

Name: _____

Title: President

Title: _____

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

**EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

CONTRACTOR:

FAGEN, INC.

By: _____

Name:

Title:

By:  _____

Name: *Larry Lindeman*

Title: *Vice President - W.R.D.*

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2014 MAR -5 AM 10:00

BY _____
CLERK

DEPUTY

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

ORIGINAL

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, XRG DEVELOPMENT
PARTNERS, LLC, and "JOHN DOES 1-
10",

Defendants.

Case No. CV 2013-573

Consolidated Cases:

- Twin Falls Co. Case No. CV 2013-573
- Twin Falls Co. Case No. CV 2013-574
- Twin Falls Co. Case No. CV 2013-575
- Twin Falls Co. Case No. CV 2013-576
- Lincoln Co. Case No. CV 2013-26.

**FIRST AMENDED COMPLAINT
(SALMON CREEK WP, et al.)**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and for its
Complaint against the above-named Defendants, SALMON CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, XRG DEVELOPMENT PARTNERS
OF IDAHO, LLC, and "JOHN DOES 1-10" as any other persons or entities claiming any right to
possession or interest of the subject property, states and alleges as follows:

PARTIES

1. Plaintiff Fagen is a corporation duly organized under the laws of the State of Minnesota. Fagen is a registered contractor pursuant to Idaho Code § 54-5204, license number RCE-26001, and in good standing.

2. Defendant J. R. Simplot Self-declaration of Revocable Trust (“Simplot Trust”), an Idaho revocable trust, is the owner or reputed owner and lessor of real property and improvements thereon (hereinafter described as the “Property”), as more fully described in Exhibit A attached to the Claim of Lien recorded as Instrument No. 2012014943 on 8/8/2012 in the Twin Falls County Recorder’s Office.

A true and correct copy of said Claim of Lien is attached as Exhibit One hereto and adopted by reference as though fully set forth herein (“Claim of Lien”).

3. Defendant Exergy Development Group of Idaho, LLC (hereinafter described as “Exergy”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with XRG and/or Salmon Creek Wind Park, LLC.

4. Defendant XRG Development Partners, LLC (hereinafter described as “XRG”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or Salmon Creek Wind Park, LLC.

5. Defendant Salmon Creek Wind Park, LLC (hereinafter described as “Salmon Creek Wind Park”), an Idaho limited liability company, is a tenant or reputed tenant which

claims an interest in the Property pursuant to lease(s) entered with the with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or XRG.

6. Exergy, XRG, and/or Salmon Creek Wind Park, are the owner(s) or reputed owner(s) of certain improvements, facilities, and structures being constructed on the Property (“hereinafter described as the “Project”).

7. Fagen claims an interest in the Property pursuant to its Claim of Lien in the amount of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law.

8. Defendants “John Does 1-10” are additional unnamed persons or parties may claim and interest in the property who are presently unknown. Fagen reserves the right to amend this Complaint to add such additional persons or parties at a later time.

9. Jurisdiction is proper in this Court pursuant to Idaho Code § 5-514 as the Defendants have transacted business and/or this action relates to ownership, use or possession of real property located within the State of Idaho.

10. Venue is proper in this Court pursuant to Idaho Code § 5-401.

FACTUAL ALLEGATIONS

11. In 2011 Fagen entered into agreements and/or memorandum of understanding(s) to supply labor, materials, and engineering, procurement and construction services with Exergy, upon, and for the benefit, of the Property.

12. Fagen supplied labor, materials, and services upon and for the benefit of the Property, commencing work in 2011.

13. Fagen continued to provide labor, furnish materials, and supply services for the improvement to the Property until July 31, 2012, when it ceased doing so due to non-payment by Exergy.

14. Fagen performed this work in a conforming, workmanlike manner pursuant to its agreement with Exergy.

15. As a result of Exergy's failure to pay Fagen for labor, materials and services supplied for improvements to the Property, Fagen filed its Claim of Lien as described above.

16. The reasonable value of the benefit to the Property is equivalent to the labor, materials, and services supplied by Fagen as the amount due stated in its Claim of Lien.

17. True and correct copies of Fagen's Claim of Lien were timely served by certified mailing on Defendants.

FIRST CAUSE OF ACTION
(Lien Foreclosure)

18. Fagen realleges the allegations contained in paragraphs 1-17 and incorporates the same herein by reference.

19. Fagen is entitled to a judgment foreclosing its Claim of Lien for the amount thereof, together with accrued interest pursuant to law; a determination that its Claim of Lien is superior and has priority to any interest claimed by all Defendants, and each of them; and for foreclosure sale with application of the proceeds of sale to amount due to Fagen.

20. Fagen is entitled to recover costs and reasonable attorney fees to maintain this action, pursuant to Idaho Code § 45-501 *et seq.* The sum of \$10,000 is reasonable should this matter be resolved by default.

SECOND CAUSE OF ACTION
(Breach of Contract)

21. Fagen realleges the allegations contained in paragraphs 1-20 and incorporates the same herein by reference.

22. Fagen has performed all of its obligations under the Agreement.

23. Exergy has breached the Agreement in that it has failed and refused to pay Fagen in full for labor, services and materials furnished by Fagen.

24. Fagen has suffered damages as a direct and proximate result of Exergy's breach of contract in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Quantum Meruit)

26. Fagen realleges the allegations contained in paragraphs 1-24 and incorporates the same herein by reference.

27. Fagen provided valuable labor, services and materials that were necessary for Exergy to perform and complete its obligations.

28. Exergy benefitted from Fagen's labor, services and materials, including, but not limited to the fact that Exergy could not have fully performed its obligations in the absence of the labor, services and materials that Fagen provided.

29. Exergy has failed and refused to pay Fagen for the labor, services and materials it provided.

30. Fagen has suffered damages and Exergy has been unjustly enriched as a result of Exergy's failure to pay Fagen for the labor, materials and services provided by Fagen in an amount to be proved at trial.

WHEREFORE, Fagen prays for judgment against Defendants as follows:

- A. An order foreclosing Fagen's Claim of Lien against the Property, and declaring the amount due of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law;
- B. An order declaring the Defendants, and all persons or entities claiming an interest in the Property or any part thereof, to be barred and foreclosed of all right, title, interest, claim or equity of redemption in and to the Property;
- C. An order for sale of the Property according to law and directing the proceeds of sale be applied to the amount due Fagen;
- D. Damages for breach of contract, and/or for Quantum Meruit in at least the amount of \$1,412,774.81 or such other amounts to be determined at trial;
- E. An award of costs incurred;
- F. An award of reasonable attorney fees in the amount of \$10,000 if this matter is resolved by default, or if not resolved by default in such amount as the Court deems reasonable;
- G. Such further relief as the Court deems just in the premises.

DATED this 3rd day of March, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED


By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of March, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
*Attorney for Exergy Development Group
of Idaho, LLC; XRG Development Partners, LLC;
and Rogerson Flats Wind Park, LLC*

- U. S. Mail *& Email*
Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

John R. Goodell (ISB #2872)
Daniel C. Green (ISB #3213)
Ferrell S. Ryan, III (ISB # 8414)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

TWIN FALLS COUNTY
RECORDED FOR:
FIRST AMERICAN TITLE - TWIN FA
12:38:33 PM 08-08-2012
2012014943
NO. PAGES 12 FEE: \$43.00
KRISTINA GLASCOCK
COUNTY CLERK
DEPUTY: DJW
Electronically Recorded by Simplifile

Attorneys for Claimant Fagen, Inc.

FAGEN, INC., a Minnesota corporation,)
Claimant,)
vs.)
SALMON CREEK WIND PARK, LLC, an)
Idaho limited liability company; EXERGY)
DEVELOPMENT GROUP OF IDAHO,)
LLC, an Idaho limited liability company;)
XRG DEVELOPMENT) PARTNERS, LLC)
(ID), an Idaho limited) liability company;)
J. R. SIMPLOT SELF-DECLARATION OF)
REVOCABLE) TRUST, an Idaho revocable)
trust,)
Owners/Reputed Owners.)

CLAIM OF LIEN (I.C. § 45-507)

NOTICE IS HEREBY GIVEN:

That FAGEN, INC., 501 W. Highway 212, P. O. Box 159, Granite Falls, MN 56241, hereby claims the benefit of the law relative to liens of mechanics and materialmen upon real property as provided by the laws of the State of Idaho, I.C. § 45-501 *et seq.*, and does hereby claim a lien upon that certain tract of land and improvements thereon as hereinafter described, and in the following amounts:



1. That the principal sum of \$1,412,774.81 in accordance with the Accounts Receivable History By Customer statement attached hereto as **Exhibit B** and adopted by reference, is owed for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment for the SALMON CREEK WIND PARK, LLC, a wind park project, located at or near Rogerson, Twin Falls, County, Idaho.

In addition, prejudgment interest is owed on the above principal installment amounts from the indicated due date on the invoices listed in **Exhibit B** pursuant to the parties' underlying written contract, and/or Idaho's statutory rate @ 12% per annum, until paid or entry of judgment; plus costs and attorney fees incurred in collection.

2. That said amounts are due, and owing, after deducting all just credits and offsets, for said claim for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, in and for those certain improvements of said land located at Twin Falls County, Idaho, more particularly described in **Exhibit A** attached hereto and adopted by reference, commonly known as SALMON CREEK WIND PARK, LLC, located at or near Rogerson, Twin Falls, County, Idaho, said land being the subject of lease(s) to SALMON CREEK WIND PARK, LLC and/or EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, and/or XRG DEVELOPMENT PARTNERS, LLC (ID), Lessees; and said land also being owned by the J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, Lessor.¹

¹Said Lessor's Trust established by written instrument dated December 21, 1989, and registered in the Fourth Judicial District of the State of Idaho, Ada County, as No. 3T-788.

In addition, **Exhibit C** attached hereto and adopted by reference are two color-coded maps and engineering drawings which locate and identify SALMON CREEK WIND FARM, LLC.

3. That the name(s) and address(es) of the person(s) and/or entity(ies) who/which contracted with claimant and for whom claimant performed labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, are:

SALMON CREEK WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

SALMON CREEK WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

SALMON CREEK WIND PARK, LLC
Attn: Peter J. Richardson
515 N. 27th St.
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

4. Claimant's last item of labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment occurred on July 31, 2012.

5. That the owner(s) or reputed owner(s) of said property to be charged with said lien are:

SALMON CREEK WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

SALMON CREEK WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

SALMON CREEK WIND PARK, LLC
Attn: Peter J. Richardson
515 N. 27th St.
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

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Boise, ID 83702

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

6. That the description of the property to be charged with said lien, and upon which said improvements were made, and which is situated Twin Falls County, Idaho, is more fully described in Exhibits A and C attached hereto and adopted by reference.

7. That the mailing address for this Claimant is:


FAGEN, INC.
Attn: Jennifer A. Johnson,
Chief Financial Officer
501 W. Highway 212
P. O. Box 159
Granite Falls, MN 56241

8. That the undersigned certifies that a true and correct copy of this Claim of Lien following recording will either be served personally, or served by mailing a copy thereof by U.S. mail, certified - return receipt requested, within the time prescribed by statute for doing so, upon the owners or reputed owners who/which are identified above.

Dated this 3rd day of August, 2012.

CLAIMANT:
FAGEN, INC.

By: _____


JOHN R. GOODELL
Attorney and Authorized Representative
for Claimant

STATE OF IDAHO)
 : ss.
County of Bannock)

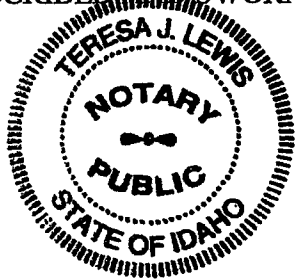
JOHN R. GOODELL, being duly sworn, on oath, says that he is the attorney and authorized signatory on behalf of claimant, FAGEN, INC., in the foregoing Claim of Lien, that he has read the same and knows the contents thereof; and that the same is true, and that it contains a correct statement of his/her/its demands after deducting all just credits and offsets; and affiant believes the same to be just.

John R. Goodell

JOHN R. GOODELL
Attorney for Claimant

SUBSCRIBED AND SWORN TO before me this 21 day of August, 2012.

(SEAL)



Teresa J. Lewis

NOTARY PUBLIC FOR IDAHO
Residing at: *Pocatello, Idaho*
My Commission Expires: *7-2018*

Salmon Creek

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 24: E $\frac{1}{2}$; E $\frac{1}{2}$ W $\frac{1}{2}$

SECTION 25: ALL

SECTION 26: E $\frac{1}{2}$ E $\frac{1}{2}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.; THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26; ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.

AND EXCEPT

A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U. S. HIGHWAY 93-PROJECT No. F-FG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE S $\frac{1}{2}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35; THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE; THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,

SECTION 35: E $\frac{1}{2}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; W $\frac{1}{2}$ NE $\frac{1}{4}$



Salmon Creek

EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,
BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26;
ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.

AND EXCEPT
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U. S. HIGHWAY 93-PROJECT No. F-FG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,
BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35;
THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE;
THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

SECTION 18: GOV'T LOT 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$

SECTION 19: ALL
EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170820.
ALSO EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170821.
THIS DEED DESCRIBES THE 6.93 ACRE PARCEL IN SECTION 17.

SECTION 30: N $\frac{1}{2}$ NE $\frac{1}{4}$; GOV'T LOT 1; NE $\frac{1}{4}$ NW $\frac{1}{4}$

01 000 Fagen Inc

DATE 7/30/12 ARF064

ACCOUNTS RECEIVABLE HISTORY BY CUSTOMER

TIME 16.52

PAGE 2

*** SUMMARY ***

INVOICE DATES 00/00/0000 - 99/99/9999

CHECK DATES 00/00/0000 - 99/99/9999

-----INVOICE-----			JOB	SUB	-----REFERENCE----	INVOICE	DISCT	CHECK	CHECK	CHECK
NUMBER	DATE	DESCRIPTION	NUMBER	JOB	NUMBER	DATE	AMT	DATE	NUMBER	AMOUNT
02209 Salmon Creek Wind Farm,										
00001	12/27/2011	APPLICATION #1	114034	604			.00	12/27/2011	999999	.00
00010	12/27/2011	APPLICATION #1	114034	604			398603.75			.00
00002	02/03/2012	APPLICATION #2	114034	604			88359.58			.00
00003	03/16/2012	APPLICATION #3	114034	604			.00	03/16/2012	999999	.00
00030	03/16/2012	APPLICATION #3	114034	604			19114.00			.00
00004	04/25/2012	APPLICATION #4	114034	604			220281.78			.00
00005	05/25/2012	APPLICATION #5	114034	604			420708.40			.00
00006	06/29/2012	APPLICATION #6	114034	604			168438.59			.00
00007	07/27/2012	APPLICATION #7	114034	604			97268.71			.00
*** SUBJOB TOTAL ***							1,412,774.81	.00		.00
** BALANCE **									1,412,774.81	
*** JOB TOTAL ***							1,412,774.81	.00		.00
** BALANCE **									1,412,774.81	
** CUSTOMER TOTAL **							1,412,774.81	.00		.00
** BALANCE **									1,412,774.81	



NOTE:
BACKGROUND IMAGE AND CONTOURS SHOWN
HAVE BEEN DERIVED FROM GOOGLE EARTH /
NO SURVEY AVAILABLE

NOTE:
PROJECT BOUNDARY, FENCE LINES,
POWER LINES, ETC., PROVIDED BY
ENERGY DEVELOPMENT GROUP



**WIND TURBINE LOCATIONS
DEEP CREEK AREA (DC)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
DC1	N 42.20424437	W 114.70282827
DC2	N 42.20778901	W 114.70444828
DC3	N 42.21718287	W 114.70232507
DC4	N 42.21822292	W 114.70488287
DC5	N 42.20532572	W 114.70282121
DC6	N 42.20436328	W 114.69927921
DC7	N 42.20494269	W 114.69958441
DC8	N 42.20288242	W 114.69534472
DC9	N 42.20710222	W 114.69848071
DC10	N 42.20516284	W 114.69928228
DC11	N 42.20632919	W 114.70742919
DC-SD04	N 42.20241277	W 114.69611837

**WIND TURBINE LOCATIONS
COTTONWOOD AREA (CW)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
CW1	N 42.22332794	W 114.67183221
CW2	N 42.21102329	W 114.62542022
CW3	N 42.20207717	W 114.64844231
CW4	N 42.20732821	W 114.64542221
CW5	N 42.20322527	W 114.67122521
CW6	N 42.20214827	W 114.66232121
CW7	N 42.22232831	W 114.66842421
CW8	N 42.21222911	W 114.64231421
CW9	N 42.21232728	W 114.64232421
CW10	N 42.20632271	W 114.64042121
CW-SD04	N 42.20722208	W 114.64477321

**WIND TURBINE LOCATIONS
ROGERSON FLATS AREA (RF)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
RF1	N 42.21770232	W 114.63162121
RF2	N 42.21282394	W 114.63102221
RF3	N 42.21787239	W 114.62252842
RF4	N 42.21623242	W 114.62272121
RF5	N 42.21267482	W 114.62127411
RF6	N 42.21772828	W 114.61972521
RF7	N 42.20748472	W 114.61142421
RF8	N 42.20332919	W 114.60894421
RF9	N 42.21302828	W 114.60431221
RF10	N 42.21162322	W 114.60472821
RF-SD04	N 42.20722348	W 114.61210721

**WIND TURBINE LOCATIONS
SALMON CREEK AREA (SC)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
SC1	N 42.18482831	W 114.60121041
SC2	N 42.18228174	W 114.64928221
SC3	N 42.18104317	W 114.64844791
SC4	N 42.19343029	W 114.64012041
SC5	N 42.19100322	W 114.63822421
SC6	N 42.18856292	W 114.63702821
SC7	N 42.19616227	W 114.62817021
SC8	N 42.19437827	W 114.62222221
SC9	N 42.19443222	W 114.62222221
SC10	N 42.19248292	W 114.62234121
SC11	N 42.17056292	W 114.62717221
SC-SD04	N 42.19224331	W 114.62222221

PROJECT BOUNDARY
FENCE LINES
POWER LINES
ROGATION MARKERS

SCALE 1"=1250'

LEGEND

PROJECT BOUNDARY
FENCE LINES
POWER LINES
ROGATION MARKERS

The original of this drawing was issued and sealed by JESSICA J. JOHNSON, State of Idaho, Professional Engineer No. 22222, and is in full of Force Engineering Ltd. corporate office in Coeur d'Alene, Idaho.

exergy
ENERGY DEVELOPMENT GROUP

FIBER ENGINEERING LLC
CORP. - ENGINEERING - SURVEYING - ELECTIONS
200 W. Adams, P.O. Box 122
Coeur d'Alene, ID 83814 Tel: 208-266-4822

ENERGY DEVELOPMENT GROUP
USA, IDAHO

JACK RANCH COMPLEX
PROJECT LAYOUT

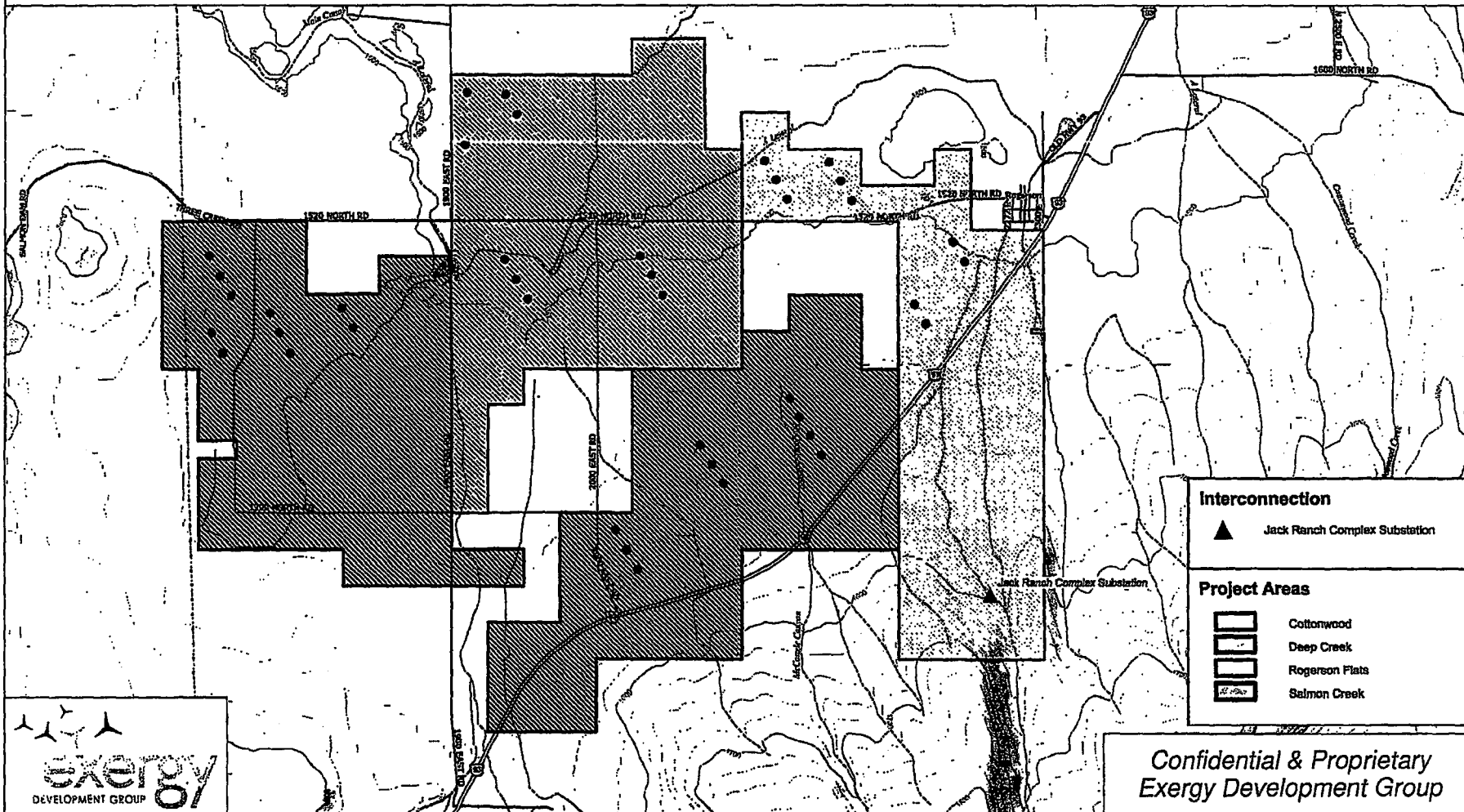
DATE: 02/14/2011
DRAWN BY: J. JOHNSON
SCALE: 1" = 1250'
PROJECT: 2101

tabbles

EXHIBIT

2





Jack Ranch Complex



Interconnection

▲ Jack Ranch Complex Substation

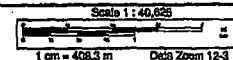
Project Areas

-  Cottonwood
-  Deep Creek
-  Rogerson Flats
-  Salmon Creek



Confidential & Proprietary
Exergy Development Group

Data use subject to Revision.
© DeLorme, XMap® 7.
www.delorme.com



**BALANCE OF PLANT
ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

FOR THE

EXERGY IDAHO SIX WINDS WIND PARK

BY AND BETWEEN

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.,

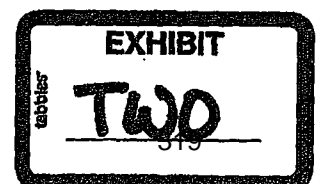
as Owner

and

FAGEN, INC.,

as Contractor

Dated December 31, 2011



**BALANCE OF PLANT ENGINEERING,
PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

This Balance of Plant Engineering, Procurement and Construction Agreement is entered into on December 30, 2011 by and between Fagen, Inc., a corporation organized and existing under Minnesota law ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company organized and existing under Idaho law ("Owner") (each of Contractor and Owner, a "Party", and together, the "Parties").

WITNESSETH:

A. Owner is developing, financing and constructing the aggregate 116MW wind generation Project (as herein defined) located at the six (6) Project Sites (as herein defined) in the State of Idaho.

B. Owner desires to contract with Contractor for the provision of engineering, procurement, construction and other services and supply of materials and equipment for the Balance of Plant (as herein defined) on a single point responsibility, and firm and lump sum basis, all as described in, and subject to the terms and conditions of, this Agreement, and Contractor desires to provide such goods and services.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth below, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following definitions:

"Affiliate" means, with respect to a Person, any other Person, directly or indirectly, in control of, controlled by, or under common control with, that Person. For purposes of this Agreement, "control," "controlled" and their derivatives, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person so controlled, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Balance of Plant Engineering, Procurement and Construction Services Agreement, including all Exhibits, appendices and attachments hereto and thereto, as the same may be amended, modified or supplemented, from time to time, in accordance with the terms hereof.

"All-Risk Builder's Risk" has the meaning set forth in Section 18.3.1.

"Applicable Laws" means all federal, state and local laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations having the force of law and permits of any Governmental Authority having jurisdiction over a Party, the Project, any Project Site, the performance of the Work, the Contract Documents and

buildings and all facilities and roads situated on or near the Project Sites, all as further described in the Exhibits to this Agreement.

"Project Final Completion" means, with respect to the whole Project, that Project Site Final Completion of each, and all, of the Project Sites has been successfully achieved pursuant to the terms of Section 7.6.

"Project Interconnection Facilities" means the electrical system of Idaho Power Company, connecting each Project Site to the electric transmission grid, a single line drawing of which is set forth in Exhibit Q (which, for the avoidance of doubt, shall not mean to include the communications cabling, which shall be the responsibility of Contractor).

"Project Site" means in the singular, the site of the High Voltage Substation and each and any of the following six (6) wind generation project sites referred to as or named (a) "Cottonwood", (b) "Rogerson Flats", (c) "Salmon Creek", (d) "Deep Creek," (e) "Lava Beds", and (f) "Notch Butte" as described and set forth in Exhibit B-1 and Exhibit B-5, Appendix 3, including the location of each Turbine on each such Project Site.

"Project Site Final Completion" has the meaning set forth in Exhibit A-1, Appendix 6.

"Project Site Final Completion Certificate" has the meaning set forth in Section 7.6.

"Project Site Mechanical Completion" has the meaning set forth in Exhibit A-1, Appendix 4.

"Project Site Mechanical Completion Certificate" has the meaning set forth in Section 7.4.

"Project Site Nameplate Capacity" means, with respect to each and any Project Site, the aggregate sum of the Nameplate Capacities of all the Turbines located or planned (pursuant to this Agreement) to be located at such Project Site.

"Project Site Substantial Completion" has the meaning set forth in of Exhibit A-1, Appendix 5.

"Project Site Substantial Completion Certificate" has the meaning set forth in Section 7.5(b).

"Project Site Underground Collection System Completion" has the meaning set forth in Exhibit A-1, Appendix 2.

"Project Site Underground Collection System Completion Certificate" has the meaning set forth in Section 7.2.

"Project Substantial Completion" means, with respect to the whole Project, that Project Site Substantial Completion of each, and all, of the Project Sites has been successfully achieved pursuant to the terms of Section 7.5.

include the plural, and vice versa; (c) the terms "hereof," "herein," "hereunder," "hereto," and similar terms refer to the entire agreement in which they appear (including any attachments, schedules, annexes, exhibits and appendices to such agreement) and not to any particular provision of such agreement; (d) references to a "day" shall mean a calendar day, unless the term "Business Day" is used; (e) references to a Party shall be deemed to include references to its successors and permitted assigns; (f) the terms "include" and "including" shall be deemed to be followed by the words "without limitation", whether or not so followed; (g) unless otherwise stated, where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day; and (h) a reference to time is a reference to the time in effect in the State of Idaho, unless otherwise indicated.

ARTICLE III THE WORK

3.1 Scope of Work.

(a) Commencing on the Commencement Date, Contractor shall perform the scope of work set forth in Exhibit A-1 and its obligations under and pursuant to this Agreement and the other Contract Documents. Contractor shall provide, furnish and perform on a single point responsibility basis all necessary design, engineering, procurement, supplies, vehicles, transportation, equipment, materials, consumables, supervision, installation, erection, construction, labor, personnel, quality assurance and inspection, and testing and other services, activities and work (including all correction, rectification, remedial, repair and replacement services, work, supplies and activities relating to defects, deficiencies in the Work not conforming to the Requirements) that are required, necessary and appropriate for Contractor to deliver and install a fully complete, and functioning and operable, Balance of Plant pursuant to the terms of this Agreement and the other Contract Documents, including the Technical Documents. Contractor shall, among other things, (i) furnish or procure, handle and store, as necessary, all materials, equipment, machinery, tools, consumables, labor and transportation; (ii) perform the construction, supervision, administration and other services and items described in the Contract Documents; (iii) perform the engineering and design services as set forth in the Contract Documents; (iv) perform the testing services required described in the Contract Documents; and (v) perform quality control checks, including inspection, of all materials, services and equipment to be used or incorporated into the Balance of Plant, and rejection of those items determined not to be in compliance with the Requirements.

(b) After Turbine Mechanical Completion of each Turbine, Contractor shall, if requested by Owner, provide advisory assistance in connection with the electrical and communications aspects of the operation and maintenance of such Turbine. Contractor shall provide all necessary and sufficient experienced personnel having the requisite expertise for the prompt performance of any correction, rectification, remedial, repair and replacement work required in accordance with this Agreement.

3.2 Compliance. Contractor shall ensure that the Work conforms to, and is in accordance with, the Contract Documents, Prudent Industry Practices, Applicable Laws,

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

CONTRACTOR:

**EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

FAGEN, INC.

By: 

By: _____

Name: James T. Carkulis

Name: _____

Title: President

Title: _____

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

**EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

CONTRACTOR:

FAGEN, INC.

By: _____

Name:

Title:

By:  _____

Name: *Larry Lindeman*

Title: *Vice President - W.R.D.*

2014 MAR -5 AM 10:00

BY _____ CLERK

[Signature]

DEPUTY

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF ~~TWIN FALLS~~

ORIGINAL

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, XRG DEVELOPMENT
PARTNERS, LLC, and "JOHN DOES 1-
10",

Defendants.

Case No. CV 2013-573

Consolidated Cases:

- Twin Falls Co. Case No. CV 2013-573
- Twin Falls Co. Case No. CV 2013-574
- Twin Falls Co. Case No. CV 2013-575
- Twin Falls Co. Case No. CV 2013-576
- Lincoln Co. Case No. CV 2013-26.

**FIRST AMENDED COMPLAINT
(NOTCH BUTTE WP, et al.)**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and for its
Complaint against the above-named Defendants, NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, XRG DEVELOPMENT PARTNERS
OF IDAHO, LLC, AND "JOHN DOES 1-10" as any other persons or entities claiming any right
to possession or interest of the subject property, states and alleges as follows:

PARTIES

1. Plaintiff Fagen is a corporation duly organized under the laws of the State of Minnesota. Fagen is a registered contractor pursuant to Idaho Code § 54-5204, license number RCE-26001, and in good standing.

2. Defendants William Hubert Shaw and Rita Shaw (“Shaw”), husband and wife, reside in Lincoln County, Idaho, and are owner(s) or reputed owner(s) and lessor(s) of real property and improvements thereon (hereinafter described as the “Property”), as more fully described in Exhibit A-1 attached to the Claim of Lien recorded as Instrument No. 0000192213 on 8/8/2012 in the Lincoln County Recorder’s Office.

A true and correct copy of said Claim of Lien is attached as Exhibit One hereto and adopted by reference as though fully set forth herein (“Claim of Lien”).

3. Defendant Geraldine W. Astle (“Astle”), a single person, resides in Lincoln County, Idaho, and is the owner or reputed owner and lessor of real property and improvements thereon (hereinafter described as the “Property”), as more fully described in Exhibit A-2 attached to the Claim of Lien.

4. Defendant Exergy Development Group of Idaho, LLC (hereinafter described as “Exergy”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with Shaw and/or Astle.

5. Defendant XRG Development Partners, LLC (hereinafter described as “XRG”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the owner(s) or reputed owner(s) thereof; and/or pursuant to contract, assignment, agreement, or other

instrument entered with Exergy, specific knowledge of which is now lacking to be determined in further discovery.

6. Defendant Notch Butte Wind Park, LLC (hereinafter described as “Notch Butte Wind Park”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to lease(s) entered with the owner(s) or reputed owner(s) thereof; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or XRG, specific knowledge of which is now lacking to be determined in further discovery.

7. Exergy, XRG, and/or Notch Butte Wind Park are the owner(s) or reputed owner(s) of certain improvements, facilities, and structures being constructed on the Property (“hereinafter described as the “Project”).

8. Fagen claims an interest in the Property pursuant to its Claim of Lien in the amount of \$856,012.20, together with prejudgment interest accruing thereon pursuant to law.

9. Defendants “John Does 1-10” are additional unnamed persons or parties may claim and interest in the property who are presently unknown. Fagen reserves the right to amend this Complaint to add such additional persons or parties at a later time.

10. Jurisdiction is proper in this Court pursuant to Idaho Code § 5-514 as the Defendants have transacted business and/or this action relates to ownership, use or possession of real property located within the State of Idaho.

11. Venue is proper in this Court pursuant to Idaho Code § 5-401.

FACTUAL ALLEGATIONS

12. In 2011 Fagen entered into agreements and/or memorandum of understanding(s) to supply labor, materials, and engineering, procurement and construction services with Exergy, upon, and for the benefit, of the Property.

13. Fagen supplied labor, materials, and services upon and for the benefit of the Property, commencing work in 2011.

14. Fagen continued to provide labor, furnish materials, and supply services for the improvement to the Property until July 31, 2012, when it ceased doing so due to non-payment by Exergy.

15. Fagen performed this work in a conforming, workmanlike manner pursuant to its agreement with Exergy.

16. As a result of Exergy's failure to pay Fagen for labor, materials and services supplied for improvements to the Property, Fagen filed its Claim of Lien as described above.

17. The reasonable value of the benefit to the Property is equivalent to the labor, materials, and services supplied by Fagen as the amount due stated in its Claim of Lien.

18. True and correct copies of Fagen's Claim of Lien were timely served by certified mailing on Defendants.

FIRST CAUSE OF ACTION

(Lien Foreclosure)

19. Fagen realleges the allegations contained in paragraphs 1-18 and incorporates the same herein by reference.

20. Fagen is entitled to a judgment foreclosing its Claim of Lien for the amount thereof, together with accrued interest pursuant to law; a determination that its Claim of Lien is

superior and has priority to any interest claimed by all Defendants, and each of them; and for foreclosure sale with application of the proceeds of sale to amount due to Fagen.

21. Fagen is entitled to recover costs and reasonable attorney fees to maintain this action, pursuant to Idaho Code § 45-501 *et seq.* The sum of \$10,000 is reasonable should this matter be resolved by default.

SECOND CAUSE OF ACTION
(Breach of Contract)

22. Fagen realleges the allegations contained in paragraphs 1-21 and incorporates the same herein by reference.

23. Fagen has performed all of its obligations under the Agreement.

24. Exergy has breached the Agreement in that it has failed and refused to pay Fagen in full for labor, services and materials furnished by Fagen.

25. Fagen has suffered damages as a direct and proximate result of Exergy's breach of contract in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Quantum Meruit)

26. Fagen realleges the allegations contained in paragraphs 1-25 and incorporates the same herein by reference.

27. Fagen provided valuable labor, services and materials that were necessary for Exergy to perform and complete its obligations.

28. Exergy benefitted from Fagen's labor, services and materials, including, but not limited to the fact that Exergy could not have fully performed its obligations in the absence of the labor, services and materials that Fagen provided.

29. Exergy has failed and refused to pay Fagen for the labor, services and materials it provided.

30. Fagen has suffered damages and Exergy has been unjustly enriched as a result of Exergy's failure to pay Fagen for the labor, materials and services provided by Fagen in an amount to be proved at trial.

WHEREFORE, Fagen prays for judgment against Defendants as follows:

- A. An order foreclosing Fagen's Claim of Lien against the Property, and declaring the amount due of \$856,012.20, together with prejudgment interest accruing thereon pursuant to law;
- B. An order declaring the Defendants, and all persons or entities claiming an interest in the Property or any part thereof, to be barred and foreclosed of all right, title, interest, claim or equity of redemption in and to the Property;
- C. An order for sale of the Property according to law and directing the proceeds of sale be applied to the amount due Fagen;
- D. Damages for breach of contract, and/or for Quantum Meruit in at least the amount of \$856,012.20 or such other amounts to be determined at trial;
- E. An award of costs incurred;
- F. An award of reasonable attorney fees in the amount of \$10,000 if this matter is resolved by default, or if not resolved by default in such amount as the Court deems reasonable;
- G. Such further relief as the Court deems just in the premises.

DATED this 3rd day of March, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: John R. Goodell
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of March, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
1168 E. 1700 S.
Salt Lake City, UT 84105
*Attorney for Exergy Development Group
of Idaho, LLC; XRG Development Partners, LLC;
and Rogerson Flats Wind Park, LLC*

U. S. Mail *& Email*
Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile

By: John R. Goodell
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

LINCOLN COUNTY
Recorded for:
FIRST AMERICAN TITLE - TWIN FA
12:48:34 PM 08-08-2012
0000192213
No. Pages 13 Fee: \$46.00
SUZANNE MCCONNELL
County Clerk
Deputy: EL
Electronically Recorded by Simplifile

John R. Goodell (ISB #2872)
Daniel C. Green (ISB #3213)
Ferrell S. Ryan, III (ISB # 8414)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

Attorneys for Claimant Fagen, Inc.

FAGEN, INC., a Minnesota corporation,)

Claimant,)

vs.)

NOTCH BUTTE WIND PARK, LLC, an)
Idaho limited liability company; EXERGY)
DEVELOPMENT GROUP OF IDAHO,)
LLC, an Idaho limited liability company;)
XRG DEVELOPMENT PARTNERS, LLC)
(ID), an Idaho limited liability company;)
WILLIAM HUBERT SHAW and RITA)
SHAW, husband and wife; and)
GERALDINE W. ASTLE, a single person)

Owners/Reputed Owners.)

CLAIM OF LIEN (I.C. § 45-507)

NOTICE IS HEREBY GIVEN:

That FAGEN, INC., 501 W. Highway 212, P. O. Box 159, Granite Falls, MN 56241, hereby claims the benefit of the law relative to liens of mechanics and materialmen upon real property as provided by the laws of the State of Idaho, I.C. § 45-501 *et seq.*, and does hereby claim a lien upon that certain tract of land and improvements thereon as hereinafter described, and in the following amounts:

NOTCH BUTTE WIND PARK - CLAIM OF LIEN (I.C. § 45-507) - Page 1



1. That the principal sum of **\$856,012.20** in accordance with the Accounts Receivable History By Customer statement attached hereto as **Exhibit B** and adopted by reference, is owed for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment for the **NOTCH BUTTE WIND PARK, LLC**, a wind park project, located at or near Dietrich, Lincoln, County, Idaho.

In addition, prejudgment interest is owed on the above principal installment amounts from the indicated due date on the invoices listed in **Exhibit B** pursuant to the parties' underlying written contract, and/or Idaho's statutory rate @ 12% per annum, until paid or entry of judgment; plus costs and attorney fees incurred in collection.

2. That said amounts are due, and owing, after deducting all just credits and offsets, for said claim for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, in and for those certain improvements of said land located at Lincoln County, Idaho, more particularly described in **Exhibits A-1 and A-2** attached hereto and adopted by reference, commonly known as **NOTCH BUTTE WIND PARK, LLC**, located at or near Dietrich, Lincoln County, Idaho, said land being the subject of lease(s) to **NOTCH BUTTE WIND PARK, LLC** and/or **EXERGY DEVELOPMENT GROUP OF IDAHO, LLC**, and/or **XRG DEVELOPMENT PARTNERS, LLC (ID)**, Lessees; and a portion of said land described in **Exhibit A-1** also being owned by **WILLIAM HUBERT SHAW** and **RITA SHAW**, husband and wife, Lessors; and a portion of said land described in **Exhibit A-2** also being owned by **GERALDINE W. ASTLE**, a single person, Lessor.

In addition, **Exhibit C** attached hereto and adopted by reference are three color-coded maps and engineering drawings which locate and identify **NOTCH BUTTE WIND FARM, LLC**.

3. That the name(s) and address(es) of the person(s) and/or entity(ies) who/which contracted with claimant and for whom claimant performed labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, are:

NOTCH BUTTE WIND PARK, LLC
Attn: James Carkulis .
801 W. Bannock
Boise, ID 83702

NOTCH BUTTE WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

NOTCH BUTTE WIND PARK, LLC
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

WILLIAM HUBERT SHAW
RITA SHAW
411 S 750 E
Dietrich, ID 83324

GERALDINE W. ASTLE
347 S 750 E
Dietrich, ID 83324

4. Claimant's last item of labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment occurred on July 31, 2012.

5. That the owner(s) or reputed owner(s) of said property to be charged with said lien are:

NOTCH BUTTE WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

NOTCH BUTTE WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

NOTCH BUTTE WIND PARK, LLC
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

WILLIAM HUBERT SHAW
RITA SHAW
411 S 750 E
Dietrich, ID 83324

GERALDINE W. ASTLE
347 S 750 E
Dietrich, ID 83324

6. That the description of the property to be charged with said lien, and upon which said improvements were made, and which is situated Lincoln, Idaho, is more fully described in Exhibits A-1, A-2 and C attached hereto and adopted by reference.

7. That the mailing address for this Claimant is:

FAGEN, INC.
Attn: Jennifer A. Johnson,
Chief Financial Officer
501 W. Highway 212
P. O. Box 159
Granite Falls, MN 56241

8. That the undersigned certifies that a true and correct copy of this Claim of Lien following recording will either be served personally, or served by mailing a copy thereof by U.S. mail, certified - return receipt requested, within the time prescribed by statute for doing so, upon the owners/reputed owners who/which are identified above.

Dated this 31st day of August, 2012.

CLAIMANT:
FAGEN, INC.

By: _____

John R. Goodell
JOHN R. GOODELL

Attorney and Authorized Representative
for Claimant

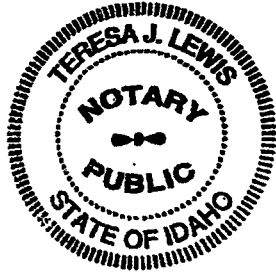
STATE OF IDAHO)
 : ss.
County of Bannock)

JOHN R. GOODELL, being duly sworn, on oath, says that he is the attorney and authorized signatory on behalf of claimant, FAGEN, INC., in the foregoing Claim of Lien, that he has read the same and knows the contents thereof; and that the same is true, and that it contains a correct statement of his/her/its demands after deducting all just credits and offsets; and affiant believes the same to be just.

John R. Goodell
JOHN R. GOODELL
Attorney for Claimant

SUBSCRIBED AND SWORN TO before me this 3rd day of August, 2012.

(SEAL)



Teresa J. Lewis
NOTARY PUBLIC FOR IDAHO
Residing at: *POCATELLO Idaho*
My Commission Expires: *7-2018*

Exhibit A-1
Legal Description

Township 6 South, Range 19 East of the Boise Meridian, Lincoln County, Idaho

Section 22: E $\frac{1}{4}$ E $\frac{1}{4}$

EXCEPT a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22 conveyed to the State of Idaho by Warranty Deed recorded as Instrument Number 109244, Lincoln County records.

Exhibit J - 4



Exhibit A -2,
Legal Description

Township 6 South, Range 19, East of the Boise Meridian, Lincoln County, Idaho

Section 27: All

Memorandum of Wind Project Ground Lease & Agreement - 4
Notch Butte - Geraldine W. Astle and the Estate of Sam D. Astle



DATE 7/30/12 ARP064
 *** SUMMARY ***

01 000 Fagen Inc
 ACCOUNTS RECEIVABLE HISTORY BY CUSTOMER
 INVOICE DATES 00/00/0000 - 99/99/9999

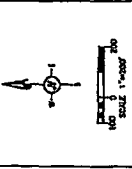
TIME 16.52 PAGE

CHECK DATES 00/00/0000 - 99/99/9999

INVOICE			JOB	SUB	REFERENCE	INVOICE	DSCT	CHECK	CHECK	CHECK		
NUMBER	DATE	DESCRIPTION	NUMBER	JOB	NUMBER	DATE	AMOUNT	AMT	DATE	NUMBER	AMOUNT	
02206 Notcha Butta Kind Farm												
00001	12/27/2011	APPLICATION #1	114034	601			335249.00	.00			.00	
00002	02/03/2012	APPLICATION #2	114034	601			152204.00	.00			.00	
00003	03/16/2012	APPLICATION #3	114034	601			.00	.00	03/16/2012	999999	.00	
00030	03/16/2012	APPLICATION #3	114034	601			43826.90	.00			.00	
00004	04/25/2012	APPLICATION #4	114034	601			17937.90	.00			.00	
00005	05/25/2012	APPLICATION #5	114034	601			118216.70	.00			.00	
00006	06/29/2012	APPLICATION #6	114034	601			74288.85	.00			.00	
00007	07/27/2012	APPLICATION #7	114034	601			74288.85	.00			.00	
*** SUBJOB TOTAL ***							856,012.20	.00			.00	
** BALANCE **											856,012.20	



NO. 1	DATE	BY	REVISION



LEGEND

PROJECT BOUNDARY

FENCE LINES

POWER LINES

TELEPHONE LINES

Roadway

BOUNDARY

SETBACK

SETBACK

SETBACK

energy

GREEN ENGINEERING LLC

2102

NOTE:

BACKGROUND IMAGE AND CONTOUR SKETCH HAVE BEEN DERIVED FROM GOOGLE EARTH / NO CONTOUR SURVEY AVAILABLE / MAJOR AND MINOR CONTOURS ARE AT 10 AND 2

NOTE:

SURVEY INFORMATION REGARDING EXISTING ROADS, STRUCTURES, UTILITIES, ETC. WAS PROVIDED BY OTHERS FIELD VERIFY ALL EXISTING CONDITIONS

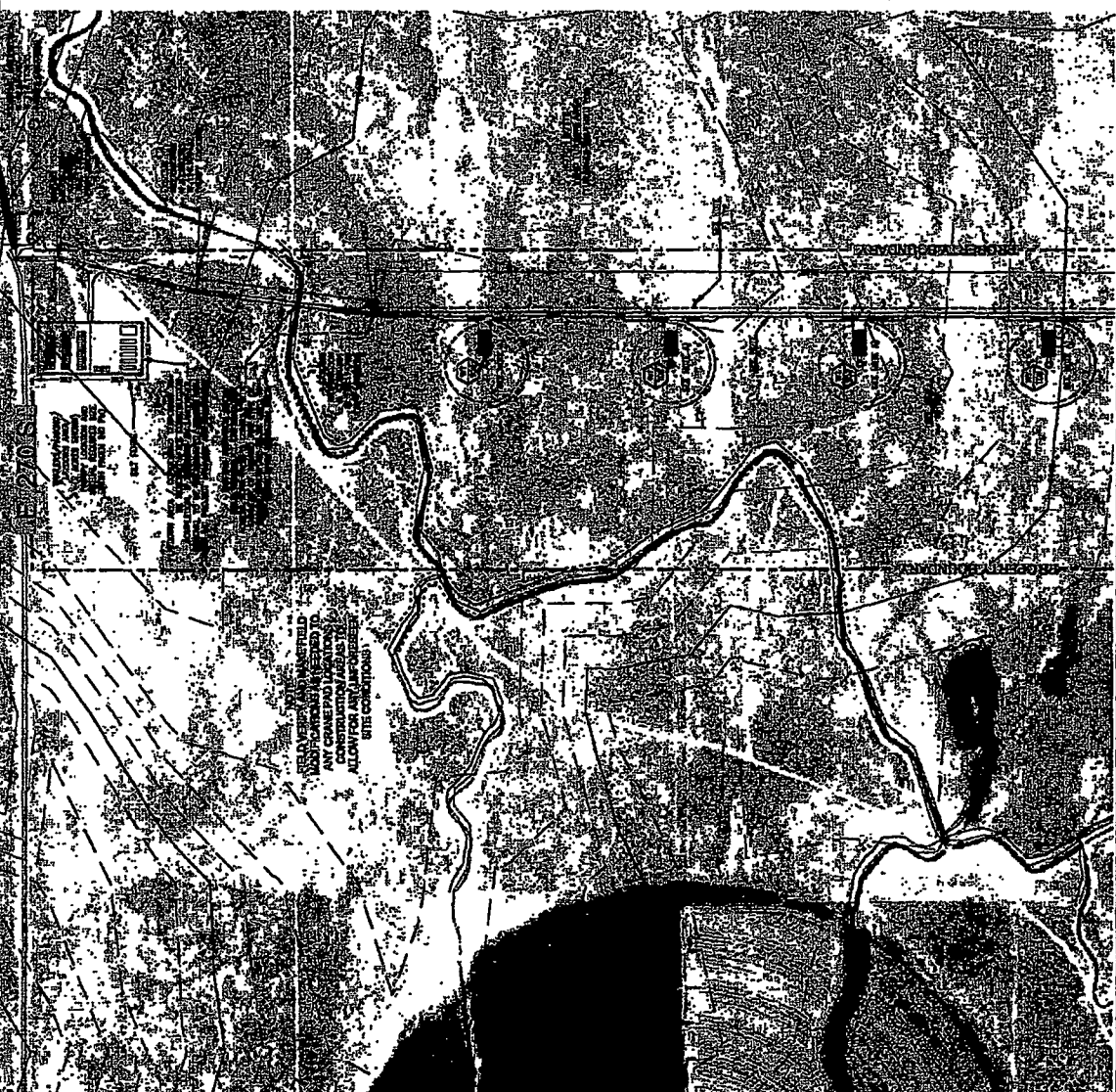
WT	LONGITUDE (UTM)	LATITUDE (UTM)	ELEVATION (EASERS)
11	824717405Z	W 114.184625Z	6262.97
12	824717405Z	W 114.184625Z	6262.97
13	824717405Z	W 114.184625Z	6262.97
14	824717405Z	W 114.184625Z	6262.97
15	824717405Z	W 114.184625Z	6262.97
16	824717405Z	W 114.184625Z	6262.97
17	824717405Z	W 114.184625Z	6262.97
18	824717405Z	W 114.184625Z	6262.97
19	824717405Z	W 114.184625Z	6262.97
20	824717405Z	W 114.184625Z	6262.97
21	824717405Z	W 114.184625Z	6262.97
22	824717405Z	W 114.184625Z	6262.97
23	824717405Z	W 114.184625Z	6262.97
24	824717405Z	W 114.184625Z	6262.97
25	824717405Z	W 114.184625Z	6262.97

NOTE:

ALL CONTOUR DATA IS PROVIDED BY OTHERS FIELD VERIFY ALL EXISTING CONDITIONS

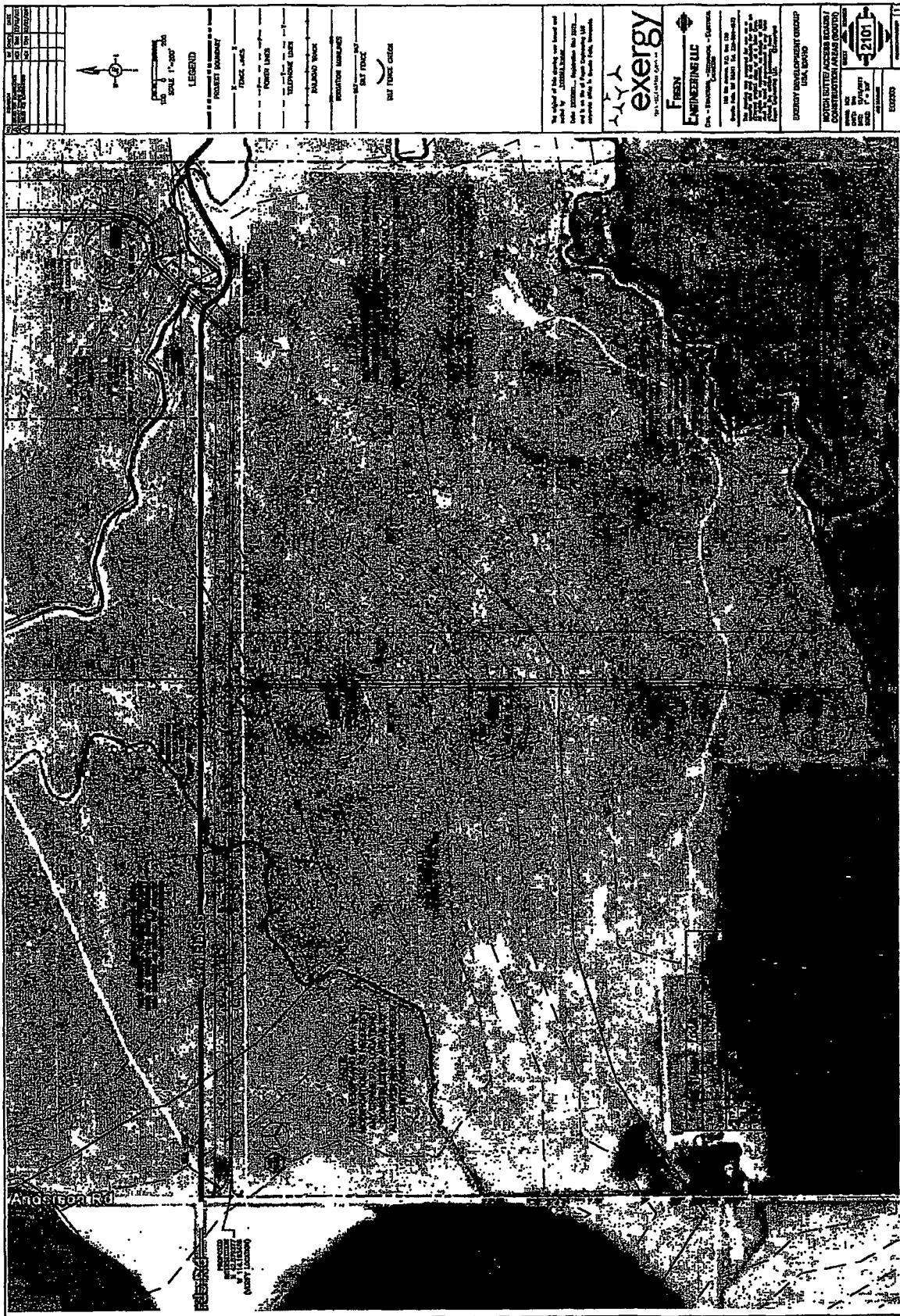
NOTES:

- A) THESE ARE ACCESS AND/OR CONSTRUCTION AREAS ONLY TO BE USED FOR CONSTRUCTION PURPOSES ONLY.
- B) THESE ARE ACCESS AND/OR CONSTRUCTION AREAS ONLY TO BE USED FOR CONSTRUCTION PURPOSES ONLY.
- C) THESE ARE ACCESS AND/OR CONSTRUCTION AREAS ONLY TO BE USED FOR CONSTRUCTION PURPOSES ONLY.
- D) THESE ARE ACCESS AND/OR CONSTRUCTION AREAS ONLY TO BE USED FOR CONSTRUCTION PURPOSES ONLY.
- E) THESE ARE ACCESS AND/OR CONSTRUCTION AREAS ONLY TO BE USED FOR CONSTRUCTION PURPOSES ONLY.
- F) THESE ARE ACCESS AND/OR CONSTRUCTION AREAS ONLY TO BE USED FOR CONSTRUCTION PURPOSES ONLY.
- G) THESE ARE ACCESS AND/OR CONSTRUCTION AREAS ONLY TO BE USED FOR CONSTRUCTION PURPOSES ONLY.
- H) THESE ARE ACCESS AND/OR CONSTRUCTION AREAS ONLY TO BE USED FOR CONSTRUCTION PURPOSES ONLY.



EXHIBIT

C



DATE	NOV 19 1984
SCALE	1" = 200'
PROJECT	...
...	...

LEGEND

PROPERTY BOUNDARY

ROAD

...

PROPERTY BOUNDARY

ROAD

...

PROPERTY BOUNDARY

ROAD

...

PROPERTY BOUNDARY

ROAD

...

PROPERTY BOUNDARY

ROAD

...

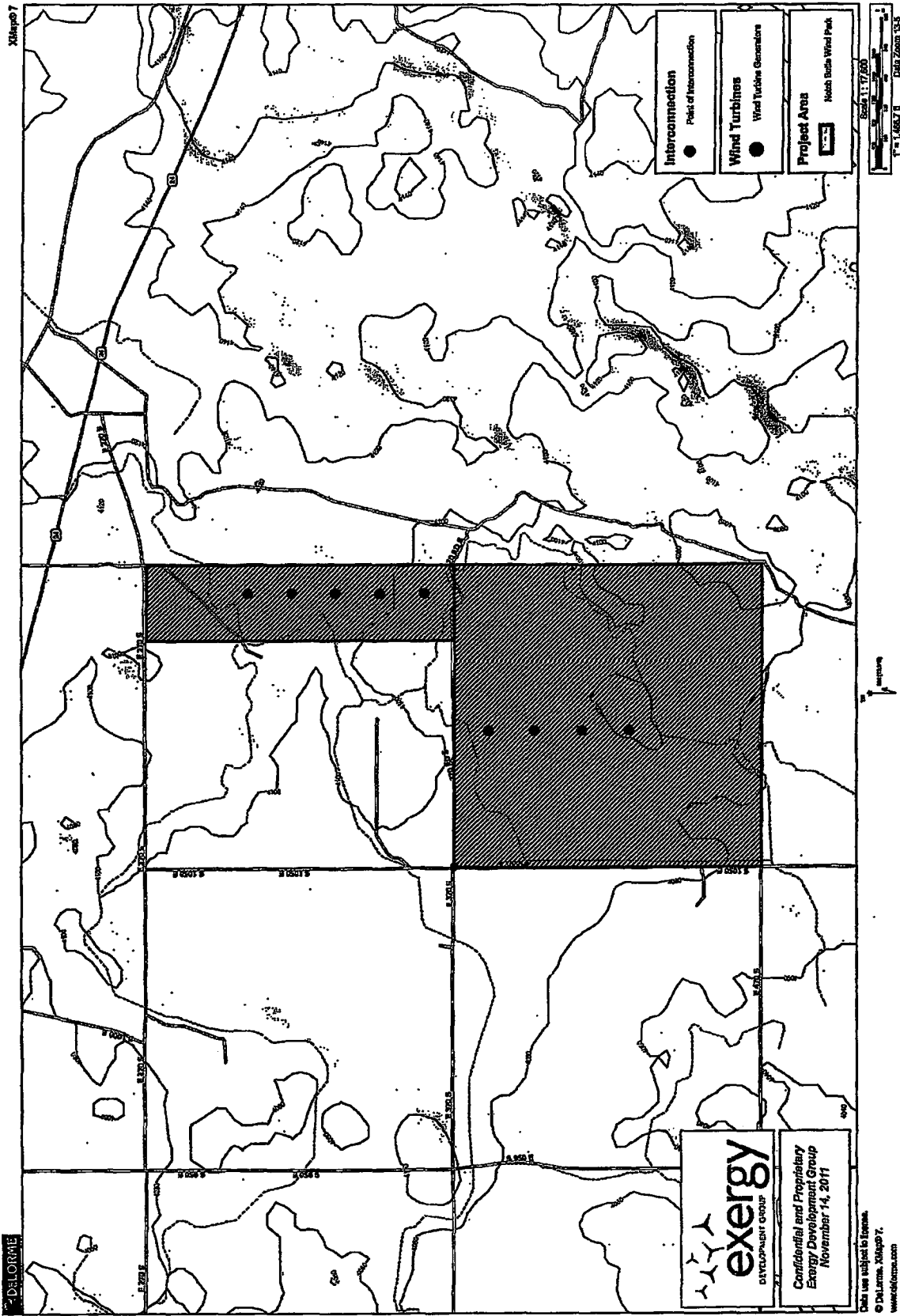
exergy

FRESH ENGINEERING LLC

2101

...

...



Interconnection
● Point of Interconnection
Wind Turbines
● Wind Turbine Generators
Project Area
▨ Match with Wind Peak

exergy
DEVELOPMENT GROUP

Confidential and Proprietary
Exergy Development Group
November 14, 2011

Scale 1:17,500
1" = 1,453.7 ft
Data Zoom 13.5



Data use subject to license.
© Delorme, XMap07.
www.delorme.com

**BALANCE OF PLANT
ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

FOR THE

EXERGY IDAHO SIX WINDS WIND PARK

BY AND BETWEEN

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.,

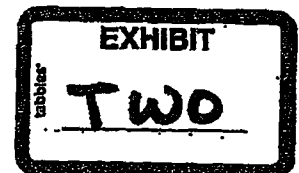
as Owner

and

FAGEN, INC.,

as Contractor

Dated December 31, 2011



**BALANCE OF PLANT ENGINEERING,
PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

This Balance of Plant Engineering, Procurement and Construction Agreement is entered into on December 30, 2011 by and between Fagen, Inc., a corporation organized and existing under Minnesota law ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company organized and existing under Idaho law ("Owner") (each of Contractor and Owner, a "Party", and together, the "Parties").

WITNESSETH:

A. Owner is developing, financing and constructing the aggregate 116MW wind generation Project (as herein defined) located at the six (6) Project Sites (as herein defined) in the State of Idaho.

B. Owner desires to contract with Contractor for the provision of engineering, procurement, construction and other services and supply of materials and equipment for the Balance of Plant (as herein defined) on a single point responsibility, and firm and lump sum basis, all as described in, and subject to the terms and conditions of, this Agreement, and Contractor desires to provide such goods and services.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth below, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following definitions:

"Affiliate" means, with respect to a Person, any other Person, directly or indirectly, in control of, controlled by, or under common control with, that Person. For purposes of this Agreement, "control," "controlled" and their derivatives, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person so controlled, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Balance of Plant Engineering, Procurement and Construction Services Agreement, including all Exhibits, appendices and attachments hereto and thereto, as the same may be amended, modified or supplemented, from time to time, in accordance with the terms hereof.

"All-Risk Builder's Risk" has the meaning set forth in Section 18.3.1.

"Applicable Laws" means all federal, state and local laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations having the force of law and permits of any Governmental Authority having jurisdiction over a Party, the Project, any Project Site, the performance of the Work, the Contract Documents and

buildings and all facilities and roads situated on or near the Project Sites, all as further described in the Exhibits to this Agreement.

"Project Final Completion" means, with respect to the whole Project, that Project Site Final Completion of each, and all, of the Project Sites has been successfully achieved pursuant to the terms of Section 7.6.

"Project Interconnection Facilities" means the electrical system of Idaho Power Company, connecting each Project Site to the electric transmission grid, a single line drawing of which is set forth in Exhibit Q (which, for the avoidance of doubt, shall not mean to include the communications cabling, which shall be the responsibility of Contractor).

"Project Site" means in the singular, the site of the High Voltage Substation and each and any of the following six (6) wind generation project sites referred to as or named (a) "Cottonwood", (b) "Rogerson Flats", (c) "Salmon Creek", (d) "Deep Creek," (e) "Lava Beds", and (f) "Notch Butte" as described and set forth in Exhibit B-1 and Exhibit B-5, Appendix 3, including the location of each Turbine on each such Project Site.

"Project Site Final Completion" has the meaning set forth in Exhibit A-1, Appendix 6.

"Project Site Final Completion Certificate" has the meaning set forth in Section 7.6.

"Project Site Mechanical Completion" has the meaning set forth in Exhibit A-1, Appendix 4.

"Project Site Mechanical Completion Certificate" has the meaning set forth in Section 7.4.

"Project Site Nameplate Capacity" means, with respect to each and any Project Site, the aggregate sum of the Nameplate Capacities of all the Turbines located or planned (pursuant to this Agreement) to be located at such Project Site.

"Project Site Substantial Completion" has the meaning set forth in of Exhibit A-1, Appendix 5.

"Project Site Substantial Completion Certificate" has the meaning set forth in Section 7.5(b).

"Project Site Underground Collection System Completion" has the meaning set forth in Exhibit A-1, Appendix 2.

"Project Site Underground Collection System Completion Certificate" has the meaning set forth in Section 7.2.

"Project Substantial Completion" means, with respect to the whole Project, that Project Site Substantial Completion of each, and all, of the Project Sites has been successfully achieved pursuant to the terms of Section 7.5.

include the plural, and vice versa; (c) the terms "hereof," "herein," "hereunder," "hereto," and similar terms refer to the entire agreement in which they appear (including any attachments, schedules, annexes, exhibits and appendices to such agreement) and not to any particular provision of such agreement; (d) references to a "day" shall mean a calendar day, unless the term "Business Day" is used; (e) references to a Party shall be deemed to include references to its successors and permitted assigns; (f) the terms "include" and "including" shall be deemed to be followed by the words "without limitation", whether or not so followed; (g) unless otherwise stated, where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day; and (h) a reference to time is a reference to the time in effect in the State of Idaho, unless otherwise indicated.

ARTICLE III THE WORK

3.1 Scope of Work.

(a) Commencing on the Commencement Date, Contractor shall perform the scope of work set forth in Exhibit A-1 and its obligations under and pursuant to this Agreement and the other Contract Documents. Contractor shall provide, furnish and perform on a single point responsibility basis all necessary design, engineering, procurement, supplies, vehicles, transportation, equipment, materials, consumables, supervision, installation, erection, construction, labor, personnel, quality assurance and inspection, and testing and other services, activities and work (including all correction, rectification, remedial, repair and replacement services, work, supplies and activities relating to defects, deficiencies in the Work not conforming to the Requirements) that are required, necessary and appropriate for Contractor to deliver and install a fully complete, and functioning and operable, Balance of Plant pursuant to the terms of this Agreement and the other Contract Documents, including the Technical Documents. Contractor shall, among other things, (i) furnish or procure, handle and store, as necessary, all materials, equipment, machinery, tools, consumables, labor and transportation; (ii) perform the construction, supervision, administration and other services and items described in the Contract Documents; (iii) perform the engineering and design services as set forth in the Contract Documents; (iv) perform the testing services required described in the Contract Documents; and (v) perform quality control checks, including inspection, of all materials, services and equipment to be used or incorporated into the Balance of Plant, and rejection of those items determined not to be in compliance with the Requirements.

(b) After Turbine Mechanical Completion of each Turbine, Contractor shall, if requested by Owner, provide advisory assistance in connection with the electrical and communications aspects of the operation and maintenance of such Turbine. Contractor shall provide all necessary and sufficient experienced personnel having the requisite expertise for the prompt performance of any correction, rectification, remedial, repair and replacement work required in accordance with this Agreement.

3.2 Compliance. Contractor shall ensure that the Work conforms to, and is in accordance with, the Contract Documents, Prudent Industry Practices, Applicable Laws,


IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

CONTRACTOR:

**EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

FAGEN, INC.

By: 

By: _____

Name: James T. Carkulis

Name:

Title: President

Title:

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

**EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

CONTRACTOR:

FAGEN, INC.

By: _____

Name:

Title:

By:  _____

Name: *Larry Lindeman*

Title: *Vice President - W.R.D.*

ORIGINAL

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

APR 22 2014

By [Signature] 9:00 AM
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,
Plaintiff(s),

Case No. CV-2013-573

vs.

STIPULATION FOR
SCHEDULING AND PLANNING

ROGERSON FLATS WIND PARK, LLC, et al.,
Defendant(s).

The above parties hereby stipulate to the following scheduling deadlines:

A. EXPERT WITNESSES

(Plaintiff's experts)

1. 90 days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.

2. 90 days before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.

3. 60 days before trial, defendant shall complete any depositions of the plaintiff's initial expert witnesses.

(Defendant's experts)

4. 60 days before trial, defendant shall disclose each person defendant intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.

5. 60 days before trial, defendant shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.

6. 30 days before trial, plaintiff shall complete any depositions of the defendant's expert witnesses.

(Plaintiff's rebuttal experts)

7. 30 days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial to rebut new information or issues disclosed or raised by the defendant.

8. 30 days before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding the rebuttal expert witnesses.

9. 30 days before trial, defendant shall complete any depositions of the plaintiff's rebuttal expert witnesses.

B. LAY WITNESSES

1. 90 days before trial, plaintiff shall disclose each person plaintiff intends to call as a lay witness at trial (excluding impeachment witnesses).

2. 60 days before trial, defendant shall disclose each person defendant intends to call as a lay witness at trial (excluding impeachment witnesses).

3. 30 days before trial, plaintiff shall disclose each lay witness (excluding impeachment witnesses) plaintiff intends to call at trial to rebut new information or issues disclosed or raised by the defendant.

4. 30 days before trial, all parties shall complete any depositions of lay witnesses.

C. DEADLINES FOR INITIATING DISCOVERY

1. 90 days before trial is the last day for serving interrogatories, requests for production, requests to permit entry upon land or other property, and requests for admission.

2. n/a days before trial is the last day for filing motions for a physical or mental examination.

D. DEADLINE FOR SUPPLEMENTAL RESPONSES TO DISCOVERY

1. 15 days before trial, all parties must serve any supplemental response to discovery required by Rule 26(e) of the Idaho Rules of Civil Procedure.

E. DEADLINE FOR DISCLOSURE OF EXHIBITS

1. 15 days before trial all parties must disclose all proposed trial exhibits.

F. PRETRIAL MOTIONS

1. 120 days before trial is the last day to file motions to add additional parties to the lawsuit.

2. 120 days before trial is the last day to file a motion to amend the claims between existing parties to the lawsuit, including to add a claim for punitive damages.

G. TRIAL SETTING

1. This case can be set for a trial to commence on or after 9/16/14.
Note, that absent extremely compelling circumstances, no case will be set for trial more than 510 days from the date of filing the complaint.

2. It is estimated that the trial will take 4-6 days.

3. This case is to be tried as a:
 court trial
 jury trial

4. Parties preference for trial dates: (Please confer and complete. Do not attach "unavailable dates").

- (a) Week of Tuesday, Sept. 16, 2014. ✓
- (b) Week of Tuesday, Sept. 30, 2014.
- (c) Week of Tuesday, Oct. 28, 2014.

H. MEDIATION

1. The parties agree to mediation: Yes No

2. If yes:

a. The parties agree to submit to mediation with a mediator mutually agreed upon.

b. Mediation shall begin 30 days prior to trial.

c. Unless otherwise agreed in writing between the parties, the cost of mediation shall be equally divided between the parties.

The parties reserve the right to amend this stipulation by agreement of all parties, subject to Court approval; each party reserves the right to seek amendment hereof by Court order, and to request further status conferences for such purpose, in accordance with I.R.C.P. 16(a) and 16(b).

Counsel for Plaintiff(s):

John Bardell Date: 4-21-14

Counsel for Defendant(s):

_____ Date: _____

Counsel for Other Parties:

_____ Date: _____

COPY

The parties reserve the right to amend this stipulation by agreement of all parties, subject to Court approval; each party reserves the right to seek amendment hereof by Court order, and to request further status conferences for such purpose, in accordance with I.R.C.P. 16(a) and 16(b).

Counsel for Plaintiff(s):

_____ Date: _____

Counsel for Defendant(s):

ALR

_____ Date: 21 April 2014

Counsel for Other Parties:

_____ Date: _____

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

APR 22 2014

By _____ 1:00 P.M.
Clerk

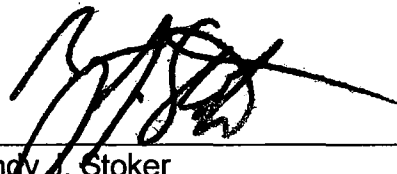
Deputy Clerk

THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

FAGEN INC.,	)	Case CV 13-573
)	
)	
Plaintiff.)	
vs)	
)	
ROGERSON FLATS WIND PARK etal,	)	ORDER APPROVING
	)	STIPULATED SCHEDULING
Defendants.	)	ORDER, PRETRIAL AND
	)	COURT TRIAL NOTICE
)	

A Stipulation for Scheduling and Planning was filed in the above-entitled case on April 22, 2014. A formal pre-trial conference pursuant to IRCP 16 shall be conducted on September 29, 2014 at 9:00 am. In lieu thereof the parties may present a written stipulation pursuant to IRCP 16(e) no later than three business days prior to the scheduled pre-trial conference. Trial to the Court and a twelve person jury shall commence promptly at 8:30 a.m. on October 28, 2014. (4 days)

DATED this 22nd day of April, 2014.



Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April, 2014, I served a true and correct copy of the foregoing Pre-Trial and Jury Trial Notice on:

John R. Goodell
Attorney at Law
101 S. Capitol Blvd., Ste. 300
Boise, Idaho 83702

Angelo L. Rosa
Attorney at Law
P.O. Box 1605
Boise, Idaho 83701

Kristina Glascock, Clerk

By 
Deputy Clerk

APR 23 2014

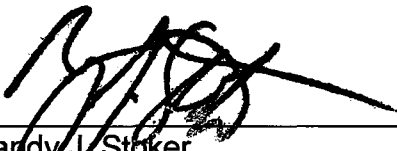
By _____ 2:15 PM
Clerk
Deputy Clerk

THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

FAGEN INC.,	)	Case CV 13-573
)	
)	
Plaintiff.)	
vs	)	AMENDED
	)	ORDER APPROVING
ROGERSON FLATS WIND PARK etal,	)	STIPULATED SCHEDULING
	)	ORDER, PRETRIAL AND
Defendants.	)	COURT TRIAL NOTICE
_____)	

A Stipulation for Scheduling and Planning was filed in the above-entitled case on April 22, 2014. A formal pre-trial conference pursuant to IRCP 16 shall be conducted on September 15, 2014 at 1:30 pm. In lieu thereof the parties may present a written stipulation pursuant to IRCP 16(e) no later than three business days prior to the scheduled pre-trial conference. Trial to the Court shall commence promptly at 8:30 a.m. on October 28, 2014. (4 days)

DATED this 24th day of April, 2014.



Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2014, I served a true and correct copy of the foregoing Pre-Trial and Court Trial Notice on:

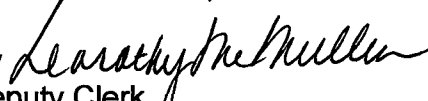
John R. Goodell
Attorney at Law
101 S. Capitol Blvd, Ste 300
Boise, Idaho 83702

U.S. Mail

Angelo Rosa
Attorney at Law
P.O. Box 1605
Boise, Idaho 83701

U.S. Mail

Kristina Glascock, Clerk

By 
Deputy Clerk

ORIGINAL

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

APR 28 2014

9:30 AM

By _____ Clerk
_____ Deputy Clerk

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,
Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",
Defendants.

Consolidated Cases Nos.:
CV 2013-573 (Rogerson Flats WP)
CV 2013-574 (Cottonwood WP)
CV 2013-575 (Salmon Creek WP)
CV 2013-576 (Deep Creek WP)

CV-2013-26 (Notch Butte WP)
(Lincoln County)

**NOTICES OF SERVICE OF
PLAINTIFF'S DISCOVERY
RESPONSES**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and hereby certify that the originals of the discovery responses identified herein for the above-referenced consolidated cases, were served by regular U.S. Mail on this date to the person(s):

Angelo L. Rosa, Esq.
P.O. Box 1605
Boise, Idaho 83701

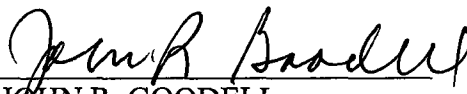
NOTICE OF SERVICE OF PLAINTIFF'S DISCOVERY RESPONSES - 1

Documents served:

- PLAINTIFF'S ANSWERS AND RESPONSES TO DEFENDANT ROGERSON FLATS WIND PARK, LLC'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION;
- PLAINTIFF'S ANSWERS AND RESPONSES TO DEFENDANT COTTONWOOD WIND PARK, LLC'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS;
- PLAINTIFF'S ANSWERS AND RESPONSES TO DEFENDANT SALMON CREEK WIND PARK LLC'S FIRST SET OF INTERROATORIES AND REQUESTS FOR PRODUCTION;
- PLAINTIFF'S ANSWERS AND RESPONSES TO DEFENDANT DEEP CREEK WIND PARK, LLC'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION;
- PLAINTIFF'S ANSWERS AND RESPONSES TO DEFENDANT NOTCH BUTTE WIND PARK LLC'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION;
- PLAINTIFF'S ANSWERS AND RESPONSES TO DEFENDANT EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS;

DATED this 25th day of April, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day April of 2014, I served a true and correct copy of the foregoing was served by the method indicated below, and addressed as stated:

Angelo L. Rosa, Esq. P.O. Box 1605 Boise, Idaho 83701 Tel. (801) 440-4400	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (801) 415-1773 <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email arosa@rosa-lp.com
--	--



JOHN R. GOODELL

ORIGINAL

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 JUL 30 PM 3:41

BY _____ CLERK
_____ DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576

CV-2013-26

**PLAINTIFF FAGEN, INC.'S
DISCLOSURE OF FACT AND
EXPERT WITNESSES**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and hereby makes the following initial Disclosure of Fact and Expert Witnesses who may be called to testify at the trial in this matter, pursuant to the *Amended Order Approving Stipulated Scheduling Order, Pre-Trial and Court Trial Notice* entered on April 23, 2014 and the

Stipulation for Scheduling and Planning entered on April 22, 2014 (collectively “Scheduling Order”) as follows:

Fagen, Inc. reserves the right to call the following officers and/or employees of Fagen, Inc.:

1. Jennifer Johnson, former Chief Financial Officer, Fagen, Inc, c/o of counsel
2. Ronald Fagen, Board Chairman, Fagen, Inc., c/o of counsel
3. Kate Carlton, Fagen, Inc., c/o of counsel
4. Lori Anderson, Accounting Department, Fagen, Inc, c/o of counsel
5. Samuel Ewald, Vice-President of Estimating, Fagen, Inc., c/o counsel
6. Kirsten Tjosaas, Controller, Fagen, Inc., c/o of counsel
7. Bradley Bormann, Project Manager, Fagen, Inc., c/o of counsel
8. Jeremy Corner, Scheduler for Fagen, Inc., c/o of counsel

In addition, Fagen, Inc. reserves the right to call any officers and/or employees (past or present) of one or more of the Defendants, including but not limited to the following:

1. James T. Carkulis
2. Dustin Shively, Engineering Consultant to Exergy Development Group of Idaho, LLC and XRG Development Partners, LLC
3. Elizabeth Woolstenhulme

At this time, Fagen, Inc. does not intend to call any expert witnesses, but reserves the right to call rebuttal expert witnesses to be subsequently designated if Defendants designate expert witnesses in accordance with the Scheduling Order.

In addition, Plaintiff, Fagen, Inc. reserves the right to supplement this disclosure based upon Defendants’ disclosure of witnesses as well as further discovery and investigation which is ongoing at this time.

DATED this 30th day of July, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

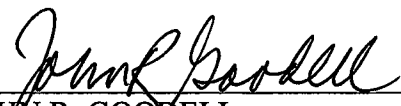
By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of July, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
Attorney at Law
P.O. Box 1605
Boise, ID 83701
*Attorney for Exergy Development Group of
Idaho, LLC; XRG Development Partners,
LLC; and Lava Beds Wind Park, LLC*

U.S. Mail
Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile 801-415-1773
 Email arosa@rosa-lp.com


JOHN R. GOODELL

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167
jrg@racinelaw.net

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2014 JUL 30 PM 3:41

BY _____ CLERK
_____ DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

ORIGINAL

FAGEN, INC.,
Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576

CV-2013-26

**PLAINTIFF FAGEN, INC.'S
CERTIFICATE OF SERVICE**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and hereby certifies that on the 30th day of July, 2014, I served true and correct copies of the documents listed below to the following person(s):

PLAINTIFF FAGEN, INC.'S CERTIFICATE OF SERVICE – Page 1

Angelo L. Rosa
Attorney at Law
PO Box 1605
Boise, ID 83701
Attorney for Defendants

1. Affidavit of Lori Anderson In Support of Fagen, Inc.'s Motion for Summary Judgment and Exhibits A – F;
2. Affidavit of Bradley Bormann In Support of Fagen, Inc.'s Motion for Summary Judgment and Exhibits A – H;
3. Affidavit of Jennifer A. Johnson In Support of Fagen, Inc.'s Motion for Summary Judgment and Exhibits A – B;
4. Affidavit of Samuel Ewald In Support of Fagen, Inc.'s Motion for Summary Judgment;
5. Affidavit of Kirsten Tjosaas In Support of Fagen, Inc.'s Motion for Summary Judgment.

DATED this 30th day of July, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of July, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
Attorney at Law
P.O. Box 1605
Boise, ID 83701
*Attorney for Exergy Development Group of
Idaho, LLC; XRG Development Partners,
LLC; et al.*

- U.S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 801-415-1773
- Email arosa@rosa-lp.com w/o exhibits



JOHN R. GOODELL

ORIGINAL

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 JUL 30 PM 3: 30

BY _____ CLERK
 d _____ DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
“JOHN DOES 1-10”,

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576

CV-2013-26

**PLAINTIFF FAGEN, INC.’S
MEMORANDUM OF LAW IN
SUPPORT OF MOTIONS FOR
SUMMARY JUDGMENT**

INTRODUCTION

This is a simple breach of contract case. Defendant Exergy Development Group of Idaho, L.L.C. (“XRG”), and its project companies identified below, contracted with Fagen, Inc. (“Fagen”) to serve as the construction contractor for five wind farms. Fagen performed work under the parties’ contracts and submitted monthly Applications and Certificates for Payment.

Defendants never objected to or questioned the Applications and Certificates for Payment. Defendants also never paid Fagen as they agreed to under the parties' contracts.

As a result, the Court should grant Fagen's summary judgment motion in its entirety.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. The Parties.

A. Fagen.

Fagen is a family-owned business headquartered in Granite Falls, Minnesota. Affidavit of Bradley Bormann ("Bormann Aff."), ¶1. Fagen is one of the largest green energy design build construction contractors in the United States. *Id.* at ¶2. As a large-scale industrial contractor, Fagen is a single-source for design, construction and all of the civil, structural, mechanical and electrical aspects of a construction project. *Id.* at ¶3. Fagen has built biofuel plants, grain elevators, manufacturing plants, steel mills, wind power production facilities, and similar agricultural, energy and industrial facilities across the country and internationally. *Id.*

B. XRG.

XRG is an Idaho limited liability company. XRG is in the business of developing clean-energy power production facilities, including wind farms commonly known as the Notch Butte Wind Farm and the Jack Ranch Wind Farm. *Id.* at Ex. A, 1.

C. The Defendant XRG Project Companies and XRG Projects.

The Defendant XRG Project Companies and XRG Projects relevant to this action include the following:

1. Defendant Notch Butte Wind Park, LLC ("Notch Butte") for 18 MW wind generated power using approximately nine (9) wind turbine generators, located near Dietrich, Lincoln County, Idaho (the "Notch Butte Wind Farm");

2. Defendant Cottonwood Wind Park, LLC (“Cottonwood”) for 20 MW of wind generated power using ten wind turbine generators, located in Twin Falls County, Idaho (the “Cottonwood Wind Farm”);
3. Defendant Deep Creek Wind Park, LLC (“Deep Creek”), for 20 MW of wind generated power using ten (10) wind turbine generators, located in Twin Falls County, Idaho (the “Deep Creek Wind Farm”);
4. Defendant Salmon Creek Wind Park, LLC (“Salmon Creek”), for 20 MW of wind generated power using ten (10) wind turbine generators, located in Twin Falls County, Idaho (the “Salmon Creek Wind Farm”); and
5. Defendant Rogerson Flats Wind Park, LLC (“Rogerson Flats”), for 20 MW of wind generated power using ten (10) wind turbine generators, and substation comprised of a generator step-up transformer, related electric gear and the substation building to interconnect Cottonwood Wind Farm, Deep Creek Wind Farm, Salmon Creek Wind Farm and Rogerson Flats to the Idaho Power electric grid (the “Rogerson Flats Wind Farm”).

See id. at Ex. G, 3. Fagen and XRG also collectively referred to the (1) Cottonwood Wind Farm; (2) the Deep Creek Wind Farm; (3) the Salmon Creek Wind Farm and (4) the Rogerson Flats Wind Farm as the “Jack Ranch Wind Farm.” *Id.* at ¶6.¹

2. The Contracts.

A. The June 15, 2011, Memorandum of Understanding.

On June 15, 2011, Fagen, XRG, and XRG on behalf of its project companies, including Notch Butte and Jack Ranch, entered into a Memorandum of Understanding (the “MOU”). *Id.* at Ex. A. In the MOU, XRG disclosed its desire to retain Fagen as the contractor for a number of clean-energy power production facilities, including the Notch Butte Wind Farm and the Jack Ranch Wind Farm. *Id.* at Ex. A, 1. Specifically, the MOU provides:

XRG desires Fagen to be the EPC Contractor for the Projects in addition to other Work as the Parties may agree . . .

¹ Fagen may hereinafter refer to the Notch Butte Wind Farm, Cottonwood Wind Farm, Deep Creek Wind Farm, Salmon Creek Wind Farm and the Rogerson Flats Wind Farm as the “five wind farms.”

* * *

1. Exclusive Opportunity, Competitive Price and Good Faith Negotiations. XRG requests that Fagen provide a price to engineer, procure, construct and install each Project. Following evaluation of the Pricing estimates for each Project, and provided the pricing is competitive to allow XRG to move forward with debt and equity financing, XRG agrees to award each Project to Fagen.

Id.

B. The July 25, 2011, Notch Butte Limited Notice to Proceed.

On July 25, 2011, Fagen, XRG, and Notch Butte entered into a Limited Notice to Proceed (the “Notch Butte LNTP #1”). *Id.* at Ex. B. Pursuant to the Notch Butte LNTP #1, XRG and Notch Butte authorized Fagen “to proceed with a portion of the Work at the Notch Butte Project Site so the Notch Butte Project construction may progress.” *Id.* at Ex. B, 1. The Notch Butte LNTP #1 provides in relevant part:

Scope of Work. [Fagen] shall perform up to fifteen (15) soil borings at the Notch Butte Project Site, which shall include one (1) soil boring at each turbine location (for a total of 11), one (1) soil boring at the meteorological tower location, and (3) borings on the road connecting the two string lines. XRG shall provide the soil boring locations to [Fagen] prior to beginning the Work. The soil borings referenced above are more specifically set forth in Appendix #1 to this LNTP. The detailed services and Schedule of work to be performed by [Fagen] associated with the above described Scope of Work are more specifically set forth in Appendix #2 to this LNTP.

* * *

Acknowledgment. XRG acknowledges and agrees that XRG and Notch Butte Wind Park, LLC, an Idaho limited liability company (“Notch Butte”) are hereby authorized to pay any amounts due to [Fagen] pursuant to this LNTP, and Owner [Notch Butte] and XRG covenant that neither Party will contest or otherwise dispute any such payments.

Id. at Ex. B, ¶¶ 1, 4.

C. The December 14, 2011, Notch Butte Limited Notice to Proceed.

On December 14, 2011, Fagen, XRG and Notch Butte entered into a second Limited Notice to Proceed (the “Notch Butte LNTP #2). *Id.* at Ex. C. Pursuant to the Notch Butte LNTP #2, XRG and Notch Butte authorized Fagen to proceed with additional “[w]ork at the Notch Butte Project Site so the Notch Butte Project construction may progress.” *Id.* at Ex. C, 1. The Notch Butte LNTP #2 provides in relevant part:

Scope of Work. [Fagen] shall perform:

- A. Engineer, procure and install site roads, crane pads, turbine erection areas and permits as required;
- B. Engineer, procure and install turbine foundations complete for the site;
- C. Engineer, procure and install underground collection system, turbine conduit and grounding; and
- D. Engineer, procure and install SCADA building foundation and building.

* * *

Acknowledgment. XRG acknowledges and agrees that XRG and Notch Butte Wind Park, LLC, an Idaho limited liability company (“Notch Butte”) is hereby authorized to pay any amounts due to [Fagen] pursuant to this LNTP #2, and Owner [Notch Butte] and XRG covenant that neither Party will contest or otherwise dispute any such payments.

Id. at Ex. C, ¶¶1, 4.

D. The August 9, 2011, Jack Ranch Limited Notice to Proceed.²

On August 9, 2011, Fagen, XRG and Jack Ranch Wind Farm, LLC (“Jack Ranch”) entered into a Limited Notice to Proceed (“Jack Ranch LNTP #1). *Id.* at Ex. D. Pursuant to the Jack Ranch LNTP #1, XRG and Jack Ranch authorized Fagen to proceed with a “portion of the

² Again, Fagen and XRG collectively referred to the Rogerson Flats Wind Farm, Salmon Creek Wind Farm, Cottonwood Wind Farm and Deep Creek Wind Farm as the “Jack Ranch Wind Farm.” Bormann Aff., ¶6.

Work at the Jack Ranch Project Site so the Jack Ranch Project construction may progress.” *Id.*

The Jack Ranch LNTP #1 provides in relevant part:

Scope of Work. [Fagen] shall perform up to Fifty Three (53) soil borings at the Jack Ranch Project Site, which shall include one (1) soil boring at each turbine location (for a total of 48), and four (4) soil borings at the meteorological tower location and one (1) boring at the substation. XRG shall provide the soil boring locations to [Fagen] prior to beginning the Work. The soil borings referenced above are more specifically set forth in Appendix #1 to this LNTP. The detailed services and Schedule of work to be provided by [Fagen] associated with the above described Scope of Work are more specifically set forth in Appendix #2 to this LNTP.

Id. at Ex. D, ¶ 1.

E. The October 9, 2011, Jack Ranch Limited Notice to Proceed.

On October 9, 2011, Fagen, XRG, Cottonwood, Deep Creek, Rogerson Flats and Salmon Creek entered into a Limited Notice to Proceed #2 (“Jack Ranch LNTP #2). *Id.* at Ex. E. Pursuant to the Jack Ranch LNTP #2, XRG, Cottonwood, Deep Creek, Rogerson Flats and Salmon Creek authorized Fagen to proceed with a portion “of the Work at the Jack Ranch Project Site so the Jack Ranch Project construction may progress.” *Id.* The Jack Ranch LNTP #2 provides in relevant part:

Scope of Work. [Fagen] shall perform the following Work for the Jack Ranch Project pursuant to the terms of this LNTP #2:

- A. Surveying, engineering, and installation of all Project Site Roads;
- B. Secure Twin Falls County Building Permits for Wind Turbine structures;
- C. Engineering of the Project Site underground and overhead electrical collection systems, including the substation; and
- D. Engineer, procure, blasting and installation of the Turbine Foundations, based on the Owner’s use of a Gamesa 2.0 – 90m Turbine, and installation of the grounding and pvc conduit for the foundation installation.

Id. at Ex. E, ¶ 1.

F. The December 14, 2011, Jack Ranch Limited Notice to Proceed.

On December 14, 2011, Fagen, XRG, Cottonwood, Deep Creek, Rogerson Flats and Salmon Creek entered into a Limited Notice to Proceed #3 (“Jack Ranch LNTP #3”). *Id.* at Ex. E. Pursuant to the Jack Ranch LNTP #3, XRG acknowledged the Jack Ranch LNTP #1 and #2 and authorized Fagen to proceed “with a portion of the Work . . . on the Cottonwood Wind Park, Salmon Creek Wind Park, Deep Creek Wind Park, and Rogerson Flats Wind Park Project Sites.”

Id. at Ex. F, 1. The LNTP #3 provides in relevant part:

Scope of Work.

- A. Issue a purchase order (P.O.) and make a down payment of \$116,500.00 for the purchase of the 345 kV generator step-up transformer from the HICO America, located in Pittsburg, PA.
- B. Engineer, procure, blast/crush and install site roads, crane pads, turbine erection areas and permits as required.
- C. Engineer, procure and install turbine foundations complete for the site.
- D. Engineer, procure and install underground collection system, turbine conduit and grounding.
- E. Engineer, procure and install SCADA building formation and building.
- F. Engineer, procure and install substation equipment and overhead collection system.
- G. Engineering of the Project Site underground and overhead electrical collection systems, including the substation; and
- H. Engineer, procure, blasting and installation of the Turbine Foundations, based on the Owner’s use of a Gamesa 2.0 – 78m Turbine, and installation of the grounding and pvc conduit for the foundation installation.

Id.

G. The December 20, 2011, Amended and Restated Memorandum of Understanding.

On December 20, 2011, Fagen, XRG, and XRG on behalf of its project companies, including Notch Butte, Cottonwood, Deep Creek, Salmon Creek and Rogerson Flats, entered into an Amended and Restated Memorandum of Understanding (the “Amended MOU”). *Id.* at Ex. G. The Amended MOU provides:

WHEREAS, Fagen is a construction company engaged in the business of building industrial facilities, including wind power production facilities, and has made secured loans to XRG on behalf of and in connection with certain of the XRG Projects and the XRG Project Company (collectively, the “Loans”).

* * *

WHEREAS, XRG desires that Fagen be the EPC/BOP³ Contractor for all XRG Projects and XRG Project Companies and Fagen desires to be the EPC/BOP Contractor for the XRG Projects and XRG Projects Companies.

* * *

III. Fagen shall provide a lump sum price to XRG for the Idaho Six Winds Project (the “Lump Sum Price”) no later than December 16, 2011 and the Lump Sum Price shall be included in the EPC/BOP Contract for the Idaho Six Winds Project, which is to be prepared as contemplated in Section VI below. The Lump Sum Price shall reflect the Idaho Six Winds Project’s overall scope of work, bulk material pricing, current labor market rates and the Idaho Six Winds Project scheduling requirements. The Lump Sum Price shall be binding upon the Parties. XRG will continue to have the obligation to obtain the land and land leases, the right to use and control the XRG Project Sites, all applicable permits and approvals, power purchase agreements and interconnection agreements, the wind turbine generators and utilize Fagen’s Lump Sum Price to pursue and obtain project financing for the XRG Projects, which may be debt, equity, or any other type of financing (or combination of financing methods then available).

Id. at Ex. G, 1-2, ¶ III.

H. The Balance of Plant Engineering, Procurement and Construction Services Agreement for the Exergy Six Winds Wind Park.

On December 31, 2011, XRG and Fagen entered into a Balance of Plant Engineering, Procurement and Construction Services Agreement for the Exergy Idaho Six Winds Wind Park (the “EPC Contract”). *Id.* at Ex. H. The EPC Contract relates to the Project Site, which includes

³ “EPC” stands for Engineering, Procurement and Construction; “BOP” stands for Balance of Plant.

the five wind farms at issue in this litigation and an additional wind farm referred to as Lava Beds. *Id.* at Ex. H, 9.⁴

The relevant provisions of the EPC Contract are set forth below.

(1) The Contract Price and the Schedules of Value For the Five Wind Farms.

Pursuant to Section 13.1, XRG agreed to pay Fagen \$51,148,644.00 (the “Contract Price”) for the work performed on the Project Site. *Id.* at Ex. H, § 13.1. Exhibit I to the EPC Contract sets forth the Schedule of Values, which allocated the Contract Price among the individual projects. *Id.* With respect to the Contract Price, the parties agreed that a portion of the Contract Price would be allocated among the five wind farms as follows:

(1)	Notch Butte Wind Farm:	\$ 7,247,835.08
(2)	Cottonwood Wind Farm:	\$ 9,044,881.75
(3)	Deep Creek Wind Farm:	\$ 9,255,759.75
(4)	Salmon Creek Wind Farm:	\$ 9,255,759.75
(5)	Rogerson Flats Wind Farm:	\$ 9,044,881.75

Id. at ¶ 19; Ex. H, Ex. I [Schedule of Values].

The Schedule of Value for the Notch Butte Wind Farm includes all of the work authorized in the Notch Butte LNTP #1 and #2, plus additional work Fagen was to perform under certain conditions set forth in the EPC Contract. Affidavit of Samuel Ewald (“Ewald Aff.”), ¶ 20. The Schedules of Value for the Cottonwood Wind Farm, Deep Creek Wind Farm, Salmon Creek Wind Farm and the Rogerson Flats Wind Farm include all of the work authorized

⁴ Project Site “means in the singular, the site of the High Voltage Substation and each and any of the following six (6) wind generation project sites referred to as or named (a) Cottonwood, (b) Rogerson Flats, (c) Salmon Creek, (d) Deep Creek, (e) Lava Beds, and (f) Notch Butte.” Bormann Aff., Ex. H, 9.

by the Jack Ranch LNTP #1, #2 and #3, plus additional work that Fagen was to perform under certain conditions set forth in the EPC Contract. *Id.* at ¶ 21.

(2) The Notice to Proceed.

In addition to the work authorized by the Notch Butte LNTP #1 and #2 and the Jack Ranch LNTP #1, #2 and #3, Fagen was to perform additional work set forth in the EPC Contract upon the Commencement Date, which is the date on which XRG gave Fagen the Notice to Proceed. Bormann Aff., Ex. H, § 3.1(a).⁵ Although the EPC Contract did not require XRG to give the Notice to Proceed, XRG remained liable for payment of the work authorized by the Notch Butte LNTP #1 and LNTP #2 and the Jack Ranch LNTP #1, #2 and #3. Specifically, Section 6.1 provides:

- (a) [Fagen] shall promptly commence the performance of the Work upon its receipt of the Notice to Proceed issued by [XRG]. The Parties agree that the Notice to Proceed shall only be valid if [XRG] presents therewith: (i) the certificate of insurance or policy of insurance evidencing insurance coverage for the All-Risk Builder's Risk insurance as required by Section 18.3.1; and (ii) evidence to [Fagen] the Project is financed in its entirety for 100% of the Contract Price.
- (b) [XRG] shall have no obligation to issue the Notice to Proceed and may do so at its option and discretion (subject to Section 6.1(c) and Section 13.2). Notwithstanding anything to the contrary in any Contract Document, [XRG] shall have no liability to [Fagen], and [Fagen] shall have no claim against [XRG], should [XRG] not issue the Notice to Proceed, *except to*

⁵ The EPC Contract contains the following definitions:

"Commencement Date" means the date of receipt by [Fagen] of the Notice to Proceed.

"Notice to Proceed" means a written notice issued by [XRG] to [Fagen] authorizing [Fagen] to begin the Work or such remaining portion of the Work *not previously authorized by a Limited Notice to Proceed*.

Bormann Aff., Ex. H, 3, 7 (emphasis in italics).

the extent of Payment for Work performed by [Fagen] pursuant to any one or more Limited Notices to Proceed.

Ex. H, § 6.1 (emphasis in italics). Ultimately, XRG never gave the Notice to Proceed, but as established below, Fagen performed work under the Notch Butte LNTP #1 and LNTP #2 and the Jack Ranch LNTP #1, #2 and #3, for which it never received payment.

3. Fagen Performs, But Receives No Payment.

A. Fagen's Team and the Work Performed Under the Notch Butte LNTP #1 and #2 and Jack Ranch LNTP #1, #2 and #3.

Pursuant to Section 4.2 of the EPC Contract, Fagen designated Bradley Bormann as Fagen's Project Manager. *Id.* at Ex. H, § 4.2; Bormann Aff., ¶ 17. As the Project Manager, Bormann oversaw the work performed by Fagen at the five wind farms. *Id.* at ¶ 20. Samuel Ewald, Fagen's Vice President of Estimating, assisted Bormann in scheduling and arranging for the necessary equipment, supplies and subcontractors to be on site at the five wind farms. Ewald Aff., ¶¶ 3, 22. Ewald also prepared the Schedule of Values for the EPC Contract, which determined the Contract Price. *Id.* at ¶¶ 17-21.

Fagen began work on the five wind farms in December 2011, and worked with number of subcontractors, including : (a) Kaneaster Construction; (b) Riedesel Engineering, Inc.; (c) Valley Wide Cooperative; (d) Sargent & Lundy LLC; (e) Western States Equipment Company; (f) Nix Excavating, Inc. and (f) Consulting Engineers Group. Bormann Aff., ¶¶ 23-24. The work Fagen performed included mobilizing the necessary staff and equipment, soil testing, foundational work, building access roads, and managing the work at the five wind farms as the general contractor. *Id.* at ¶ 23. All of the work performed or supplied by Fagen for the benefit of the Notch Butte Wind Park was within the scope of work authorized by the Notch Butte LNTP #1 and #2. *Id.* at ¶ 26; Ewald Aff., ¶ 24. Likewise, all of the work performed or supplied by Fagen

for the benefit of the Rogerson Flats Wind Farm, Salmon Creek Wind Farm, Cottonwood Wind Farm and Deep Creek Wind Farm was within the scope of work authorized by the Jack Ranch LNTP #1, #2 and #3. Bormann Aff., ¶¶ 27-30; Ewald Aff., ¶¶ 25-28.

As the Project Manager for the five wind farms, Bormann regularly communicated with Dustin Shively, XRG’s Energy System Engineer, and Elizabeth Woolstenhulme, another XRG employee. Bormann Aff., ¶33. Shively and Woolstenhulme never informed Bormann that XRG had any concerns about the quality or the scope of work Fagen performed at the five wind farms.

Id.

B. Fagen’s Applications for Payment; No Objections to Work Performed or Amount Invoiced.

In accordance with the EPC Contract, Fagen submitted monthly Applications and Certificates for Payment (the “Applications”). Specifically, Fagen provided XRG with seven Applications and invoiced XRG the following amounts for the five wind farms:

Rogerson Flats Wind Farm

<u>Exhibit</u>	<u>Application</u>	<u>Amount</u>
<u>Exhibit A:</u>	Application, dated December 27, 2011	\$398,603.75
<u>Exhibit B:</u>	Application, dated February 3, 2012	\$ 88,359.58
<u>Exhibit C:</u>	Application, dated March 16, 2012	\$ 19,114.00
<u>Exhibit D:</u>	Application, dated April 25, 2012	\$220,281.78
<u>Exhibit E:</u>	Application, dated May 25, 2012	\$420,708.40
<u>Exhibit F:</u>	Application, dated June 29, 2012	\$168,438.62
<u>Exhibit G:</u>	Application, dated July 27, 2012	<u>\$ 97,268.68</u>
	Total:	\$1,412,774.81

Cottonwood Wind Farm

<u>Exhibit A:</u>	Application, dated December 27, 2011	\$398,603.75
<u>Exhibit B:</u>	Application, dated February 3, 2012	\$ 88,359.58
<u>Exhibit C:</u>	Application, dated March 16, 2012	\$ 19,114.00
<u>Exhibit D:</u>	Application, dated April 25, 2012	\$220,281.78
<u>Exhibit E:</u>	Application, dated May 25, 2012	\$420,708.40
<u>Exhibit F:</u>	Application, dated June 29, 2012	\$168,438.59
<u>Exhibit G:</u>	Application, dated July 27, 2012	<u>\$ 97,268.71</u>
	Total:	\$1,412,774.81

Salmon Creek Wind Farm

<u>Exhibit A:</u>	Application, dated December 27, 2011	\$398,603.75
<u>Exhibit B:</u>	Application, dated February 3, 2012	\$ 88,359.58
<u>Exhibit C:</u>	Application, dated March 16, 2012	\$ 19,114.00
<u>Exhibit D:</u>	Application, dated April 25, 2012	\$220,281.78
<u>Exhibit E:</u>	Application, dated May 25, 2012	\$420,708.40
<u>Exhibit F:</u>	Application, dated June 29, 2012	\$168,438.59
<u>Exhibit G:</u>	Application, dated July 27, 2012	<u>\$ 97,268.71</u>
	Total:	\$1,412,774.81

Deep Creek Wind Farm

<u>Exhibit A:</u>	Application, dated December 27, 2011	\$398,603.75
<u>Exhibit B:</u>	Application, dated February 3, 2012	\$ 88,359.56
<u>Exhibit C:</u>	Application, dated March 16, 2012	\$ 19,114.00
<u>Exhibit D:</u>	Application, dated April 25, 2012	\$220,281.79
<u>Exhibit E:</u>	Application, dated May 25, 2012	\$420,708.38
<u>Exhibit F:</u>	Application, dated June 29, 2012	\$168,438.60
<u>Exhibit G:</u>	Application, dated July 27, 2012	<u>\$ 97,268.71</u>
	Total:	\$1,412,774.79

Notch Butte Wind Farm

<u>Exhibit A:</u>	Application, dated December 27, 2011	\$335,249.00
<u>Exhibit B:</u>	Application, dated February 3, 2012	\$192,204.00
<u>Exhibit C:</u>	Application, dated March 16, 2012	\$ 43,826.90
<u>Exhibit D:</u>	Application, dated April 25, 2012	\$ 17,937.90
<u>Exhibit E:</u>	Application, dated May 25, 2012	\$118,216.70
<u>Exhibit F:</u>	Application, dated June 29, 2012	\$ 74,288.85
<u>Exhibit G:</u>	Application, dated July 27, 2012	<u>\$ 74,288.85</u>
	Total:	\$856,012.20

Affidavit of Lori Anderson (“Anderson Aff.”), ¶ 4, Exs. A-G. The Applications reflect the value of the labor, materials and services Fagen provided under the applicable LNTP and the amount of the Applications are consistent with the Schedule of Values assigned to each of the five wind farms in the EPC Contract. Ewald Aff., ¶¶ 23-28; Bormann Aff., ¶¶ 26-30.⁶

⁶ The principal amount owed for the Rogerson Flats Wind Farm, Salmon Creek Wind Farm, Cottonwood Wind Farm and Deep Creek Wind Farm are the same, or virtually the same, because the Scope of Work was similar for each wind farm under the Jack Ranch LNTP #1, #2 and #3, and the Schedule of Values in the EPC Contract for each wind farm were similar. Ewald Aff., ¶ 29; Bormann Aff., ¶ 31.

XRG, Notch Butte, Rogerson Flats, Salmon Creek, Cottonwood and Deep Creek never objected to or questioned the amounts invoiced in the Applications. Anderson Aff., ¶ 7, Affidavit of Kirsten Tjosaas (“Tjosaas Aff.”), ¶ 5. But, Fagen never received any payment for the amounts set forth in the Applications. Anderson Aff., ¶6; Tjosaas Aff., ¶ 4.

C. XRG Orders Fagen to Stop Work on the EPC Contract.

On July 30, 2012, James Carkulis,⁷ on XRG’s behalf, ordered Fagen to “cease further construction on the . . . Cottonwood Wind Park, Rogerson Flats Wind Park, Salmon Creek Wind Park, Deep Creek Wind Park [and] Notch Butte Wind Park.” Affidavit of Jennifer Johnson (“Johnson Aff.”), Ex. A. The “cease work” instruction from XRG was based on regulatory issues involving the Idaho Public Utilities Commission and FERC, not any issues relating to Fagen’s work. *Id.* XRG never authorized Fagen to proceed with any additional work, and as a result of the stop work order, Fagen ceased work at the five wind farms. *Id.* at ¶ 4.

4. Additional Amount XRG Owes for Work at Cat Creek.

XRG also requested that Fagen perform work a “possible” future site called Cat Creek. *Id.* at ¶ 5, Ex. B. Specifically, Fagen agreed to perform 2 – Geotech borings for \$7,963.75. *Id.* at Ex. B. Fagen performed the work and invoiced XRG for the work. *Id.* at ¶ 5, Ex. B. XRG never paid. *Id.* at ¶ 5.

SUMMARY JUDGMENT STANDARD

Under I.R.C.P. 56(c), “summary judgment is proper if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *ParkWest Homes, LLC v. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013). The nonmoving

⁷ Carkulis is XRG’s President. *See* Bormann Aff., Ex. H (signature page).

party cannot rest upon mere speculation and must submit more than just conclusory assertions that an issue of material facts exists to withstand summary judgment. *Cantwell v. City of Boise*, 146 Idaho 127, 133, 191 P.3d 205, 211 (2008). A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact. *Finholt v. Crestor*, 143 Idaho 894, 896, 155 P.3d 695, 697 (2007).

ARGUMENT

I. THE UNDISPUTED MATERIAL FACTS ESTABLISH THAT FAGEN IS ENTITLED TO SUMMARY JUDGMENT ON ITS BREACH OF CONTRACT CLAIM.

The undisputed material facts establish that Fagen is entitled to summary judgment on its breach of contract claim. “The elements for a claim for breach of contract are: (a) the existence of the contract, (b) the breach of the contract, (c) the breach caused damages, and (d) the amount of those damages.” *Mosell Equities, LLC v. Berryhill & Co., Inc.*, 154 Idaho 269, 279, 297 P.3d 232, 242 (2013).

First, XRG, Notch Butte, Rogerson Flats, Cottonwood, Salmon Creek and Deep Creek cannot dispute the existence of a contract between the parties. Fagen has provided the Court with copies of the executed Notch Butte LNTP #1 and #2, the Jack Ranch LNTP #1, #2 and #3 and the EPC Contract. Bormann Aff., Ex. B-F, H. Similarly, Fagen provided the Court with a copy of the executed letter agreement regarding the work at Cat Creek. Johnson Aff., Ex. B.

Second, it is undisputed that that XRG, Notch Butte, Rogerson Flats, Cottonwood, Salmon Creek and Deep Creek breached the parties’ contracts by failing to pay Fagen. Tjosaas Aff., ¶ 4; Anderson Aff., ¶ 6; Johnson Aff., ¶ 5. Although it never issued the Notice to Proceed, the EPC Contract expressly provides that XRG remained liable “to the extent of Payment for

Work performed by [Fagen] pursuant to any one or more Limited Notices to Proceed.” Bormann Aff., Ex. H, § 6.1(b).

Finally, the amounts owed for the five wind farms are undisputed. Anderson Aff., ¶4, Ex. A-G. The Applications reflect the value of the labor, materials and services Fagen provided under the applicable LNTP and the amount of the Applications are consistent with the Schedule of Values assigned to each of the five wind farms in the EPC Contract. Ewald Aff., ¶¶ 23-28; Bormann Aff., ¶¶ 26-30. XRG never disputed or questioned the scope of Fagen’s work, the quality of Fagen’s work or the amounts Fagen invoiced. Bormann Aff., ¶ 33; Anderson Aff., ¶ 7; Tjosaas Aff., ¶ 5. Most telling, when it ordered Fagen to stop work, XRG made no mention of any complaint it had regarding the amount invoiced or the quality of Fagen’s work. Johnson Aff., Ex. A. Similarly, XRG cannot dispute the amount it agreed to pay for the work at the Cat Creek site. *Id.* at Ex. B.

Accordingly, the undisputed facts establish that Fagen is entitled to summary judgment on its breach of contract claims and requests that the Court enter the following monetary judgments:

1. XRG and Rogerson Flats, jointly and severally, in the principal amount of \$1,412,774.81;
2. XRG and Cottonwood, jointly and severally, in the principal amount of \$1,412,774.81;
3. XRG and Salmon Creek, jointly and severally, in the principal amount of \$1,412,774.81;
4. XRG and Deep Creek, jointly and severally, in the principal amount of \$1,412,774.79;
5. XRG and Notch Butte, jointly and severally, in the principal amount of \$856,012.20; and

6. XRG in the principal amount of \$7,963.75 for the work at the Cat Creek site.

CONCLUSION

Based on the foregoing, Fagen respectfully requests that the Court grant Fagen's Motion for Summary Judgment in its entirety.

DATED this 30th day of July, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: John R. Goodell
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of July, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
Attorney at Law
P.O. Box 1605
Boise, ID 83701
*Attorney for Exergy Development Group of
Idaho, L.L.C.; XRG Development Partners,
LLC; and Lava Beds Wind Park, LLC*

- U.S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 801-415-1773
- Email arosa@rosa-lp.com

John R. Goodell
JOHN R. GOODELL

ORIGINAL

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 JUL 30 PM 3:30

BY _____ CLERK
DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576

CV-2013-26

**PLAINTIFF FAGEN, INC.'S
MOTIONS FOR SUMMARY
JUDGMENT**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and hereby moves the Court for entry of summary judgment on its *claim for breach of contract only*, against Defendants Rogerson Flats Wind Park, LLC, Cottonwood Wind Park, LLC, Salmon Creek Wind Park, LLC, Deep Creek Wind Park, LLC, Notch Butte Wind Park, LLC, *in each of their respective cases*; and also against Defendant Exergy Development Group of Idaho,

LLC (“Exergy”), in *all five (5) cases*, because there is no genuine issue of material fact, and Plaintiff is entitled to judgment as a matter of law, pursuant to I.R.C.P. 56(a).

This Motion is made on the following grounds and reasons:

1. This case consolidates five (5) separate suits for failed wind park developments involving Exergy and each of the wind park entities, four (4) of which are located in south Twin Falls County,¹ and one (1) of which is located in Lincoln County.² There were five (5) of a total of six (6) wind parks to be built in Idaho.³
2. Exergy and each of the respective wind parks entered separate written contracts for each wind park with Fagen to supply engineering, construction, and procurement services for the wind parks (“Work”). The terms of the contracts for each of the respective wind parks are undisputed.
3. Exergy and each of the respective wind parks authorized Fagen to commence work under various Limited Notices to Proceed (“LNTP”), which are themselves contractual.
4. Fagen continued to work for several months until instructed to cease by Exergy.
5. At the time Exergy notified and instructed Fagen to cease Work, Exergy and the wind parks had never stated any complaint regarding Fagen’s Work.
6. Exergy and the wind parks never paid Fagen for the latter’s Work performed.

¹They are: Rogerson Flats Wind Park, Cottonwood Wind Park, Salmon Creek Wind Park, and Deep Creek Wind Park.

²It is Notch Butte Wind Park.

³ The sixth wind park is known as Lava Beds Wind Park. It was to be built in Bingham County. A similar case is pending there before the Hon. Darren B. Simpson, District Judge, entitled *Fagen, Inc. v. Lava Beds Wind Park, LLC, Exergy Development Group of Idaho, LLC, et al.*, Case No. CV-2013-261. Fagen’s motion for summary judgment therein heard, argued, and taken under advisement pending decision on Friday, July 25, 2014.

7. Fagen brought separate actions, now consolidated, for breach of contract for non-payment of work performed.⁴
8. The written contract and terms, breach, and amount unpaid and owing, are fully documented and undisputed as set forth in the Affidavits and attached Exhibits filed herewith in support of this Motion.
9. The elements of a breach of contract action under Idaho law are well settled and outlined in Fagen's Memorandum In Support of Summary Judgment filed herewith.
10. Fagen elects to pursue its breach of contract claim only herein at this time.⁵

RECORD RELIED ON

Fagen relies on the entire pleadings and Court's file herein and following additional pleadings and documents filed herewith:

- A. Affidavit of Bradley Bormann;
- B. Affidavit of Samuel Ewald;
- C. Affidavit of Lori Anderson;
- D. Affidavit of Kirsten Tjosass
- E. Affidavit of Jennifer Johnson;
- F. Fagen, Inc.'s Memorandum of Law In Support of Motion for Summary Judgment.

ORAL ARGUMENT REQUESTED.

⁴ Fagen originally also filed mechanic's lien claims against landowners named as Defendants, who have been dismissed with prejudice by prior order.

⁵ Fagen also elects to withdraw its mechanic's lien claims against the remaining Defendants now and hereby gives the Court and Defendants notice of such withdrawal here. Fagen also elects to withdraw all its claims against Defendant XRG Development Partners, LLC now and hereby gives the Court and said Defendant notice of such withdrawal here.

DATED this 30th day of July, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED


By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of July, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
Attorney at Law
P.O. Box 1605
Boise, ID 83701
*Attorney for Exergy Development Group of
Idaho, LLC; XRG Development Partners,
LLC; and Lava Beds Wind Park, LLC*

U.S. Mail
Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile 801-415-1773
 Email arosa@rosa-lp.com


JOHN R. GOODELL

JUL 30 2014

By _____ 3:40 PM
Clerk
Deputy Clerk

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

Attorneys for Plaintiff Fagen, Inc.

ORIGINAL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,
Plaintiff,
vs.
ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, L.L.C., NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",
Defendants.

Consolidated Cases Nos.:
CV 2013-573 (Rogerson Flats WP), et al.

**AFFIDAVIT OF SAMUEL EWALD
IN SUPPORT OF FAGEN, INC.'S
MOTION FOR SUMMARY
JUDGMENT**

STATE OF MINNESOTA)
)ss.
COUNTY OF YELLOW MEDICINE)

SAMUEL EWALD, being first duly sworn upon oath, deposes and states as follows:

1. My name is Samuel Ewald. I am currently employed by Plaintiff Fagen, Inc. ("Fagen") and have worked for Fagen for approximately thirteen (13) years.

2. I am a United States citizen, and my permanent residence is located in Minnesota. I am over the age of 18 years and competent to testify regarding the facts and matters stated herein, which are based on my personal knowledge and/or Fagen's regular business records.
3. At all times relevant herein, I was employed by Fagen as the Vice President of Estimating. As Vice President of Estimating, my responsibilities include reviewing the scope of work Fagen will perform under a potential contract and determining the amount Fagen will bid on the contract or the amount Fagen will agree to perform such work. I help set the contract price.
4. In 2011, I was responsible for preparing the contract price for a construction project involving six wind farms. The construction project was commonly known as the Exergy Idaho Six Winds Wind Parks (the "Project"). The Project involved the planning and construction of six wind farms.
5. Fagen and Exergy Development Group of Idaho, L.L.C. ("XRG") referred to the individual six wind farms as the (1) Lava Beds Wind Farm; (2) Notch Butte Wind Farm; (3) Rogerson Flats Wind Farm; (4) Salmon Creek Wind Farm; (5) Cottonwood Wind Farm; and (6) Deep Creek Wind Farm.
6. Fagen and XRG also collectively referred to the Rogerson Flats Wind Farm, Salmon Creek Wind Farm, Cottonwood Wind Park and the Deep Creek Wind Park as the "Jack Ranch Wind Park."
7. I have reviewed the Affidavit of Bradley Bormann ("Bormann Affidavit"). The Bormann Affidavit contains the following exhibits:

Exhibit A Memorandum of Understanding, dated June 15, 2011 (the "June 2011 MOU");

- Exhibit B Limited Notice to Proceed, dated July 25, 2011 (the “Notch Butte LNTP #1);
- Exhibit C Limited Notice to Proceed, dated December 14, 2011 (the “Notch Butte LNTP #2);
- Exhibit D Limited Notice to Proceed, dated August 9, 2011 (the “Jack Ranch LNTP #1);
- Exhibit E Limited Notice to Proceed, dated October 9, 2011 (the “Jack Ranch LNTP #2);
- Exhibit F Limited Notice to Proceed, dated December 14, 2011 (the “Jack Ranch LNTP #3);
- Exhibit G Amended and Restated Memorandum of Understanding, dated December 20, 2011 (“December 2011 MOU”); and
- Exhibit H Balance of Plant Engineering, Procurement and Construction Services Agreement for the Exergy Idaho Six Winds Wind Park, dated December 31, 2011 (the “EPC Contract”).

8. I am familiar with the terms and provisions of the Exhibits attached to the Bormann Affidavit.

9. Pursuant to the Notch Butte LNTP #1, Fagen was authorized to proceed with the Scope of Work identified in Paragraph 1:

Scope of Work. [Fagen] shall perform up to fifteen (15) soil borings at the Notch Butte Project Site, which shall include one (1) soil boring at each turbine location (for a total of 11), one (1) soil boring at the meteorological tower location, and (3) borings on the road connecting the two string lines. XRG shall provide the soil boring locations to [Fagen] prior to beginning the Work. The soil borings referenced above are more specifically set forth in Appendix #1 to this LNTP. The detailed services and Schedule of work to be performed by [Fagen] associated with the above described Scope of Work are more specifically set forth in Appendix #2 to this LNTP.

10. Pursuant to the Notch Butte LNTP #2, Fagen was authorized to proceed with the Scope of Work identified in Paragraph 1:

Scope of Work. [Fagen] shall perform:

- A. Engineer, procure and install site roads, crane pads, turbine erection areas and permits as required;
- B. Engineer, procure and install turbine foundations complete for the site;
- C. Engineer, procure and install underground collection system, turbine conduit and grounding; and
- D. Engineer, procure and install SCADA building foundation and building.

11. Pursuant to the Jack Ranch LNTP #1, Fagen was authorized to proceed with the Scope of

Work identified in Paragraph 1:

Scope of Work. [Fagen] shall perform up to Fifty Three (53) soil borings at the Jack Ranch Project Site, which shall include one (1) soil boring at each turbine location (for a total of 48), and four (4) soil borings at the meteorological tower location and one (1) boring at the substation. XRG shall provide the soil boring locations to [Fagen] prior to beginning the Work. The soil borings referenced above are more specifically set forth in Appendix #1 to this LNTP. The detailed services and Schedule of work to be provided by [Fagen] associated with the above described Scope of Work are more specifically set forth in Appendix #2 to this LNTP.

12. Pursuant to the Jack Ranch LNTP #2, Fagen was authorized to proceed with the Scope of

Work identified in Paragraph 1:

Scope of Work. [Fagen] shall perform the following Work for the Jack Ranch Project pursuant to the terms of this LNTP #2:

- A. Surveying, engineering, and installation of all Project Site Roads;
- B. Secure Twin Falls County Building Permits for Wind Turbine structures;
- C. Engineering of the Project Site underground and overhead electrical collection systems, including the substation; and
- D. Engineer, procure, blasting and installation of the Turbine Foundations, based on the Owner's use of a Gamesa 2.0 – 90m Turbine, and installation of the grounding and pvc conduit for the foundation installation.

13. Pursuant to the Jack Ranch LNTP #3, Fagen was authorized to proceed with the Scope of

Work identified in Paragraph 1:

Scope of Work.

- A. Issue a purchase order (P.O.) and make a down payment of \$116,500.00 for the purchase of the 345 kV generator step-up transformer from the HICO America, located in Pittsburg, PA.
- B. Engineer, procure, blast/crush and install site roads, crane pads, turbine erection areas and permits as required.
- C. Engineer, procure and install turbine foundations complete for the site.
- D. Engineer, procure and install underground collection system, turbine conduit and grounding.
- E. Engineer, procure and install SCADA building formation and building.
- F. Engineer, procure and install substation equipment and overhead collection system.

- G. Engineering of the Project Site underground and overhead electrical collection systems, including the substation; and
- H. Engineer, procure, blasting and installation of the Turbine Foundations, based on the Owner's use of a Gamesa 2.0 – 78m Turbine, and installation of the grounding and pvc conduit for the foundation installation.

14. The EPC Contract relates to the overall Project, including the five wind farms at issue in this case, namely: (1) Notch Butte Wind Farm; (2) Rogerson Flats Wind Farm; (3) Salmon Creek Wind Farm; (4) Cottonwood Wind Farm; and (5) Deep Creek Wind Farm.

15. As set forth in Section 13.1 of the EPC Contract, XRG agreed to pay Fagen \$51,148,644.00 (the "Contract Price").

16. Section 13.1 of the EPC Contract further provides: "Attached hereto as Exhibit I is Contractor's "Schedule of Values," allocating the entire Contract Price among the various portions of work. The Schedule of Values shall be used as a basis for reviewing and approving Contractor's Applications for Payment."

17. I was primarily responsible for preparing the Schedules of Values. I prepared a separate Schedule of Value for each of the six wind farms included in the Project.

18. With respect to the Contract Price, Fagen and XRG agreed that a portion of the Contract Price would be allocated among the five wind farms at issue in this case as follows.

(A)	Notch Butte Wind Farm:	\$ 7,247,835.08
(B)	Cottonwood Wind Farm:	\$ 9,044,881.75
(C)	Deep Creek Wind Farm:	\$ 9,255,759.75
(D)	Salmon Creek Wind Farm:	\$ 9,255,759.75
(E)	Rogerson Flats Wind Farm:	\$ 9,044,881.75

19. Prior to preparing the Schedule of Value for each of the five wind farms, I reviewed the Notch Butte LNTP #1 and #2, the Jack Ranch LNTP #1, #2 and #3, and a draft of the EPC Contract.

20. The Schedule of Value for the Notch Butte Wind Farm includes all of the work authorized by the Notch Butte LNTP #1 and LNTP #2, and additional work that Fagen was to perform under certain conditions set forth in the EPC Contract.
21. The Schedules of Value for the Cottonwood Wind Farm, the Deep Creek Wind Farm, the Salmon Creek Wind Farm and the Rogerson Flats Wind Farm include all of the work authorized by the Jack Ranch LNTP #1, #2 and #3, and additional work that Fagen was to perform under certain conditions set forth in the EPC Contract.
22. I also worked with Brad Bormann, Fagen's Project Manager, and others at Fagen, on scheduling for the work performed at the five wind farms at issue in this case. The scheduling involved arranging for the necessary equipment, supplies, and subcontractors to be on site to perform work at each of the five wind farms. As a result, I have personal knowledge regarding the timing and scope of work performed at the five wind farms at issue in this case.
23. I have reviewed the Affidavit of Lori Anderson, and the Exhibits attached to her Affidavit. The Exhibits contain copies of Fagen's Applications and Certificates for Payment (the "Applications") for the five wind farms at issue in this case.
24. The principal amount owed under the Applications for the Notch Butte Wind Farm is \$856,012.20. The amount due and owing represents the value of the labor, materials and services supplied by Fagen to the Notch Butte Wind Farm. All of the amounts invoiced are for labor, materials and services supplied within the Scope of Work authorized by the Notch Butte LNTP #1 and LNTP #2. The amounts invoiced in the Applications are also consistent with the Schedule of Value I prepared for the Notch Butte Wind Farm.


25. The principal amount owed under the Applications for the Rogerson Flats Wind Farm is \$1,412,774.81. The amount due and owing represents the value of the labor, materials and services supplied by Fagen to the Rogerson Flats Wind Farm. All of the amounts invoiced are for labor, materials and services supplied within the Scope of Work authorized by the Jack Ranch LNTP #1, #2 and #3. The amounts invoiced in the Applications are also consistent with the Schedule of Value I prepared for the Rogerson Flats Wind Farm.
26. The principal amount owed under the Applications for the Salmon Creek Wind Farm is \$1,412,774.81. The amount due and owing represents the value of the labor, materials and services supplied by Fagen to the Salmon Creek Wind Farm. All of the amounts invoiced are for labor, materials and services supplied within the Scope of Work authorized by the Jack Ranch LNTP #1, #2 and #3. The amounts invoiced in the Applications are also consistent with the Schedule of Value I prepared for the Salmon Creek Wind Farm.
27. The principal amount owed under the Applications for the Cottonwood Wind Farm is \$1,412,774.81. The amount due and owing represents the value of the labor, materials and services supplied by Fagen to the Cottonwood Wind Farm. All of the amounts invoiced are for labor, materials and services supplied within the Scope of Work authorized by the Jack Ranch LNTP #1, #2 and #3. The amounts invoiced in the Applications are also consistent with the Schedule of Value I prepared for the Cottonwood Wind Farm.
28. The principal amount owed under the Applications for the Deep Creek Wind Farm is \$1,412,774.79. The amount due and owing represents the value of the labor, materials

and services supplied by Fagen to the Deep Creek Wind Farm. All of the amounts invoiced are for labor, materials and services supplied within the Scope of Work authorized by the Jack Ranch LNTP #1, #2 and #3. The amounts invoiced in the Applications are also consistent with the Schedule of Value I prepared for the Deep Creek Wind Farm.

29. The principal amount owed for the Rogerson Flats Wind Farm, Salmon Creek Wind Farm, Cottonwood Wind Farm and Deep Creek Wind Farm are the same or virtually the same because the Scope of Work was very similar for each wind farm under the Jack Ranch LNTP #1, #2 and #3. Similarly, the Schedule of Values in the EPC Contract for each wind farm were the same or virtually the same.


FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 29 day of July 2014.

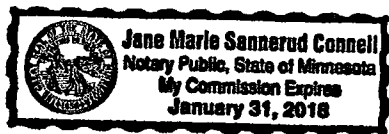


Samuel Ewald, Affiant

SUBSCRIBED AND SWORN TO before me this 29 day of July 2014.



Notary Public



John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

JUL 30 2014
By [Signature] 3:40 PM
Clerk
Deputy Clerk

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

ORIGINAL

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, L.L.C., NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (Rogerson Flats WP), *et al.*

**AFFIDAVIT OF JENNIFER A.
JOHNSON IN SUPPORT OF
FAGEN, INC.'S MOTION FOR
SUMMARY JUDGMENT**

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF CODINGTON)

JENNIFER JOHNSON, being first duly sworn upon oath, deposes and states as follows:

1. My name is Jennifer Johnson. At all times relevant herein, I served as Fagen, Inc.'s ("Fagen") Chief Financial Officer.
2. I am a United States Citizen and my permanent residence is located in South Dakota. I am over the age of 18 years and competent to testify regarding the facts and matters

stated herein, which are based on my personal knowledge and/or Fagen's business records.

3. Attached as Exhibit A and incorporated by reference is a true and correct copy of an e-mail I received from James Carkulis on July 30, 2012.
4. In the e-mail, Mr. Carkulis states that "We will be submitting a Force Majeure letter to you later today." Fagen never received a Force Majeure letter or authorization to proceed with any additional work. As a result of the e-mail from Mr. Carkulis, Fagen ceased work on the projects commonly known as the (i) Rogerson Flats Wind Park; (ii) Cottonwood Wind Park; (iii) Salmon Creek Wind Park; (iv) Deep Creek Wind Park and (v) the Notch Butte Wind Park.
5. Defendant Exergy Development Group of Idaho, L.L.C. ("XRG") also requested that Fagen perform two Geotech borings at a possible future job site called Cat Creek. XRG and Fagen agreed that Fagen would perform this work for \$7,963.75. Attached as Exhibit B and incorporated by reference are true and correct copies of the agreement signed by Exergy and Fagen and an invoice from Fagen to Exergy for this work. XRG never paid Fagen for this work.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 29th day of July 2014.


Jennifer Johnson, Affiant

SUBSCRIBED AND SWORN TO before me this 29th day of July 2014.



Notary Public



EXHIBIT A

From: "James Carkulis" <jcarkulis@exergydevelopment.com>
To: <johnson@fageninc.com>, "Elizabeth Woolstenhulme" <Elizabeth@exergydevelopment.com>
Date: 07/30/2012 11:29 AM
Subject: Idaho Projects

Jennifer:

At this time, Exergy requests that Fagen, Inc. cease further construction on the set of Idaho Projects for Exergy Development Group of Idaho, LLC., including Cottonwood Wind Park, Rogerson Flats Wind Park, Salmon Creek Wind Park, Deep Creek Wind Park, Notch Butte Wind Park, and Lava Beds Wind Park.

This request is predicated on the reckless actions of both Idaho Power Company and the Idaho Public Utilities Commission in their unprecedented set of filings and support for issues well outside the dictates and mandates under our PURPA contracts. These issues, which affect Exergy's current contract docket include, but are not limited to ownership of RECs, discrimination on FERC mandated interconnection rules, and curtailment of electricity from the projects for economic reasons. Others have filed in support of our position include Simplot Company, Clearwater Paper, GE, and others.

These issues are now before the IPUC as well as FERC under our ownership position with Idaho Wind Partners. Amicus or intervening filings at the FERC level has even come from financial institutions for our positions. Exergy shall also be filing additional claims at the IPUC and then with FERC. If necessary and we feel not without precedent after legal review, we may be seeking a racketeering action at the federal level under RICO.

We shall be submitting a Force Majeure letter to you later today.

James

<ATT00002.jpg> James T Carkulis
802 W Barnock, 12th Floor Boise, ID 83702
Office: 208.336.8783 | Mobile: 408.459.3018
jcarkulis@exergydevelopment.com
www.exergydevelopment.com

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EXHIBIT B



501 West Hwy. 212, P.O. Box 159
Granite Falls, MN 56241
320-564-3324

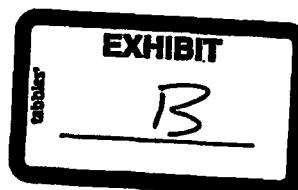
www.fageninc.com

Civil - Mechanical - Electrical Contractors

320-564-3278 fax

Dustin, per Exergy(Mr. Carkulis) request, Fagen Inc. is asked to perform 2 - Geotech borings at a possible future job site called Cat Creek located in Idaho. I talked to our CFO(Jennifer Johnson), she thought the best way to handle the billing for this Cat Creek Project is by T&M. I will set up a T&M job for this project, consisting of performing the two borings at staked locations for a cost of \$7,963.75. If you can print this email off & have it signed off by an officer of your company & returned, I can proceed with the above mentioned scope of work.

Two handwritten signatures are present. The first signature is written in dark ink and appears to be "A. C. G.". The second signature is written in a lighter ink and is more stylized, possibly reading "Reed".



Fagen Inc.
 PO Box 159
 501 West Highway 212
 Granite Falls, MN 56241
 (320) 564-3324

INVOICE

PAGE 1

BILL 2226
 TO Exergy Development Group
 of Idaho, LLC
 802 W. Bannock St. Flr 12
 Boise ID 83702

FOR: -
 LOC: Cat Creek, ID
 P.O.# -
 Job No 113026

Invoice Number: 30056
 Invoice Date: 03/21/2012

Geotechnical

LINE	REFERENCE/ INVOICE NO.	DESCRIPTION	SHIFT	UNITS	UM	RATE	AMOUNT	RETENTION	TICKET DATE
1		GEOTECH BORING/ENG. P.O.# 526429					6,925.00		10/11/2011

Total	6,925.00
MATERIAL	15.00%
RENTALS	15.00%
SUBS	15.00%
Net Amount	1,038.75

Invoice Desc:

Invoice Total

7,963.75

JUL 30 2014

By _____ 3:41 PM
Clerk
Deputy Clerk

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

Attorneys for Plaintiff Fagen, Inc.

ORIGINAL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,
Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, L.L.C., NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",
Defendants.

Consolidated Cases Nos.:
CV 2013-573 (Rogerson Flats WP), et al.

**AFFIDAVIT OF BRADLEY
BORMANN IN SUPPORT OF
FAGEN, INC.'S MOTION FOR
SUMMARY JUDGMENT**

STATE OF MINNESOTA)
)ss.
COUNTY OF YELLOW MEDICINE)

BRADLEY BORMANN, being first duly sworn upon oath, deposes and states as follows:

1. My name is Bradley Bormann. I am currently employed by Plaintiff Fagen, Inc. ("Fagen"), which is a family-owned business headquartered in Granite Falls, Minnesota.

2. At all times relevant herein, I was employed by Fagen as a Project Manager. I have been employed by Fagen for approximately twenty-one (21) years. I am a United States citizen, and my permanent residence is in Minnesota. I am over the age of 18 years and competent to testify regarding the facts and matters stated herein, which are based on my personal knowledge and/or Fagen's regular business records.
3. Fagen is one of the largest green energy design build construction contractors in the United States. As a large-scale industrial contractor, Fagen is a single-source for design, construction and all of the civil, structural, mechanical and electrical aspects of a construction project. Fagen has built biofuel plants, grain elevators, manufacturing plants, steel mills, wind power production facilities, and similar agricultural, energy and industrial facilities all across the county and internationally.
4. In 2011 and 2012, I served as Fagen's Project Manager for a construction project involving six wind farms. The construction project was commonly known as the Exergy Idaho Six Winds Wind Parks (the "Project"). The Project involved the planning and construction of six wind farm.
5. Fagen and Exergy Development Group of Idaho, L.L.C. ("XRG") referred to the individual six wind farms as the (1) Lava Beds Wind Farm; (2) Notch Butte Wind Farm; (3) Rogerson Flats Wind Farm; (4) Salmon Creek Wind Farm; (5) Cottonwood Wind Farm; and (6) Deep Creek Wind Farm.
6. Fagen and XRG also collectively referred to the Rogerson Flats Wind Farm, Salmon Creek Wind Farm, Cottonwood Wind Farm and the Deep Creed Wind Farm as the "Jack Ranch Wind Farm."

7. The Notch Butte Wind Farm is located in Lincoln County, Idaho, and the Jack Ranch Wind Farm is located in Twin Falls County, Idaho.
8. This litigation relates to the amounts Defendants XRG, Rogerson Flats Wind Park, LLC, Cottonwood Wind Park, LLC, Salmon Creek Wind Park, LLC, Deep Creek Wind Park, LLC and Notch Butte Wind Park, LLC failed to pay Fagen for the work performed on the Notch Butte Wind Farm and the Jack Ranch Wind Farm.
9. There is a separate lawsuit pending in Bingham County District Court, Court File No. CV 2013-261 relating to the failure of XRG and another Defendant to pay Fagen for the work performed at the Lava Beds Wind Farm.
10. Fagen, XRG and/or Rogerson Flats Wind Park, LLC, Cottonwood Wind Park, LLC, Salmon Creek Wind Park, LLC, Deep Creek Wind Park, LLC and Notch Butte Wind Park, LLC entered into a number of written contracts for the Notch Butte Wind Farm and the Jack Ranch Wind Farm:
 - A. Memorandum of Understanding, dated June 15, 2011 (the "June 2011 MOU");
 - B. Limited Notice to Proceed, dated July 25, 2011 (the "Notch Butte LNTP #1);
 - C. Limited Notice to Proceed, dated December 14, 2011 (the "Notch Butte LNTP #2);
 - D. Limited Notice to Proceed, dated August 9, 2011 (the "Jack Ranch LNTP #1);
 - E. Limited Notice to Proceed, dated October 9, 2011 (the "Jack Ranch LNTP #2);
 - F. Limited Notice to Proceed, dated December 14, 2011 (the "Jack Ranch LNTP #3);
 - G. Amended and Restated Memorandum of Understanding, dated December 20, 2011 ("December 2011 MOU"); and
 - H. Balance of Plant Engineering, Procurement and Construction Services Agreement for the Exergy Idaho Six Winds Wind Park, dated December 31, 2011 (the "EPC Contract").

Attached as Exhibits A-H are true and correct copies of the June 2011 MOU, Notch Butte LNTP #1 and #2, Jack Ranch LNTP #1, #2 and #3, the December 2011 MOU and the EPC Contract and the relevant exhibits to the EPC Contract.

Notch Butte Wind Farm

11. Pursuant to the Notch Butte LNTP #1, Fagen was authorized to proceed with the Scope of Work identified in Paragraph 1:

Scope of Work. [Fagen] shall perform up to fifteen (15) soil borings at the Notch Butte Project Site, which shall include one (1) soil boring at each turbine location (for a total of 11), one (1) soil boring at the meteorological tower location, and (3) borings on the road connecting the two string lines. XRG shall provide the soil boring locations to [Fagen] prior to beginning the Work. The soil borings referenced above are more specifically set forth in Appendix #1 to this LNTP. The detailed services and Schedule of work to be performed by [Fagen] associated with the above described Scope of Work are more specifically set forth in Appendix #2 to this LNTP.

12. Pursuant to the Notch Butte LNTP #2, Fagen was authorized to proceed with the Scope of Work identified in Paragraph 1:

Scope of Work. [Fagen] shall perform:

- A. Engineer, procure and install site roads, crane pads, turbine erection areas and permits as required;
- B. Engineer, procure and install turbine foundations complete for the site;
- C. Engineer, procure and install underground collection system, turbine conduit and grounding; and
- D. Engineer, procure and install SCADA building foundation and building.

Jack Ranch Wind Farm

13. Pursuant to the Jack Ranch LNTP #1, Fagen was authorized to proceed with the Scope of Work identified in Paragraph 1:

Scope of Work. [Fagen] shall perform up to Fifty Three (53) soil borings at the Jack Ranch Project Site, which shall include one (1) soil boring at each turbine location (for a total of 48), and four (4) soil borings at the meteorological tower location and one (1) boring at the substation. XRG shall provide the soil boring locations to [Fagen] prior to beginning the Work. The soil borings referenced above are more specifically set forth in Appendix #1 to this LNTP. The detailed services and Schedule of work to be provided by [Fagen] associated with the above described Scope of Work are more specifically set forth in Appendix #2 to this LNTP.

14. Pursuant to the Jack Ranch LNTP #2, Fagen was authorized to proceed with the Scope of Work identified in Paragraph 1:

Scope of Work. [Fagen] shall perform the following Work for the Jack Ranch Project pursuant to the terms of this LNTP #2:

- A. Surveying, engineering, and installation of all Project Site Roads;
- B. Secure Twin Falls County Building Permits for Wind Turbine structures;
- C. Engineering of the Project Site underground and overhead electrical collection systems, including the substation; and
- D. Engineer, procure, blasting and installation of the Turbine Foundations, based on the Owner's use of a Gamesa 2.0 – 90m Turbine, and installation of the grounding and pvc conduit for the foundation installation.

15. Pursuant to the Jack Ranch LNTP #3, Fagen was authorized to proceed with the Scope of Work identified in Paragraph 1:

Scope of Work.

- A. Issue a purchase order (P.O.) and make a down payment of \$116,500.00 for the purchase of the 345 kV generator step-up transformer from the HICO America, located in Pittsburg, PA.
- B. Engineer, procure, blast/crush and install site roads, crane pads, turbine erection areas and permits as required.
- C. Engineer, procure and install turbine foundations complete for the site.
- D. Engineer, procure and install underground collection system, turbine conduit and grounding.
- E. Engineer, procure and install SCADA building formation and building.
- F. Engineer, procure and install substation equipment and overhead collection system.
- G. Engineering of the Project Site underground and overhead electrical collection systems, including the substation; and
- H. Engineer, procure, blasting and installation of the Turbine Foundations, based on the Owner's use of a Gamesa 2.0 – 78m Turbine, and installation of the grounding and pvc conduit for the foundation installation.

The EPC Contract

16. The EPC Contract relates to the overall Project, which consists of the six farms.
17. Pursuant to Section 4.2 of the EPC Contract, Fagen identified me as the Project Manager.

18. As set forth in Section 13.1 of the EPC Contract, XRG agreed to pay Fagen \$51,148,644.00 (the "Contract Price") for the work performed by Fagen.

19. Section 13.1 of the EPC Contract further provides: "Attached hereto as Exhibit I is Contractor's "Schedule of Values," allocating the entire Contract Price among the various portions of work. The Schedule of Values shall be used as a basis for reviewing and approving Contractor's Applications for Payment." With respect to the Contract Price, Fagen and XRG agreed that a portion of the Contract Price would be allocated among the five wind farms at issue in this case as follows.

(A)	Notch Butte Wind Farm:	\$ 7,247,835.08
(B)	Cottonwood Wind Farm:	\$ 9,044,881.75
(C)	Deep Creek Wind Farm:	\$ 9,255,759.75
(D)	Salmon Creek Wind Farm:	\$ 9,255,759.75
(E)	Rogerson Flats Wind Farm:	\$ 9,044,881.75

20. As the Project Manager for these five wind farms, I have personal knowledge of the labor, materials and services Fagen provided for the benefit of the five wind farms.

21. All of the labor, materials and services Fagen provided for the benefit of the Notch Butte Wind Farm were within the Scope of Work authorized by the Notch Butte LNTP #1 and LNTP #2.

22. All of the labor, material and services Fagen provided for the benefit of the Cottonwood Wind Farm, Deep Creek Wind Farm, Salmon Creek Wind Farm and Rogerson Flats Wind Farm were with the Scope of Work authorized by the Jack Ranch LNTP #1, #2 and #3.

23. From December 2011 through July 2012, Fagen provided labor, material and services authorized by the Notch Butte LNTP #1 and #2 and the Jack Ranch LNTP #1, #2 and #3. The construction services provided by Fagen included soil testing, foundational work,

building access roads, mobilizing the necessary staff and equipment for each wind farm and managing each wind farm as the general contractor.

24. Fagen worked with a number of subcontractors on the Project and the five wind farms at issue in this case, including, without limitation: (a) Kaneaster Construction; (b) Riedesel Engineering, Inc.; (c) Valley Wide Cooperative; (d) Sargent & Lundy LLC; (e) Western States Equipment Company; (f) Nix Excavating, Inc. and (f) Consulting Engineers Group.
25. I have reviewed the Affidavit of Lori Anderson, and the copies of the Applications and Certificates for Payment (the "Applications") for the work performed by Fagen. The Applications accurately reflect the scope and timing of the work performed by Fagen or under Fagen's supervision for the Notch Butte Wind Farm, Rogerson Flats Wind Farm, Salmon Creek Wind Farm, Cottonwood Wind Farm, and Deep Creek Wind Farm.
26. The principal amount owed under the Applications for the Notch Butte Wind Farm is \$856,012.20. The amount due and owing represents the value of the labor, materials and services supplied by Fagen to the Notch Butte Wind Farm, which was all performed within the Scope of Work authorized by the Notch Butte LNTP #1 and LNTP #2.
27. The principal amount owed under the Applications for the Rogerson Flats Wind Farm is \$1,412,774.81. The amount due and owing represents the value of the labor, materials and services supplied by Fagen to the Rogerson Flats Wind Farm, which was all performed within the Scope of Work authorized by the Jack Ranch LNTP #1, #2 and #3.
28. The principal amount owed under the Applications for the Salmon Creek Wind Farm is \$1,412,774.81. The amount due and owing represents the value of the labor, materials

and services supplied by Fagen to the Salmon Creek Wind Farm, which was all performed within the Scope of Work authorized by the Jack Ranch LNTP #1, #2 and #3.

29. The principal amount owed under the Applications for the Cottonwood Wind Farm is \$1,412,774.81. The amount due and owing represents the value of the labor, materials and services supplied by Fagen to the Cottonwood Wind Farm, which was all performed within the Scope of Work authorized by the Jack Ranch LNTP #1, #2 and #3.
30. The principal amount owed under the Applications for the Deep Creek Wind Farm is \$1,412,774.79. The amount due and owing represents the value of the labor, materials and services supplied by Fagen to the Deep Creek Wind Farm, which was all performed within the Scope of Work authorized by the Jack Ranch LNTP #1, #2 and #3.
31. The principal amount owed for the Rogerson Flats Wind Farm, Salmon Creek Wind Farm, Cottonwood Wind Farm and Deep Creek Wind Farm are the same or virtually the same because the Scope of Work was very similar for each wind farm under the Jack Ranch LNTP #1, #2 and #3. Similarly, the Schedule of Values in the EPC Contract for each wind farm were the same or virtually the same.
32. XRG, Rogerson Flats Wind Park, LLC, Cottonwood Wind Park, LLC, Salmon Creek Wind Park, LLC, Deep Creek Wind Park, LLC and Notch Butte Wind Park, LLC never complained to me about the work performed on any of the wind farms, and they never provided Fagen, or me, with a notice regarding defective work under Section 4.22 of the EPC Contract.
33. I also regularly corresponded with Dustin Shively, who I understand is or was XRG's Energy Systems Engineer, and Elizabeth Woolstenhulme, who worked for XRG, regarding the status and scope of work for the Project, including the five wind farms at

issue in this case. Mr. Shively and Ms. Woolstenhulme never complained to me regarding the quality of work or the scope of work Fagen performed.

34. Fagen ceased work on the five wind farms at issue in this case in July 2012.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 29th day of July 2014.


Bradley Bormann, Affiant

SUBSCRIBED AND SWORN TO before me this 29th day of July 2014.



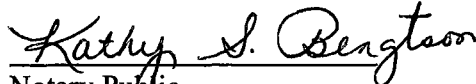

Notary Public

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding ("MOU") is made this 15th of day of June, 2011, by and between Exergy Development Group of Idaho, LLC ("XRG") for itself and on behalf of the XRG project companies for Big Blue ("Big Blue"), Lava Beds ("Lava Beds"), Notch Butte ("Notch Butte"), and Jack Ranch ("Jack Ranch"), and Fagen, Inc., a Minnesota corporation ("Fagen"). XRG and Fagen are sometimes referred to individually as a "Party" and collectively as "Parties". Big Blue, Lava Beds, Notch Butte, and Jack Ranch are sometimes referred to as the "Project Companies".

WHEREAS, XRG is in the business of developing clean-energy power production facilities, which among other projects includes the Big Blue wind farm consisting of 36 mega watts ("MW") of wind generated power using approximately twenty two (22) wind turbine generators, located near Blue Earth, Minnesota ("Big Blue Project"), and Lava Beds wind farm consisting of 18 MW of wind generated power using approximately eleven (11) wind turbine generators, located near Black Foote, Bingham County, Idaho ("Lava Beds Project"), and Notch Butte wind farm consisting of 18 MW of wind generated power using approximately eleven (11) wind turbine generators, located near Dietrich, Lincoln County, Idaho, and Jack Ranch wind farm consisting of 80 MW of wind generated power using approximately forty eight (48) wind turbine generators, located in Twin Falls County, Idaho (all of which may be referred to as the "Projects");

WHEREAS, Fagen is a construction company engaged in the in business of building industrial facilities, including wind power production facilities; and

WHEREAS, XRG desires Fagen to be the EPC Contractor for the Projects in addition to other Work as the Parties may agree; and

WHEREAS, the Parties desire to enter into this MOU in order to set forth their rights and responsibilities regarding Fagen's right to be the EPC Contractor for the Projects.

NOW, THEREFORE, in consideration for the promises and mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency thereof is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Exclusive Opportunity, Competitive Price and Good Faith Negotiations.** XRG requests that Fagen provide a price to engineer, procure, construct and install each Project (the "Price Request"). Following evaluation of the Pricing estimates for each Project, and provided the pricing is competitive to allow XRG to move forward with debt and equity financing, XRG agrees to award each Project to Fagen. The Parties agree to negotiate in good faith to complete the EPC Contracts for each Project.

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2. **Assignment of Obligations.** XRG agrees, in the event any or all of the Projects or Project Companies are divested, sold, transferred or otherwise conveyed to any person or entity prior to funding of the Project or Projects prior to the commencement of construction, prior to the execution of definitive EPC Agreements, or during the course of the execution of the Projects XRG shall assign its rights and responsibilities under this MOU to the successor to XRG's interests in the Projects, including the EPC Contracts and the assignment thereof shall be to such successor. The successors shall not be entitled to terminate Fagen for convenience at any time before execution of or while the EPC Contracts are in place. In the event XRG abandons any Project due to lack of funding or otherwise, Fagen shall have the first right to assume any such Project, including the Power Purchase Agreements, Interconnect Agreements, and applicable land leases, and XRG agrees to assign such agreements to Fagen, free and clear of all liens or encumbrances, which will allow Fagen to take over such abandoned Project or Projects.

3. **EPC Contract Negotiations.** XRG agrees to commence negotiations of the EPC Contracts with Fagen promptly upon execution of this Agreement.

4. **Representations and Warranties.** Each Party represents to the other that (i) it has full right, power and authority to execute and deliver this MOU, and to perform each and all of its obligations under this MOU (XRG for itself and on behalf of each project Company; and Fagen for itself); (ii) each entity is duly formed and validly existing under the laws of its state of its formation; and (iii) the performance of the obligations by each Party under this MOU will not violate any provision of any applicable law, its charter or bylaws or any indenture, agreement or instrument to which it is a party, or by which it may be bound.

5. **Modifications.** No modification or amendment to this MOU shall be binding upon the Parties unless reduced to writing and signed by the Parties. Each party shall appoint an individual who shall be that Party's designated contact person during negotiation of the EPC Agreement ("Designated Representative"). Any modification to this MOU shall not be valid without the approval of each Party's Designated Representative. XRG appoints James Carkulis as its Designated Representative. Fagen appoints Ron Fagen as its Designated Representative.

6. **Waiver.** The failure of either Party to enforce at any time any of the provisions of this MOU, or to require at any time performance by the other Party of any of the provisions hereof, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this MOU, or the right of either Party thereafter to enforce each and every provision.

7. **Governing Law.** This MOU shall be governed by and construed in accordance with the laws of the State of New York.

8. **Execution in Counterpart.** This Agreement may be executed in counterparts with the same effect as if all signing parties had signed the same document. This Agreement may be

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delivered by facsimile or electronic transmission and such copies shall be duly binding and effective for all purposes. Fax and electronic signatures on this Agreement shall be treated the same as original signatures.

IN WITNESS WHEREOF, XRG and Fagen have caused this Agreement to be executed in their respective names by persons duly authorized to do so on their behalf.

EXERGY DEVELOPMENT
GROUP OF IDAHO, LLC

FAGEN, INC.


By: _____

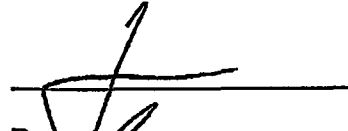

By: Ron Fagen, EVP

EXHIBIT B

LIMITED NOTICE TO PROCEED

THIS Limited Notice to Proceed ("LNTP") is entered into this 20th day of July, by Notch Butte Wind Park, LLC ("Owner") and Fagen, Inc., ("Contractor") pursuant to the terms and conditions of the Memorandum of Understanding, dated as of June 15, 2011 (the "MOU") existing between Exergy Development Group of Idaho, LLC ("XRG"), the parent of Owner, and Contractor (sometimes referred to individually as "Party" or collectively as "Parties").

WHEREAS, XRG and Contractor have entered into an MOU for Contractor to be the EPC Contractor on XRG's wind farm projects, which includes the Notch Butte Wind Park project, a wind farm consisting of 18 megawatts ("MW") of wind generated power using approximately eleven (11) wind turbine generators, (the "Notch Butte Project") located near Dietrich, Lincoln County, Idaho ("Notch Butte Project Site"); and

WHEREAS Owner and XRG are in pursuit of financing for the Notch Butte Project; and

WHEREAS, prior to Owner or XRG obtaining the financing for the Notch Butte Project, XRG, pursuant to this LNTP, authorizes Contractor to proceed with a portion of the Work at the Notch Butte Project Site so the Notch Butte Project construction may progress, until Owner finances the Project.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

XRG authorizes Contractor to proceed with a limited scope of Work upon execution of this LNTP. The purpose of this LNTP is to establish the scope of work, reimbursable work and expenses, and payment terms for the Work to be performed under this LNTP.

1. **Scope of Work.** Contractor shall perform up to fifteen (15) soil borings at the Notch Butte Project Site, which shall include one (1) soil boring at each turbine location (for a total of 11), one (1) soil boring at the meteorological tower location, and (3) borings on the road connecting the two string lines. XRG shall provide the soil boring locations to Contractor prior to beginning the Work. The soil borings referenced above are more specifically set forth in Appendix #1 to this LNTP. The detailed services and Schedule of work to be provided by Contractor associated with the above described Scope of Work are more specifically set forth in Appendix #2 to this LNTP.
2. **Payment Terms.** Contractor shall submit on a monthly basis to Owner, an invoice for any of the items of Work performed under the Scope of Work set forth in Section 1 above which are incurred by Fagen, Inc. All invoices submitted by Contractor to Owner under



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this LNTP, shall be paid within thirty (30) days of Owner's receipt of such invoice, unless otherwise agreed between the Parties.

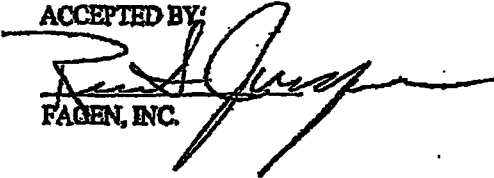
3. **Permission to Enter into the Notch Butte Project Site.** XRG warrants and represents that it has an agreement or agreements in place with the landowner(s) of the Notch Butte Project which give permission to and entitle Owner, XRG and the Contractor to enter onto the Notch Butte Project Site to conduct construction work, including the soil borings contemplated herein. The Schedule for soil boring activities is set forth in the Schedule, attached hereto as Appendix #2. XRG shall provide a notification to each landowner two weeks prior to the date Contractor is scheduled to begin the soil boring Work, so as to allow Contractor access to the Project Site.
4. **Acknowledgement.** XRG acknowledges and agrees that XRG and Notch Butte Wind Park, LLC, an Idaho limited liability company ("Notch Butte") are hereby authorized to pay any amounts due to Contractor pursuant to this LNTP, and Owner and XRG covenant that neither Party will contest or otherwise dispute any such payments.
5. **Documentation of Condition of the Land at the Turbine Locations.** Contractor shall take photos of the Turbine Locations prior to and after the soil boring Work is performed. XRG or Owner may use this information as part of their determination of crop damage at the Turbine Locations, if any. XRG or Owner is responsible for payment of any and all crop damages on the Project Site, regardless of whether such damages are caused by Contractor.

Any capitalized terms used but not defined herein shall have the same meaning as the terms of the MOU, to which this LNTP is a part thereof. All other terms and conditions of the MOU shall apply as if those terms were incorporated herein.

ACKNOWLEDGED AND ISSUED BY:

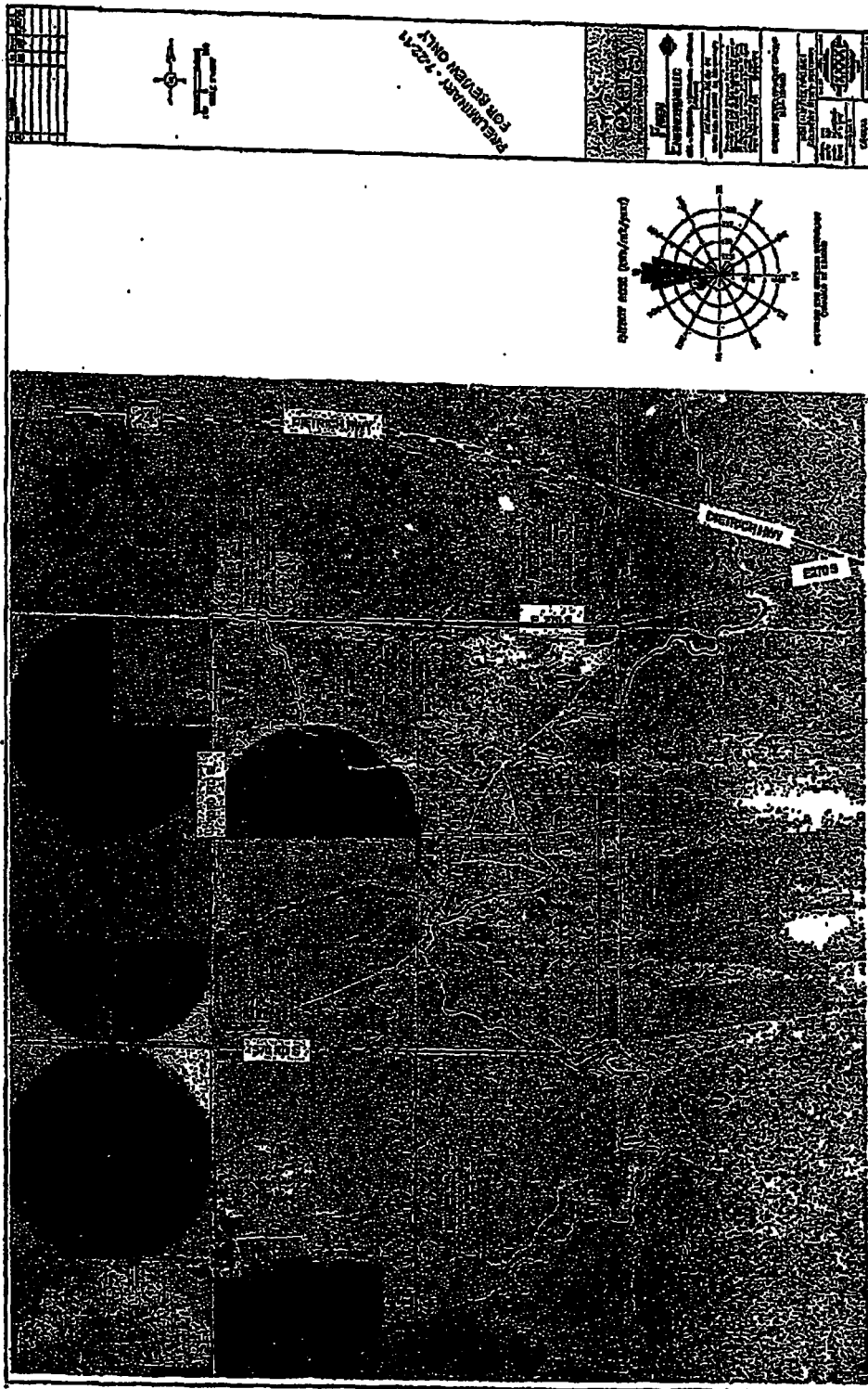

Energy Development Group of Idaho, LLC ("XRG")
and
Notch Butte Wind Park, LLC

ACCEPTED BY:


FAGEN, INC.

Appendix #1 for XRG - Notch Butte

Boring Location	# of Borings Required
T1	1 ea
T2	1 ea
T3	1 ea
T4	1 ea
T5	1 ea
T6	1 ea
T7	1 ea
T8	1 ea
T9	1 ea
T10	1 ea
T11	1 ea
Met Tower	1 ea
Road Way	3ea



FAGEN 0011

Appendix 2

B. SCOPE OF SERVICES

In general, the scope of services will include field work, laboratory testing, engineering analysis, and report preparation. Details of these tasks are provided below.

Field Work

Field work will consist of a combination of soil borings and geophysical testing as described in the following table.

ITEM DESCRIPTION

Turbines

Borings - We will drill a boring at each of the 11 WTGs. We propose to drill borings to a maximum depth of 40 feet if rock is not encountered. If rock is encountered in a boring, coring techniques will be used to advance the boring at least 15 feet into rock, or to the maximum depth of 40 feet, whichever is less. Borings will have a minimum depth of 30 feet.

Geophysical Testing - At each of the 2 lines of WTGs, geophysical tests will be performed at a selected WTG (total of 2 tests for the entire project). Each of the following tests will be performed at the selected WTG sites:

P-wave survey (refraction)

S-wave survey (MASW)

Wenner resistivity test. The spacing for these tests will consist of 0.5, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 20, 30, 40, 50, 60, 70, 80, 90, and 100 feet. Tests will be performed in one direction only (i.e., north to south or east to west, but not both).

Access Roads

Borings - Information from the borings for the turbines will be used in assessing roadway aggregate section thicknesses. In addition, we propose to drill 3 borings to a depth of about 5 feet for the roadway that connects the two lines of turbines.

MET Tower and

SCADA Building

MET Tower - We will drill one boring at the MET tower location. The boring will extend to a maximum depth of 40 feet if rock is not encountered. If rock is encountered, coring techniques will be used to advance the boring at least 15 feet into rock, or to a maximum depth of 30 feet, whichever is less.

SCADA Building - We will drill one boring to a maximum depth of 20 feet or 5 feet into rock, whichever is less.

A staff engineer or geologist will log the borings and collect soil samples for laboratory testing. Soil samples will be obtained using standard penetration test samplers or thin-walled Shelby tube samplers. Rock core will be obtained using HQ or NQ sized diamond-bit core barrel methods. Soil samples obtained from the drilling process will be stored in moisture tight containers, and sent to our laboratory for further analyses. Our scope of work does not include sampling, testing, and/or disposing of regulated environmental contaminants, if encountered. Borings will be backfilled with cuttings or in general accordance with the State of Idaho Department of Water Resources guidelines if groundwater is encountered. Remaining cuttings from the borings will be scattered on site. Backfilled borings can settle over time and may need to have additional soil placed in them. No future maintenance or filling of the holes beyond initial backfilling upon completion of the borings is included in our scope of work or fee. Some

damage to the ground surface will result from the drilling operations, such as rutting of soft or wet soils and crushing of vegetation. We will attempt to reduce such damage, but no restoration other than backfilling the borings is included.

We understand that borings locations may or may not be staked prior to our field work. Consequently, we have provided two options below:

Use of hand held GPS – If boring locations are not staked at the time of notice to proceed, Geotech Engineer will use a recreational-grade GPS to determine the approximate turbine locations based on coordinates provided by Fagen. We note that the accuracy of these devices can vary by tens of feet depending on satellite reception and other factors. If more accuracy is needed, we request that boring locations be staked by a surveyor prior to the commencement of our field work. If borings are not staked, we will make a separate trip to the site to mark locations for utility clearance purposes.

Borings Staked by Surveyor – If boring locations are staked by others at the time of notice to proceed, Geotech Engineer will use the existing stakes as markers for our utility clearance purposes and no separate trip to the site would be required. Geotech Engineer will contact the Idaho one-call service Digline to locate public utilities for the borings. It should be noted that Digline requires a minimum of 48 hours to locate utilities. We have assumed subcontracting with a private utility locator will not be required for this project.

Assumptions – We have made the following assumptions. If these are incorrect, we will need to modify our cost estimate.

- Permission to access and drill on the sites will be obtained by others prior to the commencement of our field work.
- If a soil layer is encountered below the upper rock layer (as described above), we may advance the borings deeper (maximum depth of 40 feet) to explore the extent of the underlying soil layer. Such additional drilling will be invoiced at the unit rate shown on the attached Compensation Summary.
- Field work will be performed under a single drill rig mobilization.
- Water for coring operations can be obtained from nearby canals at no cost to Terracon. Any permission required to use this water will be obtained by others.
- All boring locations (turbines, SCADA building, MET tower, and access road) will be accessible at the time of notice to proceed. All coordinates for these items will be given at the time of notice to proceed.
- Truck-mounted drill rigs and water trucks will be able to access the site. No clearing of vegetation or earthwork will be necessary or such work will be performed by others prior to our mobilization.
- Cuts and fills for site grading and access road grading will generally be less than about 3 feet.
- Work can occur on weekdays and weekends.
- A single drill rig will be mobilized to perform field explorations.

Turbines will be supported on inverted tee, mat foundations:

Loading information for WTGs, the SCADA building, and the MET tower will be provided to Terracon at the time of notice to proceed. Traffic and crane loading information will also be provided to Terracon at that time.

Our estimate assumes that the field exploration can be performed without the need for personal protective equipment for hazardous materials. If evidence of contamination is encountered in any of the borings, the exploration at that location will be terminated and our findings discussed with you. Should personal protective equipment or special borehole sealing procedures become necessary, our fee will be discussed with you prior to commencing further drilling.

Laboratory Testing

Soil samples collected in the field will be visually classified in general accordance with the Unified Soil Classification System (USCS). Laboratory testing will be conducted on representative samples to determine their engineering and physical properties. Tests may include moisture content, visual classification, gradation, Atterberg limits, consolidation/collapse, unconfined compression, Proctor, pH, resistivity, soluble sulfate and chloride, and thermal resistivity. The estimated quantity of these tests is shown on the attached Cost Estimate sheet.

Engineering Evaluation and Report Preparation

After completion of the field and laboratory testing programs, the data and conditions will be evaluated and a geotechnical report will be prepared. In general, the report will address:

- Description of soil conditions, site geology, and field exploration work,
- Description of seismicity of the region and assessment of liquefaction potential,
- Description of boring procedures and boring logs,
- Depths to groundwater, if encountered,
- Recommendations for soil bearing pressure,
- General recommendations for earthwork and site drainage,
 - Structural fill recommendations, including gradation and density to be used for backfill and compaction requirements.
 - Recommendations for site access road and crane pad aggregate sections.
 - Description of laboratory testing procedures and results of laboratory tests.
 - Recommendations for further study, if applicable.

Schedule

We understand a tentative notice to proceed dated of July 27, 2011 has been selected. Based on our understanding of the project and the above assumptions, we have provided and estimated schedule:

- Commencement of drilling - 1 week after borings have been staked.
- Completion of field work - 2 weeks after borings have been staked. Note that information regarding depth to rock can be provided daily during this time.
- Completion of final geotechnical report - 4 weeks after borings have been staked.

EXHIBIT C

LIMITED NOTICE TO PROCEED #2

THIS Limited Notice to Proceed Number Two ("LNTP#2") is entered into this 14th day of December 2011 by Notch Butte Wind Park, LLC ("Owner") and Fagen, Inc., ("Contractor") pursuant to the terms and conditions of the Memorandum of Understanding, dated as of June 15, 2011 (the "MOU") existing between Exergy Development Group of Idaho, LLC ("XRG"), the parent of Owner, and Contractor (sometimes referred to individually as "Party" or collectively as "Parties").

WHEREAS, XRG and Contractor have entered into an MOU for Contractor to be the EPC Contractor on XRG's wind farm projects, which includes the Notch Butte Wind Park project, a wind farm consisting of 18 mega watts ("MW") of wind generated power using approximately nine (9) wind turbine generators, (the "Notch Butte Project") located near District, Lincoln County, Idaho ("Notch Butte Project Site"); and

WHEREAS Owner and XRG are in pursuit of financing for the Notch Butte Project; and

WHEREAS, prior to Owner or XRG obtaining the financing for the Notch Butte Project, XRG, pursuant to this LNTP#2, authorizes Contractor to proceed with a portion of the Work at the Notch Butte Project Site so the Notch Butte Project construction may progress, until Owner finances the Project.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

XRG authorizes Contractor to proceed with a limited scope of Work upon execution of this LNTP#2. The purpose of this LNTP#2 is to establish the scope of work, reimbursable work and expenses, and payment terms for the Work to be performed under this LNTP#2.

1. Scope of Work. Contractor shall perform:
 - A. Engineer, procure and install site roads, crane pads, turbine erection areas and permits as required;
 - B. Engineer, procure and install turbine foundations complete for the site;
 - C. Engineer, procure and install underground collection system, turbine conduit and grounding; and
 - D. Engineer, procure and install SCADA building foundation and building.

The Scope of Work to be performed by Contractor under this LNTP#2 shall begin on December 19, 2011.



FAGEN 0035

2. **Payment Terms.** Contractor shall submit on a monthly basis to Owner, an invoice for any of the items of Work performed under the Scope of Work set forth in Section I above which are incurred by Fagen, Inc. All invoices submitted by Contractor to Owner under this LNTP#2, shall be paid within thirty (30) days of Owner's receipt of such invoice, unless otherwise agreed between the Parties.

3. **Permission to Enter into the Notch Butte Project Site.** XRG warrants and represents that it has an agreement or agreements in place with the landowner(s) of the Notch Butte Project which give permission to and entitle Owner, XRG and the Contractor to enter onto the Notch Butte Project Site to conduct all construction work necessary and as contemplated herein. XRG shall provide a notification to each landowner not later than December 16, 2011, so as to allow Contractor access to the Project Site on December 19, 2011. XRG shall also provide a memorandum to Contractor prior to Contractor entering the Project Site, stating Fagen, Inc. has permission to enter upon the lease premises for purposes of conducting soil borings and related construction activities.

4. **Acknowledgement.** XRG acknowledges and agrees that XRG and Notch Butte Wind Park, LLC, an Idaho limited liability company ("Notch Butte") is hereby authorized to pay any amounts due to Contractor pursuant to this LNTP#2, and Owner and XRG covenant that neither Party will contest or otherwise dispute any such payments.

Any capitalized terms used but not defined herein shall have the same meaning as the terms of the MOU, to which this LNTP#2 is a part thereof. All other terms and conditions of the MOU shall apply as if those terms were incorporated herein.

ACKNOWLEDGED AND ISSUED BY:


Energy Development Group of Idaho, LLC ("XRG")
and
Notch Butte Wind Park, LLC

ACCEPTED BY: 

FAGEN, INC. 

EXHIBIT D

LIMITED NOTICE TO PROCEED

THIS Limited Notice to Proceed ("LNTP") is entered into this 9th day of August, 2011 by Jack Ranch Wind Farm, LLC ("Owner") and Fagen, Inc., ("Contractor"), pursuant to the terms and conditions of the Memorandum of Understanding, dated as of June 15, 2011 (the "MOU") existing between Exergy Development Group of Idaho, LLC ("XRG"), the parent of Owner, and Contractor (sometimes referred to individually as "Party" or collectively as "Parties").

WHEREAS, XRG and Contractor have entered into an MOU for Contractor to be the EPC Contractor on XRG's wind farm projects, which includes the Jack Ranch Wind Farm project, a wind farm consisting of 80 mega watts ("MW") of wind generated power using approximately forty eight (48) wind turbine generators, (the "Jack Ranch Wind Farm Project") located near Twin Falls County, Idaho ("Jack Ranch Project Site"); and

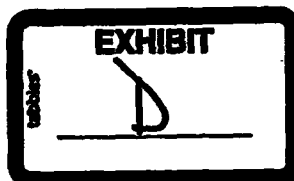
WHEREAS Owner and XRG are in pursuit of financing for the Jack Ranch Project; and

WHEREAS, prior to Owner or XRG obtaining the financing for the Jack Ranch Project, XRG, pursuant to this LNTP, authorizes Contractor to proceed with a portion of the Work at the Jack Ranch Project Site so the Jack Ranch Project construction may progress, until Owner finances the Project.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

XRG authorizes Contractor to proceed with a limited scope of Work upon execution of this LNTP. The purpose of this LNTP is to establish the scope of work, reimbursable work and expenses, and payment terms for the Work to be performed under this LNTP:

1. **Scope of Work.** Contractor shall perform up to Fifty Three (53) soil borings at the Jack Ranch Project Site, which shall include one (1) soil boring at each turbine location (for a total of 48), and four (4) soil boring at the meteorological tower location and one (1) boring at the substation. XRG shall provide the soil boring locations to Contractor prior to beginning the Work. The soil borings referenced above are more specifically set forth in Appendix #1 to this LNTP. The detailed services and Schedule of work to be provided by Contractor associated with the above described Scope of Work are more specifically set forth in Appendix #2 to this LNTP.
2. **Payment Terms.** Contractor shall submit on a monthly basis to Owner, an invoice for any of the items of Work performed under the Scope of Work set forth in Section 1 above which are incurred by Fagen, Inc. All invoices submitted by Contractor to Owner under



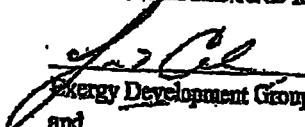
FAGEN 0023

this LNTP, shall be paid within thirty (30) days of Owner's receipt of such invoice, unless otherwise agreed between the Parties.


3. **Permission to Enter into the Jack Ranch Project Site.** XRG warrants and represents that it has an agreement or agreements in place with the landowner(s) of the Jack Ranch Project which give permission to and entitle Owner, XRG and the Contractor to enter onto the Jack Ranch Project Site to conduct construction work, including the soil borings contemplated herein. The Schedule for soil boring activities is set forth in the Schedule, attached hereto as Appendix #2. XRG shall provide a notification to each landowner two weeks prior to the date Contractor is scheduled to begin the soil boring Work, so as to allow Contractor access to the Project Site. XRG shall also provide a memorandum to Contractor prior to Contractor entering the Project Site, stating Fagen, Inc. has permission to enter upon the lease premises for purposes of conducting soil borings and related construction activities.
4. **Acknowledgement.** XRG acknowledges and agrees that XRG and Jack Ranch Wind Farm, LLC, an Idaho limited liability company ("Jack Ranch") are hereby authorized to pay any amounts due to Contractor pursuant to this LNTP, and Owner and XRG covenant that neither Party will contest or otherwise dispute any such payments.
5. **Documentation of Condition of the Land at the Turbine Locations.** Contractor shall take photos of the Turbine Locations prior to and after the soil boring Work is performed, XRG or Owner may use this information as part of their determination of crop damage at the Turbine Locations, if any. XRG or Owner is responsible for payment of any and all crop damages on the Project Site, regardless of whether such damages are caused by Contractor.

Any capitalized terms used but not defined herein shall have the same meaning as the terms of the MOU, to which this LNTP is a part thereof. All other terms and conditions of the MOU shall apply as if those terms were incorporated herein.

ACKNOWLEDGED AND ISSUED BY:


Energy Development Group of Idaho, LLC ("XRG")
and
Jack Ranch Wind Farm, LLC

ACCEPTED BY:


FAGEN, INC.

B. SCOPE OF SERVICES

In general, the scope of services will include field work, laboratory testing, engineering analysis, and report preparation. Details of these tasks are provided below.

Field Work

Field work will consist of a combination of soil borings and geophysical testing as described in the following table.

ITEM DESCRIPTION

Turbines

Borings - We will drill a boring at each of the 48 WTGs. We propose to drill borings to a maximum depth of 40 feet if rock is not encountered. If rock is encountered, borings will extend to a depth of at least 30 feet.

Geophysical Testing - At each of the four groups of WTGs, geophysical tests will be performed at two selected WTGs (total of 8 tests for the entire project). Each of the following tests will be performed at the selected WTG sites:

- P-wave survey (refraction)
- S-wave survey (MASW)
- Wenner resistivity test. The a-spacing for these tests will consist of 2, 5, 10, 20, 40, 60, and 100 feet. Tests will be performed in two orthogonal directions.

Access Roads

Borings - Information from the borings for the turbines will be used in assessing roadway aggregate section thicknesses. In addition, we propose to drill 12 borings to a depth of about 5 feet for the roadway that connects the two lines of turbines.

MET Towers

Borings - We will drill one boring at each of the 2 proposed MET tower locations. The borings will extend to a maximum depth of 40 feet if rock is not encountered. If rock is encountered, borings will extend to a depth of at least 30 feet.

Substation

Borings - We propose to drill three borings to a depth of about 30 feet for the substation.

Geophysical Testing - We propose to perform Wenner resistivity testing at the same spacing shown above.

Transmission Line

Borings - Because the length and layout of the transmission line has not been determined, we propose to drill a boring at the beginning and end of the line, one boring at each angle point, and additional borings between these (if needed) so that borings are spaced no more than two miles apart.

A staff engineer or geologist will log the borings and collect soil samples for laboratory testing. Soil samples will be obtained using standard penetration test samplers or thin-walled Shelby tube samplers. Rock core will be obtained using HQ or NQ sized diamond-bit core barrel methods. Soil samples obtained from the drilling process will be stored in moisture tight containers, and sent to our laboratory for further analyses. Our scope of work does not include sampling, testing, and/or disposing of regulated environmental contaminants, if encountered. Borings will be backfilled with cuttings or in general accordance with the State of Idaho

Department of Water Resources guidelines if groundwater is encountered. Remaining cuttings from the borings will be scattered on site. Backfilled borings can settle over time and may need to have additional soil placed in them. No future maintenance or filling of the holes beyond initial backfilling upon completion of the borings is included in our scope of work or fee. Some damage to the ground surface will result from the drilling operations, such as rutting of soft or wet soils and crushing of vegetation. We will attempt to reduce such damage, but no restoration other than backfilling the borings is included. We understand that boring locations will be staked by others prior to our field work. Geotech Engineer will use these stakes as markers for our utility clearance purposes. Geotech Engineer will contact the Idaho one-call service Digline to locate public utilities for the borings. It should be noted that Digline requires a minimum of 48 hours to locate utilities. We have assumed subcontracting with a private utility locator will not be required for this project.

Assumptions - We have made the following assumptions. If these are incorrect, we will need to modify our cost estimate.

- Permission to access and drill on the sites will be obtained by others prior to the commencement of our field work.
- If a soil layer is encountered below the upper rock layer (as described above), we may advance the borings deeper (maximum depth of 40 feet) to explore the extent of the underlying soil layer. Such additional drilling will be invoiced at the unit rate shown on the attached Compensation Summary.
- Field work will be performed under a single drill rig mobilization and will happen concurrently with the other two wind farms mentioned above.
- Water for coring operations can be obtained from nearby canals at no cost to Terracon. Any permission required to use this water will be obtained by others.
- All boring locations (turbines, MET towers, substation, access roads, and transmission line) will be accessible at the time of notice to proceed. All coordinates for these items will be given at the time of notice to proceed.
- Truck-mounted drill rigs and water trucks will be able to access the site. Clearing of vegetation will be performed by others prior to our mobilization.
- Cuts and fills for site grading and access road grading will generally be less than about 3 feet.
- Work can occur on weekdays and weekends.
- A single drill rig will be mobilized to perform field explorations.
- Turbines will be supported on inverted tee, mat foundations.
- Loading information for WTGs and the MET tower will be provided to Geotechnical Engineer at the time of notice to proceed. Traffic and crane loading information will also be provided to Geotechnical Engineer at that time. Our estimate assumes that the field exploration can be performed without the need for personal protective equipment for hazardous materials. If evidence of contamination is encountered in any of the borings, the exploration at that location will be terminated and our findings discussed with you. Should personal protective equipment or special borehole sealing procedures become necessary, our fee will be discussed with you prior to commencing further drilling.

Laboratory Testing

Soil samples collected in the field will be visually classified in general accordance with the Unified Soil Classification System (USCS). Laboratory testing will be conducted on representative samples to determine their engineering and physical properties. Tests may include moisture content, visual classification, gradation, Atterberg limits, consolidation/collapse, unconfined compression, Proctor, pH, resistivity, soluble sulfate and chloride, and thermal resistivity. The estimated quantity of these tests is shown on the attached Cost Estimate sheet.

Engineering Evaluation and Report Preparation

After completion of the field and laboratory testing programs, the data and conditions will be evaluated and a geotechnical report will be prepared. In general, the report will address:

- Description of soil conditions, site geology, and field exploration work,
- Description of seismicity of the region and assessment of liquefaction potential,
- Description of boring procedures and boring logs,
- Depths to groundwater, if encountered,
- Recommendations for soil bearing pressure,
- General recommendations for earthwork and site drainage,
- Structural fill recommendations, including gradation and density to be used for backfill and compaction requirements,
- Recommendations for site access road and crane pad aggregate sections,
- Description of laboratory testing procedures and results of laboratory tests,
- Recommendations for further study, if applicable.

Schedule

We understand work at the Jack Ranch wind farm will occur after the Notch Butte and Lava Beds wind farms have been drilled. Assuming that drilling begins on August 15, 2011 for Notch Butte, and August 18 for Lava Beds, we expect drilling will begin on the Jack Ranch site on August 22, 2011 and will continue until approximately September 8, 2011. We anticipate the final report for Jack Ranch would be available by October 1, 2011. Please let us know if you need us to revise this schedule to meet your needs.

Appendix #1 for XRG-Jack Ranch

Boing Location	# of Boings Required
DC1	1ea
DC2	1ea
DC3	1ea
DC5	1ea
DC4	1ea
CW9	1ea
CW8	1ea
CW1	1ea
CW2	1ea
DC8	1ea
DC9	1ea
CW3	1ea
CW4	1ea
CW6	1ea
CW5	1ea
RF1	1ea
RF4	1ea
CW11	1ea
CW12	1ea
CW10	1ea
RF5	1ea
RF2	1ea
RF3	1ea
RF6	1ea
DC6	1ea
DC10	1ea
DC11	1ea
DC7	1ea
DC12	1ea
CW7	1ea
RF11	1ea
RF10	1ea
SC8	1ea
SC5	1ea
SC6	1ea
SC7	1ea
SC10	1ea
SC9	1ea
SC12	1ea
SC11	1ea
RF7	1ea

RF8	1ea
RF9	1ea
RF12	1ea
SC2	1ea
SC1	1ea
SC4	1ea
SC3	1ea
Deep Creek Met Tower	1ea
Salmon Creek Met Tower	1ea
Rogerson Flats Met Tower	1ea
Cottonwood Met Tower	1ea
Substation	1ea

EXHIBIT E

LIMITED NOTICE TO PROCEED #2

THIS Limited Notice to Proceed ("LNTP#2") is entered into this 9 day of October, 2011 by Cottonwood Wind Park, LLC, Deep Creek Wind Park, LLC, Rogerson Flats Wind Park, LLC, and Salmon Creek Wind Park, LLC (which are collectively the "Owner" and are commonly known as Jack Ranch Complex) and Fagen, Inc., ("Contractor") pursuant to the terms and conditions of the Memorandum of Understanding, dated as of June 15, 2011 (the "MOU") existing between Exergy Development Group of Idaho, LLC ("XRG"), the parent of Owner, and Contractor (sometimes referred to individually as "Party" or collectively as "Parties").

WHEREAS, XRG and Contractor have entered into an MOU for Contractor to be the EPC Contractor on XRG's wind farm projects, which includes the Jack Ranch Wind Farm project, a wind farm consisting of 80 megawatts ("MW") of wind generated power using approximately forty (40) wind turbine generators, (the "Jack Ranch Wind Farm Project") located near Rogerson, Idaho ("Jack Ranch Project Site"); and

WHEREAS Owner and XRG are in pursuit of financing for the Jack Ranch Project; and

WHEREAS, prior to Owner or XRG obtaining the financing for the Jack Ranch Project, XRG, pursuant to this LNTP#2, authorizes Contractor to proceed with a portion of the Work at the Jack Ranch Project Site so the Jack Ranch Project construction may progress, concurrent with Owner's effort to secure Project financing.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

XRG authorizes Contractor to proceed with a limited scope of Work upon execution of this LNTP#2. The purpose of this LNTP#2 is to establish the scope of work, reimbursable work and expenses, and payment terms for the Work to be performed under this LNTP#2.

1. **Scope of Work.** Contractor shall perform the following Work for the Jack Ranch Project pursuant to the terms of this LNTP #2:
 - A. Surveying, engineering, and installation of all Project Site Roads;
 - B. Secure Twin Falls County Building Permits for Wind Turbine structures;
 - C. Engineering of the Project Site underground and overhead electrical collection systems, including the substation; and
 - D. Engineer, procure, blasting and installation of the Turbine Foundations, based on the Owner's use of a Gamesa 2.0 - 90m Turbine, and installation of the grounding and pvc conduit for the foundation installation.



FAGEN 0031

The Scope of Work to be performed by Contractor under this LNTP#2 shall begin on October 31, 2011.

2. **Payment Terms.** Contractor shall submit on a monthly basis to Owner, an invoice for any of the items of Work performed under the Scope of Work set forth in Section 1 above which are incurred by Fagen, Inc. All invoices submitted by Contractor to Owner under this LNTP#2, shall be paid within thirty (30) days of Owner's receipt of such invoice, unless otherwise agreed between the Parties.
3. **Permission to Enter into the Jack Ranch Project Site.** XRG warrants and represents that it has an agreement or agreements in place with the landowner(s) of the Jack Ranch Project which give permission to and entitle Owner, XRG and the Contractor to enter onto the Jack Ranch Project Site to conduct construction work, including the surveying, road installation, and foundation installation, including blasting. XRG shall provide a notification to each landowner prior to the date Contractor is scheduled to begin the Work contemplated herein, as to allow Contractor access to the Project Site. XRG shall also provide a memorandum to Contractor prior to Contractor entering the Project Site, stating Fagen, Inc. has permission to enter upon the lease premises for purposes of conducting soil borings and related construction activities.
4. **Acknowledgement.** XRG acknowledges and agrees that XRG and Jack Ranch Wind Farm, LLC, an Idaho limited liability company ("Jack Ranch") are hereby authorized to pay any amounts due to Contractor pursuant to this LNTP#2, and Owner and XRG covenant that neither Party will contest or otherwise dispute any such payments.
5. **Documentation of Condition of the Land at the Turbine Locations.** Contractor shall take photos of the Turbine Locations prior to and after the soil boring Work is performed. XRG or Owner may use this information as part of their determination of crop damage at the Turbine Locations, if any. XRG or Owner is responsible for payment of any and all crop damages on the Project Site, regardless of whether such damages are caused by Contractor.

Any capitalized terms used but not defined herein shall have the same meaning as the terms of the MOU, to which this LNTP#2 is a part thereof. All other terms and conditions of the MOU shall apply as if those terms were incorporated herein.

ACKNOWLEDGED AND ISSUED BY:

ACCEPTED BY:
FAGEN, INC.


Title:

Exergy Development Group of Idaho, LLC ("XRG")
and Jack Ranch Wind Farm, LLC

FAGEN 0032

EXHIBIT F

LIMITED NOTICE TO PROCEED #3

THIS Limited Notice to Proceed ("LNTP#3") is entered into this 14 day of December, 2011 by Energy Development Group of Idaho, LLC ("XRG"), and Fagen, Inc., ("Contractor") pursuant to the terms and conditions of the Memorandum of Understanding, dated as of June 15, 2011 (the "MOU") existing between XRG and Contractor (sometimes referred to individually as "Party" or collectively as "Parties").

WHEREAS, XRG and Contractor have entered into an MOU for Contractor to be the EPC Contractor on XRG's wind farm projects, which includes Jack Ranch Wind Park, LLC and the Jack Ranch Wind Park Project, a wind park consisting of 80 megawatts ("MW") of wind generated power using approximately forty (40) wind turbine generators (the "Jack Ranch Wind Farm Project"), located in Twin Falls County, Idaho; and

WHEREAS, XRG has recently re-named the Jack Ranch Wind Park Project to be the Idaho Six Winds Project ("Idaho Six Winds Project"); and

WHEREAS the Idaho Six Winds Project now includes the Lava Beds Wind Park (located in Blaine County, Idaho), Notch Butte Wind Park (located in Latah County, Idaho), and the leases, projects and project companies (formerly known as the Jack Ranch Wind Park Project) which is includes the following projects and project companies: Cottonwood Wind Park and Cottonwood Wind Park, LLC, Salmon Creek Wind Park and Salmon Creek Wind Park, LLC, Deep Creek Wind Park and Deep Creek Wind Park, LLC, and Rogerson Flats Wind Park and Rogerson Flats Wind Park, LLC, (all of which are located in Twin Falls County, Idaho).

WHEREAS, XRG is in pursuit of financing for the Idaho Six Winds Project; and

WHEREAS, prior to XRG obtaining the financing for the Idaho Six Winds Project, XRG issued and Contractor performed work under Jack Ranch LNTP #1, dated August 2, 2011 by and between the Parties ("Jack Ranch LNTP#1"), and XRG issued and Contractor performed Work under Jack Ranch LNTP #2, dated October 9, 2011 by and between the Parties ("Jack Ranch LNTP #2"), and XRG, pursuant to this LNTP #3 for the Idaho Six Winds Project, authorizes Contractor to proceed with a portion of the Work for the Idaho Six Winds Project on the Cottonwood Wind Park, Salmon Creek Wind Park, Deep Creek Wind Park, and Rogerson Flats Wind Park Project Sites, so the engineering, procurement, and construction of the Idaho Six Winds Project may progress, until Owner finances or sells the Project.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:



FAGEN 0037

XRG authorizes Contractor to proceed with the scope of work as set forth below, upon execution of this LNTP. The purpose of this LNTP#3 is to establish the scope of work, reimbursable work and expenses, and payment terms for the Work to be performed by the Contractor under this LNTP#3.

1. Scope of Work.

- A. Issue a purchase order (P.O.) and make a down payment of \$116,500.00 for the purchase of the 345 kV generator step-up transformer from the HICO America, located in Pittsburg, PA.
- B. Engineer, procure, blast/crush and install site roads, crane pads, turbine erection areas and permits as required.
- C. Engineer, procure and install turbine foundations complete for the site.
- D. Engineer, procure and install underground collection system, turbine conduit and grounding.
- E. Engineer, procure and install SCADA building foundation and building.
- F. Engineer, procure and install substation equipment and overhead collection system.
- G. Engineering of the Project Site underground and overhead electrical collection systems, including the substation; and
- H. Engineer, procure, blasting and installation of the Turbine Foundations, based on the Owner's use of a Gamesa 2.0 - 78m Turbine, and installation of the grounding and pvc conduit for the foundation installation.

The Scope of Work to be performed by Contractor under this LNTP#3 shall begin on December 19, 2011.

- 2. **Payment Terms.** Contractor shall submit on a monthly basis to Owner, an invoice for any of the items of Work performed under the Scope of Work set forth in Section 1 above which are incurred by Fagen, Inc. All invoices submitted by Contractor to Owner under this LNTP#3, shall be paid within thirty (30) days of Owner's receipt of such invoice, unless otherwise agreed between the Parties.
- 3. **Permission to Enter into the Idaho Six Winds Project and Cottonwood Wind Park, Salmon Creek Wind Park, Deep Creek Wind Park, and Rogerson Flats Wind Park Project Sites.** XRG warrants and represents that it has an agreement or agreements in place with the landowner(s) of the Cottonwood Wind Park, Salmon Creek Wind Park, Deep Creek Wind Park, and Rogerson Flats Wind Park Project Sites which give permission to and entitle XRG and the Contractor to enter onto the Cottonwood Wind Park, Salmon Creek Wind Park, Deep Creek Wind Park, and Rogerson Flats Wind Park Project Sites to conduct construction work, including the surveying, road installation, and foundation installation, blasting, and all other construction work necessary

to complete the Work as set forth herein. XRG shall provide a notification to each landowner prior to the date Contractor is scheduled to begin the Work contemplated herein, as to allow Contractor access to each Project Site. XRG shall also provide a memorandum to Contractor prior to Contractor entering the Project Site, stating Fagen, Inc. has permission to enter upon the lease premises for purposes of performing all construction activities.

4. **Acknowledgement.** XRG acknowledges and agrees that XRG is hereby authorized to pay any amounts due to Contractor pursuant to the terms of this LNTP#3, and XRG covenants that it shall make timely payment for work performed and shall not contest or otherwise dispute any such payments.
5. Any capitalized terms used but not defined herein shall have the same meaning as the terms of the MOU, to which this LNTP#3 is a part thereof. All other terms and conditions of the MOU shall apply as if those terms were incorporated herein.

ACKNOWLEDGED AND ISSUED BY:

ACCEPTED BY:
FAGEN, INC.


James Carulis

Title:

Energy Development Group of Idaho, LLC ("XRG"),
and as owner and Managing Member of:
Idaho Six Winds Project comprised of:
Jack Ranch Wind Farm, LLC;
Cottonwood Wind Park, LLC;
Salmon Creek Wind Park, LLC;
Deep Creek Wind Park, LLC;
Rogerson Flats Wind Park, LLC;
Lava Beds Wind Park, LLC; and
Notch Butte Wind Park, LLC

James Carulis

FAGEN 0039

EXHIBIT G

AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING

THIS Amended and Restated Memorandum of Understanding ("Amended and Restated MOU") is made this 20th day of December, 2011, by and between Exergy Development Group of Idaho, L.L.C. (XRG) for itself and on behalf of the XRG Project Companies listed in Section I below and Fagen, Inc., a Minnesota corporation (Fagen), as the EPC/BOP Contractor (as hereinafter defined) for the XRG Projects listed in Section I below. XRG and Fagen are sometimes referred to individually as a "Party" and collectively as "Parties."

WHEREAS, XRG is in the business of developing clean-energy power production facilities, which among other projects include the XRG Projects and XRG Project Companies.

WHEREAS, Fagen is a construction company engaged in the business of building industrial facilities, including wind power production facilities, and has made secured loans to XRG on behalf of and in connection with certain of the XRG Projects and the XRG Project Companies (collectively, the "Loans").

WHEREAS, XRG and Fagen have entered into that certain Balance of Plant Engineering, Procurement and Construction Services Agreement, dated as of September 30, 2011, for the wind farm commonly known as the "Big Blue Wind Farm" by and between Big Blue Wind Farm, LLC, a Minnesota limited liability company, and Fagen for the engineering, procurement and construction services of the Big Blue Project (as hereinafter defined) ("Big Blue EPC Contract"), pursuant to which Fagen is currently performing its obligations on behalf of XRG and the Big Blue Project; and

WHEREAS, XRG and Fagen entered into the first limited notice to proceed, dated August 1, 2011, for Fagen's performance of geotechnical soil borings for turbine locations and the meteorological tower location on the Lava Beds Project (as hereinafter defined), pursuant to which Fagen performed and completed work on behalf of XRG and the Lava Beds Project; and

WHEREAS, XRG and Fagen entered into the first limited notice to proceed, dated July 25, 2011, for Fagen's performance of geotechnical soil borings for the turbine and meteorological tower locations for the Notch Butte Project (as hereinafter defined), pursuant to which Fagen performed and completed work on behalf of XRG and the Notch Butte Project; and

WHEREAS, XRG and Fagen entered into the first limited notice to proceed (Jack Ranch LNTP #1), dated August 2, 2011, for Fagen's performance of geotechnical soil borings for fifty three (53) turbine locations, four (4) meteorological tower locations, and a substation for the Idaho Six Winds Project (as hereinafter defined and previously identified as the Jack Ranch Project) pursuant to which Fagen performed and completed such work; and



FAGEN 0001

WHEREAS, Fagen has continued to perform additional work on the Jack Ranch Project for the surveying, engineering and installation of site roads, securing the Twin Falls County, Idaho building permits, engineering of the Idaho Six Winds Projects' project sites' underground and overhead collection systems, engineering, procurement, blasting and installation of the turbine foundations and grounding and pvc-conduit for such turbine foundations, and all such work under the Jack Ranch LNTP #1 and otherwise has been or is currently being performed on the Cottonwood, Deep Creek, Salmon Creek, Rogerson Flats and the Jack Ranch Wind Park Projects (all as hereinafter defined); and

WHEREAS, XRG desires that Fagen be the EPC/BOP Contractor for all XRG Projects and XRG Project Companies and Fagen desires to be the EPC/BOP Contractor for the XRG Projects and XRG Project Companies; and

WHEREAS, in connection therewith, the Parties desire to enter into this Amended and Restated MOU, which amends and restates in its entirety that certain Memorandum of Understanding between the Parties made June 15, 2011, in order to set forth their rights and responsibilities regarding Fagen's role as the EPC/BOP Contractor for the XRG Projects and XRG Project Companies and XRG's role and responsibilities to Fagen to ensure Fagen is the EPC/BOP Contractor for the XRG Projects and XRG Project Companies.

NOW, THEREFORE, in consideration for the promises and mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency thereof is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

I. The XRG Projects and XRG Project Companies, as applicable, are comprised of the following:

- A. Big Blue Wind Farm, LLC, the XRG Project Company for a wind farm consisting of 36 megawatts (MW) of wind generated power using approximately eighteen (18) wind turbines, located near Blue Earth, Minnesota (Big Blue Project) and an indirect and wholly-owned subsidiary of XRG; and**
- B. XRG Development Partners, LLC (XRG Development), a direct wholly-owned subsidiary of XRG and the current XRG Project Company for a wind farm consisting of 116 MW of wind generated power utilizing fifty eight (58) wind turbines and one High Voltage Substation, located in Idaho (Idaho Six Winds Project) and XRG Developments following wholly-owned subsidiaries:**

1. Lava Beds Wind Park, LLC, for 18 MW of wind generated power using approximately nine (9) wind turbine generators, located near Black Foote, Bingham County, Idaho (Lava Beds Project); and
 2. Notch Butte Wind Park, LLC, for 18 MW of wind generated power using approximately nine (9) wind turbine generators, located near Dietrich, Lincoln County, Idaho, (Notch Butte Project); and
 3. Jack Ranch Wind Park, LLC, which is the current leaseholder of the Simplot properties for the Cottonwood Project, Deep Creek Project, Salmon Creek Project, and Rogerson Flats Project (all as defined herein); and
 4. Cottonwood Wind Park, LLC, for 20 MW of wind generated power using ten (10) wind turbine generators, located in Twin Falls County, Idaho (Cottonwood Project); and
 5. Deep Creek Wind Park, LLC, for 20 MW of wind generated power using ten (10) wind turbine generators, located in Twin Falls County, Idaho (Deep Creek Project); and
 6. Salmon Creek Wind Park, LLC, for 20 MW of wind generated power using ten (10) wind turbine generators, located in Twin Falls County, Idaho (Salmon Creek Project); and
 7. Rogerson Flats Wind Park, LLC, for 20 MW of wind generated power using ten (10) wind turbine generators, and substation comprised of a generator step-up transformer, related electric gear and the substation building to interconnect Cottonwood, Deep Creek, Salmon Creek, and Rogerson Flats to the Idaho Power electric grid (Rogerson Flats Project); and
- C. Idaho Six Winds, LLC, a Delaware limited liability company and an indirect wholly-owned subsidiary of XRG Development and Idaho Six Winds Holdings, LLC, a Delaware limited liability company and direct wholly-owned subsidiary of XRG Development.

II. In consideration, among other things, of Fagen making the Loans to XRG on behalf of certain of the XRG Project Companies and for the purpose of assisting XRG in furthering the development of the XRG Projects and the XRG Project Companies in general, XRG shall continue to use, retain and promote Fagen as the exclusive engineering, procurement, construction/balance of plant contractor for all XRG Projects and for the XRG Project

Companies (EPC/BOP Contractor) and XRG shall cause any purchaser or financing source of any or all of any XRG Projects or any of the XRG Project Companies to assume all related obligations to Fagen, including without limitation, the assumption of all applicable EPC/BOP contracts, allow Fagen to perform the work under any such EPC/BOP contracts, and be bound by all of the terms of this Amended and Restated MOU, including without limitation, the use, retention and promotion and retention of Fagen as the EPC/BOP Contractor.

III. Fagen shall provide a lump sum price to XRG for the Idaho Six Winds Project (the "Lump Sum Price") no later than December 16, 2011 and the Lump Sum Price shall be included in the EPC/BOP Contract for the Idaho Six Winds Project, which is to be prepared as contemplated in Section VI below. The Lump Sum Price shall reflect the Idaho Six Winds Project's overall scope of work, bulk material pricing, current labor market rates and the Idaho Six Winds Project scheduling requirements. The Lump Sum Price shall be binding upon the Parties. XRG will continue to have the obligation to obtain the land and land leases, the right to use and control the XRG Project sites, all applicable permits and approvals, power purchase agreements and interconnection agreements, the wind turbine generators and utilize Fagen's Lump Sum Price to pursue and obtain project financing for the XRG Projects, which may be debt, equity, or any other type of financing (or combination of financing methods then available).

IV. Neither Party may assign any or all of its rights or obligations under this Amended and Restated MOU without the prior written consent of the other Party, such consent not to be unreasonably withheld.

V. In the event XRG abandons any XRG Project due to lack of funding or otherwise, Fagen shall have the first right to assume the development of any such abandoned XRG Project and/or XRG Project Company. In such event, XRG shall assign any and all applicable XRG Project agreements, permits and rights, which include, but are not limited to, power purchase agreements, interconnect agreements, conditional use permits and applicable land leases, as well as ownership of any such XRG Project Company, for no additional consideration to Fagen, free and clear of all liens and encumbrances.

VI. The Parties agree and acknowledge that they are using the Big Blue EPC Contract as the template for the preparation of the EPC/BOP contract for the Idaho Six Winds Project and agree to continue to use this template on each XRG Project, with only conforming changes being made to the template only to accommodate the specific attributes of each XRG Project, such as changes for state specific laws and pricing for the specific XRG Project.

VII. Each Party represents to the other Party that (i) it has full right, power and authority to execute and deliver this Amended and Restated MOU, and to perform each and all of its obligations under this Amended and Restated MOU (XRG for itself and on behalf of each XRG

Project Company; and Fagen for itself); (ii) each entity is duly formed and validly existing under the laws of its state of its formation; and (iii) the performance of the obligations by each Party under this Amended and Restated MOU will not violate any provision of any applicable law, its charter or bylaws or any indenture, agreement or instrument to which it is a party, or by which it may be bound.

VIII. No modification or amendment to this Amended and Restated MOU shall be binding upon the Parties unless reduced to writing and signed by the Parties. Each Party shall appoint an individual who shall be that Party's designated contact person during negotiation of all XRG and Fagen EPC/BOP agreements ("Designated Representative"). XRG appoints James Carkulis as its Designated Representative. Fagen appoints Ron Fagen as its Designated Representative.

IX. The failure of either Party to enforce at any time any of the provisions of this Amended and Restated MOU, or to require at any time performance by the other Party of any of the provisions hereof, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Amended and Restated MOU, or the right of either Party thereafter to enforce each and every provision.

X. This Amended and Restated MOU shall be governed by and construed in accordance with the laws of the State of New York.

XI. This Amended and Restated MOU contains the entire understanding and agreement of the Parties with respect to the subject-matter hereof and supersedes all prior agreements and understandings, written or oral, with respect to the subject-matter hereof.

XII. This Amended and Restated MOU may be executed in counterparts with the same effect as if all signing parties had signed the same document. This Amended and Restated MOU may be delivered by facsimile or electronic transmission and such copies shall be duly binding and effective for all purposes. Fax and electronic signatures on this Amended and Restated MOU shall be treated the same as original signatures.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, XRG and Fagen have caused this Agreement to be executed in their respective names by persons duly authorized to do so on their behalf.

EXERGY DEVELOPMENT
GROUP OF IDAHO, L.L.C.

By: 

FAGEN, INC.

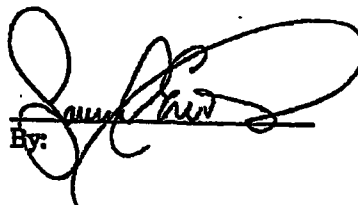
By: 

EXHIBIT H

**BALANCE OF PLANT
ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

FOR THE

EXERGY IDAHO SIX WINDS WIND PARK

BY AND BETWEEN

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.,

as Owner

and

FAGEN, INC.,

as Contractor

Dated December 31, 2011



FAGEN 0172

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LIST OF EXHIBITS

Exhibit A-1 Scope of Work

Appendix 1 Foundation Completion

Appendix 2 Project Site Underground Collection System Completion

Appendix 3 Turbine Mechanical Completion

Appendix 4 Project Site Mechanical Completion

Appendix 5 Project Site Substantial Completion

Appendix 6 Project Site Final Completion

Appendix 7.1 High Voltage Electrical System Substantial Completion (Lava Beds and Notch Butte)

Appendix 7.2 High Voltage Electrical System Substantial Completion (Cottonwood, Rogerson Flats, Salmon Creek, and Deep Creek)

Appendix 8 High Voltage Electrical System Final Completion

Appendix 9 High Voltage Electrical System Checklist

Exhibit A-2 Division of Responsibilities Matrix

Exhibit A-3 Limited Notices to Proceed

Appendix 1 Lava Beds Limited Notice to Proceed #1

Appendix 2 Lava Beds Limited Notice to Proceed #2

Appendix 3 Notch Butte Limited Notice to Proceed #1

Appendix 4 Notch Butte Limited Notice to Proceed #2

Appendix 5 Jack Ranch Limited Notice to Proceed #1

Appendix 6 Jack Ranch Limited Notice to Proceed #2

Appendix 7 Jack Ranch/Idaho Six Winds Limited Notice to Proceed #3

Exhibit B-1 Project Site Maps, including boundaries and High Voltage Substation Site

Appendix 1 Lava Beds Site Map

Appendix 2 Notch Butte Site Map

Appendix 3 Cottonwood, Deep Creek, Salmon Creek, Rogerson Flats Project Site
Maps

Exhibit B-2 Roadway Locations

Exhibit B-3 Land Ownership Maps

Appendix 1 Lava Beds Land Ownership Map

Appendix 2 Notch Butte Land Ownership Map

Appendix 3 Cottonwood, Deep Creek, Salmon Creek, Rogerson Flats Land Ownership Maps

Exhibit B-4 Points of Interconnect

Exhibit B-5 Turbine and Related Specifications

Appendix 1 SCADA Specifications

Appendix 2 Turbine Supplier's Specifications

Appendix 3 Turbine Sites, including Micro Siting

Appendix 4 Road and Staging Area Requirements

Appendix 5 [INTENTIONALLY OMITTED]

Appendix 6 Turbine Supplier Installation and Erection Manual

Appendix 7 Turbine Supplier Delivery Schedule

Appendix 8 Turbine Demurrage Rate Schedule

Appendix 9 Component Packing List

Appendix 10 Turbine Operation Manual

Exhibit C Owner Permits and Contractor Permits

Appendix 1.1 Lava Beds Conditional Use Permit ("CUP")

Appendix 1.2 Lava Beds FAA Lighting

Appendix 1.3 Lava Beds FAA Determinations

Appendix 1.4 Lava Beds ITD – No Hazard

Appendix 1.5 Lava Beds CUP Validity Confirmation

Appendix 2 Notch Butte CUP

Appendix 3 Cottonwood CUP

Appendix 4 Deep Creek CUP

Appendix 5 Salmon Creek CUP

- Appendix 6 Rogerson Flats CUP**
- Appendix 7 High Voltage Substation CUP**
- Exhibit D-1 Form of Foundation Completion Certificate**
- Exhibit D-2 Form of Project Site Underground Collection System Completion Certificate**
- Exhibit D-3 Turbines Supplier Installation Checklist**
- Exhibit D-4 Form of Turbine Mechanical Completion Certificate**
- Exhibit D-5 Form of Project Site Mechanical Completion Certificate**
- Exhibit D-6 Form of Project Site Substantial Completion Certificate**
- Exhibit D-7 Form of Project Site Final Completion Certificate**
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- Exhibit D-9 Form of High Voltage Electrical System Final Completion Certificate**
- Exhibit E-1 Geotechnical Studies and Soil Reports – Lava Beds**
- Exhibit E-2 Geotechnical Studies and Soil Reports – Notch Butte**
- Exhibit E-3 Geotechnical Studies and Soil Reports – Cottonwood, Deep Creek, Salmon Creek, and Rogerson Flats, including the High Voltage Substation**
- Exhibit G-1 Land Use Restrictions – Lava Beds**
- Exhibit G-2 Land Use Restrictions - Notch Butte**
- Exhibit G-3 Land Use Restrictions -Cottonwood, Deep Creek, Salmon Creek, and Rogerson Flats,**
- Exhibit H Master Construction Schedule**
- Appendix 1 Lava Beds Construction Schedule**
- Appendix 2 Notch Butte Construction Schedule**
- Appendix 3 Cottonwood, Deep Creek, Salmon Creek, and Rogerson Flats Construction Schedule Exhibit I Schedule of Values**
- Appendix 1 Lava Beds Schedule of Values**
- Appendix 2 Notch Butte Schedule of Values**
- Appendix 3 Cottonwood Schedule of Values**

Appendix 4 Deep Creek Schedule of Values

Appendix 5 Salmon Creek Schedule of Values

Appendix 6 Rogerson Flats Schedule of Values

- Exhibit J Form of Application for Payment**
- Exhibit K Form of Partial Waiver and Lien Release (Subcontractor)**
- Exhibit L Form of Partial Waiver and Lien Release (Contractors)**
- Exhibit M Form of Final Waiver and Lien Release**
- Exhibit N Authorized Subcontractor List**
- Exhibit O Safety Plan**
- Exhibit P [INTENTIONALLY OMITTED]**
- Exhibit Q Single Line Drawing of Interconnection of Project**
- Exhibit R Form of Monthly Progress Report**
- Exhibit S Idaho Power Company Studies and Agreements**
- Exhibit T High Voltage Electrical System Studies and Agreements**

**BALANCE OF PLANT ENGINEERING,
PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

This Balance of Plant Engineering, Procurement and Construction Agreement is entered into on December 30, 2011 by and between Fagen, Inc., a corporation organized and existing under Minnesota law ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company organized and existing under Idaho law ("Owner") (each of Contractor and Owner, a "Party", and together, the "Parties").

WITNESSETH:

A. Owner is developing, financing and constructing the aggregate 116MW wind generation Project (as herein defined) located at the six (6) Project Sites (as herein defined) in the State of Idaho.

B. Owner desires to contract with Contractor for the provision of engineering, procurement, construction and other services and supply of materials and equipment for the Balance of Plant (as herein defined) on a single point responsibility, and firm and lump sum basis, all as described in, and subject to the terms and conditions of, this Agreement, and Contractor desires to provide such goods and services.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth below, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following definitions:

"Affiliate" means, with respect to a Person, any other Person, directly or indirectly, in control of, controlled by, or under common control with, that Person. For purposes of this Agreement, "control," "controlled" and their derivatives, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person so controlled, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Balance of Plant Engineering, Procurement and Construction Services Agreement, including all Exhibits, appendices and attachments hereto and thereto, as the same may be amended, modified or supplemented, from time to time, in accordance with the terms hereof.

"All-Risk Builder's Risk" has the meaning set forth in Section 18.3.1.

"Applicable Laws" means all federal, state and local laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations having the force of law and permits of any Governmental Authority having jurisdiction over a Party, the Project, any Project Site, the performance of the Work, the Contract Documents and

each other document, instrument and agreement delivered pursuant to this Agreement, including Environmental Laws.

"Applicable Standards" means those engineering, design, procurement, fabrication, transportation, construction, installation and electrical and other standards and codes applicable to the Work, the Project and any Project Site, including any standards for materials, products, systems and services established by ASTM International, or any successor thereto, or any Governmental Authority, and including those set forth in any Contract Document.

"Application for Payment" has the meaning set forth in Section 13.4.1.

"As-Built Drawings" means the final set of as-built drawings from the field prepared by Contractor's field representatives, which accurately represent: (a) the physical placement of all Turbines, High Voltage Substation, meteorological towers, roads, culverts, and buildings as assembled, erected and installed pursuant to the Contract Documents, (b) the location (including GPS coordinates) of all foundations, Underground Collection Systems, Overhead Collection Systems and power and fiber optic cabling, and (c) the final installation of all power, control, interconnection, collection and communication systems as shown on electrical one line, schematic and control wiring diagrams.

"Authorized Recipients" has the meaning set forth in Section 22.16.

"Balance of Plant" means all equipment, supplies, consumables and materials and other items incorporated (or to be incorporated) in the Project and each Project Site except for and excluding the Excluded Work, and meeting the Requirements; and Balance of Plant includes: (a) the civil works, including the site preparation and grading, road design and construction, Turbine foundations, crane pad preparation and laydown area preparation; (b) the civil and mechanical construction works, including Turbine foundation design and installation, meteorological tower supply and foundation design and installation, High Voltage Substation building and foundation, and SCADA buildings and foundations; (c) the electrical works including the design and installation of the 34.5 kilovolt Underground Collection Systems, the Overhead Collection Systems, cabling, power and fiber optic network cabling for the SCADA in compliance with the SCADA specifications set forth in Exhibit B-5, Appendix 1, and power and fiber optic cabling for the meteorological towers in compliance with the meteorological tower specifications, and terminations inside the Turbine towers.

"Balance of Plant Vendor Manuals" means all manuals, instructions and data supplied or required to be supplied by Subcontractors to Contractor or Owner.

"BOP Punch List" has the meaning set forth in Section 7.5(a).

"Business Day" means a day, other than a Saturday, Sunday or other day on which banks or businesses are required or authorized by Applicable Law to close in the State of Idaho.

"CCI" has the meaning set forth in Section 13.2.

"CCI Baseline Index" has the meaning set forth in Section 13.2.

"Change" has the meaning set forth in Section 9.1.

"Change in Law" means the enactment, adoption, promulgation, issuance, material modification, or repeal after the Effective Date of any Applicable Law or any material change in the interpretation (having the force of law) of any Applicable Law by any Governmental Authority that materially and adversely affects the Contract Price or Contract Times.

"Change of Control" means that the members of the Owner on the date hereof or their Affiliates shall cease to collectively own, directly or indirectly, fifty percent (50%) or more of the ownership interests (whether such ownership interest is in the form capital stock (whether denominated as common stock, preferred stock or other class of stocks), equity interest, beneficial interest, partnership or membership interest, limited liability company interest, joint venture interest, participation or other ownership or profit interest in or equivalent interest (regardless of how designated)) of or in Owner, whether voting or non-voting.

"Change Order" has the meaning set forth in Section 9.2(b).

"Commencement Date" means the date of receipt by Contractor of the Notice to Proceed.

"Commission" or **"Commissioned"** means, with respect to each Turbine, that the following shall have occurred or been completed (a) the Turbine Supplier has successfully performed start-up and commissioning activities pursuant to the Turbine Supply Agreement, (b) Owner has confirmed achievement of such start-up and commissioning activities by the Turbine Supplier, and (c) Owner has notified Contractor of the date that the Turbine Supplier has successfully performed such start-up and commissioning activities.

"Confidential Information" means, with respect to a Party, any and all confidential or proprietary information of, or concerning, such Party, including but not limited to trade secrets, supplier lists, programs, procedures, computer information and databases, business plans, budget forecasts, business arrangements, information regarding specific transactions, financial information and estimates, personnel data, and long-term plans and goals. "Confidential Information" of Owner shall include all information related to the Project, each Project Site and the Deliverables, and shall include, with respect to both Parties, the Contract Documents and the occurrence, existence or aspects related to any dispute or disagreement or mediation or arbitration under any Contract Document.

"Construction Boundaries" means the areas marked as such set forth in Exhibit B-3 and Exhibit B-5, Appendix 4, which may be adjusted pursuant to the terms and provisions of this Agreement.

"Contract Documents" means this Agreement, together with all Exhibits (including the Technical Documents), the permits and all other documents, certificates, instruments, notices and filings to be delivered under or in connection with this Agreement or any Exhibit.

"Contract Price" means the firm and lump sum price to be paid to Contractor for the performance of the Work under this Agreement, as specified in Section 13.1(a), as it may be adjusted for Change Orders pursuant to Article IX or adjusted in accordance with Section 13.1(b) or Section 13.2.

"Contract Times" means the scheduled dates set forth in the Master Construction Schedule.

"Contractor" has the meaning set forth in the preamble to this Agreement.

"Contractor Event of Default" has the meaning set forth in Section 14.2.2.

"Contractor Indemnified Parties" has the meaning set forth in Section 17.2.1.

"Contractor Permits" means all work permits and registrations, corporate qualification and registrations to do business, customs clearances, and all licenses, permits, notifications and filings required by Applicable Law or Governmental Authorities necessary or required to be in Contractor's or any of its Subcontractor's names for the conduct and performance of the Work and the performance by it of the Contract Documents, including those set forth in Exhibit C.

"Contractor's Engineer" means Sargent & Lundy.

"Contractor's Project Manager" has the meaning set forth in Section 4.2.

"Contractor's Representative" has the meaning set forth in Section 21.2.

"Contractor's Senior Representative" has the meaning set forth in Section 21.2.

"Damages" has the meaning set forth in Section 17.1.1.

"Deliverables" has the meaning set forth in Section 8.1.

"Design Documentation" has the meaning set forth in Section 4.7.

"Disclosing Party" has the meaning set forth in Section 22.16.

"Division of Responsibility" means the division of responsibility detailing the responsibilities of Owner and Contractor with respect to the tasks required to be performed to construct the Project as set forth in Exhibit A-2.

"Effective Date" means December 31, 2011.

"Environmental Law" means all Applicable Laws relating to pollution or protection of human health or the environment (including wildlife, biota, ambient air, surface water and wetlands, groundwater, land surface, and subsurface strata), including laws and regulations relating to workplace or worker safety and health, emissions, effluent, discharges, releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances, including, without limitation, (a) the Clean Air Act, 42 U.S.C. § 7401, as amended; (b) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., as amended; (c) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as amended; (d) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended; (e) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as

amended; (f) Occupational Safety and Health Act of 1970, as amended; (g) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., as amended; and (h) any other similar applicable federal, state or local law.

"Excluded Work" has the meaning set forth in Section 3.1(d).

"Exhibits" means the exhibits and appendices referenced in or attached to this Agreement or any such exhibit or appendix, each of which is incorporated into and made a part of this Agreement.

"Final Application for Payment" has the meaning set forth in Section 13.6.

"Final Payment" has the meaning set forth in Section 13.6.

"Final Punch List" has the meaning set forth in Section 13.5(b).

"Final Punch List Holdback Amount" has the meaning set forth in Section 13.5(b).

"Financing Documents" means the agreements with the Financing Parties providing financing for the design, engineering, procurement, supply of materials and equipment, construction and other goods and services for or of, or the term financing of, the Project.

"Financing Parties" means (a) any and all lenders or creditors providing any senior or subordinated interim or long-term financing; and (b) any and all providers of leveraged lease-financing or refinancing for the Project.

"Force Majeure Event" means, with respect to a Party, any event or circumstance which is beyond the reasonable control of such Party and having a direct effect on such Party's performance of the Contract Documents, and which (a) could not be avoided, prevented or removed by such Party's commercially reasonable efforts and (b) is not caused by or does not result from the negligence of such Party, or breach or failure of such Party to perform its obligations under the Contract Documents; provided that such Party has taken all reasonable precautions, care and alternate measures to avoid or mitigate the effects thereof. Force Majeure Events shall include, but not be limited to: natural disasters, fire, hurricanes, tornadoes, dust or sand storms, mudslides, subsidence, lightning, flood, earthquake, explosions, acts of God, terrorism or similar actions by the public enemy, strikes or lockouts affecting the industry in general (national or regional in scope) where such strike or lockout has a direct affect on the performance of the Contract Documents, public disorder or civil disturbance, blockages, insurrections, riots, war, hostilities, sabotage, expropriation or confiscation, epidemic or quarantine, or other action or inaction (not a Change in Law) by any Governmental Authority; and with respect to Owner any event of force majeure under any other agreement or contract relating to the Project with a third party. Notwithstanding anything to the contrary, Force Majeure Events shall not be deemed to include failure of Owner to make timely payment to Contractor as required under this Agreement.

"Foundation Completion" has the meaning set forth in Exhibit A-1, Appendix 1.

"Foundation Completion Certificate" has the meaning set forth in Section 7.1.

"Geotechnical Studies" means the geotechnical, subsurface, rock, soil studies and engineering report performed at each of the Project Sites by Contractor or any Subcontractor and attached hereto as Exhibits E-1 and E-2.

"Governmental Authority" means any federal, state, local or other governmental, administrative, judicial, public or statutory instrumentality, tribunal, agency, authority, court, body or entity, or any political subdivision thereof having, legal jurisdiction over the matter or Person in question.

"Guaranteed Project Site Substantial Completion Date" means, with respect to each Project Site, the date that occurs twenty five (25) days after (and including) the date the last Turbine at such Project Site is Commissioned.

"Hazardous Substance" means (a) any substance which is listed, defined, designated or classified under any Environmental Law as a (i) hazardous substance, constituent or waste, (ii) toxic material, substance, constituent or waste, (iii) radioactive material, substance, constituent or waste, (iv) dangerous material, substance, constituent or waste, (v) pollutant, (vi) contaminant, or (vii) special waste; (b) any material, substance, constituent or waste regulated under any Environmental Laws; or (c) petroleum, petroleum products, radioactive matters, polychlorinated biphenyl, pesticides, asbestos, or asbestos-containing materials.

"High Voltage Electrical System" means all equipment, supplies, consumables and materials and other items incorporated (or to be incorporated) into the Project and each Project Site and comprising the High Voltage Substation, Overhead Collection Systems, and power and fiber optic network cabling for the SCADA. The High Voltage Electrical Equipment begins at the disconnect switch of the collection cable riser from the 50 foot 34.5 kilovolt system cable.

"High Voltage Electrical System Final Completion" has the meaning set forth in Exhibit A-1, Appendix 8.

"High Voltage Electrical System Final Completion Certificate" has the meaning set forth in Section 7.8.

"High Voltage Electrical System Required Completion Date" has the meaning set forth in Section 6.3(c).

"High Voltage Electrical System Substantial Completion" has the meaning set forth in Exhibit A-1, Appendix 7.1 and Exhibit A-1, Appendix 7.2, as applicable.

"High Voltage Electrical System Substantial Completion Certificate" has the meaning set forth in Section 7.7(b).

"High Voltage Substation" means an electrical substation facility located on the Rogerson Flats Project Site, which is described in Exhibit B-1, to gather the Turbine output collector cables, combine output and convert to transmission level interconnection voltage (345 kilovolts and above).

"HVES Punch List" has the meaning set forth in Section 7.7(a).

"Indemnified Party" has the meaning set forth in Section 17.2.3.

"Indemnifying Party" has the meaning set forth in Section 17.2.3.

"Intellectual Property Rights" means patents, copyrights, trademarks, service marks, trade secrets and all other intellectual property or proprietary rights protected under any Applicable Law.

"Jack Ranch Wind Park" means the Project Sites, formerly known as the Jack Ranch Wind Park, which are now separated entities and composed of Cottonwood Wind Park, Salmon Creek Wind Park, Deep Creek Wind Park, and Rogerson Flats Wind Park.

"Landowner" has the meaning set forth in Section 4.23.

"Landowner Provisions" has the meaning set forth in Section 4.23.

"Liens" means any demands, charges, claims, security interests, liens, encumbrances, hypothecations, pledges or stop notices arising out of any Work performed or materials supplied; provided that, the term "Liens" does not include any consensual lien granted to Contractor to secure indebtedness owed to the Contractor.

"Limited Notice to Proceed" means a written notice issued by Owner to Contractor that authorizes Contractor to begin a portion of the Work, as identified and subject to the terms and conditions set forth in such notice, including those Limited Notices to Proceed as set forth in Exhibit A-3, Appendices 1-7 herein.

"Liquidated Damages" has the meaning set forth in Section 6.3.

"Major Subcontract" has the meaning set forth in Section 4.3(a).

"Master Construction Schedule" has the meaning set forth in Section 6.2.

"Material Event" has the meaning set forth in Sections 10.1.

"Nameplate Capacity" means, with respect to each Turbine at any Project Site, the electrical generating capacity of such Turbine as stated in kilowatts or other similar measurement on the nameplate attached to such Turbine.

"Notice to Proceed" means a written notice issued by Owner to Contractor authorizing Contractor to begin the Work or such remaining portion of the Work not previously authorized by a Limited Notice to Proceed.

"NTP Date CCT" has the meaning set forth in Section 13.2.

"Overhead Collection Systems" means, with respect to each Cottonwood, Deep Creek, Salmon Creek, Rogerson Flats Project Sites, the 34.5 kilovolts overhead electrical collection, conveyance and conductor system commencing at the point of interconnect for such Project Site set forth in Exhibit B-4 and continuing downstream of the disconnect switch at the top of the

power pole for the first Turbine that is connected in series with all the other Turbines at such Project Site, including the power poles and insulators, and terminating at the electrical transmission system for Idaho Power Company.

"Owner" has the meaning set forth in the preamble to this Agreement.

"Owner Caused Delay" has the meaning set forth in Section 5.5.

"Owner Event of Default" has the meaning set forth in Section 14.6.1.

"Owner Indemnified Parties" has the meaning set forth in Section 17.1.1.

"Owner Permits" means all work permits and registrations, corporate qualifications and registrations to do business, customs clearances, and all licenses, permits, notifications and filings required by Applicable Laws and Governmental Authorities necessary or required to be in Owner's name for the performance by it of the Contract Documents, including those set forth in Exhibit C.

"Owner's Project Manager" has the meaning set forth in Section 5.3.

"Owner's Representative" has the meaning set forth in Section 21.2.

"Owner's Senior Representative" has the meaning set forth in Section 21.2.

"Party" or "Parties" has the meaning set forth in the preamble of this Agreement.

"Pay Period" means, with respect to a given Application for Payment, the one (1) month period following the last day of the previous Pay Period to which the immediately prior Application for Payment relates; provided that the initial Pay Period shall commence on the date of delivery of the first Limited Notice to Proceed, or if none, the Notice to Proceed, and end on the twenty-fourth (24th) day of the calendar month during which such Limited Notice to Proceed or the Notice to Proceed is issued.

"Person" means any natural person, corporation, general or limited partnership, limited liability company, proprietorship, trust, union, association or other organization or similar entity or Governmental Authority.

"Per Turbine Amount" has the meaning set forth in Section 13.5(a).

"Pre-Existing Hazardous Substance" means a Hazardous Substance existing at any Project Site prior to the date of the first Limited Notice to Proceed, or if no Limited Notice to Proceed has been issued, the Commencement Date.

"Project" means the integrated aggregate 116 MW wind generation project comprising all of the six (6) Project Sites, combined as a whole, and comprising fifty eight (58) Turbines and associated facilities, necessary or appropriate to provide for and enable fully operating and functioning Turbines, including, Underground Collection Systems, Overhead Collection Systems, High Voltage Substation, meteorological towers, SCADA, control and monitor

buildings and all facilities and roads situated on or near the Project Sites, all as further described in the Exhibits to this Agreement.

"Project Final Completion" means, with respect to the whole Project, that Project Site Final Completion of each, and all, of the Project Sites has been successfully achieved pursuant to the terms of Section 7.6.

"Project Interconnection Facilities" means the electrical system of Idaho Power Company, connecting each Project Site to the electric transmission grid, a single line drawing of which is set forth in Exhibit Q (which, for the avoidance of doubt, shall not mean to include the communications cabling, which shall be the responsibility of Contractor).

"Project Site" means in the singular, the site of the High Voltage Substation and each and any of the following six (6) wind generation project sites referred to as or named (a) "Cottonwood", (b) "Rogerson Flats", (c) "Salmon Creek", (d) "Deep Creek," (e) "Lava Beds", and (f) "Notch Butte" as described and set forth in Exhibit B-1 and Exhibit B-5, Appendix 3, including the location of each Turbine on each such Project Site.

"Project Site Final Completion" has the meaning set forth in Exhibit A-1, Appendix 6.

"Project Site Final Completion Certificate" has the meaning set forth in Section 7.6.

"Project Site Mechanical Completion" has the meaning set forth in Exhibit A-1, Appendix 4.

"Project Site Mechanical Completion Certificate" has the meaning set forth in Section 7.4.

"Project Site Nameplate Capacity" means, with respect to each and any Project Site, the aggregate sum of the Nameplate Capacities of all the Turbines located or planned (pursuant to this Agreement) to be located at such Project Site.

"Project Site Substantial Completion" has the meaning set forth in of Exhibit A-1, Appendix 5.

"Project Site Substantial Completion Certificate" has the meaning set forth in Section 7.5(b).

"Project Site Underground Collection System Completion" has the meaning set forth in Exhibit A-1, Appendix 2.

"Project Site Underground Collection System Completion Certificate" has the meaning set forth in Section 7.2.

"Project Substantial Completion" means, with respect to the whole Project, that Project Site Substantial Completion of each, and all, of the Project Sites has been successfully achieved pursuant to the terms of Section 7.5.

"Project Substantial Completion Date" has the meaning set forth in Section 13.5(a).

"Prudent Industry Practices" means those practices, methods, standards and acts (including, but not limited to, those engineering, design, construction, erection, installation, administration, testing and other practices, methods, standards and acts, engaged in or approved by the wind power industry for similar facilities in similar geographic areas) that at a particular time would have been expected to accomplish the desired result in a manner consistent with the Contract Documents, Applicable Laws, Applicable Standards, Contractor Permits, economy and expedition.

"Punch List" means, as relevant, the BOP Punch List and/or the HVES Punch List.

"Punch List Holdback Amount" has the meaning set forth in Section 13.5(a).

"Receiving Party" has the meaning set forth in Section 22.16.

"Requirements" has the meaning set forth in Section 3.2.

"Road and Staging Area Requirements" means those road and staging area requirements specified in Exhibit B-5, Appendix 4.

"Safety Plan" means the safety plan for the Project Sites and the Work prepared by Contractor and set forth in Exhibit O.

"SCADA" means the supervisory control and data acquisition system, including central computer, remote PC system and ancillary communication terminals and cables supplied and installed by the Turbine Supplier in individual Turbine controllers, meteorological towers, High Voltage Substation and point of interconnect per each single pole riser, as more fully described in Exhibit B-5, Appendix 1.

"Senior Representatives" has the meaning set forth in Section 21.2.

"Separate Contractors" means the contractors, suppliers and vendors for the Project who are either Owner or others under Owner's control, including the Turbine Supplier.

"Subcontractors" has the meaning set forth in Section 4.3.

"Taxes" means any and all forms of taxation, charges, duties, imposts, levies and rates whenever imposed by any Governmental Authority, including income tax, withholding taxes, corporation tax, capital gains tax, capital transfer tax, inheritance tax, water rates, value added tax, customs duties, capital duty, excise duties, betterment levy, stamp duty, stamp duty reserve tax, national insurance, social security or other similar contributions, and generally any tax, duty, impost, levy or rate or other amount and any interest, penalty or fine in connection therewith.

"Technical Documents" means the documents in Exhibits B-1, B-2, B-3, B-4, B-5, D-3, E, F, G, O, Q, S and T.

"Turbine" means a 2.0 MW wind turbine electricity generator, including the following components: an 78-meter turbine tower, a turbine nacelle, turbine blades, controller, control panels, wind vanes and anemometers, and associated accessories, as described in more detail in Exhibit B-5, and Appendices 2, 5 and 6.

"Turbine Demurrage Rate Schedule" means the schedule setting forth the costs and charges for demurrage attached as Exhibit B-5, Appendix 8.

"Turbine Mechanical Completion" has the meaning set forth in Exhibit A-1, Appendix 3.

"Turbine Mechanical Completion Certificate" has the meaning set forth in Section 7.3.

"Turbine Operations Manual" means the manual attached at Exhibit B-5, Appendix 11.

"Turbine Supplier" means Gamesa or its Affiliate.

"Turbine Supplier Delivery Schedule" means the delivery schedule for the Turbines attached as Exhibit B-5, Appendix 7.

"Turbine Supplier Installation and Erection Manual" means the manual attached as Exhibit B-5, Appendix 6.

"Turbine Supplier Installation Checklist" means the form of the checklist attached as Exhibit D-3.

"Turbine Supplier's Specifications" means the specifications set forth in Exhibit B-5, Appendix 2.

"Turbine Supply Agreement" means the Contract for the Sale of Power Generation Equipment and Related Services, dated as of _____, by and between the Turbine Supplier and Exergy Development Group, LLC, as the same may be amended, modified or supplemented from time to time in accordance with its terms.

"Underground Collection System" means, with respect to each Project Site, the underground cables between each of the Turbines at such Project Site, its electrical components, any ancillary components both individually and collectively and the interconnection pole riser used for overhead connection, fiber optic cables and terminations, the pad-mount junction boxes, underground power and communications cables for the meteorological towers and SCADA buildings, and terminating at the point of interconnection set forth in Exhibit B-4 and at the disconnect switch at the top of the power pole for the first Turbine that is connected in series with all the other Turbines at such Project Site.

"Unforeseen Subsurface Conditions" has the meaning set forth in Section 11.7.

"Warranty" or "Warranties" has the meaning set forth in Section 15.2.

"Warranty Period" has the meaning set forth in Section 15.4.

"Weather Day" means, with respect to a Project Site, that any of the following applicable criteria have been met during any working day at such Project Site: (a) winds are in excess of twenty-five (25) miles per hour at the boom tip height for scheduled tasks or in excess of eighteen (18) miles per hour when Contractor is lifting the Turbine rotor, in each case as registered on site by crane anemometers; (b) Turbines are scheduled to be erected, and driving rain, snow or lightning (not constituting a Force Majeure Event) prevent, in accordance with Prudent Industry Practices, Contractor from performing Turbine erection activities involving cranes or other lifting devices; (c) due to fog conditions at the Project Site, visibility is less than three hundred (300) feet, thereby creating an unsafe condition for the performance of the Work; (e) due to accumulation of ice on the applicable crane(s) or Turbine relating to the Work at the Project Site, in accordance with Prudent Industry Practices unsafe conditions have been created for the performance of the Work; or (f) conditions of the roads and Turbine erection areas at any Project Site occurring during the period of March 1, 2012 to May 15, 2012 where such roads and areas become impassable by truck, and construction equipment, including cranes, which prevent Contractor from performing Work and from performing Turbine erection activities involving cranes or other lifting devices. Weather Days will be determined in increments of Half-Day Periods. A **"Half-Day Period"** means either (i) a period commencing at 7:00 AM and ending at 11:59 AM, or (ii) a period commencing at 12:00 PM and ending at 5:00 PM. The 7:00 AM and 12:00 PM commencement times for a Half-Day Periods are each considered to be **"Measurement Times"**; provided that the Parties may, from time to time, mutually agree upon alternative Measurement Times. At any Measurement Time, Contractor may examine the wind speed data and weather forecast information, as regards a Project Site condition involving high wind speeds, driving rain, lightning, snow, fog and visibility, or ice accumulation, and determine whether a Weather Day condition exists or is likely to occur during the Half-Day Period in question.

"Weather Delay" means, in the case where there is a single occurrence of consecutive Weather Days and where each such Weather Day is caused by the same condition or event (such as consecutive Weather Days, for the purposes of this definition, referred to as a **"Weather Day Period"**), that number of consecutive Weather Days during such Weather Day Period occurring after the first two (2) consecutive Weather Days to occur in such Weather Day Period.

"Work" has the meaning set forth in Section 3.1(d).

ARTICLE II INTERPRETATION

2.1 **Articles, Sections and Exhibits.** References to Articles, Sections and Exhibits and Appendices unless otherwise indicated, are to Articles of, Sections of, Exhibits and Appendices to this Agreement. The Exhibits hereto and the Appendices thereto form an integral part of this Agreement.

2.2 **Headings.** The headings to Articles, Sections, Exhibits and Appendices of this Agreement are for ease of reference only and shall not in any way affect its construction or interpretation.

2.3 **Reference.** Unless the context otherwise clearly requires: (a) references to the masculine gender shall include the feminine and neuter; (b) references to the singular shall

include the plural, and vice versa; (o) the terms "hereof," "herein," "hereunder," "hereto," and similar terms refer to the entire agreement in which they appear (including any attachments, schedules, annexes, exhibits and appendices to such agreement) and not to any particular provision of such agreement; (d) references to a "day" shall mean a calendar day, unless the term "Business Day" is used; (e) references to a Party shall be deemed to include references to its successors and permitted assigns; (f) the terms "include" and "including" shall be deemed to be followed by the words "without limitation", whether or not so followed; (g) unless otherwise stated, where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day; and (h) a reference to time is a reference to the time in effect in the State of Idaho, unless otherwise indicated.

ARTICLE III THE WORK

3.1 Scope of Work.

(a) Commencing on the Commencement Date, Contractor shall perform the scope of work set forth in Exhibit A-1 and its obligations under and pursuant to this Agreement and the other Contract Documents. Contractor shall provide, furnish and perform on a single point responsibility basis all necessary design, engineering, procurement, supplies, vehicles, transportation, equipment, materials, consumables, supervision, installation, erection, construction, labor, personnel, quality assurance and inspection, and testing and other services, activities and work (including all correction, rectification, remedial, repair and replacement services, work, supplies and activities relating to defects, deficiencies in the Work not conforming to the Requirements) that are required, necessary and appropriate for Contractor to deliver and install a fully complete, and functioning and operable, Balance of Plant pursuant to the terms of this Agreement and the other Contract Documents, including the Technical Documents. Contractor shall, among other things, (i) furnish or procure, handle and store, as necessary, all materials, equipment, machinery, tools, consumables, labor and transportation; (ii) perform the construction, supervision, administration and other services and items described in the Contract Documents; (iii) perform the engineering and design services as set forth in the Contract Documents; (iv) perform the testing services required described in the Contract Documents; and (v) perform quality control checks, including inspection, of all materials, services and equipment to be used or incorporated into the Balance of Plant, and rejection of those items determined not to be in compliance with the Requirements.

(b) After Turbine Mechanical Completion of each Turbine, Contractor shall, if requested by Owner, provide advisory assistance in connection with the electrical and communications aspects of the operation and maintenance of such Turbine. Contractor shall provide all necessary and sufficient experienced personnel having the requisite expertise for the prompt performance of any correction, rectification, remedial, repair and replacement work required in accordance with this Agreement.

3.2 Compliance. Contractor shall ensure that the Work conforms to, and is in accordance with, the Contract Documents, Prudent Industry Practices, Applicable Laws,

Applicable Standards, Contractor Permits, Owner Permits, and any requirements of applicable insurance policies required under this Agreement (collectively, "Requirements"). Contractor covenants and agrees that all individuals and entities who will perform or be in charge of professional, architectural, design and engineering services for the Work shall have experience with the type of Work being undertaken and shall be duly licensed to practice under the Applicable Laws of the jurisdiction in which the Work is located. Similarly, all construction services shall be undertaken and performed by qualified construction contractors, vendors and suppliers that are licensed as may be required by Applicable Law.

(a) The Parties acknowledge and agree that this Agreement is a firm and lump-sum price and time certain, single point responsibility contract (subject to adjustment in accordance with the terms hereof) for the Balance of Plant, and Contractor's obligation to provide, furnish and perform its services, activities and work under this Agreement includes Contractor providing Owner with a fully completed and functioning Balance of Plant, complete in every detail, within the time and for the purposes specified in the Contract Documents and meeting the Requirements and to do and furnish to Owner everything in connection therewith.

(b) The foregoing described obligations, work, services, tasks, activities and responsibilities of Contractor are more fully set forth in this Agreement, the Technical Documents and the other Contract Documents, and are herein collectively referred to as the "Work"; except that the Work specifically excludes the supply of the Turbines, the Project Interconnection Facilities and other Owner responsibilities set out in Article V or otherwise agreed to by the Parties in writing (such equipment and activities, the "Excluded Work") and as used in any Contract Document the term "Work" shall mean to exclude the Excluded Work.

(c) Except as otherwise expressly provided in this Agreement, Contractor agrees and acknowledges that it shall perform all of its obligations and responsibilities under the Contract Documents at its own risk, cost and expense.

(d) Except as otherwise expressly provided in this Agreement, Contractor shall be responsible for providing, or causing the provision of, design, engineering, procurement, erection and construction services, activities and work, and personnel and labor, and all equipment and materials (and components thereof) and Contractor's equipment, and any other items not specifically described in this Agreement, the Technical Documents and the other Contract Documents, if it reasonably may be inferred in accordance with Prudent Industry Practice that the providing, or causing the provision, of services, activities, work personnel, labor, equipment, materials and items was contemplated as part of the Work or is necessary in order for Contractor to satisfy the guarantees and the warranties set forth in this Agreement and to make the Balance of Plant capable of functioning or performing as specified in the Technical Documents and any other Contract Document or as otherwise necessary in order to comply with the Requirements. Without limitation to the foregoing, wherever this Agreement and/or the other Contract Documents describes any portion of the Work in general terms, but not complete in detail, Contractor agrees that the Work shall include any incidental work, activities, tasks and services which may be reasonably inferred as required or necessary to complete and render operable the Balance of Plant in accordance with the terms and conditions of the Contract Documents, and Owner shall have no obligation or responsibility (except as specifically set forth in the Contract Documents) with respect to the completion of the Balance of Plant.

(e) Work undertaken, equipment and materials (including components thereof), Contractor's equipment, labor and personnel, and additional items provided pursuant to this Agreement shall not give rise to any adjustment in the Contract Price or any Contract Time or any other term of this Agreement, except pursuant to a Change Order agreed to pursuant to the terms of Article IX or pursuant to Section 13.1(b) or Section 13.2, or as otherwise allowed pursuant to the terms of this Agreement, and shall be included in and comprise the Work for all purposes of this Agreement.

(f) The Work identified and performed by the Contractor under the following Limited Notices to Proceed, include: Notch Butte LNTP #1, dated July 25, 2011; Notch Butte LNTP #2, dated December 14, 2011; Lava Beds LNTP #1, dated August 1, 2011; Lava Beds LNTP #2, dated December 14, 2011; Jack Ranch LNTP #1, dated August 2, 2011; Jack Ranch LNTP #2, dated October 9, 2011; Jack Ranch/Idaho Six Winds LNTP #3, dated December 14, 2011 all as more specifically set forth in Exhibit A-3, Appendices 1-7, Limited Notices to Proceed, is and shall comprise part of the Work for purposes of this Agreement and the terms and conditions of this Agreement shall govern the performance and execution of such Work, including scheduling and payment.

3.3 Cooperation with Separate Contractors: Cooperation with Financing Parties.

(a) Contractor recognizes and acknowledges that consultants, advisors, Separate Contractors and Owner's personnel have been, and may be, engaged by Owner to advise Owner and to perform services and work at the Project Sites and/or with regard to the Project, and that consultants and advisors (including the Financing Parties' independent engineer) may be engaged by the Financing Parties to advise with respect to the Project. Contractor shall cooperate with such consultants, advisors, Separate Contractors and personnel and coordinate its activities with the activities of such Persons.

(b) Contractor acknowledges that Owner is seeking financing for the Project. Contractor agrees to cooperate with Owner in good faith in order to satisfy the reasonable requirements of Owner's financing arrangements, including, where appropriate and reasonable, the execution and delivery of documents or instruments necessary to accommodate such financing arrangements. Owner agrees to pay all documented and reasonable costs incurred during the term of this Agreement, in connection with satisfying the requirements of Owner's financing arrangements, including all documented and reasonable attorney's fees. Contractor and Owner also acknowledge that the Financing Parties may require Owner to provide the independent engineer for the Financing Parties with certain reasonable participation and review rights with respect to Contractor's performance of the Work. Contractor acknowledges and agrees that such reasonable participation and review rights shall consist of the right to: (i) enter the Project Sites and inspect the Work upon reasonable notice to Contractor; (ii) attend all start-up, testing completion procedures; and (iii) review and approve items and Change Orders for which Owner is required by the Financing Parties to obtain the concurrence, opinion or a certificate of the independent engineer acting for the Financing Parties or of the Financing Parties pursuant to the Financing Documents so long as such review and approval rights do not alter the rights or impose additional obligations on Contractor. Nothing in this Section 3.3 shall be deemed to require Contractor to agree to any amendments to this Agreement that would adversely affect Contractor's risks, rights or obligations under this Agreement.

ARTICLE IV
GENERAL DUTIES AND OBLIGATIONS OF CONTRACTOR

4.1 Taxes.

(a) Contractor shall pay or otherwise be responsible for (a) all sales and use Taxes on consumables (including, fuel, oil and grease for construction equipment), construction equipment, office supplies, office equipment, tools, rental equipment and temporary construction materials used in the Work, (b) all governmental fees imposed upon Contractor Permits and (c) all sales and use taxes for consumables (including, fuel, oil and grease for construction equipment), construction equipment, office supplies, office equipment, tools, rental equipment and temporary construction materials provided or performed by Subcontractors. The Contract Price does not include any sales and use Tax other than as described in this Section 4.1.

(b) Contractor shall not file any claims for rebates or refunds of sales or use taxes (collectively, "Sales and Use Tax Rebates") with respect to the Work. In addition, to the extent Contractor receives any Sales and Use Tax Rebates with respect to the Work, Contractor shall promptly pay all amounts of such rebates or refunds to Owner. Contractor agrees to cooperate with and assist Owner with respect to obtaining Sales and Use Tax Rebates with respect to the Work.

4.2 Contractor's Project Manager. Contractor shall appoint a single representative to act on Contractor's behalf as its manager and coordinator of the Work and in respect of the Contract Documents ("Contractor's Project Manager"). Contractor's Project Manager shall (a) act as the liaison for Contractor's communications with Owner, (b) be responsible for providing all reports, notices and information due under the Contract Documents to Owner, and (c) have authority to act on behalf of Contractor and shall have the experience and authority to make immediate decisions and take actions on behalf of Contractor at any Project Site. All communications given to or received from Contractor's Project Manager shall be binding on Contractor. Contractor's Project Manager shall coordinate all activities of Contractor including, but not limited to, reporting activities and communication activities. The following individual (or such other Person approved in writing by Owner) shall perform the role of Contractor's Project Manager with respect to Contractor's performance of the Work: Brad Bormann.

4.3 Subcontractors.

(a) Contractor may locate and procure the services of subcontractors, consultants, vendors, or suppliers (collectively, "Subcontractors") which in Contractor's reasonable judgment may be necessary to complete the Work. Contractor shall ensure that all of its Subcontractors discharge their respective obligations in compliance with the Requirements. No Subcontractor is intended to be nor shall be deemed to be a third party beneficiary of any Contract Document. Contractor shall not enter into any subcontract for services, equipment, supplies or materials or other items valued at more than one hundred thousand U.S. dollars (\$100,000.00) with a Subcontractor that is not listed in Exhibit N without Owner's prior approval, which shall not be unreasonably withheld or delayed. All subcontracts between Contractor and the Subcontractors identified on Exhibit N and any Subcontractor approved by Owner pursuant to the immediately preceding sentence shall be deemed a "Major Subcontract."

Contractor shall use commercially reasonable efforts to ensure that each Major Subcontract includes (i) an indemnification provision in favor of the Owner Indemnified Parties at least as favorable to the Owner Indemnified Parties as those indemnities set forth in Article 17 and (ii) confidentiality requirements substantially similar to those contained in Section 22.16. Owner shall have the right, upon written request, to receive promptly from Contractor a copy of any Major Subcontract, equipment specifications, performance guaranty data and warranties, as well as a copy of all shop and field performance test reports, and vendor field representative reports, with respect to Work performed under or pursuant to a Major Subcontract.

(b) All Subcontractors shall be appropriately licensed to perform the work required of them under their subcontract with Contractor. Within fifteen (15) days of the Effective Date, Contractor shall give Owner written notice of the name of each Subcontractor which Contractor intends to select to perform any aspect of the Work and shall furnish to Owner for approval such information concerning such Subcontractor as is necessary to enable Owner to determine compliance with the Requirements and other requirements of this Agreement, including (i) a brief description of the subcontract work to be performed by such Subcontractor (including those listed on Exhibit N), (ii) a technical analysis of such Subcontractor's bid (excluding price), (iii) documented evidence, satisfactory to Owner, of insurance meeting the requirements of this Agreement, and (iv) such other information as may be requested by Owner.

(c) Contractor shall require all Subcontractors to perform their work in conformity with all applicable provisions of the Contract Documents, and, notwithstanding any approval by Owner of any Subcontractor, subcontract or purchase order, as the case may be, Contractor shall be responsible for and warrants the work and services of all Subcontractors as if performed by Contractor. Any approval by Owner shall not relieve Contractor of any of its duties, responsibilities, obligations, warranties or liabilities under any Contract Document.

(d) No subcontract or purchase order shall bind or purport to bind Owner but shall contain a provision permitting assignment thereof (including assignment of warranties) to Owner upon Owner's written request (including pursuant to Section 14.2.4) without the consent of the counterparty to the subcontract or purchase order. Contractor shall include in all subcontracts and purchase orders the right of unilateral written termination by Contractor of all or a portion of such subcontract or purchase order and, if requested by Owner, shall exercise such right of termination. Each subcontract and purchase order shall also state that in the event of a total or partial termination, Subcontractor may claim only its properly supported out-of-pocket costs plus a reasonable amount to compensate Subcontractor for demonstrably (to Owner's satisfaction) related charges for the terminated portions. In addition, such subcontract and purchase order shall state that title to materials or partially completed work whose full costs are included in the termination charges shall pass to Contractor or Owner, as Owner shall direct, and that Contractor shall advise Subcontractor what disposition shall be made of such materials or work.

(e) Contractor shall promptly advise Owner in writing of any Subcontractors which are in default under the terms of their subcontracts or purchase orders, as the case may be. Contractor shall not make any payments to any Subcontractor who may be in default, unless in Contractor's reasonable judgment such payments are required to cause such Subcontractor to cure such default.

(f) Contractor shall promptly pay, in accordance with the terms and conditions set forth in the relevant subcontract, each Subcontractor the amount to which such Subcontractor is entitled, provided, that Contractor shall not pay any Subcontractor in full until such Subcontractor has issued a certificate or release satisfactory to Owner that such subcontract or purchase order has been fully performed and that no property used in connection with the Work is subject to any unsatisfied Lien as a result of the performance or non-performance of such Subcontractor. Each such subcontract shall require the Subcontractor thereunder to make timely payments to its laborers, suppliers and subcontractors.

(g) Prior to the engagement or hire of any Subcontractor, Contractor shall provide Owner with the full name, address, telephone and email contact details, Subcontractor's license number and proof of Subcontractor's license, permit or authority to perform work in the state of Idaho for such Subcontractor, and such other information relative to such Subcontractor as Owner may reasonably request; and Contractor shall also provide Owner with a copy of each agreement (excluding the price) between Contractor and each of its Subcontractors. In the event of termination of this Agreement pursuant to Article XIV, Contractor shall deliver a copy of each such agreement related to such Project Site to Owner with price so that Owner can decide whether or not to exercise its right of assignment.

(h) Contractor shall perform and carry out its obligations under and pursuant to its subcontracts with Subcontractors in order to facilitate the timely completion of the Work without unnecessary disputes and complications. Contractor shall retain Subcontractors (and shall cause its Subcontractors to retain subcontractors), whether they employ union or non-union personnel, as is appropriate to maintain labor harmony at the Project Sites, and to the extent possible, to avoid strikes, lockouts and other labor disturbances.

(i) To the extent that Subcontractors' warranties and other third party component warranties exceed the Warranty Period provided by Contractor under this Agreement, Contractor shall ensure that such warranties from the Subcontractor may be freely assigned to Owner at the end of Contractor's Warranty Period under this Agreement, without consent or approval, upon notice to the Subcontractor or third party. Subcontractors' warranties shall be automatically assigned to Owner in the event of a default by Contractor hereunder. Contractor shall be responsible for enforcing and shall promptly enforce all warranties of all Subcontractors through Contractor's Warranty Period under this Agreement. If the stated term of any such Subcontractors' warranties is less than the term of Contractor's Warranty Period under this Agreement, the scope and term of Contractor's Warranty Period under this Agreement shall not be diminished or otherwise affected thereby. Contractor's failure to obtain sufficient warranties from Subcontractors shall not in any way impair or limit Contractor's obligation to provide the Warranties hereunder with respect to any equipment, materials or services supplied by or Work performed by Subcontractors.

4.4 Contractor Permits and Approvals: Compliance with Law. Contractor shall, and shall cause its Subcontractors to, at its or its Subcontractors' cost, apply for, obtain, maintain and pay for all Contractor's Permits. Within forty-five (45) days of the Commencement Date, Contractor shall provide Owner with copies of those Contractor Permits listed in Exhibit C and shall provide Owner with copies of all other Contractor Permits as and when they are required to be obtained by Applicable Law or any Governmental Authority. Contractor shall ensure that all

activities related to the Work are conducted in compliance with all Applicable Laws, including compliance with all terms and conditions contained within the Contractor Permits and Owner Permits.

4.5 Inspection of the Work by Owner. During the term of this Agreement, Contractor shall permit Owner, the Financing Parties and each of their representatives and engineers to inspect the Work and the progress of the Work in order to verify compliance with the Requirements and to maintain personnel at the Project Sites for such purpose, provided however, that except as otherwise permitted herein, neither Owner, the Financing Parties, nor any of their representatives or engineers shall delay or otherwise interfere with Contractor's timely completion of the Work. Contractor shall permit Owner, the Financing Parties and each of their representatives and engineers to inspect the Work so as to be able to deliver such certificates as to the adequacy and conformity of such Work as Owner and the Financing Parties may require. Such inspection shall be at Owner's sole cost and expense. Owner, or its representative, agent, advisor, consultant, inspector or engineer, shall have full right and authority to stop or suspend any work or activity of Contractor or Subcontractor if such work or activity is not in compliance with any Requirement; and any such stoppage or suspension shall not entitle Contractor to any Change Order. Owner and its representatives shall have access to all test procedures, test reports and data related to the Work. Any inspection of any part of the Work by Owner or any of its representatives or the Financing Parties shall in no way relieve Contractor of its obligations, duties and responsibility to perform the Work in accordance with the Contract Documents.

4.6 Safety. Contractor shall comply with all Applicable Laws relating to safety and shall take all reasonable actions to avoid injury, loss or damage to Persons or property by taking reasonable steps to protect employees and other Persons at each Project Site, materials and equipment stored at each Project Site or off-site locations for use in performance of the Work, and the Project and all property located at each Project Site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work. Contractor shall undertake such actions as provided for by and comply with the Safety Plan. Contractor shall cooperate and coordinate with all other contractors at each Project Site on safety precautions and programs for the Project. Contractor shall report immediately in writing all significant accidents and injuries occurring at any Project Site related to the Work or in the performance of the Work to Owner. When Contractor is required to file an accident report with any Governmental Authority, Contractor shall furnish a copy of the report to Owner. Contractor shall comply with the requirements of any Governmental Authority having jurisdiction over the safety related to the Work, any Project Site or Contractor. Contractor's responsibility for safety under this Section 4.6 is not intended in any way to relieve Owner of its own contractual and legal obligations and responsibility for (i) complying with all Applicable Laws, including those related to health and safety matters, and (ii) conducting activities within Contractor's work areas in accordance with Section 5.11.

4.7 Engineering and Design.

(a) Contractor warrants that prior to the Effective Date, it has checked and carefully considered the Technical Documents and has found them to be proper, adequate and suitable for fulfilling the Work. Contractor shall design and engineer the Work by preparing all design and engineering documentation (including drawings, specifications, models, samples

and calculations) in computer readable and written forms and format as are necessary for Contractor to engineer and design the Balance of Plant and perform the Work (the "Design Documentation"). Prior to submitting the Design Documentation to Owner pursuant to Section 4.7(b), Contractor shall engage Contractor's Engineer to review, and confirm its acceptance and approval of, the Design Documentation relating to all roads, foundations, Underground Collection Systems, Overhead Collection Systems, High Voltage Substation, SCADA and fiber optic cabling, which shall be within the scope of work set forth in Exhibit A-1.

(b) Within forty-five (45) days (or such other period of time as the Parties may mutually agree upon) after the Commencement Date, Contractor shall submit to Owner all Design Documentation it prepares along with any and all engineer's reviews and reports from Contractor's Engineer regarding any Design Documentation. Owner may within fifteen (15) Business Days provide comments on any Design Documentation, and, in the event Owner does not provide comments within such time period, Owner shall be deemed to accept such Design Documentation. Contractor shall reasonably consider Owner's comments on any Design Documentation. If Contractor amends or modifies any Design Documentation, including as result of any Owner's comments, it shall resubmit the same to Owner and this Section 4.7(b) shall apply to such resubmitted Design Documentation. Notwithstanding any review and/or approval by Owner of any Design Documentation, Contractor shall be responsible for and warrants the completeness and accuracy of the Design Documentation necessary to engineer and design the Balance of Plant and perform the Work. Any approval of any Design Documentation by Owner shall not relieve Contractor of any of its duties, responsibilities, obligations, warranties or liabilities under any Contract Document, and Owner shall not have any responsibility with respect to any Design Documentation.

(c) Contractor shall not commence the assembly, installation, erection or construction of any part of the Work unless and until it has submitted to Owner all Design Documentation and complied with Section 4.7(b).

4.8 Project Site Regulations. Contractor shall conduct all of its activities within the Construction Boundaries. Contractor and Contractor's agents and employees as well as Subcontractors, Subcontractors' agents and employees, shall observe all pertinent and reasonable regulations and rules issued by Owner to Contractor as provided by Owner to Contractor which are in effect at each Project Site, as the case may be, regarding passes, badges and proper conduct on such Project Site.

4.9 Work Hours. Except for weeks in which a holiday occurs pursuant to Applicable Law, work hours will generally be five (5) days per week, ten (10) hours per day but may include Saturdays and/or Sundays or additional hours per day at Contractor's discretion and not inconsistent with Applicable Laws.

4.10 Clean-Up. Upon completion of the Work, Contractor shall leave each Project Site, including storage areas, clean and free of waste materials, trash, rubbish and debris arising out of the Work. Contractor shall, at all times during the term of this Agreement, keep each Project Site and surrounding streets, properties and other areas free from accumulation of waste materials, trash rubbish, debris and other garbage relating to the Work or created by Contractor, its Subcontractor or other Persons for whom they are responsible, and shall employ adequate

dust control measures, and prior to completion of the Work shall clean up, remove and properly dispose in accordance with all Applicable Laws of any such waste materials, trash, rubbish, debris and garbage from and about the Project Site as well as remove all tools, equipment and materials, including Hazardous Substances, of Contractor or Subcontractors or other Persons for whom they are responsible. Contractor shall, in accordance with Applicable Law, properly and regularly dispose of unneeded soil, gravel and other materials used, generated or excavated in the performance of the Work. Prior to each Project Site Final Completion, Contractor shall remove from the relevant Project Site all tools, equipment, machinery, surplus materials, waste materials and rubbish, and shall clean all surfaces (including, without limitation, the blades and towers of the Turbines), remove all paint spots and other smears, stains or scuff marks, clean all equipment (to the extent cleaning is necessitated by or related to performance of the Work) and otherwise leave the Project Site in a neat and clean condition. All waste disposal and other clean up shall be performed, at a minimum, in accordance with all Applicable Laws. If Contractor fails to clean the Work and any Project Site as provided herein, then after five (5) days' written notice from Owner, Owner may do so and the cost thereof shall be payable by Contractor.

4.11 Drugs, Alcohol and Firearms. Contractor shall not permit or allow the introduction or use of any firearms, illegal drugs or intoxicating liquor upon any Project Site, or upon any of the grounds occupied, controlled, or used by Contractor or any Subcontractor or other Person for whom they are responsible in the performance of the Work.

4.12 Existing Improvements and Facilities. Contractor shall protect and avoid the removal, alteration or damage to existing improvements, facilities and equipment at each Project Site, except as is necessary to complete the Work in which case Contractor shall obtain the prior written approval of Owner.

4.13 Progress Meetings. Progress meetings shall be held upon request by Contractor or Owner, but in any event at least twice per month, at the relevant Project Site where Work is in progress as designated by Owner. Contractor shall cause its Contractor's Project Manager and Owner shall cause its Owner's Project Manager to attend and participate in progress meetings. Contractor shall prepare and distribute minutes of such progress meetings. Owner shall cause the Turbine Supplier and the Separate Contractors to attend any progress meetings to coordinate compliance with the Master Construction Schedule. Progress meetings may be utilized to address any delays, unusual conditions, or critical items which have affected or could affect the progress of the Work, and to consider any other matter or subject of relevance to the Work.

4.14 Turbine Delivery.

(a) Contractor shall coordinate the delivery of the Turbines with the Turbine Supplier in accordance with the Turbine Supplier Delivery Schedule. If the Turbine components are delivered out of sequence from that set forth in the Turbine Supplier Delivery Schedule, delivered to the wrong Project Site, or the Turbines are missing components, or if the Turbines are not delivered in accordance with the Turbine Supplier Delivery Schedule, and such event materially and adversely affects Contractor's assembly of the relevant Turbine in accordance with the Master Construction Schedule, Contractor may be entitled to request a Change Order. If a Turbine (or any part thereof) is delivered to the relevant Project Site before 2:00 PM Mountain Standard Time, Contractor will unload that day. If a Turbine arrives after

2:00 PM Mountain Standard Time, it is at Contractor's sole discretion to unload that day; failing which, it shall unload the following day before 2:00 P.M. Contractor will not accept Turbine deliveries on any Sunday unless previously agreed to by it. During the period from the acceptance of the delivery of any Turbine (or any part thereof) at a Project Site until the assembly, installation and erection thereof, such Turbine (or any part thereof) shall be stored and protected at such Project Site in accordance with Prudent Industry Practices and the Requirements.

(b) Contractor shall bear demurrage charges in accordance with the Turbine Demurrage Rate Schedule if it fails to unload the Turbines in accordance with Section 4.14(a), provided, that, Contractor shall not be responsible for any demurrage charges in the event the Turbine Supplier delivers more than eight (8) Turbines per week (with each such week beginning on Monday).

(c) Contractor shall coordinate and communicate with the Turbine Supplier regarding the delivery of the Turbines and the Turbine Supplier Delivery Schedule such that Contractor is informed during the period leading up to the delivery of each Turbine of the proposed timings and expected arrival of the Turbine at the relevant Project Site and shall accordingly schedule its activities for receipt and unloading the Turbine. If Contractor has any questions regarding the assembly, erection or installation work, Contractor shall obtain Turbine Supplier's written instructions. Contractor shall comply with the reasonable instructions provided by Turbine Supplier.

4.15 Turbine Erection and Installation. Contractor shall assemble, erect and install each Turbine and interconnect such Turbine to the Underground Collection System, which shall then be connected to the disconnect switch at the top of the power pole for the Project Site, in accordance with the Technical Documents and perform all other work necessary to achieve Turbine Mechanical Completion of each Turbine. Contractor shall be responsible for procuring all the supplies, materials and components (excluding the Excluded Work) necessary for its performance of the foregoing. Contractor shall install Federal Aviation Administration lighting on the Turbines as specified in the Turbine Supplier Installation and Erection Manual.

4.16 As-Built Drawings. Contractor shall deliver to Owner the As-Built Drawings with respect to each Project Site within thirty (30) days following achievement of Project Site Substantial Completion of such Project Site and, in any event, no later than Project Site Final Completion of such Project Site if it occurs within such thirty (30) day period. Contractor shall deliver to Owner the As-Built Drawings with respect to the High Voltage Electrical System within thirty (30) days following achievement of High Voltage Electrical System Substantial Completion and, in any event, no later than High Voltage Electrical System Final Completion if it occurs within such thirty (30) day period.

4.17 Access Roads. Contractor shall design, procure materials for, construct and maintain the access roads within all Project Sites as contemplated in the Road and Staging Area Requirements and the other the Contract Documents, all in accordance with the Master Construction Schedule. The signage, structural analysis and design of such access roads are the responsibility of Contractor and shall conform to the Requirements, Road and Staging Area Requirements and to any requirements therefor set forth in the Contract Documents. Contractor

acknowledges and agrees that such access roads may be used by other Persons performing work at the Project Sites. After completion of the erection and commissioning of the Turbines, Contractor shall repair all damage to such access roads resulting from the Work performed by Contractor, any Subcontractor or any Persons for who they are responsible.

4.18 Storage Areas. Contractor shall design, permit, construct and maintain at each Project Site appropriate storage facilities and areas during the term of this Agreement for the Work. Contractor shall remove such facilities from each Project Site prior to Project Site Substantial Completion for such Project Sites, except to the extent as may be agreed by the Parties or reasonably necessary for (i) the performance of the Work relating to the Punch List or (ii) the use by Owner or Separate Contractors (as notified by Owner to Contractor).

4.19 Reporting. Contractor shall submit to Owner a monthly progress report in a form to be mutually agreed upon by the Parties and, at such time as so agreed upon, to be attached hereto as Exhibit R that shall include, at a minimum, a description of the progress of the Work and the status of the supply of goods, materials and equipment necessary for completion of the Work, a comparison of the actual schedule of the Work with the Master Construction Schedule, an evaluation of problems and deficiencies and a description of any planned corrective action with respect thereto, and the status of obtaining the Contractor Permits or satisfying Contractor Permits or other requirements of Governmental Authorities as to the Work. If the actual schedule of the Work is behind the Master Completion Schedule and Owner so directs, Contractor shall conduct appropriate planning and review meetings pursuant to Section 4.13 with representatives of Owner to review the status of the Work. Contractor shall promptly notify Owner in writing if at any time Contractor becomes aware: (i) of defects in the work of any Separate Contractor at any Project Site, it being understood that Contractor is not responsible for monitoring the progress of the Separate Contractors; (ii) of any events or occurrences that would reasonably be likely to result in Contractor failing to meet any milestone in the Master Construction Schedule or an increase in Contractor's cost of performing the Work or which may affect the time required for Owner to perform any of its obligations under this Agreement or any Separate Contractor to perform its work at any Project Site; or (iii) any issues with cooperation between Contractor and/or any Subcontractor, on the one hand, and any Separate Contractor, on the other hand. Should any problem, emergency, strike, injury, work stoppage, or legal problem be anticipated, or any unanticipated event occur which might materially and adversely affect Contractor's ability to perform the Work and its obligations hereunder in a timely manner, Contractor shall promptly prepare and deliver to Owner a written significant event report detailing all available information and steps being taken to correct such problem or event.

4.20 Notification of Defects. Contractor shall give prompt notice to Owner of any defects, deficiencies or non-conformity in or poor quality or condition of design, workmanship, equipment, components or parts of the Work that it detects and shall promptly correct, rectify, remedy, repair or replace same. No such notice shall be deemed to cause a waiver or release of any of Contractor's duties or obligations under the Contract Documents or of Owner's rights and remedies thereunder. Contractor shall not be excused, released or relieved of liability for any such defect, deficiency or non-conformity in the Work or for failing to perform the Work in accordance with the Master Construction Schedule, or failing to correct, rectify, remedy, repair or replace such defect, deficiency or non-conformity, on account of providing such notice to Owner. Contractor shall not be responsible for defects in or damage to the Turbines unless

caused by an act or omission of Contractor, Subcontractors or Persons for whom they are responsible.

4.21 Correction of Damages. Contractor shall, at its sole cost and expense, promptly correct, rectify, remedy, repair or replace any damage or loss to any Project Site and any other property (including, without limitation, surrounding property and roads) to the extent caused in whole or in part by Contractor, a Subcontractor or other Persons for whom they are responsible. Prior to the date a Project Site achieves Project Site Substantial Completion, Contractor shall, at its sole cost and expense, (i) correct, rectify, remedy, repair or replace any part of the Work at such Project Site that is non-conforming, defective or deficient, or ceases to perform the operation or function for which it was designed, regardless of the stage of its completion or the time or place of discovery of such non-conformity, defect, or deficiency and regardless of whether Owner has previously inspected or accepted such Work through oversight or otherwise (or Owner has specifically accepted such condition in writing) and (ii) satisfactorily correct, rectify, remedy, repair or remove and replace any damage caused by Contractor or its Subcontractors or other Persons for whom they are responsible to (a) other work and (b) land or other surrounding areas or improvements resulting therefrom.

4.22 Owner's Right Regarding Defective Work.

(a) Owner shall have the right and the authority to reject Work which is defective or deficient, or which otherwise does not conform to the Contract Documents. If Contractor fails to perform the Work in accordance with the Contract Documents and Contractor does not commence and diligently pursue a cure of such failure within seven (7) days after Owner's written notice to Contractor of the same, Owner may, without prejudice to any other rights or remedies Owner may have, and with or without terminating this Agreement, correct such failure, and deduct an amount equal to the expenditures reasonably incurred by Owner in so doing from amounts due or to become due to Contractor. Owner may also, by a written directive, order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, the right of Owner to stop the Work shall neither give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity, nor relieve Contractor of any of its responsibilities and obligations under or pursuant to this Agreement. In confirmation and furtherance of the foregoing, Contractor shall not have any claim for an increase in the Contract Price or a Change Order due to stoppage in the Work except as provided in Section 4.22(b).

(b) Notwithstanding the foregoing, if Owner stops the Work and it is later determined that the Work was in fact in conformity with the requirements of this Agreement (and Owner had no other just cause to stop the Work), Contractor shall be entitled to request a Change Order pursuant to Section 9.3 and reimbursed for costs incurred by it for demobilization and remobilization, direct costs, additional equipment rental and any other costs incurred as applicable.

4.23 Landowner and Transportation Considerations. Contractor shall cooperate with Owner to address any and all reasonable concerns of owners or occupants of real property comprising or adjacent to each Project Site (each, a "Landowner"). Contractor shall not enter into any agreement, contract or understanding (oral, written or otherwise) affecting the Project

with any Landowner without the prior written consent of Owner (such consent not to be unreasonably withheld), and any such transaction entered into by Contractor shall in no way be an obligation of Owner. Contractor shall (and shall cause its Subcontractors to) carry out the Work at each Project Site in compliance with the land use restrictions set forth in Exhibit G-1, Land Use Restrictions - Lava Beds, Exhibit G-2, Land Use Restrictions - Notch Butte, and Exhibit G-3, Land Use Restrictions - Cottonwood, Deep Creek, Salmon Creek, and Rogerson Flats, and any applicable restrictions or requirements set forth in any leases, easements or other real property agreements relating to such Project Site and notified by Owner to Contractor (collectively, the "Landowner Provisions") and so as not to interfere unreasonably, unnecessarily or improperly with access to or use of private roads, footpaths or of properties of Owner or of any other Person. Contractor shall liaise with Landowners and Governmental Authorities, and comply with requirements of applicable Landowner Provisions and Governmental Authorities in relation to vehicular access to and egress from Project Sites.

4.24 Site Layout. Exhibit B-1 and Exhibit B-5, Appendix 3 identifies the locations for the various portions of the Work for each Project Site. Contractor shall be strictly responsible for the proper staking, layout, location, performance, and accuracy of the lines and levels required for the proper performance of the Work at each Project Site and for any loss or damage to Owner resulting from Contractor's failure to properly perform the same. Contractor shall undertake quality assurance and quality control surveying to verify the accuracy of such layout. If any changes of locations are required by Contractor from those shown in Exhibit B-1 and Exhibit B-5, Appendix 3, such changes of locations shall comply with the Requirements and Contractor shall obtain written approval of Owner before beginning any Work at the new locations. Owner shall have the right to revise and/or amend Exhibit B-1 at any time and from time to time upon written notice to Contractor of such revisions and amendments. If Contractor's cost or time to perform is increased or decreased by any such revision and/or amendment to Exhibit B-1, then Contractor may request a Change Order in accordance with the procedures set forth in Article IX.

4.25 Books and Records. Contractor shall keep and maintain such full and detailed books, records and accounts as may be reasonably necessary for proper financial management under this Agreement, including one set of records showing all payments made to Contractor by Owner. Such records shall be maintained for at least four (4) years after Final Payment to Contractor. At any reasonable time within four (4) years after Final Payment to Contractor, upon the request of Owner or its representatives, Contractor shall provide Owner with copies of such records (excluding any such records relating to overhead profit and labor costs) relating to (a) payments to Contractor for Work performed, (b) Taxes for which Contractor is liable and that are assessed or imposed on the Work or (c) any regulatory or other proceeding related to the Work before a Governmental Authority. If the audit determines that there has been an under or over payment, then the Party owing money shall promptly pay the amount due, with interest. All information, books, records and accounts provided to Owner by Contractor pursuant to this Section 4.25 shall be subject to the confidentiality requirements of Section 22.16.

ARTICLE V
GENERAL DUTIES AND OBLIGATIONS OF OWNER

5.1 Site Access and Landowner Issues. Owner shall provide Contractor and its Subcontractors with access to the Project Site (in compliance with the Landowner Provisions) at all times necessary for performance of the Work.

5.2 Landowner Concerns. Subject to Section 4.23, Owner shall be responsible to handle any and all issues or concerns raised by Landowners related to the Project Site (except that Contractor shall be liable for any such issues arising from the breach or non-compliance by Contractor, its Subcontractor or other Persons for whom they are responsible of or with any Applicable Law or any Contract Document).

5.3 Owner's Project Manager. Owner shall appoint a single representative to act on Owner's behalf as manager and coordinator in respect of the Contract Documents ("Owner's Project Manager"). Owner's Project Manager shall act as the liaison for Owner's communications with Contractor and Contractor's communications with Turbine Supplier and other Separate Contractors. All written communications given to or received from Owner's Project Manager shall be binding on Owner.

5.4 Owner Responsibilities. Owner, at its sole cost and expense shall (a) acquire the Turbines and procure the Turbine Supplier to deliver the Turbines to the relevant Project Site, in accordance with the Turbine Supplier Delivery Schedule (which shall be provided to Contractor in accordance with Section 22.19 herein): beginning at the Lava Beds Project Site, not later than September 1, 2012 at the rate of not-less-than three (3) Turbines per week; and beginning at the Notch Butte Site, not later than September 1, 2012 at the rate of not-less-than three (3) Turbines per week, and beginning at the Cottonwood, Salmon Creek, Deep Creek, and the Rogerson Flats Project Sites not later than June 30, 2012 at the rate of not-less-than five (5) Turbines per week; (b) coordinate the efforts and activities of Owner, other contractors under Owner's control, and all other Persons on the Project Site performing work on behalf of Owner with the efforts and activities of Contractor to minimize interference with the performance of the Work; (c) continue to provide Contractor access to the Project Site and sufficient space within the Project Site to enable Contractor to perform the Work in accordance with the Road and Staging Area Requirements; and (d) all other duties as set forth in the Division of Responsibility.

5.4.1 Owner Review of Documents. Owner shall have ten (10) Business Days after the receipt of documents to provide comments thereon, which comments shall be in writing. Owner shall review and return such documents to Contractor marked "Reviewed, No Comments," "Reviewed, With Comments," "Revise and Resubmit," or "Reviewed with Comments and Request for Change or Options." Owner's review shall be for the purposes of learning whether Contractor's design and engineering work is in conformity with this Agreement, and Owner may require that the documents submitted to it be amended to meet the obligations of Contractor hereunder. Review and comment by Owner shall not relieve Contractor of any of its responsibilities hereunder. If Owner fails to provide comments within such ten Business Day period, such failure shall be deemed a waiver of Owner's right to review said documents and said documents shall be deemed marked "Reviewed, No Comments." Any subsequent review of the documents shall be completed by the Owner in the durations noted below. Subsequent reviews shall be limited to ensuring accepted comments were integrated properly and to new content only.

Upon return receipt of drawings and documents marked "Reviewed, No Comments," and agreed to by Contractor, Contractor shall commence procurement, fabrication, manufacture, assembly, shipment, construction, or installation, as applicable. Use of the term "Reviewed, No Comments" shall not absolve or otherwise discharge Contractor from its responsibility to supply Work that complies with the requirements of this Agreement.

Upon return receipt of drawings and documents marked "Reviewed, With Comments" and agreed to by Contractor, Contractor shall incorporate into the drawings and documents, if applicable, the comments noted by Owner and resubmit for information only within five (5) business days and Contractor shall immediately commence procurement, fabrication, manufacture, assembly, shipment, construction, or installation, as applicable. If Contractor determines in good faith that it cannot incorporate Owner's comments into Contractor's drawings and documents without prejudice to Contractor's obligations under this Agreement, then Contractor shall so advise Owner in writing within ten (10) days of its receipt of Owner's comments, stating the reasons in reasonable detail.

Upon return receipt of drawings or documents marked "Revise and Resubmit," Contractor shall immediately take all necessary action to review such comments on the drawings or documents, revise such drawings and documentation as applicable and resubmit its revised drawings and documents for information only to Owner within five (5) business days and Contractor shall immediately commence procurement, fabrication, manufacture, assembly, shipment, construction, or installation, as applicable. Upon return receipt of drawings or documents marked "Reviewed with Comments and Request for Change or Options," Contractor shall immediately take all necessary action the same as above "Reviewed, With Comments" along with pricing or a plan to obtain pricing for Owner's requested changes or options. Such comments shall be considered a Change Order Request and the Change Order Request shall be handled in accordance with Article IX of this Agreement.

If Owner makes comments to a document after the ten (10) Business Day period has expired, or makes additional comments to previously reviewed documents, then such comments shall be considered as a new "Reviewed with Comments and Request for Change or Options" and Contractor shall be entitled to a Change Order for any and all costs and Schedule impacts arising from such Comment or change required. When a drawing or document previously submitted by the Contractor is altered by the Contractor on its initiative or revised to alter features that had been previously incorporated due to Owner's comment, it shall be resubmitted for review and the substance of the revision noted in the transmittal letter. Minor revisions shall be submitted to Owner for information as such revisions are issued.

5.5 Owner Caused Delay. Notwithstanding anything contained herein to the contrary, if Owner fails to complete or satisfy its obligations set forth in Section 5.4 pursuant to the terms of this Agreement, or if anyone under Owner's control, including the Turbine Supplier or other Separate Contractors, fail to complete any work required to be performed by or on behalf of Owner pursuant to this Agreement within the dates specified in Master Construction Schedule (and, in each case, provided such failure is not attributable to any breach, non-performance or non-compliance by Contractor or any Subcontractor or any other Person for whom they are responsible of any Contract Document) (such failure by Owner, an "Owner Caused Delay"), and

such Owner Caused Delay has a material and adverse delay to Contractor's ability to achieve Project Site Substantial Completion, Contractor shall be entitled to request a Change Order pursuant to Article IX.

5.6 Coordination with Turbine Supplier. Owner shall be responsible for the Turbine Supplier being present at the Project Site during the installation and erection of each Turbine. Owner shall be responsible for the Turbine Supplier providing qualified individuals during each Turbine erection and to facilitate the inspections of such Turbine to occur within twenty-four (24) hours (or if such 24-hour period does not fall within a Business Day, then within the immediately next Business Day) of Contractor's notice to the Turbine Supplier and Owner of completion of such erection. During such inspection, Contractor shall coordinate with the Turbine Supplier to complete the Turbine Supplier Installation Checklist, which is required by the Turbine Supplier as a part of the Turbine Supplier Installation and Erection Manual, as set forth in Exhibit D-3, which checklist shall be so completed once it is signed by both Contractor and the Turbine Supplier. Owner shall procure the Turbine Supplier to Commission each Turbine within ten (10) Business Days after Contractor has successfully achieved Turbine Mechanical Completion of such Turbine pursuant to Section 7.3.

5.7 Permits. Owner shall at its cost apply for, obtain and maintain all Owner Permits. Owner shall provide copies of such Owner Permits to Contractor.

5.8 Map and Survey. Owner shall provide Contractor with all maps, surveys, and other site information necessary for Contractor to perform the Work, and Contractor shall, subject to Section 4.24, be entitled to rely on the accuracy and completeness of such information.

5.9 Limited Notice to Proceed. Prior to issuance of a Notice to Proceed, Owner and Contractor agreed in writing to proceed with the Work as identified under the following Limited Notices to Proceed: Notch Butte LNTP #1, dated July 25, 2011; Notch Butte LNTP #2, dated December 14, 2011; Lava Beds LNTP #1, dated August 1, 2011; Lava Beds LNTP #2, dated December 14, 2011; Jack Ranch LNTP #1, dated August 2, 2011; Jack Ranch LNTP #2, dated October 9, 2011; Jack Ranch/Idaho Six Winds LNTP #3, dated December 14, 2011, all as more specifically set forth in Exhibit A-3, Appendices 1-7 herein. Each Limited Notice to Proceed specified the portion of the Work to be performed, authorized Contractor to begin performance of the Work, and specified the specific payment due Contractor for completion of that portion of the Work specified in the Limited Notice to Proceed and based on the Limited Notices to Proceed issued by the Owner, Contractor began work at these respective locations on or about the dates specified in the Limited Notices to Proceed. All other terms of this Agreement shall apply to the Limited Notices to Proceed. Owner was entitled to and issued more than one Limited Notice to Proceed before issuing the Notice to Proceed. Any and all payments made under any Limited Notice to Proceed shall be applied towards and credited to the obligation of Owner to pay the Contract Price.

5.10 Taxes. Owner shall pay any and all sales and use Taxes related to or arising out of the Turbines and any materials or equipment required to be furnished pursuant to this Agreement by Owner to Contractor for the performance by Contractor of the Work, including any and all sales and use Taxes (if any) that are imposed on Contractor related to such installed materials or equipment furnished by Owner to Contractor, including the Turbines, and work

performed by Owner or those Persons under its direction or control (but specifically excluding custom duties, import taxes and taxes on income to Persons other than Owner and excluding Taxes for which Contractor is responsible pursuant to Section 4.1(a)).

5.11 Safety. Owner shall, and shall require its Separate Contractors to, cooperate with the Safety Plan and procure all its employees or representatives, or the employees or representatives of its Separate Contractors to participate in Contractor's site safety orientation, to the extent such individuals are in any way engaged within the work areas of Contractor. Owner shall also require a representative of Owner and its Separate Contractors to attend Contractor's daily site safety meeting during periods when they are engaged within Contractor's work area. Contractor shall cooperate with Owner in ensuring Project Site safety rules are implemented and enforced. To the extent Contractor and Separate Contractors are working in close proximity with one another, Contractor shall provide a representative for safety meetings with Separate Contractors.

5.12 Compliance with Laws. Owner shall comply with all Applicable Laws in performing its obligations under this Agreement.

5.13 Turbine Locations. Owner will designate and provide the layout and setting of each Turbine.

5.14 Project Interconnection Facilities. Owner shall notify Idaho Power Company that Contractor is authorized by Owner to communicate and coordinate with Idaho Power Company and its technical personnel with respect to the Project Interconnection Facilities.

ARTICLE VI NOTICE TO PROCEED, SCHEDULE AND LIQUIDATED DAMAGES

6.1 Notice to Proceed and Commencement.

(a) Contractor shall promptly commence the performance of the Work upon its receipt of the Notice of Proceed issued by Owner. The Parties agree that the Notice to Proceed shall only be valid if Owner presents therewith: (i) the certificate of insurance or policy of insurance evidencing insurance coverage for the All-Risk Builder's Risk insurance as required by Section 18.3.1; and (ii) evidence to Contractor the Project is financed in its entirety for 100% of the Contract Price.

(b) Owner shall have no obligation to issue the Notice to Proceed and may do so at its option and discretion (subject to Section 6.1(c) and Section 13.2). Notwithstanding anything to the contrary in any Contract Document, Owner shall have no liability to Contractor, and Contractor shall have no claim against Owner, should Owner not issue the Notice to Proceed, except to the extent of Payment for Work performed by Contractor pursuant to any one or more Limited Notices to Proceed.

(c) In the event that Owner does not issue the Notice to Proceed on or prior to January 31, 2012, the Parties shall adjust (i) the dates in the Master Construction

Schedule and (ii) the date "December 15, 2012" set forth in Section 6.3(a)(ii) and the date "September 30, 2012" set forth in Section 6.3(c); on a day-for-day basis for each day occurring after December 15, 2012 and until (but excluding) the date of issuance by Owner of the Notice to Proceed.

6.2 Master Construction Schedule. Contractor shall perform its Work in accordance with the dates and milestones described in the master construction schedule attached to this Agreement as Exhibit H, Appendices 1-6 (the "Master Construction Schedule"), as such schedule may be revised at the request of Contractor in an immaterial manner and agreed to by Owner from time to time throughout the performance of the Project to accommodate changes in the sequence of activities by Contractor of the Work necessitated by variable and adverse Project Site conditions to allow Contractor to achieve the Project Site Substantial Completion as required by this Agreement. Contractor shall not be entitled to request a Change Order (or adjustment to Contract Price) as a result of any such agreed upon changes in sequence of activities of Contractor.

6.3 Liquidated Damages; Not a Penalty, Sole and Exclusive Remedy. The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur should Contractor fail to achieve the dates set forth below in Sections 6.3(a), and 6.3(c). It is understood and agreed by the Parties that (i) Owner shall be damaged by the failure of Contractor to meet such obligations, (ii) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom, (iii) any sums which would be payable under Sections 6.3(a), and/or 6.3(c) are in the nature of liquidated damages, and not a penalty, and are fair and reasonable under the circumstances and (iv) each payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure, and shall be the sole and exclusive measure of damages with respect to any such failure by Contractor (but without limitation of Contractor's obligation to achieve Project Site Substantial Completion or to otherwise complete the Work in accordance with the Master Construction Schedule). Once payment of the Liquidated Damages (set forth below in Sections 6.3(a), and 6.3(c)) have been paid or the limits set forth in Section 12.1 have been reached, Contractor shall be relieved of any further liability in respect of the failure to meet the dates set forth below in Sections 6.3(a), and 6.3(c). Accordingly, the Parties agree that:

(a) in the event that Contractor fails to successfully achieve Project Site Substantial Completion in accordance with Section 7.5 for the Project Site on or prior to the earlier to occur of (i) the Guaranteed Project Site Substantial Completion Date for the Notch Butte Project Site and (ii) December 15, 2012, Contractor shall pay to Owner as liquidated damages, and not as a penalty, the amount of one thousand two hundred twenty five U.S. Dollars (\$1,225.00) per day of delay commencing in the case of the Guaranteed Project Site Substantial Completion Date, the thirty-first (31st) day after such date for each Turbine located at the Project Site, provided that, commencing the day immediately following the day that Project Site Substantial Completion for the Project Site is successfully achieved pursuant to Section 7.5, such amount shall no longer be payable by Contractor; plus

(b) RESERVED.

(c) in the event that Contractor fails to successfully energize the High Voltage Substation and otherwise achieve High Voltage Electrical System Substantial Completion on or prior to September 30, 2012 (the "High Voltage Electrical System Required Completion Date"), then Contractor shall pay to Owner as liquidated damages, and not as a penalty, the amount of ten thousand U.S. Dollars (\$10,000.00) per day of delay (commencing on the thirty-first (31st) day immediately after such earlier date to occur).

(d) The amounts set forth above in Sections 6.3(a) and 6.3(c) collectively, are referred to herein as the "Liquidated Damages".

6.4 Payment. The Liquidated Damages shall be due and payable by Contractor to Owner upon demand and, at Owner's sole discretion, Owner may offset any such Liquidated Damages against amounts due from Owner to Contractor. Late payments of Liquidated Damages will accrue interest at the rate set forth in Section 13.7.

ARTICLE VII ACHIEVEMENT OF COMPLETION OF PROJECT

7.1 Foundation Completion for a Turbine. When Contractor believes that it has achieved Foundation Completion for a Turbine, Contractor shall so notify Owner with the submittal to Owner of a "Foundation Completion Certificate" in the form of Exhibit D-1, signed by Contractor's Project Manager, applicable to such Turbine, stating the date of achievement of such Foundation Completion and identifying the Turbine for which the foundation has been completed. Owner shall review the relevant Work and the Foundation Completion Certificate to determine if Foundation Completion has in fact been achieved for such Turbine. Within three (3) Business Days after the receipt of the Foundation Completion Certificate by Owner, Owner shall either (a) notify Contractor that Foundation Completion for the identified Turbine has been achieved (in which case, such Foundation Completion will then have been successfully achieved) or (b) notify Contractor that such Foundation Completion has not been achieved and stating the reasons therefore. Should Owner fail to respond to Contractor's notice within such three (3) Business Day period, the corresponding Turbine shall be deemed to have successfully achieved Foundation Completion. In the event Owner provides written notice that Foundation Completion has not been achieved, Contractor shall, at its cost and expense, take action to correct, rectify, remedy, repair and/or replace any defective, deficient or non-conforming Work adversely affecting the achievement of Foundation Completion for such Turbine. Upon completion of such corrective, rectification remedial, repair and/or replacement actions, Contractor shall again notify Owner that it believes Foundation Completion has been achieved and the foregoing procedures in this Section 7.1 shall be repeated until Foundation Completion has in fact been successfully achieved for such Turbine.

7.2 Project Site Underground Collection System Completion. When Contractor believes that it has achieved Project Site Underground Collection System Completion for a Project Site, Contractor shall so notify Owner with the submittal to Owner of a "Project Site Underground Collection System Completion Certificate" in the form of Exhibit D-2, signed by Contractor's Project Manager stating the date of achievement of such Project Site Underground Collection System Completion. Owner shall review the relevant Work and the Project Site Underground Collection System Completion Certificate to determine if Project Site Underground

Collection System Completion has in fact been achieved for the relevant Project Site. Within three (3) Business Days after the receipt of the Project Site Underground Collection System Completion Certificate by Owner, Owner shall either (a) notify Contractor that Project Site Underground Collection System Completion for such Project Site has been achieved (in which case, such Project Site Underground Collection System Completion will then have been successfully achieved) or (b) notify Contractor that such Project Site Underground Collection System Completion has not been achieved and stating the reasons therefore. Should Owner fail to respond to Contractor's notice within such three (3) Business Day period, such Project Site shall be deemed to have successfully achieved Project Site Underground Collection System Completion. In the event Owner provides written notice that the Project Site Underground Collection System Completion has not been achieved, Contractor shall, at its cost and expense, take action to correct, rectify, remedy, repair and/or replace any defective, deficient or non-conforming Work adversely affecting the achievement of Project Site Underground Collection System Completion for such Project Site. Upon completion of such corrective, rectification remedial, repair and/or replacement actions, Contractor shall again notify Owner that it believes Project Site Underground Collection System Completion has been achieved and the foregoing procedures in this Section 7.2 shall be repeated until Project Site Underground Collection System Completion has in fact been successfully achieved for such Project Site.

7.3 Turbine Mechanical Completion. When Contractor believes that it has achieved Turbine Mechanical Completion for any individual Turbine, Contractor shall so notify Owner with the submittal to Owner and the Turbine Supplier of a "Turbine Mechanical Completion Certificate" in the form of Exhibit D-4, signed by Contractor's Project Manager, applicable to such Turbine, stating the date of achievement of Turbine Mechanical Completion and identifying the Turbine completed, and have attached thereto the Turbine Supplier Installation Checklist completed pursuant to Section 5.6, in the form of Exhibit D-3, for such Turbine. Owner shall review the Work related to such Turbine Mechanical Completion, the Turbine Supplier Installation Checklist and Turbine Mechanical Completion Certificate to determine if Turbine Mechanical Completion has in fact been achieved for such Turbine. Within three (3) Business Days after the receipt of the Turbine Mechanical Completion Certificate (which shall have attached thereto the Turbine Supplier Installation Checklist) by Owner, Owner shall either (a) notify Contractor that Turbine Mechanical Completion for the identified Turbine has been achieved (in which case, such Turbine Mechanical Completion will then have been successfully achieved) or (b) notify Contractor that such Turbine Mechanical Completion has not been achieved and stating the reasons therefore. Should Owner fail to respond to Contractor's notice within such three (3) Business Day period, the corresponding Turbine shall be deemed to have successfully achieved Turbine Mechanical Completion. In the event Owner provides written notice that Turbine Mechanical Completion has not been achieved, Contractor shall, at its cost and expense, take action to correct, rectify, remedy, repair and/or replace any defective, deficient or non-conforming Work adversely affecting the achievement of Turbine Mechanical Completion of such Turbine. Upon completion of such corrective, remedial, repair, rectification and/or replacement actions, Contractor shall again notify Owner and the Turbine Supplier that it believes Turbine Mechanical Completion has been achieved and the foregoing procedures in this Section 7.3 shall be repeated until Turbine Mechanical Completion has in fact been successfully achieved for such Turbine.

7.4 Project Site Mechanical Completion. When Contractor believes that it has achieved Project Site Mechanical Completion for a Project Site, Contractor shall so notify Owner with the submittal to Owner of a "Project Site Mechanical Completion Certificate" in the form of Exhibit D-5, signed by Contractor's Project Manager stating the date of achievement of such Project Site Mechanical Completion. Owner shall review the relevant Work and the Project Site Mechanical Completion Certificate to determine if Project Site Mechanical Completion has in fact been achieved for such Project Site. Within five (5) Business Days after the receipt of the Project Site Mechanical Completion Certificate by Owner, Owner shall either (a) notify Contractor that Project Site Mechanical Completion for such Project Site has been achieved (in which case, such Project Site Mechanical Completion will then have been successfully achieved) or (b) notify Contractor that Project Site Mechanical Completion has not been achieved and stating the reasons therefore. Should Owner fail to respond to Contractor's notice within such five (5) Business Day period, such Project Site shall be deemed to have successfully achieved Project Site Mechanical Completion. In the event Owner provides written notice that the Project Site Mechanical Completion has not been achieved, Contractor shall, at its cost and expense, take action to correct, rectify, remedy, repair and/or replace any defective, deficient or non-conforming Work adversely affecting the achievement of Project Site Mechanical Completion for such Project Site. Upon completion of such corrective, rectification remedial, repair and/or replacement actions, Contractor shall again notify Owner that it believes Project Site Mechanical Completion has been achieved and the foregoing procedures in this Section 7.4 shall be repeated until Project Site Mechanical Completion has in fact been successfully achieved for such Project Site.

7.5 Project Site Substantial Completion.

(a) Prior to the submission of a Project Site Substantial Completion Certificate with respect to a Project Site pursuant to Section 7.5(b), Owner and Contractor shall inspect the Work, and on the basis thereof Contractor shall prepare a draft list of minor items of Work (the "BOP Punch List") that remain to be performed or completed by Contractor for such Project Site, provided, however, that in no event shall any such minor item of Work be included in the BOP Punch List if it adversely affects the integrity or the safe or reliable operation of any part of such Project Site, including the integrity or the safe or reliable operation of any Turbine for such Project Site. Contractor shall submit such draft BOP Punch List to Owner for its approval, together with an estimate of the cost and the schedule to complete or correct each item on such BOP Punch List. Owner shall, not later than three (3) Business Days after its receipt of the draft BOP Punch List, either: (i) accept the draft BOP Punch List; or (ii) provide its comments on the draft BOP Punch List to Contractor and Contractor shall issue a revised BOP Punch List to Owner that takes account of or responds to Owner's comments not later than three (3) Business Days after Contractor's receipt of such comments, and the process described in this sentence shall be repeated. If Owner does not respond to Contractor's draft BOP Punch List within such three (3) Business Day period, Owner shall be deemed to have accepted such BOP Punch List.

(b) When Contractor believes Project Site Substantial Completion for a Project Site has been achieved, Contractor shall deliver to Owner a "Project Site Substantial Completion Certificate" in the form set forth in Exhibit D-6, signed by Contractor's Project Manager, which certificate shall set forth the date of achievement of Project Site Substantial

Completion and be accompanied by the BOP Punch List accepted by Owner pursuant to Section 7.5(a). Owner shall review the relevant Work and the Project Site Substantial Completion Certificate to determine if Project Site Substantial Completion has in fact been achieved for such Project Site. Within five (5) Business Days after the receipt of the Project Site Substantial Completion Certificate, Owner shall either (i) notify Contractor that Project Site Substantial Completion has been achieved (in which case, such Project Site Substantial Completion will then have been successfully achieved), or (ii) notify Contractor that Project Site Substantial Completion has not been achieved and stating the reasons therefore. Should Owner fail to respond to Contractor's notice within such five (5) Business Day period, Project Site Substantial Completion shall be deemed to have been successfully achieved. In the event Owner provides written notice that Project Site Substantial Completion has not been achieved, Contractor shall, at its cost and expense, take action to correct, rectify, remedy, repair and/or replace the defective, deficient or non-conforming Work adversely affecting the achievement of Project Site Substantial Completion for such Project Site. Upon completion of such corrective, remedial, repair, rectification and/or replacement actions, Contractor shall again notify Owner that it believes Project Site Substantial Completion has been achieved and the foregoing procedures in this Section 7.5(b) shall be repeated until Project Site Substantial Completion has in fact been successfully achieved for such Project Site.

7.6 Project Site Final Completion. When Contractor believes it has achieved Project Site Final Completion of a Project Site, Contractor shall submit the "Project Site Final Completion Certificate", in the form of Exhibit D-7 signed by Contractor's Project Manager, for such Project Site stating the date of Project Site Final Completion. Owner shall review the relevant Work and the Project Site Final Completion Certificate to determine if Project Site Final Completion has in fact been achieved for such Project Site. Within five (5) Business Days after the receipt of the Project Site Final Completion Certificate, Owner shall either (a) notify Contractor that Project Site Final Completion has been achieved (in which case, such Project Site Final Completion will then have been successfully achieved), or (b) notify Contractor that Project Site Final Completion has not been achieved stating the reasons therefore. Should Owner fail to respond to Contractor's notice within such five (5) Business Day period, Project Site Final Completion shall be deemed to have been successfully achieved. In the event Owner provides written notice that Project Site Final Completion has not been achieved, Contractor shall, at its cost and expense, take action to correct, rectify, remedy, repair and/or replace the defective, deficient or non-conforming Work for achievement of Project Site Final Completion for such Project Site. Upon completion of such corrective remedial, repair, rectification and/or replacement actions, Contractor shall again notify Owner that it believes Project Site Final Completion has been achieved and the foregoing procedures in this Section 7.6 shall be repeated until Project Site Final Completion has in fact been successfully achieved for such Project Site. For the avoidance of doubt, all Work related to the Punch List items for the relevant Project Site shall have been completed by Contractor and accepted by Owner for purposes of Contractor successfully achieving Project Site Final Completion of such Project Site. Further, if the Project is completed in the winter months and where such weather and seasonal conditions do not allow for final grading, seeding, and Site clean-up, the Parties further agree the final items of grading, seeding, and clean-up shall be valued at that time and the Owner may retain 150% of the agreed upon value of those items to be completed and such items of Work shall be completed when weather and the season permits. Contractor shall be paid for all Work complete, including the

amount of Retainage on these final items of Work shall be released at the time the Work is complete.

7.7 High Voltage Electrical System Substantial Completion.

(a) Prior to the submission of a High Voltage Electrical System Substantial Completion Certificate pursuant to Section 7.7(b), Owner and Contractor shall inspect the Work, and on the basis thereof Contractor shall prepare a draft list of minor items of Work (the "HVES Punch List") that remain to be performed or completed by Contractor with respect to the High Voltage Electrical System, provided, however, that in no event shall any such minor item of Work be included in the HVES Punch List if it adversely affects the integrity or the safe or reliable operation of the High Voltage Electrical System, including the integrity or the safe or reliable operation of any Turbine for the Project. Contractor shall submit such draft HVES Punch List to Owner for its approval, together with an estimate of the cost and the schedule to complete or correct each item on such HVES Punch List. Owner shall, not later than three (3) Business Days after its receipt of the draft HVES Punch List, either: (i) accept the draft HVES Punch List; or (ii) provide its comments on the draft HVES Punch List to Contractor and Contractor shall issue a revised HVES Punch List to Owner that takes account of or responds to Owner's comments not later than three (3) Business Days after Contractor's receipt of such comments, and the process described in this sentence shall be repeated. If Owner does not respond to Contractor's draft HVES Punch List within such three (3) Business Day period, Owner shall be deemed to have accepted such HVES Punch List.

(b) When Contractor believes that it has achieved High Voltage Electrical System Substantial Completion, Contractor shall so notify Owner with the submittal to Owner of a "High Voltage Electrical System Substantial Completion Certificate" in the form of Exhibit D-8, signed by Contractor's Project Manager stating the date of achievement of such High Voltage Electrical System Substantial Completion and be accompanied by the HVES Punch List accepted by Owner pursuant to Section 7.7(a). Owner shall review the relevant Work and the High Voltage Electrical System Substantial Completion Certificate to determine if High Voltage Electrical System Substantial Completion has in fact been achieved. Within three (3) Business Days after the receipt of the High Voltage Electrical System Substantial Completion Certificate by Owner, Owner shall either (a) notify Contractor that High Voltage Electrical System Substantial Completion has been achieved (in which case, such High Voltage Electrical System Substantial Completion will then have been successfully achieved) or (b) notify Contractor that such High Voltage Electrical System Substantial Completion has not been achieved and stating the reasons therefore. Should Owner fail to respond to Contractor's notice within such three (3) Business Day period, High Voltage Electrical System Substantial Completion shall be deemed to have been successfully achieved. In the event Owner provides written notice that High Voltage Electrical System Substantial Completion has not been achieved, Contractor shall, at its cost and expense, take action to correct, rectify, remedy, repair and/or replace any defective, deficient or non-conforming Work adversely affecting the achievement of High Voltage Electrical System Substantial Completion. Upon completion of such corrective, rectification remedial, repair and/or replacement actions, Contractor shall again notify Owner that it believes High Voltage Electrical System Substantial Completion has been achieved and the foregoing procedures in this Section 7.7(b) shall be repeated until High Voltage Electrical System Substantial Completion has in fact been successfully achieved.

7.8 High Voltage Electrical System Final Completion. When Contractor believes that it has achieved High Voltage Electrical System Final Completion, Contractor shall so notify Owner with the submittal to Owner of a "High Voltage Electrical System Final Completion Certificate" in the form of Exhibit D-9, signed by Contractor's Project Manager stating the date of achievement of such High Voltage Electrical System Final Completion. Owner shall review the relevant Work and the High Voltage Electrical System Final Completion Certificate to determine if High Voltage Electrical System Final Completion has in fact been achieved. Within three (3) Business Days after the receipt of the High Voltage Electrical System Final Completion Certificate by Owner, Owner shall either (a) notify Contractor that High Voltage Electrical System Final Completion has been achieved (in which case, such High Voltage Electrical System Final Completion will then have been successfully achieved) or (b) notify Contractor that such High Voltage Electrical System Final Completion has not been achieved and stating the reasons therefore. Should Owner fail to respond to Contractor's notice within such three (3) Business Day period, High Voltage Electrical System Final Completion shall be deemed to have been successfully achieved. In the event Owner provides written notice that High Voltage Electrical System Final Completion has not been achieved, Contractor shall, at its cost and expense, take action to correct, rectify, remedy, repair and/or replace any defective, deficient or non-conforming Work adversely affecting the achievement of High Voltage Electrical System Final Completion. Upon completion of such corrective, rectification remedial, repair and/or replacement actions, Contractor shall again notify Owner that it believes High Voltage Electrical System Final Completion has been achieved and the foregoing procedures in this Section 7.8 shall be repeated until High Voltage Electrical System Final Completion has in fact been successfully achieved.

ARTICLE VIII LICENSE

8.1 Use and Reuse of Deliverables. Title to all submittals, reports, drawings, design materials, As-Built Drawings, and other documents, calculations and data (where such information is made available to or prepared by Contractor) in connection with the Work ("Deliverables"), including all Intellectual Property Rights therein, except for pricing information and Contractor's preexisting proprietary information, shall vest in Owner when Owner makes payment therefore, and Contractor hereby assigns to Owner all right, title and interest therein. Nothing herein shall be construed as granting Contractor any rights in any of the foregoing, other than as expressly provided herein. Contractor shall, at the request and expense of Owner, perform any acts that Owner may reasonably deem necessary or desirable to evidence, protect or confirm Owner's ownership and Intellectual Property Rights therein, including, but not limited to, making further written assignments in a form determined by Owner.

8.2 Pre-Existing Rights License. Contractor hereby grants to Owner an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license under all of Contractor's preexisting proprietary information and Intellectual Property Rights included in Deliverables to prepare, compile, install, make, use, execute, access, reproduce, publicly display, publicly perform, modify and/or prepare derivative works of such information and rights in connection with the use and operation of the Deliverables. The license granted hereunder shall include the right of Owner to grant to Persons engaged by Owner the right to do any of the foregoing, provided that such Persons use such information and rights solely in connection with the use of Deliverables.

8.3 Reuse of Deliverables. Any reuse of the Deliverables other than in connection with the Project shall be at Owner's sole risk and without liability or legal exposure to Contractor. Owner agrees to waive any claim against Contractor arising out of or resulting from such reuse by Owner, or any third party, of the Deliverables, however arising, including, the waiver of any claims against Contractor for Contractor's negligence or other tort, breach of contract, strict liability or any other basis of liability.

8.4 Consent to Assignment. Contractor hereby consents to the assignment by Owner of all or a portion of its right, title and interest in the license granted under this Article VIII to any successor or assign of Owner pursuant to Section 22.10 and to any subcontractor (and its successors or assigns) of Owner providing operation or maintenance services with respect to the Project or other similar services. Contractor further hereby consents to the assignment by Owner of Owner's right, title and interest in such license in connection with any financing involving the Project to any Financing Party and shall execute and deliver, upon request of Owner, a consent to such collateral assignment.

ARTICLE IX CHANGE ORDERS

9.1 Changes to Work. Owner may, at its option, by written notice request Contractor to make changes in the Work consisting of additions, deletions, modifications or other revisions (a "Change").

9.2 Change Order Process.

(a) In the event that Owner requests a Change, then, within ten (10) Business Days of its receipt of such request Contractor shall submit a proposal to Owner stating its proposed adjustment to the Contract Price (if any) (including any changes to Exhibit I resulting therefrom) and to any Contract Time (if any) that would result from such Change, including reasonable details regarding such adjustments with supporting calculations and documents; provided, however, that in the case of any such Change for the reduction or increase in the number of Turbines, any adjustment to the Contract Price shall be determined in accordance with Section 13.1(b).

(b) Owner shall within ten (10) Business Days of its receipt of Contractor's proposal, accept or reject in writing Contractor's proposals in relation to a Change. If Owner agrees with the proposal for such Change, the Parties shall execute a written change order stating the agreed upon: (i) Change in the Work; (ii) amount of the adjustment (if any) in the Contract Price (including changes to Exhibit I resulting therefrom), and (iii) the adjustment (if any) to the Contract Times (a "Change Order"). In the event that Owner rejects Contractor's proposal for the Change, Owner may notify Contractor that Owner (x) has decided to withdraw its requested Change, (y) has decided to modify its requested Change or requests additional information regarding Contractor's proposal, in which case the process described above in this Section 9.2 shall be repeated, or (z) Section 9.4 shall apply. Should Owner fail to respond to Contractor in writing within ten (10) Business Days of Owner's receipt of Contractor's proposal, Owner shall be deemed to have withdrawn its requested Change.

9.3 Changes for a Material Event and Other Matters.

(a) In the event of the occurrence of a Material Event, Contractor shall be entitled to request a Change and submit a Change Order for an equitable adjustment to the Contract Price and/or the Contract Times, in which case Contractor shall notify Owner in writing of its request for a Change (and a description of the Change) and submit a proposal to Owner stating its proposed adjustment to the Contract Price (if any) and/or to any Contract Time (if any) that would result from such Change.

(b) Owner shall, within ten (10) Business Days of its receipt of such request of a Change and proposal for a Change Order, accept or reject in writing Contractor's proposals in relation to such Change or Change Order. If Owner agrees with such proposal for a Change and Change Order, the Parties shall execute a written Change Order stating the agreed-upon matters described above in Section 9.2(b) (in respect of the definition of "Change Order"). In the event that Owner rejects Contractor's proposal for such Change or Change Order, Owner may notify Contractor that it requests additional information regarding Contractor's proposal, in which case the process described above in this Section 9.3(b) shall be repeated, or Section 9.4 shall apply. Should Owner fail to respond to Contractor in writing within ten (10) Business Days of Owner's receipt of Contractor's proposal for a Change or Change Order, Owner shall be deemed to reject such proposal.

(c) In the event that Owner does not issue the Notice to Proceed on or before December 15, 2011, Section 13.2 shall apply in respect of an adjustment, if any, to the Contract Price, and Section 6.1(c) shall apply in respect of an adjustment, if any, to the Contract Times.

9.4 Disputes Regarding Change Orders. If the Parties are unable to agree upon an appropriate adjustment to the Contract Price or Contract Times resulting from a Change Order, either Party may initiate the dispute resolution procedures set forth in Article XXI. Notwithstanding any such disagreement, if the Parties are unable to mutually agree upon the terms of an adjustment to the Contract Price or Contract Time and the value of such disagreement does not exceed five hundred thousand U.S. Dollars (\$500,000.00), Contractor shall perform the Work and Owner shall pay Contractor based on the Change Order adjustment proposed by Owner until the Parties reach agreement on the final adjustment to the Contract Price or Contract Time or such disagreement is resolved pursuant to the dispute resolution procedures set forth in Article XXI.

**ARTICLE X
CONTRACTOR MATERIAL EVENTS; OWNER FORCE MAJEURE**

10.1 Material Event for Contractor. Upon the occurrence of a Material Event which materially and adversely affects the Work, Contractor shall be entitled to request a Change Order pursuant to the procedures set forth in Section 9.3. For the purposes of this Agreement, a "Material Event" shall mean: material delays affecting the Work and resulting from: (a) an Owner Caused Delay; (b) a Force Majeure Event; (c) the discovery of any Hazardous Substance, not brought on the relevant Project Site (or not materially exacerbated) by Contractor or any of its Subcontractors or other Persons for whom Contractor or any Subcontractor is responsible or

as a consequence of the Work or acts or omissions of Contractor or any of its Subcontractors or such Persons; (d) a Change in Law; (e) any requirement after the Effective Date of a Governmental Authority that the Work is required to be performed by Contractor at the then prevailing wages for labor as specified by such Governmental Authority or as referred by it to any Applicable Law; (f) the suspension of the Work in whole or in part by Owner pursuant to Section 14.1 (if the Work was in fact in conformity with the Requirements and Owner had no just cause to stop the Work) except where such suspension is related to a Contractor Event of Default; (g) the occurrence of the event described in Section 4.22(b); and (h) the discovery of any Unforeseen Subsurface Condition; (i) the occurrence of a Weather Delay; or (j) a delay in the completion and installation of the Project Interconnection Facilities beyond May 30, 2012 that causes a delay in the achievement in Project Site Substantial Completion of any of the Project Sites, including the High Voltage Substation.

10.2 Procedures upon a Material Event. Contractor shall comply with the following conditions precedent to the right to seek an equitable adjustment to the Contract Price or Contract Times through a Change Order:

(a) Contractor shall give Owner written notice describing the particulars of such Material Event, such notice to be given promptly after the occurrence of such Material Event but not later than five (5) Business Days after it becomes aware of such occurrence, which notice shall include an estimate of such Material Event's expected duration and probable impact on the performance of its obligations hereunder, and Contractor shall continue to furnish timely, regular reports during the continuation of such Material Event;

(b) any necessary suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by such Material Event;

(c) no liability or obligation of Contractor that is not affected directly by such Material Event shall be excused as a result of the occurrence of such Material Event;

(d) Contractor shall exercise all reasonable efforts to mitigate or limit damages to Owner and delays as a result of such Material Event by promptly taking appropriate and sufficient corrective action, including the expenditure of all reasonable sums of money;

(e) Contractor shall use reasonable efforts to continue to perform its obligations under the Contract Documents and to correct or cure such Material Event excusing performance; and

(f) when such Material Event is no longer in existence or applicable, or, if such Material Event resulted in Contractor suspension of any Work, when Contractor is able to resume performance of such Work, Contractor shall give Owner written notice to that effect.

10.3 Force Majeure Event Affecting Owner. If Owner is affected by a Force Majeure Event, it shall provide notice thereof to Contractor and the extent to which such Force Majeure Event affects the performance by Owner of its obligations under the Contract Documents. Owner shall not be liable for its failure to comply with any of its obligations as a result of a Force Majeure Event and shall use all reasonable efforts to mitigate or limit the effects of such Force

Majeure Event on the performance of its obligations under the Contract Documents. Owner shall notify Contractor in writing when it is able to resume the performance of its obligations.

**ARTICLE XI
HAZARDOUS SUBSTANCES AND SITE CONDITIONS**

11.1 Hazardous Substance Handling Program. Contractor shall implement and administer a Hazardous Substance handling program for all of its employees and all Subcontractors and other Persons for whom they are responsible, which shall include development of guidelines and training with respect to the proper handling, use and disposal of Hazardous Substance and the development, implementation and enforcement of procedures for notification to Owner and appropriate Governmental Authorities about, and clean-up of, spills and other release or emissions of Hazardous Substance. Owner shall have the right to review, comment on and approve such program prior to the commencement of the Work at a Project Site.

11.2 Use of Hazardous Substances. Contractor shall not bring or store (and shall prohibit Subcontractors from bringing or storing) Hazardous Substances to or on any Project Site, and shall not utilize any construction materials containing radioactivity, asbestos, polychlorinated biphenyls or urea formaldehyde; provided, however, Contractor may use and store in reasonable quantities the following materials required to perform the Work, but only in accordance with applicable Environmental Laws: gasoline, diesel fuel, fuel oil, grease, lube oil, sealants, anti-freeze, cleansers, paint, form oil, solvents, adhesives and other materials of a type and quantity consistent with normal and customary construction practices for construction of a project similar in nature and scope to the Project. Any other Hazardous Substances to be brought to or stored on any Project Site shall require specific written authorization of Owner. Contractor shall comply, and shall cause its Subcontractors (and other Persons for whom Contractor or any Subcontractor is responsible) to comply, with all applicable Environmental Laws. Owner shall not require (by Change Order or otherwise) Contractor to use Hazardous Substances for the Work or at the Project Site in violation of Applicable Laws, including Environmental Laws.

11.3 Discovery of Hazardous Substances. If, in the course of performance of the Work, Contractor encounters on any Project Site any matter which it reasonably believes is a Hazardous Substance that may be dangerous or may require response, removal, cleanup or other remedial action under applicable Environmental Laws, Contractor shall immediately suspend the Work in the area affected and report the condition to Owner by telephone and in writing. In any such event, the obligations and duties of the Parties hereto shall be as follows:

(a) If such condition involves a Pre-Existing Hazardous Substance, then Contractor shall have no obligation with respect to such condition (except to the extent that Contractor, a Subcontractor or any Person for whom Contractor or any Subcontractor is responsible materially exacerbates such Pre-Existing Hazardous Substance) and Owner shall promptly respond in compliance with Applicable Laws.

(b) To the extent such condition involves a Pre-Existing Hazardous Substance that was materially exacerbated by Contractor, a Subcontractor or any Person for whom Contractor or Subcontractor is responsible, then any response, removal, cleanup or other

remedial action required by applicable Environmental Laws shall be promptly performed by Contractor at its sole cost and expense. Except as to Contractor's initial response to an emergency, any such remedial action(s) shall require the prior review and approval of Owner.

(c) If such condition involves a Hazardous Substance introduced to the Project Site after the date of this Agreement by Contractor, its Subcontractors or any Person for whom Contractor or any Subcontractor is responsible, then any response, removal, cleanup or other remedial action required by applicable Environmental Laws shall be performed by Contractor promptly at its sole cost and expense. Except as to Contractor's initial response to an emergency, any such remedial action(s) shall require the prior review and approval of Owner.

(d) If the condition does not involve a Hazardous Substance that requires response, removal, cleanup or other remedial action under applicable Environmental Laws, Contractor shall, promptly after receiving written notice from Owner authorizing Contractor to recommence site activities in the subject area, resume the portion of the Work that had been suspended.

(e) Contractor acknowledges and agrees that the circumstances described in Sections 11.3(b) and 11.3(c) are not Material Events.

11.4 Remediation. The Parties acknowledge and agree that Contractor shall not commence or continue any construction activities on any portion of the Project Site on, in or under which any response, removal, cleanup or other remedial actions are to be (or are being) performed until such actions are to the point where construction activities will not interfere with such actions, as evidenced by appropriate certifications from the applicable environmental engineer and/or remediation contractor and any required approvals of any applicable Governmental Authorities. Contractor agrees to use good faith diligent efforts to continue the unaffected portions of the Work and to adjust and reschedule its activities at the relevant Project Site so as to minimize, to the extent reasonably practicable, any adverse effect on the progress of the Work resulting from the performance of any such actions.

11.5 Owner's Responsibility for Hazardous Substances.

11.5.1 Responsibility. Owner shall bear all costs and expenses and shall be solely responsible for any response, removal, transportation, investigation, cleanup and other remedial action required by applicable Environmental Laws related to any Pre-Existing Hazardous Substance (except to the extent that Contractor, a Subcontractor or any Person for whom Contractor or any Subcontractor is responsible materially exacerbates such Pre-Existing Hazardous Substance). Nothing in the foregoing sentence shall limit Owner's rights of cost-recovery or contribution against Persons for costs of such response, removal, investigation, cleanup or other remedial action.

11.5.2 Indemnity. Owner shall indemnify, defend and hold harmless the Contractor Indemnified Parties from and against any and all Damages caused by any Pre-Existing Hazardous Substance (except to the extent that Contractor, a Subcontractor or any Person for whom Contractor or any Subcontractor is responsible materially exacerbates such Pre-Existing Hazardous Substance).

11.6 Contractor's Responsibility for Hazardous Substances.

11.6.1 Responsibility. Contractor shall bear all costs and expenses and shall be solely responsible for any response, removal, transportation, investigation, cleanup and other remedial action required by applicable Environmental Laws related to any Hazardous Substance (a) brought onto any Project Site by or on its behalf or by any of its Subcontractors, or by any Person for whom Contractor or a Subcontractor is responsible, or (b) if such Hazardous Substance is used or handled by Contractor, any of its Subcontractors, or by any Person for whom Contractor or a Subcontractor is responsible, as part of the Work; and (c) relating to a Pre-Existing Hazardous Substance that was materially exacerbated by Contractor, a Subcontractor or by any Person for whom Contractor or a Subcontractor is responsible.

11.6.2 Indemnity. Contractor shall indemnify, defend and hold harmless the Owner Indemnified Parties from and against any and all Damages caused by (a) any Hazardous Substance introduced to any Project Site by Contractor or its Subcontractors, their respective employees or any other Person for whom Contractor or Subcontractor is responsible, (b) any Hazardous Substance used or handled by Contractor, any of its Subcontractors, agents or representatives or by any Person for whom Contractor or a Subcontractor is responsible as part of the Work, and (c) any Pre-Existing Hazardous Substance to the extent materially exacerbated by Contractor, a Subcontractor or by any Person for whom Contractor or a Subcontractor is responsible.

11.7 Unforeseen Subsurface Conditions. Promptly upon discovery thereof, Contractor shall notify Owner in writing of subsurface or latent physical subsurface conditions at the Project Site differing materially and adversely from those indicated in the Contract Documents, the Geotechnical Studies, boring reports and provided by Owner (but excluding any such condition arising from the discovery of a Hazardous Substance, which is addressed by Section 11.3) ("Unforeseen Subsurface Conditions"). Contractor shall take reasonable steps to secure Unforeseen Subsurface Condition, including fencing and avoiding further disturbance, if an Unforeseen Subsurface Condition may potentially have an adverse effect on human health, safety or the environment. Upon notification, Owner shall promptly investigate the conditions. If Contractor encounters an Unforeseen Subsurface Condition, Contractor will be entitled to request a Change Order only to the extent Contractor's cost or time of performance are materially and adversely impacted by the Unforeseen Subsurface Condition.

**ARTICLE XII
LIMITATION OF LIABILITY**

12.1 (a) Limitation for Liquidated Damages. The liability of Contractor to Owner for the Liquidated Damages payable under Sections 6.3(a) and (c) shall not exceed fifteen percent (15%) of the Contract Price. The Liability of Contractor to Owner for the Liquidated Damages payable under Section 6.3(c) shall not exceed fifteen percent (15%) of the Contract Price. The aggregate liability of Contractor to Owner for the Liquidated Damages payable under Sections 6.3(a) and 6.3(c) shall not exceed twenty percent (20%) of the Contract Price.

(b) General Limitation of Liability. The aggregate liability of Contractor, including any liability of Contractor to pay any Liquidated Damages under Sections

6.3(a) and 6.3(c), but excluding any liability of Contractor to pay Liquidated Damages under Section 6.3(c), to Owner for any and all claims and/or liabilities arising out of or relating in any manner to the Work or to Contractor's performance or non-performance of its obligations under this Agreement, whether based in contract, tort (including negligence), strict liability or otherwise, shall not exceed, in the aggregate, twenty percent (20%) of the Contract Price; provided, however, that, notwithstanding the foregoing and anything to the contrary in any Contract Document, no limitation of liability shall apply in respect of: (i) any liability, claim or Damages resulting from any fraud, intentional or willful misconduct or illegal or unlawful acts or illegal or unlawful omissions of Contractor or any of its Subcontractor or any of their respective officers, directors, employees, servants or agents; or (ii) any liability, claim or Damages pursuant to Section 4.21, Article XI (including Section 11.6.2), Section 13.8, Section 14.2.4, Article XV (including Section 15.2(b)), Sections 17.1.1, 17.1.2, 17.1.3 and 17.1.4 and any obligation for Contractor to correct, rectify, remedy, repair or replace any part of the Work in accordance with the terms of any Contract Document.

12.2 Consequential Damages. Notwithstanding anything to the contrary in this Agreement, each of Owner and Contractor waive all claims against each other (and their respective Affiliates) for any consequential, incidental, indirect, special, exemplary or punitive damages (including, but not limited to, loss of actual or anticipated profits, revenues, and regardless of whether any such claim arises out of breach of contract or warranty, tort (including negligence)). Any Liquidated Damages payable by Contractor shall not be deemed to be consequential or any other type of damages for purposes of this Section 12.2.

ARTICLE XIII CONTRACT PRICE AND PAYMENT

13.1 Contract Price. (a) As consideration and payment to Contractor for furnishing and performing the Work, Owner agrees to pay Contractor an amount equal to Fifty One Million One Hundred Forty Eight Thousand Six Hundred and Forty Four U.S. Dollars (\$51,148,644.00) (such amount, the "Contract Price"), subject to any price adjustments as may arise from time to time pursuant to Article IX, Section 13.1(b), and Section 13.2. The Contract Price is a fixed and lump sum amount for all Work (subject to such adjustments). Attached hereto as Exhibit I is Contractor's "Schedule of Values" allocating the entire Contract Price among the various portions of the Work. The Schedule of Values shall be used as a basis for reviewing and approving Contractor's Applications for Payment.

(b) Reserved.

13.2 Construction Cost Index Increase. The Contract Price is based on the Construction Cost Index published by Engineering News-Record Magazine ("CCI") for the State of Idaho as of October, 2011 (the "CCI Baseline Index"), which is 9146.95. If Owner issues the Notice to Proceed after December 15, 2011, and if the CCI as of the date of the issuance of the Notice to Proceed (such CCI, the "NTP Date CCI") has increased from the CCI Baseline Index, then Contractor shall notify Owner of the NTP Date CCI and the Contract Price shall be increased by a percentage amount that is equal to the percentage amount of increase of the NTP Date CCI from the CCI Baseline Index.

13.3 Work performed under Limited Notices to Proceed. Contractor shall be entitled to invoice for any Work performed pursuant to any one or more LNTP's issued by the Owner prior to the NTP Date. Payment for such Work performed pursuant to any LNTP shall be in accordance with the Payment terms as set forth in Section 13.4 below.

13.4 Payments.

13.4.1 Application for Payment. Following the issuance of any of the Limited Notices to Proceed identified in Exhibit A-3, Appendices 1-7 herein or the Notice to Proceed, Contractor shall submit to Owner, on or before the twenty-fifth (25th) day of each month, its request for payment for all Work with respect to each Project Site performed and approved by Owner and not paid for during the Pay Period ending immediately prior to such twenty-fifth (25th) day (the "Application for Payment"). The Application for Payment shall be prepared with respect to each separate Project Site substantially in the form attached hereto as Exhibit J and shall provide sufficient detail as to the Work performed and other items billed (other than information regarding Contractor's costs and Subcontractor's pricing). Contractor shall provide Owner with such information regarding any Application for Payment as reasonably requested by Owner (other than information regarding Contractor's costs and Subcontractor's pricing). Each Application for Payment shall provide a separate line item for the sales and use Taxes that are included in the total invoiced amount of such Application for Payment.

13.4.2 Contractor shall include with each Application for Payment: (i) a list of names of each Subcontractor that will receive payment from the proceeds of the payment by Owner of such Application for Payment and (ii) the relevant waiver and lien releases pursuant to Section 13.8(c). The Parties agree that the verification of the Work completed and other items billed under an Application for Payment, the verification of the Application for Payment against the Schedule of Values and the Work scheduled to be performed pursuant to the Master Construction Schedule and the confirmation of any independent engineer or advisor to the Financing Parties shall provide sufficient substantiation of the Application for Payment; and that, except for such information (other than information regarding Contractor's costs and Subcontractor's pricing) as may be reasonably requested by Owner for purposes of such verification and confirmation, no additional documentation (other than as set forth in this Section 13.4.2) will be provided to Owner in support of an Application for Payment.

13.4.3 Subject to Section 13.5, Owner shall pay Contractor not later than the fifteenth (15th) day (or if such day is not a Business Day, then the immediately following Business Day) of the month immediately following Owner's receipt of a duly completed Application for Payment meeting the requirements of Section 13.4.2, provided that Owner has received such Application for Payment within two (2) Business Days following the end of the Pay Period that relates to such Application for Payment.

13.4.4 Subject to Section 13.5, the Application for Payment may request payment for: (a) completed Work; (b) prepayments for materials or equipment for the Work when prepayment is required by the manufacturer or supplier of such materials or equipment; or (c) equipment and materials not yet incorporated into the Work provided that (i) the equipment and materials are suitably stored at either the relevant Project Site or another location, (ii) the equipment and materials are protected by insurance pursuant to the terms of this Agreement, and

(iii) upon payment in full for such equipment and materials, Owner will receive the equipment and materials free and clear of all workman's or similar liens and encumbrances.

13.5 Retainage. (a) Notwithstanding Section 13.4 and anything herein to the contrary, in relation to each and any Application for Payment:

(i) with respect to each Project Site and prior to the date that Project Site Mechanical Completion of such Project Site is successfully achieved pursuant to Section 7.4, Owner shall not be required to pay any amount which when aggregated with all amounts paid in respect of such Project Site pursuant to all Application for Payments would exceed ninety percent (90%) of the amount equal to the number of Turbines installed at such Project Site multiplied by Sixty Five Thousand U.S. Dollars (\$65,000.00) (such amount of Sixty Five Thousand U.S. Dollars (\$65,000.00) herein called the "Per Turbine Amount") and being the indicative amount for each Turbine based on the "Schedule of Values," Exhibit I);

(ii) with respect to each Project Site and prior to the date that Project Site Substantial Completion of such Project Site is successfully achieved pursuant to Section 7.5, Owner shall not be required to pay any amount which when aggregated with all amounts paid in respect of such Project Site pursuant to all Application for Payments would exceed ninety seven and one-half percent (97.5%) of the amount equal to the number of Turbines installed at such Project Site multiplied by the Per Turbine Amount; and

(iii) prior to the date (such date the "Project Substantial Completion Date") that Project Substantial Completion is successfully achieved, Owner shall not be required to pay any amount which when aggregated with all amounts paid in respect of all Application for Payments (including the Application for Payment issued pursuant to Section 13.3) would exceed the Contract Price less Fifty Thousand U.S. Dollars (\$50,000.00) per Project Site (such Fifty Thousand U.S. Dollars (\$50,000.00) per Project Site herein called the "Punch List Holdback Amount").

(b) On the date that occurs thirty (30) days after but not including the Project Substantial Completion Date, Contractor shall submit to Owner a list of any items on any and all Punch Lists that have not been completed or performed and the estimate of the cost of and the schedule to complete and perform such remaining items (such list of items, the "Final Punch List"). Within three (3) Business Days of Owner's receipt of the Final Punch List, Owner shall pay Contractor the Punch List Holdback Amount less an amount equal to one hundred and fifty percent (150%) of the value of the items on the Final Punch List (such one hundred and fifty percent (150%), the "Final Punch List Holdback Amount"). Upon successful achievement of Project Final Completion, Owner shall pay Contractor the Final Punch List Holdback Amount. In the event that Contractor determines that there is no Final Punch List, then upon successful achievement of Project Final Completion, Owner shall pay Contractor the Punch List Holdback Amount.

13.6 Final Payment. Contractor shall deliver to Owner an Application for Payment for the Punch List Holdback Amount or the Final Punch List Holdback Amount, as the case may be pursuant to Section 13.5(b) (the "Final Application for Payment") when Project Final

Completion has been successfully achieved for all the Project Sites. Owner shall make payment of the Final Application for Payment in accordance with Section 13.4.3 (the "Final Payment").

13.7 Late Payment Interest. Payments which are due and payable but not paid when due and payable by Owner to Contractor in accordance with this Article XIII, and payments which are due and payable but not paid when due and payable by Contractor to Owner in accordance with this Agreement, shall bear interest commencing five (5) Business Days after payment is due and payable in accordance with the terms of this Agreement at the rate of ten percent (10%) per annum for the number of days elapsed from and including such fifth Business Day until but not including the date of payment calculated based on a 365 day year.

13.8 Lien Waivers.

(a) Contractor shall perform and, upon transfer of title thereto in accordance with Article XX, deliver the Work free and clear of all Liens by Contractor, Subcontractors or any other Persons capable of claiming Liens by reason of having performed any portion of the Work, other than any Lien that arises from Owner's unexcused failure to pay when due and payable, for Work performed by Contractor or its Subcontractors as required by this Agreement. Except to the extent of Owner's unexcused failure to pay when due and payable, for Work performed by Contractor or its Subcontractors, Contractor shall not (and shall cause its Subcontractors not to) directly or indirectly create, incur, assume or suffer to be created any Lien on or affecting the Project, any Project Site, the Work or any part of or interest therein. Contractor shall promptly notify Owner of any Lien on or against the Project, any Project Site, the Work or any part thereof upon learning of such Lien.

(b) Except for Liens arising from Owner's unexcused failure to pay, when due and payable, for Work performed by Contractor or its Subcontractor, Contractor shall, and shall cause its Subcontractors to, discharge, release and remove of record all Liens within fifteen (15) days after the date on which Contractor becomes aware of the Lien or Owner notifies Contractor of the Lien, whichever is earliest. Upon the failure of Contractor to comply with the requirements of the preceding sentence, Owner may, but shall not be obligated to, pay, discharge and release such Lien or obtain a bond, letter of credit or other security for such Lien, and upon such payment, discharge, release or posting of security therefor, Owner shall be entitled to immediately recover from Contractor all costs and expenses incurred by Owner in connection with such payment, discharge, release or posting, or set off of all such amounts against any sums owed by Owner to Contractor.

(c) In respect of all Work performed and invoiced by Contractor under an Application of Payment, Contractor shall submit to Owner together with such Application of Payment: (i) waiver and lien releases in the form of Exhibit K signed by each relevant Subcontractor and relating to the Work performed by such Subcontractor and invoiced under the immediately preceding Application for Payment submitted by Contractor to Owner and for which payment has been made by or on behalf of Owner; (ii) a waiver and lien release in the form of Exhibit L or Exhibit M, as applicable signed by Contractor with respect to the Work performed by Contractor and invoiced under such Application for Payment; and (iii) in the case of the Final Application for Payment, waiver and lien releases in the form of Exhibit M signed by each relevant Subcontractor and Contractor relating to the Work performed by such

Subcontractors and Contractor and invoiced under such Final Application for Payment. Each month with Contractor's application for Payment, Contractor will provide a list of all Subcontractors who were paid with the previous month's Payment received by Contractor from the Owner and who may have lien rights against any real property where Work has been performed. Contractor agrees to comply with reasonable requests by the Financing Parties related to Owner obtaining construction financing for the Projects.

ARTICLE XIV SUSPENSION AND TERMINATION

14.1 Construction Suspension. Owner may order Contractor to suspend the Work, or any part thereof, for such time and in such manner as Owner may consider necessary, including reason of a Contractor Event of Default. Contractor, during a suspension, shall properly protect and secure the Work or such part thereof so far as is necessary in the reasonable opinion of Owner. In the event of a suspension (and except for any such suspension relating to a Contractor Event of Default), Contractor shall be entitled to request a Change Order pursuant to Section 9.3 and reimbursed costs incurred by it for demobilization and remobilization costs, direct costs, additional equipment rental and any other costs incurred as applicable.

14.2 Owner's Right to Suspend or Terminate for Cause and Force Majeure Events. Owner may suspend or terminate this Agreement as follows:

14.2.1 Force Majeure Events. If a Force Majeure Event continues for more than six (6) months after a notice of a Force Majeure Event is given and if the Force Majeure Event has rendered impossible the performance of this Agreement in accordance with the Contract Times or Turbine Supplier Delivery Schedule by either Party, Owner may terminate this Agreement by giving Contractor at least five (5) days' prior written notice of termination.

14.2.2 Contractor Event of Default. If: (a) (i) Contractor shall assign or transfer this Agreement or any right or interest herein, or if the interest of Contractor shall devolve upon any Person, otherwise than as herein permitted; (ii) Contractor shall fail without cause to make timely payment for labor, services, equipment, materials or supplies; (iii) Contractor shall persistently disregard laws or ordinances or lawful requirements of any competent Governmental Authority or Applicable Laws; or (iv) if Contractor otherwise commits a material breach of its representations and warranties or obligations under this Agreement (it being understood that an immaterial deviation from the Master Construction Schedule shall not constitute such a breach); or (b) Contractor shall become voluntarily or involuntarily the subject of proceedings under any bankruptcy or insolvency law, or other law or procedure for the relief of financially distressed debtors, or is unable, or admits in writing its inability, to pay its debts as they mature, or takes or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any part of its assets or elects or institutes or has instituted against it a case under the United States Bankruptcy Code (in each case as described in Sections 14.2.2(a) and (b), a "Contractor Event of Default"), then Owner, shall have the rights set forth in Sections 14.2.3 and 14.2.4 below.

14.2.3 In the case of a Contractor Event of Default under Section 14.2.2(b), this Agreement shall terminate immediately upon written notice by Owner to Contractor. Upon the

occurrence of a Contractor Event of Default other than pursuant to Section 14.2.2(b), Owner shall provide written notice to Contractor that a Contractor Event of Default has occurred and Contractor must cure or commence to cure such Contractor Event of Default within fifteen (15) days of Contractor's receipt of such notice. If Contractor has failed to cure such Contractor Event of Default within such fifteen (15) day period but is diligently pursuing such cure, and such Contractor Event of Default is capable of cure, then Contractor shall have an additional fifteen (15) day period to cure such Contractor Event of Default. If Contractor, within such additional fifteen (15) day period (or if such additional fifteen (15) day period is not applicable, then, within such first fifteen (15) day period), fails to cure such Contractor Event of Default, then Owner may declare this Agreement terminated by providing written notice to Contractor.

14.2.4 Upon declaring the Agreement terminated, pursuant to Section 14.2.3 above, in addition to any other rights and remedies Owner may have, Owner shall have the right, at its sole option, to (a) enter upon the premises and take title and possession of any and all Work and any and all materials and equipment (other than such equipment owned or rented by Contractor) for the performance of the Work, all of which Contractor hereby transfers, assigns and sets over to Owner for such purpose, (b) succeed to the interests of Contractor in any and all purchase orders, contracts or subcontracts entered into by Contractor with respect to the Work, and (c) to employ such Person or Persons to complete the Work. In the event of any such election by Owner, Owner shall be required to compensate such Subcontractors only for compensation becoming due and payable under the terms of their contracts and shall not be liable for compensation due and payable to such Persons as to which Owner has previously paid Contractor. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, Contractor will be paid promptly by Owner for Work performed by Contractor prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Contractor shall promptly pay Owner for such costs and expenses.

14.2.5 If Owner terminates this Agreement not in accordance with this Agreement, this termination will be converted to a termination for convenience in accordance with the provisions of Section 14.3.

14.3 Owner's Right to Terminate for Convenience. Upon ten (10) days prior written notice to Contractor, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Contractor for the following: (a) to the extent not already paid (including any amounts not paid pursuant to Section 13.5(a)), all Work completed; (b) the reasonable costs and expenses incurred by Contractor as a consequence of such termination, including demobilization costs; (c) amounts due in settlement of terminated contracts with Subcontractors; and (d) overhead and profit margin in the amount of ten percent (10%) on the sum in item (a) above; provided, however, if any such termination occurs after a Change of Control, then the amount payable by Owner under the immediately preceding clause (d) shall be equal to ten percent (10%) of the Contract Price.

14.4 Design Documentation: Warranties. If Owner terminates this Agreement pursuant to Section 14.2 or Section 14.3 and proceeds to design and construct the Project through its employees, agents or other Persons, Owner shall have the right to use the specifications, data, drawings, calculations and all Design Documentation and other similar Work produced by

Contractor and paid for by Owner and all Warranties under Article XV of Contractor including Warranties of Subcontractors, shall remain in effect for a period of one (1) year from the date of such termination, for Work completed on or prior to such termination date.

14.5 Contractor's Right to Stop Work and Terminate for Payment Default. If Owner fails to pay Contractor any undisputed amount when due and payable, in addition to all other remedies provided in the Contract Documents, Contractor may, upon five (5) Business Days prior written notice to Owner, stop Work. After receipt of prior written notice from Contractor regarding Owner's failure to pay when due and payable any undisputed amount, Owner shall have fifteen (15) Business Days to remedy the non-payment. If Owner fails to remedy such failure to pay within such fifteen (15) day period, Contractor may terminate this Agreement upon thirty (30) days prior written notice to Owner and in the event of such termination, Contractor shall be entitled to recover in the same manner as if Owner had terminated this Agreement for its convenience pursuant to Section 14.3 and such recovery shall be the sole remedy for Contractor and the sole liability for Owner in respect of such Owner's failure to pay an undisputed amount.

14.6 Contractor's Right to Terminate for Cause.

14.6.1 If: (a) Owner fails to perform any of its material obligations pursuant to the terms of this Agreement (other than a failure to pay, which is addressed in Section 14.5) which results in the Work being required to be suspended and Owner has not ordered Contractor in writing to suspend the Work pursuant to Section 14.1 hereof; or (b) Owner shall become voluntarily or involuntarily the subject of proceedings under any bankruptcy or insolvency law, or other law or procedure for the relief of financially distressed debtors, or is unable, or admits in writing its inability, to pay its debts as they mature, or takes or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any part of its assets or elects or institutes or has instituted against it a case under the United States Bankruptcy Code (in each case as described in Sections 14.6.1(a) and (b), an "Owner Event of Default"), then Contractor shall have the rights set forth below in Section 14.6.2.

14.6.2 In the case of an Owner Event of Default under Section 14.6.1(b), this Agreement shall terminate immediately upon written notice by Contractor to Owner. Upon the occurrence of an Owner Event of Default other than pursuant to Section 14.6.1(b), Contractor shall provide written notice to Owner that an Owner Event of Default has occurred and Owner must cure such Owner Event of Default or commence to cure such Owner Event of Default within fifteen (15) days of Owner's receipt of such notice. If Owner has failed to cure such Owner Event of Default within such fifteen (15) day period but is diligently pursuing such cure, and such Owner Event of Default is capable of cure, then Owner shall have an additional fifteen (15) day period to cure such Owner Event of Default. If Owner, within such additional fifteen (15) day period (or if such additional fifteen (15) day period is not applicable, then within such first fifteen (15) day period), fails to cure such Owner Event of Default, then Contractor may declare this Agreement terminated by providing written notice to Owner, and in such case Contractor shall be entitled to recover in the same manner as if Owner had terminated this Agreement for its convenience pursuant to Section 14.3 and such recovery shall be the sole remedy for Contractor and the sole liability for Owner in respect of an Owner Event of Default; provided that, notwithstanding the foregoing, if Owner orders Contractor in writing to suspend

the Work pursuant to Section 14.1 hereof within aforementioned cure periods, Contractor shall not have the right to terminate this Agreement.

14.7 Financing Parties' Right to Cure. At any time after the occurrence of any Owner Event of Default or an Owner default to pay under Section 14.5, the Financing Parties shall have the right, but not the obligation, to cure such default on behalf of Owner in accordance with Section 14.5 or Section 14.6.2, as the case may be.

14.8 Other Termination; Survival of Claims. The Parties may terminate this Agreement upon mutual agreement and this Agreement is subject to termination pursuant to Section 6.1(b). In the event of any termination of this Agreement pursuant to Section 6.1(b) or this Article XIV, any claim or claims of either Party against the other Party arising under any Contract Document prior to or upon such termination shall survive such termination (including any claims in respect of any Warranties or liquidated damages) and the relevant provisions of this Agreement shall survive such termination for purposes of the final resolution of such claim or claims in accordance with the terms of this Agreement.

ARTICLE XV WARRANTY

15.1 General Warranties. Contractor warrants that: (a) all goods, services, equipment, parts and materials furnished in connection with the Work (i) are free from any defects (latent or otherwise) in design, materials, construction, installation and workmanship (exclusive of designs and defects in materials or equipment provided by Owner, the Turbine Supplier or Separate Contractors); (ii) is correct and fit for the intended purpose and conforms with the Requirements; (iii) have been designed, constructed, installed and tested in accordance with the terms and requirements set forth in this Agreement and other Contract Documents; and (iv) are new and unused and of good quality at the time of delivery to the relevant Project Site; and (b) each Turbine and the other facilities forming part of the Work have been properly assembled, erected and installed on the Project Site in accordance with the Technical Documents.

15.2 Title Warranty. (a) Contractor warrants that at the time title to any Project equipment, tools and supplies and the Work passes to Owner pursuant to this Agreement (i) Owner shall have good and marketable title to such Project equipment, tools and supplies and Work free and clear of all Liens; (ii) no instrument or other document shall be required to be delivered to Owner in order to evidence such title, or if any such instrument or other document is so required, then Contractor shall have delivered such instrument or other document to Owner; and (iii) no component, part or the whole of any materials, Project equipment, tools and supplies included in the Work shall be the subject of any retention of title in favor of any Person (such warranties collectively with the warranties under Section 15.1, the "Warranty" or "Warranties").

(b) Contractor shall indemnify, defend and hold harmless the Owner Indemnified Parties from and against any Damages arising out of or relating to the breach of any of the Warranties contained in Article 15.

15.3 Limitation on Warranty. Contractor shall have no warranty obligation for Warranty claims that are caused by: (a) normal wear and tear; (b) Owner's misuse or negligence;

(c) Owner's use, without Contractor's approval, of spare parts other than those supplied or recommended by the Turbine Supplier; (d) use of the Turbines or the Balance of Plant (or any relevant part thereof) other than in conformance in all material respects with Turbine Operations Manual or the Balance of Plant Vendor Manuals, respectively, and any other specific written directions provided to Owner by Contractor consistent with Prudent Industry Practices; or (e) any component, equipment, material, which is defective or otherwise not in conformance with the Contract Documents which are supplied by Owner, the Turbine Supplier or Separate Contractors.

15.4 Warranty Period

(a) If notified in writing by Owner (within ten (10) days of Owner discovering the defect within the Warranty Period) that the Work has defects, deficiencies or is not in conformance with the Warranty, Contractor shall promptly correct, remedy, rectify, repair and/or replace at its cost and expense the defects, deficiencies or non-conformity, provided that, with respect to the Warranties set forth in Section 15.1, Owner has notified Contractor thereof on or prior to the date that occurs 165 days after the date the last Turbine on the last Project Site has successfully achieved Turbine Mechanical Completion pursuant to Section 7.3 (the "Warranty Period"); it being agreed by the Parties that the Warranties under Section 15.2 shall not be limited by any period of time other than any applicable statute of limitations.

(b) If Contractor does not commence and diligently pursue a correction, remedy, repair rectification or replacement within seven (7) days after receipt of written notice from Owner pursuant to Section 15.4(a), Owner may perform or have performed at Contractor's cost and expense by a qualified and experienced third Person the necessary correction, remedy, repair, rectification and/or replacement consistent with the requirements set forth in this Agreement.

15.5 No Implied Warranties. ALL OTHER CONTRACT PROVISIONS NOTWITHSTANDING, THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY.

ARTICLE XVI REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

16.1 Contractor's Representations and Warranties. Contractor hereby represents and warrants to Owner, as of the Effective Date and as of the Commencement Date, as follows:

16.1.1 Due Organization; Good Standing. Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of Minnesota, and qualified to conduct business in the State of Minnesota and any other jurisdiction necessary for the proper performance of the Work and Contractor's other obligations under the Contract Documents.

16.1.2 Due Authorization. The execution, delivery and performance of this Agreement by Contractor has been duly authorized by all necessary corporate action on the part of Contractor and does not and will not require the consent of any trustee or holder of any

indebtedness or other obligation of Contractor or any other Person that is a party to any agreement with Contractor. Contractor's Project Manager has been duly authorized by all necessary corporate action on the part of the Contractor to act on behalf of Contractor, to make immediate decisions and take actions on behalf of Contractor at any Project Site.

16.1.3 Execution and Delivery. This Agreement has been duly executed and delivered by Contractor. This Agreement constitutes the legal, valid, binding and enforceable obligation of Contractor.

16.1.4 Governmental Approvals. No Contractor Permits are required in connection with the execution, delivery and performance of this Agreement by Contractor, except those which have already been obtained and which are not required on the Effective Date or on the Commencement Date as the case may be, but which Contractor will obtain in a timely manner in the ordinary course of its performance of the Contract Documents.

16.1.5 Bankruptcy. No action relating to the bankruptcy, insolvency or liquidation of, and no general suspension of payments by, Contractor has occurred, has been taken or is in existence.

ARTICLE XVII INDEMNIFICATION

17.1 Contractor's Indemnities.

17.1.1 Bodily and Property Indemnity. Contractor shall indemnify, defend and hold harmless Owner and its Affiliates and its and its Affiliate's shareholders, members, officers, directors, employees, advisors and agents (collectively, the "Owner Indemnified Parties") from and against any and all claims, demands, suits, liabilities, causes of action, losses, costs, expenses, damages or penalties, including, without limitation, court costs and reasonable attorneys', accountants' and other professional's fees and costs (collectively, the "Damages") arising by reason of claims relating to bodily injury, sickness or death, or third party property damage or destruction (other than to the Work itself), to the extent resulting from the acts or omissions of, or non-compliance, breach or non-performance of any Contract Document by, Contractor or any of its Subcontractors, or any of Contractor's or a Subcontractor's officers, directors, employees, representatives, advisors, agents, or anyone for whose acts any of them may be liable. This indemnification obligation of Contractor shall not extend to the extent that any losses or damages are recovered by Owner under any Owner provided insurance, including the All-Risk Builder's Risk insurance.

17.1.2 General Indemnity. Contractor shall indemnify, defend, protect and hold harmless the Owner Indemnified Parties from and against any and all Damages arising by reason of a claim or assertion by any Governmental Authority or other Persons and relating to or in connection with Contractor's or Subcontractor's breach, non-compliance or non-performance of any provisions of any Contract Document, including but not limited to compliance with Environmental Laws and Applicable Laws and Section 11.2 or relating to safety or the failure of Contractor or any Subcontractor or their respective agents to properly administer and pay any Taxes or fees required to be paid by them pursuant to the Contract Documents.

17.1.3 Payment Claim Indemnity. To the extent Contractor has received payment for the Work, Contractor shall indemnify, defend, protect and hold harmless the Owner Indemnified Parties from and against any and all mechanic's or workman's or similar Liens or encumbrances claimed, asserted or brought against the Project or any part thereof or against any Owner Indemnified Party and any and all Damages as a result of the failure of Contractor or any Subcontractors, to pay for any services, materials, labor, equipment, Taxes or other items or obligations furnished or incurred for or in connection with the Work.

17.1.4 Infringement Indemnity. Contractor shall indemnify, defend, protect and hold harmless the Owner Indemnified Parties from and against any and all Damages arising by reason of third-party suits, actions, claims or assertions by reason of or based upon any claim of infringement of any Intellectual Property Right arising from the Work or Contractor's or any Subcontractor's equipment or other materials or equipment furnished by Contractor or any Subcontractor, design documents, or specifications. Each Party agrees to notify the other as soon as reasonably possible of any material matters with respect to which the foregoing indemnity is likely to apply and of which the notifying Party has actual knowledge.

17.2 Owner's Indemnities.

17.2.1 Bodily and Property Indemnity. Owner shall indemnify, defend, protect and hold harmless Contractor and its Affiliates and its and its Affiliate's shareholders, members, officers, directors, employees, advisors and agents (collectively, the "Contractor Indemnified Parties") from and against any and all Damages arising by reason of claims relating to bodily injury, sickness or death, and third party property damage or destruction (other than to the Work itself), to the extent resulting from the acts or omissions of, or non-compliance, breach or non-performance of any Contract Document by, Owner or any of its officers, directors, employees, representatives, advisors, agents, or anyone for whose acts any of them may be liable. This indemnification obligation of Contractor shall not extend to the extent that any losses or damages are recovered from by Contractor under any Contractor provided insurance.

17.2.2 Tax Claim Indemnity. If, in accordance with Owner's prior written direction, an exemption for all or any part of the Work is claimed for Taxes by Contractor, Owner shall indemnify, defend, protect and hold harmless Contractor Indemnified Parties from and against any and all Damages incurred by Contractor as a result of any action taken by Contractor in accordance with Owner's directive.

17.3 Indemnification Procedure. When required to indemnify any Person entitled to indemnification under this Agreement (each, an "Indemnified Party"), the Party providing the indemnity ("Indemnifying Party") shall assume (at its cost and expense) on behalf of such Indemnified Party and conduct with due diligence and in good faith the defense of any claim against such Indemnified Party, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Party shall cooperate with the Indemnifying Party in such defense. The Indemnifying Party shall have charge and direction of the defense and settlement of such claim; provided, however, that without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party's right to control the defense or settlement thereof, the Indemnified Party may elect to participate through separate counsel in the defense of any such claim. The amount of any indemnity payment made under this Agreement shall be reduced by

the amount of all insurance proceeds received by the Indemnified Party in respect of the event giving rise to the right of indemnity under this Agreement.

17.4 Survival. The indemnities set forth in this Agreement shall each survive the termination or expiration of this Agreement and any other Contract Document.

ARTICLE XVIII INSURANCE

18.1 Contractor's Insurance. Contractor shall procure and maintain in force through the date of achievement, in accordance with this Agreement, of Project Final Completion and during the Warranty Period for each, and all, of the Project Sites the following insurance coverages with the policy limits indicated below and with an insurance company or companies that have a rating of not less than "A-" and minimum size rating of "X" by Best's Insurance Guide and Key Ratings (or equivalent rating by another nationally recognized insurance rating agency), and otherwise in compliance with the provisions of this Agreement:

Commercial General Liability:	
General Aggregate	\$ 2,000,000
Products and Completed Operations	\$ 2,000,000
Personal and Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000
Fire Damage (Any one fire)	\$ 50,000
Med Exp (Any one person)	\$ 5,000

Automobile Liability:	
Combined Single Limit	
Each Occurrence	\$ 1,000,000

Excess Liability - Umbrella Form:	
Each Occurrence	\$ 20,000,000
Aggregate	\$ 20,000,000

Workers' Compensation - Statutory limits as required by the state in which the Work is performed.

Employers' Liability:	
Each Accident	\$ 1,000,000
Disease-Policy Limit	\$ 1,000,000
Disease-Each Employee	\$ 1,000,000

Professional Errors and Omissions	
Per Claim	\$ 5,000,000
Annual	\$ 5,000,000

The liability insurance obtained by Contractor shall include Owner as additional insured.

18.2 Contractor's Insurance Requirements.

18.2.1 Any professional liability insurance shall specifically exclude any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Evidence of such coverage shall be provided prior to the commencement of any design services hereunder.

18.2.2 Prior to commencing any Work, Contractor shall provide Owner with certificates evidencing that (a) the insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (b) no insurance coverage required hereunder will be canceled, renewal refused, or changed unless at least thirty (30) days prior written notice is given to Owner. Contractor shall not cause its insurance coverages required hereunder to lapse or be cancelled during the term of this Agreement. In the event Contractor replaces insurance providers for any policy required under Section 18.1, revises such policy coverages, or otherwise modifies such insurance policy in any way, Contractor shall provide Owner, for its review or possession as provided under this Section 18.2.2, the certificate of insurance and a copy of such new, revised or modified policy when available.

18.3 Owner's Insurance.

18.3.1 Insurance: Owner shall procure from insurance companies authorized to do business in the State of Idaho, and maintain through Project Site Final Completion, all-risk builder's risk ("All-Risk Builder's Risk") insurance upon the entire Project in a minimum amount equal to the full insurable replacement value of the Project, including labor, professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The policy shall be primary to all other insurance supplied by Contractor. The property insurance obtained by Owner shall include Contractor as additional insured. Such policy shall insure against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The All-Risk Builder's Risk policy shall be written on a replacement cost basis. The property insurance shall be endorsed to cover physical loss or damage to the Work, all goods in transit including the Turbines, materials and equipment in transit, at the Project Site or at another location, expediting, delay in opening and all hot and cold testing. Contractor's responsibility for any deductible on the All-Risk Builder's Risk insurance shall be limited to \$50,000 per occurrence with regard to the Work.

18.3.2 Certificates of Insurance. Within forty-five (45) days of the Commencement Date, but not later than the shipment of the first Turbine, Owner shall provide a copy of the All-Risk Builder's Risk policy to Contractor. Prior to Contractor commencing any Work, Owner shall provide Contractor with copies of the insurance certificates reflecting coverages required under this Section 18.3 evidencing that (a) the All-Risk Builder's Risk policy is in full force and in effect and will remain in effect until Contractor has completed all of the Work and has received Final Payment from Owner, and (b) such insurance coverage will not be cancelled unless at least thirty (30) Days' prior written notice is given to Contractor. The All-

Risk Builder's Risk insurance certificates provided by Owner pursuant to this Section 18.3.2 shall clearly identify in writing Contractor as an additional insured. Owner shall not cause such insurance to lapse or be canceled during the term of this Agreement. In the event Owner replaces insurance providers for the All-Risk Builder's Risk insurance required under Section 18.3.1, revises such policy coverages, or otherwise modifies such insurance policy in any way, Owner shall provide Contractor, for its review or possession as provided under this Section 18.3.2, the certificate of insurance and a copy of such new, revised or modified policy when available.

18.3.3 Loss Adjustment. Any loss covered under Owner's All-Risk Builder's Risk insurance shall be adjusted with Owner and Contractor made payable to the insured party as their interests may appear.

18.3.4 Waiver of Subrogation. Owner and Contractor agree to waive on behalf of their respective insurers that any right of subrogation their insurers may have is waived for any claim arising out of or relating to any injury, loss or damage arising out of or resulting from the operations or work of either Party. Contractor and Owner shall, where appropriate, require similar waivers of subrogation from the Separate Contractors, Subcontractors, and insurance providers and shall require each of them to include similar waivers in their contracts or policies.

ARTICLE XIX REPRESENTATIONS AND WARRANTIES OF OWNER

Owner represents and warrants to Contractor as of the Effective Date as follows:

19.1 Due Organization; Good Standing; Qualified to do Business. Owner is a limited liability company, duly organized under the laws of the State of Idaho and validly existing. Owner is qualified to conduct business in the State of Idaho.

19.2 Due Authorization. The execution, delivery and performance of this Agreement by Owner has been duly authorized by all necessary action on the part of Owner in accordance with its organizational documents and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Owner or any other Person that is a party to any agreement with Owner.

19.3 Execution and Delivery. This Agreement has been duly executed and delivered by Owner. This Agreement constitutes the legal, valid, binding and enforceable obligation of Owner.

19.4 Governmental Approvals. No authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any Governmental Authority is required on the part of Owner in connection with the execution, delivery and performance of this Agreement, except those which have already been obtained or which Owner will obtain in a timely manner in the ordinary course of performance of the Contract Documents.

19.5 Bankruptcy. No action relating to the bankruptcy, insolvency or liquidation of, and no general suspension of payments by, Owner has been taken or is in existence.

**ARTICLE XX
TRANSFER OF TITLE, RISK OF LOSS**

20.1 Transfer of Title Title to all or a portion of the Work, equipment, supplies and other components of the Work shall pass to Owner upon the date payment for said Work, material, equipment, supplies or components is made by Owner.

20.2 Risk of Loss Contractor shall, at all times prior to Turbine Mechanical Completion of each Turbine, retain care, custody and control of and bear the risk of physical loss or damage to such Turbine and the Work related to such Turbine. Upon Turbine Mechanical Completion of each Turbine, Owner shall take possession and control of that portion of the Balance of Plant incorporating such Turbine and shall thereafter be solely responsible for operation, maintenance and risk of loss thereof. Transfer of title to Owner shall in no way affect Owner's and Contractor's rights and obligations as set forth in other provisions of this Agreement. Notwithstanding the transfer of risk of loss to Owner, Contractor shall nevertheless remain liable for any loss or damage to the Turbine and the Work, and each Project Site to the extent caused in whole or in part by Contractor, a Subcontractor or any other Person for whom Contractor or any Subcontractor is responsible. Contractor is not responsible for loss or damage to the Work, the materials or equipment furnished by Owner, the Turbines or any parts thereof, if caused by the negligent acts or omissions or willful misconduct of Owner, Separate Contractors, or other Persons for whom Owner is responsible (other than Contractor or Subcontractors), or if such loss or damage is caused by a Force Majeure Event. In no event shall Contractor be responsible or have risk of loss for the Work, the Project, the Turbines, or materials or equipment furnished by Owner or Separate Contractors where the Work, the Project, the Turbines, or materials or equipment furnished by Owner or Separate Contractors is underinsured or uninsured by Owner under the All-Risk Builder's Risk Insurance except to the extent of any deductible under such All-Risk Builder's Risk insurance procured by Owner for which Contractor shall be responsible or which Contractor will pay Owner and where such loss or damage is related to Contractor's or Subcontractor's or other Persons (for whom Contractor or any Subcontractor is responsible) negligence, fault, act or omission or breach, or non-performance or non-compliance with any Contract Document.

**ARTICLE XXI
DISPUTE RESOLUTION PROCEDURE**

21.1 Dispute Avoidance and Mediation.

(a) The Parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements under any of the Contract Documents. If disputes or disagreements under any of the Contract Documents do arise, Contractor and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work and to mitigate delays, losses and damages. Contractor and Owner will first attempt to resolve disputes or disagreements through discussions between Contractor's Representative and Owner's Representative.

(b) If a dispute or disagreement under any of the Contract Documents cannot be resolved through Contractor's Representative and Owner's Representative, upon the written request of either Party, Contractor's Senior Representative and Owner's Senior Representative shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the Parties will exchange relevant information that will assist the Parties in resolving their dispute or disagreement.

(c) If, after meeting, the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both Parties, either Party may submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted in Minneapolis, Minnesota by an impartial mediator mutually agreed upon by the Parties or, if the Parties cannot so agree, a mediator that is designated by the American Arbitration Association pursuant to its Construction Industry and Mediation Procedures. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the Parties or, if the Parties cannot so agree, by procedures established by the mediator. Mediation is a condition precedent to arbitration under Section 21.3, unless the Parties agree otherwise.

21.2 Designation of Representatives. Owner designates the individuals listed below as its representative ("Owner's Representative") and senior representative ("Owner's Senior Representative"), which individuals have the authority and responsibility for resolving disputes under this Article XXI:

Owner's Representative:

James Carkulis
801 W. Bannock
Boise, ID 83702
Tel.: (208) 336-9793
Fax.: (208) 336-9431

Owner's Senior Representative:

James Carkulis
801 W. Bannock
Boise, ID 83702
Tel.: (208) 336-9793
Fax.: (208) 336-9431

Contractor designates the individuals listed below as its representative ("Contractor's Representative") and senior representative ("Contractor's Senior Representative"), and, together with Owner's Senior Representative, the "Senior Representatives", which individuals have the authority and responsibility for resolving disputes under this Article XXI:

Contractor's Representative:

Evan Fagen
President/Chief Operating Officer
Fagen, Inc.
501 W. Highway 212
P.O. Box 159
Granite Falls, MN 56241
Telephone: (320) 564-3324

Contractor's Senior Representative:

Roland "Ron" Fagen
Chairman of the Board and Executive
Vice President
Fagen Inc.
501 W. Highway 212
P.O. Box 159
Granite Falls, MN 56241
Telephone: (320) 564-3324
Facsimile: (320) 564-3278

21.3 Arbitration.

(a) Any claims, disputes or controversies arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 21.1 above shall be decided by arbitration in accordance with the American Arbitration Association's Construction Industry Arbitration Rules then in effect. The number of arbitrators shall be three. The place of the arbitration shall be Minneapolis, Minnesota. The arbitration shall be governed by the Federal Arbitration Act. The award of the arbitrators shall be final and binding upon the Parties. Judgment may be entered upon it by any court having jurisdiction thereof.

(b) Contractor and Owner expressly agree that any arbitration pursuant to this Section 21.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Contractor and Owner will include appropriate provisions in all contracts they execute with other Persons in connection with the Project to require arbitration of all disputes and such joinder or consolidation. The prevailing party in any arbitration shall be entitled to recover its reasonable fees and costs in connection with the arbitration.

21.4 Duty to Continue Performance. Contractor shall continue to perform the Work and Owner shall continue to satisfy its undisputed payment obligations to Contractor in accordance with the terms of the Contract Documents, pending the final resolution of any dispute or disagreement between Contractor and Owner.

ARTICLE XXII
GENERAL PROVISIONS

22.1 Waiver. No delay or omission by the Parties in exercising any right or remedy provided for under any Contract Document shall constitute a waiver of such right or remedy nor shall it be construed as a bar to or waiver of any such right or remedy on any future occasion.

22.2 Governing Law. Any claims, disputes or controversies arising out of or relating to this Agreement or any Contract Document or the breach thereof shall be governed by, and shall be construed in accordance with, the substantive laws of the State of Idaho without regard to its conflict of laws principles

22.3 Amendments. This Agreement may be modified, amended or supplemented only by an instrument in writing signed by the Parties.

22.4 Entire Agreement. This Agreement constitutes the complete statement of the agreement between Owner and Contractor relating to the subject matter hereof. No prior statement or correspondence shall modify or affect the terms and conditions hereof. Prior representations, promises, warranties or statements by Contractor or Owner, or by any agent or employee of Contractor or Owner, that differ in any way from the terms and conditions hereof shall be given no effect.

22.5 Conflicting Provisions. Upon discovery, Contractor or Owner shall promptly notify the other in writing of any conflicts, ambiguities, inconsistencies, errors, or omissions in the Contract Documents. In the event of any inconsistencies between this Agreement and the other Contract Documents, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

- (a) duly authorized and executed Change Orders and written amendments, modifications or supplements to this Agreement executed by both Parties;
- (b) this Agreement (and solely with respect to the definition of the "Work", Exhibit A-1, Scope of Work, and Articles 3 and 4 shall have equal precedential value);
- (c) the Exhibits;
- (d) drawings produced and delivered pursuant to this Agreement (in respect of which, precedence shall be given to drawings of a larger scale over those of smaller, figured dimensions on the drawings shall control over scaled dimensions, and noted materials shall control over undimensioned graphic indications); and
- (e) the other Contract Documents.

Where an irreconcilable conflict exists among Applicable Laws, this Agreement, the drawings included in the Technical Documents, the earliest item mentioned in this sentence involving a conflict shall control over any later mentioned item or items subject to such conflict.

22.6 No Partnership Created. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between Contractor and Owner.

22.7 Independent Contractor. Contractor is an independent contractor, and all persons employed by Contractor in connection herewith shall be employees of Contractor and not employees of Owner in any respect. Contractor is not an agent of Owner and shall maintain complete control over its employees.

22.8 Further Assurances. Contractor and Owner agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement.

22.9 Counterparts. This Agreement may be executed by the Parties in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

22.10 Assignment. Contractor may not assign or transfer any or all of its rights or obligations under any Contract Document to any Person without the prior written consent of Owner, which may be exercised by Owner in its sole discretion. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and permitted assigns of the Parties. Contractor's subcontracting portions of the Work in accordance with this Agreement shall not be deemed to be an assignment of this Agreement. Owner may not assign or transfer any or all of its rights or obligations under any Contract Document to any Person without the prior written consent of Contractor, except that Owner may assign all of its rights and obligations under the Contract Documents to its Financing Parties as collateral security in connection with Owner obtaining or arranging any financing for the Project, provided, however, Owner shall deliver, at least five (5) Business Days prior to any such assignment, to Contractor (a) written notice of such assignment and (b) a copy of consent to assignment for the benefit of the Financing Parties in form and substance reasonably acceptable to Contractor, whose approval shall not be unreasonably withheld or delayed. The Financing Parties may assign the Contract Documents or their rights under the Contract Documents, including without limitation in connection with any foreclosure, remedial right or other enforcement of their security interest.

22.11 Successors. Contractor and Owner intend that the provisions of the Contract Documents are binding upon the Parties, their employees, agents, heirs, successors by law and permitted assigns.

22.12 Severability. If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any Applicable Law, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

22.13 Headings. The table of contents and the headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to

limit, define, extend, describe, alter, or otherwise affect the scope or the meaning of any provision of this Agreement or such other Contract Document.

22.14 Notice. Whenever the Contract Documents require that notice or written communication be provided to a Party, such notice or communication shall be in writing and shall be (a) delivered in person, receipt acknowledged, (b) sent by certified mail, return receipt requested, (c) sent by recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile transmission to such Party at its address and facsimile number set forth below or such other address or facsimile number notified in writing to the other Party.

If to Contractor, to:

Fagen, Inc.
501 W. Highway 212
P. O. Box 159
Granite Falls, MN 56241
Attention: Evan Fagen, Executive Vice President
Fax: (320) 564-1196

with a copy to:

Fagen, Inc.
501 W. Highway 212
P. O. Box 159
Granite Falls, MN 56241
Attention: Jennifer Johnson, CFO
Fax: (320) 564-1278

and to:

Fagen, Inc.
3001 S. Lincoln Ave.
Steamboat Springs, CO 80487
Attention: Kate Carlton
Fax: (970) 879-3310

If to Owner, to:

James Carulis
801 W. Bannock
Boise, ID 83702
Tel.: (208) 336-9793
Fax.: (208) 336-9431

Financing Parties at the address provided for the Financing Parties to Contractor by Owner.

22.15 Third-Party Beneficiaries. Except as expressly provided herein, this Agreement is intended to be solely for the benefit of Owner, Contractor and their respective successors and permitted assigns, and is not intended to and shall not confer any rights or benefits on any other Person.

22.16 Confidentiality. Each Party (the "Receiving Party") shall maintain in confidence all Confidential Information of the other Party (the "Disclosing Party") and the Contract Documents, and shall not disclose such Confidential Information or any Contract Document to any third party except to the following (collectively, "Authorized Recipients"):

(a) to any Affiliate of the Disclosing Party that requires such information for purposes of the performance by the Disclosing Party of this Agreement or any other Contract Document;

(b) to any Subcontractor or Separate Contractor or any outside consultants or advisers engaged by or on behalf of the Disclosing Party in connection with the Work or any Contract Document, or, in the case of Owner, the financing or operation of the Project, and acting in that capacity;

(c) to any Financing Party and its consultants and advisers from which Owner is seeking or obtaining finance;

(d) to the extent required by the rules of a relevant and recognized stock exchange;

(e) to any insurer under a policy of insurance required to be taken out by either Party under any Contract Document; or

(f) to directors, employees and officers of such Party who have a need to know such information;

provided that, each in case:

(g) the Disclosing Party determines in good faith that the recipient has a legitimate need to see such data or information; and

(h) the recipient has been made aware of and the Disclosing Party has obtained in writing the recipient's agreement to be bound, *mutatis mutandis*, by the terms of this Section 22.16.

22.16.2 Degree of Care. In maintaining the confidentiality of Confidential Information of the other Party, each Party shall exercise the same degree of care that it exercises with its own Confidential Information, and in no event less than a reasonable degree of care. Each Party shall ensure that each of its Authorized Recipients holds in confidence and makes no use of the Confidential Information of the other Party for any purpose other than those permitted under this Agreement or otherwise required by Applicable Law.

22.16.3 Exceptions. The obligation of confidentiality contained in this Agreement shall not apply to the extent that (a) the Receiving Party is required to disclose information by order or regulation of a governmental agency or a court of competent jurisdiction; provided, however, that the Receiving Party shall not make any such disclosure without first notifying the Disclosing Party and allowing the other Party a reasonable opportunity to seek injunctive relief from (or a protective order with respect to) the obligation to make such disclosure or (b) the Receiving Party can demonstrate that (i) the disclosed information was at the time of such disclosure to the Receiving Party already in (or thereafter enters) the public domain other than as a result of actions of the Receiving Party or Authorized Recipients in violation hereof; or (ii) the disclosed information was received by the Receiving Party on an unrestricted basis from a source unrelated to any Party to this Agreement and not under a duty of confidentiality to the Disclosing Party.

22.16.4 Disclosure. Each Party acknowledges and confirms that the Confidential Information of the Disclosing Party constitutes proprietary information or trade secrets valuable to the Disclosing Party, and that the unauthorized use, loss or outside disclosure of such Confidential Information shall be presumed to cause irreparable injury to the Disclosing Party. Each Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information, and will cooperate with the Disclosing Party in every reasonable way to help regain possession of such Confidential Information and to prevent its further unauthorized use.

22.16.5 Injunctive Relief. Each Party acknowledges that monetary damages is not a sufficient remedy for unauthorized disclosure of Confidential Information of the Disclosing Party and that the Disclosing Party shall be entitled, without waiving other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

22.17 Survival. Notwithstanding any provisions herein to the contrary, the indemnity obligations set forth herein, and the confidentiality obligations set forth herein, shall survive (in full force and effect) the expiration or termination of this Agreement and shall continue to apply to the Parties to this Agreement even after termination of this Agreement or the transfer of such Party's interest in this Agreement.

22.18 Publicity. Neither Owner nor Contractor shall make any public announcements, press release or other disclosure concerning the contents of, or arrangements contemplated by, this Agreement or any other Contract Document, or to the effect that the Parties have entered into this Agreement, without the prior written consent of the other Party.

22.19 Forthcoming Exhibits and Appendices. The Parties acknowledge and agree that, as of Effective Date, the following Exhibits and Appendices have not been delivered by the responsible Party and shall be supplied by the Owner to the Contractor not later than January 31, 2012: (a) Exhibit B-5, Appendix 2, Turbine Supplier's Specifications, (b) Exhibit B-5, Appendix 6, Turbine Supplier Installation and Erection Manual, (c) Exhibit B-5, Appendix 7, Turbine Supplier Delivery Schedule, (d) Exhibit B-5, Appendix 8, Turbine Demurrage Rate Schedule, (e) Exhibit B-5, Appendix 9 Component Packing List, (f) Exhibit B-5, Appendix 10, Turbine Operation Manual, (g) Exhibit D-3, Turbine Supplier Installation Checklist, (h) Exhibit Q,

Single Line Drawing of Interconnection of the Project, (i) Exhibit S, Idaho Power Company Studies and Agreements, and (j) Exhibit T, High Voltage Electrical System Studies and Agreements. All Exhibits and Appendices agreed upon or delivered, as the case may be, in accordance with this Section, shall be attached to and become a part of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

CONTRACTOR:

**EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

FAGEN, INC.

By: _____

By: _____

Name:

Name:

Title:

Title:

45048.000L2357315.2

FAGEN 0243

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

CONTRACTOR:

**ENERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

FAGEN, INC.

By: 

By: _____

Name: James T. Carkulis

Name: _____

Title: President

Title: _____

45048.0008.25073152

FAGEN 0244

IN WITNESS WHERE OF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

**ENERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**


CONTRACTOR:

FAGEN, INC.

By: _____

Name:

Title:

By:  _____

Name: *Larry Lindeman*

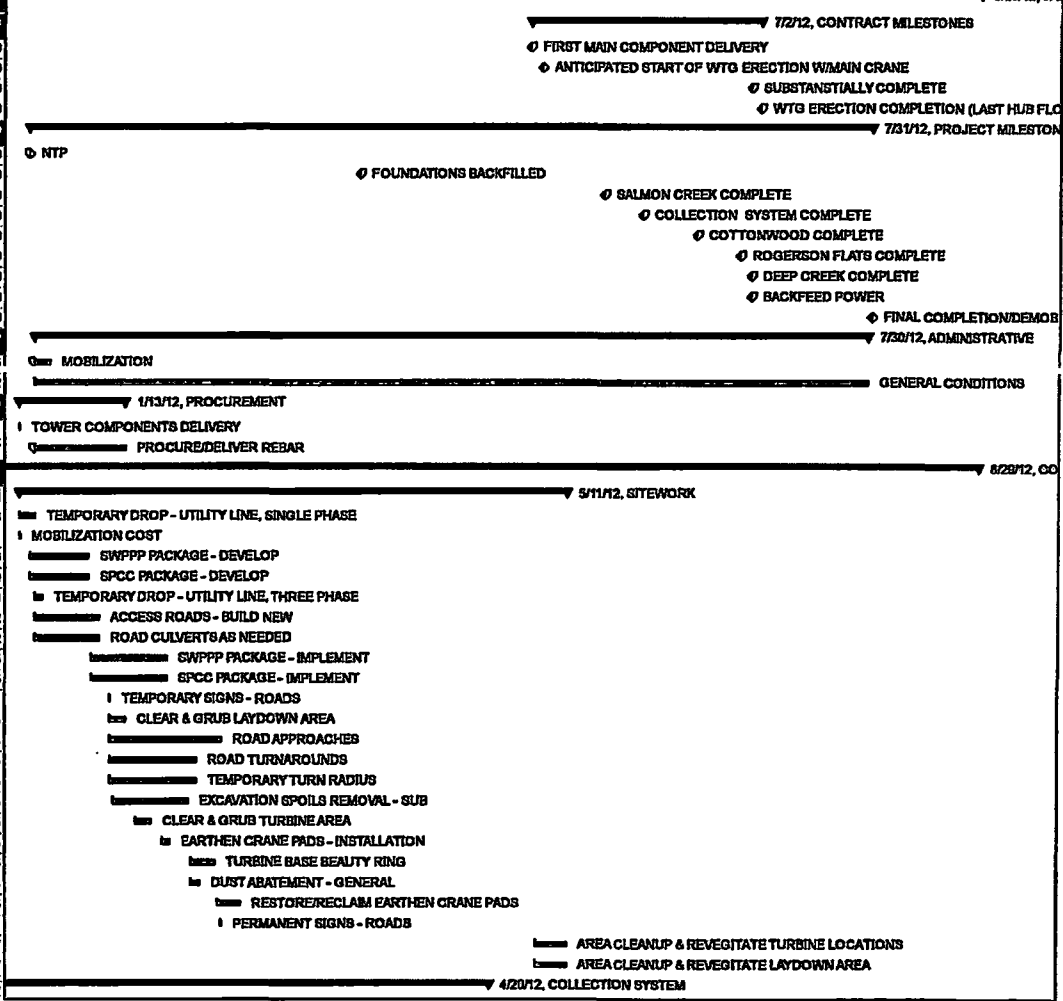
Title: *Vice President - W.R.D.*

45049.0008.2387315.2

FAGEN 0245

Activity ID	Activity Name	Start	Finish	Original Duration	October 2011	November 2011	December 2011	January 2012	February 2012	March 2012	April 2012	May 2012	June 2012	July 2012	August 2012	September 2012	October 2012
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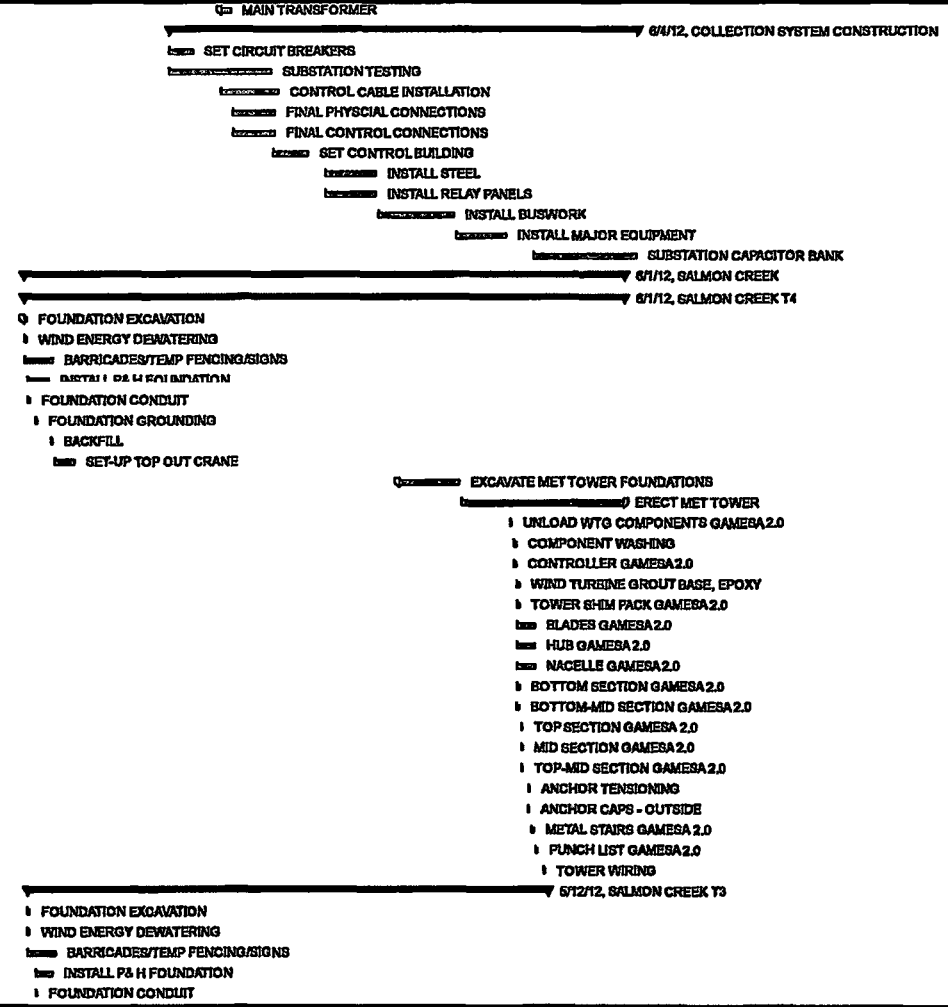
Activity ID	Activity Name	Start	Finish	Original Duration	October 2011	November 2011	December 2011	January 2012	February 2012	March 2012	April 2012	May 2012	June 2012	July 2012	August 2012	September 2012	October 2012
CONTRACT MILESTONES																	
JRWMS0123000	FIRST MAIN COMPONENT DELIVERY	7/1/12	7/2/12	43													
JRWMS0125000	ANTICIPATED START OF WTO ERECTION W/MAIN CRANE		5/1/12	0													
JRWMS485000	SUBSTANTIALLY COMPLETE		6/28/12	0													
JRWMS0126000	WTO ERECTION COMPLETION (LAST HUB FLOW)		7/2/12	0													
PROJECT MILESTONES																	
JRWMS010000	NTP	12/18/11	7/31/12	190													
JRWMS013000	FOUNDATIONS BACKFILLED		3/18/12	0													
JRWMS481000	SALMON CREEK COMPLETE		5/21/12	0													
JRWMS260000	COLLECTION SYSTEM COMPLETE		5/31/12	0													
JRWMS483000	COTTONWOOD COMPLETE		6/15/12	0													
JRWMS482000	ROGERSON FLATS COMPLETE		6/28/12	0													
JRWMS484000	DEEP CREEK COMPLETE		6/28/12	0													
JRWMS485000	BACKFEED POWER		6/28/12	0													
JRWMS019000	FINAL COMPLETION/DEMOLITION		7/31/12	0													
ADMINISTRATIVE																	
JRWG010000	GENERAL CONDITIONS	12/20/11	7/30/12	192													
PROCUREMENT																	
JRWDP32110	TOWER COMPONENTS DELIVERY	12/16/11	1/13/12	19													
JRWDP32100	PROCURE/DELIVER REBAR	12/20/11	1/13/12	17													
CONSTRUCTION																	
SITework																	
JRWWS1701300-3	TEMPORARY DROP - UTILITY LINE, SINGLE PHASE	12/18/11	5/1/12	104													
JRWWS1701310-2	MOBILIZATION COST	12/18/11	12/20/11	3													
JRWWS1704033-1	SWPPP PACKAGE - DEVELOP	12/18/11	1/3/12	10													
JRWWS1704033-3	SPCC PACKAGE - DEVELOP	12/18/11	1/3/12	10													
JRWWS1701300-4	TEMPORARY DROP - UTILITY LINE, THREE PHASE	12/20/11	12/22/11	3													
JRWWS1701310-1	ACCESS ROADS - BUILD NEW	12/20/11	1/6/12	12													
JRWWS1704010	ROAD CULVERTS AS NEEDED	12/20/11	1/6/12	12													
JRWWS1704033-2	SWPPP PACKAGE - IMPLEMENT	1/4/12	1/24/12	15													
JRWWS1704033-4	SPCC PACKAGE - IMPLEMENT	1/4/12	1/24/12	15													
JRWWS10145300-1	TEMPORARY SIGNS - ROADS	1/6/12	1/6/12	1													
JRWWS1131300-2	CLEAR & GRUB LAYDOWN AREA	1/6/12	1/13/12	5													
JRWWS1701315	ROAD APPROACHES	1/6/12	2/6/12	23													
JRWWS1701320	ROAD TURNAROUNDS	1/6/12	2/1/12	18													
JRWWS1701375	TEMPORARY TURN RADIUS	1/6/12	2/1/12	18													
JRWWS1703510	EXCAVATION SPOILS REMOVAL - SUB	1/10/12	1/30/12	15													
JRWWS1131300-1	CLEAR & GRUB TURBINE AREA	1/16/12	1/20/12	5													
JRWWS1701325	EARTHEN CRANE PADS - INSTALLATION	1/23/12	1/25/12	3													
JRWWS1703500-1	TURBINE BASE BEAUTY RING	1/31/12	2/6/12	5													
JRWWS1704033-5	DUST ABATEMENT - GENERAL	1/31/12	2/2/12	3													
JRWWS1703500-2	RESTORE/RECLAIM EARTHEN CRANE PADS	2/7/12	2/13/12	5													
JRWWS10145300-2	PERMANENT SIGNS - ROADS	2/6/12	2/6/12	1													
JRWWS1703500-3	AREA CLEANUP & REVEGETATE TURBINE LOCATIONS	5/3/12	5/11/12	7													
JRWWS1703500-4	AREA CLEANUP & REVEGETATE LAYDOWN AREA	5/3/12	5/11/12	7													
COLLECTION SYSTEM																	



	DD 12/16/11	JACK RANCH WIND FARM MASTER	Current Bar Labels	Finish Constr...	
	CD 12/21/11		Milestone	% Complete	
	Page 1 of 24		Start Constraint	Summary	

Activity ID	Activity Name	Start	Finish	Duration	Original Date	2011	2012	2013	
MAJOR MATERIALS						12/22/11	3/18/12	60	3/18/12, MAJOR MATERIALS
JRW260007	FIBER LEAD TIME	12/22/11	2/17/12	40					FIBER LEAD TIME
JRW260008	FIBER DUCT LEAD TIME	12/22/11	1/8/12	10					FIBER DUCT LEAD TIME
JRW260010	G&W 6F6 SWITCH LEAD TIME	12/22/11	3/18/12	60					G&W 6F6 SWITCH LEAD TIME
JRW260011	OTHER COLLECTION MATERIALS	12/22/11	12/20/12	20					OTHER COLLECTION MATERIALS
JRW260006	35KV CABLE LEAD TIME	12/27/11	2/20/12	40					35KV CABLE LEAD TIME
JRW260009	TRENCH GROUND LEAD TIME	12/27/11	1/8/12	10					TRENCH GROUND LEAD TIME
COLLECTION SYSTEM CONSTRUCTION						9/28/11	4/20/12	144	4/20/12, COLLECTION SYSTEM CONSTRUCTION
JRW260013	MARK LOCATE AND PREP - HDD	9/28/11	12/28/11	8					MARK LOCATE AND PREP - HDD
JRW260015	MOBILIZE FOR TRENCHING / PLOWING	12/18/11	12/22/11	5					MOBILIZE FOR TRENCHING / PLOWING
JRW260021	START OF FAGEN FOUNDATION WORK	12/18/11	2/1/12	32					START OF FAGEN FOUNDATION WORK
JRW260022	TURBINE GROUND GRID	12/18/11	2/1/12	32					TURBINE GROUND GRID
JRW260023	TURBINE CONDUIT	12/18/11	2/1/12	32					TURBINE CONDUIT
JRW260018	UNLOAD 35KV CABLE	12/27/11	12/27/11	1					UNLOAD 35KV CABLE
JRW260024	BACK-DIG CABLE INTO WTG	12/27/11	2/8/12	32					BACK-DIG CABLE INTO WTG
JRW260017	CABLE TRENCHING - 2500' / DAY / CREW	12/28/11	1/21/12	25					CABLE TRENCHING - 2500' / DAY / CREW
JRW260019	FIBER INSTALLATION IN CONDUIT	1/4/12	2/7/12	25					FIBER INSTALLATION IN CONDUIT
JRW260016	CONCENTRIC GROUNDS AND SPLICES	1/4/12	2/14/12	30					CONCENTRIC GROUNDS AND SPLICES
JRW260014	HORIZONTAL DIRECTIONAL DRILLING	1/8/12	1/28/12	15					HORIZONTAL DIRECTIONAL DRILLING
JRW260020	JUNCTION BOX INSTALLATION	1/23/12	2/2/12	10					JUNCTION BOX INSTALLATION
JRW260025	35KV SWITCH INSTALLATION	3/18/12	3/30/12	10					35KV SWITCH INSTALLATION
JRW260028	35KV ELBOWS AND OTHER TERMINATIONS	4/2/12	4/13/12	10					35KV ELBOWS AND OTHER TERMINATIONS
JRW260027	CABLE TESTING - AC VLF HI POT	4/18/12	4/20/12	5					CABLE TESTING - AC VLF HI POT
SUBSTATION CONSTRUCTION						8/29/11	8/28/12	237	8/28/12, SUB
JRWU260033	PROCURE CONDUIT AND GROUNDING	8/29/11	1/15/12	20					PROCURE CONDUIT AND GROUNDING
JRWU260031	SUBSTATION GRADING	2/27/12	2/15/12	10					SUBSTATION GRADING
JRWU260032	SUB FOUNDATIONS	3/1/12	6/8/12	72					SUB FOUNDATIONS
JRWU260034	SUB CONTROL CONDUITS	3/8/12	3/21/12	10					SUB CONTROL CONDUITS
JRWU260035	SUB GROUND GRID	3/8/12	3/18/12	8					SUB GROUND GRID
JRWU260036	SUB - RE-COMPACT SURFACE - FAGEN	3/20/12	3/20/12	1					SUB - RE-COMPACT SURFACE - FAGEN
JRWU261000	CONTROL CABLE INSTALLATION	6/15/12	6/8/12	40					CONTROL CABLE INST
JRWU261200	INSTALL RELAY PANELS	7/25/12	8/21/12	20					INSTALL RELAY
JRWU261300	FINAL PHYSICAL CONNECTIONS	7/26/12	8/29/12	25					FINAL PHY
JRWU261400	FINAL CONTROL CONNECTIONS	7/26/12	8/29/12	25					FINAL CON
JRWU261100	SET CONTROL BUILDING	6/10/12	8/21/12	8					SET CONTROL
MAJOR MATERIALS						9/29/11	5/7/12	98	5/7/12, MAJOR MATERIALS
JRWU260038	STEEL	9/29/11	3/12/12	60					STEEL
JRWU260039	181KV CB	9/29/11	1/30/12	30					181KV CB
JRWU260040	34.5KV CB (QTY 2)	9/29/11	1/30/12	30					34.5KV CB (QTY 2)
JRWU260041	181KV SWITCH	9/29/11	3/28/12	70					181KV SWITCH
JRWU260042	181KV CVT	9/29/11	3/28/12	70					181KV CVT
JRWU260043	34.5KV GOAB SWITCH	9/29/11	2/13/12	40					34.5KV GOAB SWITCH
JRWU260044	34.5KV HS SWITCH	9/29/11	1/30/12	30					34.5KV HS SWITCH
JRWU260045	BUS AND OTHER MATERIALS	9/29/11	2/13/12	40					BUS AND OTHER MATERIALS
JRWU260046	CONTROL BUILDING	9/29/11	2/27/12	50					CONTROL BUILDING
JRWU260047	RELAY PANELS	9/29/11	3/12/12	60					RELAY PANELS
JRWU260048	CONTROL CABLES	9/29/11	2/13/12	40					CONTROL CABLES
JRWU260049	METERING CTS AND PTS	9/29/11	3/12/12	60					METERING CTS AND PTS
JRWU260051	CAPACITOR BANK	9/29/11	5/7/12	100					CAPACITOR BANK

JRWU260050	MAIN TRANSFORMER	2/14/12	2/18/12	3
COLLECTION SYSTEM CONSTRUCTION				
JRWU260055	SET CIRCUIT BREAKERS	1/31/12	2/6/12	6
JRWU260062	SUBSTATION TESTING	1/31/12	2/27/12	20
JRWU260059	CONTROL CABLE INSTALLATION	2/14/12	2/28/12	12
JRWU260069	FINAL PHYSICAL CONNECTIONS	2/17/12	2/24/12	8
JRWU260061	FINAL CONTROL CONNECTIONS	2/17/12	2/28/12	8
JRWU260057	SET CONTROL BUILDING	2/22/12	3/8/12	6
JRWU260053	INSTALL STEEL	3/13/12	3/26/12	10
JRWU260058	INSTALL RELAY PANELS	3/13/12	3/29/12	10
JRWU260054	INSTALL BUSWORK	3/27/12	4/16/12	15
JRWU260056	INSTALL MAJOR EQUIPMENT	4/17/12	4/30/12	10
JRWU260063	SUBSTATION CAPACITOR BANK	5/8/12	6/4/12	20
SALMON CREEK				
SALMON CREEK T4				
JRWS31701510T4	FOUNDATION EXCAVATION	12/23/11	6/1/12	139
JRWS31701900T4	WIND ENERGY DEWATERING	12/23/11	12/23/11	1
JRWS31704035T4	BARRICADES/TEMP FENCING/SIGNS	12/23/11	12/30/11	7
JRWS26053400T4	FOUNDATION CONDUIT	12/24/11	12/24/11	1
JRWS26052600T4	FOUNDATION GROUNDING	12/26/11	12/26/11	1
JRWS31702313T4	BACKFILL	12/30/11	12/30/11	1
JRWS48159010T4	SETUP TOP OUT CRANE	1/23/12	1/5/12	6
JRWS48031000	EXCAVATE MET TOWER FOUNDATIONS	4/27/12	6/16/12	16
JRWS48480000	ERECT MET TOWER	4/18/12	6/1/12	38
JRWS48150510T4	UNLOAD WTG COMPONENTS GAMESA 2.0	5/2/12	5/2/12	1
JRWS48150530T4	COMPONENT WASHING	5/3/12	5/3/12	1
JRWS48152000T4	CONTROLLER GAMESA 2.0	5/3/12	5/3/12	1
JRWS31701375T4	WIND TURBINE GROUT BASE, EPOXY	5/4/12	5/4/12	1
JRWS48150540T4	TOWER SHIM PACK GAMESA 2.0	5/4/12	5/4/12	1
JRWS48151320T4	BLADES GAMESA 2.0	5/4/12	5/8/12	4
JRWS48151330T4	HUB GAMESA 2.0	5/4/12	5/8/12	4
JRWS48151610T4	NACELLE GAMESA 2.0	5/4/12	5/8/12	4
JRWS48152010T4	BOTTOM SECTION GAMESA 2.0	5/4/12	5/4/12	1
JRWS48152020T4	BOTTOM-MID SECTION GAMESA 2.0	5/4/12	5/4/12	1
JRWS48152050T4	TOP SECTION GAMESA 2.0	5/5/12	5/5/12	1
JRWS48152030T4	MID SECTION GAMESA 2.0	5/5/12	5/5/12	1
JRWS48152040T4	TOP-MID SECTION GAMESA 2.0	5/5/12	5/5/12	1
JRWS48150520T4	ANCHOR TENSIONING	5/7/12	5/7/12	1
JRWS48150525T4	ANCHOR CAPS - OUTSIDE	5/7/12	5/7/12	1
JRWS48150535T4	METAL STAIRS GAMESA 2.0	5/8/12	5/8/12	1
JRWS48150530T4	PUNCH LIST GAMESA 2.0	5/8/12	5/8/12	1
JRWS26100000T4	TOWER WIRING	5/11/12	5/11/12	1
SALMON CREEK T3				
JRWS31701510T3	FOUNDATION EXCAVATION	12/24/11	12/24/11	1
JRWS31701900T3	WIND ENERGY DEWATERING	12/24/11	12/24/11	1
JRWS31704035T3	BARRICADES/TEMP FENCING/SIGNS	12/24/11	12/31/11	7
JRWS31701500T3	INSTALL P & H FOUNDATION	12/26/11	12/30/11	6
JRWS26053400T3	FOUNDATION CONDUIT	12/26/11	12/26/11	1



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FAGEN INC.

JRWS26052600T3	FOUNDATION GROUNDING	12/27/11	12/27/11	1	
JRWS31702313T3	BACKFILL	12/31/11	12/31/11	1	
JRWS48150510T3	UNLOAD WTG COMPONENTS GAMESA 2.0	5/3/12	5/3/12	1	
JRWS48150530T3	COMPONENT WASHING	5/4/12	5/4/12	1	
JRWS48152000T3	CONTROLLER GAMESA 2.0	5/4/12	5/4/12	1	
JRWS03701375T3	WIND TURBINE GROUT BASE, EPOXY	5/5/12	5/5/12	1	
JRWS48150540T3	TOWER SHIM PACK GAMESA 2.0	5/5/12	5/5/12	1	
JRWS48151320T3	BLADES GAMESA 2.0	5/5/12	5/5/12	4	
JRWS48151330T3	HUB GAMESA 2.0	5/5/12	5/5/12	4	
JRWS48151610T3	NACELLE GAMESA 2.0	5/5/12	5/5/12	4	
JRWS48152010T3	BOTTOM SECTION GAMESA 2.0	5/5/12	5/5/12	1	
JRWS48152020T3	BOTTOM-MID SECTION GAMESA 2.0	5/5/12	5/5/12	1	
JRWS48150535T3	METAL STAIRS GAMESA 2.0	5/5/12	5/5/12	1	
JRWS48152050T3	TOP SECTION GAMESA 2.0	5/5/12	5/5/12	1	
JRWS48152030T3	MID SECTION GAMESA 2.0	5/5/12	5/5/12	1	
JRWS48152040T3	TOP-MID SECTION GAMESA 2.0	5/5/12	5/5/12	1	
JRWS48150520T3	ANCHOR TENSIONING	5/10/12	5/10/12	1	
JRWS48150525T3	ANCHOR CAPS - OUTSIDE	5/10/12	5/10/12	1	
JRWS26100000T3	TOWER WIRING	5/12/12	5/12/12	1	
SALMON CREEK T2		12/28/11	5/14/12	121	
JRWS31701510T2	FOUNDATION EXCAVATION	12/28/11	12/28/11	1	
JRWS31701900T2	WIND ENERGY DEWATERING	12/28/11	12/28/11	1	
JRWS31704035T2	BARRICADES/TEMP FENCINGS/SGNS	12/28/11	1/2/12	7	
JRWS03701500T2	INSTALL P & H FOUNDATION	12/27/11	12/31/11	6	
JRWS26053400T2	FOUNDATION CONDUIT	12/27/11	12/27/11	1	
JRWS26052600T2	FOUNDATION GROUNDING	12/28/11	12/28/11	1	
JRWS31702313T2	BACKFILL	1/2/12	1/2/12	1	
JRWS48150510T2	UNLOAD WTG COMPONENTS GAMESA 2.0	5/4/12	5/4/12	1	
JRWS48150530T2	COMPONENT WASHING	5/5/12	5/5/12	1	
JRWS48152000T2	CONTROLLER GAMESA 2.0	5/5/12	5/5/12	1	
JRWS03701375T2	WIND TURBINE GROUT BASE, EPOXY	5/7/12	5/7/12	1	
JRWS48150540T2	TOWER SHIM PACK GAMESA 2.0	5/7/12	5/7/12	1	
JRWS48151320T2	BLADES GAMESA 2.0	5/7/12	5/10/12	4	
JRWS48151330T2	HUB GAMESA 2.0	5/7/12	5/10/12	4	
JRWS48151610T2	NACELLE GAMESA 2.0	5/7/12	5/10/12	4	
JRWS48152010T2	BOTTOM SECTION GAMESA 2.0	5/7/12	5/7/12	1	
JRWS48152020T2	BOTTOM-MID SECTION GAMESA 2.0	5/7/12	5/7/12	1	
JRWS48150535T2	METAL STAIRS GAMESA 2.0	5/10/12	5/10/12	1	
JRWS48152050T2	TOP SECTION GAMESA 2.0	5/10/12	5/10/12	1	
JRWS48152030T2	MID SECTION GAMESA 2.0	5/10/12	5/10/12	1	
JRWS48152040T2	TOP-MID SECTION GAMESA 2.0	5/10/12	5/10/12	1	
JRWS48150520T2	ANCHOR TENSIONING	5/11/12	5/11/12	1	
JRWS48150525T2	ANCHOR CAPS - OUTSIDE	5/11/12	5/11/12	1	
JRWS48150530T2	PUNCH LIST GAMESA 2.0	5/11/12	5/11/12	1	
JRWS26100000T2	TOWER WIRING	5/14/12	5/14/12	1	
SALMON CREEK T1		12/27/11	5/15/12	121	
JRWS31701510T1	FOUNDATION EXCAVATION	12/27/11	12/27/11	1	
JRWS31701900T1	WIND ENERGY DEWATERING	12/27/11	12/27/11	1	
JRWS31704035T1	BARRICADES/TEMP FENCINGS/SGNS	12/27/11	1/2/12	6	

FOUNDATION GROUNDING	
BACKFILL	
UNLOAD WTG COMPONENTS GAMESA 2.0	
COMPONENT WASHING	
CONTROLLER GAMESA 2.0	
WIND TURBINE GROUT BASE, EPOXY	
TOWER SHIM PACK GAMESA 2.0	
BLADES GAMESA 2.0	
HUB GAMESA 2.0	
NACELLE GAMESA 2.0	
BOTTOM SECTION GAMESA 2.0	
BOTTOM-MID SECTION GAMESA 2.0	
METAL STAIRS GAMESA 2.0	
TOP SECTION GAMESA 2.0	
MID SECTION GAMESA 2.0	
TOP-MID SECTION GAMESA 2.0	
ANCHOR TENSIONING	
ANCHOR CAPS - OUTSIDE	
PUNCH LIST GAMESA 2.0	
TOWER WIRING	
5/14/12, SALMON CREEK T2	
FOUNDATION EXCAVATION	
WIND ENERGY DEWATERING	
BARRICADES/TEMP FENCINGS/SGNS	
INSTALL P & H FOUNDATION	
FOUNDATION CONDUIT	
FOUNDATION GROUNDING	
BACKFILL	
UNLOAD WTG COMPONENTS GAMESA 2.0	
COMPONENT WASHING	
CONTROLLER GAMESA 2.0	
WIND TURBINE GROUT BASE, EPOXY	
TOWER SHIM PACK GAMESA 2.0	
BLADES GAMESA 2.0	
HUB GAMESA 2.0	
NACELLE GAMESA 2.0	
BOTTOM SECTION GAMESA 2.0	
BOTTOM-MID SECTION GAMESA 2.0	
METAL STAIRS GAMESA 2.0	
TOP SECTION GAMESA 2.0	
MID SECTION GAMESA 2.0	
TOP-MID SECTION GAMESA 2.0	
ANCHOR TENSIONING	
ANCHOR CAPS - OUTSIDE	
PUNCH LIST GAMESA 2.0	
TOWER WIRING	
5/15/12, SALMON CREEK T1	
FOUNDATION EXCAVATION	
WIND ENERGY DEWATERING	
BARRICADES/TEMP FENCINGS/SGNS	



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Current Bar Labels Finish Constr...
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JRWS03701500T1	INSTALL P&H FOUNDATION	12/28/11	1/2/12	5
JRWS26053400T1	FOUNDATION CONDUIT	12/28/11	12/28/11	1
JRWS26052600T1	FOUNDATION GROUNDING	12/28/11	12/28/11	1
JRWS17023131T1	BACKFILL	1/3/12	1/3/12	1
JRWS48150510T1	UNLOAD WTG COMPONENTS GAMESA 2.0	5/5/12	5/5/12	1
JRWS48150530T1	COMPONENT WASHING	5/7/12	5/7/12	1
JRWS48152000T1	CONTROLLER GAMESA 2.0	5/7/12	5/7/12	1
JRWS03701375T1	WIND TURBINE GROUT BASE, EPOXY	5/8/12	5/8/12	1
JRWS48150540T1	TOWER SHIM PACK GAMESA 2.0	5/8/12	5/8/12	1
JRWS48151320T1	BLADES GAMESA 2.0	5/8/12	5/11/12	4
JRWS48151330T1	HUB GAMESA 2.0	5/8/12	5/11/12	4
JRWS48151610T1	NACELLE GAMESA 2.0	5/8/12	5/11/12	4
JRWS48152010T1	BOTTOM SECTION GAMESA 2.0	5/8/12	5/8/12	1
JRWS48152020T1	BOTTOM-MID SECTION GAMESA 2.0	5/8/12	5/8/12	1
JRWS48150535T1	METAL STAIRS GAMESA 2.0	5/11/12	5/11/12	1
JRWS48152050T1	TOP SECTION GAMESA 2.0	5/11/12	5/11/12	1
JRWS48152030T1	MID SECTION GAMESA 2.0	5/11/12	5/11/12	1
JRWS48152040T1	TOP-MID SECTION GAMESA 2.0	5/11/12	5/11/12	1
JRWS48150525T1	ANCHOR CAPS - OUTSIDE	5/12/12	5/12/12	1
JRWS48150580T1	PUNCH LIST GAMESA 2.0	5/12/12	5/12/12	1
JRWS26100000T1	TOWER WIRING	5/15/12	5/15/12	1
SALMON CREEK T7				
JRWS17015101T7	FOUNDATION EXCAVATION	12/28/11	12/28/11	1
JRWS17018001T7	WIND ENERGY DEWATERING	12/28/11	12/28/11	1
JRWS17040351T7	BARRICADES/TEMP FENCING/SIGNS	12/28/11	1/2/12	5
JRWS03701500T7	INSTALL P&H FOUNDATION	12/28/11	1/3/12	5
JRWS26053400T7	FOUNDATION CONDUIT	12/28/11	12/28/11	1
JRWS26052600T7	FOUNDATION GROUNDING	12/30/11	12/30/11	1
JRWS17023131T7	BACKFILL	1/4/12	1/4/12	1
JRWS48150510T7	UNLOAD WTG COMPONENTS GAMESA 2.0	5/7/12	5/7/12	1
JRWS48150530T7	COMPONENT WASHING	5/8/12	5/8/12	1
JRWS48152000T7	CONTROLLER GAMESA 2.0	5/8/12	5/8/12	1
JRWS03701375T7	WIND TURBINE GROUT BASE, EPOXY	5/8/12	5/8/12	1
JRWS48150540T7	TOWER SHIM PACK GAMESA 2.0	5/8/12	5/8/12	1
JRWS48151320T7	BLADES GAMESA 2.0	5/8/12	5/12/12	4
JRWS48151330T7	HUB GAMESA 2.0	5/8/12	5/12/12	4
JRWS48151610T7	NACELLE GAMESA 2.0	5/8/12	5/12/12	4
JRWS48152010T7	BOTTOM SECTION GAMESA 2.0	5/8/12	5/8/12	1
JRWS48152020T7	BOTTOM-MID SECTION GAMESA 2.0	5/8/12	5/8/12	1
JRWS48150535T7	METAL STAIRS GAMESA 2.0	5/12/12	5/12/12	1
JRWS48152050T7	TOP SECTION GAMESA 2.0	5/12/12	5/12/12	1
JRWS48152030T7	MID SECTION GAMESA 2.0	5/12/12	5/12/12	1
JRWS48152040T7	TOP-MID SECTION GAMESA 2.0	5/12/12	5/12/12	1
JRWS48150520T7	ANCHOR TENSIONING	5/14/12	5/14/12	1
JRWS48150525T7	ANCHOR CAPS - OUTSIDE	5/14/12	5/14/12	1
JRWS48150580T7	PUNCH LIST GAMESA 2.0	5/14/12	5/14/12	1
JRWS26100000T7	TOWER WIRING	5/15/12	5/15/12	1
SALMON CREEK T6				
JRWS17015101T6	FOUNDATION EXCAVATION	12/28/11	12/28/11	1

INSTALL P&H FOUNDATION
FOUNDATION CONDUIT
FOUNDATION GROUNDING
BACKFILL
UNLOAD WTG COMPONENTS GAMESA 2.0
COMPONENT WASHING
CONTROLLER GAMESA 2.0
WIND TURBINE GROUT BASE, EPOXY
TOWER SHIM PACK GAMESA 2.0
BLADES GAMESA 2.0
HUB GAMESA 2.0
NACELLE GAMESA 2.0
BOTTOM SECTION GAMESA 2.0
BOTTOM-MID SECTION GAMESA 2.0
METAL STAIRS GAMESA 2.0
TOP SECTION GAMESA 2.0
MID SECTION GAMESA 2.0
TOP-MID SECTION GAMESA 2.0
ANCHOR TENSIONING
ANCHOR CAPS - OUTSIDE
PUNCH LIST GAMESA 2.0
TOWER WIRING
5/15/12, SALMON CREEK T7
FOUNDATION EXCAVATION
WIND ENERGY DEWATERING
BARRICADES/TEMP FENCING/SIGNS
INSTALL P&H FOUNDATION
FOUNDATION CONDUIT
FOUNDATION GROUNDING
BACKFILL
UNLOAD WTG COMPONENTS GAMESA 2.0
COMPONENT WASHING
CONTROLLER GAMESA 2.0
WIND TURBINE GROUT BASE, EPOXY
TOWER SHIM PACK GAMESA 2.0
BLADES GAMESA 2.0
HUB GAMESA 2.0
NACELLE GAMESA 2.0
BOTTOM SECTION GAMESA 2.0
BOTTOM-MID SECTION GAMESA 2.0
METAL STAIRS GAMESA 2.0
TOP SECTION GAMESA 2.0
MID SECTION GAMESA 2.0
TOP-MID SECTION GAMESA 2.0
ANCHOR TENSIONING
ANCHOR CAPS - OUTSIDE
PUNCH LIST GAMESA 2.0
TOWER WIRING
5/17/12, SALMON CREEK T6
FOUNDATION EXCAVATION



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Current Bar Labels Finish Constr...
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Start Constraint Summary



Activity ID	Activity Name	Start	Finish	Original Duration
JRWS31701800T8	WIND ENERGY DEWATERING	12/29/11	12/29/11	1
JRWS31704035T8	BARRICADES/TEMP FENCING/SIGNS	12/29/11	1/4/12	6
JRWS31701500T8	INSTALL P & H FOUNDATION	12/30/11	1/4/12	5
JRWS26053400T8	FOUNDATION CONDUIT	12/30/11	12/30/11	1
JRWS26052800T8	FOUNDATION GROUNDING	12/31/11	12/31/11	1
JRWS31702313T8	BACKFILL	1/5/12	1/5/12	1
JRWS48150510T8	UNLOAD WTG COMPONENTS GAMESA 2.0	5/8/12	5/8/12	1
JRWS48150530T8	COMPONENT WASHING	5/8/12	5/8/12	1
JRWS48152000T8	CONTROLLER GAMESA 2.0	5/8/12	5/8/12	1
JRWS31701375T8	WIND TURBINE GROUT BASE, EPOXY	5/10/12	5/10/12	1
JRWS48150540T8	TOWER SHIM PACK GAMESA 2.0	5/10/12	5/10/12	1
JRWS48151320T8	BLADES GAMESA 2.0	5/10/12	5/14/12	4
JRWS48151330T8	HUB GAMESA 2.0	5/10/12	5/14/12	4
JRWS48151810T8	NACELLE GAMESA 2.0	5/10/12	5/14/12	4
JRWS48152010T8	BOTTOM SECTION GAMESA 2.0	5/10/12	5/10/12	1
JRWS48152020T8	BOTTOM-MID SECTION GAMESA 2.0	5/10/12	5/10/12	1
JRWS48150535T8	METAL STAIRS GAMESA 2.0	5/14/12	5/14/12	1
JRWS48152050T8	TOP SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWS48152030T8	MID SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWS48152040T8	TOP-MID SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWS48150520T8	ANCHOR TENSIONING	5/15/12	5/15/12	1
JRWS48150525T8	ANCHOR CAPS - OUTSIDE	5/15/12	5/15/12	1
JRWS48150530T8	PUNCH LIST GAMESA 2.0	5/15/12	5/15/12	1
JRWS28100000T8	TOWER WIRING	5/17/12	5/17/12	1
SALMON CREEK T3				
JRWS31701510T8	FOUNDATION EXCAVATION	12/30/11	12/30/11	1
JRWS31701800T8	WIND ENERGY DEWATERING	12/30/11	12/30/11	1
JRWS31704035T8	BARRICADES/TEMP FENCING/SIGNS	12/30/11	1/5/12	6
JRWS31701500T8	INSTALL P & H FOUNDATION	12/31/11	1/5/12	5
JRWS26053400T8	FOUNDATION CONDUIT	12/31/11	12/31/11	1
JRWS26052800T8	FOUNDATION GROUNDING	1/2/12	1/2/12	1
JRWS31702313T8	BACKFILL	1/8/12	1/8/12	1
JRWS48150510T8	UNLOAD WTG COMPONENTS GAMESA 2.0	5/8/12	5/8/12	1
JRWS48150530T8	COMPONENT WASHING	5/10/12	5/10/12	1
JRWS48152000T8	CONTROLLER GAMESA 2.0	5/10/12	5/10/12	1
JRWS31701375T8	WIND TURBINE GROUT BASE, EPOXY	5/11/12	5/11/12	1
JRWS48150540T8	TOWER SHIM PACK GAMESA 2.0	5/11/12	5/11/12	1
JRWS48151320T8	BLADES GAMESA 2.0	5/11/12	5/15/12	4
JRWS48151330T8	HUB GAMESA 2.0	5/11/12	5/15/12	4
JRWS48151810T8	NACELLE GAMESA 2.0	5/11/12	5/15/12	4
JRWS48152010T8	BOTTOM SECTION GAMESA 2.0	5/11/12	5/11/12	1
JRWS48152020T8	BOTTOM-MID SECTION GAMESA 2.0	5/11/12	5/11/12	1
JRWS48150535T8	METAL STAIRS GAMESA 2.0	5/15/12	5/15/12	1
JRWS48152050T8	TOP SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRWS48152030T8	MID SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRWS48152040T8	TOP-MID SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRWS48150520T8	ANCHOR TENSIONING	5/18/12	5/18/12	1
JRWS48150525T8	ANCHOR CAPS - OUTSIDE	5/18/12	5/18/12	1
JRWS48150530T8	PUNCH LIST GAMESA 2.0	5/18/12	5/18/12	1
JRWS28100000T8	TOWER WIRING	5/18/12	5/18/12	1

WIND ENERGY DEWATERING
BARRICADES/TEMP FENCING/SIGNS
INSTALL P & H FOUNDATION
FOUNDATION CONDUIT
FOUNDATION GROUNDING
BACKFILL
UNLOAD WTG COMPONENTS GAMESA 2.0
COMPONENT WASHING
CONTROLLER GAMESA 2.0
WIND TURBINE GROUT BASE, EPOXY
TOWER SHIM PACK GAMESA 2.0
BLADES GAMESA 2.0
HUB GAMESA 2.0
NACELLE GAMESA 2.0
BOTTOM SECTION GAMESA 2.0
BOTTOM-MID SECTION GAMESA 2.0
METAL STAIRS GAMESA 2.0
TOP SECTION GAMESA 2.0
MID SECTION GAMESA 2.0
TOP-MID SECTION GAMESA 2.0
ANCHOR TENSIONING
ANCHOR CAPS - OUTSIDE
PUNCH LIST GAMESA 2.0
TOWER WIRING
5/18/12, SALMON CREEK T3
FOUNDATION EXCAVATION
WIND ENERGY DEWATERING
BARRICADES/TEMP FENCING/SIGNS
INSTALL P & H FOUNDATION
FOUNDATION CONDUIT
FOUNDATION GROUNDING
BACKFILL
UNLOAD WTG COMPONENTS GAMESA 2.0
COMPONENT WASHING
CONTROLLER GAMESA 2.0
WIND TURBINE GROUT BASE, EPOXY
TOWER SHIM PACK GAMESA 2.0
BLADES GAMESA 2.0
HUB GAMESA 2.0
NACELLE GAMESA 2.0
BOTTOM SECTION GAMESA 2.0
BOTTOM-MID SECTION GAMESA 2.0
METAL STAIRS GAMESA 2.0
TOP SECTION GAMESA 2.0
MID SECTION GAMESA 2.0
TOP-MID SECTION GAMESA 2.0
ANCHOR TENSIONING
ANCHOR CAPS - OUTSIDE
PUNCH LIST GAMESA 2.0
TOWER WIRING



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Activity ID	Activity Name	Start	Finish	Original Duration
SALMON CREEK T8		12/31/11	5/18/12	121
JRWS31701510T8	FOUNDATION EXCAVATION	12/31/11	12/31/11	1
JRWS31701800T8	WIND ENERGY DEWATERING	12/31/11	12/31/11	1
JRWS31704035T8	BARRICADES/TEMP FENCING/SIGNS	12/31/11	1/6/12	6
JRWS03701500T8	INSTALL P&H FOUNDATION	1/2/12	1/6/12	5
JRWS26053400T8	FOUNDATION CONDUIT	1/2/12	1/2/12	1
JRWS26052800T8	FOUNDATION GROUNDING	1/3/12	1/3/12	1
JRWS31702313T8	BACKFILL	1/7/12	1/7/12	1
JRWS48150510T8	UNLOAD WTG COMPONENTS GAMESA 2.0	5/10/12	5/10/12	1
JRWS48150530T8	COMPONENT WASHING	5/11/12	5/11/12	1
JRWS48152000T8	CONTROLLER GAMESA 2.0	5/11/12	5/11/12	1
JRWS03701375T8	WIND TURBINE GROUT BASE, EPOXY	5/12/12	5/12/12	1
JRWS48150540T8	TOWER GHM PACK GAMESA 2.0	5/12/12	5/12/12	1
JRWS48151320T8	BLADES GAMESA 2.0	5/12/12	5/18/12	4
JRWS48151330T8	HUB GAMESA 2.0	5/12/12	5/18/12	4
JRWS48151610T8	NACELLE GAMESA 2.0	5/12/12	5/18/12	4
JRWS48152010T8	BOTTOM SECTION GAMESA 2.0	5/12/12	5/12/12	1
JRWS48152020T8	BOTTOM-MID SECTION GAMESA 2.0	5/12/12	5/12/12	1
JRWS48152030T8	METAL STAIRS GAMESA 2.0	5/18/12	5/18/12	1
JRWS48152050T8	TOP SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWS48152030T8	MID SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWS48152040T8	TOP-MID SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWS48150520T8	ANCHOR TENSIONING	5/17/12	5/17/12	1
JRWS48150525T8	ANCHOR CAPS - OUTSIDE	5/17/12	5/17/12	1
JRWS48150530T8	PUNCH LIST GAMESA 2.0	5/17/12	5/17/12	1
JRWS26100000T8	TOWER WIRING	5/18/12	5/18/12	1
SALMON CREEK T9		1/2/12	5/18/12	119
JRWS31701510T9	FOUNDATION EXCAVATION	1/2/12	1/2/12	1
JRWS31701800T9	WIND ENERGY DEWATERING	1/2/12	1/2/12	1
JRWS31704035T9	BARRICADES/TEMP FENCING/SIGNS	1/2/12	1/7/12	6
JRWS03701500T9	INSTALL P&H FOUNDATION	1/3/12	1/7/12	5
JRWS26053400T9	FOUNDATION CONDUIT	1/3/12	1/3/12	1
JRWS26052800T9	FOUNDATION GROUNDING	1/4/12	1/4/12	1
JRWS31702313T9	BACKFILL	1/8/12	1/8/12	1
JRWS48150510T9	UNLOAD WTG COMPONENTS GAMESA 2.0	5/11/12	5/11/12	1
JRWS48150530T9	COMPONENT WASHING	5/12/12	5/12/12	1
JRWS48152000T9	CONTROLLER GAMESA 2.0	5/12/12	5/12/12	1
JRWS03701375T9	WIND TURBINE GROUT BASE, EPOXY	5/14/12	5/14/12	1
JRWS48150540T9	TOWER GHM PACK GAMESA 2.0	5/14/12	5/14/12	1
JRWS48151320T9	BLADES GAMESA 2.0	5/14/12	5/17/12	4
JRWS48151330T9	HUB GAMESA 2.0	5/14/12	5/17/12	4
JRWS48151610T9	NACELLE GAMESA 2.0	5/14/12	5/17/12	4
JRWS48152010T9	BOTTOM SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWS48152020T9	BOTTOM-MID SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWS48150535T9	METAL STAIRS GAMESA 2.0	5/17/12	5/17/12	1
JRWS48152050T9	TOP SECTION GAMESA 2.0	5/17/12	5/17/12	1
JRWS48152030T9	MID SECTION GAMESA 2.0	5/17/12	5/17/12	1
JRWS48152040T9	TOP-MID SECTION GAMESA 2.0	5/17/12	5/17/12	1
JRWS48150520T9	ANCHOR TENSIONING	5/18/12	5/18/12	1
JRWS48150525T9	ANCHOR CAPS - OUTSIDE	5/18/12	5/18/12	1

Activity ID	Activity Name	Start	Finish	Original Duration
JRWS31701510T8	FOUNDATION EXCAVATION	12/31/11	12/31/11	1
JRWS31701800T8	WIND ENERGY DEWATERING	12/31/11	12/31/11	1
JRWS31704035T8	BARRICADES/TEMP FENCING/SIGNS	12/31/11	1/6/12	6
JRWS03701500T8	INSTALL P&H FOUNDATION	1/2/12	1/6/12	5
JRWS26053400T8	FOUNDATION CONDUIT	1/2/12	1/2/12	1
JRWS26052800T8	FOUNDATION GROUNDING	1/3/12	1/3/12	1
JRWS31702313T8	BACKFILL	1/7/12	1/7/12	1
JRWS48150510T8	UNLOAD WTG COMPONENTS GAMESA 2.0	5/10/12	5/10/12	1
JRWS48150530T8	COMPONENT WASHING	5/11/12	5/11/12	1
JRWS48152000T8	CONTROLLER GAMESA 2.0	5/11/12	5/11/12	1
JRWS03701375T8	WIND TURBINE GROUT BASE, EPOXY	5/12/12	5/12/12	1
JRWS48150540T8	TOWER GHM PACK GAMESA 2.0	5/12/12	5/12/12	1
JRWS48151320T8	BLADES GAMESA 2.0	5/12/12	5/18/12	4
JRWS48151330T8	HUB GAMESA 2.0	5/12/12	5/18/12	4
JRWS48151610T8	NACELLE GAMESA 2.0	5/12/12	5/18/12	4
JRWS48152010T8	BOTTOM SECTION GAMESA 2.0	5/12/12	5/12/12	1
JRWS48152020T8	BOTTOM-MID SECTION GAMESA 2.0	5/12/12	5/12/12	1
JRWS48152030T8	METAL STAIRS GAMESA 2.0	5/18/12	5/18/12	1
JRWS48152050T8	TOP SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWS48152030T8	MID SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWS48152040T8	TOP-MID SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWS48150520T8	ANCHOR TENSIONING	5/17/12	5/17/12	1
JRWS48150525T8	ANCHOR CAPS - OUTSIDE	5/17/12	5/17/12	1
JRWS48150530T8	PUNCH LIST GAMESA 2.0	5/17/12	5/17/12	1
JRWS26100000T8	TOWER WIRING	5/18/12	5/18/12	1
JRWS31701510T9	FOUNDATION EXCAVATION	1/2/12	1/2/12	1
JRWS31701800T9	WIND ENERGY DEWATERING	1/2/12	1/2/12	1
JRWS31704035T9	BARRICADES/TEMP FENCING/SIGNS	1/2/12	1/7/12	6
JRWS03701500T9	INSTALL P&H FOUNDATION	1/3/12	1/7/12	5
JRWS26053400T9	FOUNDATION CONDUIT	1/3/12	1/3/12	1
JRWS26052800T9	FOUNDATION GROUNDING	1/4/12	1/4/12	1
JRWS31702313T9	BACKFILL	1/8/12	1/8/12	1
JRWS48150510T9	UNLOAD WTG COMPONENTS GAMESA 2.0	5/11/12	5/11/12	1
JRWS48150530T9	COMPONENT WASHING	5/12/12	5/12/12	1
JRWS48152000T9	CONTROLLER GAMESA 2.0	5/12/12	5/12/12	1
JRWS03701375T9	WIND TURBINE GROUT BASE, EPOXY	5/14/12	5/14/12	1
JRWS48150540T9	TOWER GHM PACK GAMESA 2.0	5/14/12	5/14/12	1
JRWS48151320T9	BLADES GAMESA 2.0	5/14/12	5/17/12	4
JRWS48151330T9	HUB GAMESA 2.0	5/14/12	5/17/12	4
JRWS48151610T9	NACELLE GAMESA 2.0	5/14/12	5/17/12	4
JRWS48152010T9	BOTTOM SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWS48152020T9	BOTTOM-MID SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWS48150535T9	METAL STAIRS GAMESA 2.0	5/17/12	5/17/12	1
JRWS48152050T9	TOP SECTION GAMESA 2.0	5/17/12	5/17/12	1
JRWS48152030T9	MID SECTION GAMESA 2.0	5/17/12	5/17/12	1
JRWS48152040T9	TOP-MID SECTION GAMESA 2.0	5/17/12	5/17/12	1
JRWS48150520T9	ANCHOR TENSIONING	5/18/12	5/18/12	1
JRWS48150525T9	ANCHOR CAPS - OUTSIDE	5/18/12	5/18/12	1



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Activity ID	Activity Name	Start	Finish	Original Duration
JRWS48150590T9	PUNCH LIST GAMESA 2.0	5/18/12	5/18/12	1
JRWS2810000T9	TOWER WIRING	5/18/12	5/18/12	1
SALMON CREEK T10				
JRWS31701510T10	FOUNDATION EXCAVATION	1/3/12	5/25/12	124
JRWS31701900T10	WIND ENERGY DEWATERING	1/3/12	1/3/12	1
JRWS31704035T10	BARRICADES/TEMP FENCINGS/SIGNS	1/3/12	1/7/12	5
JRWS03701500T10	INSTALL P&H FOUNDATION	1/4/12	1/8/12	5
JRWS28053400T10	FOUNDATION CONDUIT	1/4/12	1/4/12	1
JRWS28052800T10	FOUNDATION GROUNDING	1/5/12	1/5/12	1
JRWS31702313T10	BACKFILL	1/10/12	1/10/12	1
JRWS48150510T10	UNLOAD WTG COMPONENTS GAMESA 2.0	5/12/12	5/12/12	1
JRWS48150530T10	COMPONENT WASHING	5/14/12	5/14/12	1
JRWS48152000T10	CONTROLLER GAMESA 2.0	5/14/12	5/14/12	1
JRWS03701515T10	WIND TURBINE GROUT BASE, EPOXY	5/15/12	5/15/12	1
JRWS48150540T10	TOWER SHIM PACK GAMESA 2.0	5/15/12	5/15/12	1
JRWS48151320T10	BLADES GAMESA 2.0	5/15/12	5/18/12	4
JRWS48151330T10	HUB GAMESA 2.0	5/15/12	5/18/12	4
JRWS48151810T10	NACELLE GAMESA 2.0	5/15/12	5/18/12	4
JRWS48152010T10	BOTTOM SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRWS48152020T10	BOTTOM-MID SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRWS48152035T10	METAL STAIRS GAMESA 2.0	5/15/12	5/18/12	1
JRWS48152050T10	TOP SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWS48152030T10	MID SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWS48152040T10	TOP-MID SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWS48152020T10	ANCHOR TENSIONING	5/18/12	5/18/12	1
JRWS48150525T10	ANCHOR CAPS - OUTSIDE	5/18/12	5/18/12	1
JRWS48150590T10	PUNCH LIST GAMESA 2.0	5/18/12	5/18/12	1
JRWS48150300T10	TEAR DOWN TOP OUT CRANE	5/18/12	5/25/12	6
JRWS2810000T10	TOWER WIRING	5/22/12	5/22/12	1
ROGERSON FLATS				
ROGERSON FLATS T10				
JRWR31701510T	FOUNDATION EXCAVATION	1/4/12	6/8/12	138
JRWR31701900T	WIND ENERGY DEWATERING	1/4/12	1/4/12	1
JRWR31704035T	BARRICADES/TEMP FENCINGS/SIGNS	1/4/12	1/10/12	6
JRWR03701500T	INSTALL P&H FOUNDATION	1/5/12	1/10/12	6
JRWR28053400T	FOUNDATION CONDUIT	1/5/12	1/5/12	1
JRWR28052800T	FOUNDATION GROUNDING	1/8/12	1/8/12	1
JRWR31702313T	BACKFILL	1/11/12	1/11/12	1
JRWR48150510T	UNLOAD WTG COMPONENTS GAMESA 2.0	5/14/12	5/14/12	1
JRWR48150530T	COMPONENT WASHING	5/15/12	5/15/12	1
JRWR48152000T	CONTROLLER GAMESA 2.0	5/15/12	5/15/12	1
JRWR4815010T	SETUP TOP OUT CRANE	5/28/12	6/1/12	6
JRWR03701578T	WIND TURBINE GROUT BASE, EPOXY	6/2/12	6/2/12	1
JRWR48150540T	TOWER SHIM PACK GAMESA 2.0	6/2/12	6/2/12	1
JRWR48151320T	BLADES GAMESA 2.0	6/2/12	6/8/12	4
JRWR48151330T	HUB GAMESA 2.0	6/2/12	6/8/12	4
JRWR48151810T	NACELLE GAMESA 2.0	6/2/12	6/8/12	4
JRWR48152010T	BOTTOM SECTION GAMESA 2.0	6/2/12	6/2/12	1
JRWR48152020T	BOTTOM-MID SECTION GAMESA 2.0	6/2/12	6/2/12	1

PUNCH LIST GAMESA 2.0	
TOWER WIRING	
5/25/12, SALMON CREEK T10	
FOUNDATION EXCAVATION	
WIND ENERGY DEWATERING	
BARRICADES/TEMP FENCINGS/SIGNS	
INSTALL P&H FOUNDATION	
FOUNDATION CONDUIT	
FOUNDATION GROUNDING	
BACKFILL	
UNLOAD WTG COMPONENTS GAMESA 2.0	
COMPONENT WASHING	
CONTROLLER GAMESA 2.0	
WIND TURBINE GROUT BASE, EPOXY	
TOWER SHIM PACK GAMESA 2.0	
BLADES GAMESA 2.0	
HUB GAMESA 2.0	
NACELLE GAMESA 2.0	
BOTTOM SECTION GAMESA 2.0	
BOTTOM-MID SECTION GAMESA 2.0	
METAL STAIRS GAMESA 2.0	
TOP SECTION GAMESA 2.0	
MID SECTION GAMESA 2.0	
TOP-MID SECTION GAMESA 2.0	
ANCHOR TENSIONING	
ANCHOR CAPS - OUTSIDE	
PUNCH LIST GAMESA 2.0	
TEAR DOWN TOP OUT CRANE	
TOWER WIRING	
7/2/12, ROGERSON FLATS	
FOUNDATION EXCAVATION	
WIND ENERGY DEWATERING	
BARRICADES/TEMP FENCINGS/SIGNS	
INSTALL P&H FOUNDATION	
FOUNDATION CONDUIT	
FOUNDATION GROUNDING	
BACKFILL	
UNLOAD WTG COMPONENTS GAMESA 2.0	
COMPONENT WASHING	
CONTROLLER GAMESA 2.0	
SETUP TOP OUT CRANE	
WIND TURBINE GROUT BASE, EPOXY	
TOWER SHIM PACK GAMESA 2.0	
BLADES GAMESA 2.0	
HUB GAMESA 2.0	
NACELLE GAMESA 2.0	
BOTTOM SECTION GAMESA 2.0	
BOTTOM-MID SECTION GAMESA 2.0	



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Current Bar Labels D Finish Constr...
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Start Constraint Summary



Activity ID	Activity Name	Start	Finish	Original Duration	January 2012		February 2012		March 2012		April 2012		May 2012		June 2012		July 2012		August 2012		September 2012	
					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
JRW48152050T	TOP SECTION GAMESA 2.0	6/4/12	6/4/12	1																		
JRW48152030T	MID SECTION GAMESA 2.0	6/4/12	6/4/12	1																		
JRW48152040T	TOP-MID SECTION GAMESA 2.0	6/4/12	6/4/12	1																		
JRW48150520T	ANCHOR TENSIONING	6/5/12	6/5/12	1																		
JRW48150525T	ANCHOR CAPS - OUTSIDE	6/5/12	6/5/12	1																		
JRW48150535T	METAL STAIRS GAMESA 2.0	6/6/12	6/6/12	1																		
JRW48150530T	PUNCH LIST GAMESA 2.0	6/7/12	6/7/12	1																		
JRW48100000T	TOWER WIRING	6/8/12	6/8/12	1																		
ROGERSON FLATS T8					1/5/12	6/11/12	136															
JRW481701510T8	FOUNDATION EXCAVATION	1/5/12	1/5/12	1																		
JRW481701500T8	WIND ENERGY DEWATERING	1/5/12	1/5/12	1																		
JRW481704035T8	BARRICADES/TEMP FENCINGS/SIGNS	1/5/12	1/11/12	6																		
JRW4803701500T8	INSTALL P & H FOUNDATION	1/6/12	1/11/12	6																		
JRW48053400T8	FOUNDATION CONDUIT	1/6/12	1/6/12	1																		
JRW48052600T8	FOUNDATION GROUNDING	1/7/12	1/7/12	1																		
JRW481702313T8	BACKFILL	1/12/12	1/12/12	1																		
JRW48150510T8	UNLOAD WTG COMPONENTS GAMESA 2.0	5/15/12	5/15/12	1																		
JRW48150530T8	COMPONENT WASHING	5/16/12	5/16/12	1																		
JRW48150540T8	CONTROLLER GAMESA 2.0	5/17/12	5/17/12	1																		
JRW481701375T8	WIND TURBINE GROUT BASE, EPOXY	5/17/12	5/17/12	1																		
JRW48150540T8	TOWER SHIM PACK GAMESA 2.0	5/17/12	5/17/12	1																		
JRW48151326T8	BLADES GAMESA 2.0	5/17/12	5/21/12	4																		
JRW48152010T8	BOTTOM SECTION GAMESA 2.0	5/17/12	5/17/12	1																		
JRW48152020T8	BOTTOM-MID SECTION GAMESA 2.0	5/17/12	5/17/12	1																		
JRW48151330T8	HUB GAMESA 2.0	6/4/12	6/7/12	4																		
JRW48151810T8	NACELLE GAMESA 2.0	6/4/12	6/7/12	4																		
JRW48150535T8	METAL STAIRS GAMESA 2.0	6/7/12	6/7/12	1																		
JRW48152050T8	TOP SECTION GAMESA 2.0	6/7/12	6/7/12	1																		
JRW48152030T8	MID SECTION GAMESA 2.0	6/7/12	6/7/12	1																		
JRW48152040T8	TOP-MID SECTION GAMESA 2.0	6/7/12	6/7/12	1																		
JRW48150520T8	ANCHOR TENSIONING	6/8/12	6/8/12	1																		
JRW48150525T8	ANCHOR CAPS - OUTSIDE	6/8/12	6/8/12	1																		
JRW48150530T8	PUNCH LIST GAMESA 2.0	6/8/12	6/8/12	1																		
JRW48100000T8	TOWER WIRING	6/11/12	6/11/12	1																		
ROGERSON FLATS T8					1/6/12	6/8/12	134															
JRW481701510T8	FOUNDATION EXCAVATION	1/6/12	1/6/12	1																		
JRW481701500T8	WIND ENERGY DEWATERING	1/6/12	1/6/12	1																		
JRW481704035T8	BARRICADES/TEMP FENCINGS/SIGNS	1/6/12	1/12/12	6																		
JRW4803701500T8	INSTALL P & H FOUNDATION	1/7/12	1/12/12	6																		
JRW48053400T8	FOUNDATION CONDUIT	1/7/12	1/7/12	1																		
JRW48052600T8	FOUNDATION GROUNDING	1/8/12	1/8/12	1																		
JRW481702313T8	BACKFILL	1/13/12	1/13/12	1																		
JRW48150510T8	UNLOAD WTG COMPONENTS GAMESA 2.0	5/16/12	5/16/12	1																		
JRW48150530T8	COMPONENT WASHING	5/17/12	5/17/12	1																		
JRW48152000T8	CONTROLLER GAMESA 2.0	5/17/12	5/17/12	1																		
JRW4803701375T8	WIND TURBINE GROUT BASE, EPOXY	5/18/12	5/18/12	1																		
JRW48150540T8	TOWER SHIM PACK GAMESA 2.0	5/18/12	5/18/12	1																		
JRW48151320T8	BLADES GAMESA 2.0	5/18/12	5/22/12	4																		
JRW48152010T8	BOTTOM SECTION GAMESA 2.0	5/18/12	5/18/12	1																		
JRW48152020T8	BOTTOM-MID SECTION GAMESA 2.0	5/18/12	5/18/12	1																		

6/11/12, ROGERSON FLATS T8

- FOUNDATION EXCAVATION
- WIND ENERGY DEWATERING
- BARRICADES/TEMP FENCINGS/SIGNS
- INSTALL P & H FOUNDATION
- FOUNDATION CONDUIT
- FOUNDATION GROUNDING
- BACKFILL

- UNLOAD WTG COMPONENTS GAMESA 2.0
- COMPONENT WASHING
- CONTROLLER GAMESA 2.0
- WIND TURBINE GROUT BASE, EPOXY
- TOWER SHIM PACK GAMESA 2.0
- BLADES GAMESA 2.0
- BOTTOM SECTION GAMESA 2.0
- BOTTOM-MID SECTION GAMESA 2.0
- HUB GAMESA 2.0
- NACELLE GAMESA 2.0
- METAL STAIRS GAMESA 2.0
- TOP SECTION GAMESA 2.0
- MID SECTION GAMESA 2.0
- TOP-MID SECTION GAMESA 2.0
- ANCHOR TENSIONING
- ANCHOR CAPS - OUTSIDE
- PUNCH LIST GAMESA 2.0
- TOWER WIRING

6/8/12, ROGERSON FLATS T8

- FOUNDATION EXCAVATION
- WIND ENERGY DEWATERING
- BARRICADES/TEMP FENCINGS/SIGNS
- INSTALL P & H FOUNDATION
- FOUNDATION CONDUIT
- FOUNDATION GROUNDING
- BACKFILL

- UNLOAD WTG COMPONENTS GAMESA 2.0
- COMPONENT WASHING
- CONTROLLER GAMESA 2.0
- WIND TURBINE GROUT BASE, EPOXY
- TOWER SHIM PACK GAMESA 2.0
- BLADES GAMESA 2.0
- BOTTOM SECTION GAMESA 2.0
- BOTTOM-MID SECTION GAMESA 2.0



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Current Bar Labels Finish Constr...
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JRWR4815133078	HUB GAMESA 2.0	6/5/12	6/8/12	4
JRWR4815161078	NACELLE GAMESA 2.0	6/5/12	6/8/12	4
JRWR4815053578	METAL STAIRS GAMESA 2.0	6/8/12	6/8/12	1
JRWR4815205078	TOP SECTION GAMESA 2.0	6/8/12	6/8/12	1
JRWR4815203078	MID SECTION GAMESA 2.0	6/8/12	6/8/12	1
JRWR4815204078	TOP-MID SECTION GAMESA 2.0	6/8/12	6/8/12	1
JRWR2610000078	TOWER WIRING	6/8/12	6/8/12	1
JRWR4815052078	ANCHOR TENSIONING	6/8/12	6/8/12	1
JRWR4815052578	ANCHOR CAPS - OUTSIDE	6/8/12	6/8/12	1
JRWR4815059078	PUNCH LIST GAMESA 2.0	6/8/12	6/8/12	1
ROGERSON FLATS T1		1/7/12	6/13/12	136
JRWR3170151077	FOUNDATION EXCAVATION	1/7/12	1/7/12	1
JRWR3170190077	WIND ENERGY DEWATERING	1/7/12	1/7/12	1
JRWR3170403577	BARRICADES/TEMP FENCING/SIGNS	1/7/12	1/13/12	6
JRWR3070150077	INSTALL P&H FOUNDATION	1/8/12	1/13/12	6
JRWR2605340077	FOUNDATION CONDUIT	1/8/12	1/8/12	1
JRWR2605260077	FOUNDATION GROUNDING	1/10/12	1/10/12	1
JRWR3170231377	BACKFILL	1/14/12	1/14/12	1
JRWR4815051077	UNLOAD WTG COMPONENTS GAMESA 2.0	5/17/12	5/17/12	1
JRWR4815053077	COMPONENT WASHING	5/18/12	5/18/12	1
JRWR4815200077	CONTROLLER GAMESA 2.0	5/18/12	5/18/12	1
JRWR3070137577	WIND TURBINE GROUT BASE, EPOXY	5/18/12	5/18/12	1
JRWR4815054077	TOWER SHIM PACK GAMESA 2.0	5/18/12	5/18/12	1
JRWR4815132077	BLADES GAMESA 2.0	5/18/12	5/23/12	4
JRWR4815201077	BOTTOM SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWR4815202077	BOTTOM-MID SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWR4815133077	HUB GAMESA 2.0	6/8/12	6/8/12	4
JRWR4815161077	NACELLE GAMESA 2.0	6/8/12	6/8/12	4
JRWR4815053577	METAL STAIRS GAMESA 2.0	6/8/12	6/8/12	1
JRWR4815205077	TOP SECTION GAMESA 2.0	6/8/12	6/8/12	1
JRWR4815203077	MID SECTION GAMESA 2.0	6/8/12	6/8/12	1
JRWR4815204077	TOP-MID SECTION GAMESA 2.0	6/8/12	6/8/12	1
JRWR4815052077	ANCHOR TENSIONING	6/11/12	6/11/12	1
JRWR4815052577	ANCHOR CAPS - OUTSIDE	6/11/12	6/11/12	1
JRWR4815059077	PUNCH LIST GAMESA 2.0	6/11/12	6/11/12	1
JRWR2610000077	TOWER WIRING	6/13/12	6/13/12	1
ROGERSON FLATS T1		1/8/12	6/18/12	139
JRWR3170151077	FOUNDATION EXCAVATION	1/8/12	1/8/12	1
JRWR3170190077	WIND ENERGY DEWATERING	1/8/12	1/8/12	1
JRWR3170403577	BARRICADES/TEMP FENCING/SIGNS	1/8/12	1/13/12	6
JRWR3070150077	INSTALL P&H FOUNDATION	1/10/12	1/14/12	6
JRWR2605340077	FOUNDATION CONDUIT	1/10/12	1/10/12	1
JRWR2605260077	FOUNDATION GROUNDING	1/11/12	1/11/12	1
JRWR3170231377	BACKFILL	1/16/12	1/16/12	1
JRWR4815051077	UNLOAD WTG COMPONENTS GAMESA 2.0	5/18/12	5/18/12	1
JRWR4815053077	COMPONENT WASHING	5/18/12	5/18/12	1
JRWR4815200077	CONTROLLER GAMESA 2.0	5/18/12	5/18/12	1
JRWR3070137577	WIND TURBINE GROUT BASE, EPOXY	6/11/12	6/11/12	1
JRWR4815054077	TOWER SHIM PACK GAMESA 2.0	6/11/12	6/11/12	1
JRWR4815132077	BLADES GAMESA 2.0	6/11/12	6/14/12	4

HUB GAMESA 2.0	▬
NACELLE GAMESA 2.0	▬
METAL STAIRS GAMESA 2.0	▬
TOP SECTION GAMESA 2.0	▬
MID SECTION GAMESA 2.0	▬
TOP-MID SECTION GAMESA 2.0	▬
TOWER WIRING	▬
ANCHOR TENSIONING	▬
ANCHOR CAPS - OUTSIDE	▬
PUNCH LIST GAMESA 2.0	▬
6/13/12, ROGERSON FLATS T7	▬
FOUNDATION EXCAVATION	▬
WIND ENERGY DEWATERING	▬
BARRICADES/TEMP FENCING/SIGNS	▬
INSTALL P&H FOUNDATION	▬
FOUNDATION CONDUIT	▬
FOUNDATION GROUNDING	▬
BACKFILL	▬
UNLOAD WTG COMPONENTS GAMESA 2.0	▬
COMPONENT WASHING	▬
CONTROLLER GAMESA 2.0	▬
WIND TURBINE GROUT BASE, EPOXY	▬
TOWER SHIM PACK GAMESA 2.0	▬
BLADES GAMESA 2.0	▬
BOTTOM SECTION GAMESA 2.0	▬
BOTTOM-MID SECTION GAMESA 2.0	▬
HUB GAMESA 2.0	▬
NACELLE GAMESA 2.0	▬
METAL STAIRS GAMESA 2.0	▬
TOP SECTION GAMESA 2.0	▬
MID SECTION GAMESA 2.0	▬
TOP-MID SECTION GAMESA 2.0	▬
ANCHOR TENSIONING	▬
ANCHOR CAPS - OUTSIDE	▬
PUNCH LIST GAMESA 2.0	▬
TOWER WIRING	▬
6/18/12, ROGERSON FLATS T1	▬
FOUNDATION EXCAVATION	▬
WIND ENERGY DEWATERING	▬
BARRICADES/TEMP FENCING/SIGNS	▬
INSTALL P&H FOUNDATION	▬
FOUNDATION CONDUIT	▬
FOUNDATION GROUNDING	▬
BACKFILL	▬
UNLOAD WTG COMPONENTS GAMESA 2.0	▬
COMPONENT WASHING	▬
CONTROLLER GAMESA 2.0	▬
WIND TURBINE GROUT BASE, EPOXY	▬
TOWER SHIM PACK GAMESA 2.0	▬
BLADES GAMESA 2.0	▬



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JACK RANCH WIND FARM MASTER

Current Bar Labels ▬ Finish Const...
 ◀ Milestone ▬ % Complete
 ◻ Start Constraint ▬ Summary



Activity ID	Activity Name	Start	Finish	Original	Jan 2012	Feb 2012	Mar 2012	Apr 2012	May 2012	Jun 2012	Jul 2012	Aug 2012	Oct 2012
JRWR48151330T1	HUB GAMESA 2.0	6/11/12	6/14/12	4									
JRWR48151610T1	NACELLE GAMESA 2.0	6/11/12	6/14/12	4									
JRWR48152010T1	BOTTOM SECTION GAMESA 2.0	6/11/12	6/11/12	1									
JRWR48152020T1	BOTTOM-MID SECTION GAMESA 2.0	6/11/12	6/11/12	1									
JRWR48152050T1	TOP SECTION GAMESA 2.0	6/12/12	6/12/12	1									
JRWR48152030T1	MID SECTION GAMESA 2.0	6/12/12	6/12/12	1									
JRWR48152040T1	TOP-MID SECTION GAMESA 2.0	6/12/12	6/12/12	1									
JRWR48150520T1	ANCHOR TENSIONING	6/13/12	6/13/12	1									
JRWR48150525T1	ANCHOR CAPS - OUTSIDE	6/13/12	6/13/12	1									
JRWR48150535T1	METAL STAIRS GAMESA 2.0	6/14/12	6/14/12	1									
JRWR48150590T1	PUNCH LIST GAMESA 2.0	6/15/12	6/15/12	1									
JRWR26100000T1	TOWER WIRING	6/18/12	6/18/12	1									
ROGERSON FLATS T2				139									
JRWR31701510T2	FOUNDATION EXCAVATION	1/10/12	1/10/12	1									
JRWR31701800T2	WIND ENERGY DEWATERING	1/10/12	1/10/12	1									
JRWR31704035T2	BARRICADES/TEMP FENCING/SIGNS	1/10/12	1/16/12	6									
JRWR03701500T2	INSTALL P & H FOUNDATION	1/11/12	1/16/12	5									
JRWR26053400T2	FOUNDATION CONDUIT	1/11/12	1/11/12	1									
JRWR26052600T2	FOUNDATION GROUNDING	1/12/12	1/12/12	1									
JRWR31702313T2	BACKFILL	1/17/12	1/17/12	1									
JRWR48150510T2	UNLOAD WTG COMPONENTS GAMESA 2.0	5/18/12	5/18/12	1									
JRWR48150530T2	COMPONENT WASHING	5/21/12	5/21/12	1									
JRWR48152000T2	CONTROLLER GAMESA 2.0	5/21/12	5/21/12	1									
JRWR03701375T2	WIND TURBINE GROUT BASE, EPOXY	5/22/12	5/22/12	1									
JRWR48150540T2	TOWER SHIM PACK GAMESA 2.0	5/22/12	5/22/12	1									
JRWR48151320T2	BLADES GAMESA 2.0	5/22/12	5/25/12	4									
JRWR48152010T2	BOTTOM SECTION GAMESA 2.0	5/22/12	5/22/12	1									
JRWR48152020T2	BOTTOM-MID SECTION GAMESA 2.0	5/22/12	5/22/12	1									
JRWR48151330T2	HUB GAMESA 2.0	6/12/12	6/15/12	4									
JRWR48151610T2	NACELLE GAMESA 2.0	6/12/12	6/15/12	4									
JRWR48150535T2	METAL STAIRS GAMESA 2.0	6/15/12	6/15/12	1									
JRWR48152050T2	TOP SECTION GAMESA 2.0	6/15/12	6/15/12	1									
JRWR48152030T2	MID SECTION GAMESA 2.0	6/15/12	6/15/12	1									
JRWR48152040T2	TOP-MID SECTION GAMESA 2.0	6/15/12	6/15/12	1									
JRWR48150520T2	ANCHOR TENSIONING	6/18/12	6/18/12	1									
JRWR48150525T2	ANCHOR CAPS - OUTSIDE	6/18/12	6/18/12	1									
JRWR48150590T2	PUNCH LIST GAMESA 2.0	6/18/12	6/18/12	1									
JRWR26100000T2	TOWER WIRING	6/18/12	6/18/12	1									
ROGERSON FLATS T3				139									
JRWR31701510T3	FOUNDATION EXCAVATION	1/11/12	1/11/12	1									
JRWR31701800T3	WIND ENERGY DEWATERING	1/11/12	1/11/12	1									
JRWR31704035T3	BARRICADES/TEMP FENCING/SIGNS	1/11/12	1/17/12	6									
JRWR03701500T3	INSTALL P & H FOUNDATION	1/12/12	1/17/12	5									
JRWR26053400T3	FOUNDATION CONDUIT	1/12/12	1/12/12	1									
JRWR26052600T3	FOUNDATION GROUNDING	1/13/12	1/13/12	1									
JRWR31702313T3	BACKFILL	1/18/12	1/18/12	1									
JRWR48150510T3	UNLOAD WTG COMPONENTS GAMESA 2.0	5/21/12	5/21/12	1									
JRWR48150530T3	COMPONENT WASHING	5/22/12	5/22/12	1									
JRWR48152000T3	CONTROLLER GAMESA 2.0	5/22/12	5/22/12	1									
JRWR03701375T3	WIND TURBINE GROUT BASE, EPOXY	5/23/12	5/23/12	1									

6/18/12, ROGERSON FLATS T2

- FOUNDATION EXCAVATION
- WIND ENERGY DEWATERING
- BARRICADES/TEMP FENCING/SIGNS
- INSTALL P & H FOUNDATION
- FOUNDATION CONDUIT
- FOUNDATION GROUNDING
- BACKFILL
- UNLOAD WTG COMPONENTS GAMESA 2.0
- COMPONENT WASHING
- CONTROLLER GAMESA 2.0
- WIND TURBINE GROUT BASE, EPOXY
- TOWER SHIM PACK GAMESA 2.0
- BLADES GAMESA 2.0
- BOTTOM SECTION GAMESA 2.0
- BOTTOM-MID SECTION GAMESA 2.0
- HUB GAMESA 2.0
- NACELLE GAMESA 2.0
- METAL STAIRS GAMESA 2.0
- TOP SECTION GAMESA 2.0
- MID SECTION GAMESA 2.0
- TOP-MID SECTION GAMESA 2.0
- ANCHOR TENSIONING
- ANCHOR CAPS - OUTSIDE
- PUNCH LIST GAMESA 2.0
- TOWER WIRING

6/20/12, ROGERSON FLATS T3

- FOUNDATION EXCAVATION
- WIND ENERGY DEWATERING
- BARRICADES/TEMP FENCING/SIGNS
- INSTALL P & H FOUNDATION
- FOUNDATION CONDUIT
- FOUNDATION GROUNDING
- BACKFILL
- UNLOAD WTG COMPONENTS GAMESA 2.0
- COMPONENT WASHING
- CONTROLLER GAMESA 2.0
- WIND TURBINE GROUT BASE, EPOXY



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JACK RANCH WIND FARM MASTER

Current Bar Labels D Finish Constr...
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JRW48150540T3	TOWER GIM PACK GAMESA 2.0	5/22/12	5/22/12	1
JRW48151320T3	BLADES GAMESA 2.0	5/22/12	5/26/12	4
JRW48152010T3	BOTTOM SECTION GAMESA 2.0	5/22/12	5/22/12	1
JRW48152020T3	BOTTOM-MID SECTION GAMESA 2.0	5/22/12	5/22/12	1
JRW48151330T3	HUB GAMESA 2.0	5/13/12	5/15/12	4
JRW48151810T3	NACELLE GAMESA 2.0	5/13/12	5/15/12	4
JRW48150535T3	METAL STAIRS GAMESA 2.0	5/15/12	5/15/12	1
JRW48152050T3	TOP SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRW48152030T3	MID SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRW48152040T3	TOP-MID SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRW48150520T3	ANCHOR TENSIONING	5/15/12	5/15/12	1
JRW48150525T3	ANCHOR CAPS - OUTSIDE	5/15/12	5/15/12	1
JRW48150530T3	PUNCH LIST GAMESA 2.0	5/15/12	5/15/12	1
JRW48100000T3	TOWER WIRING	5/22/12	5/22/12	1
ROGERSON FLATS T4				
JRW481701510T4	FOUNDATION EXCAVATION	1/12/12	1/12/12	1
JRW481701300T4	WIND ENERGY DEWATERING	1/12/12	1/12/12	1
JRW481704035T4	BARRICADES/TEMP FENCING/SIGNS	1/12/12	1/15/12	6
JRW481701500T4	INSTALL P & H FOUNDATION	1/13/12	1/15/12	5
JRW481505260T4	FOUNDATION GROUNDING	1/14/12	1/14/12	1
JRW481702113T4	BACKFILL	1/15/12	1/15/12	1
JRW48150510T4	UNLOAD WTG COMPONENTS GAMESA 2.0	5/22/12	5/22/12	1
JRW48150530T4	COMPONENT WASHING	5/23/12	5/23/12	1
JRW48152000T4	CONTROLLER GAMESA 2.0	5/23/12	5/23/12	1
JRW481701375T4	WIND TURBINE GROUT BASE, EPOXY	5/24/12	5/24/12	1
JRW48150540T4	TOWER GIM PACK GAMESA 2.0	5/24/12	5/24/12	1
JRW48151320T4	BLADES GAMESA 2.0	5/24/12	5/26/12	4
JRW48152010T4	BOTTOM SECTION GAMESA 2.0	5/24/12	5/24/12	1
JRW48152020T4	BOTTOM-MID SECTION GAMESA 2.0	5/24/12	5/24/12	1
JRW48151330T4	HUB GAMESA 2.0	5/14/12	5/15/12	4
JRW48151810T4	NACELLE GAMESA 2.0	5/14/12	5/15/12	4
JRW48150535T4	METAL STAIRS GAMESA 2.0	5/15/12	5/15/12	1
JRW48152050T4	TOP SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRW48152030T4	MID SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRW48152040T4	TOP-MID SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRW48150520T4	ANCHOR TENSIONING	5/15/12	5/15/12	1
JRW48150525T4	ANCHOR CAPS - OUTSIDE	5/15/12	5/15/12	1
JRW48150530T4	PUNCH LIST GAMESA 2.0	5/15/12	5/15/12	1
JRW48100000T4	TOWER WIRING	5/21/12	5/21/12	1
ROGERSON FLATS T5				
JRW481701510T5	FOUNDATION EXCAVATION	1/13/12	1/13/12	1
JRW481701300T5	WIND ENERGY DEWATERING	1/13/12	1/13/12	1
JRW481704035T5	BARRICADES/TEMP FENCING/SIGNS	1/13/12	1/15/12	6
JRW481701500T5	INSTALL P & H FOUNDATION	1/14/12	1/15/12	5
JRW4815053400T5	FOUNDATION CONDUIT	1/14/12	1/14/12	1
JRW4815052600T5	FOUNDATION GROUNDING	1/15/12	1/15/12	1
JRW481702115T5	BACKFILL	1/20/12	1/20/12	1
JRW48150510T5	UNLOAD WTG COMPONENTS GAMESA 2.0	5/23/12	5/23/12	1
JRW48150530T5	COMPONENT WASHING	5/24/12	5/24/12	1

- ↳ TOWER GIM PACK GAMESA 2.0
- ↳ BLADES GAMESA 2.0
- ↳ BOTTOM SECTION GAMESA 2.0
- ↳ BOTTOM-MID SECTION GAMESA 2.0
- ↳ HUB GAMESA 2.0
- ↳ NACELLE GAMESA 2.0
- ↳ METAL STAIRS GAMESA 2.0
- ↳ TOP SECTION GAMESA 2.0
- ↳ MID SECTION GAMESA 2.0
- ↳ TOP-MID SECTION GAMESA 2.0
- ↳ ANCHOR TENSIONING
- ↳ ANCHOR CAPS - OUTSIDE
- ↳ PUNCH LIST GAMESA 2.0
- ↳ TOWER WIRING

6/21/12, ROGERSON FLATS T4

- ↳ FOUNDATION EXCAVATION
- ↳ WIND ENERGY DEWATERING
- ↳ BARRICADES/TEMP FENCING/SIGNS
- ↳ INSTALL P & H FOUNDATION
- ↳ FOUNDATION GROUNDING
- ↳ BACKFILL

- ↳ UNLOAD WTG COMPONENTS GAMESA 2.0
- ↳ COMPONENT WASHING
- ↳ CONTROLLER GAMESA 2.0
- ↳ WIND TURBINE GROUT BASE, EPOXY
- ↳ TOWER GIM PACK GAMESA 2.0
- ↳ BLADES GAMESA 2.0
- ↳ BOTTOM SECTION GAMESA 2.0
- ↳ BOTTOM-MID SECTION GAMESA 2.0
- ↳ HUB GAMESA 2.0
- ↳ NACELLE GAMESA 2.0
- ↳ METAL STAIRS GAMESA 2.0
- ↳ TOP SECTION GAMESA 2.0
- ↳ MID SECTION GAMESA 2.0
- ↳ TOP-MID SECTION GAMESA 2.0
- ↳ ANCHOR TENSIONING
- ↳ ANCHOR CAPS - OUTSIDE
- ↳ PUNCH LIST GAMESA 2.0
- ↳ TOWER WIRING

6/27/12, ROGERSON FLATS T5

- ↳ FOUNDATION EXCAVATION
- ↳ WIND ENERGY DEWATERING
- ↳ BARRICADES/TEMP FENCING/SIGNS
- ↳ INSTALL P & H FOUNDATION
- ↳ FOUNDATION CONDUIT
- ↳ FOUNDATION GROUNDING
- ↳ BACKFILL
- ↳ UNLOAD WTG COMPONENTS GAMESA 2.0
- ↳ COMPONENT WASHING



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JACK RANCH WIND FARM MASTER

Current Bar Labels Finish Constr...
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Start Constraint Summary



JRWR48152000TS	CONTROLLER GAMESA 2.0	5/24/12	5/24/12	1
JRWR03701375TS	WIND TURBINE GROUT BASE, EPOXY	5/25/12	5/25/12	1
JRWR48150540TS	TOWER GHM PACK GAMESA 2.0	5/25/12	5/25/12	1
JRWR48151320TS	BLADES GAMESA 2.0	5/25/12	5/28/12	4
JRWR48152010TS	BOTTOM SECTION GAMESA 2.0	5/25/12	5/25/12	1
JRWR48152020TS	BOTTOM-MID SECTION GAMESA 2.0	5/25/12	5/25/12	1
JRWR48151330TS	HUB GAMESA 2.0	6/15/12	6/18/12	4
JRWR48150535TS	METAL STAIRS GAMESA 2.0	6/18/12	6/18/12	1
JRWR48152050TS	TOP SECTION GAMESA 2.0	6/18/12	6/18/12	1
JRWR48152030TS	MID SECTION GAMESA 2.0	6/18/12	6/18/12	1
JRWR48152040TS	TOP-MID SECTION GAMESA 2.0	6/18/12	6/18/12	1
JRWR48150520TS	ANCHOR TENSIONING	6/20/12	6/20/12	1
JRWR48150525TS	ANCHOR CAPS - OUTSIDE	6/20/12	6/20/12	1
JRWR48151610TS	NACELLE GAMESA 2.0	6/20/12	6/23/12	4
JRWR48150590TS	PUNCH LIST GAMESA 2.0	6/25/12	6/25/12	1
JRWR26100000TS	TOWER WIRING	6/27/12	6/27/12	1
ROGERSON FLATS T8		7/14/12	7/21/12	148
JRWR31701510TS	FOUNDATION EXCAVATION	7/14/12	7/14/12	1
JRWR31701800TS	WIND ENERGY DEWATERING	7/14/12	7/14/12	1
JRWR31704035TS	BARRICADES/TEMP FENCINGS/SIGNS	7/14/12	7/18/12	5
JRWR03701500TS	INSTALL P&H FOUNDATION	7/18/12	7/20/12	5
JRWR26053400TS	FOUNDATION CONDUIT	7/18/12	7/18/12	1
JRWR26052800TS	FOUNDATION GROUNDING	7/17/12	7/17/12	1
JRWR31702313TS	BACKFILL	7/21/12	7/21/12	1
JRWR48150510TS	UNLOAD WTG COMPONENTS GAMESA 2.0	5/24/12	5/24/12	1
JRWR48150530TS	COMPONENT WASHING	5/25/12	5/25/12	1
JRWR48152000TS	CONTROLLER GAMESA 2.0	5/25/12	5/25/12	1
JRWR03701375TS	WIND TURBINE GROUT BASE, EPOXY	5/25/12	5/25/12	1
JRWR48150540TS	TOWER GHM PACK GAMESA 2.0	5/25/12	5/25/12	1
JRWR48151320TS	BLADES GAMESA 2.0	5/25/12	5/30/12	4
JRWR48152010TS	BOTTOM SECTION GAMESA 2.0	5/25/12	5/25/12	1
JRWR48152020TS	BOTTOM-MID SECTION GAMESA 2.0	5/25/12	5/25/12	1
JRWR48151330TS	HUB GAMESA 2.0	6/21/12	6/25/12	4
JRWR48151610TS	NACELLE GAMESA 2.0	6/21/12	6/25/12	4
JRWR48150535TS	METAL STAIRS GAMESA 2.0	6/25/12	6/25/12	1
JRWR48152050TS	TOP SECTION GAMESA 2.0	6/25/12	6/25/12	1
JRWR48152030TS	MID SECTION GAMESA 2.0	6/25/12	6/25/12	1
JRWR48152040TS	TOP-MID SECTION GAMESA 2.0	6/25/12	6/25/12	1
JRWR48150520TS	ANCHOR TENSIONING	6/25/12	6/25/12	1
JRWR48150525TS	ANCHOR CAPS - OUTSIDE	6/25/12	6/25/12	1
JRWR48150590TS	PUNCH LIST GAMESA 2.0	6/25/12	6/25/12	1
JRWR48150030TS	TEAR DOWN TOP OUT CRANE	6/25/12	7/2/12	6
JRWR26100000TS	TOWER WIRING	6/28/12	6/28/12	1
COTTONWOOD		7/18/12	5/25/12	115
COTTONWOOD T8		7/18/12	6/11/12	101
JRWC31701510TS	FOUNDATION EXCAVATION	7/18/12	7/18/12	1
JRWC31701800TS	WIND ENERGY DEWATERING	7/18/12	7/18/12	1
JRWC31704035TS	BARRICADES/TEMP FENCINGS/SIGNS	7/18/12	7/21/12	5
JRWC03701500TS	INSTALL P&H FOUNDATION	7/17/12	7/21/12	5

CONTROLLER GAMESA 2.0
WIND TURBINE GROUT BASE, EPOXY
TOWER GHM PACK GAMESA 2.0
BLADES GAMESA 2.0
BOTTOM SECTION GAMESA 2.0
BOTTOM-MID SECTION GAMESA 2.0
HUB GAMESA 2.0
METAL STAIRS GAMESA 2.0
TOP SECTION GAMESA 2.0
MID SECTION GAMESA 2.0
TOP-MID SECTION GAMESA 2.0
ANCHOR TENSIONING
ANCHOR CAPS - OUTSIDE
NACELLE GAMESA 2.0
PUNCH LIST GAMESA 2.0
TOWER WIRING
7/21/12, ROGERSON FLATS T8
FOUNDATION EXCAVATION
WIND ENERGY DEWATERING
BARRICADES/TEMP FENCINGS/SIGNS
INSTALL P&H FOUNDATION
FOUNDATION CONDUIT
FOUNDATION GROUNDING
BACKFILL
UNLOAD WTG COMPONENTS GAMESA 2.0
COMPONENT WASHING
CONTROLLER GAMESA 2.0
WIND TURBINE GROUT BASE, EPOXY
TOWER GHM PACK GAMESA 2.0
BLADES GAMESA 2.0
BOTTOM SECTION GAMESA 2.0
BOTTOM-MID SECTION GAMESA 2.0
HUB GAMESA 2.0
NACELLE GAMESA 2.0
METAL STAIRS GAMESA 2.0
TOP SECTION GAMESA 2.0
MID SECTION GAMESA 2.0
TOP-MID SECTION GAMESA 2.0
ANCHOR TENSIONING
ANCHOR CAPS - OUTSIDE
PUNCH LIST GAMESA 2.0
TEAR DOWN TOP OUT CRANE
TOWER WIRING
5/25/12, COTTONWOOD
6/11/12, COTTONWOOD T8
FOUNDATION EXCAVATION
WIND ENERGY DEWATERING
BARRICADES/TEMP FENCINGS/SIGNS
INSTALL P&H FOUNDATION



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JACK RANCH WIND FARM MASTER

Current Bar Labels
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JRWC2605340078	FOUNDATION CONDUIT	1/17/12	1/17/12	1
JRWC2605260078	FOUNDATION GROUNDING	1/18/12	1/18/12	1
JRWC3170231378	BACKFILL	1/23/12	1/23/12	1
JRWC4815301078	SET-UP TOP OUT CRANE	4/25/12	5/1/12	6
JRWC4815051078	UNLOAD WTG COMPONENTS GAMESA 2.0	5/2/12	5/2/12	1
JRWC4815053078	COMPONENT WASHING	5/3/12	5/3/12	1
JRWC4815200078	CONTROLLER GAMESA 2.0	5/3/12	5/3/12	1
JRWC0370137578	WIND TURBINE GROUT BASE, EPOXY	5/4/12	5/4/12	1
JRWC4815054078	TOWER SHIM PACK GAMESA 2.0	5/4/12	5/4/12	1
JRWC4815132078	BLADES GAMESA 2.0	5/4/12	5/8/12	4
JRWC4815133078	HUB GAMESA 2.0	5/4/12	5/8/12	4
JRWC4815161078	NACELLE GAMESA 2.0	5/4/12	5/8/12	4
JRWC4815201078	BOTTOM SECTION GAMESA 2.0	5/4/12	5/4/12	1
JRWC4815202078	BOTTOM MID SECTION GAMESA 2.0	5/4/12	5/4/12	1
JRWC4815205078	TOP SECTION GAMESA 2.0	5/5/12	5/5/12	1
JRWC4815203078	MID SECTION GAMESA 2.0	5/5/12	5/5/12	1
JRWC4815204078	TOP-MID SECTION GAMESA 2.0	5/5/12	5/5/12	1
JRWC4815052078	ANCHOR TENSIONING	5/7/12	5/7/12	1
JRWC4815052578	ANCHOR CAPS - OUTSIDE	5/7/12	5/7/12	1
JRWC4815053578	METAL STAIRS GAMESA 2.0	5/8/12	5/8/12	1
JRWC4815050078	PUNCH LIST GAMESA 2.0	5/8/12	5/8/12	1
JRWC2610000078	TOWER WIRING	5/11/12	5/11/12	1
COTTONWOOD T9		1/17/12	5/12/12	101
JRWC3170151078	FOUNDATION EXCAVATION	1/17/12	1/17/12	1
JRWC3170180078	WIND ENERGY Dewatering	1/17/12	1/17/12	1
JRWC3170603578	BARRICADES/TEMP FENCING/SIGNS	1/17/12	1/23/12	6
JRWC0370150078	INSTALL P&H FOUNDATION	1/18/12	1/23/12	6
JRWC2605340078	FOUNDATION CONDUIT	1/18/12	1/18/12	1
JRWC2605260078	FOUNDATION GROUNDING	1/18/12	1/18/12	1
JRWC3170231378	BACKFILL	1/24/12	1/24/12	1
JRWC4815051078	UNLOAD WTG COMPONENTS GAMESA 2.0	5/3/12	5/3/12	1
JRWC4815053078	COMPONENT WASHING	5/4/12	5/4/12	1
JRWC4815200078	CONTROLLER GAMESA 2.0	5/4/12	5/4/12	1
JRWC0370137578	WIND TURBINE GROUT BASE, EPOXY	5/5/12	5/5/12	1
JRWC4815054078	TOWER SHIM PACK GAMESA 2.0	5/5/12	5/5/12	1
JRWC4815132078	BLADES GAMESA 2.0	5/5/12	5/8/12	4
JRWC4815133078	HUB GAMESA 2.0	5/5/12	5/8/12	4
JRWC4815181078	NACELLE GAMESA 2.0	5/5/12	5/8/12	4
JRWC4815201078	BOTTOM SECTION GAMESA 2.0	5/5/12	5/5/12	1
JRWC4815202078	BOTTOM-MID SECTION GAMESA 2.0	5/5/12	5/5/12	1
JRWC4815053578	METAL STAIRS GAMESA 2.0	5/8/12	5/8/12	1
JRWC4815205078	TOP SECTION GAMESA 2.0	5/8/12	5/8/12	1
JRWC4815203078	MID SECTION GAMESA 2.0	5/8/12	5/8/12	1
JRWC4815204078	TOP-MID SECTION GAMESA 2.0	5/8/12	5/8/12	1
JRWC4815052078	ANCHOR TENSIONING	5/10/12	5/10/12	1
JRWC4815052578	ANCHOR CAPS - OUTSIDE	5/10/12	5/10/12	1
JRWC4815053078	PUNCH LIST GAMESA 2.0	5/10/12	5/10/12	1
JRWC2610000078	TOWER WIRING	5/12/12	5/12/12	1
COTTONWOOD T1		1/18/12	5/14/12	101
JRWC3170151078	FOUNDATION EXCAVATION	1/18/12	1/18/12	1

FOUNDATION CONDUIT
FOUNDATION GROUNDING
BACKFILL
SET-UP TOP OUT CRANE
UNLOAD WTG COMPONENTS GAMESA 2.0
COMPONENT WASHING
CONTROLLER GAMESA 2.0
WIND TURBINE GROUT BASE, EPOXY
TOWER SHIM PACK GAMESA 2.0
BLADES GAMESA 2.0
HUB GAMESA 2.0
NACELLE GAMESA 2.0
BOTTOM SECTION GAMESA 2.0
BOTTOM-MID SECTION GAMESA 2.0
TOP SECTION GAMESA 2.0
MID SECTION GAMESA 2.0
TOP-MID SECTION GAMESA 2.0
ANCHOR TENSIONING
ANCHOR CAPS - OUTSIDE
METAL STAIRS GAMESA 2.0
PUNCH LIST GAMESA 2.0
TOWER WIRING
5/12/12, COTTONWOOD T9
FOUNDATION EXCAVATION
WIND ENERGY Dewatering
BARRICADES/TEMP FENCING/SIGNS
INSTALL P&H FOUNDATION
FOUNDATION CONDUIT
FOUNDATION GROUNDING
BACKFILL
UNLOAD WTG COMPONENTS GAMESA 2.0
COMPONENT WASHING
CONTROLLER GAMESA 2.0
WIND TURBINE GROUT BASE, EPOXY
TOWER SHIM PACK GAMESA 2.0
BLADES GAMESA 2.0
HUB GAMESA 2.0
NACELLE GAMESA 2.0
BOTTOM SECTION GAMESA 2.0
BOTTOM-MID SECTION GAMESA 2.0
METAL STAIRS GAMESA 2.0
TOP SECTION GAMESA 2.0
MID SECTION GAMESA 2.0
TOP-MID SECTION GAMESA 2.0
ANCHOR TENSIONING
ANCHOR CAPS - OUTSIDE
PUNCH LIST GAMESA 2.0
TOWER WIRING
5/14/12, COTTONWOOD T1
FOUNDATION EXCAVATION



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JACK RANCH WIND FARM MASTER

Current Bar Labels Finish Constr...
 Milestone % Complete
 Start Constraint Summary



Activity ID	Activity Name	Start	Finish	Duration
COTTONWOOD T3		1/20/12	5/18/12	101
JRWCC31701510T3	FOUNDATION EXCAVATION	1/20/12	1/20/12	1
JRWCC31701800T3	WIND ENERGY DEWATERING	1/20/12	1/20/12	1
JRWCC31704035T3	BARRICADES/TEMP FENCING/SIGNS	1/20/12	1/25/12	5
JRWCC31701500T3	INSTALL P&H FOUNDATION	1/21/12	1/28/12	5
JRWCC28053400T3	FOUNDATION CONDUIT	1/21/12	1/21/12	1
JRWCC28052800T3	FOUNDATION GROUNDING	1/23/12	1/23/12	1
JRWCC31702313T3	BACKFILL	1/27/12	1/27/12	1
JRWCC48150510T3	UNLOAD WTG COMPONENTS GAMESA 2.0	5/7/12	5/7/12	1
JRWCC48150330T3	COMPONENT WASHING	5/8/12	5/8/12	1
JRWCC48152000T3	CONTROLLER GAMESA 2.0	5/8/12	5/8/12	1
JRWCC31701375T3	WIND TURBINE GROUT BASE, EPOXY	5/8/12	5/8/12	1
JRWCC48150540T3	TOWER GHM PACK GAMESA 2.0	5/8/12	5/8/12	1
JRWCC48151320T3	BLADES GAMESA 2.0	5/8/12	5/12/12	4
JRWCC48151330T3	HUB GAMESA 2.0	5/8/12	5/12/12	4
JRWCC48151810T3	NACELLE GAMESA 2.0	5/8/12	5/12/12	4
JRWCC48152010T3	BOTTOM SECTION GAMESA 2.0	5/8/12	5/8/12	1
JRWCC48152020T3	BOTTOM-MID SECTION GAMESA 2.0	5/8/12	5/8/12	1
JRWCC48152030T3	METAL STAIRS GAMESA 2.0	5/12/12	5/12/12	1
JRWCC48152050T3	TOP SECTION GAMESA 2.0	5/12/12	5/12/12	1
JRWCC48152040T3	MID SECTION GAMESA 2.0	5/12/12	5/12/12	1
JRWCC48152040T3	TOP-MID SECTION GAMESA 2.0	5/12/12	5/12/12	1
JRWCC48150520T3	ANCHOR TENSIONING	5/14/12	5/14/12	1
JRWCC48150525T3	ANCHOR CAPS - OUTSIDE	5/14/12	5/14/12	1
JRWCC48150580T3	PUNCH LIST GAMESA 2.0	5/14/12	5/14/12	1
JRWCC28100000T3	TOWER WIRING	5/18/12	5/18/12	1
COTTONWOOD T4		1/21/12	5/21/12	104
JRWCC31701510T4	FOUNDATION EXCAVATION	1/21/12	1/21/12	1
JRWCC31701800T4	WIND ENERGY DEWATERING	1/21/12	1/21/12	1
JRWCC31704035T4	BARRICADES/TEMP FENCING/SIGNS	1/21/12	1/27/12	6
JRWCC31701500T4	INSTALL P&H FOUNDATION	1/23/12	1/27/12	5
JRWCC28053400T4	FOUNDATION CONDUIT	1/23/12	1/23/12	1
JRWCC28052800T4	FOUNDATION GROUNDING	1/24/12	1/24/12	1
JRWCC31702313T4	BACKFILL	1/28/12	1/28/12	1
JRWCC48150510T4	UNLOAD WTG COMPONENTS GAMESA 2.0	5/8/12	5/8/12	1
JRWCC48150330T4	COMPONENT WASHING	5/8/12	5/8/12	1
JRWCC48152000T4	CONTROLLER GAMESA 2.0	5/8/12	5/8/12	1
JRWCC31701375T4	WIND TURBINE GROUT BASE, EPOXY	5/10/12	5/10/12	1
JRWCC48150540T4	TOWER GHM PACK GAMESA 2.0	5/10/12	5/10/12	1
JRWCC48151320T4	BLADES GAMESA 2.0	5/10/12	5/14/12	4
JRWCC48151330T4	HUB GAMESA 2.0	5/10/12	5/14/12	4
JRWCC48151810T4	NACELLE GAMESA 2.0	5/10/12	5/14/12	4
JRWCC48152010T4	BOTTOM SECTION GAMESA 2.0	5/10/12	5/10/12	1
JRWCC48152020T4	BOTTOM-MID SECTION GAMESA 2.0	5/10/12	5/10/12	1
JRWCC48150535T4	METAL STAIRS GAMESA 2.0	5/14/12	5/14/12	1
JRWCC48152050T4	TOP SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWCC48152040T4	MID SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWCC48152040T4	TOP-MID SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWCC48150520T4	ANCHOR TENSIONING	5/15/12	5/15/12	1
JRWCC48150525T4	ANCHOR CAPS - OUTSIDE	5/15/12	5/15/12	1

- FOUNDATION EXCAVATION
- WIND ENERGY DEWATERING
- BARRICADES/TEMP FENCING/SIGNS
- INSTALL P&H FOUNDATION
- FOUNDATION CONDUIT
- FOUNDATION GROUNDING
- BACKFILL

- 5/18/12, COTTONWOOD T3
- UNLOAD WTG COMPONENTS GAMESA 2.0
- COMPONENT WASHING
- CONTROLLER GAMESA 2.0
- WIND TURBINE GROUT BASE, EPOXY
- TOWER GHM PACK GAMESA 2.0
- BLADES GAMESA 2.0
- HUB GAMESA 2.0
- NACELLE GAMESA 2.0
- BOTTOM SECTION GAMESA 2.0
- BOTTOM-MID SECTION GAMESA 2.0
- METAL STAIRS GAMESA 2.0
- TOP SECTION GAMESA 2.0
- MID SECTION GAMESA 2.0
- TOP-MID SECTION GAMESA 2.0
- ANCHOR TENSIONING
- ANCHOR CAPS - OUTSIDE
- PUNCH LIST GAMESA 2.0
- TOWER WIRING

- FOUNDATION EXCAVATION
- WIND ENERGY DEWATERING
- BARRICADES/TEMP FENCING/SIGNS
- INSTALL P&H FOUNDATION
- FOUNDATION CONDUIT
- FOUNDATION GROUNDING
- BACKFILL

- 5/21/12, COTTONWOOD T4
- UNLOAD WTG COMPONENTS GAMESA 2.0
- COMPONENT WASHING
- CONTROLLER GAMESA 2.0
- WIND TURBINE GROUT BASE, EPOXY
- TOWER GHM PACK GAMESA 2.0
- BLADES GAMESA 2.0
- HUB GAMESA 2.0
- NACELLE GAMESA 2.0
- BOTTOM SECTION GAMESA 2.0
- BOTTOM-MID SECTION GAMESA 2.0
- METAL STAIRS GAMESA 2.0
- TOP SECTION GAMESA 2.0
- MID SECTION GAMESA 2.0
- TOP-MID SECTION GAMESA 2.0
- ANCHOR TENSIONING
- ANCHOR CAPS - OUTSIDE



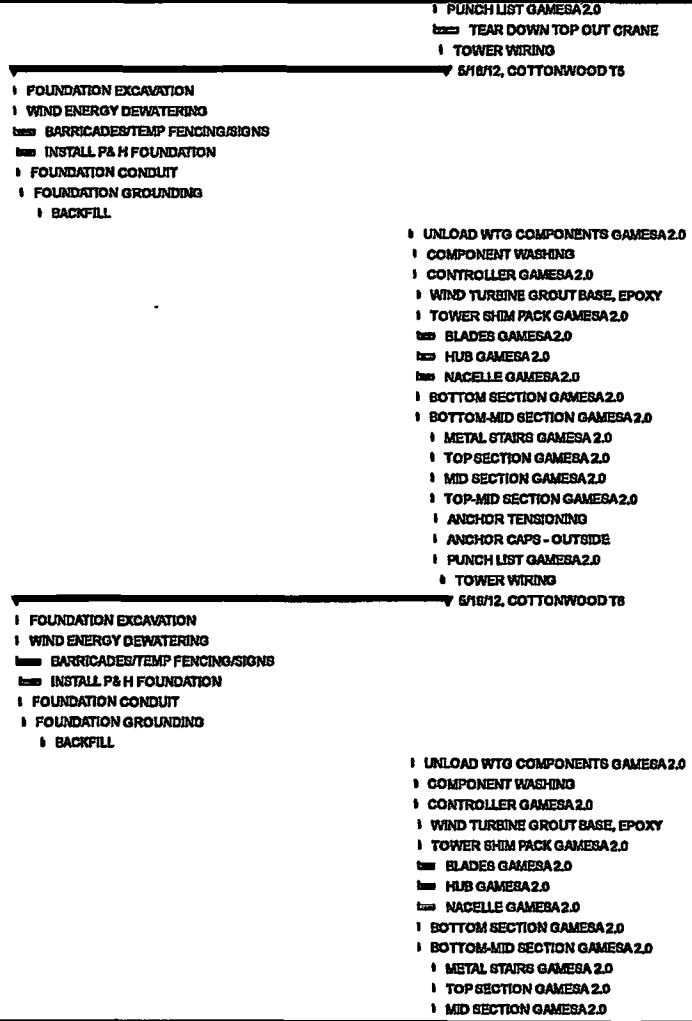
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JACK RANCH WIND FARM MASTER

Current Bar Labels Finish Const...
 Milestone % Complete
 Start Constraint Summary



Activity ID	Activity Name	Start	Finish	Original after 2011	January 2012	February 2012	March 2012	April 2012	May 2012	June 2012	July 2012	August 2012	October 2012
				Duration	12	19	26	02	09	16	23	30	06
					13	20	27	03	10	17	24	31	07
					14	21	28	04	11	18	25	01	08
					15	22	29	05	12	19	26	02	09
					16	23	30	06	13	20	27	03	10
					17	24	31	07	14	21	28	04	11
					18	25	01	08	15	22	29	05	12
					19	26	02	09	16	23	30	06	13
					20	27	03	10	17	24	31	07	14
					21	28	04	11	18	25	01	08	15
					22	29	05	12	19	26	02	09	16
					23	30	06	13	20	27	03	10	17
					24	31	07	14	21	28	04	11	18
					25	01	08	15	22	29	05	12	19
					26	02	09	16	23	30	06	13	20
					27	03	10	17	24	31	07	14	21
					28	04	11	18	25	01	08	15	22
					29	05	12	19	26	02	09	16	23
					30	06	13	20	27	03	10	17	24
					31	07	14	21	28	04	11	18	25
JRWC4815053074	PUNCH LIST GAMESA 2.0	5/15/12	5/15/12	1									
JRWC4815053074	TEAR DOWN TOP OUT CRANE	5/15/12	5/21/12	6									
JRWC2810000074	TOWER WIRING	5/17/12	5/17/12	1									
COTTONWOOD T5				101									
JRWC3170151075	FOUNDATION EXCAVATION	1/23/12	1/23/12	1									
JRWC3170190075	WIND ENERGY DEWATERING	1/23/12	1/23/12	1									
JRWC3170403575	BARRICADES/TEMP FENCING/SIGNS	1/23/12	1/23/12	6									
JRWC0370150075	INSTALL P&H FOUNDATION	1/24/12	1/28/12	6									
JRWC2805340075	FOUNDATION CONDUIT	1/24/12	1/24/12	1									
JRWC2805260075	FOUNDATION GROUNDING	1/25/12	1/25/12	1									
JRWC3170231375	BACKFILL	1/30/12	1/30/12	1									
JRWC4815051075	UNLOAD WTG COMPONENTS GAMESA 2.0	5/9/12	5/9/12	1									
JRWC4815053075	COMPONENT WASHING	5/10/12	5/10/12	1									
JRWC4815200075	CONTROLLER GAMESA 2.0	5/10/12	5/10/12	1									
JRWC0370137575	WIND TURBINE GROUT BASE, EPOXY	5/11/12	5/11/12	1									
JRWC4815054075	TOWER SHIM PACK GAMESA 2.0	5/11/12	5/11/12	1									
JRWC4815132075	BLADES GAMESA 2.0	5/11/12	5/15/12	4									
JRWC4815133075	HUB GAMESA 2.0	5/11/12	5/15/12	4									
METAL STAIRS GAMESA 2.0				4									
JRWC4815201075	BOTTOM SECTION GAMESA 2.0	5/11/12	5/11/12	1									
JRWC4815202075	BOTTOM-MID SECTION GAMESA 2.0	5/11/12	5/11/12	1									
JRWC4815053575	METAL STAIRS GAMESA 2.0	5/15/12	5/15/12	1									
JRWC4815205075	TOP SECTION GAMESA 2.0	5/15/12	5/15/12	1									
JRWC4815203075	MID SECTION GAMESA 2.0	5/15/12	5/15/12	1									
JRWC4815204075	TOP-MID SECTION GAMESA 2.0	5/15/12	5/15/12	1									
JRWC4815052075	ANCHOR TENSIONING	5/16/12	5/16/12	1									
JRWC4815052575	ANCHOR CAPS - OUTSIDE	5/16/12	5/16/12	1									
JRWC4815053075	PUNCH LIST GAMESA 2.0	5/16/12	5/16/12	1									
JRWC2810000075	TOWER WIRING	5/16/12	5/16/12	1									
COTTONWOOD T6				101									
JRWC3170151075	FOUNDATION EXCAVATION	1/24/12	1/24/12	1									
JRWC3170190075	WIND ENERGY DEWATERING	1/24/12	1/24/12	1									
JRWC3170403575	BARRICADES/TEMP FENCING/SIGNS	1/24/12	1/30/12	6									
JRWC0370150075	INSTALL P&H FOUNDATION	1/25/12	1/30/12	6									
JRWC2805340075	FOUNDATION CONDUIT	1/25/12	1/25/12	1									
JRWC2805260075	FOUNDATION GROUNDING	1/26/12	1/26/12	1									
JRWC3170231375	BACKFILL	1/31/12	1/31/12	1									
JRWC4815051075	UNLOAD WTG COMPONENTS GAMESA 2.0	5/10/12	5/10/12	1									
JRWC4815053075	COMPONENT WASHING	5/11/12	5/11/12	1									
JRWC4815200075	CONTROLLER GAMESA 2.0	5/11/12	5/11/12	1									
JRWC0370137575	WIND TURBINE GROUT BASE, EPOXY	5/12/12	5/12/12	1									
JRWC4815054075	TOWER SHIM PACK GAMESA 2.0	5/12/12	5/12/12	1									
JRWC4815132075	BLADES GAMESA 2.0	5/12/12	5/16/12	4									
JRWC4815133075	HUB GAMESA 2.0	5/12/12	5/16/12	4									
JRWC4815161075	NACELLE GAMESA 2.0	5/12/12	5/16/12	4									
JRWC4815201075	BOTTOM SECTION GAMESA 2.0	5/12/12	5/12/12	1									
JRWC4815202075	BOTTOM-MID SECTION GAMESA 2.0	5/12/12	5/12/12	1									
JRWC4815053575	METAL STAIRS GAMESA 2.0	5/16/12	5/16/12	1									
JRWC4815205075	TOP SECTION GAMESA 2.0	5/16/12	5/16/12	1									
JRWC4815203075	MID SECTION GAMESA 2.0	5/16/12	5/16/12	1									



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Activity ID	Activity Name	Start	Finish	Original Duration
JRWCA81520407B	TOP-MID SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWCA81505207B	ANCHOR TENSIONING	5/17/12	5/17/12	1
JRWCA81505257B	ANCHOR CAPS - OUTSIDE	5/17/12	5/17/12	1
JRWCA81505907B	PUNCH LIST GAMESA 2.0	5/17/12	5/17/12	1
JRWCA81000007B	TOWER WIRING	5/18/12	5/18/12	1
COTTONWOOD T7		1/25/12	5/21/12	101
JRWCS170151077	FOUNDATION EXCAVATION	1/25/12	1/25/12	1
JRWCS170180077	WIND ENERGY DEWATERING	1/25/12	1/25/12	1
JRWCS170403577	BARRICADES/TEMP FENCING/SIGNS	1/25/12	1/31/12	6
JRWCS0370150077	INSTALL P&H FOUNDATION	1/25/12	1/31/12	5
JRWCA2605340077	FOUNDATION CONDUIT	1/28/12	1/28/12	1
JRWCA2605260077	FOUNDATION GROUNDING	1/27/12	1/27/12	1
JRWCS170231377	BACKFILL	2/1/12	2/1/12	1
JRWCA815051077	UNLOAD WTG COMPONENTS GAMESA 2.0	5/11/12	5/11/12	1
JRWCA815053077	COMPONENT WASHING	5/12/12	5/12/12	1
JRWCA815200077	CONTROLLER GAMESA 2.0	5/12/12	5/12/12	1
JRWCS0370137577	WIND TURBINE GROUT BASE, EPOXY	5/14/12	5/14/12	1
JRWCA815054077	TOWER SHIM PACK GAMESA 2.0	5/14/12	5/14/12	1
JRWCA815132077	BLADES GAMESA 2.0	5/14/12	5/14/12	4
JRWCA815133077	HUB GAMESA 2.0	5/14/12	5/14/12	4
JRWCA815161077	NACELLE GAMESA 2.0	5/14/12	5/14/12	4
JRWCA815201077	BOTTOM SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWCA815202077	BOTTOM-MID SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWCA815053577	METAL STAIRS GAMESA 2.0	5/17/12	5/17/12	1
JRWCA815205077	TOP SECTION GAMESA 2.0	5/17/12	5/17/12	1
JRWCA815203077	MID SECTION GAMESA 2.0	5/17/12	5/17/12	1
JRWCA815204077	TOP-MID SECTION GAMESA 2.0	5/17/12	5/17/12	1
JRWCA815052077	ANCHOR TENSIONING	5/18/12	5/18/12	1
JRWCA815052577	ANCHOR CAPS - OUTSIDE	5/18/12	5/18/12	1
JRWCA815059077	PUNCH LIST GAMESA 2.0	5/18/12	5/18/12	1
JRWCA810000077	TOWER WIRING	5/21/12	5/21/12	1
COTTONWOOD T10		1/28/12	5/25/12	104
JRWCS170151077	FOUNDATION EXCAVATION	1/28/12	1/28/12	1
JRWCS170180077	WIND ENERGY DEWATERING	1/28/12	1/28/12	1
JRWCS170403577	BARRICADES/TEMP FENCING/SIGNS	1/28/12	1/31/12	6
JRWCS0370150077	INSTALL P&H FOUNDATION	1/27/12	2/1/12	5
JRWCA2605340077	FOUNDATION CONDUIT	1/27/12	1/27/12	1
JRWCA2605260077	FOUNDATION GROUNDING	1/28/12	1/28/12	1
JRWCS170231377	BACKFILL	2/2/12	2/2/12	1
JRWCA815051077	UNLOAD WTG COMPONENTS GAMESA 2.0	5/12/12	5/12/12	1
JRWCA815053077	COMPONENT WASHING	5/14/12	5/14/12	1
JRWCA815200077	CONTROLLER GAMESA 2.0	5/14/12	5/14/12	1
JRWCS0370137577	WIND TURBINE GROUT BASE, EPOXY	5/15/12	5/15/12	1
JRWCA815054077	TOWER SHIM PACK GAMESA 2.0	5/15/12	5/15/12	1
JRWCA815132077	BLADES GAMESA 2.0	5/15/12	5/15/12	4
JRWCA815133077	HUB GAMESA 2.0	5/15/12	5/15/12	4
JRWCA815161077	NACELLE GAMESA 2.0	5/15/12	5/15/12	4
JRWCA815201077	BOTTOM SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRWCA815202077	BOTTOM-MID SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRWCA815053577	METAL STAIRS GAMESA 2.0	5/18/12	5/18/12	1

Activity ID	Activity Name	Start	Finish	Original Duration
JRWCA81520407B	TOP-MID SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWCA81505207B	ANCHOR TENSIONING	5/17/12	5/17/12	1
JRWCA81505257B	ANCHOR CAPS - OUTSIDE	5/17/12	5/17/12	1
JRWCA81505907B	PUNCH LIST GAMESA 2.0	5/17/12	5/17/12	1
JRWCA81000007B	TOWER WIRING	5/18/12	5/18/12	1
COTTONWOOD T7		1/25/12	5/21/12	101
JRWCS170151077	FOUNDATION EXCAVATION	1/25/12	1/25/12	1
JRWCS170180077	WIND ENERGY DEWATERING	1/25/12	1/25/12	1
JRWCS170403577	BARRICADES/TEMP FENCING/SIGNS	1/25/12	1/31/12	6
JRWCS0370150077	INSTALL P&H FOUNDATION	1/25/12	1/31/12	5
JRWCA2605340077	FOUNDATION CONDUIT	1/28/12	1/28/12	1
JRWCA2605260077	FOUNDATION GROUNDING	1/27/12	1/27/12	1
JRWCS170231377	BACKFILL	2/1/12	2/1/12	1
JRWCA815051077	UNLOAD WTG COMPONENTS GAMESA 2.0	5/11/12	5/11/12	1
JRWCA815053077	COMPONENT WASHING	5/12/12	5/12/12	1
JRWCA815200077	CONTROLLER GAMESA 2.0	5/12/12	5/12/12	1
JRWCS0370137577	WIND TURBINE GROUT BASE, EPOXY	5/14/12	5/14/12	1
JRWCA815054077	TOWER SHIM PACK GAMESA 2.0	5/14/12	5/14/12	1
JRWCA815132077	BLADES GAMESA 2.0	5/14/12	5/14/12	4
JRWCA815133077	HUB GAMESA 2.0	5/14/12	5/14/12	4
JRWCA815161077	NACELLE GAMESA 2.0	5/14/12	5/14/12	4
JRWCA815201077	BOTTOM SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWCA815202077	BOTTOM-MID SECTION GAMESA 2.0	5/14/12	5/14/12	1
JRWCA815053577	METAL STAIRS GAMESA 2.0	5/17/12	5/17/12	1
JRWCA815205077	TOP SECTION GAMESA 2.0	5/17/12	5/17/12	1
JRWCA815203077	MID SECTION GAMESA 2.0	5/17/12	5/17/12	1
JRWCA815204077	TOP-MID SECTION GAMESA 2.0	5/17/12	5/17/12	1
JRWCA815052077	ANCHOR TENSIONING	5/18/12	5/18/12	1
JRWCA815052577	ANCHOR CAPS - OUTSIDE	5/18/12	5/18/12	1
JRWCA815059077	PUNCH LIST GAMESA 2.0	5/18/12	5/18/12	1
JRWCA810000077	TOWER WIRING	5/21/12	5/21/12	1
COTTONWOOD T10		1/28/12	5/25/12	104
JRWCS170151077	FOUNDATION EXCAVATION	1/28/12	1/28/12	1
JRWCS170180077	WIND ENERGY DEWATERING	1/28/12	1/28/12	1
JRWCS170403577	BARRICADES/TEMP FENCING/SIGNS	1/28/12	1/31/12	6
JRWCS0370150077	INSTALL P&H FOUNDATION	1/27/12	2/1/12	5
JRWCA2605340077	FOUNDATION CONDUIT	1/27/12	1/27/12	1
JRWCA2605260077	FOUNDATION GROUNDING	1/28/12	1/28/12	1
JRWCS170231377	BACKFILL	2/2/12	2/2/12	1
JRWCA815051077	UNLOAD WTG COMPONENTS GAMESA 2.0	5/12/12	5/12/12	1
JRWCA815053077	COMPONENT WASHING	5/14/12	5/14/12	1
JRWCA815200077	CONTROLLER GAMESA 2.0	5/14/12	5/14/12	1
JRWCS0370137577	WIND TURBINE GROUT BASE, EPOXY	5/15/12	5/15/12	1
JRWCA815054077	TOWER SHIM PACK GAMESA 2.0	5/15/12	5/15/12	1
JRWCA815132077	BLADES GAMESA 2.0	5/15/12	5/15/12	4
JRWCA815133077	HUB GAMESA 2.0	5/15/12	5/15/12	4
JRWCA815161077	NACELLE GAMESA 2.0	5/15/12	5/15/12	4
JRWCA815201077	BOTTOM SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRWCA815202077	BOTTOM-MID SECTION GAMESA 2.0	5/15/12	5/15/12	1
JRWCA815053577	METAL STAIRS GAMESA 2.0	5/18/12	5/18/12	1

5/21/12, COTTONWOOD T7

- | FOUNDATION EXCAVATION
- | WIND ENERGY DEWATERING
- | BARRICADES/TEMP FENCING/SIGNS
- | INSTALL P&H FOUNDATION
- | FOUNDATION CONDUIT
- | FOUNDATION GROUNDING
- | BACKFILL

| UNLOAD WTG COMPONENTS GAMESA 2.0

- | COMPONENT WASHING
- | CONTROLLER GAMESA 2.0
- | WIND TURBINE GROUT BASE, EPOXY
- | TOWER SHIM PACK GAMESA 2.0

| BLADES GAMESA 2.0

- | HUB GAMESA 2.0
- | NACELLE GAMESA 2.0

| BOTTOM SECTION GAMESA 2.0

- | BOTTOM-MID SECTION GAMESA 2.0
- | METAL STAIRS GAMESA 2.0

| TOP SECTION GAMESA 2.0

- | MID SECTION GAMESA 2.0
- | TOP-MID SECTION GAMESA 2.0

| ANCHOR TENSIONING

- | ANCHOR CAPS - OUTSIDE
- | PUNCH LIST GAMESA 2.0

| TOWER WIRING

5/25/12, COTTONWOOD T10

- | FOUNDATION EXCAVATION
- | WIND ENERGY DEWATERING
- | BARRICADES/TEMP FENCING/SIGNS
- | INSTALL P&H FOUNDATION
- | FOUNDATION CONDUIT
- | FOUNDATION GROUNDING
- | BACKFILL

| UNLOAD WTG COMPONENTS GAMESA 2.0

- | COMPONENT WASHING
- | CONTROLLER GAMESA 2.0
- | WIND TURBINE GROUT BASE, EPOXY
- | TOWER SHIM PACK GAMESA 2.0

| BLADES GAMESA 2.0

- | HUB GAMESA 2.0
- | NACELLE GAMESA 2.0

| BOTTOM SECTION GAMESA 2.0

- | BOTTOM-MID SECTION GAMESA 2.0
- | METAL STAIRS GAMESA 2.0



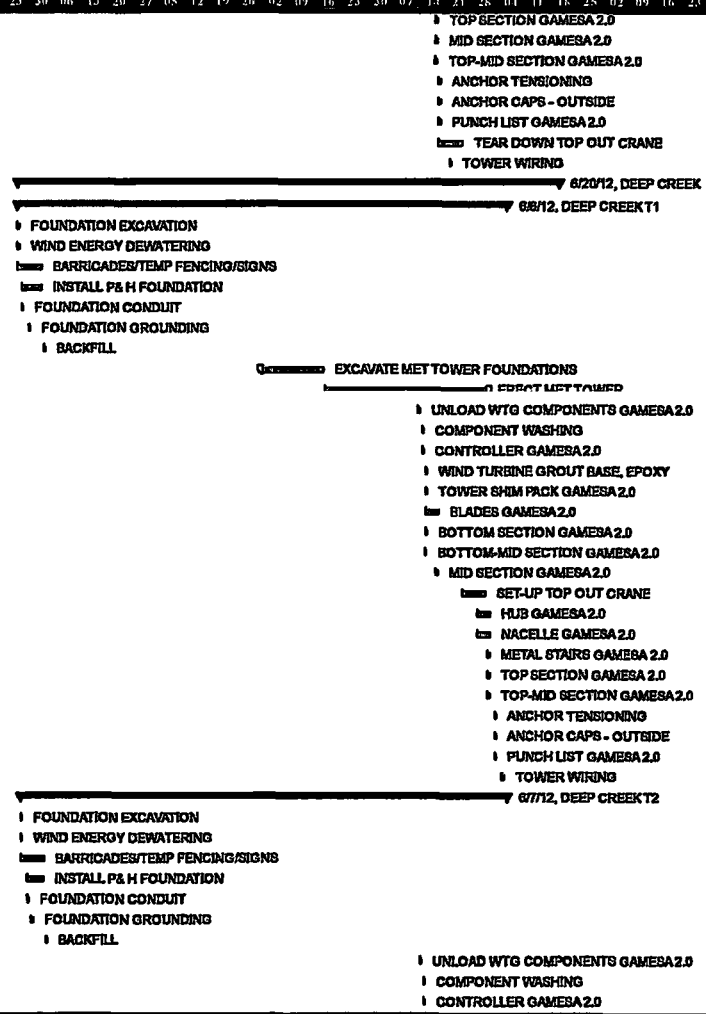
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JACK RANCH WIND FARM MASTER

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Activity ID	Activity Name	Start	Finish	Original Duration	December 2011	January 2012	February 2012	March 2012	April 2012	May 2012	June 2012	July 2012	August 2012	September 2012
JRWC48152050T	TOP SECTION GAMESA 2.0	5/18/12	5/18/12	1										
JRWC48152030T	MID SECTION GAMESA 2.0	5/18/12	5/18/12	1										
JRWC48152040T	TOP-MID SECTION GAMESA 2.0	5/18/12	5/18/12	1										
JRWC48150520T	ANCHOR TENSIONING	5/18/12	5/18/12	1										
JRWC48150525T	ANCHOR CAPS - OUTSIDE	5/18/12	5/18/12	1										
JRWC48150530T	PUNCH LIST GAMESA 2.0	5/18/12	5/18/12	1										
JRWC48150530T	TEAR DOWN TOP OUT CRANE	5/18/12	5/25/12	6										
JRWC26100000T	TOWER WIRING	5/22/12	5/22/12	1										
DEEP CREEK		1/27/12	5/20/12	125										
DEEP CREEK T1		1/27/12	5/8/12	113										
JRWD31701510T1	FOUNDATION EXCAVATION	1/27/12	1/27/12	1										
JRWD31701800T1	WIND ENERGY DEWATERING	1/27/12	1/27/12	1										
JRWD31704035T1	BARRICADES/TEMP FENCING/SIGNS	1/27/12	2/2/12	6										
JRWD03701500T1	INSTALL P&H FOUNDATION	1/28/12	2/2/12	5										
JRWD26053400T1	FOUNDATION CONDUIT	1/28/12	1/28/12	1										
JRWD26052600T1	FOUNDATION GROUNDING	1/30/12	1/30/12	1										
JRWD31702313T1	BACKFILL	2/3/12	2/3/12	1										
JRWS08031000	EXCAVATE MET TOWER FOUNDATIONS	4/2/12	4/18/12	15										
JRWD48150510T1	UNLOAD WTG COMPONENTS GAMESA 2.0	5/14/12	5/14/12	1										
JRWD48150530T1	COMPONENT WASHING	5/15/12	5/15/12	1										
JRWD48152000T1	CONTROLLER GAMESA 2.0	5/15/12	5/15/12	1										
JRWD03701375T1	WIND TURBINE GROUT BASE, EPOXY	5/16/12	5/16/12	1										
JRWD48150540T1	TOWER SHIM PACK GAMESA 2.0	5/16/12	5/16/12	1										
JRWD48151320T1	BLADES GAMESA 2.0	5/16/12	5/16/12	4										
JRWD48152010T1	BOTTOM SECTION GAMESA 2.0	5/16/12	5/16/12	1										
JRWD48152020T1	BOTTOM-MID SECTION GAMESA 2.0	5/16/12	5/16/12	1										
JRWD48152030T1	MID SECTION GAMESA 2.0	5/16/12	5/16/12	1										
JRWD48153010T1	SETUP TOP OUT CRANE	5/28/12	6/1/12	5										
JRWD48151330T1	HUB GAMESA 2.0	5/30/12	6/2/12	4										
JRWD48151610T1	NACELLE GAMESA 2.0	5/30/12	6/2/12	4										
JRWD48150535T1	METAL STAIRS GAMESA 2.0	6/2/12	6/2/12	1										
JRWD48152050T1	TOP SECTION GAMESA 2.0	6/2/12	6/2/12	1										
JRWD48152040T1	TOP-MID SECTION GAMESA 2.0	6/2/12	6/2/12	1										
JRWD48150520T1	ANCHOR TENSIONING	6/4/12	6/4/12	1										
JRWD48150525T1	ANCHOR CAPS - OUTSIDE	6/4/12	6/4/12	1										
JRWD48150530T1	PUNCH LIST GAMESA 2.0	6/4/12	6/4/12	1										
JRWD26100000T1	TOWER WIRING	6/6/12	6/6/12	1										
DEEP CREEK T2		1/28/12	5/7/12	113										
JRWD31701510T2	FOUNDATION EXCAVATION	1/28/12	1/28/12	1										
JRWD31701800T2	WIND ENERGY DEWATERING	1/28/12	1/28/12	1										
JRWD31704035T2	BARRICADES/TEMP FENCING/SIGNS	1/28/12	2/3/12	6										
JRWD03701500T2	INSTALL P&H FOUNDATION	1/30/12	2/3/12	5										
JRWD26053400T2	FOUNDATION CONDUIT	1/30/12	1/30/12	1										
JRWD26052600T2	FOUNDATION GROUNDING	1/31/12	1/31/12	1										
JRWD31702313T2	BACKFILL	2/4/12	2/4/12	1										
JRWD48150510T2	UNLOAD WTG COMPONENTS GAMESA 2.0	5/15/12	5/15/12	1										
JRWD48150530T2	COMPONENT WASHING	5/16/12	5/16/12	1										
JRWD48152000T2	CONTROLLER GAMESA 2.0	5/16/12	5/16/12	1										



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Activity ID	Activity Name	Start	Finish	Original	January	February	March	April	May	June	July	August	2012
JRWD03701375T2	WIND TURBINE GROUT BASE, EPOXY	5/17/12	5/17/12	1									
JRWD48150540T2	TOWER SHIM PACK GAMESA 2.0	5/17/12	5/17/12	1									
JRWD48151320T2	BLADES GAMESA 2.0	5/17/12	5/21/12	4									
JRWD48152010T2	BOTTOM SECTION GAMESA 2.0	5/17/12	5/17/12	1									
JRWD48152020T2	BOTTOM-MID SECTION GAMESA 2.0	5/17/12	5/17/12	1									
JRWD48151330T2	HUB GAMESA 2.0	5/31/12	5/4/12	4									
JRWD48151810T2	NACELLE GAMESA 2.0	5/31/12	5/4/12	4									
JRWD48150535T2	METAL STAIRS GAMESA 2.0	5/4/12	5/4/12	1									
JRWD48152050T2	TOP SECTION GAMESA 2.0	5/4/12	5/4/12	1									
JRWD48152030T2	MID SECTION GAMESA 2.0	5/4/12	5/4/12	1									
JRWD48152040T2	TOP-MID SECTION GAMESA 2.0	5/4/12	5/4/12	1									
JRWD48150520T2	ANCHOR TENSIONING	5/5/12	5/5/12	1									
JRWD48150525T2	ANCHOR CAPS - OUTSIDE	5/5/12	5/5/12	1									
JRWD48150530T2	PUNCH LIST GAMESA 2.0	5/5/12	5/5/12	1									
JRWD28100000T2	TOWER WIRING	5/7/12	5/7/12	1									
DEEP CREEK T3		1/30/12	5/8/12	113									
JRWD31701510T3	FOUNDATION EXCAVATION	1/30/12	1/30/12	1									
JRWD31701900T3	WIND ENERGY DEWATERING	1/30/12	1/30/12	1									
JRWD03701500T3	INSTALL P&H FOUNDATION	1/31/12	2/1/12	5									
JRWD28053400T3	FOUNDATION CONDUIT	1/31/12	1/31/12	1									
JRWD28052600T3	FOUNDATION GROUNDING	2/1/12	2/1/12	1									
JRWD31702313T3	BACKFILL	2/6/12	2/6/12	1									
JRWD48150510T3	UNLOAD WTG COMPONENTS GAMESA 2.0	5/18/12	5/18/12	1									
JRWD48150530T3	COMPONENT WASHING	5/17/12	5/17/12	1									
JRWD48152000T3	CONTROLLER GAMESA 2.0	5/17/12	5/17/12	1									
JRWD03701375T3	WIND TURBINE GROUT BASE, EPOXY	5/18/12	5/18/12	1									
JRWD48150540T3	TOWER SHIM PACK GAMESA 2.0	5/18/12	5/18/12	1									
JRWD48151320T3	BLADES GAMESA 2.0	5/18/12	5/22/12	4									
JRWD48152010T3	BOTTOM SECTION GAMESA 2.0	5/18/12	5/18/12	1									
JRWD48152020T3	BOTTOM-MID SECTION GAMESA 2.0	5/18/12	5/18/12	1									
JRWD48151330T3	HUB GAMESA 2.0	5/1/12	5/5/12	4									
JRWD48151810T3	NACELLE GAMESA 2.0	5/1/12	5/5/12	4									
JRWD48150535T3	METAL STAIRS GAMESA 2.0	5/5/12	5/5/12	1									
JRWD48152050T3	TOP SECTION GAMESA 2.0	5/5/12	5/5/12	1									
JRWD48152030T3	MID SECTION GAMESA 2.0	5/5/12	5/5/12	1									
JRWD48152040T3	TOP-MID SECTION GAMESA 2.0	5/5/12	5/5/12	1									
JRWD48150520T3	ANCHOR TENSIONING	5/5/12	5/5/12	1									
JRWD48150525T3	ANCHOR CAPS - OUTSIDE	5/5/12	5/5/12	1									
JRWD48150530T3	PUNCH LIST GAMESA 2.0	5/5/12	5/5/12	1									
JRWD28100000T3	TOWER WIRING	5/8/12	5/8/12	1									
DEEP CREEK T4		1/31/12	5/9/12	113									
JRWD31701510T4	FOUNDATION EXCAVATION	1/31/12	1/31/12	1									
JRWD31701900T4	WIND ENERGY DEWATERING	1/31/12	1/31/12	1									
JRWD31704035T4	BARRICADES/TEMP FENCING/SIGNS	1/31/12	2/6/12	6									
JRWD03701500T4	INSTALL P&H FOUNDATION	2/1/12	2/5/12	5									
JRWD28053400T4	FOUNDATION CONDUIT	2/1/12	2/1/12	1									
JRWD28052600T4	FOUNDATION GROUNDING	2/2/12	2/2/12	1									
JRWD31702313T4	BACKFILL	2/7/12	2/7/12	1									
JRWD48150510T4	UNLOAD WTG COMPONENTS GAMESA 2.0	5/17/12	5/17/12	1									

WIND TURBINE GROUT BASE, EPOXY
 TOWER SHIM PACK GAMESA 2.0
 BLADES GAMESA 2.0
 BOTTOM SECTION GAMESA 2.0
 BOTTOM-MID SECTION GAMESA 2.0
 HUB GAMESA 2.0
 NACELLE GAMESA 2.0
 METAL STAIRS GAMESA 2.0
 TOP SECTION GAMESA 2.0
 MID SECTION GAMESA 2.0
 TOP-MID SECTION GAMESA 2.0
 ANCHOR TENSIONING
 ANCHOR CAPS - OUTSIDE
 PUNCH LIST GAMESA 2.0
 TOWER WIRING
 5/8/12, DEEP CREEK T3
 FOUNDATION EXCAVATION
 WIND ENERGY DEWATERING
 BARRICADES/TEMP FENCING/SIGNS
 INSTALL P&H FOUNDATION
 FOUNDATION CONDUIT
 FOUNDATION GROUNDING
 BACKFILL
 UNLOAD WTG COMPONENTS GAMESA 2.0
 COMPONENT WASHING
 CONTROLLER GAMESA 2.0
 WIND TURBINE GROUT BASE, EPOXY
 TOWER SHIM PACK GAMESA 2.0
 BLADES GAMESA 2.0
 BOTTOM SECTION GAMESA 2.0
 BOTTOM-MID SECTION GAMESA 2.0
 HUB GAMESA 2.0
 NACELLE GAMESA 2.0
 METAL STAIRS GAMESA 2.0
 TOP SECTION GAMESA 2.0
 MID SECTION GAMESA 2.0
 TOP-MID SECTION GAMESA 2.0
 ANCHOR TENSIONING
 ANCHOR CAPS - OUTSIDE
 PUNCH LIST GAMESA 2.0
 TOWER WIRING
 5/8/12, DEEP CREEK T4
 FOUNDATION EXCAVATION
 WIND ENERGY DEWATERING
 BARRICADES/TEMP FENCING/SIGNS
 INSTALL P&H FOUNDATION
 FOUNDATION CONDUIT
 FOUNDATION GROUNDING
 BACKFILL
 UNLOAD WTG COMPONENTS GAMESA 2.0



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Current Bar Labels P Finish Constr.
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JRWD4815053074	COMPONENT WASHING	5/18/12	5/18/12	1
JRWD4815200074	CONTROLLER GAMESA 2.0	5/18/12	5/18/12	1
JRWD0370137574	WIND TURBINE GROUT BASE, EPOXY	5/18/12	5/18/12	1
JRWD4815054074	TOWER SHIM PACK GAMESA 2.0	5/18/12	5/18/12	1
JRWD4815132074	BLADES GAMESA 2.0	5/18/12	5/23/12	4
JRWD4815201074	BOTTOM SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWD4815202074	BOTTOM-MID SECTION GAMESA 2.0	5/18/12	5/18/12	1
JRWD4815133074	HUB GAMESA 2.0	6/2/12	6/6/12	4
JRWD4815181074	NACELLE GAMESA 2.0	6/2/12	6/6/12	4
JRWD4815053574	METAL STAIRS GAMESA 2.0	6/6/12	6/6/12	1
JRWD4815205074	TOP SECTION GAMESA 2.0	6/6/12	6/6/12	1
JRWD4815203074	MID SECTION GAMESA 2.0	6/6/12	6/6/12	1
JRWD4815204074	TOP-MID SECTION GAMESA 2.0	6/6/12	6/6/12	1
JRWD4815052074	ANCHOR TENSIONING	6/7/12	6/7/12	1
JRWD4815052574	ANCHOR CAPS - OUTSIDE	6/7/12	6/7/12	1
JRWD4815053074	PUNCH LIST GAMESA 2.0	6/7/12	6/7/12	1
JRWD2810000074	TOWER WIRING	6/8/12	6/8/12	1
DEEP CREEK T8		2/1/12	6/11/12	113
JRWD3170151075	FOUNDATION EXCAVATION	2/1/12	2/1/12	1
JRWD3170403375	BARRICADES/TEMP FENCING/SIGNS	2/2/12	2/8/12	6
JRWD0370150075	INSTALL P&H FOUNDATION	2/2/12	2/7/12	5
JRWD2805340075	FOUNDATION CONDUIT	2/2/12	2/2/12	1
JRWD2805260075	FOUNDATION GROUNDING	2/3/12	2/3/12	1
JRWD3170231375	BACKFILL	2/8/12	2/8/12	1
JRWD4815051075	UNLOAD WTG COMPONENTS GAMESA 2.0	5/18/12	5/18/12	1
JRWD4815053075	COMPONENT WASHING	5/18/12	5/18/12	1
JRWD4815200075	CONTROLLER GAMESA 2.0	5/18/12	5/18/12	1
JRWD0370137575	WIND TURBINE GROUT BASE, EPOXY	5/21/12	5/21/12	1
JRWD4815054075	TOWER SHIM PACK GAMESA 2.0	5/21/12	5/21/12	1
JRWD4815132075	BLADES GAMESA 2.0	5/21/12	5/24/12	4
JRWD4815201075	BOTTOM SECTION GAMESA 2.0	5/21/12	5/21/12	1
JRWD4815202075	BOTTOM-MID SECTION GAMESA 2.0	5/21/12	5/21/12	1
JRWD4815133075	HUB GAMESA 2.0	6/4/12	6/7/12	4
JRWD4815181075	NACELLE GAMESA 2.0	6/4/12	6/7/12	4
JRWD4815053575	METAL STAIRS GAMESA 2.0	6/7/12	6/7/12	1
JRWD4815205075	TOP SECTION GAMESA 2.0	6/7/12	6/7/12	1
JRWD4815203075	MID SECTION GAMESA 2.0	6/7/12	6/7/12	1
JRWD4815204075	TOP-MID SECTION GAMESA 2.0	6/7/12	6/7/12	1
JRWD4815052075	ANCHOR TENSIONING	6/8/12	6/8/12	1
JRWD4815052575	ANCHOR CAPS - OUTSIDE	6/8/12	6/8/12	1
JRWD4815053075	PUNCH LIST GAMESA 2.0	6/8/12	6/8/12	1
JRWD2810000075	TOWER WIRING	6/11/12	6/11/12	1
DEEP CREEK T8		2/2/12	6/12/12	113
JRWD3170151078	FOUNDATION EXCAVATION	2/2/12	2/2/12	1
JRWD3170180078	WIND ENERGY DEWATERING	2/2/12	2/2/12	1
JRWD3170403378	BARRICADES/TEMP FENCING/SIGNS	2/2/12	2/8/12	6
JRWD0370150078	INSTALL P&H FOUNDATION	2/3/12	2/8/12	5
JRWD2805340078	FOUNDATION CONDUIT	2/3/12	2/3/12	1
JRWD2805260078	FOUNDATION GROUNDING	2/4/12	2/4/12	1

COMPONENT WASHING
CONTROLLER GAMESA 2.0
WIND TURBINE GROUT BASE, EPOXY
TOWER SHIM PACK GAMESA 2.0
BLADES GAMESA 2.0
BOTTOM SECTION GAMESA 2.0
BOTTOM-MID SECTION GAMESA 2.0
HUB GAMESA 2.0
NACELLE GAMESA 2.0
METAL STAIRS GAMESA 2.0
TOP SECTION GAMESA 2.0
MID SECTION GAMESA 2.0
TOP-MID SECTION GAMESA 2.0
ANCHOR TENSIONING
ANCHOR CAPS - OUTSIDE
PUNCH LIST GAMESA 2.0
TOWER WIRING
6/11/12, DEEP CREEK T8
FOUNDATION EXCAVATION
WIND ENERGY DEWATERING
BARRICADES/TEMP FENCING/SIGNS
INSTALL P&H FOUNDATION
FOUNDATION CONDUIT
FOUNDATION GROUNDING
BACKFILL
UNLOAD WTG COMPONENTS GAMESA 2.0
COMPONENT WASHING
CONTROLLER GAMESA 2.0
WIND TURBINE GROUT BASE, EPOXY
TOWER SHIM PACK GAMESA 2.0
BLADES GAMESA 2.0
BOTTOM SECTION GAMESA 2.0
BOTTOM-MID SECTION GAMESA 2.0
HUB GAMESA 2.0
NACELLE GAMESA 2.0
METAL STAIRS GAMESA 2.0
TOP SECTION GAMESA 2.0
MID SECTION GAMESA 2.0
TOP-MID SECTION GAMESA 2.0
ANCHOR TENSIONING
ANCHOR CAPS - OUTSIDE
PUNCH LIST GAMESA 2.0
TOWER WIRING
6/12/12, DEEP CREEK T8
FOUNDATION EXCAVATION
WIND ENERGY DEWATERING
BARRICADES/TEMP FENCING/SIGNS
INSTALL P&H FOUNDATION
FOUNDATION CONDUIT
FOUNDATION GROUNDING



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Current Bar Labels P Finish Constr...
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JRW03170231378	BACKFILL	2/8/12	2/8/12	1										
JRW04815051078	UNLOAD WTG COMPONENTS GAMESA 2.0	5/18/12	5/18/12	1										
JRW04815053078	COMPONENT WASHING	5/21/12	5/21/12	1										
JRW04815200078	CONTROLLER GAMESA 2.0	5/21/12	5/21/12	1										
JRW0370137578	WIND TURBINE GROUT BASE, EPOXY	5/22/12	5/22/12	1										
JRW04815054078	TOWER SHM PACK GAMESA 2.0	5/22/12	5/22/12	1										
JRW04815132078	BLADES GAMESA 2.0	5/22/12	5/22/12	4										
JRW04815201078	BOTTOM SECTION GAMESA 2.0	5/22/12	5/22/12	1										
JRW04815202078	BOTTOM-MID SECTION GAMESA 2.0	5/22/12	5/22/12	1										
JRW04815133078	HUB GAMESA 2.0	5/5/12	5/5/12	4										
JRW04815161078	NACELLE GAMESA 2.0	5/5/12	5/5/12	4										
JRW04815053578	METAL STAIRS GAMESA 2.0	5/5/12	5/5/12	1										
JRW04815205078	TOP SECTION GAMESA 2.0	5/5/12	5/5/12	1										
JRW04815203078	MID SECTION GAMESA 2.0	5/5/12	5/5/12	1										
JRW04815204078	TOP-MID SECTION GAMESA 2.0	5/5/12	5/5/12	1										
JRW04815052078	ANCHOR TENSIONING	5/5/12	5/5/12	1										
JRW04815052578	ANCHOR CAPS - OUTSIDE	5/5/12	5/5/12	1										
JRW04815059078	PUNCH LIST GAMESA 2.0	5/5/12	5/5/12	1										
JRW02810000078	TOWER WIRING	5/12/12	5/12/12	1										
DEEP CREEK T7		2/3/12	5/13/12	113										
JRW03170151077	FOUNDATION EXCAVATION	2/3/12	2/3/12	1										
JRW03170180077	WIND ENERGY DEWATERING	2/3/12	2/3/12	1										
JRW03170403577	BARRICADES/TEMP FENCING/SIGNS	2/3/12	2/9/12	6										
JRW0370150077	INSTALL P&H FOUNDATION	2/4/12	2/9/12	5										
JRW02605340077	FOUNDATION CONDUIT	2/4/12	2/4/12	1										
JRW02605250077	FOUNDATION GROUNDING	2/5/12	2/5/12	1										
JRW03170231377	BACKFILL	2/10/12	2/10/12	1										
JRW04815051077	UNLOAD WTG COMPONENTS GAMESA 2.0	5/21/12	5/21/12	1										
JRW04815053077	COMPONENT WASHING	5/22/12	5/22/12	1										
JRW04815200077	CONTROLLER GAMESA 2.0	5/22/12	5/22/12	1										
JRW0370137577	WIND TURBINE GROUT BASE, EPOXY	5/23/12	5/23/12	1										
JRW04815054077	TOWER SHM PACK GAMESA 2.0	5/23/12	5/23/12	1										
JRW04815132077	BLADES GAMESA 2.0	5/23/12	5/23/12	4										
JRW04815201077	BOTTOM SECTION GAMESA 2.0	5/23/12	5/23/12	1										
JRW04815202077	BOTTOM-MID SECTION GAMESA 2.0	5/23/12	5/23/12	1										
JRW04815133077	HUB GAMESA 2.0	5/5/12	5/5/12	4										
JRW04815161077	NACELLE GAMESA 2.0	5/5/12	5/5/12	4										
JRW04815053577	METAL STAIRS GAMESA 2.0	5/5/12	5/5/12	1										
JRW04815205077	TOP SECTION GAMESA 2.0	5/5/12	5/5/12	1										
JRW04815203077	MID SECTION GAMESA 2.0	5/5/12	5/5/12	1										
JRW04815204077	TOP-MID SECTION GAMESA 2.0	5/5/12	5/5/12	1										
JRW04815052077	ANCHOR TENSIONING	5/11/12	5/11/12	1										
JRW04815052577	ANCHOR CAPS - OUTSIDE	5/11/12	5/11/12	1										
JRW04815059077	PUNCH LIST GAMESA 2.0	5/11/12	5/11/12	1										
JRW02810000077	TOWER WIRING	5/13/12	5/13/12	1										
DEEP CREEK T8		2/4/12	5/14/12	113										
JRW03170151078	FOUNDATION EXCAVATION	2/4/12	2/4/12	1										
JRW03170180078	WIND ENERGY DEWATERING	2/4/12	2/4/12	1										
JRW03170403578	BARRICADES/TEMP FENCING/SIGNS	2/4/12	2/10/12	6										
JRW0370150078	INSTALL P&H FOUNDATION	2/5/12	2/10/12	5										

BACKFILL	
UNLOAD WTG COMPONENTS GAMESA 2.0	
COMPONENT WASHING	
CONTROLLER GAMESA 2.0	
WIND TURBINE GROUT BASE, EPOXY	
TOWER SHM PACK GAMESA 2.0	
BLADES GAMESA 2.0	
BOTTOM SECTION GAMESA 2.0	
BOTTOM-MID SECTION GAMESA 2.0	
HUB GAMESA 2.0	
NACELLE GAMESA 2.0	
METAL STAIRS GAMESA 2.0	
TOP SECTION GAMESA 2.0	
MID SECTION GAMESA 2.0	
TOP-MID SECTION GAMESA 2.0	
ANCHOR TENSIONING	
ANCHOR CAPS - OUTSIDE	
PUNCH LIST GAMESA 2.0	
TOWER WIRING	
6/13/12, DEEP CREEK T7	
FOUNDATION EXCAVATION	
WIND ENERGY DEWATERING	
BARRICADES/TEMP FENCING/SIGNS	
INSTALL P&H FOUNDATION	
FOUNDATION CONDUIT	
FOUNDATION GROUNDING	
BACKFILL	
UNLOAD WTG COMPONENTS GAMESA 2.0	
COMPONENT WASHING	
CONTROLLER GAMESA 2.0	
WIND TURBINE GROUT BASE, EPOXY	
TOWER SHM PACK GAMESA 2.0	
BLADES GAMESA 2.0	
BOTTOM SECTION GAMESA 2.0	
BOTTOM-MID SECTION GAMESA 2.0	
HUB GAMESA 2.0	
NACELLE GAMESA 2.0	
METAL STAIRS GAMESA 2.0	
TOP SECTION GAMESA 2.0	
MID SECTION GAMESA 2.0	
TOP-MID SECTION GAMESA 2.0	
ANCHOR TENSIONING	
ANCHOR CAPS - OUTSIDE	
PUNCH LIST GAMESA 2.0	
TOWER WIRING	
6/14/12, DEEP CREEK T8	
FOUNDATION EXCAVATION	
WIND ENERGY DEWATERING	
BARRICADES/TEMP FENCING/SIGNS	
INSTALL P&H FOUNDATION	



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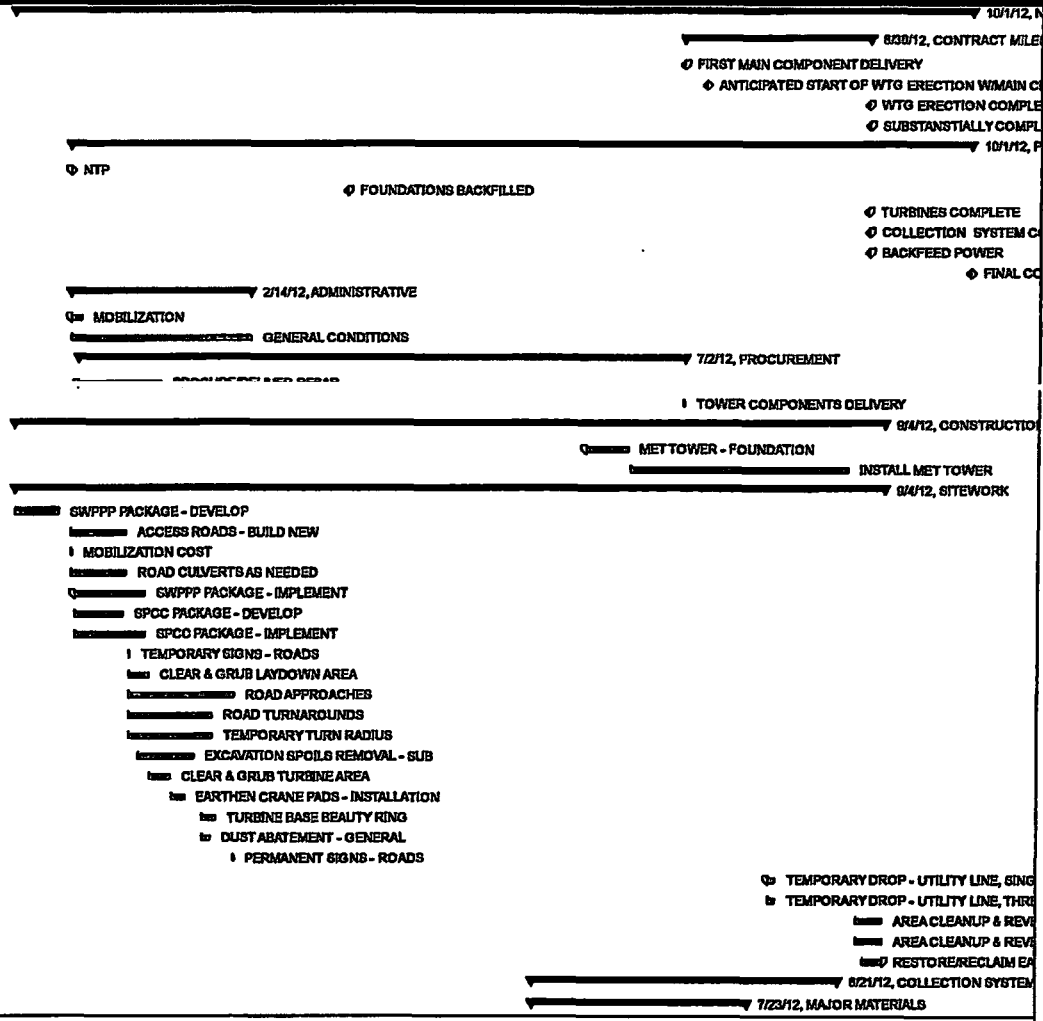
Current Bar Labels ✓ Finish Const...
 ◀ Milestone % Complete
 □ Start Constraint Summary



Activity ID	Activity Name	Start	Finish	Original Duration	October 2011	January 2012	February 2012	March 2012	April 2012	May 2012	June 2012	July 2012	August 2012	September 2012
JRW026053400T8	FOUNDATION CONDUIT	2/8/12	2/8/12	1										
JRW026052600T8	FOUNDATION GROUNDING	2/7/12	2/7/12	1										
JRW031702313T8	BACKFILL	2/11/12	2/11/12	1										
JRW048150510T8	UNLOAD WTG COMPONENTS GAMESA 2.0	5/22/12	5/22/12	1										
JRW048150530T8	COMPONENT WASHING	5/23/12	5/23/12	1										
JRW048152000T8	CONTROLLER GAMESA 2.0	5/23/12	5/23/12	1										
JRW03701375T8	WIND TURBINE GROUT BASE, EPOXY	5/24/12	5/24/12	1										
JRW048150540T8	TOWER SHIM PACK GAMESA 2.0	5/24/12	5/24/12	1										
JRW048151320T8	BLADES GAMESA 2.0	5/24/12	5/24/12	4										
JRW048152010T8	BOTTOM SECTION GAMESA 2.0	5/24/12	5/24/12	1										
JRW048152020T8	BOTTOM-MID SECTION GAMESA 2.0	5/24/12	5/24/12	1										
JRW048151330T8	HUB GAMESA 2.0	6/7/12	6/11/12	4										
JRW048151610T8	NACELLE GAMESA 2.0	6/7/12	6/11/12	4										
JRW048150535T8	METAL STAIRS GAMESA 2.0	6/11/12	6/11/12	1										
JRW048152050T8	TOP SECTION GAMESA 2.0	6/11/12	6/11/12	1										
JRW048152030T8	MID SECTION GAMESA 2.0	6/11/12	6/11/12	1										
JRW048152040T8	TOP-MID SECTION GAMESA 2.0	6/11/12	6/11/12	1										
JRW048150520T8	ANCHOR TENSIONING	6/12/12	6/12/12	1										
JRW048150525T8	ANCHOR CAPS - OUTSIDE	6/12/12	6/12/12	1										
JRW048150590T8	PUNCH LIST GAMESA 2.0	6/12/12	6/12/12	1										
JRW026100000T8	TOWER WIRING	6/14/12	6/14/12	1										
DEEP CREEK T9		2/8/12	6/15/12	113										
JRW031701510T8	FOUNDATION EXCAVATION	2/8/12	2/8/12	1										
JRW031701800T8	WIND ENERGY DEWATERING	2/8/12	2/8/12	1										
JRW031704035T8	BARRICADES/TEMP FENCINGS/SIGNS	2/8/12	2/11/12	6										
JRW03701500T8	INSTALL P&H FOUNDATION	2/7/12	2/11/12	5										
JRW026053400T8	FOUNDATION CONDUIT	2/7/12	2/7/12	1										
JRW026052600T8	FOUNDATION GROUNDING	2/8/12	2/8/12	1										
JRW031702313T8	BACKFILL	2/13/12	2/13/12	1										
JRW048150510T8	UNLOAD WTG COMPONENTS GAMESA 2.0	5/22/12	5/22/12	1										
JRW048150530T8	COMPONENT WASHING	5/24/12	5/24/12	1										
JRW048152000T8	CONTROLLER GAMESA 2.0	5/24/12	5/24/12	1										
JRW03701375T8	WIND TURBINE GROUT BASE, EPOXY	5/25/12	5/25/12	1										
JRW048150540T8	TOWER SHIM PACK GAMESA 2.0	5/25/12	5/25/12	1										
JRW048151320T8	BLADES GAMESA 2.0	5/25/12	5/25/12	4										
JRW048152010T8	BOTTOM SECTION GAMESA 2.0	5/25/12	5/25/12	1										
JRW048152020T8	BOTTOM-MID SECTION GAMESA 2.0	5/25/12	5/25/12	1										
JRW048151330T8	HUB GAMESA 2.0	6/8/12	6/12/12	4										
JRW048151610T8	NACELLE GAMESA 2.0	6/8/12	6/12/12	4										
JRW048150535T8	METAL STAIRS GAMESA 2.0	6/12/12	6/12/12	1										
JRW048152050T8	TOP SECTION GAMESA 2.0	6/12/12	6/12/12	1										
JRW048152030T8	MID SECTION GAMESA 2.0	6/12/12	6/12/12	1										
JRW048152040T8	TOP-MID SECTION GAMESA 2.0	6/12/12	6/12/12	1										
JRW048150520T8	ANCHOR TENSIONING	6/13/12	6/13/12	1										
JRW048150525T8	ANCHOR CAPS - OUTSIDE	6/13/12	6/13/12	1										
JRW048150590T8	PUNCH LIST GAMESA 2.0	6/13/12	6/13/12	1										
JRW026100000T8	TOWER WIRING	6/15/12	6/15/12	1										
DEEP CREEK T10		2/7/12	6/20/12	116										
JRW031701510T8	FOUNDATION EXCAVATION	2/7/12	2/7/12	1										
JRW031701800T8	WIND ENERGY DEWATERING	2/7/12	2/7/12	1										

I FOUNDATION CONDUIT
 I FOUNDATION GROUNDING
 I BACKFILL
 I UNLOAD WTG COMPONENTS GAMESA 2.0
 I COMPONENT WASHING
 I CONTROLLER GAMESA 2.0
 I WIND TURBINE GROUT BASE, EPOXY
 I TOWER SHIM PACK GAMESA 2.0
 I BLADES GAMESA 2.0
 I BOTTOM SECTION GAMESA 2.0
 I BOTTOM-MID SECTION GAMESA 2.0
 I HUB GAMESA 2.0
 I NACELLE GAMESA 2.0
 I METAL STAIRS GAMESA 2.0
 I TOP SECTION GAMESA 2.0
 I MID SECTION GAMESA 2.0
 I TOP-MID SECTION GAMESA 2.0
 I ANCHOR TENSIONING
 I ANCHOR CAPS - OUTSIDE
 I PUNCH LIST GAMESA 2.0
 I TOWER WIRING
 I 6/15/12, DEEP CREEK T9
 I FOUNDATION EXCAVATION
 I WIND ENERGY DEWATERING
 I BARRICADES/TEMP FENCINGS/SIGNS
 I INSTALL P&H FOUNDATION
 I FOUNDATION CONDUIT
 I FOUNDATION GROUNDING
 I BACKFILL
 I UNLOAD WTG COMPONENTS GAMESA 2.0
 I COMPONENT WASHING
 I CONTROLLER GAMESA 2.0
 I WIND TURBINE GROUT BASE, EPOXY
 I TOWER SHIM PACK GAMESA 2.0
 I BLADES GAMESA 2.0
 I BOTTOM SECTION GAMESA 2.0
 I BOTTOM-MID SECTION GAMESA 2.0
 I HUB GAMESA 2.0
 I NACELLE GAMESA 2.0
 I METAL STAIRS GAMESA 2.0
 I TOP SECTION GAMESA 2.0
 I MID SECTION GAMESA 2.0
 I TOP-MID SECTION GAMESA 2.0
 I ANCHOR TENSIONING
 I ANCHOR CAPS - OUTSIDE
 I PUNCH LIST GAMESA 2.0
 I TOWER WIRING
 I 6/20/12, DEEP CREEK T10
 I FOUNDATION EXCAVATION
 I WIND ENERGY DEWATERING

Activity ID	Activity Name	Start	Finish	Original Duration	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
CONTRACT MILESTONES					7/2/12	8/30/12	48												
NBWM50123000	FIRST MAIN COMPONENT DELIVERY		7/2/12	0															
NBWM50125000	ANTICIPATED START OF WTG ERECTION W/MAIN CRAN		7/8/12	0															
NBWM50126000	WTG ERECTION COMPLETION (LAST HUB FLOWN)		8/30/12	0															
NBWM5485000	SUBSTANTIALY COMPLETE		8/30/12	0															
PROJECT MILESTONES					12/19/11	10/1/12	204												
NBWM5010000	NTP		12/19/11	0															
NBWM5013000	FOUNDATIONS BACKFILLED		9/18/12	0															
NBWM5481000	TURBINES COMPLETE		8/30/12	0															
NBWM5260000	COLLECTION SYSTEM COMPLETE		8/30/12	0															
NBWM5486000	BACKFEED POWER		8/30/12	0															
NBWM5018000	FINAL COMPLETION/DEMOLITION		10/1/12	0															
ADMINISTRATIVE					12/19/11	2/15/12	50												
NBWM011000	MOBILIZATION		12/19/11	4															
NBWM010000	GENERAL CONDITIONS		12/19/11	50															
PROCUREMENT					12/2/11	7/2/12	150												
CONSTRUCTION					12/19/11	9/4/12	185												
NBWM032110	TOWER COMPONENTS DELIVERY		7/2/12	1															
SITWORK					12/19/11	8/4/12	185												
NBWM330550	MET TOWER - FOUNDATION		8/1/12	10															
NBWM3301321	INSTALL MET TOWER		8/15/12	50															
NBWM31704035-1	SWPPP PACKAGE - DEVELOP		12/1/11	10															
NBWM31701910-1	ACCESS ROADS - BUILD NEW		12/18/11	12															
NBWM31701310-2	MOBILIZATION COST		12/18/11	1															
NBWM31704010	ROAD CULVERTS AS NEEDED		12/18/11	12															
NBWM31704035-2	SWPPP PACKAGE - IMPLEMENT		12/20/11	15															
NBWM31704035-3	SPCC PACKAGE - DEVELOP		12/20/11	10															
NBWM31704035-4	SPCC PACKAGE - IMPLEMENT		12/20/11	15															
NBWM10145300-1	TEMPORARY SIGNS - ROADS		1/8/12	1															
NBWM31131300-2	CLEAR & GRUB LAYDOWN AREA		1/8/12	8															
NBWM31701315	ROAD APPROACHES		1/8/12	25															
NBWM31701320	ROAD TURNAROUNDS		1/8/12	20															
NBWM31701370	TEMPORARY TURN RADIUS		1/8/12	20															
NBWM31703510	EXCAVATION SPOILS REMOVAL - SUB		1/8/12	15															
NBWM31131300-1	CLEAR & GRUB TURBINE AREA		1/13/12	6															
NBWM31701325	EARTHEN CRANE PADS - INSTALLATION		1/20/12	3															
NBWM31703500-1	TURBINE BASE BEAUTY RING		1/30/12	5															
NBWM31704035-3	DUST ABATEMENT - GENERAL		1/30/12	3															
NBWM10145300-2	PERMANENT SIGNS - ROADS		2/8/12	1															
NBWM31701300-3	TEMPORARY DROP - UTILITY LINE, SINGLE PHASE		7/30/12	3															
NBWM31701300-4	TEMPORARY DROP - UTILITY LINE, THREE PHASE		7/30/12	3															
NBWM31703500-3	AREA CLEANUP & REVEGETATE TURBINE LOCATIONS		8/27/12	7															
NBWM31703500-4	AREA CLEANUP & REVEGETATE LAYDOWN AREA		8/27/12	7															
NBWM31703500-2	RESTORE/RECLAIM EARTHEN CRANE PADS		8/28/12	5															
COLLECTION SYSTEM					8/15/12	8/21/12	71												
MAJOR MATERIALS					8/15/12	7/23/12	60												



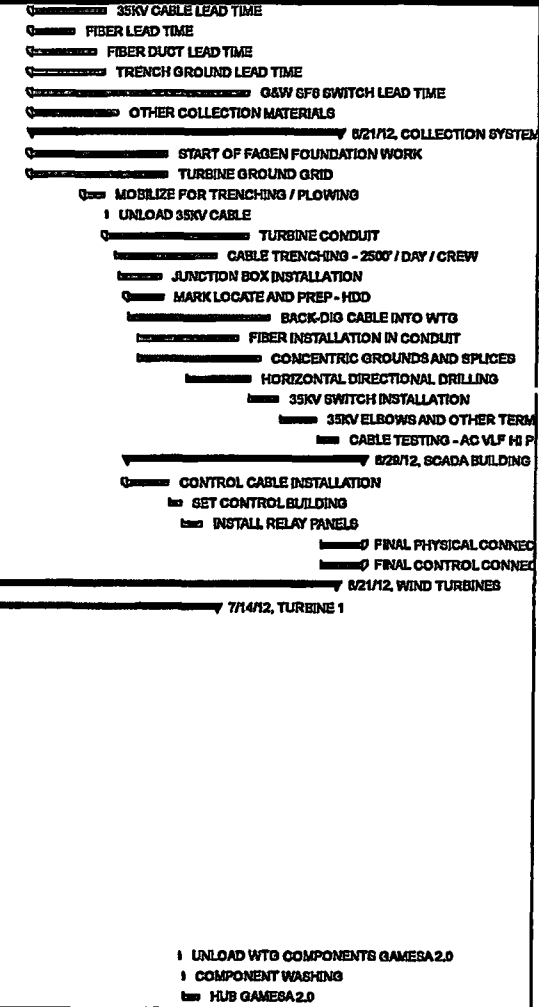
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Current Bar Labels
Milestone
Start Constraint
Finish Constraint
% Complete
Summary

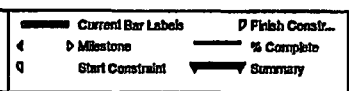


NBWC260006	35KV CABLE LEAD TIME	6/15/12	6/7/12	18
NBWC260007	FIBER LEAD TIME	6/15/12	6/28/12	10
NBWC260008	FIBER DUCT LEAD TIME	6/15/12	6/4/12	15
NBWC260009	TRENCH GROUND LEAD TIME	6/15/12	6/7/12	18
NBWC260010	O&W SFS SWITCH LEAD TIME	6/15/12	7/23/12	60
NBWC260011	OTHER COLLECTION MATERIALS	6/15/12	6/11/12	20
COLLECTION SYSTEM CONSTRUCTION				
NBWC260021	START OF FAGEN FOUNDATION WORK	6/15/12	6/27/12	32
NBWC260022	TURBINE GROUND GRID	6/15/12	6/27/12	32
NBWC260015	MOBILIZE FOR TRENCHING / PLOWING	6/1/12	6/7/12	5
NBWC260016	UNLOAD 35KV CABLE	6/8/12	6/8/12	1
NBWC260023	TURBINE CONDUIT	6/8/12	7/23/12	32
NBWC260017	CABLE TRENCHING - 2500' / DAY / CREW	6/11/12	7/13/12	26
NBWC260020	JUNCTION BOX INSTALLATION	6/12/12	6/25/12	10
NBWC260013	MARK LOCATE AND PREP - HDD	6/15/12	6/25/12	8
NBWC260024	BACK-DIG CABLE INTO WTG	6/15/12	7/30/12	32
NBWC260018	FIBER INSTALLATION IN CONDUIT	6/18/12	7/20/12	25
NBWC260019	CONCENTRIC GROUNDS AND SPLICES	6/18/12	7/21/12	30
NBWC260025	35KV SWITCH INSTALLATION	7/2/12	8/2/12	6
NBWC260026	35KV ELBOWS AND OTHER TERMINATIONS	8/5/12	8/14/12	8
NBWC260027	CABLE TESTING - AC VLF HI POT	8/15/12	8/21/12	5
SCADA BUILDING				
NBWU260050	CONTROL CABLE INSTALLATION	6/15/12	6/28/12	10
NBWU260050	SET CONTROL BUILDING	6/28/12	7/2/12	2
NBWU260070	INSTALL RELAY PANELS	7/3/12	7/9/12	5
NBWU260030	FINAL PHYSICAL CONNECTIONS	8/19/12	8/29/12	10
NBWU260040	FINAL CONTROL CONNECTIONS	8/19/12	8/29/12	10
WIND TURBINES				
TURBINE 1				
NBWS31701610T1	FOUNDATION EXCAVATION	12/23/11	12/28/11	3
NBWS31701900T1	WIND ENERGY DEWATERING	12/23/11	12/23/11	1
NBWS31704035T1	BARRICADES/TEMP FENCING/SIGNS	12/23/11	12/28/11	6
NBWS31702343T1	ENGINEERED FILL	12/27/11	12/27/11	1
NBWS03701311T1	WIND TURBINE SPREAD FOUNDATION, MUD MATS	12/28/11	12/28/11	1
NBWS03701315T1	WIND TURBINE SPREAD FOUNDATION, REBAR	1/17/12	1/17/12	1
NBWS03701320T1	WIND TURBINE SPREAD FOUNDATION, EMBEDS	1/17/12	1/17/12	1
NBWS03701325T1	ANCHOR BOLT TEMPLATE WIND TURBINE	1/17/12	1/17/12	1
NBWS03701335T1	FORM WIND TURBINE SPREAD FOOTING	1/17/12	1/17/12	1
NBWS03701355T1	PUMP PLACE WIND TURBINE SPREAD FOOTING	1/17/12	1/17/12	1
NBWS26053400T1	FOUNDATION CONDUIT	1/17/12	1/17/12	1
NBWS03701325T1	SET WIND TURBINE ANCHOR BOLTS	1/18/12	1/18/12	1
NBWS03701360T1	FORM WIND TURBINE PEDESTAL	1/18/12	1/18/12	1
NBWS03701364T1	PUMP PLACE WIND TURBINE PEDESTAL	1/18/12	1/18/12	1
NBWS26052600T1	FOUNDATION GROUNDING	1/18/12	1/18/12	1
NBWS31702313T1	BACKFILL	1/18/12	1/18/12	1
NBWS48150510T1	UNLOAD WTG COMPONENTS GAMESA 2.0	7/3/12	7/3/12	1
NBWS48150530T1	COMPONENT WASHING	7/4/12	7/4/12	1
NBWS48151330T1	HUB GAMESA 2.0	7/4/12	7/6/12	5



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NBWS48151610T1	NACELLE GAMESA 2.0	7/4/12	7/11/12	1	7
NBWS48152000T1	CONTROLLER GAMESA 2.0	7/4/12	7/4/12	1	1
NBWS03701375T1	WIND TURBINE GROUT BASE, EPOXY	7/5/12	7/5/12	1	1
NBWS48150540T1	TOWER SHIM PACK GAMESA 2.0	7/5/12	7/5/12	1	1
NBWS48151320T1	BLADES GAMESA 2.0	7/5/12	7/8/12	4	4
NBWS48152010T1	BOTTOM SECTION GAMESA 2.0	7/5/12	7/5/12	1	1
NBWS48152020T1	BOTTOM-MID SECTION GAMESA 2.0	7/5/12	7/5/12	1	1
NBWS48152050T1	TOP SECTION GAMESA 2.0	7/5/12	7/5/12	1	1
NBWS48152030T1	MID SECTION GAMESA 2.0	7/5/12	7/5/12	1	1
NBWS48152040T1	TOP-MID SECTION GAMESA 2.0	7/5/12	7/5/12	1	1
NBWS48150520T1	ANCHOR TENSIONING	7/7/12	7/7/12	1	1
NBWS48150525T1	ANCHOR CAPS - OUTSIDE	7/7/12	7/7/12	1	1
NBWS48150535T1	METAL STAIRS GAMESA 2.0	7/8/12	7/8/12	1	1
NBWS48150530T1	PUNCH LIST GAMESA 2.0	7/12/12	7/12/12	1	1
NBWS26100000T1	TOWER WIRING	7/14/12	7/14/12	1	1
TURBINE 2					
NBWS31701510T2	FOUNDATION EXCAVATION	12/28/11	12/30/11	3	3
NBWS31701900T2	WIND ENERGY DEWATERING	12/28/11	12/28/11	1	1
NBWS31704000T2	BARRICADES/TEMP FENCING/SIGNS	12/28/11	1/4/12	7	7
NBWS31702343T2	ENGINEERED FILL	12/31/11	12/31/11	1	1
NBWS03701311T2	WIND TURBINE SPREAD FOUNDATION, MUD MATS	1/7/12	1/7/12	1	1
NBWS03701315T2	WIND TURBINE SPREAD FOUNDATION, REBAR	1/7/12	1/7/12	1	1
NBWS03701320T2	WIND TURBINE SPREAD FOUNDATION, EMBEDS	1/7/12	1/7/12	1	1
NBWS03701326T2	ANCHOR BOLT TEMPLATE WIND TURBINE	1/7/12	1/7/12	1	1
NBWS03701355T2	FORM WIND TURBINE SPREAD FOOTING	1/7/12	1/7/12	1	1
NBWS03701359T2	PUMP PLACE WIND TURBINE SPREAD FOOTING	1/7/12	1/7/12	1	1
NBWS26053400T2	FOUNDATION CONDUIT	1/7/12	1/7/12	1	1
NBWS03701325T2	SET WIND TURBINE ANCHOR BOLTS	1/18/12	1/18/12	1	1
NBWS03701360T2	FORM WIND TURBINE PEDESTAL	1/18/12	1/18/12	1	1
NBWS03701364T2	PUMP PLACE WIND TURBINE PEDESTAL	1/18/12	1/18/12	1	1
NBWS26052600T2	FOUNDATION GROUNDING	1/18/12	1/18/12	1	1
NBWS31702313T2	BACKFILL	1/18/12	1/18/12	1	1
NBWS48150510T2	UNLOAD WTG COMPONENTS GAMESA 2.0	7/4/12	7/4/12	1	1
NBWS48150530T2	COMPONENT WASHING	7/5/12	7/5/12	1	1
NBWS48152000T2	CONTROLLER GAMESA 2.0	7/5/12	7/5/12	1	1
NBWS03701375T2	WIND TURBINE GROUT BASE, EPOXY	7/5/12	7/5/12	1	1
NBWS48150540T2	TOWER SHIM PACK GAMESA 2.0	7/5/12	7/5/12	1	1
NBWS48151320T2	BLADES GAMESA 2.0	7/5/12	7/10/12	4	4
NBWS48152010T2	BOTTOM SECTION GAMESA 2.0	7/5/12	7/5/12	1	1
NBWS48152020T2	BOTTOM-MID SECTION GAMESA 2.0	7/5/12	7/5/12	1	1
NBWS48151330T2	HUB GAMESA 2.0	7/8/12	7/13/12	5	5
NBWS48151610T2	NACELLE GAMESA 2.0	7/8/12	7/18/12	7	7
NBWS48150535T2	METAL STAIRS GAMESA 2.0	7/13/12	7/13/12	1	1
NBWS48152050T2	TOP SECTION GAMESA 2.0	7/13/12	7/13/12	1	1
NBWS48152030T2	MID SECTION GAMESA 2.0	7/13/12	7/13/12	1	1
NBWS48152040T2	TOP-MID SECTION GAMESA 2.0	7/13/12	7/13/12	1	1
NBWS48150520T2	ANCHOR TENSIONING	7/14/12	7/14/12	1	1
NBWS48150525T2	ANCHOR CAPS - OUTSIDE	7/14/12	7/14/12	1	1
NBWS48150530T2	PUNCH LIST GAMESA 2.0	7/17/12	7/17/12	1	1
NBWS26100000T2	TOWER WIRING	7/18/12	7/18/12	1	1

NACELLE GAMESA 2.0	
CONTROLLER GAMESA 2.0	
WIND TURBINE GROUT BASE, EPOXY	
TOWER SHIM PACK GAMESA 2.0	
BLADES GAMESA 2.0	
BOTTOM SECTION GAMESA 2.0	
BOTTOM-MID SECTION GAMESA 2.0	
TOP SECTION GAMESA 2.0	
MID SECTION GAMESA 2.0	
TOP-MID SECTION GAMESA 2.0	
ANCHOR TENSIONING	
ANCHOR CAPS - OUTSIDE	
METAL STAIRS GAMESA 2.0	
PUNCH LIST GAMESA 2.0	
TOWER WIRING	
7/18/12, TURBINE 2	
FOUNDATION EXCAVATION	
WIND ENERGY DEWATERING	
BARRICADES/TEMP FENCING/SIGNS	
ENGINEERED FILL	
WIND TURBINE SPREAD FOUNDATION, MUD MATS	
WIND TURBINE SPREAD FOUNDATION, REBAR	
WIND TURBINE SPREAD FOUNDATION, EMBEDS	
ANCHOR BOLT TEMPLATE WIND TURBINE	
FORM WIND TURBINE SPREAD FOOTING	
PUMP PLACE WIND TURBINE SPREAD FOOTING	
FOUNDATION CONDUIT	
SET WIND TURBINE ANCHOR BOLTS	
FORM WIND TURBINE PEDESTAL	
PUMP PLACE WIND TURBINE PEDESTAL	
FOUNDATION GROUNDING	
BACKFILL	
UNLOAD WTG COMPONENTS GAMESA 2.0	
COMPONENT WASHING	
CONTROLLER GAMESA 2.0	
WIND TURBINE GROUT BASE, EPOXY	
TOWER SHIM PACK GAMESA 2.0	
BLADES GAMESA 2.0	
BOTTOM SECTION GAMESA 2.0	
BOTTOM-MID SECTION GAMESA 2.0	
HUB GAMESA 2.0	
NACELLE GAMESA 2.0	
METAL STAIRS GAMESA 2.0	
TOP SECTION GAMESA 2.0	
MID SECTION GAMESA 2.0	
TOP-MID SECTION GAMESA 2.0	
ANCHOR TENSIONING	
ANCHOR CAPS - OUTSIDE	
PUNCH LIST GAMESA 2.0	
TOWER WIRING	



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Current Bar Labels Finish Constr...
 Milestone % Complete
 Start Constraint Summary



Activity ID	Activity Name	Start	Finish	Original Dur. (min)
TURBINE 3				
NEWSS1701510T3	FOUNDATION EXCAVATION	1/27/12	7/24/12	178
NEWSS1701900T3	WIND ENERGY DEWATERING	1/27/12	1/27/12	9
NEWSS1702343T3	ENGINEERED FILL	1/27/12	1/27/12	1
NEWSS1704035T3	BARRICADES/TEMP FENCINGS/SIGNS	1/27/12	1/8/12	7
NEWSS0370131T3	WIND TURBINE SPREAD FOUNDATION, MUD MATS	1/3/12	1/3/12	1
NEWSS03701315T3	WIND TURBINE SPREAD FOUNDATION, REBAR	1/17/12	1/17/12	1
NEWSS03701320T3	WIND TURBINE SPREAD FOUNDATION, EMBEDS	1/17/12	1/17/12	1
NEWSS03701326T3	ANCHOR BOLT TEMPLATE WIND TURBINE	1/17/12	1/17/12	1
NEWSS03701335T3	FORM WIND TURBINE SPREAD FOOTING	1/17/12	1/17/12	1
NEWSS03701339T3	PUMP PLACE WIND TURBINE SPREAD FOOTING	1/17/12	1/17/12	1
NEWSS26053400T3	FOUNDATION CONDUIT	1/17/12	1/17/12	1
NEWSS03701325T3	SET WIND TURBINE ANCHOR BOLTS	1/18/12	1/18/12	1
NEWSS03701360T3	FORM WIND TURBINE PEDESTAL	1/18/12	1/18/12	1
NEWSS03701364T3	PUMP PLACE WIND TURBINE PEDESTAL	1/18/12	1/18/12	1
NEWSS26052600T3	FOUNDATION GROUNDING	1/18/12	1/18/12	1
NEWSS1702313T3	BACKFILL	1/18/12	1/18/12	1
NEWSS48150510T3	UNLOAD WTG COMPONENTS GAMESA 2.0	7/5/12	7/5/12	1
NEWSS48150530T3	COMPONENT WASHING	7/8/12	7/8/12	1
NEWSS48152000T3	CONTROLLER GAMESA 2.0	7/8/12	7/8/12	1
NEWSS03701375T3	WIND TURBINE GROUT BASE, EPOXY	7/7/12	7/7/12	1
NEWSS48150540T3	TOWER SHIM PACK GAMESA 2.0	7/7/12	7/7/12	1
NEWSS48151320T3	BLADES GAMESA 2.0	7/7/12	7/7/12	4
NEWSS48152010T3	BOTTOM SECTION GAMESA 2.0	7/7/12	7/7/12	1
NEWSS48152020T3	BOTTOM-MID SECTION GAMESA 2.0	7/7/12	7/7/12	1
NEWSS48151330T3	HUB GAMESA 2.0	7/13/12	7/13/12	6
NEWSS48151010T3	NACELLE GAMESA 2.0	7/13/12	7/20/12	7
NEWSS48150535T3	METAL STAIRS GAMESA 2.0	7/18/12	7/18/12	1
NEWSS48152050T3	TOP SECTION GAMESA 2.0	7/18/12	7/18/12	1
NEWSS48152030T3	MID SECTION GAMESA 2.0	7/18/12	7/18/12	1
NEWSS48152040T3	TOP-MID SECTION GAMESA 2.0	7/18/12	7/18/12	1
NEWSS48150520T3	ANCHOR TENSIONING	7/18/12	7/18/12	1
NEWSS48150525T3	ANCHOR CAPS - OUTSIDE	7/18/12	7/18/12	1
NEWSS48150530T3	PUNCH LIST GAMESA 2.0	7/21/12	7/21/12	1
NEWSS26100000T3	TOWER WIRING	7/24/12	7/24/12	1
TURBINE 4				
NEWSS1701510T4	FOUNDATION EXCAVATION	1/8/12	1/8/12	3
NEWSS1701900T4	WIND ENERGY DEWATERING	1/8/12	1/8/12	1
NEWSS1704035T4	BARRICADES/TEMP FENCINGS/SIGNS	1/8/12	1/13/12	7
NEWSS1702343T4	ENGINEERED FILL	1/10/12	1/10/12	1
NEWSS0370131T4	WIND TURBINE SPREAD FOUNDATION, MUD MATS	1/11/12	1/11/12	1
NEWSS03701315T4	WIND TURBINE SPREAD FOUNDATION, REBAR	1/17/12	1/17/12	1
NEWSS03701320T4	WIND TURBINE SPREAD FOUNDATION, EMBEDS	1/17/12	1/17/12	1
NEWSS03701326T4	ANCHOR BOLT TEMPLATE WIND TURBINE	1/17/12	1/17/12	1
NEWSS03701335T4	FORM WIND TURBINE SPREAD FOOTING	1/17/12	1/17/12	1
NEWSS03701339T4	PUMP PLACE WIND TURBINE SPREAD FOOTING	1/17/12	1/17/12	1
NEWSS26053400T4	FOUNDATION CONDUIT	1/17/12	1/17/12	1
NEWSS03701325T4	SET WIND TURBINE ANCHOR BOLTS	1/18/12	1/18/12	1
NEWSS03701360T4	FORM WIND TURBINE PEDESTAL	1/18/12	1/18/12	1
NEWSS03701364T4	PUMP PLACE WIND TURBINE PEDESTAL	1/18/12	1/18/12	1

- FOUNDATION EXCAVATION
- WIND ENERGY DEWATERING
- ENGINEERED FILL
- BARRICADES/TEMP FENCINGS/SIGNS
- WIND TURBINE SPREAD FOUNDATION, MUD MATS
- WIND TURBINE SPREAD FOUNDATION, REBAR
- WIND TURBINE SPREAD FOUNDATION, EMBEDS
- ANCHOR BOLT TEMPLATE WIND TURBINE
- FORM WIND TURBINE SPREAD FOOTING
- PUMP PLACE WIND TURBINE SPREAD FOOTING
- FOUNDATION CONDUIT
- SET WIND TURBINE ANCHOR BOLTS
- FORM WIND TURBINE PEDESTAL
- PUMP PLACE WIND TURBINE PEDESTAL
- FOUNDATION GROUNDING
- BACKFILL
- UNLOAD WTG COMPONENTS GAMESA 2.0
- COMPONENT WASHING
- CONTROLLER GAMESA 2.0
- WIND TURBINE GROUT BASE, EPOXY
- TOWER SHIM PACK GAMESA 2.0
- BLADES GAMESA 2.0
- BOTTOM SECTION GAMESA 2.0
- BOTTOM-MID SECTION GAMESA 2.0
- HUB GAMESA 2.0
- NACELLE GAMESA 2.0
- METAL STAIRS GAMESA 2.0
- TOP SECTION GAMESA 2.0
- MID SECTION GAMESA 2.0
- TOP-MID SECTION GAMESA 2.0
- ANCHOR TENSIONING
- ANCHOR CAPS - OUTSIDE
- PUNCH LIST GAMESA 2.0
- TOWER WIRING

- FOUNDATION EXCAVATION
- WIND ENERGY DEWATERING
- BARRICADES/TEMP FENCINGS/SIGNS
- ENGINEERED FILL
- WIND TURBINE SPREAD FOUNDATION, MUD MATS
- WIND TURBINE SPREAD FOUNDATION, REBAR
- WIND TURBINE SPREAD FOUNDATION, EMBEDS
- ANCHOR BOLT TEMPLATE WIND TURBINE
- FORM WIND TURBINE SPREAD FOOTING
- PUMP PLACE WIND TURBINE SPREAD FOOTING
- FOUNDATION CONDUIT
- SET WIND TURBINE ANCHOR BOLTS
- FORM WIND TURBINE PEDESTAL
- PUMP PLACE WIND TURBINE PEDESTAL



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NEWS26052600T4	FOUNDATION GROUNDING	1/18/12	1/18/12	1
NEWS31702313T4	BACKFILL	1/18/12	1/18/12	1
NEWS48150010T4	SET-UP TOP OUT CRANE	1/20/12	1/25/12	6
NEWS48150510T4	UNLOAD WTG COMPONENTS GAMESA 2.0	7/8/12	7/8/12	1
NEWS48150530T4	COMPONENT WASHING	7/7/12	7/7/12	1
NEWS48152000T4	CONTROLLER GAMESA 2.0	7/7/12	7/7/12	1
NEWS03701375T4	WIND TURBINE GROUT BASE, EPOXY	7/8/12	7/8/12	1
NEWS48150540T4	TOWER SHIM PACK GAMESA 2.0	7/8/12	7/8/12	1
NEWS48151320T4	BLADES GAMESA 2.0	7/8/12	7/12/12	4
NEWS48152010T4	BOTTOM SECTION GAMESA 2.0	7/8/12	7/8/12	1
NEWS48152020T4	BOTTOM-MID SECTION GAMESA 2.0	7/8/12	7/8/12	1
NEWS48151330T4	HUB GAMESA 2.0	7/18/12	7/23/12	5
NEWS48151610T4	NACELLE GAMESA 2.0	7/18/12	7/23/12	7
NEWS48150535T4	METAL STAIRS GAMESA 2.0	7/23/12	7/23/12	1
NEWS48152050T4	TOP SECTION GAMESA 2.0	7/23/12	7/23/12	1
NEWS48152030T4	MID SECTION GAMESA 2.0	7/23/12	7/23/12	1
NEWS48152040T4	TOP-MID SECTION GAMESA 2.0	7/23/12	7/23/12	1
NEWS48150520T4	ANCHOR TENSIONING	7/24/12	7/24/12	1
NEWS48150525T4	ANCHOR CAPS - OUTSIDE	7/24/12	7/24/12	1
NEWS48150580T4	PUNCH LIST GAMESA 2.0	7/28/12	7/28/12	1
NEWS28100000T4	TOWER WIRING	7/28/12	7/28/12	1
TURBINE 5				
NEWS31701810T5	FOUNDATION EXCAVATION	1/11/12	1/13/12	3
NEWS31701900T5	WIND ENERGY DEWATERING	1/11/12	1/11/12	1
NEWS31704035T5	BARRICADES/TEMP FENCING/SIGNS	1/11/12	1/17/12	6
NEWS31702343T5	ENGINEERED FILL	1/14/12	1/14/12	1
NEWS03701311T5	WIND TURBINE SPREAD FOUNDATION, MUD MATS	1/18/12	1/18/12	1
NEWS03701315T5	WIND TURBINE SPREAD FOUNDATION, REBAR	1/17/12	1/17/12	1
NEWS03701320T5	WIND TURBINE SPREAD FOUNDATION, EMBEDS	1/17/12	1/17/12	1
NEWS03701328T5	ANCHOR BOLT TEMPLATE WIND TURBINE	1/17/12	1/17/12	1
NEWS03701353T5	FORM WIND TURBINE SPREAD FOOTING	1/17/12	1/17/12	1
NEWS03701359T5	PUMP PLACE WIND TURBINE SPREAD FOOTING	1/17/12	1/17/12	1
NEWS28053400T5	FOUNDATION CONDUIT	1/17/12	1/17/12	1
NEWS03701325T5	SET WIND TURBINE ANCHOR BOLTS	1/18/12	1/18/12	1
NEWS03701360T5	FORM WIND TURBINE PEDESTAL	1/18/12	1/18/12	1
NEWS03701384T5	PUMP PLACE WIND TURBINE PEDESTAL	1/18/12	1/18/12	1
NEWS26052600T5	FOUNDATION GROUNDING	1/18/12	1/18/12	1
NEWS31702313T5	BACKFILL	1/18/12	1/18/12	1
NEWS48150510T5	UNLOAD WTG COMPONENTS GAMESA 2.0	7/7/12	7/7/12	1
NEWS48150530T5	COMPONENT WASHING	7/8/12	7/8/12	1
NEWS48152000T5	CONTROLLER GAMESA 2.0	7/8/12	7/8/12	1
NEWS03701375T5	WIND TURBINE GROUT BASE, EPOXY	7/10/12	7/10/12	1
NEWS48150540T5	TOWER SHIM PACK GAMESA 2.0	7/10/12	7/10/12	1
NEWS48151320T5	BLADES GAMESA 2.0	7/10/12	7/13/12	4
NEWS48152010T5	BOTTOM SECTION GAMESA 2.0	7/10/12	7/10/12	1
NEWS48152020T5	BOTTOM-MID SECTION GAMESA 2.0	7/10/12	7/10/12	1
NEWS48151330T5	HUB GAMESA 2.0	7/23/12	7/27/12	6
NEWS48151610T5	NACELLE GAMESA 2.0	7/23/12	7/30/12	7
NEWS48150535T5	METAL STAIRS GAMESA 2.0	7/27/12	7/27/12	1
NEWS48152050T5	TOP SECTION GAMESA 2.0	7/27/12	7/27/12	1

FOUNDATION GROUNDING
BACKFILL
SET-UP TOP OUT CRANE
UNLOAD WTG COMPONENTS GAMESA 2.0
COMPONENT WASHING
CONTROLLER GAMESA 2.0
WIND TURBINE GROUT BASE, EPOXY
TOWER SHIM PACK GAMESA 2.0
BLADES GAMESA 2.0
BOTTOM SECTION GAMESA 2.0
BOTTOM-MID SECTION GAMESA 2.0
HUB GAMESA 2.0
NACELLE GAMESA 2.0
METAL STAIRS GAMESA 2.0
TOP SECTION GAMESA 2.0
MID SECTION GAMESA 2.0
TOP-MID SECTION GAMESA 2.0
ANCHOR TENSIONING
ANCHOR CAPS - OUTSIDE
PUNCH LIST GAMESA 2.0
TOWER WIRING
8/2/12, TURBINE 5
FOUNDATION EXCAVATION
WIND ENERGY DEWATERING
BARRICADES/TEMP FENCING/SIGNS
ENGINEERED FILL
WIND TURBINE SPREAD FOUNDATION, MUD MATS
WIND TURBINE SPREAD FOUNDATION, REBAR
WIND TURBINE SPREAD FOUNDATION, EMBEDS
ANCHOR BOLT TEMPLATE WIND TURBINE
FORM WIND TURBINE SPREAD FOOTING
PUMP PLACE WIND TURBINE SPREAD FOOTING
FOUNDATION CONDUIT
SET WIND TURBINE ANCHOR BOLTS
FORM WIND TURBINE PEDESTAL
PUMP PLACE WIND TURBINE PEDESTAL
FOUNDATION GROUNDING
BACKFILL
UNLOAD WTG COMPONENTS GAMESA 2.0
COMPONENT WASHING
CONTROLLER GAMESA 2.0
WIND TURBINE GROUT BASE, EPOXY
TOWER SHIM PACK GAMESA 2.0
BLADES GAMESA 2.0
BOTTOM SECTION GAMESA 2.0
BOTTOM-MID SECTION GAMESA 2.0
HUB GAMESA 2.0
NACELLE GAMESA 2.0
METAL STAIRS GAMESA 2.0
TOP SECTION GAMESA 2.0



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NBWS48152030T5	MID SECTION GAMESA 2.0	7/27/12	7/27/12	1
NBWS48152040T5	TOP-MID SECTION GAMESA 2.0	7/27/12	7/27/12	1
NBWS48150520T5	ANCHOR TENSIONING	7/28/12	7/28/12	1
NBWS48150525T5	ANCHOR CAPS - OUTSIDE	7/28/12	7/28/12	1
NBWS48150530T5	PUNCH LIST GAMESA 2.0	7/31/12	7/31/12	1
NBWS26100000T5	TOWER WIRING	8/27/12	8/27/12	1
TURBINE 6				
NBWS31701510T8	FOUNDATION EXCAVATION	1/16/12	1/16/12	3
NBWS31701900T8	WIND ENERGY DEWATERING	1/16/12	1/16/12	1
NBWS31704035T8	BARRICADES/TEMP FENCING/SIGNS	1/18/12	1/21/12	6
NBWS31702437T5	ENGINEERED FILL	1/18/12	1/19/12	1
NBWS03701311T8	WIND TURBINE SPREAD FOUNDATION, MUD MATS	1/20/12	1/20/12	1
NBWS03701315T8	WIND TURBINE SPREAD FOUNDATION, REBAR	1/21/12	1/21/12	1
NBWS03701320T8	WIND TURBINE SPREAD FOUNDATION, EMBEDS	1/21/12	1/21/12	1
NBWS03701326T8	ANCHOR BOLT TEMPLATE WIND TURBINE	1/21/12	1/21/12	1
NBWS03701335T8	FORM WIND TURBINE SPREAD FOOTING	1/21/12	1/21/12	1
NBWS03701358T8	PUMP PLACE WIND TURBINE SPREAD FOOTING	1/21/12	1/21/12	1
NBWS26053400T8	FOUNDATION CONDUIT	1/21/12	1/21/12	1
NBWS03701359T8	SET WIND TURBINE ANCHOR BOLTS	1/23/12	1/23/12	1
NBWS03701380T8	FORM WIND TURBINE PEDESTAL	1/23/12	1/23/12	1
NBWS03701384T8	PUMP PLACE WIND TURBINE PEDESTAL	1/23/12	1/23/12	1
NBWS26052600T8	FOUNDATION GROUNDING	1/23/12	1/23/12	1
NBWS31702313T8	BACKFILL	1/24/12	1/24/12	1
NBWS48150510T6	UNLOAD WTG COMPONENTS GAMESA 2.0	7/8/12	7/8/12	1
NBWS48150530T6	COMPONENT WASHING	7/10/12	7/10/12	1
NBWS48152000T6	CONTROLLER GAMESA 2.0	7/10/12	7/10/12	1
NBWS03701375T8	WIND TURBINE GROUT BASE, EPOXY	7/11/12	7/11/12	1
NBWS48150540T6	TOWER SHEM PACK GAMESA 2.0	7/11/12	7/11/12	1
NBWS48151320T6	BLADES GAMESA 2.0	7/11/12	7/14/12	4
NBWS48152010T6	BOTTOM SECTION GAMESA 2.0	7/11/12	7/11/12	1
NBWS48152020T6	BOTTOM-MID SECTION GAMESA 2.0	7/11/12	7/11/12	1
NBWS48151330T6	HUB GAMESA 2.0	7/27/12	8/7/12	5
NBWS48151610T6	NACELLE GAMESA 2.0	7/27/12	8/3/12	7
NBWS48150535T6	METAL STAIRS GAMESA 2.0	8/1/12	8/1/12	1
NBWS48152050T6	TOP SECTION GAMESA 2.0	8/1/12	8/1/12	1
NBWS48152030T6	MID SECTION GAMESA 2.0	8/1/12	8/1/12	1
NBWS48152040T6	TOP-MID SECTION GAMESA 2.0	8/1/12	8/1/12	1
NBWS48150520T6	ANCHOR TENSIONING	8/2/12	8/2/12	1
NBWS48150525T6	ANCHOR CAPS - OUTSIDE	8/2/12	8/2/12	1
NBWS48150530T6	PUNCH LIST GAMESA 2.0	8/4/12	8/4/12	1
NBWS26100000T6	TOWER WIRING	8/7/12	8/7/12	1
TURBINE 7				
NBWS31701510T7	FOUNDATION EXCAVATION	1/20/12	1/23/12	3
NBWS31701800T7	WIND ENERGY DEWATERING	1/20/12	1/20/12	1
NBWS31704035T7	BARRICADES/TEMP FENCING/SIGNS	1/20/12	1/25/12	6
NBWS31702437T7	ENGINEERED FILL	1/24/12	1/24/12	1
NBWS03701311T7	WIND TURBINE SPREAD FOUNDATION, MUD MATS	1/25/12	1/25/12	1
NBWS03701315T7	WIND TURBINE SPREAD FOUNDATION, REBAR	1/26/12	1/26/12	1
NBWS03701320T7	WIND TURBINE SPREAD FOUNDATION, EMBEDS	1/26/12	1/26/12	1
NBWS03701326T7	ANCHOR BOLT TEMPLATE WIND TURBINE	1/26/12	1/26/12	1

- 1 MID SECTION GAMESA 2.0
- 1 TOP-MID SECTION GAMESA 2.0
- 1 ANCHOR TENSIONING
- 1 ANCHOR CAPS - OUTSIDE
- 1 PUNCH LIST GAMESA 2.0
- 1 TOWER WIRING
- 3 FOUNDATION EXCAVATION
- 1 WIND ENERGY DEWATERING
- 6 BARRICADES/TEMP FENCING/SIGNS
- 1 ENGINEERED FILL
- 1 WIND TURBINE SPREAD FOUNDATION, MUD MATS
- 1 WIND TURBINE SPREAD FOUNDATION, REBAR
- 1 WIND TURBINE SPREAD FOUNDATION, EMBEDS
- 1 ANCHOR BOLT TEMPLATE WIND TURBINE
- 1 FORM WIND TURBINE SPREAD FOOTING
- 1 PUMP PLACE WIND TURBINE SPREAD FOOTING
- 1 FOUNDATION CONDUIT
- 1 SET WIND TURBINE ANCHOR BOLTS
- 1 FORM WIND TURBINE PEDESTAL
- 1 PUMP PLACE WIND TURBINE PEDESTAL
- 1 FOUNDATION GROUNDING
- 1 BACKFILL
- 1 UNLOAD WTG COMPONENTS GAMESA 2.0
- 1 COMPONENT WASHING
- 1 CONTROLLER GAMESA 2.0
- 1 WIND TURBINE GROUT BASE, EPOXY
- 1 TOWER SHEM PACK GAMESA 2.0
- 4 BLADES GAMESA 2.0
- 1 BOTTOM SECTION GAMESA 2.0
- 1 BOTTOM-MID SECTION GAMESA 2.0
- 5 HUB GAMESA 2.0
- 7 NACELLE GAMESA 2.0
- 1 METAL STAIRS GAMESA 2.0
- 1 TOP SECTION GAMESA 2.0
- 1 MID SECTION GAMESA 2.0
- 1 TOP-MID SECTION GAMESA 2.0
- 1 ANCHOR TENSIONING
- 1 ANCHOR CAPS - OUTSIDE
- 1 PUNCH LIST GAMESA 2.0
- 1 TOWER WIRING
- 3 FOUNDATION EXCAVATION
- 1 WIND ENERGY DEWATERING
- 6 BARRICADES/TEMP FENCING/SIGNS
- 1 ENGINEERED FILL
- 1 WIND TURBINE SPREAD FOUNDATION, MUD MATS
- 1 WIND TURBINE SPREAD FOUNDATION, REBAR
- 1 WIND TURBINE SPREAD FOUNDATION, EMBEDS
- 1 ANCHOR BOLT TEMPLATE WIND TURBINE



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NBWS0370135577	FORM WIND TURBINE SPREAD FOOTING	1/28/12	1/28/12	1
NBWS0370135977	PUMP PLACE WIND TURBINE SPREAD FOOTING	1/28/12	1/28/12	1
NBWS2605340077	FOUNDATION CONDUIT	1/28/12	1/28/12	1
NBWS0370132577	SET WIND TURBINE ANCHOR BOLTS	1/27/12	1/27/12	1
NBWS0370136077	FORM WIND TURBINE PEDESTAL	1/27/12	1/27/12	1
NBWS0370136477	PUMP PLACE WIND TURBINE PEDESTAL	1/27/12	1/27/12	1
NBWS2605260077	FOUNDATION GROUNDING	1/27/12	1/27/12	1
NBWS3170231577	BACKFILL	1/28/12	1/28/12	1
NBWS4815051077	UNLOAD WTG COMPONENTS GAMESA 2.0	7/10/12	7/10/12	1
NBWS4815053077	COMPONENT WASHING	7/11/12	7/11/12	1
NBWS4815200077	CONTROLLER GAMESA 2.0	7/11/12	7/11/12	1
NBWS0370137577	WIND TURBINE GROUT BASE, EPOXY	7/12/12	7/12/12	1
NBWS4815054077	TOWER SHIM PACK GAMESA 2.0	7/12/12	7/12/12	1
NBWS4815132077	BLADES GAMESA 2.0	7/16/12	7/16/12	4
NBWS4815201077	BOTTOM SECTION GAMESA 2.0	7/12/12	7/12/12	1
NBWS4815202077	BOTTOM-MID SECTION GAMESA 2.0	7/12/12	7/12/12	1
NBWS4815133077	HUB GAMESA 2.0	8/1/12	8/8/12	6
NBWS4815161077	NACELLE GAMESA 2.0	8/1/12	8/8/12	7
NBWS4815265077	TOP SECTION GAMESA 2.0	8/6/12	8/6/12	1
NBWS4815243077	MID SECTION GAMESA 2.0	8/6/12	8/6/12	1
NBWS4815204077	TOP-MID SECTION GAMESA 2.0	8/6/12	8/6/12	1
NBWS4815052077	ANCHOR TENSIONING	8/7/12	8/7/12	1
NBWS4815052577	ANCHOR CAPS - OUTSIDE	8/7/12	8/7/12	1
NBWS4815053077	PUNCH LIST GAMESA 2.0	8/8/12	8/8/12	1
NBWS2610000077	TOWER WIRING	8/11/12	8/11/12	1
TURBINE 8				
NBWS3170151078	FOUNDATION EXCAVATION	1/25/12	1/27/12	3
NBWS3170180078	WIND ENERGY DEWATERING	1/25/12	1/25/12	1
NBWS3170403578	BARRICADES/TEMP FENCING/SIGNS	1/25/12	1/31/12	6
NBWS3170234378	ENGINEERED FILL	1/28/12	1/28/12	1
NBWS0370131178	WIND TURBINE SPREAD FOUNDATION, MUD MATS	1/30/12	1/30/12	1
NBWS0370131578	WIND TURBINE SPREAD FOUNDATION, REBAR	1/31/12	1/31/12	1
NBWS0370132078	WIND TURBINE SPREAD FOUNDATION, EMBEDS	1/31/12	1/31/12	1
NBWS0370132878	ANCHOR BOLT TEMPLATE WIND TURBINE	1/31/12	1/31/12	1
NBWS0370135578	FORM WIND TURBINE SPREAD FOOTING	1/31/12	1/31/12	1
NBWS0370135978	PUMP PLACE WIND TURBINE SPREAD FOOTING	1/31/12	1/31/12	1
NBWS2605340078	FOUNDATION CONDUIT	1/31/12	1/31/12	1
NBWS0370132578	SET WIND TURBINE ANCHOR BOLTS	2/1/12	2/1/12	1
NBWS0370136078	FORM WIND TURBINE PEDESTAL	2/1/12	2/1/12	1
NBWS0370136478	PUMP PLACE WIND TURBINE PEDESTAL	2/1/12	2/1/12	1
NBWS2605260078	FOUNDATION GROUNDING	2/1/12	2/1/12	1
NBWS3170231578	BACKFILL	2/2/12	2/2/12	1
NBWS4815051078	UNLOAD WTG COMPONENTS GAMESA 2.0	7/11/12	7/11/12	1
NBWS4815053078	COMPONENT WASHING	7/12/12	7/12/12	1
NBWS4815200078	CONTROLLER GAMESA 2.0	7/12/12	7/12/12	1
NBWS0370137578	WIND TURBINE GROUT BASE, EPOXY	7/13/12	7/13/12	1
NBWS4815054078	TOWER SHIM PACK GAMESA 2.0	7/13/12	7/13/12	1
NBWS4815132078	BLADES GAMESA 2.0	7/13/12	7/17/12	4
NBWS4815201078	BOTTOM SECTION GAMESA 2.0	7/13/12	7/13/12	1

- FORM WIND TURBINE SPREAD FOOTING
- PUMP PLACE WIND TURBINE SPREAD FOOTING
- FOUNDATION CONDUIT
- SET WIND TURBINE ANCHOR BOLTS
- FORM WIND TURBINE PEDESTAL
- PUMP PLACE WIND TURBINE PEDESTAL
- FOUNDATION GROUNDING
- BACKFILL
- UNLOAD WTG COMPONENTS GAMESA 2.0
- COMPONENT WASHING
- CONTROLLER GAMESA 2.0
- WIND TURBINE GROUT BASE, EPOXY
- TOWER SHIM PACK GAMESA 2.0
- BLADES GAMESA 2.0
- BOTTOM SECTION GAMESA 2.0
- BOTTOM-MID SECTION GAMESA 2.0
- HUB GAMESA 2.0
- NACELLE GAMESA 2.0
- LETTAI STAIRS GAMESA 2.0
- TOP SECTION GAMESA 2.0
- MID SECTION GAMESA 2.0
- TOP-MID SECTION GAMESA 2.0
- ANCHOR TENSIONING
- ANCHOR CAPS - OUTSIDE
- PUNCH LIST GAMESA 2.0
- TOWER WIRING
- FOUNDATION EXCAVATION
- WIND ENERGY DEWATERING
- BARRICADES/TEMP FENCING/SIGNS
- ENGINEERED FILL
- WIND TURBINE SPREAD FOUNDATION, MUD MATS
- WIND TURBINE SPREAD FOUNDATION, REBAR
- WIND TURBINE SPREAD FOUNDATION, EMBEDS
- ANCHOR BOLT TEMPLATE WIND TURBINE
- FORM WIND TURBINE SPREAD FOOTING
- PUMP PLACE WIND TURBINE SPREAD FOOTING
- FOUNDATION CONDUIT
- SET WIND TURBINE ANCHOR BOLTS
- FORM WIND TURBINE PEDESTAL
- PUMP PLACE WIND TURBINE PEDESTAL
- FOUNDATION GROUNDING
- BACKFILL
- UNLOAD WTG COMPONENTS GAMESA 2.0
- COMPONENT WASHING
- CONTROLLER GAMESA 2.0
- WIND TURBINE GROUT BASE, EPOXY
- TOWER SHIM PACK GAMESA 2.0
- BLADES GAMESA 2.0
- BOTTOM SECTION GAMESA 2.0



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 Milestone % Complete
 Start Constraint Summary



Activity ID	Activity Name	Start	Finish	Original Duration
NBWS48152020TB	BOTTOM-MID SECTION GAMESA 2.0	7/13/12	7/13/12	1
NBWS48151530TB	HUB GAMESA 2.0	8/8/12	8/10/12	3
NBWS48151610TB	NACELLE GAMESA 2.0	8/8/12	8/13/12	7
NBWS48150535TB	METAL STAIRS GAMESA 2.0	8/10/12	8/10/12	1
NBWS48152050TB	TOP SECTION GAMESA 2.0	8/10/12	8/10/12	1
NBWS48152030TB	MID SECTION GAMESA 2.0	8/10/12	8/10/12	1
NBWS48152040TB	TOP-MID SECTION GAMESA 2.0	8/10/12	8/10/12	1
NBWS48150520TB	ANCHOR TENSIONING	8/11/12	8/11/12	1
NBWS48150525TB	ANCHOR CAPS - OUTSIDE	8/11/12	8/11/12	1
NBWS48150590TB	PUNCH LIST GAMESA 2.0	8/14/12	8/14/12	1
NBWS26100000TB	TOWER WIRING	8/18/12	8/18/12	1
TURBINE 9				
NBWS31701510TB	FOUNDATION EXCAVATION	1/30/12	2/1/12	178
NBWS31701900TB	WIND ENERGY DEWATERING	1/30/12	2/1/12	3
NBWS31704035TB	BARRICADES/TEMP FENCING/SIGNS	1/30/12	2/4/12	6
NBWS31702343TB	ENGINEERED FILL	2/27/12	2/27/12	1
NBWS33701311TB	WIND TURBINE SPREAD FOUNDATION, MUD MATS	2/3/12	2/3/12	1
NBWS33701315TB	WIND TURBINE SPREAD FOUNDATION, REBAR	2/4/12	2/4/12	1
NBWS33701320TB	WIND TURBINE SPREAD FOUNDATION, EMBEDS	2/4/12	2/4/12	1
NBWS33701326TB	ANCHOR BOLT TEMPLATE WIND TURBINE	2/4/12	2/4/12	1
NBWS33701355TB	FORM WIND TURBINE SPREAD FOOTING	2/4/12	2/4/12	1
NBWS33701359TB	PUMP PLACE WIND TURBINE SPREAD FOOTING	2/4/12	2/4/12	1
NBWS26053400TB	FOUNDATION CONDUIT	2/4/12	2/4/12	1
NBWS33701325TB	SET WIND TURBINE ANCHOR BOLTS	2/6/12	2/6/12	1
NBWS33701300TB	FORM WIND TURBINE PEDESTAL	2/6/12	2/6/12	1
NBWS33701364TB	PUMP PLACE WIND TURBINE PEDESTAL	2/6/12	2/6/12	1
NBWS26052600TB	FOUNDATION GROUNDING	2/6/12	2/6/12	1
NBWS31702313TB	BACKFILL	2/7/12	2/7/12	1
NBWS48150510TB	UNLOAD WTG COMPONENTS GAMESA 2.0	7/12/12	7/12/12	1
NBWS48150530TB	COMPONENT WASHING	7/13/12	7/13/12	1
NBWS48152000TB	CONTROLLER GAMESA 2.0	7/13/12	7/13/12	1
NBWS33701375TB	WIND TURBINE GROUT BASE, EPOXY	7/14/12	7/14/12	1
NBWS48150540TB	TOWER GHM PACK GAMESA 2.0	7/14/12	7/14/12	1
NBWS48151320TB	BLADES GAMESA 2.0	7/14/12	7/18/12	4
NBWS48152010TB	BOTTOM SECTION GAMESA 2.0	7/14/12	7/14/12	1
NBWS48152020TB	BOTTOM-MID SECTION GAMESA 2.0	7/14/12	7/14/12	1
NBWS48151530TB	HUB GAMESA 2.0	8/10/12	8/15/12	6
NBWS48151610TB	NACELLE GAMESA 2.0	8/10/12	8/17/12	7
NBWS48150535TB	METAL STAIRS GAMESA 2.0	8/16/12	8/16/12	1
NBWS48152050TB	TOP SECTION GAMESA 2.0	8/16/12	8/16/12	1
NBWS48152030TB	MID SECTION GAMESA 2.0	8/16/12	8/16/12	1
NBWS48152040TB	TOP-MID SECTION GAMESA 2.0	8/16/12	8/16/12	1
NBWS48150520TB	ANCHOR TENSIONING	8/16/12	8/16/12	1
NBWS48150525TB	ANCHOR CAPS - OUTSIDE	8/16/12	8/16/12	1
NBWS48150590TB	PUNCH LIST GAMESA 2.0	8/18/12	8/18/12	1
NBWS26100000TB	TOWER WIRING	8/21/12	8/21/12	1

Activity ID	Activity Name	Start	Finish	Original Duration
BOTTOM-MID SECTION GAMESA 2.0				
↳ HUB GAMESA 2.0				
↳ NACELLE GAMESA 2.0				
↳ METAL STAIRS GAMESA 2.0				
↳ TOP SECTION GAMESA 2.0				
↳ MID SECTION GAMESA 2.0				
↳ TOP-MID SECTION GAMESA 2.0				
↳ ANCHOR TENSIONING				
↳ ANCHOR CAPS - OUTSIDE				
↳ PUNCH LIST GAMESA 2.0				
↳ TOWER WIRING				
8/21/12, TURBINE 9				
↳ FOUNDATION EXCAVATION				
↳ WIND ENERGY DEWATERING				
↳ BARRICADES/TEMP FENCING/SIGNS				
↳ ENGINEERED FILL				
↳ WIND TURBINE SPREAD FOUNDATION, MUD MATS				
↳ WIND TURBINE SPREAD FOUNDATION, REBAR				
↳ WIND TURBINE SPREAD FOUNDATION, EMBEDS				
↳ ANCHOR BOLT TEMPLATE WIND TURBINE				
↳ FORM WIND TURBINE SPREAD FOOTING				
↳ PUMP PLACE WIND TURBINE SPREAD FOOTING				
↳ FOUNDATION CONDUIT				
↳ SET WIND TURBINE ANCHOR BOLTS				
↳ FORM WIND TURBINE PEDESTAL				
↳ PUMP PLACE WIND TURBINE PEDESTAL				
↳ FOUNDATION GROUNDING				
↳ BACKFILL				
↳ UNLOAD WTG COMPONENTS GAMESA 2.0				
↳ COMPONENT WASHING				
↳ CONTROLLER GAMESA 2.0				
↳ WIND TURBINE GROUT BASE, EPOXY				
↳ TOWER GHM PACK GAMESA 2.0				
↳ BLADES GAMESA 2.0				
↳ BOTTOM SECTION GAMESA 2.0				
↳ BOTTOM-MID SECTION GAMESA 2.0				
↳ HUB GAMESA 2.0				
↳ NACELLE GAMESA 2.0				
↳ METAL STAIRS GAMESA 2.0				
↳ TOP SECTION GAMESA 2.0				
↳ MID SECTION GAMESA 2.0				
↳ TOP-MID SECTION GAMESA 2.0				
↳ ANCHOR TENSIONING				
↳ ANCHOR CAPS - OUTSIDE				
↳ PUNCH LIST GAMESA 2.0				
↳ TOWER WIRING				



DD 11/18/11
CD 12/21/11
Page 8 of 8

NOTCH BUTTE

Current Bar Labels
Milestone
Start Constraint
Finish Constr...
% Complete
Summary



EXHIBIT "T"

SCOPE OF WORK CATEGORIES INCLUDE IN BID

Lava Beds - TURBINE TOTAL		9						
Balance of Plant	WTG	\$ / WTG	Total Cost	Basis Per WTG	Percentage	Category	Sub-category	
Crane Rental	9	\$ 65,665	\$ 590,981.00			BOP	Mechanical	
Turbine Receive, Assemble, Erect	9	\$ 81,341	\$ 732,068.00			BOP	Mechanical	
Foundations	9	\$ 173,622	\$ 1,562,598.00			BOP	Civil	
Site Pads	9	\$ 17,718	\$ 159,464.00			BOP	Civil	
Crane Pads	9	\$ 10,443	\$ 93,989.00			BOP	Civil	
Access Roads and On Site Roads	9	\$ 82,137	\$ 739,235.00			BOP	Civil	
Temporary Facilities, Fencing and Security	9	\$ 18,893	\$ 170,038.00			BOP	Civil	
Off-site Road Improvements (Bonding)	9	\$ -	\$ -			BOP	Civil	
Substations (on-site)	9	\$ -	\$ -			BOP	Electrical	
Electrical Infrastructure (on site)	9	\$ 78,226	\$ 704,034.00			BOP	Electrical	
Fiber Optic System > park & distribution	9	\$ 3,165	\$ 28,486.00			BOP	Electrical	
Turbine Switch Gear	9	\$ 25,440	\$ 228,957.00			BOP	Electrical	
Communications System & SCADA	9	\$ 17,263	\$ 155,367.00			BOP	Electrical	
Meteorological Towers & Sensors (1 ea)	1	\$ 211,210	\$ 211,210.00			BOP	Engineering	
Soils Testing	9	\$ 3,259	\$ 29,335.00			BOP	Engineering	
Site Remediation	9	\$ 4,694	\$ 42,242.00			BOP	Engineering	
Site Surveying	9	\$ 1,956	\$ 17,601.00			BOP	Engineering	
Misc.(phone, electric service, septic, communications)	1	\$ 54,528	\$ 54,528.00			BOP	Civil	
Construction Management & Overhead	1	\$ 1,559,266	\$ 1,559,266.00			Construction Fee	G&A	
Mobilization	1	\$ 220,779	\$ 220,779.00					
Punchlist Hold Back	0							
BoP - EPC Price	Per/EA	\$ 405,565	\$ 7,300,178.00					

EXHIBIT "F"

SCOPE OF WORK CATEGORIES INCLUDE IN BID

Notch Butte - TURBINE TOTAL							
	9						
Balance of Plant	WTG	\$ / WTG	Total Cost	Basis Per WTG	Percentage	Category	Sub-category
Crane Rental	9	\$ 65,666	\$ 590,992.08			BOP	Mechanical
Turbine Receive, Assemble, Erect	9	\$ 79,713	\$ 717,414.00			BOP	Mechanical
Foundations	9	\$ 174,603	\$ 1,571,429.00			BOP	Civil
Site Pads	9	\$ 22,882	\$ 205,934.00			BOP	Civil
Crane Pads	9	\$ 10,443	\$ 93,990.00			BOP	Civil
Access Roads and On Site Roads	9	\$ 60,600	\$ 545,402.00			BOP	Civil
Temporary Facilities, Fencing and Security	9	\$ 23,587	\$ 212,284.00			BOP	Civil
Off-site Road Improvements (Bonding)	9	\$ 12,764	\$ 114,877.00			BOP	Civil
Substations (on-site)	9	\$ -	\$ -			BOP	Electrical
Electrical Infrastructure (on site)	9	\$ 78,228	\$ 704,048.00			BOP	Electrical
Fiber Optic System > park & distribution	9	\$ 3,165	\$ 28,486.00			BOP	Electrical
Turbine Switch Gear	9	\$ 25,440	\$ 228,962.00			BOP	Electrical
Communications System & SCADA	9	\$ 14,747	\$ 132,724.00			BOP	Electrical
Meteorological Towers & Sensors (1 ea)	1	\$ 211,214	\$ 211,214.00			BOP	Engineering
Soils Testing	9	\$ 4,098	\$ 36,880.00			BOP	Engineering
Site Remediation	9	\$ 4,694	\$ 42,243.00			BOP	Engineering
Site Surveying	9	\$ 1,956	\$ 17,601.00			BOP	Engineering
Misc. (phone, electric service, septic, communications)	1	\$ 54,529	\$ 54,529.00			BOP	Civil
Construction Management & Overhead	1	\$ 1,518,043	\$ 1,518,043.00			Construction Fee	G&A
Mobilization	1	\$ 220,783	\$ 220,783.00				
Punchlist Hold Back	0						
BoP - EPC Price	Per/EA	\$ 402,658	\$ 7,247,835.08				

EXHIBIT "T"

SCOPE OF WORK CATEGORIES INCLUDE IN BID

Cottonwood - TURBINE TOTAL		10						
Balance of Plant	WTG	\$ / WTG	Total Cost	Basis Per WTG	Percentage	Category	Sub-category	
Crane Rental	10	\$ 22,712	\$ 227,123.25			BOP	Mechanical	
Turbine Receive, Assemble, Erect	10	\$ 75,946	\$ 759,456.75			BOP	Mechanical	
Foundations	10	\$ 172,322	\$ 1,723,215.50			BOP	Civil	
Site Pads	10	\$ 28,117	\$ 281,170.75			BOP	Civil	
Crane Pads	10	\$ 9,372	\$ 93,723.50			BOP	Civil	
Access Roads and On Site Roads	10	\$ 79,618	\$ 796,182.00			BOP	Civil	
Temporary Facilities, Fencing and Security	10	\$ 14,250	\$ 142,502.75			BOP	Civil	
Off-site Road Improvements (Bonding)	0	#DIV/0!	\$ -			BOP	Civil	
Substations (on-site)	1	\$ 768,533.50	\$ 768,533.50			BOP	Electrical	
Electrical Infrastructure (on site)	10	\$ 76,853	\$ 768,533.50			BOP	Electrical	
Fiber Optic System > park & distribution	10	\$ 2,901	\$ 29,006.75			BOP	Electrical	
Turbine Switch Gear	10	\$ 25,400	\$ 253,996.75			BOP	Electrical	
Communications System & SCADA	10	\$ 17,773	\$ 177,726.25			BOP	Electrical	
Meteorological Towers & Sensors (1 ea)	0	#DIV/0!	\$ -			BOP	Engineering	
Soils Testing	10	\$ 3,515	\$ 35,146.25			BOP	Engineering	
Site Remediation	10	\$ 4,393	\$ 43,933.00			BOP	Engineering	
Site Surveying	10	\$ 1,757	\$ 17,573.25			BOP	Engineering	
Misc.(phone, electric service, septic, communications)	10	\$ 2,210	\$ 22,096.25			BOP	Civil	
Construction Management & Overhead	10	\$ 95,544	\$ 955,435.00			Construction Fee	G&A	
Mobilization	10	\$ 24,528	\$ 245,277.75					
Main Substation Transformer	4	\$ 81,719	\$ 326,875.75					
BoP - EPC Price	Per/EA	\$ 904,488	\$ 9,044,881.75					

EXHIBIT "F"

SCOPE OF WORK CATEGORIES INCLUDE IN BID

Deep Creek - TURBINE TOTAL							
	10						
Balance of Plant	WTG	\$ / WTG	Total Cost	Basis Per WTG	Percentage	Category	Sub-category
Crane Rental	10	\$ 22,712	\$ 227,123.25			BOP	Mechanical
Turbine Receive, Assemble, Erect	10	\$ 75,946	\$ 759,456.75			BOP	Mechanical
Foundations	10	\$ 172,322	\$ 1,723,215.50			BOP	Civil
Site Pads	10	\$ 28,117	\$ 281,170.75			BOP	Civil
Crane Pads	10	\$ 9,372	\$ 93,723.50			BOP	Civil
Access Roads and On Site Roads	10	\$ 79,618	\$ 796,182.00			BOP	Civil
Temporary Facilities, Fencing and Security	10	\$ 14,250	\$ 142,502.75			BOP	Civil
Off-site Road Improvements (Bonding)	0	#DIV/0!	\$ -			BOP	Civil
Substations (on-site)	1	\$ 2,145,907	\$ 2,145,908.75			BOP	Electrical
Electrical Infrastructure (on site)	10	\$ 76,853	\$ 768,533.50			BOP	Electrical
Fiber Optic System > park & distribution	10	\$ 2,901	\$ 29,006.75			BOP	Electrical
Turbine Switch Gear	10	\$ 25,400	\$ 253,996.75			BOP	Electrical
Communications System & SCADA	10	\$ 17,773	\$ 177,726.25			BOP	Electrical
Meteorological Towers & Sensors (1 ea)	1	\$ 210,878	\$ 210,878.00			BOP	Engineering
Soils Testing	10	\$ 3,515	\$ 35,146.25			BOP	Engineering
Site Remediation	10	\$ 4,393	\$ 43,933.00			BOP	Engineering
Site Surveying	10	\$ 1,757	\$ 17,573.25			BOP	Engineering
Misc.(phone, electric service, septic, communications)	10	\$ 2,210	\$ 22,096.25			BOP	Civil
Construction Management & Overhead	10	\$ 95,544	\$ 955,435.00			Construction Fee	G&A
Mobilization	10	\$ 24,528	\$ 245,277.75				
Main Substation Transformer	1	\$ 326,876	\$ 326,875.75				
BoP - EPC Price	Per/EA	\$ 925,576	\$ 9,255,759.75				

EXHIBIT "T"

SCOPE OF WORK CATEGORIES INCLUDE IN BID

Salmon Creek - TURBINE TOTAL		10						
Balance of Plant	WTG	\$ / WTG	Total Cost	Basis Per WTG	Percentage	Category	Sub-category	
Crane Rental	10	\$ 22,712	\$ 227,123.25			BOP	Mechanical	
Turbine Receive, Assemble, Erect	10	\$ 75,946	\$ 759,456.75			BOP	Mechanical	
Foundations	10	\$ 172,322	\$ 1,723,215.50			BOP	Civil	
Site Pads	10	\$ 28,117	\$ 281,170.75			BOP	Civil	
Crane Pads	10	\$ 9,372	\$ 93,723.50			BOP	Civil	
Access Roads and On Site Roads	10	\$ 79,618	\$ 796,182.00			BOP	Civil	
Temporary Facilities, Fencing and Security	10	\$ 14,250	\$ 142,502.75			BOP	Civil	
Off-site Road Improvements (Bonding)	0	#DIV/0!	\$ -			BOP	Civil	
Substations (on-site)	1	\$ 76,853	\$ 768,533.50			BOP	Electrical	
Electrical Infrastructure (on site)	10	\$ 2,901	\$ 29,006.75			BOP	Electrical	
Fiber Optic System > park & distribution	10	\$ 25,400	\$ 253,996.75			BOP	Electrical	
Turbine Switch Gear	10	\$ 17,773	\$ 177,726.25			BOP	Electrical	
Communications System & SCADA	10	\$ 210,878	\$ 2,108,780.00			BOP	Engineering	
Meteorological Towers & Sensors (1 ea)	1	\$ 3,515	\$ 35,146.25			BOP	Engineering	
Soils Testing	10	\$ 4,393	\$ 43,933.00			BOP	Engineering	
Site Remediation	10	\$ 1,757	\$ 17,573.25			BOP	Engineering	
Site Surveying	10	\$ 2,210	\$ 22,096.25			BOP	Civil	
Misc.(phone, electric service, septic, communications)	10	\$ 95,544	\$ 955,435.00			Construction Fee	G&A	
Construction Management & Overhead	10	\$ 24,528	\$ 245,277.75					
Mobilization	1	\$ 326,876	\$ 326,875.75					
Main Substation Transformer								
BoP - EPC Price	Per/EA	\$ 925,576	\$ 9,255,759.75					

EXHIBIT "T"

SCOPE OF WORK CATEGORIES INCLUDE IN BID

Rogerson Flats - TURBINE TOTAL		10					
Balance of Plant	WTG	\$ / WTG	Total Cost	Basis Per WTG	Percentage	Category	Sub-category
Crane Rental	10	\$ 22,712	\$ 227,123.25			BOP	Mechanical
Turbine Receive, Assemble, Erect	10	\$ 75,946	\$ 759,456.75			BOP	Mechanical
Foundations	10	\$ 172,322	\$ 1,723,215.50			BOP	Civil
Site Pads	10	\$ 28,117	\$ 281,170.75			BOP	Civil
Crane Pads	10	\$ 9,372	\$ 93,723.50			BOP	Civil
Access Roads and On Site Roads	10	\$ 79,618	\$ 796,182.00			BOP	Civil
Temporary Facilities, Fencing and Security	10	\$ 14,250	\$ 142,502.75			BOP	Civil
Off-site Road Improvements (Bonding)	0	#DIV/0!	\$ -			BOP	Civil
Substations (on-site)	1	\$ 2,145,907	\$ 2,145,906.75			BOP	Electrical
Electrical Infrastructure (on site)	10	\$ 76,853	\$ 768,533.50			BOP	Electrical
Fiber Optic System > park & distribution	10	\$ 2,901	\$ 29,006.75			BOP	Electrical
Turbine Switch Gear	10	\$ 25,400	\$ 253,996.75			BOP	Electrical
Communications System & SCADA	10	\$ 17,773	\$ 177,726.25			BOP	Electrical
Meteorological Towers & Sensors (1 ea)	0	#DIV/0!	\$ -			BOP	Engineering
Soils Testing	10	\$ 3,515	\$ 35,146.25			BOP	Engineering
Site Remediation	10	\$ 4,393	\$ 43,933.00			BOP	Engineering
Site Surveying	10	\$ 1,757	\$ 17,573.25			BOP	Engineering
Misc.(phone, electric service, septic, communications)	10	\$ 2,210	\$ 22,096.25			BOP	Civil
Construction Management & Overhead	10	\$ 95,544	\$ 955,435.00			Construction Fee	G&A
Mobilization	10	\$ 24,528	\$ 245,277.75				
Main Substation Transformer	10	\$ 32,688	\$ 326,875.75				
BoP - EPC Price	Per/EA	\$ 904,488	\$ 9,044,881.75				

EXHIBIT J
FORM OF APPLICATION FOR PAYMENT

APPLICATION AND CERTIFICATE FOR PAYMENT	AIA DOCUMENT G702	(Instructions on reverse side)	PAGE ONE
TO OWNER:	PROJECT:	APPLICATION NO:	Distribution to:
		PERIOD TO:	<input type="checkbox"/> OWNER
		PROJECT NOS:	<input type="checkbox"/> ARCHITECT
			<input type="checkbox"/> CONTRACTOR
			<input type="checkbox"/>
			<input type="checkbox"/>
FROM CONTRACTOR:	VIA ARCHITECT:		
Fagen Inc.			
501 West Highway 212			
Granite Falls MN 56241			
CONTRACT NO: 1			

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	
2. Net change by Change Orders	\$	
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$	
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	
b. On Stored Material (Column F on G703)	\$	
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	
6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 total)	\$	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	
8. CURRENT PAYMENT DUE	\$	
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 7 less Line 8)	\$	

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total changes approved in		
TOTALS		
NET CHANGES by Change Order		

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc.

By: _____ Date: _____

State of: _____
County of: _____
Subscribed and sworn to before

me this day of: _____

Notary Public:
My Commission expires _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

EXHIBIT J

FORM OF APPLICATION FOR PAYMENT

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE 1 OF 2 PAGES

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:
APPLICATION DATE:
PERIOD TO:
ARCHITECTS PROJECT NO:

A ITEM NUMBER	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			D FROM PREVIOUS APPLICATION (D + E)	E THIS PERIOD		% (G / C)			

AIA DOCUMENT G703 - CONTINUATION SHEET FOR G702 - AIA ©1992 - THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5202

Users may obtain validation of this document by requesting a completed AIA Document D401 - Certification of Document's Authenticity from the Licenses.

G703-1992

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

JUL 30 2014

By _____ 3:41 P.M.
Clerk
Deputy Clerk

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

ORIGINAL

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, L.L.C., NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, I.L.C. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (Rogerson Flats WP), et al.

**AFFIDAVIT OF KIRSTEN
TJOSAAS IN SUPPORT OF FAGEN,
INC.'S MOTION FOR SUMMARY
JUDGMENT**

STATE OF MINNESOTA)
)ss.
COUNTY OF YELLOW MEDICINE)

KIRSTEN TJOSAAS, being first duly sworn upon oath, deposes and states as follows:

1. My name is Kirsten Tjosaas. I am currently employed by Fagen, Inc. ("Fagen").
2. At all times relevant hereir, I was employed by Fagen as its controller. I have been employed by Fagen for approximately ten years. I am a United States Citizen and my

permanent residence is located in Minnesota. I am over the age of 18 years and competent to testify regarding the facts and matters stated herein, which are based on my personal knowledge and/or Fagen's business records.

3. I have reviewed the Affidavit of Lori Anderson, and the Exhibits attached to her Affidavit. The Exhibits contain copies of Fagen's Applications and Certificates for Payment (collectively, the "Applications"). I caused the Applications dated December 27, 2011; February 3, 2012; May 25, 2012; June 29, 2012 and July 27, 2012, to be mailed by UPS to Exergy Development Group of Idaho, L.L.C. ("XRG"), 802 W. Bannock St., 12th Floor, Boise, Idaho 83702.
4. Fagen has received no payment on the amounts set forth in the Applications.
5. I never received any communication from XRG, Rogerson Flats Wind Park, LLC, Cottonwood Wind Park, LLC, Salmon Creek Wind Park, LLC, Deep Creek Wind Park, LLC or Notch Butte Wind Park, LLC objecting to or questioning the amounts of the Applications.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 29th day of July 2014.

Kirsten Tjosaas
Kirsten Tjosaas, Affiant

SUBSCRIBED TO AND SWORN TO before me this 29th day of July 2014.

Kelly S. Olson
Notary Public



JUL 30 2014

3:41 P.M.

By _____
_____ Clerk
Deputy Clerk

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

ORIGINAL

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, L.L.C., NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (Rogerson Flats WP), *et al.*

**AFFIDAVIT OF LORI ANDERSON
IN SUPPORT OF FAGEN, INC.'S
MOTION FOR SUMMARY
JUDGMENT**

STATE OF MINNESOTA)
)ss.
COUNTY OF YELLOW MEDICINE)

LORI ANDERSON, being first duly sworn upon oath, deposes and states as follows:

1. My name is Lori Anderson. I am currently employed by Plaintiff Fagen, Inc. ("Fagen").
2. At all times relevant herein, I worked in Fagen's accounting department. I have been employed by Fagen for approximately eight years. I am a United States Citizen, and my

permanent residence is located in Minnesota. I am over the age of 18 years and competent to testify regarding the facts and matters stated herein, which are based on my personal knowledge and/or Fagen's business records.

3. In 2011 and 2012, I was responsible for preparing certain Applications and Certificates for Payment (collectively, the "Applications") relating to the work Fagen performed for a construction project involving six wind production facilities. The five wind production facilities at issue in this case were commonly referred to as (i) Rogerson Flats Wind Farm; (ii) Cottonwood Wind Farm; (iii) Salmon Creek Wind Farm; (iv) Deep Creek Wind Farm and (v) the Notch Butte Wind Farm.
4. Attached as Exhibits A-G are true and correct copies of the Applications for the wind production facilities identified in Paragraph 3. The Applications show that the following amounts were invoiced for each wind production facility:

Rogerson Flats Wind Farm

<u>Exhibit</u>	<u>Application</u>	<u>Amount</u>
<u>Exhibit A:</u>	Application, dated December 27, 2011	\$398,603.75
<u>Exhibit B:</u>	Application, dated February 3, 2012	\$ 88,359.58
<u>Exhibit C:</u>	Application, dated March 16, 2012	\$ 19,114.00
<u>Exhibit D:</u>	Application, dated April 25, 2012	\$220,281.78
<u>Exhibit E:</u>	Application, dated May 25, 2012	\$420,708.40
<u>Exhibit F:</u>	Application, dated June 29, 2012	\$168,438.62
<u>Exhibit G:</u>	Application, dated July 27, 2012	<u>\$ 97,268.68</u>
	Total:	\$1,412,774.81

Cottonwood Wind Farm

<u>Exhibit A:</u>	Application, dated December 27, 2011	\$398,603.75
<u>Exhibit B:</u>	Application, dated February 3, 2012	\$ 88,359.58
<u>Exhibit C:</u>	Application, dated March 16, 2012	\$ 19,114.00
<u>Exhibit D:</u>	Application, dated April 25, 2012	\$220,281.78
<u>Exhibit E:</u>	Application, dated May 25, 2012	\$420,708.40
<u>Exhibit F:</u>	Application, dated June 29, 2012	\$168,438.59
<u>Exhibit G:</u>	Application, dated July 27, 2012	<u>\$ 97,268.71</u>
	Total:	\$1,412,774.81

Salmon Creek Wind Farm

<u>Exhibit A:</u>	Application, dated December 27, 2011	\$398,603.75
<u>Exhibit B:</u>	Application, dated February 3, 2012	\$ 88,359.58
<u>Exhibit C:</u>	Application, dated March 16, 2012	\$ 19,114.00
<u>Exhibit D:</u>	Application, dated April 25, 2012	\$220,281.78
<u>Exhibit E:</u>	Application, dated May 25, 2012	\$420,708.40
<u>Exhibit F:</u>	Application, dated June 29, 2012	\$168,438.59
<u>Exhibit G:</u>	Application, dated July 27, 2012	<u>\$ 97,268.71</u>
	Total:	\$1,412,774.81

Deep Creek Wind Farm

<u>Exhibit A:</u>	Application, dated December 27, 2011	\$398,603.75
<u>Exhibit B:</u>	Application, dated February 3, 2012	\$ 88,359.56
<u>Exhibit C:</u>	Application, dated March 16, 2012	\$ 19,114.00
<u>Exhibit D:</u>	Application, dated April 25, 2012	\$220,281.79
<u>Exhibit E:</u>	Application, dated May 25, 2012	\$420,708.38
<u>Exhibit F:</u>	Application, dated June 29, 2012	\$168,438.60
<u>Exhibit G:</u>	Application, dated July 27, 2012	<u>\$ 97,268.71</u>
	Total:	\$1,412,774.79

Notch Butte Wind Farm

<u>Exhibit A:</u>	Application, dated December 27, 2011	\$335,249.00
<u>Exhibit B:</u>	Application, dated February 3, 2012	\$192,204.00
<u>Exhibit C:</u>	Application, dated March 16, 2012	\$ 43,826.90
<u>Exhibit D:</u>	Application, dated April 25, 2012	\$ 17,937.90
<u>Exhibit E:</u>	Application, dated May 25, 2012	\$118,216.70
<u>Exhibit F:</u>	Application, dated June 29, 2012	\$ 74,288.85
<u>Exhibit G:</u>	Application, dated July 27, 2012	<u>\$ 74,288.85</u>
	Total:	\$856,012.20

5. For the Applications dated March 16, 2012 and April 25, 2012, I signed the cover letters to Exergy Development Group of Idaho, L.L.C. ("XRG") on behalf of Kirsten Tjosaas. I caused the cover letters and Applications to be mailed to Exergy Development Group Attn: James Carkulis by UPS, to the address listed on the cover letters, 802 W. Bannock St., 12th Floor, Boise, Idaho 83702.
6. Fagen has received no payment on the amounts set forth in the Applications.
7. I never received any communication from XRG, Rogerson Flats Wind Park, LLC, Cottonwood Wind Park, LLC, Salmon Creek Wind Park, LLC, Deep Creek Wind Park,

LLC or Notch Butte Wind Park, LLC objecting to or questioning the amounts of the Applications.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 29th day of July 2014.

Lori Anderson
Lori Anderson, Affiant

SUBSCRIBED TO AND SWORN TO before me this 29th day of July 2014.

Kelly S. Olson
Notary Public



EXHIBIT A

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

TO OWNER:
Notche Butte Wind Farm

PROJECT:
Notch Butte
9 Turbines

APPLICATION NO: 1
PERIOD TO: 12/31/2011
PROJECT NOS: 114034 601
CONTRACT NO: 1
CONTRACT DATE: 12/22/2011

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

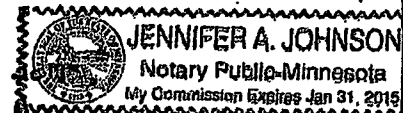
Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	7,247,835.08
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,247,835.08
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	335,249.00
5. RETAINAGE:	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	335,249.00
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	.00
8. CURRENT PAYMENT DUE	\$	335,249.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	6,912,586.08

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kori Anderson Date: 12-27-11
State of: Minnesota
County of: Yellow Medicine
Subscribed and sworn to before
me this 27th day of December
Notary Public: Jennifer A. Johnson
My Commission expires: Jan 31, 2015



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

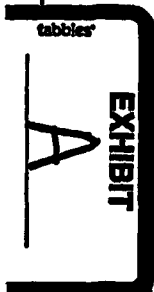
AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____


This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.



AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 1
 APPLICATION DATE: 12/27/2011
 PERIOD TO: 12/31/2011
 PROJECT NO: 114034 601
 PROJECT NAME: Notch Butte 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	590,992.08	.00	.00	.00	.00	0	590,992.08	.00
02	Turbine Receive	717,414.00	.00	.00	.00	.00	0	717,414.00	.00
03	Foundations	1,571,429.00	.00	.00	.00	.00	0	1,571,429.00	.00
04	Site Pads	205,934.00	.00	.00	.00	.00	0	205,934.00	.00
05	Crane Pads	93,990.00	.00	.00	.00	.00	0	93,990.00	.00
06	Access Roads and On	545,402.00	.00	77,586.00	.00	77,586.00	14	467,816.00	.00
07	Temporary Facilities	212,284.00	.00	.00	.00	.00	0	212,284.00	.00
08	Off-site Road Improv	114,877.00	.00	.00	.00	.00	0	114,877.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,048.00	.00	.00	.00	.00	0	704,048.00	.00
11	Fiber Optic Systems	28,488.00	.00	.00	.00	.00	0	28,488.00	.00
12	Turbine Switch Gear	228,962.00	.00	.00	.00	.00	0	228,962.00	.00
13	Communications	132,724.00	.00	.00	.00	.00	0	132,724.00	.00
14	Met Towers & Sensors	211,214.00	.00	.00	.00	.00	0	211,214.00	.00
15	Soils Testing	36,880.00	.00	36,880.00	.00	36,880.00	100	.00	.00
16	Site Remediation	42,243.00	.00	.00	.00	.00	0	42,243.00	.00
17	Site Surveying	17,601.00	.00	.00	.00	.00	0	17,601.00	.00
18	Misc. (phone, elect)	54,529.00	.00	.00	.00	.00	0	54,529.00	.00
19	Const Management	1,518,043.00	.00	.00	.00	.00	0	1,518,043.00	.00
20	Mobilization	220,783.00	.00	220,783.00	.00	220,783.00	100	.00	.00
		7,247,895.08	.00	335,249.00	.00	335,249.00		6,912,646.08	.00

APPLICATION AND CERTIFICATE FOR PAYMENT		AIA DOCUMENT G702	
TO OWNER: Lava Beds Wind Farm, LLC	PROJECT: Lava Beds 9 Turbines	APPLICATION NO: 1 PERIOD TO: 12/31/2011 PROJECT NOS: 114034 602 CONTRACT NO: 1 CONTRACT DATE: 12/23/2011	Distribution to: <input type="checkbox"/> OWNER <input type="checkbox"/> ARCHITECT <input type="checkbox"/> CONTRACTOR <input type="checkbox"/> <input type="checkbox"/>
FROM CONTRACTOR: Fagen Inc 501 West Highway 212 Granite Falls, MN 56241		VIA ARCHITECT:	
CONTRACTOR'S APPLICATION FOR PAYMENT Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.		The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.	
1. ORIGINAL CONTRACT SUM	\$	7,300,178.00	CONTRACTOR: Fagen Inc By: <u>Lori Anderson</u> Date: <u>12-27-11</u> State of: <u>Minnesota</u> County of: <u>Yellow Medicine</u> Subscribed and sworn to before me this <u>27th</u> day of <u>December</u> 2011  JENNIFER A. JOHNSON Notary Public-Minnesota My Commission Expires Jan 31, 2015 Notary Public: <u>Jennifer A. Johnson</u> My Commission expires: <u>Jan 31, 2015</u>
2. Net change by Change Orders	\$	.00	
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,300,178.00	
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	369,430.00	
5. RETAINAGE:	\$	.00	
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	369,430.00	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	.00	
8. CURRENT PAYMENT DUE	\$	369,430.00	
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	6,930,748.00	
			ARCHITECT'S CERTIFICATE FOR PAYMENT In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.
			AMOUNT CERTIFIED \$ _____ (Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)
			ARCHITECT By: _____ Date: _____
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.			

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 1
 APPLICATION DATE: 12/27/2011
 PERIOD TO: 12/31/2011
 PROJECT NO: 114034 602
 PROJECT NAME: Lava Beds 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	590,981.00	.00	.00	.00	.00	0	590,981.00	.00
02	Turbine Receive	732,068.00	.00	.00	.00	.00	0	732,068.00	.00
03	Foundations	1,562,598.00	.00	41,730.00	.00	41,730.00	3	1,520,868.00	.00
04	Site Pads	159,464.00	.00	.00	.00	.00	0	159,464.00	.00
05	Crane Pads	93,989.00	.00	.00	.00	.00	0	93,989.00	.00
06	Access Roads & On Si	739,235.00	.00	77,586.00	.00	77,586.00	10	661,649.00	.00
07	Temporary Facilities	170,038.00	.00	.00	.00	.00	0	170,038.00	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,034.00	.00	.00	.00	.00	0	704,034.00	.00
11	Fiber Optic System	28,488.00	.00	.00	.00	.00	0	28,488.00	.00
12	Turbine Switch Gear	228,957.00	.00	.00	.00	.00	0	228,957.00	.00
13	Communications Syste	155,367.00	.00	.00	.00	.00	0	155,367.00	.00
14	Met Towers & Sensors	211,210.00	.00	.00	.00	.00	0	211,210.00	.00
15	Soils Testing	29,335.00	.00	29,335.00	.00	29,335.00	100	.00	.00
16	Site Remediation	42,242.00	.00	.00	.00	.00	0	42,242.00	.00
17	Site Surveying	17,601.00	.00	.00	.00	.00	0	17,601.00	.00
18	Misc. (Phone, Elect)	54,528.00	.00	.00	.00	.00	0	54,528.00	.00
19	Construction Managem	1,559,268.00	.00	.00	.00	.00	0	1,559,268.00	.00
20	Mobilization	220,779.00	.00	220,779.00	.00	220,779.00	100	.00	.00
		7,009,778.00	.00	369,730.00	.00	369,730.00		6,640,048.00	.00
			.00		.00			6,640,048.00	

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

TO OWNER:
Rogerson Flats Wind Farm,

PROJECT:
Jack Ranch Rogerson
Flats 10 Turbines

APPLICATION NO: 1
PERIOD TO: 12/31/2011
PROJECT NOS: 114034 603
CONTRACT NO: 1
CONTRACT DATE: 12/23/2011

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	398,603.75
5. RETAINAGE:	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	398,603.75
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	.00
8. CURRENT PAYMENT DUE	\$	398,603.75
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,646,278.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Hori Anderson Date: 12-27-11

State of: Minnesota
County of: Yellow Medicine
Subscribed and sworn to before
me this 27th day of Dec. 2011



JENNIFER A. JOHNSON
Notary Public-Minnesota
My Commission Expires Jan 31, 2015

Notary Public: Jennifer A. Johnson
My Commission expires: Jan. 31, 2015

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION
 PAYMENT, containing Contractor's signed Certification, is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 11
 APPLICATION DATE: 12/27/2011
 PERIOD TO: 12/31/2011
 PROJECT NO: 114034 603
 PROJECT NAME: Jack Ranch Rogerson Flats 10 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive Asse	759,456.75	.00	.00	.00	.00	0	759,456.75	.00
03	Foundations	1,723,216.50	.00	70,293.00	.00	70,293.00	4	1,652,922.50	.00
04	Site Pads	281,170.75	.00	.00	.00	.00	0	281,170.75	.00
05	Crano Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	.00	41,577.00	.00	41,577.00	5	754,605.00	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	.00	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	.00	.00	.00	.00	0	177,726.25	.00
14	Met Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,146.25	.00	35,146.00	.00	35,146.00	100	.25	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	.00	.00	.00	.00	0	17,573.25	.00
18	Misc. (Phone, elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,436.00	.00	6,310.00	.00	6,310.00	1	949,126.00	.00
20	Mobilization	245,277.75	.00	245,277.75	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,876.75	.00	.00	.00	.00	0	326,876.75	.00
		10,413,377.50	0.00	90,000.00	0.00	90,000.00	0	10,323,377.50	0.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

TO OWNER:
Salmon Creek Wind Farm,

PROJECT:
Jack Ranch
Salmon Creeks

APPLICATION NO: 1'
PERIOD TO: 12/31/2011
PROJECT NOS: 114034 804
CONTRACT NO: 1
CONTRACT DATE: 12/23/2011

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	398,603.75
5. RETAINAGE:	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	398,603.75
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	.00
8. CURRENT PAYMENT DUE	\$	398,603.75
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,857,156.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

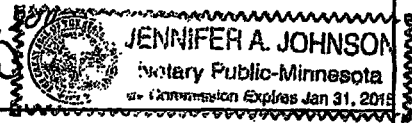
CONTRACTOR: Fagen Inc

By: Lori Anderson Date: 12-27-11

State of: Minnesota
County of: Yellow Medicine

Subscribed and sworn to before me this 27th day of December, 2011

Notary Public: Jennifer A. Johnson
My Commission expires: Jan 31, 2015



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 1
 APPLICATION DATE: 12/27/2011
 PERIOD TO: 12/31/2011
 PROJECT NO: 114034 604
 PROJECT NAME: Jack Ranch Salmon Creeks

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.75	.00	.00	.00	.00	0	759,456.75	.00
03	Foundations	1,723,215.50	.00	70,293.00	.00	70,293.00	4	1,652,922.50	.00
04	Site Pads	281,170.75	.00	.00	.00	.00	0	281,170.75	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	.00	41,577.00	.00	41,577.00	5	754,605.00	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	.00	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,908.75	.00	.00	.00	.00	0	2,145,908.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,986.75	.00	.00	.00	.00	0	253,986.75	.00
13	Communications Syste	177,726.25	.00	.00	.00	.00	0	177,726.25	.00
14	Met Towers & Sensors	210,878.00	.00	.00	.00	.00	0	210,878.00	.00
15	Soils Testing	35,146.25	.00	35,146.00	.00	35,146.00	100	.25	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	.00	.00	.00	.00	0	17,573.25	.00
18	Misc (Phone, Electr)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	.00	6,310.00	.00	6,310.00	1	949,125.00	.00
20	Mobilization	245,277.75	.00	245,277.75	.00	245,277.75	100	.00	.00
21	Main Substation Tran	328,875.75	.00	.00	.00	.00	0	328,875.75	.00
		2,257,759.75	.00	498,001.75	.00	2,000,000.00		2,559,761.00	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

TO OWNER:
 Cottonwood Wind Park, LLC

PROJECT:
 Jack Ranch
 Cottonwood

APPLICATION NO: 1
PERIOD TO: 12/31/2011
PROJECT NOS: 114034 605
CONTRACT NO: 1
CONTRACT DATE: 12/23/2011

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Fagen Inc
 601 West Highway 212
 Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.


1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	398,603.75
5. RETAINAGE:	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	398,603.75
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	.00
8. CURRENT PAYMENT DUE	\$	398,603.75
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,646,278.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Lori Anderson Date: 12-27-11

State of: MINNESOTA
 County of: Yellow Medicine
 Subscribed and sworn to before me this 27th day of Dec. 2011

 **JENNIFER A. JOHNSON**
 Notary Public - Minnesota
 My Commission Expires Jan 31, 2015

Notary Public: Jennifer A. Johnson
 My Commission expires Jan 31, 2015

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION
 PAYMENT, containing Contractor's signed Certification, is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 1
 APPLICATION DATE: 12/27/2011
 PERIOD TO: 12/31/2011
 PROJECT NO: 114034 605
 PROJECT NAME: Jack Ranch Cottonwood

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	227,123.25	0	227,123.25	.00
02	Turbine Receive	759,456.75	.00	.00	.00	759,456.75	0	759,456.75	.00
03	Foundations	1,723,216.50	.00	70,293.00	.00	70,293.00	4	1,652,922.50	.00
04	Site Pads	281,170.75	.00	.00	.00	281,170.75	0	281,170.75	.00
05	Crane Pads	93,723.50	.00	.00	.00	93,723.50	0	93,723.50	.00
06	Access Roads and On	796,182.00	.00	41,577.00	.00	41,577.00	5	754,605.00	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	142,502.75	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	2,145,906.75	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	768,533.50	0	768,533.50	.00
11	Fiber Optic Systems	29,006.75	.00	.00	.00	29,006.75	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	253,996.75	0	253,996.75	.00
13	Communications Syste	177,726.25	.00	.00	.00	177,726.25	0	177,726.25	.00
14	Met Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,146.25	.00	35,146.00	.00	35,146.00	100	.26	.00
16	Site Remediation	43,933.00	.00	.00	.00	43,933.00	0	43,933.00	.00
17	Site Surveying	17,573.25	.00	.00	.00	17,573.25	0	17,573.25	.00
18	Misc (Phone, Elect)	22,096.25	.00	.00	.00	22,096.25	0	22,096.25	.00
19	Construction Managem	955,435.00	.00	6,310.00	.00	6,310.00	1	949,125.00	.00
20	Mobilization	245,277.75	.00	245,277.75	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,876.75	.00	.00	.00	326,876.75	0	326,876.75	.00
		11,481,817.25	.00	981,863.75	.00	981,863.75	9	10,500,000.00	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

TO OWNER:
Deep Creek Wind Park, LLC

PROJECT:
Jack Ranch
Deep Creek

APPLICATION NO: 11
PERIOD TO: 12/31/2011
PROJECT NOS: 114034 608
CONTRACT NO: 1
CONTRACT DATE: 12/23/2011

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	398,603.75
5. RETAINAGE:	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	398,603.75
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	.00
8. CURRENT PAYMENT DUE	\$	398,603.75
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,857,156.00

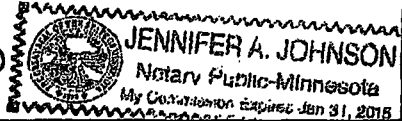
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Lori Anderson Date: 12-27-11

State of: MINNESOTA
County of: Yellow Medicine
Subscribed and sworn to before me this 27th day of Dec 2011

Notary Public: Jennifer A. Johnson
My Commission expires Jan 31, 2015



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 1
 APPLICATION DATE: 12/27/2011
 PERIOD TO: 12/31/2011
 PROJECT NO: 114034 606
 PROJECT NAME: Jack Ranch Deep Creek

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,458.75	.00	.00	.00	.00	0	759,458.75	.00
03	Foundations	1,723,215.60	.00	70,293.00	.00	70,293.00	4	1,652,922.50	.00
04	Site Pads	281,170.75	.00	.00	.00	.00	0	281,170.75	.00
05	Crane Pads	93,723.60	.00	.00	.00	.00	0	93,723.60	.00
06	Access Roads and On	788,182.00	.00	41,577.00	.00	41,577.00	6	746,605.00	.00
07	Temporary Facilities	142,602.75	.00	.00	.00	.00	0	142,602.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,908.75	.00	.00	.00	.00	0	2,145,908.75	.00
10	Electrical Infrastru	768,533.60	.00	.00	.00	.00	0	768,533.60	.00
11	Fiber Optic Systems	29,008.75	.00	.00	.00	.00	0	29,008.75	.00
12	Turbine Switch Gear	253,998.75	.00	.00	.00	.00	0	253,998.75	.00
13	Communications Syste	177,728.25	.00	.00	.00	.00	0	177,728.25	.00
14	Met Towers & Sensors	210,878.00	.00	.00	.00	.00	0	210,878.00	.00
15	Soils Testing	35,146.25	.00	35,146.00	.00	35,146.00	100	.25	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	.00	.00	.00	.00	0	17,573.25	.00
18	Misc (Phone, Elect)	22,098.25	.00	.00	.00	.00	0	22,098.25	.00
19	Construction Managem	955,435.00	.00	6,310.00	.00	6,310.00	1	949,125.00	.00
20	Mobilization	245,277.75	.00	245,277.75	.00	245,277.75	100	.00	.00
21	Main Substation Tran	328,875.75	.00	.00	.00	.00	0	328,875.75	.00
		22,146,750.75	.00	198,603.75	.00	198,603.75	100	21,948,147.00	.00

EXHIBIT B



501 West Hwy. 212, P.O. Box 159
Granite Falls, MN 56241
320-564-3324

www.fageninc.com

Civil - Mechanical - Electrical Contractors

320-564-3278 fax

February 6, 2012

Exergy Development Group of Idaho, LLC
James Carkulis
802 W. Bannock St., 12th Floor
Boise, ID 83702

Dear James:

As prescribed in the Contract, enclosed please find original Payment Application Number Two for the Exergy Idaho Six Winds Wind Park Project in Idaho, along with the signed Contractor's Partial Waiver and Lien Release.

Also enclosed, please find a list of subcontractors to be paid from this Payment Application.

Please contact me if you have any questions or need anything further to process this Payment Application.

Thank you.

Sincerely,
FAGEN, INC.

Kirsten A. Tjosas
Kirsten A. Tjosas
Controller



APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Notche Butte Wind Farm

Boise, ID 83702

PROJECT:
Notch Butte
9 Turbines

APPLICATION NO: 2
PERIOD TO: 01/26/2012
PROJECT NOS: 114034 601
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	7,247,835.08
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,247,835.08
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	527,453.00
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	527,453.00
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	335,249.00
8. CURRENT PAYMENT DUE	\$	192,204.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	6,720,382.08

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kati Anderson Date: 2/3/12

State of: Minnesota
County of: Yellow Medicine

Subscribed and sworn to before me this 3rd day of February

Notary Public: KAREN KIEUWERTER
My Commission expires: Jan 31, 2015

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION

PAYMENT, containing Contractor's signed Certification, is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 2

APPLICATION DATE: 02/03/2012

PERIOD TO: 01/25/2012

PROJECT NO: 114034 601

PROJECT NAME: Notch Butte 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	590,992.08	.00	.00	.00	.00	0	590,992.08	.00
02	Turbine Receive	717,414.00	.00	.00	.00	.00	0	717,414.00	.00
03	Foundations	1,571,429.00	.00	157,143.00	.00	157,143.00	10	1,414,286.00	.00
04	Site Pads	205,934.00	.00	4,700.00	.00	4,700.00	2	201,234.00	.00
05	Crane Pads	93,990.00	.00	.00	.00	.00	0	93,990.00	.00
06	Access Roads and On	545,402.00	77,586.00	.00	.00	77,586.00	14	467,816.00	.00
07	Temporary Facilities	212,284.00	.00	.00	.00	.00	0	212,284.00	.00
08	Off-site Road Improv	114,877.00	.00	.00	.00	.00	0	114,877.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,048.00	.00	.00	.00	.00	0	704,048.00	.00
11	Fiber Optic Systems	28,486.00	.00	.00	.00	.00	0	28,486.00	.00
12	Turbine Switch Gear	228,962.00	.00	.00	.00	.00	0	228,962.00	.00
13	Communications	132,724.00	.00	.00	.00	.00	0	132,724.00	.00
14	Met Towers & Sensors	211,214.00	.00	.00	.00	.00	0	211,214.00	.00
15	Soils Testing	36,880.00	36,880.00	.00	.00	36,880.00	100	.00	.00
16	Site Remediation	42,243.00	.00	.00	.00	.00	0	42,243.00	.00
17	Site Surveying	17,601.00	.00	.00	.00	.00	0	17,601.00	.00
18	Misc. (phone, elect)	54,529.00	.00	.00	.00	.00	0	54,529.00	.00
19	Const Management	1,518,043.00	.00	30,361.00	.00	30,361.00	2	1,487,682.00	.00
20	Mobilization	220,783.00	220,783.00	.00	.00	220,783.00	100	.00	.00
		7,247,835.08		192,204.00		7,527,453.08			.00
			336,246.00		.00			7,200,207.08	

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Lava Beds Wind Farm, LLC
Boise, ID 83702

PROJECT:
Lava Beds
9 Turbines

APPLICATION NO: 2
PERIOD TO: 01/25/2012
PROJECT NOS: 114034 802
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	7,300,178.00
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,300,178.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	523,945.53
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	523,945.53
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	369,430.00
8. CURRENT PAYMENT DUE	\$	154,515.53
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	6,776,232.47

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc
By: Kou Anderson Date: 2/3/12

State of: Minnesota
County of: Yellow Medicine
Subscribed and sworn to before me this 3rd day of February, 2012
Notary Public: Karen Nieuwebeert
My Commission expires: 1/31/13

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 2
 APPLICATION DATE: 02/03/2012
 PERIOD TO: 01/25/2012
 PROJECT NO: 114034 602
 PROJECT NAME: Lava Beds 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	690,981.00	.00	.00	.00	.00	0	690,981.00	.00
02	Turbine Receive	732,068.00	.00	.00	.00	.00	0	732,068.00	.00
03	Foundations	1,582,598.00	41,730.00	114,530.00	.00	156,260.00	10	1,406,338.00	.00
04	Site Pads	159,464.00	.00	.00	.00	.00	0	159,464.00	.00
05	Crane Pads	93,989.00	.00	.00	.00	.00	0	93,989.00	.00
06	Access Roads & On Sl	739,235.00	77,588.00	.00	.00	77,588.00	10	661,649.00	.00
07	Temporary Facilities	170,038.00	.00	.00	.00	.00	0	170,038.00	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,034.00	.00	.00	.00	.00	0	704,034.00	.00
11	Fiber Optic System	28,486.00	.00	.00	.00	.00	0	28,486.00	.00
12	Turbine Switch Gear	228,957.00	.00	.00	.00	.00	0	228,957.00	.00
13	Communications Syste	155,367.00	.00	.00	.00	.00	0	155,367.00	.00
14	Met Towers & Sensors	211,210.00	.00	.00	.00	.00	0	211,210.00	.00
15	Soils Testing	29,335.00	29,335.00	.00	.00	29,335.00	100	.00	.00
16	Site Remediation	42,242.00	.00	.00	.00	.00	0	42,242.00	.00
17	Site Surveying	17,601.00	.00	8,800.50	.00	8,800.50	50	8,800.50	.00
18	Misc. (Phone, Elect)	54,528.00	.00	.00	.00	.00	0	54,528.00	.00
19	Construction Managem	1,559,266.00	.00	31,185.03	.00	31,185.03	2	1,528,080.97	.00
20	Mobilization	220,779.00	220,779.00	.00	.00	220,779.00	100	.00	.00
		7,500,176.00	1,511,514.00	1,511,514.00	1,511,514.00	1,511,514.00	20	5,988,662.00	0.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Rogerson Flats Wind Farm,
Boise, ID 83702

PROJECT:
Jack Ranch Rogerson
Flats 10 Turbines

APPLICATION NO: 2
PERIOD TO: 01/25/2012
PROJECT NOS: 114034 603
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	486,963.33
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	486,963.33
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	398,603.75
8. CURRENT PAYMENT DUE	\$	88,359.58
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,557,918.42

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kou Anderson Date: 2/3/12

State of Minnesota
County of Yellow Medicine

Subscribed and sworn to before me this 3rd day of February



KAREN NIEUWBEERTA
Notary Public - Minnesota

My Commission expires: 1/31/15

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 2
 APPLICATION DATE: 02/03/2012
 PERIOD TO: 01/25/2012
 PROJECT NO: 114034 603
 PROJECT NAME: Jack Ranch Rogerson Flats 10 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	227,123.25	0	227,123.25	.00
02	Turbine Receive Asse	759,456.75	.00	.00	.00	.00	0	759,456.75	.00
03	Foundations	1,723,215.50	70,293.00	.00	.00	70,293.00	4	1,652,922.50	.00
04	Site Pads	281,170.75	.00	.00	.00	.00	0	281,170.75	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	798,182.00	41,577.00	28,530.75	.00	70,107.75	9	728,074.25	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	.00	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	.00	3,555.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,146.25	35,146.00	.25	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	.00	8,787.00	.00	8,787.00	50	8,786.25	.00
18	Misc. (Phone, elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	6,310.00	14,799.00	.00	21,109.00	2	934,326.00	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	328,875.75	.00	32,687.58	.00	32,687.58	10	294,188.17	.00
		9,044,981.75		88,359.58		498,983.33			.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Salmon Creek Wind Farm,
Boise, ID 83702

PROJECT:
Jack Ranch
Salmon Creeks

APPLICATION NO: 2
PERIOD TO: 01/25/2012
PROJECT NOS: 114034 604
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	486,963.33
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	486,963.33
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	398,603.75
8. CURRENT PAYMENT DUE	\$	88,359.58
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,768,796.42

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc
By: Rou Anderson Date: 2/3/12

State of: Minnesota
County of: Yellow Medicine

Subscribed and sworn to before me this 3rd day of February

KAREN NIEUWBEERTA
Notary Public - Minnesota
My Commission Expires Jan 31, 2011

Notary Public: Sherryl Free
My Commission expires: 1/31/11

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 2
 APPLICATION DATE: 02/03/2012
 PERIOD TO: 01/25/2012
 PROJECT NO: 114034 604
 PROJECT NAME: Jack Ranch Salmon Creeks

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.75	.00	.00	.00	.00	0	759,456.75	.00
03	Foundations	1,723,215.50	70,293.00	.00	.00	70,293.00	4	1,652,922.50	.00
04	Site Pads	281,170.75	.00	.00	.00	.00	0	281,170.75	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	41,577.00	28,530.75	.00	70,107.75	9	726,074.25	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	.00	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	.00	3,555.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	210,878.00	.00	.00	.00	.00	0	210,878.00	.00
15	Soils Testing	35,146.25	35,146.00	.25	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	.00	8,787.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Electr)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	6,310.00	14,799.00	.00	21,109.00	2	934,326.00	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	.00	32,687.58	.00	32,687.58	10	294,188.17	.00
		8,254,759.75		88,359.58		88,983.33			.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Cottonwood Wind Park, LLC

Boise, ID 83702

PROJECT:
Jack Ranch
Cottonwood

APPLICATION NO: 2
PERIOD TO: 01/25/2012
PROJECT NOS: 114034 605
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	486,963.33
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	486,963.33
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	398,603.75
8. CURRENT PAYMENT DUE	\$	88,359.58
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,557,918.42

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

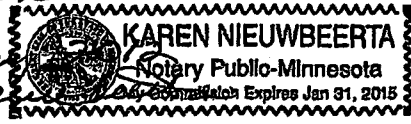
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Rou Anderson Date: 2/3/12

State of: Minnesota
County of: Yellow Medicine

Subscribed and sworn to before me this 3rd day of February
Notary Public: [Signature]
My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 2
 APPLICATION DATE: 02/03/2012
 PERIOD TO: 01/25/2012
 PROJECT NO: 114034 605
 PROJECT NAME: Jack Ranch Cottonwood

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.75	.00	.00	.00	.00	0	759,456.75	.00
03	Foundations	1,723,215.00	70,293.00	.00	.00	70,293.00	4	1,652,922.00	.00
04	Site Pads	281,170.75	.00	.00	.00	.00	0	281,170.75	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	41,577.00	28,530.75	.00	70,107.75	9	726,074.25	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	.00	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic Systems	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	.00	3,555.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,146.25	35,146.00	.25	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	.00	8,787.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	8,310.00	14,789.00	.00	21,109.00	2	934,326.00	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,676.75	.00	32,667.58	.00	32,667.58	10	294,009.17	.00
		9,044,881.75	398,003.75	66,369.58	.00	466,983.33			.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Deap Creek Wind Park, LLC
Boise, ID 83702

PROJECT:
Jack Ranch
Deep Creek

APPLICATION NO: 2
PERIOD TO: 01/25/2012
PROJECT NOS: 114034 606
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	486,963.31
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	486,963.31
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	398,603.75
8. CURRENT PAYMENT DUE	\$	88,359.56
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,768,796.44

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kou Anderson Date: 2/3/12

State of: Minnesota
County of: Yellow Medicine
Subscribed and sworn to before me this 3rd day of February
Notary Public: Karen Nieuwbeert
My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 2
 APPLICATION DATE: 02/03/2012
 PERIOD TO: 01/25/2012
 PROJECT NO: 114034 606
 PROJECT NAME: Jack Ranch Deep Creek

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.75	.00	.00	.00	.00	0	759,456.75	.00
03	Foundations	1,723,215.50	70,293.00	.00	.00	70,293.00	4	1,652,922.50	.00
04	Site Pads	281,170.75	.00	.00	.00	.00	0	281,170.75	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	766,182.00	41,577.00	28,530.75	.00	70,107.75	9	726,074.25	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	.00	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,908.75	.00	.00	.00	.00	0	2,145,908.75	.00
10	Electrical Infrastru.	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic Systems	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	.00	3,555.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	210,876.00	.00	.00	.00	.00	0	210,876.00	.00
15	Soils Testing	35,146.25	35,146.00	.25	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,673.25	.00	8,787.00	.00	8,787.00	50	8,886.25	.00
18	Misc (Phone, Elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	6,310.00	14,799.00	.00	21,109.00	2	934,326.00	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,876.75	.00	32,687.66	.00	32,687.66	10	294,189.10	.00
		9,256,785.75		86,359.66		1,488,983.31			.00
		3,086,603.75				300		2,086,603.75	

Exhibit L

PARTIAL WAIVER AND LIEN RELEASE

Fagen, Inc., a Minnesota corporation ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company ("Owner"), have entered into that certain Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

For and in consideration of partial payment in the amount of seven hundred thousand one hundred fifty seven and 83/100 (\$700,157.83) for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Owner, and other good and valuable consideration, Contractor does hereby, to the extent paid and contingent upon receipt thereof:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors or any of its respective employees, (b) (i) it has not received a notice of intention to claim any Liens (including Liens by, through or under any of its Subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, or to the best of its knowledge after due inquiry, by any of its Subcontractors, and (iii) there is no known basis for any such Liens; and

3. agree and certify that all amounts properly due and payable with respect to all prior Applications for Payment have been paid in full by Owner and the applicable lien waivers associated therewith are final and unconditional.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 6 day of February 2012.

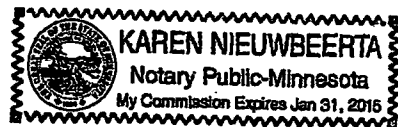
[Fagen, Inc.]

By: _____
Name: Ryan Marthey
Title: VP

STATE of Minnesota
COUNTY of Yellow Medicine

SUBSCRIBED AND SWORN to before me by Ryan Marthey 6th day of February, 2012.

Karen Nieuwebeerta
Notary Public in and for the State of
MN, residing at:
Montevideo, MN
56265



Lava Beds Legal Description

EXHIBIT "A" EASEMENT

Township 1 South, Range 32, E.B.M., Bingham County, Idaho

Sections 22, 23 and 26: All of that property lying within 1320 feet south and west of the Tabor Highway/Union Pacific Rail Road right of way.

Notch Butte Legal Description

Exhibit A Legal Description

Township 6 South, Range 19 East of the Boise Meridian, Lincoln County, Idaho

Section 22: EYzEYz

EXCEPT a portion of the NE"NE" of Section 22 conveyed to the State of Idaho by Warranty Deed recorded as Instrument Number 109244, Lincoln County records.

Rogerson Flats

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

SECTION 7: GOV'T. LOTS 2, 3, 4, 5, 6, 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; NW $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SE $\frac{1}{4}$.

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

**TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., TWIN FALLS COUNTY, IDAHO
SECTION 7:**

**BEGINNING AT A POINT ON THE SECTION LINE 763 FEET, MORE OR LESS, SOUTH OF THE WEST QUARTER CORNER OF SECTION 7, WHICH POINT IS STATION 252+85 OF "A" LATERAL AS LOCATED;
THENCE NORTH 65° 58' EAST 89.4 FEET;
THENCE ON A 20° CURVE TO THE LEFT, 157.2 FEET;
THENCE NORTH 34° 32' EAST 422.7 FEET;
THENCE ON A 20° CURVE TO THE RIGHT 80.8 FEET;
THENCE NORTH 50° 42' EAST 580.7 FEET;
THENCE ON A 10° CURVE TO THE RIGHT, 210 FEET;
THENCE NORTH 71° 42' EAST 457.6 FEET;
THENCE ON A 10° CURVE TO THE LEFT, 180 FEET, TO STATION 274+63.4 WHICH POINT IS ON THE LAST EAST LINE OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ BEING GOV'T LOT 7 OF SECTION 7 AND 865 FEET, MORE OR LESS, SOUTH OF THE NORTHEAST CORNER OF SAID SW $\frac{1}{4}$ NW $\frac{1}{4}$ GOV'T LOT 7 OF SECTION 7, ALL SITUATED IN THE W $\frac{1}{2}$ OF SECTION 7, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M.:**

AND EXCEPT

THAT PORTION OF THE SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 7, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., AS DESCRIBED:

BEGINNING AT A POINT WHICH IS THE CORNER COMMON TO SECTIONS 7, 8, 17 AND 18, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M.:

**THENCE NORTH FOR 141 FEET;
THENCE SOUTH 76° 46' 32" WEST FOR 610 FEET;
THENCE EAST FOR 600 FEET TO THE CORNER COMMON TO SECTIONS 7, 8, 17 AND 18, WHICH IS THE POINT OF BEGINNING.**

SECTION 8: NE $\frac{1}{4}$ SW $\frac{1}{4}$; S $\frac{1}{2}$ SW $\frac{1}{4}$.

SECTION 17: GOV'T. LOTS 1 AND 2, EXCEPT THE NORTH 300 FEET OF SAID LOTS; S $\frac{1}{2}$ NE $\frac{1}{4}$; NW $\frac{1}{2}$ SE $\frac{1}{4}$; S $\frac{1}{2}$ SE $\frac{1}{4}$; W $\frac{1}{2}$ OF SECTION NORTH WEST OF RAILROAD; 6.93 ACRES RAILROAD RIGHT OF WAY, W $\frac{1}{2}$ OF SECTION SOUTH AND EAST OF RAILROAD.

AND EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SECTION 17 ALL IN TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., WHICH BEARS SOUTH 00° 09' 24" WEST A DISTANCE OF 2640.66 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 17; THENCE ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 1320.33 FEET ALONG THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 26' 58" WEST A DISTANCE OF 450.00 FEET ALONG THE 1/16TH LINE;

Rogerson Flats

**THENCE ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF SOUTH 89° 26' 58" EAST A DISTANCE OF 450.00 FEET TO
THE EAST BOUNDARY OF SAID SECTION 17;
THENCE ON A BEARING OF SOUTH 00° 09' 24" WEST A DISTANCE OF 120.00 FEET
ALONG THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF
BEGINNING.**

SECTION 20: ALL

SECTION 29: ALL

Salmon Creek

EXHIBIT A
Property Description

**TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO**

SECTION 24: E $\frac{1}{2}$; E $\frac{1}{2}$ W $\frac{1}{4}$

SECTION 25: ALL

SECTION 26: E $\frac{1}{2}$ E $\frac{1}{2}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

**EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.; THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26; ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.**

AND EXCEPT

**A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U. S. HIGHWAY 93-PROJECT No. F-FG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE S $\frac{1}{2}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35;
THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE;
THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,**

SECTION 35: E $\frac{1}{2}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; W $\frac{1}{2}$ NE $\frac{1}{4}$

Salmon Creek

EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26;
ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.

AND EXCEPT

A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U.S. HIGHWAY 93-PROJECT No. F-FG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE S $\frac{1}{2}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35;
THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE;
THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

SECTION 18: GOV'T LOT 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$

SECTION 19: ALL

EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170820;
ALSO EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170821.
THIS DEED DESCRIBES THE 6.93 ACRE PARCEL IN SECTION 17.

SECTION 30: N $\frac{1}{2}$ NE $\frac{1}{4}$; GOV'T LOT 1; NE $\frac{1}{4}$ NW $\frac{1}{4}$

Cottonwood

EXHIBIT A
Property Description

**TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO**

SECTION 1: SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

SECTION 11: ALL

SECTION 12: W $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$; W $\frac{1}{2}$

EXCEPT

**A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE;
BEGINNING AT A POINT ON THE SECTION LINE, 1799 FEET, MORE OR LESS, EAST OF
SECTION CORNER COMMON TO SECTIONS 11, 12, 13 AND 14, TOWNSHIP 14 SOUTH,
RANGE 15 EAST, B.M., WHICH POINT IS STATION 210+62 OF "A" LATERAL AS
LOCATED;**

**THENCE NORTH 00° 28' EAST 37.3 FEET;
THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET;
THENCE NORTH 22° 28' EAST, 238.5 FEET;
THENCE ON A 20° CURVE TO THE RIGHT, 120.8 FEET;
THENCE NORTH 46° 38' EAST, 47.6 FEET;
THENCE ON A 30° CURVE TO THE RIGHT, 174.4 FEET;
THENCE SOUTH 81° 02' EAST, 407.5 FEET;
THENCE ON A 40° CURVE TO THE LEFT, 177.1 FEET;
THENCE NORTH 28° 08' EAST, 171.6 FEET;
THENCE ON A 20° CURVE TO THE RIGHT, 189.2 FEET;
THENCE NORTH 65° 58' EAST 2549 FEET TO STATION 252+85 WHICH POINT IS ON
THE EAST SECTION LINE OF SECTION 12, TOWNSHIP 14 SOUTH, RANGE 15 EAST,
B.M., AND 763 FEET, MORE OR LESS, SOUTH OF THE EAST $\frac{1}{4}$ CORNER OF SAID
SECTION 12, ALL SITUATED IN THE $\frac{9}{2}$ OF SAID SECTION 12.**

SECTION 13: ALL

EXCEPT

**A NINE (9) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE WEST QUARTER CORNER OF SECTION 13 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 26' 46" EAST A
DISTANCE OF 2646.88 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 13;
THENCE ON A BEARING OF SOUTH 00° 26' 46" WEST A DISTANCE OF 34.00 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 57° 01'
03" EAST A DISTANCE OF 1900.00 FEET;
THENCE ON A BEARING OF SOUTH 32° 58' 57" EAST A DISTANCE OF 200.00 FEET;
THENCE ON A BEARING OF SOUTH 57° 01' 03" WEST A DISTANCE OF 2032.02 FEET
TO THE WEST BOUNDARY OF SAID SECTION 13;
THENCE ON A BEARING OF NORTH 00° 26' 46" EAST A DISTANCE OF 239.64 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING.**

SECTION 14: ALL

Coltonwood

EXCEPT

BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.; THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET MORE OR LESS; THENCE NORTH 81° 31' EAST, 80 FEET; THENCE NORTH 8° 29' WEST, 505 FEET, MORE OR LESS TO THE PLACE OF BEGINNING.

AND EXCEPT

A STRIP OF LAND 100 FEET WIDE LYING 50 FEET ON EACH SIDE OF THE CENTERLINE OF "A" LATERAL AS LOCATED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14; THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET, MORE OR LESS; THENCE NORTH 81° 31' EAST, 30 FEET TO THE POINT OF BEGINNING, WHICH IS PC STATION 117+79.8 OF "A" LATERAL AS LOCATED; THENCE ON A 40° CURVE TO THE LEFT FROM SEMI-TANGENT SOUTH 8° 29' EAST, A DISTANCE OF 200 FEET; THENCE SOUTH 88° 29' EAST, 206.2 FEET; THENCE ON A 40° CURVE TO THE LEFT, 165 FEET; THENCE NORTH 25° 31' EAST, 449 FEET; THENCE NORTH 37° 01' EAST, 180 FEET TO A POINT ON THE NORTH LINE OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14, 805 FEET MORE OR LESS, EAST OF THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14, ALL SITUATED IN THE SW $\frac{1}{4}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: BEGINNING AT STATION 129+80 OF "A" LATERAL SURVEY AS LOCATED WHICH POINT IS ON THE SOUTH BOUNDARY LINE OF THE NW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND 805 FEET, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF SAID FORTY; THENCE NORTH 37° 01' EAST, 224.9 FEET; THENCE ON A 20° CURVE TO THE RIGHT, 310 FEET; THENCE SOUTH 80° 59' EAST 1440.1 FEET TO STATION 149+55 WHICH STATION IS A POINT ON THE EAST LINE OF THE NE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND 1260 FEET, MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SECTION 14, ALL LYING IN THE N $\frac{1}{2}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: BEGINNING AT A POINT ON THE WEST BOUNDARY LINE OF THE NE $\frac{1}{4}$ OF SECTION 14, 1260 FEET, MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SAID SECTION 14, WHICH POINT IS STATION 149+55 OF "A" LATERAL SURVEY AS LOCATED; THENCE SOUTH 80° 59' EAST, 366.1 FEET MORE OR LESS; THENCE ON A 20° CURVE TO THE RIGHT, 190 FEET; THENCE SOUTH 42° 59' EAST, 685.5 FEET; THENCE ON A 40° CURVE TO THE LEFT, 280.8 FEET; THENCE NORTH 24° 41' EAST, 693.3 FEET; THENCE ON A 40° CURVE TO THE RIGHT 165 FEET; THENCE SOUTH 89° 19' EAST 220.5 FEET; THENCE ON A 50° CURVE TO THE LEFT, 155.7 FEET; THENCE NORTH 12° 51' EAST, 312 FEET; THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET; THENCE NORTH 34° 51' EAST, 708.6 FEET; THENCE ON A 50° CURVE TO THE RIGHT, 110.2 FEET;

Cottonwood

THENCE NORTH 89° 58' EAST, 53 FEET TO STATION 189+86, WHICH POINT IS ON THE EAST LINE OF SAID SECTION 14 AND 45 FEET SOUTH OF THE NORTHEAST CORNER, SITUATED IN THE NE¼ OF SECTION 14.

AND ALSO EXCEPT

A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 40' 16" WEST A DISTANCE OF 2640.52 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 1370.00 FEET ALONG THE NORTH BOUNDARY OF SECTION 14 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 00° 00' 00" WEST A DISTANCE OF 445.00 FEET; THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 200.00 FEET PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF NORTH 00° 00' 00" EAST A DISTANCE OF 445.00 FEET TO THE NORTH BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 89° 40' 16" EAST A DISTANCE OF 200.00 FEET ALONG THE NORTH BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING.

AND ALSO EXCEPT

A TWELVE (12) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 21' 12" EAST A DISTANCE OF 2645.57 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 1008.00 FEET ALONG THE EAST BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 884.00 FEET; THENCE ON A BEARING OF NORTH 89° 38' 48" WEST A DISTANCE OF 590.00 FEET; THENCE ON A BEARING OF NORTH 00° 21' 12" EAST A DISTANCE OF 884.00 FEET PARALLEL WITH THE EAST BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 89° 38' 48" EAST A DISTANCE OF 590.00 FEET TO THE EAST BOUNDARY OF SAID SECTION 14 AND THE REAL POINT OF BEGINNING.
SECTION 23: W½W½; NE¼NW¼

Deep Creek

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 15: $5\frac{1}{2}$; $S\frac{1}{2}NE\frac{1}{4}$

EXCEPT

BEGINNING AT SURVEY STATION 115+74 OF "A" LATERAL SURVEY AS LOCATED WHICH POINT IS ON SECTION LINE 1620.8 FEET SOUTH OF SECTION CORNER COMMON TO SECTION 10, 11, 14 AND 15, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;

THENCE NORTH ALONG SAID SECTION LINE 300.8 FEET, MORE OR LESS TO THE NORTHEAST CORNER OF THE $SE\frac{1}{4}NE\frac{1}{4}$ OF SECTION 15;

THENCE WEST ALONG THE NORTH BOUNDARY OF SAID FORTY (FORTH), 100 FEET; THENCE SOUTH $8^{\circ} 29'$ EAST 681.3 FEET, TO A POINT ON THE EAST SECTION LINE OF SECTION 15;

THENCE NORTHERLY ALONG SAID SECTION LINE 380.5 FEET, TO THE POINT OF BEGINNING.

SECTION 16: ALL

SECTION 21: $E\frac{1}{2}W\frac{1}{2}$; $E\frac{1}{2}$

EXCEPT

A TWENTY-TWO (22) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 21 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH $89^{\circ} 42' 57''$ WEST A DISTANCE OF 2638.50 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 21; THENCE ON A BEARING OF NORTH $007^{\circ} 22' 02''$ EAST A DISTANCE OF 1963.97 FEET TO THE REAL POINT OF BEGINNING;

THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH $89^{\circ} 42' 09''$ WEST A DISTANCE OF 1319.23 FEET;

THENCE ON A BEARING OF NORTH $007^{\circ} 22' 03''$ EAST A DISTANCE OF 680.00 FEET;

THENCE ON A BEARING OF SOUTH $89^{\circ} 42' 09''$ EAST A DISTANCE OF 1319.23 FEET TO THE CENTER QUARTER CORNER OF SAID SECTION 21;

THENCE CONTINUING ON A BEARING OF SOUTH $89^{\circ} 42' 09''$ EAST A DISTANCE OF 100.00 FEET;

THENCE ON A BEARING OF SOUTH $007^{\circ} 17' 51''$ WEST A DISTANCE OF 680.00 FEET;

THENCE ON A BEARING OF NORTH $89^{\circ} 42' 09''$ WEST A DISTANCE OF 100.83 FEET TO THE REAL POINT OF BEGINNING.

SECTION 22: ALL

EXCEPT

A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 22 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS SOUTH $89^{\circ} 32' 27''$ EAST A DISTANCE OF 2642.45 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 22;

THENCE ON A BEARING OF NORTH $89^{\circ} 30' 21''$ WEST A DISTANCE OF 370.00 FEET ALONG THE SOUTH BOUNDARY OF SAID SECTION 22 TO THE REAL POINT OF BEGINNING;

Deep Creek

THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF NORTH 89° 32' 27" WEST A DISTANCE OF 410.00 FEET;
THENCE ON A BEARING OF NORTH 00° 27' 33" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF NORTH 61° 56' 10" EAST A DISTANCE OF 261.77 FEET;
THENCE ON A BEARING OF SOUTH 89° 32' 27" EAST A DISTANCE OF 180.00 FEET
PARALLEL WITH THE SOUTH BOUNDARY OF SAID SECTION 22;
THENCE ON A BEARING OF SOUTH 00° 27' 33" WEST A DISTANCE OF 245.00 FEET TO
THE SOUTH BOUNDARY OF SAID SECTION 22 AND THE REAL POINT OF BEGINNING.

SECTION 26: S½NW¼

SECTION 27: NE¼; N½NW¼; SE¼NW¼

SECTION 28: N½NE¼; NE¼NW¼

EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 28 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2638.50 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 28
AND BEING THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 89° 42'
57" EAST A DISTANCE OF 275.00 FEET ALONG THE NORTH BOUNDARY OF SAID
SECTION 28;
THENCE ON A BEARING OF SOUTH 00° 23' 55" WEST A DISTANCE OF 155.00 FEET;
THENCE ON A BEARING OF NORTH 89° 42' 57" WEST A DISTANCE OF 275.00 FEET
PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 28;
THENCE ON A BEARING OF NORTH 00° 23' 55" EAST A DISTANCE OF 155.00 FEET TO
THE REAL POINT OF BEGINNING.

Exergy ID Pay Request #2, 2/2012				
Detail Contractor/Subcontractor/Suppliers To Be Paid				
			Payable	
Fastenal Company	P O Box 978	Winona, MN 55987	\$ 2,574.73	Mechanical Instrumentation
Hico America Sales & Tech	Three Penn Center W	Pittsburgh, PA 15276	\$ 116,050.00	Transformers
Industrial Automation	123 Main St #3	Three Forks, MT 59752	\$ 4,234.50	Professional Services
Nlx Excavating	4020 North 2600 East	Filer, ID 83328	\$ 167,706.30	Excavating
Renewable Rsrc Cnsltnts	1426 River Forest Dr	Round Rock, TX 78665	\$ 32,500.00	Struct Eng Design
Terracon Consultants	P O Box 419263	Kansas City, MO 64193	\$ 166,929.75	Soil / Concrete Testing
Valley Co-Op Inc	1833 S Lincoln	Jerome, ID 83338	\$ 3,731.14	Fuel
Fagen Inc	P O Box 159	Granite Falls, MN 56241	\$ 206,431.41	General
Total			\$ 700,157.83	

EXHIBIT C



501 West Hwy. 212, P.O. Box 159
Granite Falls, MN 56241
320-564-3324

www.fageninc.com

Civil - Mechanical - Electrical Contractors

320-564-3278 fax

March 16, 2012

Exergy Development Group of Idaho, LLC
James Carkulis
802 W. Bannock St., 12th Floor
Boise, ID 83702

Dear James:

As prescribed in the Contract, enclosed please find original Payment Application Number Three for the Exergy Idaho Six Winds Wind Park Project in Idaho, along with the signed Contractor's Partial Waiver and Lien Release.

Also enclosed, please find a list of subcontractors to be paid from this Payment Application.

Please contact me if you have any questions or need anything further to process this Payment Application.

Thank you.

Sincerely,
FAGEN, INC.

Kirsten Tjosaa KA

Kirsten A. Tjosaa
Controller



APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
 Notche Butte Wind Farm
 Exergy Development Group of Idaho,
 LLC
 Boise, ID 83702

PROJECT:
 Notch Butte
 9 Turbines

APPLICATION NO: 3
PERIOD TO: 02/29/2012
PROJECT NOS: 114034 601
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Fagen Inc
 501 West Highway 212
 Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	7,247,835.08
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,247,835.08
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	571,279.90
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	571,279.90
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	527,453.00
8. CURRENT PAYMENT DUE	\$	43,826.90
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	6,676,555.18

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Rosi Anderson Date: 3-16-12

State of: Minnesota
 County of: Yellow Medicine

Subscribed and sworn to before me this 16th day of March
 Notary Public: Karen Nieuwbeerta
 My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 3
 APPLICATION DATE: 03/16/2012
 PERIOD TO: 02/29/2012
 PROJECT NO: 114034 601
 PROJECT NAME: Notch Butte 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	590,992.08	.00	.00	.00	.00	0	590,992.08	.00
02	Turbine Receive	717,414.00	.00	.00	.00	.00	0	717,414.00	.00
03	Foundations	1,571,429.00	157,143.00	.00	.00	157,143.00	10	1,414,286.00	.00
04	Site Pads	205,934.00	4,700.00	.00	.00	4,700.00	2	201,234.00	.00
05	Crane Pads	93,990.00	.00	.00	.00	.00	0	93,990.00	.00
06	Access Roads and On	545,402.00	77,588.00	36,786.50	.00	114,372.50	21	431,029.50	.00
07	Temporary Facilities	212,284.00	.00	.00	.00	.00	0	212,284.00	.00
08	Off-site Road Improv	114,877.00	.00	.00	.00	.00	0	114,877.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,048.00	.00	.00	.00	.00	0	704,048.00	.00
11	Fiber Optic Systems	28,486.00	.00	.00	.00	.00	0	28,486.00	.00
12	Turbine Switch Gear	228,962.00	.00	.00	.00	.00	0	228,962.00	.00
13	Communications	132,724.00	.00	.00	.00	.00	0	132,724.00	.00
14	Met Towers & Sensors	211,214.00	.00	.00	.00	.00	0	211,214.00	.00
15	Soils Testing	36,880.00	36,880.00	.00	.00	36,880.00	100	.00	.00
16	Site Remediation	42,243.00	.00	.00	.00	.00	0	42,243.00	.00
17	Site Surveying	17,601.00	.00	7,040.40	.00	7,040.40	40	10,560.60	.00
18	Misc. (phone, elect)	54,529.00	.00	.00	.00	.00	0	54,529.00	.00
19	Const Management	1,518,043.00	30,361.00	.00	.00	30,361.00	2	1,487,682.00	.00
20	Mobilization	220,783.00	220,783.00	.00	.00	220,783.00	100	.00	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Lava Beds Wind Farm, LLC
Exergy Development Group of Idaho, LLC
Boise, ID 83702

PROJECT:
Lava Beds
9 Turbines

APPLICATION NO: 31
PERIOD TO: 02/29/2012
PROJECT NOS: 114034 602
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	7,300,178.00
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,300,178.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	623,094.02
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	623,094.02
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 8 from prior Certificate)	\$	523,945.53
8. CURRENT PAYMENT DUE	\$	99,148.49
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 8)	\$	6,677,083.98

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

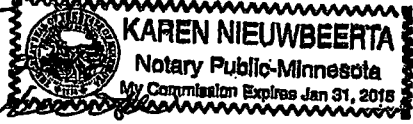
CONTRACTOR: Fagen Inc

By: Lou Anderson Date: 3-16-12

State of Minnesota
County of Yellow Medicine

Subscribed and sworn to before me this 16th day of March.

Notary Public: Karen Nieuwbeerta
My Commission expires: 3/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 31
 APPLICATION DATE: 03/16/2012
 PERIOD TO: 02/29/2012
 PROJECT NO: 114034 602
 PROJECT NAME: Lava Beds 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	590,981.00	.00	.00	.00	590,981.00	0	590,981.00	.00
02	Turbine Receive	732,068.00	.00	.00	.00	732,068.00	0	732,068.00	.00
03	Foundations	1,562,598.00	158,280.00	5,559.10	.00	161,819.10	10	1,400,778.90	.00
04	Site Pads	159,484.00	.00	.00	.00	159,484.00	0	159,484.00	.00
05	Crane Pads	93,989.00	.00	.00	.00	93,989.00	0	93,989.00	.00
06	Access Roads & On Si	739,235.00	77,586.00	41,068.50	.00	118,654.50	16	620,580.50	.00
07	Temporary Facilities	170,038.00	.00	.00	.00	170,038.00	0	170,038.00	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,034.00	.00	.00	.00	704,034.00	0	704,034.00	.00
11	Fiber Optic System	28,486.00	.00	.00	.00	28,486.00	0	28,486.00	.00
12	Turbine Switch Gear	228,957.00	.00	.00	.00	228,957.00	0	228,957.00	.00
13	Communications Syste	155,367.00	.00	.00	.00	155,367.00	0	155,367.00	.00
14	Met Towers & Sensors	211,210.00	.00	.00	.00	211,210.00	0	211,210.00	.00
15	Soils Testing	29,335.00	29,335.00	.00	.00	29,335.00	100	.00	.00
16	Site Remediation	42,242.00	.00	.00	.00	42,242.00	0	42,242.00	.00
17	Site Surveying	17,601.00	8,800.50	.00	.00	8,800.50	50	8,800.50	.00
18	Misc. (Phone, Elect)	54,528.00	.00	.00	.00	54,528.00	0	54,528.00	.00
19	Construction Managem	1,559,268.00	31,185.03	52,520.89	.00	83,705.92	5	1,475,562.08	.00
20	Mobilization	220,779.00	220,779.00	.00	.00	220,779.00	100	.00	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Rogerson Flats Wind Farm,
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Jack Ranch Rogerson
Flats 10 Turbines

APPLICATION NO: 3
PERIOD TO: 02/29/2012
PROJECT NOS: 114034 603
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	506,077.33
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	506,077.33
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	486,963.33
8. CURRENT PAYMENT DUE	\$	19,114.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,538,804.42

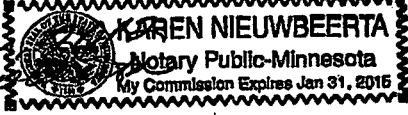
CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kate Anderson Date: 3-16-12

State of Minnesota
County of Yellow Medicine
Subscribed and sworn to before me this 16th day of March
Notary Public Karen Nieuwbeerta
My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION
 PAYMENT, containing Contractor's signed Certification, is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 3
 APPLICATION DATE: 03/16/2012
 PERIOD TO: 02/29/2012
 PROJECT NO: 114034 603
 PROJECT NAME: Jack Ranch Rogerson Flats 10 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive Asse	759,456.75	.00	.00	.00	.00	0	759,456.75	.00
03	Foundations	1,723,215.50	70,293.00	.00	.00	70,293.00	4	1,652,922.50	.00
04	Site Pads	281,170.75	.00	.00	.00	.00	0	281,170.75	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	70,107.75	.00	.00	70,107.75	9	726,074.25	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	.00	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc. (Phone, elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	21,109.00	19,114.00	.00	40,223.00	4	915,212.00	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,876.75	32,687.58	.00	.00	32,687.58	10	294,189.17	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
 Salmon Creek Wind Farm,
 Exergy Development Group of Idaho,
 LLC
 Boise, ID 83702

PROJECT:
 Jack Ranch
 Salmon Creeks

APPLICATION NO: 3
 PERIOD TO: 02/29/2012
 PROJECT NOS: 114034 604
 CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Fagen Inc
 501 West Highway 212
 Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	506,077.33
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	506,077.33
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 8 from prior Certificate)	\$	488,963.33
8. CURRENT PAYMENT DUE	\$	19,114.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,749,682.42

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kou Anderson Date: 3-16-12

State of Minnesota
 County of Yellow Medicine

Subscribed and sworn to before me this 16th day of March

Notary Public Karen Nieuwbeerta
 My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION

PAYMENT, containing Contractor's signed Certification, is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 3

APPLICATION DATE: 03/16/2012

PERIOD TO: 02/29/2012

PROJECT NO: 114034 604

PROJECT NAME: Jack Ranch Salmon Creeks

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.75	.00	.00	.00	.00	0	759,456.75	.00
03	Foundations	1,723,215.50	70,293.00	.00	.00	70,293.00	4	1,652,922.50	.00
04	Site Pads	281,170.75	.00	.00	.00	.00	0	281,170.75	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
08	Access Roads and On	796,182.00	70,107.75	.00	.00	70,107.75	9	726,074.25	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	.00	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optio System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Mst Towers & Sensors	210,878.00	.00	.00	.00	.00	0	210,878.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Electr)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	21,109.00	19,114.00	.00	40,223.00	4	915,212.00	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,876.75	32,687.68	.00	.00	32,687.68	10	294,189.07	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Cottonwood Wind Park, LLC
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Jack Ranch
Cottonwood

APPLICATION NO: 3
PERIOD TO: 02/29/2012
PROJECT NOS: 114034 605
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
601 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	506,077.33
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	506,077.33
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	486,963.33
8. CURRENT PAYMENT DUE	\$	19,114.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,538,804.42

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kari Anderson Date: 3-16-12

State of Minnesota
County of Yellow Medicine

Subscribed and sworn to before me this 16th day of March


KAREN NIEUWBEERTA
Notary Public - Minnesota
My Commission Expires Jan 31, 2018

Notary Public: Karen Nieuwbeerta
My Commission expires: 4/31/15

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION
 PAYMENT, containing Contractor's signed Certification, is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 3
 APPLICATION DATE: 03/16/2012
 PERIOD TO: 02/29/2012
 PROJECT NO: 114034 605
 PROJECT NAME: Jack Ranch Cottonwood

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	227,123.25	0	227,123.25	.00
02	Turbine Receive	759,458.75	.00	.00	.00	759,458.75	0	759,458.75	.00
03	Foundations	1,723,215.50	70,293.00	.00	.00	70,293.00	4	1,652,922.50	.00
04	Site Pads	281,170.75	.00	.00	.00	281,170.75	0	281,170.75	.00
05	Crane Pads	93,723.50	.00	.00	.00	93,723.50	0	93,723.50	.00
06	Access Roads and On	796,182.00	70,107.75	.00	.00	70,107.75	9	726,074.25	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	142,502.75	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,908.75	.00	.00	.00	2,145,908.75	0	2,145,908.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	768,533.50	0	768,533.50	.00
11	Fiber Optic Systems	29,008.75	.00	.00	.00	29,008.75	0	29,008.75	.00
12	Turbine Switch Gear	253,998.75	.00	.00	.00	253,998.75	0	253,998.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	43,933.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Elect)	22,098.25	.00	.00	.00	22,098.25	0	22,098.25	.00
19	Construction Managem	955,435.00	21,109.00	19,114.00	.00	40,223.00	4	915,212.00	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.58	.00	.00	32,687.58	10	294,188.17	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
 Deep Creek Wind Park, LLC
 Exergy Development Group of Idaho,
 LLC
 Boise, ID 83702

PROJECT:
 Jack Ranch
 Deep Creek

APPLICATION NO: 31
PERIOD TO: 02/29/2012
PROJECT NOS: 114034 606
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Fagen Inc
 501 West Highway 212
 Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	506,077.31
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	506,077.31
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	486,963.31
8. CURRENT PAYMENT DUE	\$	19,114.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,749,682.44

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Lou Anderson Date: 3-16-12

State of Minnesota
 County of Holloway

Subscribed and sworn to before me this 16th day of March
 Notary Public Karen Nieuwbeerta
 My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION
 PAYMENT, containing Contractor's signed Certification, is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 3
 APPLICATION DATE: 03/16/2012
 PERIOD TO: 02/29/2012
 PROJECT NO: 114034 606
 PROJECT NAME: Jack Ranch Deep Creek

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	227,123.25	0	227,123.25	.00
02	Turbine Receive	759,456.75	.00	.00	.00	.00	0	759,456.75	.00
03	Foundations	1,723,215.50	70,293.00	.00	.00	70,293.00	4	1,652,922.50	.00
04	Site Pads	281,170.75	.00	.00	.00	.00	0	281,170.75	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	70,107.75	.00	.00	70,107.75	9	726,074.25	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	.00	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic Systems	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	210,878.00	.00	.00	.00	.00	0	210,878.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	21,109.00	19,114.00	.00	40,223.00	4	915,212.00	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,876.75	32,687.56	.00	.00	32,687.56	10	294,188.19	.00

Exhibit L

PARTIAL WAIVER AND LIEN RELEASE

Fagen, Inc., a Minnesota corporation ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company ("Owner"), have entered into that certain Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

For and in consideration of partial payment in the amount of two hundred nineteen thousand four hundred thirty one and 39/100 (\$219,431.39) for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Owner, and other good and valuable consideration, Contractor does hereby, to the extent paid and contingent upon receipt thereof:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors or any of its respective employees, (b) (i) it has not received a notice of intention to claim any Liens (including Liens by, through or under any of its Subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, or to the best of its knowledge after due inquiry, by any of its Subcontractors, and (iii) there is no known basis for any such Liens; and

3. agree and certify that all amounts properly due and payable with respect to all prior Applications for Payment have been paid in full by Owner and the applicable lien waivers associated therewith are final and unconditional.

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IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 16 day of March 2012:

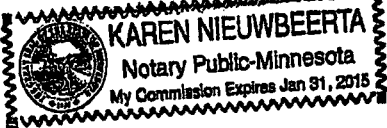
[Fagen, Inc.]

By: [Signature]
Name: MIKE ELLGEN
Title: SA. VICE PRES.

STATE of Minnesota
COUNTY of Yellow Medicine

SUBSCRIBED AND SWORN to before me by Mike Ellgen this 16th day of March, 2012.

Karen Nieuwebeerta
Notary Public in and for the State of
[MN], residing at:
Chippewa County

 KAREN NIEUWBEERTA
Notary Public-Minnesota
My Commission Expires Jan 31, 2015

Lava Beds Legal Description

EXHIBIT "A" EASEMENT

Township 1 South, Range 32, E.B.M., Bingham County, Idaho

Sections 22, 23 and 26: All of that property lying within 1320 feet south and west of the Tabor Highway/Union Pacific Rail Road right of way.

Notch Butte Legal Description

Exhibit A Legal Description

Township 6 South, Range 19 East of the Boise Meridian, Lincoln County, Idaho

Section 22: EYzEYz

EXCEPT a portion of the NE"NE" of Section 22 conveyed to the State of Idaho by Warranty Deed recorded as Instrument Number 109244, Lincoln County records.

Rogerson Flats

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 7: GOV'T. LOTS 2, 3, 4, 5, 6, 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:

TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., TWIN FALLS COUNTY, IDAHO
SECTION 7:

BEGINNING AT A POINT ON THE SECTION LINE 763 FEET, MORE OR LESS, SOUTH OF
THE WEST QUARTER CORNER OF SECTION 7, WHICH POINT IS STATION 252+85 OF
"A" LATERAL AS LOCATED;

THENCE NORTH 65° 58' EAST 89.4 FEET;

THENCE ON A 20° CURVE TO THE LEFT, 157.2 FEET;

THENCE NORTH 34° 32' EAST 422.7 FEET;

THENCE ON A 20° CURVE TO THE RIGHT 80.8 FEET;

THENCE NORTH 50° 42' EAST 580.7 FEET;

THENCE ON A 10° CURVE TO THE RIGHT, 210 FEET;

THENCE NORTH 71° 42' EAST 457.6 FEET;

THENCE ON A 10° CURVE TO THE LEFT, 180 FEET, TO STATION 274+63.4 WHICH

POINT IS ON THE LAST EAST LINE OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ BEING GOV'T LOT 7 OF
SECTION 7 AND 865 FEET, MORE OR LESS, SOUTH OF THE NORTHEAST CORNER OF
SAID SW $\frac{1}{4}$ NW $\frac{1}{4}$ GOV'T LOT 7 OF SECTION 7, ALL SITUATED IN THE W $\frac{1}{2}$ OF SECTION
7, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M.

AND EXCEPT

THAT PORTION OF THE SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 7, TOWNSHIP 14 SOUTH, RANGE 16
EAST, B.M., AS DESCRIBED:

BEGINNING AT A POINT WHICH IS THE CORNER COMMON TO SECTIONS 7, 8, 17
AND 18, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M.;

THENCE NORTH FOR 141 FEET;

THENCE SOUTH 76° 46' 32" WEST FOR 610 FEET;

THENCE EAST FOR 600 FEET TO THE CORNER COMMON TO SECTIONS 7, 8, 17 AND
18, WHICH IS THE POINT OF BEGINNING.

SECTION 8: NE $\frac{1}{4}$ SW $\frac{1}{4}$; S $\frac{1}{2}$ SW $\frac{1}{4}$

SECTION 17: GOV'T. LOTS 1 AND 2, EXCEPT THE NORTH 300 FEET OF SAID LOTS;
S $\frac{1}{2}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$; S $\frac{1}{4}$ SE $\frac{1}{4}$; W $\frac{1}{2}$ OF SECTION NORTHWEST OF RAILROAD; 6.93
ACRES RAILROAD RIGHT OF WAY; W $\frac{1}{2}$ OF SECTION SOUTH AND EAST OF RAILROAD.

AND EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHEAST CORNER OF SECTION 17, ALL IN TOWNSHIP 14
SOUTH, RANGE 16 EAST, B.M., WHICH BEARS SOUTH 00° 09' 24" WEST A DISTANCE
OF 2640.66 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 17; THENCE
ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 1320.33 FEET ALONG
THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 26'
58" WEST A DISTANCE OF 450.00 FEET ALONG THE 1/16TH LINE.

Rogerson Flats

**THENCE ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF SOUTH 89° 26' 58" EAST A DISTANCE OF 450.00 FEET TO
THE EAST BOUNDARY OF SAID SECTION 17;
THENCE ON A BEARING OF SOUTH 00° 09' 24" WEST A DISTANCE OF 120.00 FEET
ALONG THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF
BEGINNING.**

SECTION 20: ALL

SECTION 29: ALL

Salmon Creek

EXHIBIT A
Property Description

**TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO**

SECTION 24: E $\frac{1}{2}$; E $\frac{1}{2}$ W $\frac{1}{2}$

SECTION 25: ALL

SECTION 26: E $\frac{1}{2}$ E $\frac{1}{2}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$.

**EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE
HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE
FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON
THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG 2391(4) HIGHWAY SURVEY ON FILE
IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE
STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{2}$
OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN
TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,
BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A
POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER
CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID
SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET
SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26,
ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH
STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0
FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING
NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH
STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE
EAST QUARTER CORNER OF SECTION 26.**

AND EXCEPT

**A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE
FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON
THE OFFICIAL PLAT OF U. S. HIGHWAY 93-PROJECT No. F-FG 2391(5) HIGHWAY
SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT
DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$
AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE S $\frac{1}{2}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF
SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,
BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION
IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST
QUARTER CORNER OF SECTION 35;
THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID
SURVEY, WHICH STATION IS A POINT OF CURVATURE;
THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL
ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE
APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION
26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,**

SECTION 35: E $\frac{1}{2}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; W $\frac{1}{2}$ NE $\frac{1}{4}$

Salmon Creek

EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.) A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.; THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26; ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.

AND EXCEPT

A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U.S. HIGHWAY 93-PROJECT No. F-FG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35; THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE; THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

SECTION 18: GOV'T LOT 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$

SECTION 19: ALL

EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170820. ALSO EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170821. THIS DEED DESCRIBES THE 6.93 ACRE PARCEL IN SECTION 17.

SECTION 30: N $\frac{1}{2}$ NE $\frac{1}{4}$; GOV'T LOT 1; NE $\frac{1}{4}$ NW $\frac{1}{4}$.

Cultonwood

EXHIBIT A
Property Description

**TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO**

SECTION 1: SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

SECTION 11: ALL

SECTION 12: W $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$; W $\frac{1}{2}$

EXCEPT

**A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE;**

**BEGINNING AT A POINT ON THE SECTION LINE, 1799 FEET, MORE OR LESS, EAST OF
SECTION CORNER COMMON TO SECTIONS 11, 12, 13 AND 14, TOWNSHIP 14 SOUTH,
RANGE 15 EAST, B.M., WHICH POINT IS STATION 210+62 OF "A" LATERAL AS
LOCATED;**

THENCE NORTH 00° 28' EAST 37.3 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET;

THENCE NORTH 22° 28' EAST, 238.5 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 120.8 FEET;

THENCE NORTH 46° 38' EAST, 47.6 FEET;

THENCE ON A 30° CURVE TO THE RIGHT, 174.4 FEET;

THENCE SOUTH 81° 02' EAST, 407.5 FEET;

THENCE ON A 40° CURVE TO THE LEFT, 177.1 FEET;

THENCE NORTH 28° 08' EAST, 171.6 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 189.2 FEET;

**THENCE NORTH 65° 58' EAST 2549 FEET TO STATION 252+85 WHICH POINT IS ON
THE EAST SECTION LINE OF SECTION 12, TOWNSHIP 14 SOUTH, RANGE 15 EAST,
B.M., AND 763 FEET, MORE OR LESS, SOUTH OF THE EAST $\frac{1}{4}$ CORNER OF SAID
SECTION 12, ALL SITUATED IN THE SW $\frac{1}{2}$ OF SAID SECTION 12.**

SECTION 13: ALL

EXCEPT

**A NINE (9) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE WEST QUARTER CORNER OF SECTION 13 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 26' 46" EAST A
DISTANCE OF 2646.88 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 13;
THENCE ON A BEARING OF SOUTH 00° 26' 46" WEST A DISTANCE OF 34.00 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING;**

**THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 57° 01'
03" EAST A DISTANCE OF 1900.00 FEET;**

THENCE ON A BEARING OF SOUTH 32° 58' 57" EAST A DISTANCE OF 200.00 FEET;

**THENCE ON A BEARING OF SOUTH 57° 01' 03" WEST A DISTANCE OF 2032.02 FEET
TO THE WEST BOUNDARY OF SAID SECTION 13;**

**THENCE ON A BEARING OF NORTH 00° 26' 46" EAST A DISTANCE OF 239.64 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING.**

SECTION 14: ALL

Coltonwood

EXCEPT

BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.; THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET MORE OR LESS; THENCE NORTH 81° 31' EAST, 80 FEET; THENCE NORTH 8° 29' WEST, 505 FEET, MORE OR LESS TO THE PLACE OF BEGINNING.

AND EXCEPT

A STRIP OF LAND 100 FEET WIDE LYING 50 FEET ON EACH SIDE OF THE CENTERLINE OF "A" LATERAL AS LOCATED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14; THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET, MORE OR LESS; THENCE NORTH 81° 31' EAST, 30 FEET TO THE POINT OF BEGINNING, WHICH IS PC STATION 117+79.8 OF "A" LATERAL AS LOCATED; THENCE ON A 40° CURVE TO THE LEFT FROM SEMI-TANGENT SOUTH 8° 29' EAST, A DISTANCE OF 200 FEET; THENCE SOUTH 88° 29' EAST, 206.2 FEET; THENCE ON A 40° CURVE TO THE LEFT, 165 FEET; THENCE NORTH 25° 31' EAST, 449 FEET; THENCE NORTH 37° 01' EAST, 180 FEET TO A POINT ON THE NORTH LINE OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14, 805 FEET MORE OR LESS, EAST OF THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14, ALL SITUATED IN THE SW $\frac{1}{4}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: BEGINNING AT STATION 129+80 OF "A" LATERAL SURVEY AS LOCATED WHICH POINT IS ON THE SOUTH BOUNDARY LINE OF THE NW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND 805 FEET, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF SAID FORTY; THENCE NORTH 37° 01' EAST, 224.9 FEET; THENCE ON A 20° CURVE TO THE RIGHT, 310 FEET; THENCE SOUTH 80° 59' EAST 1440.1 FEET TO STATION 149+55 WHICH STATION IS A POINT ON THE EAST LINE OF THE NE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND 1260 FEET, MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SECTION 14, ALL LYING IN THE N $\frac{1}{2}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: BEGINNING AT A POINT ON THE WEST BOUNDARY LINE OF THE NE $\frac{1}{4}$ OF SECTION 14, 1260 FEET, MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SAID SECTION 14, WHICH POINT IS STATION 149+55 OF "A" LATERAL SURVEY AS LOCATED; THENCE SOUTH 80° 59' EAST, 366.1 FEET MORE OR LESS; THENCE ON A 20° CURVE TO THE RIGHT, 190 FEET; THENCE SOUTH 42° 59' EAST, 685.5 FEET; THENCE ON A 40° CURVE TO THE LEFT, 280.8 FEET; THENCE NORTH 24° 41' EAST, 693.3 FEET; THENCE ON A 40° CURVE TO THE RIGHT 165 FEET; THENCE SOUTH 89° 19' EAST 220.5 FEET; THENCE ON A 50° CURVE TO THE LEFT, 155.7 FEET; THENCE NORTH 12° 51' EAST, 312 FEET; THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET; THENCE NORTH 34° 51' EAST, 708.6 FEET; THENCE ON A 50° CURVE TO THE RIGHT, 110.2 FEET;

Cottonwood

THENCE NORTH 89° 58' EAST, 53 FEET TO STATION 189+86, WHICH POINT IS ON THE EAST LINE OF SAID SECTION 14 AND 45 FEET SOUTH OF THE NORTHEAST CORNER, SITUATED IN THE NE¼ OF SECTION 14.

AND ALSO EXCEPT

A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 40' 16" WEST A DISTANCE OF 2640.52 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 14;
THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 1370.00 FEET ALONG THE NORTH BOUNDARY OF SECTION 14 TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 00° 00' 00" WEST A DISTANCE OF 445.00 FEET;
THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 200.00 FEET PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 14;
THENCE ON A BEARING OF NORTH 00° 00' 00" EAST A DISTANCE OF 445.00 FEET TO THE NORTH BOUNDARY OF SAID SECTION 14;
THENCE ON A BEARING OF SOUTH 89° 40' 16" EAST A DISTANCE OF 200.00 FEET ALONG THE NORTH BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING.

AND ALSO EXCEPT

A TWELVE (12) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 21' 12" EAST A DISTANCE OF 2645.57 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 1008.00 FEET ALONG THE EAST BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 884.00 FEET;
THENCE ON A BEARING OF NORTH 89° 38' 48" WEST A DISTANCE OF 590.00 FEET;
THENCE ON A BEARING OF NORTH 00° 21' 12" EAST A DISTANCE OF 884.00 FEET PARALLEL WITH THE EAST BOUNDARY OF SAID SECTION 14;
THENCE ON A BEARING OF SOUTH 89° 38' 48" EAST A DISTANCE OF 590.00 FEET TO THE EAST BOUNDARY OF SAID SECTION 14 AND THE REAL POINT OF BEGINNING.
SECTION 23: W½W½; NE¼NW¼

Deep Creek

EXHIBIT A
Property Description

**TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO**

SECTION 15: S½; S½NE¼

EXCEPT

**BEGINNING AT SURVEY STATION 115474 OF "A" LATERAL SURVEY AS LOCATED
WHICH POINT IS ON SECTION LINE 1620.8 FEET SOUTH OF SECTION CORNER
COMMON TO SECTION 10, 11, 14 AND 15, TOWNSHIP 14 SOUTH, RANGE 15 EAST,
B.M.;**

**THENCE NORTH ALONG SAID SECTION LINE 300.8 FEET, MORE OR LESS TO THE
NORTHEAST CORNER OF THE SE¼ NE¼ OF SECTION 15;
THENCE WEST ALONG THE NORTH BOUNDARY OF SAID FORTY (FORTH) 100 FEET;
THENCE SOUTH 8° 29' EAST 681.3 FEET, TO A POINT ON THE EAST SECTION LINE OF
SECTION 15;
THENCE NORTHERLY ALONG SAID SECTION LINE 380.5 FEET, TO THE POINT OF
BEGINNING.**

SECTION 16: ALL

SECTION 21: E½W½; E½

EXCEPT

**A TWENTY-TWO (22) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS
FOLLOWS:
COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 21 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2698.50 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 21;
THENCE ON A BEARING OF NORTH 007° 22' 02" EAST A DISTANCE OF 1963.97 FEET
TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 42'
09" WEST A DISTANCE OF 1319.23 FEET;
THENCE ON A BEARING OF NORTH 007° 22' 03" EAST A DISTANCE OF 680.00 FEET;
THENCE ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF 1319.23 FEET TO
THE CENTER QUARTER CORNER OF SAID SECTION 21;
THENCE CONTINUING ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF
100.00 FEET;
THENCE ON A BEARING OF SOUTH 007° 17' 51" WEST A DISTANCE OF 680.00 FEET;
THENCE ON A BEARING OF NORTH 89° 32' 09" WEST A DISTANCE OF 100.83 FEET TO
THE REAL POINT OF BEGINNING.**

SECTION 22: ALL

EXCEPT

**A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 22 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS SOUTH 89° 32' 27" EAST A
DISTANCE OF 2642.45 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 22;
THENCE ON A BEARING OF NORTH 89° 30' 21" WEST A DISTANCE OF 370.00 FEET
ALONG THE SOUTH BOUNDARY OF SAID SECTION 22 TO THE REAL POINT OF
BEGINNING;**

Deep Creek

THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF NORTH 89° 32' 27" WEST A DISTANCE OF 410.00 FEET;
THENCE ON A BEARING OF NORTH 00° 27' 33" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF NORTH 61° 56' 10" EAST A DISTANCE OF 251.77 FEET;
THENCE ON A BEARING OF SOUTH 89° 32' 27" EAST A DISTANCE OF 180.00 FEET
PARALLEL WITH THE SOUTH BOUNDARY OF SAID SECTION 22;
THENCE ON A BEARING OF SOUTH 00° 27' 33" WEST A DISTANCE OF 245.00 FEET TO
THE SOUTH BOUNDARY OF SAID SECTION 22 AND THE REAL POINT OF BEGINNING.

SECTION 26: S½NW¼

SECTION 27: NE¼; N½NW¼; SE¼NW¼

SECTION 28: N½NE¼; NE¼NW¼

EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 28 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2636.50 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 28
AND BEING THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 89° 42'
57" EAST A DISTANCE OF 275.00 FEET ALONG THE NORTH BOUNDARY OF SAID
SECTION 28;
THENCE ON A BEARING OF SOUTH 00° 23' 55" WEST A DISTANCE OF 155.00 FEET;
THENCE ON A BEARING OF NORTH 89° 42' 57" WEST A DISTANCE OF 275.00 FEET
PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 28;
THENCE ON A BEARING OF NORTH 00° 23' 55" EAST A DISTANCE OF 155.00 FEET TO
THE REAL POINT OF BEGINNING.

Exergy ID Pay Request #3, 2/2012				
Detail Contractor/Subcontractor/Suppliers To Be Paid				
			Payable	
Kaneaster Construction	425 N Lupine Place	Pine, ID 83647	\$ 7,825.00	Replace Doors
Riedesel Engineering	202 Falls Ave	Twin Falls, ID 83301	\$ 26,745.22	Surveying
Sargent & Lundy LLC	8070 Solutions Center	Chicago, IL 60677-8000	\$ 2,690.00	Design Reviews
Valley Co-Op Inc	1833 S Lincoln	Jerome, ID 83338	\$ 5,945.25	Fuel
Western States Equip	P O Box 3805	Seattle, WA 98124-3805	\$ 19,546.64	Equipment
Fagen Inc	P O Box 159	Granite Falls, MN 56241	\$ 156,879.28	General
Total			\$ 219,431.39	

IN WITNESS WHEREOF, the undersigned has executed and delivered
this Partial Waiver and Lien Release this 22 day of Feb, 2012

Festenal

By: Misty Rusted
Name: _____
Title: A/R

STATE of MN

COUNTY of Winona

SUBSCRIBED AND SWORN to before me by Misty Rusted this 22 day of
Feb, 2012

Heather E. Suhr
Notary Public in and for the State of
MN, residing at
Winona



Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Fastenal ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 560900) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$2574.73 (Inv# IDBLA6436), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Hico America Sales & Tech ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524119) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$116050.00 (Inv# 640), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 22nd day of Feb, 2012

Hico Americas Sales & Tech

By: [Signature]
Name: Bong-Jin Ock
Title: Director

STATE of Pennsylvania
COUNTY of Allegheny

SUBSCRIBED AND SWORN to before me by Bong-Jin Ock this 22nd day of February, 2012

[Signature]
Notary Public in and for the State of PA, residing at: Pittsburgh, PA 15276

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Antoinette Baker, Notary Public
Moon Twp., Allegheny County
My Commission Expires June 15, 2012
Member, Pennsylvania Association of Notaries

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Industrial Automation Con ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 532871) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$4234.50 (Inv# 4259), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

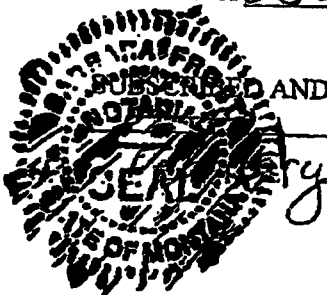
IN WITNESS WHEREOF, the undersigned has executed and delivered
this Partial Waiver and Lien Release this 3 day of Feb., 2012.

Industrial Automation Con.

By: Crystal Turner
Name: CRYSTAL TURNER
Title: ADMINISTRATOR

STATE of Montana

COUNTY of Gallatin



SUBSCRIBED AND SWORN to before me by Crystal Turner this 3 day of
Feb., 2012

Barbara Frost
Notary Public in and for the State of
MT, residing at:
Three Forks

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Nix Excavating ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 512373) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$1400.00 (Inv# 3834), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 16 day of December, 2014.

Nix Excavating Inc

By: [Signature]
Name: CEO / owner
Title: Keith Nix

STATE of Idaho

COUNTY of Lain Falls

SUBSCRIBED AND SWORN to before me by Keith Nix this 16 day of December, 2014.

SAMANTHA ANDERSON
NOTARY PUBLIC
STATE OF IDAHO

[Signature]
Notary Public in and for the State of Idaho, residing at:
3895 N 2500 E, Filer, Idaho 83328
Commission Exp 6/18/16

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Nix Excavating ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524127) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$166306.30 (Inv# 3904), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered
this Partial Waiver and Lien Release this 6 day of February, 2012.

Nix Excavating Inc

By: [Signature]
Name: Keith Nix
Title: Pres CEO

STATE of Idaho

COUNTY of Twin Falls

SUBSCRIBED AND SWORN to before me by Keith Nix this 6 day of
February, 2011.

SAMANTHA ANDERSON
NOTARY PUBLIC
STATE OF IDAHO

Exp 6-18-16

[Signature]
Notary Public in and for the State of
Idaho residing at:
2895 N 2500 E - Filer Id

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Renewable Resource Cnslt ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524117) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$22500.00 (Inv# 1102841), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 11th day of January, 2012

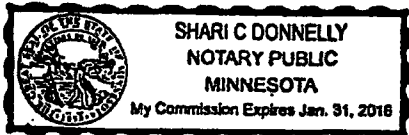
Renewable Resource Cnslt

By: Michael Sip
Name: MICHAEL SIP
Title: PRINCIPAL

STATE of Minnesota

COUNTY of Hennepin

SUBSCRIBED AND SWORN to before me by Michael Sip this 11th day of January, 2012



Shari C Donnelly
Notary Public in and for the State of
MN, residing at:
Brocklyn Park, MN

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Renewable Resource Cnslt ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524130) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$10000.00 (Inv# 1103111), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 2ND day of February, 2012.

Renewable Resource Cnslt

By: Michael J. Sip
Name: Michael J. Sip
Title: Principal

STATE of Minnesota
COUNTY of Hennepin

SUBSCRIBED AND SWORN to before me by Michael J. Sip this 2ND day of February, 2012

Shari C. Donnelly
Notary Public in and for the State of
MN, residing at:
Hennepin County

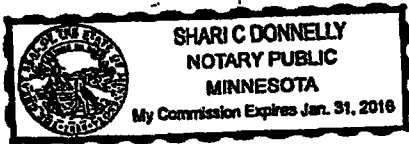


Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Terracon Consultants Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 526430) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$90200.00 (Inv# P001178), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 9th day of Dec., 2011.

Terracon Consultants Inc

By: [Signature]
Name: Patrick L. McCarty
Title: Act. Rep. II

STATE of KS

COUNTY of Sedgewick

SUBSCRIBED AND SWORN to before me by [Signature] this 9 day of December, 2011.

NOTARY PUBLIC-State of Kansas
PAMELA G. GIBSON
My Appt. Exp. 10-23-14

[Signature]
Notary Public in and for the State of KS residing at:
18001 W. 106th St. Ste 200
Overland Park, Kansas

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Terracon Consultants Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 526431) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$15300.00(Inv# P001234), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 9th day of Dec., 2011.

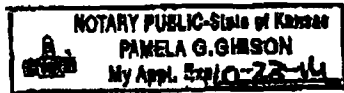
Terracon Consultants Inc

By: [Signature]
Name: Patrick L. McGarry
Title: Asst. Rep. III

STATE of KS

COUNTY of Schuman

SUBSCRIBED AND SWORN to before me by [Signature] this 9 day of December, 2011



[Signature]
Notary Public in and for the State of KS, residing at:
1801 W. 10th St Ste. 200
Overland Park, KS

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Terracon Consultants Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 526427) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$27020.00(Inv# P001176), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 9th day of Dec., 2011.

Terracon Consultants Inc

By: [Signature]
Name: Patrick L. McLucy
Title: Asst. Rep. III

STATE of KS
COUNTY of Johnson

SUBSCRIBED AND SWORN to before me by [Signature] this 9 day of December, 2011.

NOTARY PUBLIC-State of Kansas
PAMELA G. GIBSON
My App. Exp. 12-23-14

[Signature]
Notary Public in and for the State of KS
residing at:
1801 W. 106th St Ste 300
Overland Park, Kansas

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Terracon Consultants Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 526430) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$26548.75(Inv# T260501), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 19 day of Dec., 2011.

Terracon Consultants Inc

By: [Signature]
Name: Patrick L. McQuay
Title: Gen. S.P. III

STATE of KS
COUNTY of Sedgewick

SUBSCRIBED AND SWORN to before me by [Signature] this 19 day of Dec., 2011

[Signature]
Notary Public in and for the State of Ks, residing at:
1801 W 10th St Ste 200
Olathe, KS 66041

NOTARY PUBLIC-State of Kansas
PAMELA G. GIBSON
My App. Exp. 10-22-14

Deposit Date: 12/14/2011
Lockbox: 843358
Batch: 3369
Transaction: 23

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Terracon Consultants Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 526431) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$7861.00(Inv# T260546), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 19 day of Dec., 2011.

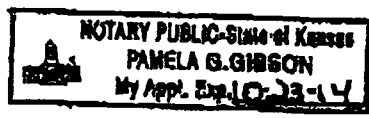
Terracon Consultants Inc

By: [Signature]
Name: Patrick L. McCarty
Title: Asst. Rep. III

STATE of KS
COUNTY of Johnson

SUBSCRIBED AND SWORN to before me by [Signature] this 19 day of December, 2011

[Signature]
Notary Public in and for the State of KS
residing at:
1800 W. 106th St 300
Pamela G. Gibson



Deposit Date: 12/14/2011
Lockbox: 843358
Batch: 3369
Transaction: 23

Exhibit K**PARTIAL WAIVER AND LIEN RELEASE****(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Valley Co-Op Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 559036) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$3731.14 (Inv# 27627 27623 27626), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. Irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

FEB/23/2012/THU 10:38 AM
FEB-23-2012 THU 11:01 AM Fagen Inc.

FAX No.
FAX NO. 3205645191

P. 003
P. 03

IN WITNESS WHEREOF, the undersigned has executed and delivered
this Partial Waiver and Lien Release this 20 day of Feb, 2012

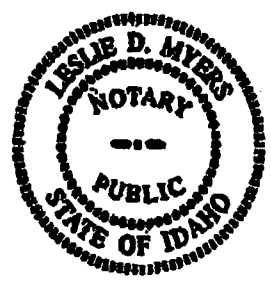
Valley Co-Op Inc

By: Mary Jane Holmberg
Name: Mary Jane Holmberg
Title: _____

STATE of Idaho

COUNTY of Jerome

SUBSCRIBED AND SWORN to before me by Mary Jane Holmberg this 20 day of
February, 2012.



Leslie D. Myers
Notary Public in and for the State of
ID residing at:
Jerome, ID

EXHIBIT D



501 West Hwy. 212, P.O. Box 159
Granite Falls, MN 56241
320-564-3324

www.fageninc.com

Civil - Mechanical - Electrical Contractors

320-564-3278 fax

April 25, 2012

Exergy Development Group of Idaho, LLC
James Carkulis
802 W. Bannock St., 12th Floor
Boise, ID 83702

Dear James:

As prescribed in the Contract, enclosed please find original Payment Application Number Four for the Exergy Idaho Six Winds Wind Park Project in Idaho, along with the signed Contractor's Partial Waiver and Lien Release.

Also enclosed, please find a list of subcontractors to be paid from this Payment Application.

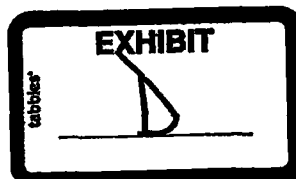
Please contact me if you have any questions or need anything further to process this Payment Application.

Thank you.

Sincerely,
FAGEN, INC.

Kirsten Tjosaas (KA)

Kirsten A. Tjosaas
Controller



APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Notche Butte Wind Farm
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Notch Butte
9 Turbines

APPLICATION NO: 4
PERIOD TO: 04/25/2012
PROJECT NOS: 114034 601
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	7,247,835.08
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,247,835.08
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	589,217.80
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	589,217.80
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	571,279.90
8. CURRENT PAYMENT DUE	\$	17,937.90
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	6,658,617.28

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kou Anderson Date: 4-25-12

State of: Minnesota
County of: Yellow Medicine

Subscribed and sworn to before me this 25th day of April
Notary Public Karen Nieuwebeerta
My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 4
 APPLICATION DATE: 04/25/2012
 PERIOD TO: 04/25/2012
 PROJECT NO: 114034 601
 PROJECT NAME: Notch Butte 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	590,992.08	.00	.00	.00	.00	0	590,992.08	.00
02	Turbine Receive	717,414.00	.00	.00	.00	.00	0	717,414.00	.00
03	Foundations	1,571,429.00	157,143.00	2,044.50	.00	159,187.50	10	1,412,241.50	.00
04	Site Pads	205,934.00	4,700.00	15,893.40	.00	20,593.40	10	185,340.60	.00
05	Crane Pads	93,990.00	.00	.00	.00	.00	0	93,990.00	.00
06	Access Roads and On	545,402.00	114,372.50	.00	.00	114,372.50	21	431,029.50	.00
07	Temporary Facilities	212,284.00	.00	.00	.00	.00	0	212,284.00	.00
08	Off-site Road Improv	114,877.00	.00	.00	.00	.00	0	114,877.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,048.00	.00	.00	.00	.00	0	704,048.00	.00
11	Fiber Optic Systems	28,488.00	.00	.00	.00	.00	0	28,488.00	.00
12	Turbine Switch Gear	228,962.00	.00	.00	.00	.00	0	228,962.00	.00
13	Communications	132,724.00	.00	.00	.00	.00	0	132,724.00	.00
14	Met Towers & Sensors	211,214.00	.00	.00	.00	.00	0	211,214.00	.00
15	Solis Testing	36,880.00	36,880.00	.00	.00	36,880.00	100	.00	.00
16	Site Remediation	42,243.00	.00	.00	.00	.00	0	42,243.00	.00
17	Site Surveying	17,601.00	7,040.40	.00	.00	7,040.40	40	10,560.60	.00
18	Misc. (phone, elect)	54,529.00	.00	.00	.00	.00	0	54,529.00	.00
19	Const Management	1,518,043.00	30,361.00	.00	.00	30,361.00	2	1,487,682.00	.00
20	Mobilization	220,783.00	220,783.00	.00	.00	220,783.00	100	.00	.00
		7,247,835.08	501,278.30	17,937.90	.00	589,217.90			.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Lava Beds Wind Farm, LLC
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Lava Beds
9 Turbines

APPLICATION NO: 4
PERIOD TO: 04/25/2012
PROJECT NOS: 114034 602
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	7,300,178.00
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,300,178.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	623,094.02
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	623,094.02
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	623,094.02
8. CURRENT PAYMENT DUE	\$	.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 8)	\$	6,677,083.98

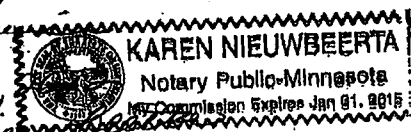
CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Rob Anderson Date: 4-25-12

State of: Minnesota
County of: Yellow Med
Subscribed and sworn to before me this 25 day of April,
Notary Public: Karen Nieuwbeerta
My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION
 PAYMENT, containing Contractor's signed Certification, is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 4
 APPLICATION DATE: 04/25/2012
 PERIOD TO: 04/25/2012
 PROJECT NO: 114034 602
 PROJECT NAME: Lava Beds 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	590,981.00	.00	.00	.00	.00	0	590,981.00	.00
02	Turbine Receive	732,088.00	.00	.00	.00	.00	0	732,088.00	.00
03	Foundations	1,662,598.00	161,819.10	.00	.00	161,819.10	10	1,400,778.90	.00
04	Site Pads	159,464.00	.00	.00	.00	.00	0	159,464.00	.00
05	Crane Pads	93,989.00	.00	.00	.00	.00	0	93,989.00	.00
06	Access Roads & On Si	739,235.00	118,654.50	.00	.00	118,654.50	16	620,580.50	.00
07	Temporary Facilities	170,038.00	.00	.00	.00	.00	0	170,038.00	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,034.00	.00	.00	.00	.00	0	704,034.00	.00
11	Fiber Optic System	28,486.00	.00	.00	.00	.00	0	28,486.00	.00
12	Turbine Switch Gear	228,957.00	.00	.00	.00	.00	0	228,957.00	.00
13	Communications Syste	155,367.00	.00	.00	.00	.00	0	155,367.00	.00
14	Met Towers & Sensors	211,210.00	.00	.00	.00	.00	0	211,210.00	.00
15	Soils Testing	29,335.00	29,335.00	.00	.00	29,335.00	100	.00	.00
16	Site Remediation	42,242.00	.00	.00	.00	.00	0	42,242.00	.00
17	Site Surveying	17,801.00	8,800.50	.00	.00	8,800.50	50	8,800.50	.00
18	Misc. (Phone, Elect)	54,528.00	.00	.00	.00	.00	0	54,528.00	.00
19	Construction Managem	1,559,266.00	83,705.92	.00	.00	83,705.92	5	1,475,560.08	.00
20	Mobilization	220,779.00	220,779.00	.00	.00	220,779.00	100	.00	.00
		7,300,178.00		.00		623,054.02			.00
			623,054.02					6,677,123.98	

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Rogerson Flats Wind Farm,
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Jack Ranch Rogerson
Flats 10 Turbines

APPLICATION NO: 4
PERIOD TO: 04/25/2012
PROJECT NOS: 114034 603
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	726,359.11
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	726,359.11
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	506,077.33
8. CURRENT PAYMENT DUE	\$	220,281.78
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,318,522.64

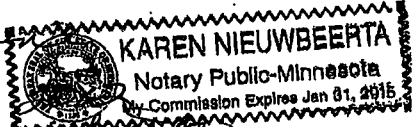
CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kou Anderson Date: 4-26-12

State of: Minnesota
County of: Yellow Medicine
Subscribed and sworn to before me this 25th day of April
Notary Public: Karen Nieuwbeerta
My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 4
 APPLICATION DATE: 04/25/2012
 PERIOD TO: 04/25/2012
 PROJECT NO: 114034 603
 PROJECT NAME: Jack Ranch Rogerson Flats 10 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive Asse	759,456.75	.00	146.45	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,216.50	70,293.00	82,008.25	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	.00	48,678.23	.00	48,678.23	17	232,492.52	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	70,107.75	48,938.01	.00	119,045.76	15	677,136.24	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	.00	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc. (Phone, elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construiction Managem	955,435.00	40,223.00	40,510.84	.00	80,733.84	8	874,701.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.58	.00	.00	32,687.58	10	294,188.17	.00
		9,041,861.75		220,283.78		776,556.11			.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
 Salmon Creek Wind Farm,
 Exergy Development Group of Idaho,
 LLC
 Boise, ID 83702

PROJECT:
 Jack Ranch
 Salmon Creeks

APPLICATION NO: 4
PERIOD TO: 04/25/2012
PROJECT NOS: 114034 604
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Fagen Inc
 501 West Highway 212
 Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	726,359.11
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	726,359.11
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	508,077.33
8. CURRENT PAYMENT DUE	\$	220,281.78
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,529,400.64

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

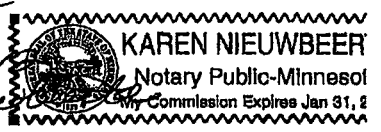
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kou Anderson Date: 4-25-12

State of: Minnesota
 County of: Yellow Medicine

Subscribed and sworn to before me this 25th day of April, 2012
 Notary Public Karen Nieuwbeer
 My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 4
 APPLICATION DATE: 04/25/2012
 PERIOD TO: 04/25/2012
 PROJECT NO: 114034 604
 PROJECT NAME: Jack Ranch Salmon Creeks

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.75	.00	146.45	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,215.50	70,293.00	82,008.25	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	.00	48,878.23	.00	48,878.23	17	232,492.52	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	70,107.75	48,938.01	.00	119,045.76	15	677,136.24	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	.00	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	210,878.00	.00	.00	.00	.00	0	210,878.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Electr)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	40,223.00	40,510.84	.00	80,733.84	8	874,701.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.58	.00	.00	32,687.58	10	294,188.17	.00
		9,255,759.75		220,281.78		726,959.11			.00
				808,076.11		36			

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Cottonwood Wind Park, LLC
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Jack Ranch
Cottonwood

APPLICATION NO: 4
PERIOD TO: 04/25/2012
PROJECT NOS: 114034 605
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	726,359.11
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	726,359.11
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	506,077.33
8. CURRENT PAYMENT DUE	\$	220,281.78
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,318,522.64

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kori Anderson Date: 4-25-12

State of Minnesota
County of Yellow Medicine
Subscribed and sworn to before me this 25th day of April, 2012
Notary Public Karen Nieuwbeer
My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 4
 APPLICATION DATE: 04/25/2012
 PERIOD TO: 04/25/2012
 PROJECT NO: 114034 605
 PROJECT NAME: Jack Ranch Cottonwood

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.75	.00	146.45	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,215.50	70,293.00	82,008.25	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	.00	48,678.23	.00	48,678.23	17	232,492.52	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	70,107.75	48,938.01	.00	119,045.76	15	677,136.24	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	.00	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic Systems	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	40,223.00	40,510.84	.00	80,733.84	8	874,701.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,876.58	32,687.58	.00	.00	32,687.58	10	294,188.17	.00
		9,042,081.75	86,077.33	220,261.78	.00	726,359.11		8,936,222.22	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
 Deep Creek Wind Park, LLC
 Exergy Development Group of Idaho,
 LLC
 Boise, ID 83702

PROJECT:
 Jack Ranch
 Deep Creek

APPLICATION NO: 4
 PERIOD TO: 04/25/2012
 PROJECT NOS: 114034 606
 CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Fagen Inc
 501 West Highway 212
 Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	726,359.10
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	726,359.10
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	506,077.31
8. CURRENT PAYMENT DUE	\$	220,281.79
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 8)	\$	8,529,400.65

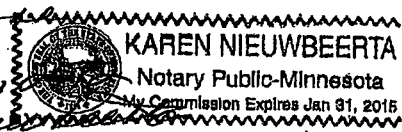
CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Lou Anderson Date: 4-25-12

State of Minnesota
 County of Yellow Medicine
 Subscribed and sworn to before me this 25th day of April, 2012
 Notary Public Karen Nieuwbeerta
 My Commission expires: 4/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION
 PAYMENT, containing Contractor's signed Certification, is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 4
 APPLICATION DATE: 04/25/2012
 PERIOD TO: 04/25/2012
 PROJECT NO: 114034 606
 PROJECT NAME: Jack Ranch Deep Creek

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,458.75	.00	146.45	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,215.50	70,293.00	82,008.25	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	.00	48,678.24	.00	48,678.24	17	232,492.51	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	798,182.00	70,107.75	48,938.01	.00	119,045.76	15	677,136.24	.00
07	Temporary Facilities	142,502.75	.00	.00	.00	.00	0	142,502.75	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic Systems	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	210,878.00	.00	.00	.00	.00	0	210,878.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	40,223.00	40,510.84	.00	80,733.84	8	874,701.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.56	.00	.00	32,687.56	10	294,188.19	.00
		9,255,759.75	586,437.31	220,281.75	.00	726,359.10		2,514,885.00	.00

Exhibit L

PARTIAL WAIVER AND LIEN RELEASE

Fagen, Inc., a Minnesota corporation ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company ("Owner"), have entered into that certain Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

For and in consideration of partial payment in the amount of eight hundred ninety nine thousand sixty five dollars and 03/100 (\$899,065.03) for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Owner, and other good and valuable consideration, Contractor does hereby, to the extent paid and contingent upon receipt thereof:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors or any of its respective employees, (b) (i) it has not received a notice of intention to claim any Liens (including Liens by, through or under any of its Subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, or to the best of its knowledge after due inquiry, by any of its Subcontractors, and (iii) there is no known basis for any such Liens; and

3. agree and certify that all amounts properly due and payable with respect to all prior Applications for Payment have been paid in full by Owner and the applicable lien waivers associated therewith are final and unconditional.

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IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 25 day of April, 2012

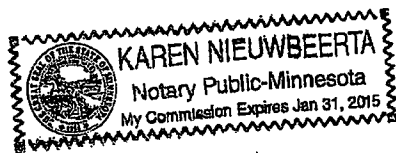
[Fagen, Inc]

By: Jennifer A Johnson CFO
Name: Jennifer A- Johnson
Title: CFO

STATE of Minnesota

COUNTY of Yellow Medicine

SUBSCRIBED AND SWORN to before me by Jennifer Johnson this 25th day of April, 2012



Karen Nieuwebeerta
Notary Public in and for the State of
IA, residing at:
Chippewa County

Lava Beds Legal Description

EXHIBIT "A" EASEMENT

Township 1 South, Range 32, E.B.M., Bingham County, Idaho

Sections 22, 23 and 26: All of that property lying within 1320 feet south and west of the Tabor Highway/Union Pacific Rail Road right of way.

Notch Butte Legal Description

Exhibit A Legal Description

Township 6 South, Range 19 East of the Boise Meridian, Lincoln County, Idaho

Section 22: EYzEYz

EXCEPT a portion of the NE"NE" of Section 22 conveyed to the State of Idaho by Warranty Deed recorded as Instrument Number 109244, Lincoln County records.

Rogerson Flats

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 7: GOV'T. LOTS 2, 3, 4, 5, 6, 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:

TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., TWIN FALLS COUNTY, IDAHO

SECTION 7:

BEGINNING AT A POINT ON THE SECTION LINE 763 FEET, MORE OR LESS, SOUTH OF
THE WEST QUARTER CORNER OF SECTION 7, WHICH POINT IS STATION 252+85 OF
"A" LATERAL AS LOCATED;

THENCE NORTH 65° 58' EAST 89.4 FEET;

THENCE ON A 20° CURVE TO THE LEFT, 157.2 FEET;

THENCE NORTH 34° 32' EAST 422.7 FEET;

THENCE ON A 20° CURVE TO THE RIGHT 80.8 FEET;

THENCE NORTH 50° 42' EAST 580.7 FEET;

THENCE ON A 10° CURVE TO THE RIGHT, 210 FEET;

THENCE NORTH 71° 42' EAST 457.6 FEET;

THENCE ON A 10° CURVE TO THE LEFT, 180 FEET, TO STATION 274+63.4 WHICH
POINT IS ON THE LAST EAST LINE OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ BEING GOV'T LOT 7 OF
SECTION 7 AND 865 FEET, MORE OR LESS, SOUTH OF THE NORTHEAST CORNER OF
SAID SW $\frac{1}{4}$ NW $\frac{1}{4}$ GOV'T LOT 7 OF SECTION 7, ALL SITUATED IN THE W $\frac{1}{2}$ OF SECTION
7, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M..

AND EXCEPT

THAT PORTION OF THE SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 7, TOWNSHIP 14 SOUTH, RANGE 16
EAST, B.M., AS DESCRIBED:

BEGINNING AT A POINT WHICH IS THE CORNER COMMON TO SECTIONS 7, 8, 17

AND 18, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M.;

THENCE NORTH FOR 141 FEET;

THENCE SOUTH 76° 46' 32" WEST FOR 610 FEET;

THENCE EAST FOR 600 FEET TO THE CORNER COMMON TO SECTIONS 7, 8, 17 AND
18, WHICH IS THE POINT OF BEGINNING.

SECTION 8: NE $\frac{1}{4}$ SW $\frac{1}{4}$; S $\frac{1}{2}$ SW $\frac{1}{4}$

SECTION 17: GOV'T. LOTS 1 AND 2, EXCEPT THE NORTH 300 FEET OF SAID LOTS;
S $\frac{1}{2}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$; S $\frac{1}{2}$ SE $\frac{1}{4}$; W $\frac{1}{2}$ OF SECTION NORTHWEST OF RAILROAD; 6.93
ACRES RAILROAD RIGHT OF WAY; W $\frac{1}{2}$ OF SECTION SOUTH AND EAST OF RAILROAD.

AND EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHEAST CORNER OF SECTION 17 ALL IN TOWNSHIP 14
SOUTH, RANGE 16 EAST, B.M., WHICH BEARS SOUTH 00° 09' 24" WEST A DISTANCE
OF 2640.66 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 17; THENCE
ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 1320.33 FEET ALONG
THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 25'
58" WEST A DISTANCE OF 450.00 FEET ALONG THE 1/16TH LINE;

Rogerson Flats

THENCE ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF SOUTH 89° 26' 58" EAST A DISTANCE OF 450.00 FEET TO
THE EAST BOUNDARY OF SAID SECTION 17;
THENCE ON A BEARING OF SOUTH 00° 09' 24" WEST A DISTANCE OF 120.00 FEET
ALONG THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF
BEGINNING.

SECTION 20: ALL

SECTION 29: ALL

Salmon Creek

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 24: E $\frac{1}{2}$; E $\frac{1}{2}$ W $\frac{1}{2}$

SECTION 25: ALL

SECTION 26: E $\frac{1}{2}$ E $\frac{1}{2}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26;
ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.

AND EXCEPT

A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U. S. HIGHWAY 93-PROJECT No. F-FG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE S $\frac{1}{2}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35;
THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE;
THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,

SECTION 35: E $\frac{1}{2}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; W $\frac{1}{2}$ NE $\frac{1}{4}$

Salmon Creek

EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26;
ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.

AND EXCEPT

A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U. S. HIGHWAY 93-PROJECT No. F-FG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE S $\frac{1}{2}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35;
THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE;
THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

SECTION 18: GOV'T LOT 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$

SECTION 19: ALL

EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170820.
ALSO EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170821.
THIS DEED DESCRIBES THE 6.93 ACRE PARCEL IN SECTION 17.

SECTION 30: N $\frac{1}{2}$ NE $\frac{1}{4}$; GOV'T LOT 1; NE $\frac{1}{4}$ NW $\frac{1}{4}$

Cottonwood

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 1: SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

SECTION 11: ALL

SECTION 12: W $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$; W $\frac{1}{2}$

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE;

BEGINNING AT A POINT ON THE SECTION LINE, 1799 FEET, MORE OR LESS, EAST OF
SECTION CORNER COMMON TO SECTIONS 11, 12, 13 AND 14, TOWNSHIP 14 SOUTH,
RANGE 15 EAST, B.M., WHICH POINT IS STATION 210+62 OF "A" LATERAL AS
LOCATED;

THENCE NORTH 00° 28' EAST 37.3 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET;

THENCE NORTH 22° 28' EAST, 238.5 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 120.8 FEET;

THENCE NORTH 46° 38' EAST, 47.6 FEET;

THENCE ON A 30° CURVE TO THE RIGHT, 174.4 FEET;

THENCE SOUTH 81° 02' EAST, 407.5 FEET;

THENCE ON A 40° CURVE TO THE LEFT, 177.1 FEET;

THENCE NORTH 28° 08' EAST, 171.6 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 189.2 FEET;

THENCE NORTH 65° 58' EAST 2549 FEET TO STATION 252+85 WHICH POINT IS ON
THE EAST SECTION LINE OF SECTION 12, TOWNSHIP 14 SOUTH, RANGE 15 EAST,
B.M., AND 763 FEET, MORE OR LESS, SOUTH OF THE EAST $\frac{1}{4}$ CORNER OF SAID
SECTION 12, ALL SITUATED IN THE S $\frac{1}{2}$ OF SAID SECTION 12.

SECTION 13: ALL

EXCEPT

A NINE (9) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE WEST QUARTER CORNER OF SECTION 13 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 26' 46" EAST A
DISTANCE OF 2646.88 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 13;
THENCE ON A BEARING OF SOUTH 00° 26' 46" WEST A DISTANCE OF 34.00 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING;

THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 57° 01'
03" EAST A DISTANCE OF 1900.00 FEET;

THENCE ON A BEARING OF SOUTH 32° 58' 57" EAST A DISTANCE OF 200.00 FEET;

THENCE ON A BEARING OF SOUTH 57° 01' 03" WEST A DISTANCE OF 2032.02 FEET
TO THE WEST BOUNDARY OF SAID SECTION 13;

THENCE ON A BEARING OF NORTH 00° 26' 46" EAST A DISTANCE OF 239.64 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING.

SECTION 14: ALL

Cottonwood

EXCEPT

BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14,
TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET MORE OR LESS;
THENCE NORTH 81° 31' EAST, 80 FEET;
THENCE NORTH 8° 29' WEST, 505 FEET, MORE OR LESS TO THE PLACE OF
BEGINNING.

AND EXCEPT

A STRIP OF LAND 100 FEET WIDE LYING 50 FEET ON EACH SIDE OF THE CENTERLINE
OF "A" LATERAL AS LOCATED AND DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14;
THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET, MORE OR LESS;
THENCE NORTH 81° 31' EAST, 30 FEET TO THE POINT OF BEGINNING, WHICH IS PC
STATION 117+79.8 OF "A" LATERAL AS LOCATED;
THENCE ON A 40° CURVE TO THE LEFT FROM SEMI-TANGENT SOUTH 8° 29' EAST, A
DISTANCE OF 200 FEET;
THENCE SOUTH 88° 29' EAST, 206.2 FEET;
THENCE ON A 40° CURVE TO THE LEFT, 165 FEET;
THENCE NORTH 25° 31' EAST, 449 FEET;
THENCE NORTH 37° 01' EAST, 180 FEET TO A POINT ON THE NORTH LINE OF THE
SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14, 805 FEET MORE OR LESS, EAST OF THE
NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14, ALL SITUATED IN THE
SW $\frac{1}{4}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:
BEGINNING AT STATION 129+80 OF "A" LATERAL SURVEY AS LOCATED WHICH
POINT IS ON THE SOUTH BOUNDARY LINE OF THE NW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND
805 FEET, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF SAID FORTY;
THENCE NORTH 37° 01' EAST, 224.9 FEET;
THENCE ON A 20° CURVE TO THE RIGHT, 310 FEET;
THENCE SOUTH 80° 59' EAST 1440.1 FEET TO STATION 149+55 WHICH STATION IS
A POINT ON THE EAST LINE OF THE NE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND 1260 FEET,
MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SECTION 14, ALL LYING IN
THE N $\frac{1}{2}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:
BEGINNING AT A POINT ON THE WEST BOUNDARY LINE OF THE NE $\frac{1}{4}$ OF SECTION
14, 1260 FEET, MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SAID SECTION
14, WHICH POINT IS STATION 149+55 OF "A" LATERAL SURVEY AS LOCATED;
THENCE SOUTH 80° 59' EAST, 366.1 FEET MORE OR LESS;
THENCE ON A 20° CURVE TO THE RIGHT, 190 FEET;
THENCE SOUTH 42° 59' EAST, 685.5 FEET;
THENCE ON A 40° CURVE TO THE LEFT, 280.8 FEET;
THENCE NORTH 24° 41' EAST, 693.3 FEET;
THENCE ON A 40° CURVE TO THE RIGHT 165 FEET;
THENCE SOUTH 89° 19' EAST 220.5 FEET;
THENCE ON A 50° CURVE TO THE LEFT, 155.7 FEET;
THENCE NORTH 12° 51' EAST, 312 FEET;
THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET;
THENCE NORTH 34° 51' EAST, 708.6 FEET;
THENCE ON A 50° CURVE TO THE RIGHT, 110.2 FEET;

Cottonwood

THENCE NORTH 89° 58' EAST, 53 FEET TO STATION 189+86, WHICH POINT IS ON THE EAST LINE OF SAID SECTION 14 AND 45 FEET SOUTH OF THE NORTHEAST CORNER, SITUATED IN THE NE¼ OF SECTION 14.

AND ALSO EXCEPT

A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 40' 16" WEST A DISTANCE OF 2640.52 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 1370.00 FEET ALONG THE NORTH BOUNDARY OF SECTION 14 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 00° 00' 00" WEST A DISTANCE OF 445.00 FEET; THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 200.00 FEET PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF NORTH 00° 00' 00" EAST A DISTANCE OF 445.00 FEET TO THE NORTH BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 89° 40' 16" EAST A DISTANCE OF 200.00 FEET ALONG THE NORTH BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING.

AND ALSO EXCEPT

A TWELVE (12) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 21' 12" EAST A DISTANCE OF 2645.57 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 1008.00 FEET ALONG THE EAST BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 884.00 FEET; THENCE ON A BEARING OF NORTH 89° 38' 48" WEST A DISTANCE OF 590.00 FEET; THENCE ON A BEARING OF NORTH 00° 21' 12" EAST A DISTANCE OF 884.00 FEET PARALLEL WITH THE EAST BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 89° 38' 48" EAST A DISTANCE OF 590.00 FEET TO THE EAST BOUNDARY OF SAID SECTION 14 AND THE REAL POINT OF BEGINNING.
SECTION 23: W½W½; NE¼NW¼

Deep Creek

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 15: S $\frac{1}{2}$; S $\frac{1}{2}$ NE $\frac{1}{4}$

EXCEPT

BEGINNING AT SURVEY STATION 115+74 OF "A" LATERAL SURVEY AS LOCATED
WHICH POINT IS ON SECTION LINE 1620.8 FEET SOUTH OF SECTION CORNER
COMMON TO SECTION 10, 11, 14 AND 15, TOWNSHIP 14 SOUTH, RANGE 15 EAST,
B.M.;

THENCE NORTH ALONG SAID SECTION LINE, 300.8 FEET, MORE OR LESS TO THE
NORTHEAST CORNER OF THE SE $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 15;

THENCE WEST ALONG THE NORTH BOUNDARY OF SAID FORTY (FORTH), 100 FEET;
THENCE SOUTH 8° 29' EAST 681.3 FEET, TO A POINT ON THE EAST SECTION LINE OF
SECTION 15;

THENCE NORTHERLY ALONG SAID SECTION LINE 380.5 FEET, TO THE POINT OF
BEGINNING.

SECTION 16: ALL

SECTION 21: E $\frac{1}{2}$ W $\frac{1}{2}$; E $\frac{1}{2}$

EXCEPT

A TWENTY-TWO (22) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS
FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 21 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2638.50 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 21;
THENCE ON A BEARING OF NORTH 00° 22' 02" EAST A DISTANCE OF 1963.97 FEET
TO THE REAL POINT OF BEGINNING;

THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 42'
09" WEST A DISTANCE OF 1319.23 FEET;

THENCE ON A BEARING OF NORTH 00° 22' 03" EAST A DISTANCE OF 680.00 FEET;

THENCE ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF 1319.23 FEET TO
THE CENTER QUARTER CORNER OF SAID SECTION 21;

THENCE CONTINUING ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF
100.00 FEET;

THENCE ON A BEARING OF SOUTH 00° 17' 51" WEST A DISTANCE OF 680.00 FEET;

THENCE ON A BEARING OF NORTH 89° 42' 09" WEST A DISTANCE OF 100.83 FEET TO
THE REAL POINT OF BEGINNING.

SECTION 22: ALL

EXCEPT

A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 22 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS SOUTH 89° 32' 27" EAST A
DISTANCE OF 2642.45 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 22;
THENCE ON A BEARING OF NORTH 89° 30' 21" WEST A DISTANCE OF 370.00 FEET
ALONG THE SOUTH BOUNDARY OF SAID SECTION 22 TO THE REAL POINT OF
BEGINNING;

Deep Creek

THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF NORTH 89° 32' 27" WEST A DISTANCE OF 410.00 FEET;
THENCE ON A BEARING OF NORTH 00° 27' 33" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF NORTH 61° 56' 10" EAST A DISTANCE OF 261.77 FEET;
THENCE ON A BEARING OF SOUTH 89° 32' 27" EAST A DISTANCE OF 180.00 FEET
PARALLEL WITH THE SOUTH BOUNDARY OF SAID SECTION 22;
THENCE ON A BEARING OF SOUTH 00° 27' 33" WEST A DISTANCE OF 245.00 FEET TO
THE SOUTH BOUNDARY OF SAID SECTION 22 AND THE REAL POINT OF BEGINNING.

SECTION 26: S $\frac{1}{2}$ NW $\frac{1}{4}$

SECTION 27: ; NE $\frac{1}{4}$; N $\frac{1}{2}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$

SECTION 28: N $\frac{1}{2}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$

EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 28 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2638.50 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 28
AND BEING THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 89° 42'
57" EAST A DISTANCE OF 275.00 FEET ALONG THE NORTH BOUNDARY OF SAID
SECTION 28;
THENCE ON A BEARING OF SOUTH 00° 23' 55" WEST A DISTANCE OF 155.00 FEET;
THENCE ON A BEARING OF NORTH 89° 42' 57" WEST A DISTANCE OF 275.00 FEET
PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 28;
THENCE ON A BEARING OF NORTH 00° 23' 55" EAST A DISTANCE OF 155.00 FEET TO
THE REAL POINT OF BEGINNING.

Exergy ID Pay Request #4, 3/2012				
Detail Contractor/Subcontractor/Suppliers To Be Paid				
			Payable	
Consulting Engineers	21210 Eaton Ave	Farmington, MN 55024	\$ 146,900.00	Engineering Services
Dan Lafferty Construction	P O Box 16	Wendell, ID 83355	\$ 5,003.19	Foundation Blasting
Earth Systems Global	P O Box 3757	San Luis Obispo, CA 93403	\$ 120,000.00	Engineering Services
Hico America Sales & Tech	Three Penn Center W	Pittsburgh, PA 15276	\$ 348,150.00	Transformers
Nix Excavating	4020 North 2600 East	Filer, ID 83328	\$ 221,685.28	Excavaing
Renewable Rsrc Cnsitnts	1426 River Forest Dr	Round Rock, TX 78665	\$ 10,000.00	Struct Eng Design
Riedesel Engineering Inc	202 Falls Ave	Twin Falls, ID 83301	\$ 7,345.23	Surveying
Sargent & Lundy LLC	8070 Solutions Center	Chicago, IL 60677-8000	\$ 27,508.66	Design Reviews
Valley Co-Op Inc	1833 S Lincoln	Jerome, ID 83338	\$ 8,390.52	Fuel
Western States Equip	P O Box 3805	Seattle, WA 98124-3805	\$ 38,954.24	Equipment
Fagen Inc	P O Box 159	Granite Falls, MN 56241	\$ (34,872.09)	General
Total			\$ 899,065.03	

Exhibit K**PARTIAL WAIVER AND LIEN RELEASE****(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Kaneaster Construction ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 504995) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$7625.00 (Inv# 177), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 22 day of March, 2012

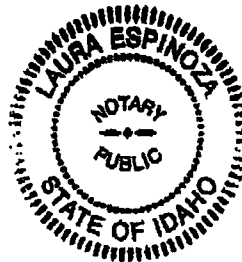
Kaneaster Construction

By: [Signature]
Name: Kaneaster Construction
Title: owner

STATE of Idaho

COUNTY of Gooding

SUBSCRIBED AND SWORN to before me by Curtis Kaneaster this 22 day of March, 2012



[Signature]
Notary Public in and for the State of Idaho residing at: Jerome, ID
Commission expires 01-31-2017

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Riedesel Engineering Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 559051) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$26745.24 (Inv# 8003 8004 8007), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 24 day of Feb, 2012

Riedesel Engineering Inc

By: [Signature]
Name: Aaron L Went
Title: Principal

STATE of Idaho
COUNTY of Blaine Falls

SUBSCRIBED AND SWORN to before me by Aaron L Went this 24 day of February, 2012

[Signature]
Notary Public in and for the State of Idaho, residing at: Blaine Falls Idaho 8121206

Exhibit K

**PARTIAL WAIVER AND LIEN RELEASE
(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Sargent & Lundy ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524128 524129) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$7735.00 (Inv# 10774644 10774648), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered
this Partial Waiver and Lien Release this 07 day of March, 2012

Sargent & Lundy LLC

By: Sean F. Hagen
Name: Sean F. Hagen
Title: Senior Principal Consultant

STATE of Illinois

COUNTY of Cook

SUBSCRIBED AND SWORN to before me by Sean F. Hagen this 7th day of
March, 2012

Belinda Drygalski
Notary Public in and for the State of
Illinois, residing at:
2838 N. 7th Court, Elmwood Pl., IL
60707

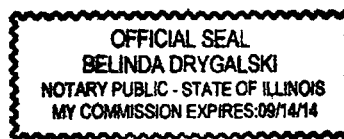


Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Valley Co-Op Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 559063) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$1814.41 (Inv# 027750 027751 027758), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered
this Partial Waiver and Lien Release this 20 day of Feb, 2012

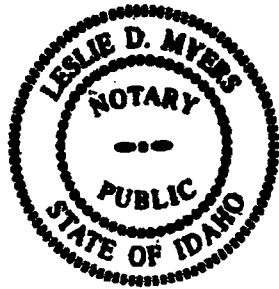
Valley Co-Op Inc

By: Mary Jane Kihlstrom
Name: Mary Jane Kihlstrom
Title: _____

STATE of Idaho

COUNTY of Jerome

SUBSCRIBED AND SWORN to before me by M.J. Kihlstrom this 20th day of
February, 2012



Leslie D. Myers
Notary Public in and for the State of
ID, residing at:
Jerome, ID

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Valley Wide Co-Op ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 560905 pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$4130.84 (Inv# M09862), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 19 day of March, 2012.

Valley Co-Op Inc

By: Mary Jane Kohnstopp
Name: Mary Jane Kohnstopp
Title: office help

STATE of Idaho

COUNTY of Jerome

SUBSCRIBED AND SWORN to before me by M. Kohnstopp this 19 day of March, 2012.

Leslie D. Myers
Notary Public in and for the State of ID, residing at: Jerome, Idaho

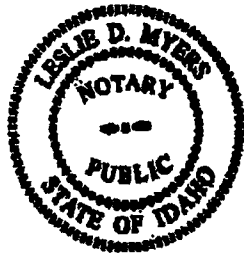


Exhibit K**PARTIAL WAIVER AND LIEN RELEASE****(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Western States Equip ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 557674 557675) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$19546.64 (Inv# 0102101960 0405300684), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 20 day of Feb, 2012.

Western States Equip

By: Linda Sanford
Name: LINDA SANFORD
Title: Credit Manager

STATE of ID

COUNTY of ADA

SUBSCRIBED AND SWORN to before me by Linda Sanford this 20 day of February, 2012.

Annette Gilbertson
Notary Public in and for the State of ID, residing at: Ada County



EXHIBIT E



501 West Hwy. 212, P.O. Box 159
Granite Falls, MN 56241
320-564-3324

www.fageninc.com

Civil - Mechanical - Electrical Contractors

320-564-3278 fax

May 25, 2012

Exergy Development Group of Idaho, LLC
James Carkulis
802 W. Bannock St., 12th Floor
Boise, ID 83702

Dear James:

As prescribed in the Contract, enclosed please find original Payment Application Number Five for the Exergy Idaho Six Winds Wind Park Project in Idaho, along with the signed Contractor's Partial Waiver and Lien Release.

Also enclosed, please find a list of subcontractors to be paid from this Payment Application.

Please contact me if you have any questions or need anything further to process this Payment Application.

Thank you.

Sincerely,
FAGEN, INC.

Kirsten A. Tjosaas
Controller



APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Notche Butte Wind Farm
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Notch Butte
9 Turbines

APPLICATION NO: 5
PERIOD TO: 05/25/2012
PROJECT NOS: 114034 601
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	7,247,835.08
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,247,835.08
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	707,434.50
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	707,434.50
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	589,217.80
8. CURRENT PAYMENT DUE	\$	118,216.70
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	6,540,400.58

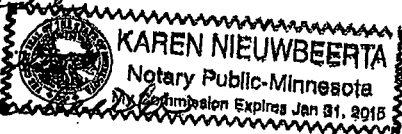
CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kari Anderson Date: 5-25-12

State of: Minnesota
County of: Yellow Medicine
Subscribed and sworn to before me this 25th day of May, 2012.
Notary Public: Karen Nieuwebeerta
My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 5
 APPLICATION DATE: 05/25/2012
 PERIOD TO: 05/25/2012
 PROJECT NO: 114034 601
 PROJECT NAME: Notch Butte 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	590,992.08	.00	.00	.00	.00	0	590,992.08	.00
02	Turbine Receive	717,414.00	.00	.00	.00	.00	0	717,414.00	.00
03	Foundations	1,571,429.00	159,187.50	.00	.00	159,187.50	10	1,412,241.50	.00
04	Site Pads	205,934.00	20,593.40	.00	.00	20,593.40	10	185,340.60	.00
05	Crane Pads	93,990.00	.00	.00	.00	.00	0	93,990.00	.00
06	Access Roads and On	545,402.00	114,372.50	.00	.00	114,372.50	21	431,029.50	.00
07	Temporary Facilities	212,284.00	.00	.00	.00	.00	0	212,284.00	.00
08	Off-site Road Improv	114,877.00	.00	.00	.00	.00	0	114,877.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,048.00	.00	.00	.00	.00	0	704,048.00	.00
11	Fiber Optic Systems	28,486.00	.00	.00	.00	.00	0	28,486.00	.00
12	Turbine Switch Gear	228,962.00	.00	.00	.00	.00	0	228,962.00	.00
13	Communications	132,724.00	.00	.00	.00	.00	0	132,724.00	.00
14	Met Towers & Sensors	211,214.00	.00	.00	.00	.00	0	211,214.00	.00
15	Soils Testing	36,880.00	36,880.00	.00	.00	36,880.00	100	.00	.00
16	Site Remediation	42,243.00	.00	.00	.00	.00	0	42,243.00	.00
17	Site Surveying	17,601.00	7,040.40	.00	.00	7,040.40	40	10,560.60	.00
18	Misc. (phone, elect)	54,529.00	.00	.00	.00	.00	0	54,529.00	.00
19	Const Management	1,518,043.00	30,361.00	118,216.70	.00	148,577.70	10	1,369,465.30	.00
20	Mobilization	220,783.00	220,783.00	.00	.00	220,783.00	100	.00	.00
		7,247,835.08	489,517.40	118,216.70	.00	707,439.50		6,540,400.58	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Lava Beds Wind Farm, LLC
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Lava Beds
9 Turbines

APPLICATION NO: 5
PERIOD TO: 05/25/2012
PROJECT NOS: 114034 602
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	7,300,178.00
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,300,178.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	698,123.82
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE	\$	698,123.82
(Line 4 less line 5 total)		
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	623,094.02
8. CURRENT PAYMENT DUE	\$	75,029.80
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	6,602,054.18

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kate Anderson Date: 5-25-12

State of Minnesota
County of Yellow Medicine

Subscribed and sworn to before
me this 25th day of May, 2012

Notary Public: Karen Nieuwbeert
My Commission expires:



KAREN NIEUWBEERT
Notary Public-Minnesota
Commission Expires Jan 31, 2015

1/31/15

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 5
 APPLICATION DATE: 05/25/2012
 PERIOD TO: 05/25/2012
 PROJECT NO: 114034 602
 PROJECT NAME: Lava Beds 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	590,981.00	.00	.00	.00	.00	0	590,981.00	.00
02	Turbine Receive	732,068.00	.00	.00	.00	.00	0	732,068.00	.00
03	Foundations	1,562,598.00	161,819.10	.00	.00	161,819.10	10	1,400,778.90	.00
04	Site Pads	159,464.00	.00	.00	.00	.00	0	159,464.00	.00
05	Crane Pads	93,989.00	.00	.00	.00	.00	0	93,989.00	.00
06	Access Roads & On Si	739,235.00	118,654.50	.00	.00	118,654.50	16	620,580.50	.00
07	Temporary Facilities	170,038.00	.00	.00	.00	.00	0	170,038.00	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,034.00	.00	.00	.00	.00	0	704,034.00	.00
11	Fiber Optic System	28,486.00	.00	.00	.00	.00	0	28,486.00	.00
12	Turbine Switch Gear	228,957.00	.00	.00	.00	.00	0	228,957.00	.00
13	Communications Syste	155,367.00	.00	.00	.00	.00	0	155,367.00	.00
14	Met Towers & Sensors	211,210.00	.00	.00	.00	.00	0	211,210.00	.00
15	Soils Testing	29,335.00	29,335.00	.00	.00	29,335.00	100	.00	.00
16	Site Remediation	42,242.00	.00	.00	.00	.00	0	42,242.00	.00
17	Site Surveying	17,601.00	8,800.50	.00	.00	8,800.50	50	8,800.50	.00
18	Misc. (Phone, Elect)	54,528.00	.00	.00	.00	.00	0	54,528.00	.00
19	Construction Managem	1,559,266.00	83,705.92	75,029.80	.00	158,735.72	10	1,400,530.28	.00
20	Mobilization	220,779.00	220,779.00	.00	.00	220,779.00	100	.00	.00
		7,300,178.00	1,039,064.92	75,029.80	.00	668,123.82		6,261,114.18	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Rogerson Flats Wind Farm,
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Jack Ranch Rogerson
Flats 10 Turbines

APPLICATION NO: 5
PERIOD TO: 05/25/2012
PROJECT NOS: 114034 603
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	1,147,067.51
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	1,147,067.51
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	726,359.11
8. CURRENT PAYMENT DUE	\$	420,708.40
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 8)	\$	7,897,814.24

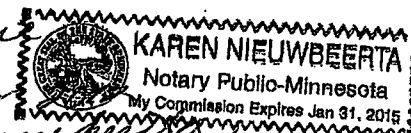
CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kou Anderson Date: 5-25-12

State of Minnesota
County of: Yellow Medicine
Subscribed and sworn to before
me this 25th day of May
Notary Public: Karen Nieuwbeerta
My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT
By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION
 PAYMENT, containing Contractor's signed Certification, is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 5
 APPLICATION DATE: 05/25/2012
 PERIOD TO: 05/25/2012
 PROJECT NO: 114034 603
 PROJECT NAME: Jack Ranch Rogerson Flats 10 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive Asse	759,456.75	148.45	.00	.00	148.45	0	759,310.30	.00
03	Foundations	1,723,215.50	152,301.25	.00	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	48,678.23	83,120.89	.00	131,799.12	47	149,371.63	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	119,045.76	260,080.86	.00	379,126.62	48	417,055.38	.00
07	Temporary Facilities	142,502.75	.00	1,060.65	.00	1,060.65	1	141,442.10	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc. (Phone, elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	80,733.84	76,446.00	.00	157,179.84	16	798,255.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.58	.00	.00	32,687.58	10	294,188.17	.00
		9,044,861.75	28,859.43	420,708.40	.00	1,147,067.51		89,793.24	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
 Salmon Creek Wind Farm,
 Exergy Development Group of Idaho,
 LLC
 Boise, ID 83702

PROJECT:
 Jack Ranch
 Salmon Creeks

APPLICATION NO: 5
 PERIOD TO: 05/25/2012
 PROJECT NOS: 114034 604
 CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Fagen Inc
 501 West Highway 212
 Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	1,147,067.51
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	1,147,067.51
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	726,359.11
8. CURRENT PAYMENT DUE	\$	420,708.40
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	8,108,692.24

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Karl Anderson Date: 5-25-12

State of Minnesota
 County of Yellow Medicine

Subscribed and sworn to before me this 25th day of May, 2012
 Notary Public: Karen Nieuwebeerta
 My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 5
 APPLICATION DATE: 05/25/2012
 PERIOD TO: 05/25/2012
 PROJECT NO: 114034 604
 PROJECT NAME: Jack Ranch Salmon Creeks

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.75	146.45	.00	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,215.50	152,301.25	.00	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	48,678.23	83,120.88	.00	131,799.11	47	149,371.64	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	119,045.76	260,080.87	.00	379,126.63	48	417,055.37	.00
07	Temporary Facilities	142,502.75	.00	1,060.65	.00	1,060.65	1	141,442.10	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	210,878.00	.00	.00	.00	.00	0	210,878.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Electr)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	80,733.84	76,446.00	.00	157,179.84	16	798,255.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.58	.00	.00	32,687.58	10	294,188.17	.00
		5,255,759.75		420,706.40		1,147,067.51			.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Cottonwood Wind Park, LLC
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Jack Ranch
Cottonwood

APPLICATION NO: 5
PERIOD TO: 05/25/2012
PROJECT NOS: 114034 605
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	1,147,067.51
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	1,147,067.51
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	726,359.11
8. CURRENT PAYMENT DUE	\$	420,708.40
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	7,897,814.24

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

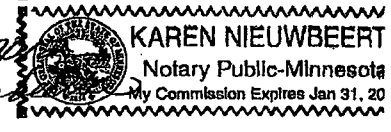
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Lori Anderson Date: 5-25-12

State of: Minnesota
County of: Yellow Medicine

Subscribed and sworn to before me this 25th day of May, 2012
Notary Public: Karen Nieuwebeert
My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 5
 APPLICATION DATE: 05/25/2012
 PERIOD TO: 05/25/2012
 PROJECT NO: 114034 605
 PROJECT NAME: Jack Ranch Cottonwood

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.75	146.45	.00	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,215.50	152,301.25	.00	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	48,678.23	83,120.88	.00	131,799.11	47	149,371.64	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	119,045.76	260,080.87	.00	379,126.63	48	417,055.37	.00
07	Temporary Facilities	142,502.75	.00	1,060.65	.00	1,060.65	1	141,442.10	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic Systems	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	80,733.84	76,446.00	.00	157,179.84	16	798,255.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.58	.00	.00	32,687.58	10	294,188.17	.00
		9,044,581.75	2,262,950.10	420,708.40	0.00	1,147,067.51			.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

TO OWNER:
 Deep Creek Wind Park, LLC
 Exergy Development Group of Idaho,
 LLC
 Boise, ID 83702

PROJECT:
 Jack Ranch
 Deep Creek

APPLICATION NO: 5
 PERIOD TO: 05/25/2012
 PROJECT NOS: 114034 606
 CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Fagen Inc
 501 West Highway 212
 Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	1,147,067.48
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	1,147,067.48
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	726,359.10
8. CURRENT PAYMENT DUE	\$	420,708.38
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 8)	\$	8,108,692.27

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

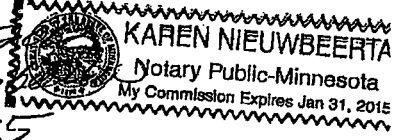
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Roy Anderson Date: 5-25-12

State of Minnesota
 County of: Yellow Medicine

Subscribed and sworn to before me this 25th day of May, 2012
 Notary Public: Karen Nieuwebeerta
 My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 5
 APPLICATION DATE: 05/25/2012
 PERIOD TO: 05/25/2012
 PROJECT NO: 114034 606
 PROJECT NAME: Jack Ranch Deep Creek

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.75	148.45	.00	.00	148.45	0	759,310.30	.00
03	Foundations	1,723,215.50	152,301.25	.00	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	48,678.24	83,120.87	.00	131,799.11	47	149,371.64	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	119,045.76	260,080.86	.00	379,126.62	48	417,055.38	.00
07	Temporary Facilities	142,502.75	.00	1,060.65	.00	1,060.65	1	141,442.10	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic Systems	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	210,878.00	.00	.00	.00	.00	0	210,878.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	80,733.84	76,448.00	.00	157,179.84	16	798,255.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,876.75	32,687.66	.00	.00	32,687.66	10	294,188.19	.00
		9,255,759.75	26,759.10	420,708.38	.00	1,147,067.48		8,081,282.27	.00

Exhibit L

PARTIAL WAIVER AND LIEN RELEASE

Fagen, Inc., a Minnesota corporation ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company ("Owner"), have entered into that certain Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

For and in consideration of partial payment in the amount of one million eight hundred seventy six thousand eighty dollar and 08/100 (\$1,876,080.08) for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Owner, and other good and valuable consideration, Contractor does hereby, to the extent paid and contingent upon receipt thereof:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors or any of its respective employees, (b) (i) it has not received a notice of intention to claim any Liens (including Liens by, through or under any of its Subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, or to the best of its knowledge after due inquiry, by any of its Subcontractors, and (iii) there is no known basis for any such Liens; and

3. agree and certify that all amounts properly due and payable with respect to all prior Applications for Payment have been paid in full by Owner and the applicable lien waivers associated therewith are final and unconditional.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 25 day of May, 2012.

Fogel, Irene

By:

Name:

Title:

[Signature]
Ryan Matheny
VP

STATE of Minnesota

COUNTY of Yellow Medicine

SUBSCRIBED AND SWORN to before me by Ryan Matheny this 25 day of May, 2012

Karen Nieuwebeerta

Notary Public in and for the State of

KAREN NIEUWBEERTA, residing at:

Notary Public-Minnesota

My Commission Expires Jan 31, 2015



Chippewa County

Lava Beds Legal Description

EXHIBIT "A" EASEMENT

Township 1 South, Range 32, E.B.M., Bingham County, Idaho

Sections 22, 23 and 26: All of that property lying within 1320 feet south and west of the Tabor Highway/Union Pacific Rail Road right of way.

Notch Butte Legal Description

Exhibit A Legal Description

Township 6 South, Range 19 East of the Boise Meridian, Lincoln County, Idaho

Section 22: EYzEYz

EXCEPT a portion of the NE"NE" of Section 22 conveyed to the State of Idaho by Warranty Deed recorded as Instrument Number 109244, Lincoln County records.

Rogerson Flats

THENCE ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF SOUTH 89° 26' 58" EAST A DISTANCE OF 450.00 FEET TO
THE EAST BOUNDARY OF SAID SECTION 17;
THENCE ON A BEARING OF SOUTH 00° 09' 24" WEST A DISTANCE OF 120.00 FEET
ALONG THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF
BEGINNING.

SECTION 20: ALL

SECTION 29: ALL

Salmon Creek

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 24: E $\frac{1}{2}$; E $\frac{1}{2}$ W $\frac{1}{2}$

SECTION 25: ALL

SECTION 26: E $\frac{1}{2}$ E $\frac{1}{2}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.; THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26; ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.

AND EXCEPT

A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U. S. HIGHWAY 93-PROJECT No. F-FG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE S $\frac{1}{2}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35; THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE; THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,

SECTION 35: E $\frac{1}{2}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; W $\frac{1}{2}$ NE $\frac{1}{4}$

Salmon Creek

EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG-2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,
BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26;
ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.

AND EXCEPT
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U. S. HIGHWAY 93-PROJECT No. F-FG-2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE S $\frac{1}{2}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,
BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35;
THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE;
THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

SECTION 18: GOV'T LOT 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$

SECTION 19: ALL

EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170820;
ALSO EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170821.
THIS DEED DESCRIBES THE 6.93 ACRE PARCEL IN SECTION 17.

SECTION 30: N $\frac{1}{2}$ NE $\frac{1}{4}$; GOV'T LOT 1; NE $\frac{1}{4}$ NW $\frac{1}{4}$

Cottonwood

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 1: SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

SECTION 11: ALL

SECTION 12: W $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$; W $\frac{1}{2}$

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE;

BEGINNING AT A POINT ON THE SECTION LINE, 1799 FEET, MORE OR LESS, EAST OF
SECTION CORNER COMMON TO SECTIONS 11, 12, 13 AND 14, TOWNSHIP 14 SOUTH,
RANGE 15 EAST, B.M., WHICH POINT IS STATION 210+62 OF "A" LATERAL AS
LOCATED;

THENCE NORTH 00° 28' EAST 37.3 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET;

THENCE NORTH 22° 28' EAST, 238.5 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 120.8 FEET;

THENCE NORTH 46° 38' EAST, 47.6 FEET;

THENCE ON A 30° CURVE TO THE RIGHT, 174.4 FEET;

THENCE SOUTH 81° 02' EAST, 407.5 FEET;

THENCE ON A 40° CURVE TO THE LEFT, 177.1 FEET;

THENCE NORTH 28° 08' EAST, 171.6 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 189.2 FEET;

THENCE NORTH 65° 58' EAST 2549 FEET TO STATION 252+85 WHICH POINT IS ON
THE EAST SECTION LINE OF SECTION 12, TOWNSHIP 14 SOUTH, RANGE 15 EAST,
B.M., AND 763 FEET, MORE OR LESS, SOUTH OF THE EAST $\frac{1}{4}$ CORNER OF SAID
SECTION 12, ALL SITUATED IN THE S $\frac{1}{2}$ OF SAID SECTION 12.

SECTION 13: ALL

EXCEPT

A NINE (9) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE WEST QUARTER CORNER OF SECTION 13 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 26' 46" EAST A
DISTANCE OF 2646.88 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 13;
THENCE ON A BEARING OF SOUTH 00° 26' 46" WEST A DISTANCE OF 34.00 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING;

THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 57° 01'
03" EAST A DISTANCE OF 1900.00 FEET;

THENCE ON A BEARING OF SOUTH 32° 58' 57" EAST A DISTANCE OF 200.00 FEET;

THENCE ON A BEARING OF SOUTH 57° 01' 03" WEST A DISTANCE OF 2032.02 FEET
TO THE WEST BOUNDARY OF SAID SECTION 13;

THENCE ON A BEARING OF NORTH 00° 26' 46" EAST A DISTANCE OF 239.64 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING.

SECTION 14: ALL

Coltonwood

EXCEPT

BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14,
TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET MORE OR LESS;
THENCE NORTH 81° 31' EAST, 80 FEET;
THENCE NORTH 8° 29' WEST, 505 FEET, MORE OR LESS TO THE PLACE OF
BEGINNING.

AND EXCEPT

A STRIP OF LAND 100 FEET WIDE LYING 50 FEET ON EACH SIDE OF THE CENTERLINE
OF "A" LATERAL AS LOCATED AND DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14;
THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET, MORE OR LESS;
THENCE NORTH 81° 31' EAST, 30 FEET TO THE POINT OF BEGINNING, WHICH IS PC
STATION 117+79.8 OF "A" LATERAL AS LOCATED;
THENCE ON A 40° CURVE TO THE LEFT FROM SEMI-TANGENT SOUTH 8° 29' EAST, A
DISTANCE OF 200 FEET;
THENCE SOUTH 88° 29' EAST, 206.2 FEET;
THENCE ON A 40° CURVE TO THE LEFT, 165 FEET;
THENCE NORTH 25° 31' EAST, 449 FEET;
THENCE NORTH 37° 01' EAST, 180 FEET TO A POINT ON THE NORTH LINE OF THE
SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14, 805 FEET MORE OR LESS, EAST OF THE
NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14, ALL SITUATED IN THE
SW $\frac{1}{4}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:
BEGINNING AT STATION 129+80 OF "A" LATERAL SURVEY AS LOCATED WHICH
POINT IS ON THE SOUTH BOUNDARY LINE OF THE NW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND
805 FEET, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF SAID FORTY;
THENCE NORTH 37° 01' EAST, 224.9 FEET;
THENCE ON A 20° CURVE TO THE RIGHT, 310 FEET;
THENCE SOUTH 80° 59' EAST 1440.1 FEET TO STATION 149+55 WHICH STATION IS
A POINT ON THE EAST LINE OF THE NE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND 1260 FEET,
MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SECTION 14, ALL LYING IN
THE N $\frac{1}{2}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:
BEGINNING AT A POINT ON THE WEST BOUNDARY LINE OF THE NE $\frac{1}{4}$ OF SECTION
14, 1260 FEET, MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SAID SECTION
14, WHICH POINT IS STATION 149+55 OF "A" LATERAL SURVEY AS LOCATED;
THENCE SOUTH 80° 59' EAST, 366.1 FEET MORE OR LESS;
THENCE ON A 20° CURVE TO THE RIGHT, 190 FEET;
THENCE SOUTH 42° 59' EAST, 685.5 FEET;
THENCE ON A 40° CURVE TO THE LEFT, 280.8 FEET;
THENCE NORTH 24° 41' EAST, 693.3 FEET;
THENCE ON A 40° CURVE TO THE RIGHT 165 FEET;
THENCE SOUTH 89° 19' EAST 220.5 FEET;
THENCE ON A 50° CURVE TO THE LEFT, 155.7 FEET;
THENCE NORTH 12° 51' EAST, 312 FEET;
THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET;
THENCE NORTH 34° 51' EAST, 708.6 FEET;
THENCE ON A 50° CURVE TO THE RIGHT, 110.2 FEET;

Cottonwood

THENCE NORTH 89° 58' EAST, 53 FEET TO STATION 189+86, WHICH POINT IS ON THE EAST LINE OF SAID SECTION 14 AND 45 FEET SOUTH OF THE NORTHEAST CORNER, SITUATED IN THE NE¼ OF SECTION 14.

AND ALSO EXCEPT

A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 40' 16" WEST A DISTANCE OF 2640.52 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 1370.00 FEET ALONG THE NORTH BOUNDARY OF SECTION 14 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 00° 00' 00" WEST A DISTANCE OF 445.00 FEET; THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 200.00 FEET PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF NORTH 00° 00' 00" EAST A DISTANCE OF 445.00 FEET TO THE NORTH BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 89° 40' 16" EAST A DISTANCE OF 200.00 FEET ALONG THE NORTH BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING.

AND ALSO EXCEPT

A TWELVE (12) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 21' 12" EAST A DISTANCE OF 2645.57 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 1008.00 FEET ALONG THE EAST BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 884.00 FEET; THENCE ON A BEARING OF NORTH 89° 38' 48" WEST A DISTANCE OF 590.00 FEET; THENCE ON A BEARING OF NORTH 00° 21' 12" EAST A DISTANCE OF 884.00 FEET PARALLEL WITH THE EAST BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 89° 38' 48" EAST A DISTANCE OF 590.00 FEET TO THE EAST BOUNDARY OF SAID SECTION 14 AND THE REAL POINT OF BEGINNING.
SECTION 23: W½W½; NE¼NW¼

Deep Creek

EXHIBIT A
Property Description

**TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO**

SECTION 15: S½; S½NE¼

EXCEPT

**BEGINNING AT SURVEY STATION 115+74 OF "A" LATERAL SURVEY AS LOCATED
WHICH POINT IS ON SECTION LINE 1620.8 FEET SOUTH OF SECTION CORNER
COMMON TO SECTION 10, 11, 14 AND 15, TOWNSHIP 14 SOUTH, RANGE 15 EAST,
B.M.;
THENCE NORTH ALONG SAID SECTION LINE, 300.8 FEET, MORE OR LESS TO THE
NORTHEAST CORNER OF THE SE¼NE¼ OF SECTION 15;
THENCE WEST ALONG THE NORTH BOUNDARY OF SAID FORTY (FORTH), 100 FEET;
THENCE SOUTH 8° 29' EAST 681.3 FEET, TO A POINT ON THE EAST SECTION LINE OF
SECTION 15;
THENCE NORTHERLY ALONG SAID SECTION LINE 380.5 FEET, TO THE POINT OF
BEGINNING.**

SECTION 16: ALL

SECTION 21: E½W½; E½

EXCEPT

**A TWENTY-TWO (22) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS
FOLLOWS:
COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 21 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2638.50 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 21;
THENCE ON A BEARING OF NORTH 00° 22' 02" EAST A DISTANCE OF 1963.97 FEET
TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 42'
09" WEST A DISTANCE OF 1319.23 FEET;
THENCE ON A BEARING OF NORTH 00° 22' 03" EAST A DISTANCE OF 680.00 FEET;
THENCE ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF 1319.23 FEET TO
THE CENTER QUARTER CORNER OF SAID SECTION 21;
THENCE CONTINUING ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF
100.00 FEET;
THENCE ON A BEARING OF SOUTH 00° 17' 51" WEST A DISTANCE OF 680.00 FEET;
THENCE ON A BEARING OF NORTH 89° 42' 09" WEST A DISTANCE OF 100.83 FEET TO
THE REAL POINT OF BEGINNING.**

SECTION 22: ALL

EXCEPT

**A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 22 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS SOUTH 89° 32' 27" EAST A
DISTANCE OF 2642.45 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 22;
THENCE ON A BEARING OF NORTH 89° 30' 21" WEST A DISTANCE OF 370.00 FEET
ALONG THE SOUTH BOUNDARY OF SAID SECTION 22 TO THE REAL POINT OF
BEGINNING;**

Deep Creek

THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF NORTH 89° 32' 27" WEST A DISTANCE OF 410.00 FEET;
THENCE ON A BEARING OF NORTH 00° 27' 33" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF NORTH 61° 56' 10" EAST A DISTANCE OF 261.77 FEET;
THENCE ON A BEARING OF SOUTH 89° 32' 27" EAST A DISTANCE OF 180.00 FEET
PARALLEL WITH THE SOUTH BOUNDARY OF SAID SECTION 22;
THENCE ON A BEARING OF SOUTH 00° 27' 33" WEST A DISTANCE OF 245.00 FEET TO
THE SOUTH BOUNDARY OF SAID SECTION 22 AND THE REAL POINT OF BEGINNING.

SECTION 26: S½NW¼

SECTION 27: NE¼; N½NW¼; SE¼NW¼

SECTION 28: N½NE¼; NE¼NW¼

EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 28 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2638.50 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 28
AND BEING THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 89° 42'
57" EAST A DISTANCE OF 275.00 FEET ALONG THE NORTH BOUNDARY OF SAID
SECTION 28;
THENCE ON A BEARING OF SOUTH 00° 23' 55" WEST A DISTANCE OF 155.00 FEET;
THENCE ON A BEARING OF NORTH 89° 42' 57" WEST A DISTANCE OF 275.00 FEET
PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 28;
THENCE ON A BEARING OF NORTH 00° 23' 55" EAST A DISTANCE OF 155.00 FEET TO
THE REAL POINT OF BEGINNING.

Exergy ID Pay Request #5, 5/2012				
Detail Contractor/Subcontractor/Suppliers To Be Paid				
			Payable	
Consulting Engineers	21210 Eaton Ave	Farmington, MN 55024	\$ 182,137.60	Engineering Services
Earth Systems Global	P O Box 3757	San Luis Obispo, CA 93403	\$ 80,000.00	Engineering Services
Kaneaster Construction	425 N Lupine Place	Pine, ID 83647	\$ 2,205.50	Replace Doors
Nix Excavating	4020 North 2600 East	Filer, ID 83328	\$ 88,656.75	Excavaing
Sargent & Lundy LLC	8070 Solutions Center	Chicago, IL 60677-8000	\$ 2,770.00	Design Reviews
Fagen Inc	P O Box 159	Granite Falls, MN 56241	\$ 1,520,310.56	General
Total			\$ 1,876,080.41	

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Consulting Engineers ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 539606) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$146,900.00 (Inv# 30712JR), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 23 day of APRIL, 2012

Consulting Engineers

By: [Signature]
Name: VINCENT L GRANQUIST
Title: PRESIDENT

STATE of MN

COUNTY of DAKOTA

SUBSCRIBED AND SWORN to before me by VINCENT L GRANQUIST this 23rd day of APRIL, 2012

[Signature]
Notary Public in and for the State of MN, residing at:
6035 115TH ST E NEPLD MN 55057



Exhibit K**PARTIAL WAIVER AND LIEN RELEASE****(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Dan Lafferty Construction ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 532877) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$5003.19 (Inv# 11123), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 11th day of May, 2012

Dan Lafferty Construction

By: [Signature]
Name: Dan Lafferty
Title: Owner

STATE of Idaho
COUNTY of Gooding

SUBSCRIBED AND SWORN to before me by Dan Lafferty this 11th day of May, 2012.

Brenda Kaye Fleetwood
Notary Public
State of Idaho

Brenda Kaye Fleetwood
Notary Public in and for the State of
Idaho, residing at:
Paqueran, Idaho

Exhibit K**PARTIAL WAIVER AND LIEN RELEASE
(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

~~Earth Systems Global Inc. ("Subcontractor/Supplier") and Contractor have~~ entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524108) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$40000.00 (Inv# 040851) the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 5th day of April, 2012

Earth Systems Global Inc

By: *Terril Hebert*
Name: Terril Hebert
Title: Collection Mgr

STATE of _____

COUNTY of _____

SUBSCRIBED AND SWORN to before me by _____ this _____ day of _____, 20 .

Notary Public in and for the State of _____, residing at:

ACKNOWLEDGMENT

State of California
County of San Luis Obispo)

On April 5, 2012 before me, Jennifer Marie Barnes - Notary Public
(insert name and title of the officer)

personally appeared Terri Hebert
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s)-acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jennifer Marie Barnes (Seal)



Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Earth Systems Global Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524108) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$80000.00 (Inv# 041078), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies, and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:


1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered
this Partial Waiver and Lien Release this 17 day of May, 2012

Earth Systems Global Inc

By: 
Name: Terri Hebert
Title: Collection Mgr

STATE of _____

COUNTY of _____

SUBSCRIBED AND SWORN to before me by _____ this _____ day of
_____, 20__.

Notary Public in and for the State of
_____, residing at:

ACKNOWLEDGMENT

State of California
County of San Luis Obispo

On May 17, 2012 before me, Jennifer Marie Barnes - Notary Public
(insert name and title of the officer)

personally appeared Terri Hebert
who proved to me on the basis of satisfactory evidence to be the person(e) whose name(e) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(e), or the entity upon behalf of which the person(e) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature JENNIFER MARIE BARNES (Seal)

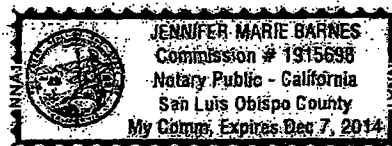


Exhibit K**PARTIAL WAIVER AND LIEN RELEASE
(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

~~Trico America Sales & Tech~~ ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524119) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$348150.00 (Inv# 687), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 14th day of APRIL, 2012

Ilico America Sales & Tech

By: ROBERT ALLEN
Name: ROB W
Title: ACCOUNTANT

STATE of Pennsylvania
COUNTY of Allegheny

SUBSCRIBED AND SWORN to before me by Rob Allen this 14th day of APRIL, 2012

Annalette Baker
Notary Public in and for the State of PA, residing at:
MOON TWP, PA 15108

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Annalette Baker, Notary Public
Moon Twp., Allegheny County
My Commission Expires June 15, 2012
Member, Pennsylvania Association of Notaries

Exhibit K**PARTIAL WAIVER AND LIEN RELEASE
(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Nix Excavating ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524120 524121 524127) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$196,937.53 (Inv# 3926 3926TX 3927 3928 3929 3930 3931 3932 3932TX 3933 3933TX), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 19 day of March, 2012

Nix Excavating

By: [Signature]
Name: Keith Nix
Title: owner CEO

STATE of Idaho

COUNTY of Twin Falls

SUBSCRIBED AND SWORN to before me by Keith Nix this 19 day of March, 2012

[Signature]
Notary Public in and for the State of Idaho residing at: 3895 N 2500 E, Filow

SAMANTHA ANDERSON
NOTARY PUBLIC
STATE OF IDAHO
EXP 6/15/16

Exhibit K**PARTIAL WAIVER AND LIEN RELEASE****(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Nix Excavating Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524127) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$24,747.75 (Inv# 3939 3940 3941 3942 3943), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 23 day of April, 2012.

Nix Excavating Inc

By: [Signature]
Name: Keith Nix
Title: Pres. CEO

STATE of Idaho
COUNTY of Latah

SUBSCRIBED AND SWORN to before me by Keith Nix this 23 day of April, 2012.

[Signature]
Notary Public in and for the State of Idaho, residing at:
3895 N 2500 E - Filer
Commission Exp. 6/18/16

SAMANTHA ANDERSON
NOTARY PUBLIC
STATE OF IDAHO

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Renewable Resource Cnslt ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524130) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$10000.00 (Inv# 1103112), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 20 day of March, 2012

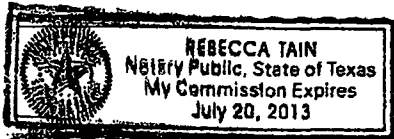
Renewable Resource Cnslt

By: Chong T. Borg
Name: ~~Williamson~~
Title: Principal

STATE of Texas

COUNTY of Williamson

SUBSCRIBED AND SWORN to before me by _____ this 21th day of March, 2012.



Rebecca Tain
Notary Public in and for the State of Tx, residing at:

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Riedesel Engineering Inc. ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 559068) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$7345.23 (Inv# 8095), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

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IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 20 day of March, 2012.

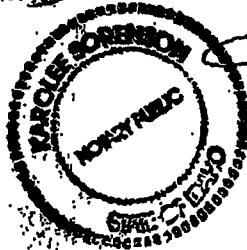
Riedesel Engineering Inc

By: Aaron J. West
Name: Aaron J. West
Title: Principal

STATE of IDAHO

COUNTY of Twin Falls

SUBSCRIBED AND SWORN to before me by Aaron J. West this 20 day of March, 2012



Marcie Lorenson
Notary Public in and for the State of
Idaho, residing at:
Twin Falls, ID 6/21/2014

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Sargent & Lundy LLC ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 532860 532861 532862 532863 532858 532859) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$4350.00 (Inv# 10776629B 10776629C 10776629D 10776629E 10776629F 10776629G), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered
this Partial Waiver and Lien Release this 22 day of May, 2012.

Sargent & Lundy LLC

By: Sean F. Hagan
Name: Sean F. Hagan
Title: Senior Principal Consultant

STATE of Illinois

COUNTY of COOK

SUBSCRIBED AND SWORN to before me by Sean F. Hagan this 22 day of
May, 2012

Gloria Collazo
Notary Public in and for the State of
IL, residing at:
2241 N 74th Ct #2
Elmwood PK IL 60907



Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Sargent & Lundy LLC ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 532860 532861 532862 532863 524127 532858 524128 532859) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$23158.66 (Inv# 10778466C 10778466D 10778466E 10778466F 10780546D 10780546E 10780546F 10780546G 10780727 10778466A 10778466B 10780729 10780546B 10780546C), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior

invoices for payment have been paid in full by Contractor to it and the applicable lien
waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered
this Partial Waiver and Lien Release this 22 day of May, 2012

Sargent & Lundy LLC

By:

Name:

Title:

Sean F. Hagen
Sean F. Hagen
Senior Principal Consultant

STATE of Illinois

COUNTY of Cook

SUBSCRIBED AND SWORN to before me by Sean F. Hagen this 22 day of
May, 2012

Gloria Collazo
Notary Public in and for the State of
IL, residing at:
2241 N 74th Ct #2
Elmwood Pk IL 60706



Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Valley Co-Op Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 559069) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$5716.60 (Inv# 27879 269943 7776), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");
2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;
3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

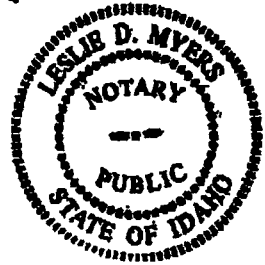
IN WITNESS WHEREOF, the undersigned has executed and delivered
this Partial Waiver and Lien Release this 21 day of May, 2012.

Valley Co-Op Inc

By: [Signature]
Name: Sarah L. Kline
Title: Office

STATE of Idaho
COUNTY of Jerome

SUBSCRIBED AND SWORN to before me by [Signature] this 21st day of
May, 2012



[Signature]
Notary Public in and for the State of
ID, residing at:
Jerome, ID
exp. May 24, 2016

Exhibit K**PARTIAL WAIVER AND LIEN RELEASE****(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Valley Co-Op Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 559073 pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$2,673.92 (Inv# 28123A), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it, and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 20 day of April 2012

Valley Co-Op Inc

By: [Signature]
Name: Bobb L Kline
Title: Office Team

STATE of Idaho

COUNTY of Jerome

SUBSCRIBED AND SWORN to before me by Bobb L Kline this 20th day of April, 2012

[Signature]
Notary Public in and for the State of ID, residing at: Jerome, ID

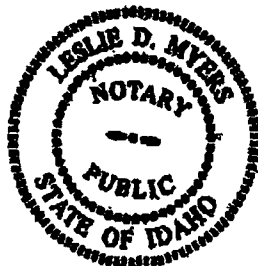


Exhibit K**PARTIAL WAIVER AND LIEN RELEASE
(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Western States Equip ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 557674 557675) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$18596.64 (Inv# 0102101996 0405300693), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner; and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 2 day of April, 2012

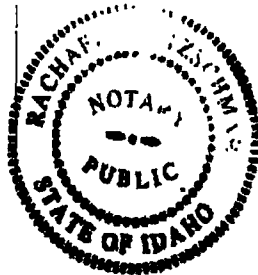
Western States Equipment

By: Linda Sanford
Name: LINDA SANFORD
Title: Credit Manager

STATE of IDAHO

COUNTY of ADA

SUBSCRIBED AND SWORN to before me by Rachel Knutson this 2 day of April, 2012.



Rachael Knutson
Notary Public in and for the State of
_____, residing at:
Mexican, Idaho

Exhibit K**PARTIAL WAIVER AND LIEN RELEASE
(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Western States Equip ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 557675 557674 559077) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$20,357.60 (Inv# 0405300723 102102052A 102102052B), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");
2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;
3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 23 day of April, 2012

Western States Equip

By: Linda Sanford
Name: LINDA SANFORD
Title: Credit Manager

STATE of IDAHO

COUNTY of ADA

SUBSCRIBED AND SWORN to before me by Linda Sanford this 23 day of April, 2012



Annette Gilbertson
Notary Public in and for the State of
Idaho residing at: Ada County

EXHIBIT F



501 West Hwy. 212, P.O. Box 159
Granite Falls, MN 56241
320-564-3324

www.fageninc.com

Civil - Mechanical - Electrical Contractors

320-564-3278 fax

June 29, 2012

Exergy Development Group of Idaho, LLC
James Carkulis
802 W. Bannock St., 12th Floor
Boise, ID 83702

Dear James:

As prescribed in the Contract, enclosed please find original Payment Application Number Six for the Exergy Idaho Six Winds Wind Park Project in Idaho, along with the signed Contractor's Partial Waiver and Lien Release.

Also enclosed, please find a list of subcontractors to be paid from this Payment Application.

Please contact me if you have any questions or need anything further to process this Payment Application.

Thank you.

Sincerely,
FAGEN, INC.


Kirsten A. Tjosaa
Controller



APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Notche Butte Wind Farm
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Notch Butte
9 Turbines

APPLICATION NO: 6
PERIOD TO: 06/25/2012
PROJECT NOS: 114034 601
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	7,247,835.08
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,247,835.08
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	781,723.35
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	781,723.35
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	707,434.50
8. CURRENT PAYMENT DUE	\$	74,288.85
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	6,466,111.73

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

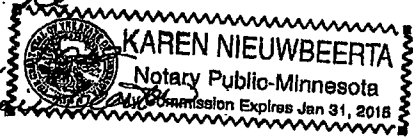
By: Roni Anderson

Date: 6-29-12

State of: Minnesota
County of: Yellow Medicine

Subscribed and sworn to before me this 29th day of June.

Notary Public: Karen Nieuwbeerta
My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____

Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 6
 APPLICATION DATE: 06/29/2012
 PERIOD TO: 06/25/2012
 PROJECT NO: 114034 601
 PROJECT NAME: Notch Butte 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	590,992.08	.00	.00	.00	.00	0	590,992.08	.00
02	Turbine Receive	717,414.00	.00	.00	.00	.00	0	717,414.00	.00
03	Foundations	1,571,429.00	159,187.50	.00	.00	159,187.50	10	1,412,241.50	.00
04	Site Pads	205,934.00	20,593.40	.00	.00	20,593.40	10	185,340.60	.00
05	Crane Pads	93,990.00	.00	.00	.00	.00	0	93,990.00	.00
06	Access Roads and On	646,402.00	114,372.50	.00	.00	114,372.50	21	431,029.50	.00
07	Temporary Facilities	212,284.00	.00	.00	.00	.00	0	212,284.00	.00
08	Off-site Road Improv	114,877.00	.00	.00	.00	.00	0	114,877.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,048.00	.00	.00	.00	.00	0	704,048.00	.00
11	Fiber Optic Systems	28,486.00	.00	.00	.00	.00	0	28,486.00	.00
12	Turbine Switch Gear	228,962.00	.00	.00	.00	.00	0	228,962.00	.00
13	Communications	132,724.00	.00	.00	.00	.00	0	132,724.00	.00
14	Met Towers & Sensors	211,214.00	.00	.00	.00	.00	0	211,214.00	.00
15	Soils Testing	36,880.00	36,880.00	.00	.00	36,880.00	100	.00	.00
16	Site Remediation	42,243.00	.00	.00	.00	.00	0	42,243.00	.00
17	Site Surveying	17,601.00	7,040.40	.00	.00	7,040.40	40	10,560.60	.00
18	Misc. (phone, elect)	54,529.00	.00	.00	.00	.00	0	54,529.00	.00
19	Const Management	1,518,043.00	148,677.70	74,288.85	.00	222,866.55	15	1,295,176.45	.00
20	Mobilization	220,783.00	220,783.00	.00	.00	220,783.00	100	.00	.00
		7,247,835.08	1,518,043.00	74,288.85	.00	1,592,331.85		5,655,503.23	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Lava Beds Wind Farm, LLC
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Lava Beds
9 Turbines

APPLICATION NO: 6
PERIOD TO: 06/25/2012
PROJECT NOS: 114034 602
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	7,300,178.00
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,300,178.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	773,153.62
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	773,153.62
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	698,123.82
8. CURRENT PAYMENT DUE	\$	75,029.80
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 8)	\$	6,527,024.38

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

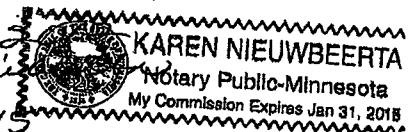
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Lou Anderson Date: 6-29-12

State of Minnesota
County of: Yellow Medicine

Subscribed and sworn to before me this 29th day of June, 2012
Notary Public: Karen Nieuwbeerta
My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 6
 APPLICATION DATE: 06/29/2012
 PERIOD TO: 06/25/2012
 PROJECT NO: 114034 602
 PROJECT NAME: Lava Beds 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	590,981.00	.00	.00	.00	.00	0	590,981.00	.00
02	Turbine Receive	732,068.00	.00	.00	.00	.00	0	732,068.00	.00
03	Foundations	1,562,598.00	161,819.10	.00	.00	161,819.10	10	1,400,778.90	.00
04	Site Pads	159,464.00	.00	.00	.00	.00	0	159,464.00	.00
05	Crane Pads	93,989.00	.00	.00	.00	.00	0	93,989.00	.00
06	Access Roads & On Si	739,235.00	118,654.50	.00	.00	118,654.50	16	620,580.50	.00
07	Temporary Facilities	170,038.00	.00	.00	.00	.00	0	170,038.00	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,034.00	.00	.00	.00	.00	0	704,034.00	.00
11	Fiber Optic System	28,486.00	.00	.00	.00	.00	0	28,486.00	.00
12	Turbine Switch Gear	228,957.00	.00	.00	.00	.00	0	228,957.00	.00
13	Communications Syste	155,367.00	.00	.00	.00	.00	0	155,367.00	.00
14	Met Towers & Sensors	211,210.00	.00	.00	.00	.00	0	211,210.00	.00
15	Soils Testing	29,335.00	29,335.00	.00	.00	29,335.00	100	.00	.00
16	Site Remediation	42,242.00	.00	.00	.00	.00	0	42,242.00	.00
17	Site Surveying	17,801.00	8,800.50	.00	.00	8,800.50	50	8,800.50	.00
18	Misc. (Phone, Elect)	54,528.00	.00	.00	.00	.00	0	54,528.00	.00
19	Construction Managem	1,559,266.00	158,735.72	75,029.80	.00	233,765.52	15	1,325,500.48	.00
20	Mobilization	220,779.00	220,779.00	.00	.00	220,779.00	100	.00	.00
		7,300,178.00	698,125.62	75,029.80	.00	773,155.62		6,527,022.38	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Rogerson Flats Wind Farm,
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Jack Ranch Rogerson
Flats 10 Turbines

APPLICATION NO: 6
PERIOD TO: 06/25/2012
PROJECT NOS: 114034 603
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	1,315,506.13
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	1,315,506.13
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	1,147,067.51
8. CURRENT PAYMENT DUE	\$	168,438.62
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 8)	\$	7,729,375.62

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

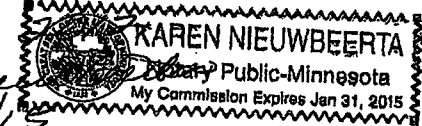
CONTRACTOR: Fagen Inc

By: Kari Anderson Date: 6-29-12

State of Minnesota
County of Yellow Medicine

Subscribed and sworn to before
me this 29th day of June

Notary Public: Karen Nieuwbeerta
My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 6
 APPLICATION DATE: 06/29/2012
 PERIOD TO: 06/25/2012
 PROJECT NO: 114034 603
 PROJECT NAME: Jack Ranch Rogerson Flats 10 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive Asse	759,456.75	146.45	.00	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,215.50	152,301.25	.00	.00	162,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	131,799.12	16,167.29	.00	147,966.41	53	133,204.34	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	798,182.00	379,126.62	75,825.33	.00	454,951.95	57	341,230.05	.00
07	Temporary Facilities	142,502.76	1,060.65	.00	.00	1,060.65	1	141,442.10	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,148.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc. (Phone, elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	157,179.84	76,446.00	.00	233,625.84	24	721,809.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.58	.00	.00	32,687.58	10	294,188.17	.00
		9,044,881.75	1,670,677.75	1,682,436.62	.00	1,315,506.13		1,239,375.62	.00

TO OWNER:
 Salmon Creek Wind Farm,
 Exergy Development Group of Idaho,
 LLC
 Boise, ID 83702

PROJECT:
 Jack Ranch
 Salmon Creeks

APPLICATION NO: 6
 PERIOD TO: 06/25/2012
 PROJECT NOS: 114034 604
 CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Fagen Inc
 501 West Highway 212
 Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	1,315,506.10
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	1,315,506.10
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	1,147,067.51
8. CURRENT PAYMENT DUE	\$	168,438.59
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	7,940,253.65

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

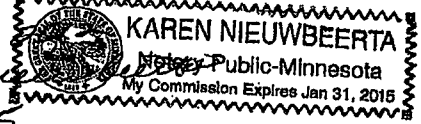
CONTRACTOR: Fagen Inc

By: Lori Anderson Date: 6-29-12

State of: Minnesota
 County of: Yellow Medicine

Subscribed and sworn to before me this 29th day of June.

Notary Public: Karen Nieuwbeerta
 My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 6
 APPLICATION DATE: 06/29/2012
 PERIOD TO: 06/25/2012
 PROJECT NO: 114034 604
 PROJECT NAME: Jack Ranch Salmon Creeks

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.75	146.45	.00	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,215.50	152,301.25	.00	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	131,799.11	16,167.27	.00	147,966.38	53	133,204.37	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	379,126.63	75,825.32	.00	454,951.95	57	341,230.05	.00
07	Temporary Facilities	142,502.75	1,060.65	.00	.00	1,060.65	1	141,442.10	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	210,878.00	.00	.00	.00	.00	0	210,878.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Electr)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	157,179.84	76,446.00	.00	233,625.84	24	721,809.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.58	.00	.00	32,687.58	10	294,188.17	.00
		9,255,739.75	1,864,365.58	186,436.58	.00	1,131,506.10		7,949,263.55	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Cottonwood Wind Park, LLC
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Jack Ranch
Cottonwood

APPLICATION NO: 6
PERIOD TO: 06/25/2012
PROJECT NOS: 114034 605
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	1,315,506.10
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	1,315,506.10
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	1,147,067.51
8. CURRENT PAYMENT DUE	\$	168,438.59
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	7,729,375.65

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Rou Anderson Date: 6-29-12

State of Minnesota
County of Yellow Medicine
Subscribed and sworn to before me this 29 day of June
Notary Public: Karen Nieuwbeerta
My Commission Expires Jan 31, 2015
Notary Public: Shawn Nieuwbeerta
My Commission expires: 1/31/15

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION

PAYMENT, containing Contractor's signed Certification, is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 6

APPLICATION DATE: 06/29/2012

PERIOD TO: 06/25/2012

PROJECT NO: 114034 605

PROJECT NAME: Jack Ranch Cottonwood

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.75	146.45	.00	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,215.50	152,301.25	.00	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	131,799.11	16,167.27	.00	147,966.38	53	133,204.37	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	379,126.63	75,825.32	.00	454,951.95	57	341,230.05	.00
07	Temporary Facilities	142,502.75	1,060.65	.00	.00	1,060.65	1	141,442.10	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic Systems	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Mel Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	157,179.84	76,446.00	.00	233,625.84	24	721,809.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.58	.00	.00	32,687.58	10	294,188.17	.00
		3,044,881.75	1,177,068.75	188,438.55	.00	1,315,506.10		724,375.65	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
 Deep Creek Wind Park, LLC
 Exergy Development Group of Idaho,
 LLC
 Boise, ID 83702

PROJECT:
 Jack Ranch
 Deep Creek

APPLICATION NO: 6
 PERIOD TO: 06/25/2012
 PROJECT NOS: 114034 606
 CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Fagen Inc
 501 West Highway 212
 Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	1,315,506.08
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	1,315,506.08
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	1,147,067.48
8. CURRENT PAYMENT DUE	\$	168,438.60
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	7,940,253.67

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kari Anderson Date: 6-29-12

State of Minnesota
 County of Yellow Medicine
 Subscribed and sworn to before
 me this 29 day of June
 Notary Public: Karen Nieuwebeerta
 My Commission expires: 1/31/15

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 6
 APPLICATION DATE: 06/29/2012
 PERIOD TO: 06/25/2012
 PROJECT NO: 114034 606
 PROJECT NAME: Jack Ranch Deep Creek

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,458.75	146.45	.00	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,215.50	152,301.25	.00	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	131,799.11	16,167.27	.00	147,966.38	53	133,204.37	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	379,126.62	75,825.33	.00	454,951.95	57	341,230.05	.00
07	Temporary Facilities	142,502.75	1,060.65	.00	.00	1,060.65	1	141,442.10	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic Systems	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	210,878.00	.00	.00	.00	.00	0	210,878.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	157,179.84	76,446.00	.00	233,625.84	24	721,809.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.56	.00	.00	32,687.56	10	294,188.19	.00
		2,557,559.75	1,270,672.45	168,438.80	.00	1,439,111.25	56	1,117,447.50	.00

Exhibit L

PARTIAL WAIVER AND LIEN RELEASE

Fagen, Inc., a Minnesota corporation ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company ("Owner"), have entered into that certain Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

For and in consideration of partial payment in the amount of eight hundred twenty three thousand seventy three dollars and 05/100 (\$823,073.05) for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Owner, and other good and valuable consideration, Contractor does hereby, to the extent paid and contingent upon receipt thereof:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors or any of its respective employees, (b) (i) it has not received a notice of intention to claim any Liens (including Liens by, through or under any of its Subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, or to the best of its knowledge after due inquiry, by any of its Subcontractors, and (iii) there is no known basis for any such Liens; and

3. agree and certify that all amounts properly due and payable with respect to all prior Applications for Payment have been paid in full by Owner and the applicable lien waivers associated therewith are final and unconditional.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 29th day of June, 2012.

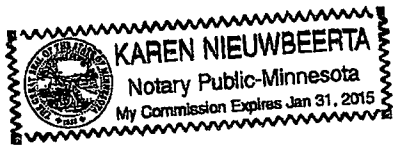
[Fagen, Inc.]

By: [Signature]
Name: Timothy A. Johnson
Title: CFO

STATE of Minnesota
COUNTY of Yellow Medicine

SUBSCRIBED AND SWORN to before me by [Signature] this 29th day of June, 2012.

[Signature]
Notary Public in and for the State of
MN, residing at:
Chippewa Co



Lava Beds Legal Description

EXHIBIT "A" EASEMENT

Township 1 South, Range 32, E.B.M., Bingham County, Idaho

Sections 22, 23 and 26: All of that property lying within 1320 feet south and west of the Tabor Highway/Union Pacific Rail Road right of way.

Notch Butte Legal Description

Exhibit A Legal Description

Township 6 South, Range 19 East of the Boise Meridian, Lincoln County, Idaho

Section 22: EYzEYz

EXCEPT a portion of the NE"NE" of Section 22 conveyed to the State of Idaho by Warranty Deed recorded as Instrument Number 109244, Lincoln County records.

Rogerson Flats

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 7: GOV'T. LOTS 2, 3, 4, 5, 6, 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:

TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., TWIN FALLS COUNTY, IDAHO

SECTION 7:

BEGINNING AT A POINT ON THE SECTION LINE 763 FEET, MORE OR LESS, SOUTH OF
THE WEST QUARTER CORNER OF SECTION 7, WHICH POINT IS STATION 252+85 OF
"A" LATERAL AS LOCATED;

THENCE NORTH 65° 58' EAST 89.4 FEET;

THENCE ON A 20° CURVE TO THE LEFT, 157.2 FEET;

THENCE NORTH 34° 32' EAST 422.7 FEET;

THENCE ON A 20° CURVE TO THE RIGHT 80.8 FEET;

THENCE NORTH 50° 42' EAST 580.7 FEET;

THENCE ON A 10° CURVE TO THE RIGHT, 210 FEET;

THENCE NORTH 71° 42' EAST 457.6 FEET;

THENCE ON A 10° CURVE TO THE LEFT, 180 FEET, TO STATION 274+63.4 WHICH

POINT IS ON THE LAST EAST LINE OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ BEING GOV'T LOT 7 OF

SECTION 7 AND 865 FEET, MORE OR LESS, SOUTH OF THE NORTHEAST CORNER OF
SAID SW $\frac{1}{4}$ NW $\frac{1}{4}$ GOV'T LOT 7 OF SECTION 7, ALL SITUATED IN THE W $\frac{1}{2}$ OF SECTION
7, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M.

AND EXCEPT

THAT PORTION OF THE SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 7, TOWNSHIP 14 SOUTH, RANGE 16
EAST, B.M., AS DESCRIBED:

BEGINNING AT A POINT WHICH IS THE CORNER COMMON TO SECTIONS 7, 8, 17
AND 18, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M.;

THENCE NORTH FOR 141 FEET;

THENCE SOUTH 76° 46' 32" WEST FOR 610 FEET;

THENCE EAST FOR 600 FEET TO THE CORNER COMMON TO SECTIONS 7, 8, 17 AND
18, WHICH IS THE POINT OF BEGINNING.

SECTION 8: NE $\frac{1}{4}$ SW $\frac{1}{4}$; S $\frac{1}{2}$ SW $\frac{1}{4}$

SECTION 17: GOV'T. LOTS 1 AND 2, EXCEPT THE NORTH 300 FEET OF SAID LOTS;
S $\frac{1}{2}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$; S $\frac{1}{2}$ SE $\frac{1}{4}$; W $\frac{1}{2}$ OF SECTION NORTHWEST OF RAILROAD; 6.93
ACRES RAILROAD RIGHT OF WAY; W $\frac{1}{2}$ OF SECTION SOUTH AND EAST OF RAILROAD.

AND EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHEAST CORNER OF SECTION 17 ALL IN TOWNSHIP 14
SOUTH, RANGE 16 EAST, B.M., WHICH BEARS SOUTH 00° 09' 24" WEST A DISTANCE
OF 2640.66 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 17; THENCE
ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 1320.33 FEET ALONG
THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 26'
58" WEST A DISTANCE OF 450.00 FEET ALONG THE 1/16TH LINE;

Rogerson Flats

THENCE ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF SOUTH 89° 26' 58" EAST A DISTANCE OF 450.00 FEET TO
THE EAST BOUNDARY OF SAID SECTION 17;
THENCE ON A BEARING OF SOUTH 00° 09' 24" WEST A DISTANCE OF 120.00 FEET
ALONG THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF
BEGINNING.

SECTION 20: ALL

SECTION 29: ALL

Salmon Creek

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 24: E $\frac{1}{2}$; E $\frac{1}{2}$ W $\frac{1}{2}$

SECTION 25: ALL

SECTION 26: E $\frac{1}{2}$ E $\frac{1}{2}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.; THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26; ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.

AND EXCEPT

A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U. S. HIGHWAY 93-PROJECT No. F-FG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE SE $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35;
THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE;
THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,

SECTION 35: E $\frac{1}{2}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; W $\frac{1}{2}$ NE $\frac{1}{4}$

Salmon Creek

EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26;
ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.

AND EXCEPT

A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U. S. HIGHWAY 93-PROJECT No. F-FG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35;
THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE;
THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

SECTION 18: GOV'T LOT 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$

SECTION 19: ALL

EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170820.
ALSO EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170821.
THIS DEED DESCRIBES THE 6.93 ACRE PARCEL IN SECTION 17.

SECTION 30: N $\frac{1}{2}$ NE $\frac{1}{4}$; GOV'T LOT 1; NE $\frac{1}{4}$ NW $\frac{1}{4}$

Cottonwood

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 1: SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

SECTION 11: ALL

SECTION 12: W $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$; W $\frac{1}{2}$

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE;

BEGINNING AT A POINT ON THE SECTION LINE, 1799 FEET, MORE OR LESS, EAST OF
SECTION CORNER COMMON TO SECTIONS 11, 12, 13 AND 14, TOWNSHIP 14 SOUTH,
RANGE 15 EAST, B.M., WHICH POINT IS STATION 210+62 OF "A" LATERAL AS
LOCATED;

THENCE NORTH 00° 28' EAST 37.3 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET;

THENCE NORTH 22° 28' EAST, 238.5 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 120.8 FEET;

THENCE NORTH 46° 38' EAST, 47.6 FEET;

THENCE ON A 30° CURVE TO THE RIGHT, 174.4 FEET;

THENCE SOUTH 81° 02' EAST, 407.5 FEET;

THENCE ON A 40° CURVE TO THE LEFT, 177.1 FEET;

THENCE NORTH 28° 08' EAST, 171.6 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 189.2 FEET;

THENCE NORTH 65° 58' EAST 2549 FEET TO STATION 252+85 WHICH POINT IS ON
THE EAST SECTION LINE OF SECTION 12, TOWNSHIP 14 SOUTH, RANGE 15 EAST,
B.M., AND 763 FEET, MORE OR LESS, SOUTH OF THE EAST $\frac{1}{4}$ CORNER OF SAID
SECTION 12, ALL SITUATED IN THE S $\frac{1}{2}$ OF SAID SECTION 12.

SECTION 13: ALL

EXCEPT

A NINE (9) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE WEST QUARTER CORNER OF SECTION 13 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 26' 46" EAST A
DISTANCE OF 2646.88 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 13;
THENCE ON A BEARING OF SOUTH 00° 26' 46" WEST A DISTANCE OF 34.00 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING;

THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 57° 01'
03" EAST A DISTANCE OF 1900.00 FEET;

THENCE ON A BEARING OF SOUTH 32° 58' 57" EAST A DISTANCE OF 200.00 FEET;

THENCE ON A BEARING OF SOUTH 57° 01' 03" WEST A DISTANCE OF 2032.02 FEET
TO THE WEST BOUNDARY OF SAID SECTION 13;

THENCE ON A BEARING OF NORTH 00° 26' 46" EAST A DISTANCE OF 239.64 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING.

SECTION 14: ALL

Coltonwood

EXCEPT

BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET MORE OR LESS;
THENCE NORTH 81° 31' EAST, 80 FEET;
THENCE NORTH 8° 29' WEST, 505 FEET, MORE OR LESS TO THE PLACE OF BEGINNING.

AND EXCEPT

A STRIP OF LAND 100 FEET WIDE LYING 50 FEET ON EACH SIDE OF THE CENTERLINE OF "A" LATERAL AS LOCATED AND DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14;
THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET, MORE OR LESS;
THENCE NORTH 81° 31' EAST, 30 FEET TO THE POINT OF BEGINNING, WHICH IS PC STATION 117+79.8 OF "A" LATERAL AS LOCATED;
THENCE ON A 40° CURVE TO THE LEFT FROM SEMI-TANGENT SOUTH 8° 29' EAST, A DISTANCE OF 200 FEET;
THENCE SOUTH 88° 29' EAST, 206.2 FEET;
THENCE ON A 40° CURVE TO THE LEFT, 165 FEET;
THENCE NORTH 25° 31' EAST, 449 FEET;
THENCE NORTH 37° 01' EAST, 180 FEET TO A POINT ON THE NORTH LINE OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14, 805 FEET MORE OR LESS, EAST OF THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14, ALL SITUATED IN THE SW $\frac{1}{4}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:
BEGINNING AT STATION 129+80 OF "A" LATERAL SURVEY AS LOCATED WHICH POINT IS ON THE SOUTH BOUNDARY LINE OF THE NW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND 805 FEET, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF SAID FORTY;
THENCE NORTH 37° 01' EAST, 224.9 FEET;
THENCE ON A 20° CURVE TO THE RIGHT, 310 FEET;
THENCE SOUTH 80° 59' EAST 1440.1 FEET TO STATION 149+55 WHICH STATION IS A POINT ON THE EAST LINE OF THE NE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND 1260 FEET, MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SECTION 14, ALL LYING IN THE NE $\frac{1}{2}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:
BEGINNING AT A POINT ON THE WEST BOUNDARY LINE OF THE NE $\frac{1}{4}$ OF SECTION 14, 1260 FEET, MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SAID SECTION 14, WHICH POINT IS STATION 149+55 OF "A" LATERAL SURVEY AS LOCATED;
THENCE SOUTH 80° 59' EAST, 366.1 FEET MORE OR LESS;
THENCE ON A 20° CURVE TO THE RIGHT, 190 FEET;
THENCE SOUTH 42° 59' EAST, 685.5 FEET;
THENCE ON A 40° CURVE TO THE LEFT, 280.8 FEET;
THENCE NORTH 24° 41' EAST, 693.3 FEET;
THENCE ON A 40° CURVE TO THE RIGHT 165 FEET;
THENCE SOUTH 89° 19' EAST 220.5 FEET;
THENCE ON A 50° CURVE TO THE LEFT, 155.7 FEET;
THENCE NORTH 12° 51' EAST, 312 FEET;
THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET;
THENCE NORTH 34° 51' EAST, 708.6 FEET;
THENCE ON A 50° CURVE TO THE RIGHT, 110.2 FEET;

Cottonwood

THENCE NORTH 89° 58' EAST, 53 FEET TO STATION 189+86, WHICH POINT IS ON THE EAST LINE OF SAID SECTION 14 AND 45 FEET SOUTH OF THE NORTHEAST CORNER, SITUATED IN THE NE¼ OF SECTION 14.

AND ALSO EXCEPT

A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 40' 16" WEST A DISTANCE OF 2640.52 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 1370.00 FEET ALONG THE NORTH BOUNDARY OF SECTION 14 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 00° 00' 00" WEST A DISTANCE OF 445.00 FEET; THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 200.00 FEET PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF NORTH 00° 00' 00" EAST A DISTANCE OF 445.00 FEET TO THE NORTH BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 89° 40' 16" EAST A DISTANCE OF 200.00 FEET ALONG THE NORTH BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING.

AND ALSO EXCEPT

A TWELVE (12) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 21' 12" EAST A DISTANCE OF 2645.57 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 1008.00 FEET ALONG THE EAST BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 884.00 FEET; THENCE ON A BEARING OF NORTH 89° 38' 48" WEST A DISTANCE OF 590.00 FEET; THENCE ON A BEARING OF NORTH 00° 21' 12" EAST A DISTANCE OF 884.00 FEET PARALLEL WITH THE EAST BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 89° 38' 48" EAST A DISTANCE OF 590.00 FEET TO THE EAST BOUNDARY OF SAID SECTION 14 AND THE REAL POINT OF BEGINNING.
SECTION 23: W½W½; NE¼NW¼

Deep Creek

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 15: S $\frac{1}{2}$; S $\frac{1}{2}$ NE $\frac{1}{4}$

EXCEPT

BEGINNING AT SURVEY STATION 115+74 OF "A" LATERAL SURVEY AS LOCATED
WHICH POINT IS ON SECTION LINE 1620.8 FEET SOUTH OF SECTION CORNER
COMMON TO SECTION 10, 11, 14 AND 15, TOWNSHIP 14 SOUTH, RANGE 15 EAST,
B.M.;
THENCE NORTH ALONG SAID SECTION LINE, 300.8 FEET, MORE OR LESS TO THE
NORTHEAST CORNER OF THE SE $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 15;
THENCE WEST ALONG THE NORTH BOUNDARY OF SAID FORTY (FORTH), 100 FEET;
THENCE SOUTH 8° 29' EAST 681.3 FEET, TO A POINT ON THE EAST SECTION LINE OF
SECTION 15;
THENCE NORTHERLY ALONG SAID SECTION LINE 380.5 FEET, TO THE POINT OF
BEGINNING.

SECTION 16: ALL

SECTION 21: E $\frac{1}{2}$ W $\frac{1}{2}$; E $\frac{1}{2}$

EXCEPT

A TWENTY-TWO (22) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS
FOLLOWS:
COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 21 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2638.50 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 21;
THENCE ON A BEARING OF NORTH 00° 22' 02" EAST A DISTANCE OF 1963.97 FEET
TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 42'
09" WEST A DISTANCE OF 1319.23 FEET;
THENCE ON A BEARING OF NORTH 00° 22' 03" EAST A DISTANCE OF 680.00 FEET;
THENCE ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF 1319.23 FEET TO
THE CENTER QUARTER CORNER OF SAID SECTION 21;
THENCE CONTINUING ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF
100.00 FEET;
THENCE ON A BEARING OF SOUTH 00° 17' 51" WEST A DISTANCE OF 680.00 FEET;
THENCE ON A BEARING OF NORTH 89° 42' 09" WEST A DISTANCE OF 100.83 FEET TO
THE REAL POINT OF BEGINNING.

SECTION 22: ALL

EXCEPT

A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 22 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS SOUTH 89° 32' 27" EAST A
DISTANCE OF 2642.45 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 22;
THENCE ON A BEARING OF NORTH 89° 30' 21" WEST A DISTANCE OF 370.00 FEET
ALONG THE SOUTH BOUNDARY OF SAID SECTION 22 TO THE REAL POINT OF
BEGINNING;

Deep Creek

THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF NORTH 89° 32' 27" WEST A DISTANCE OF 410.00 FEET;
THENCE ON A BEARING OF NORTH 00° 27' 33" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF NORTH 61° 56' 10" EAST A DISTANCE OF 261.77 FEET;
THENCE ON A BEARING OF SOUTH 89° 32' 27" EAST A DISTANCE OF 180.00 FEET
PARALLEL WITH THE SOUTH BOUNDARY OF SAID SECTION 22;
THENCE ON A BEARING OF SOUTH 00° 27' 33" WEST A DISTANCE OF 245.00 FEET TO
THE SOUTH BOUNDARY OF SAID SECTION 22 AND THE REAL POINT OF BEGINNING.

SECTION 26: S $\frac{1}{2}$ NW $\frac{1}{4}$

SECTION 27: ; NE $\frac{1}{4}$; N $\frac{1}{2}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$

SECTION 28: N $\frac{1}{2}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$

EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 28 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2638.50 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 28
AND BEING THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 89° 42'
57" EAST A DISTANCE OF 275.00 FEET ALONG THE NORTH BOUNDARY OF SAID
SECTION 28;
THENCE ON A BEARING OF SOUTH 00° 23' 55" WEST A DISTANCE OF 155.00 FEET;
THENCE ON A BEARING OF NORTH 89° 42' 57" WEST A DISTANCE OF 275.00 FEET
PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 28;
THENCE ON A BEARING OF NORTH 00° 23' 55" EAST A DISTANCE OF 155.00 FEET TO
THE REAL POINT OF BEGINNING.

Exergy ID Pay Request #6, 6/2012				
Detail Contractor/Subcontractor/Suppliers To Be Paid				
			Payable	
Consulting Engineers	21210 Eaton Ave	Farmington, MN 55024	\$ 14,639.50	Engineering Services
Grand View Farms	1301 Highway 67	Grand View, ID 83264	\$ 6,310.00	Water
Kaneaster Construction	425 N Lupine Place	Pine, ID 83647	\$ 2,045.74	Replace Doors
Nix Excavating	4020 North 2600 East	Filer, ID 83328	\$ 123,705.00	Excavaing
Riedesel Engineering	202 Falls Ave	Twin Falls, ID 83301	\$ 2,134.35	Surveying
Terracon Consultants	P O Box 419263	Kansas City, MO 64193	\$ 1,600.00	Soil / Concrete Testing
Valley Co-Op Inc	1833 S Lincoln	Jerome, ID 83338	\$ 2,336.71	Fuel
Western States Equip	P O Box 3805	Seattle, WA 98124	\$ 12,718.94	Equipment
Fagen Inc	P O Box 159	Granite Falls, MN 56241	\$ 657,582.81	General
Total			\$ 823,073.05	

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Consulting Engineers ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders. 539606) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$143095.00 (Inv# 30712JRA 30712JRB 40912JR), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 17th day of MAY, 2012.

Consulting Engineers

By: [Signature]
Name: VINCENT L. GRANQVIST
Title: PRESIDENT

STATE of MINNESOTA

COUNTY of DALOTA

SUBSCRIBED AND SWORN to before me by VINCENT L. GRANQVIST this 17th day of MAY, 2012



[Signature]
Notary Public in and for the State of MN, residing at 6035 115TH ST E. NEFD MN 55057

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Consulting Engineers ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 539606) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$39042.60 (Inv# 50712JR), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 10 day of JUNE, 2012

Consulting Engineers

By: [Signature]
Name: VINCENT L. GRANQUIST
Title: PRESIDENT

STATE of MN

COUNTY of DAKOTA

SUBSCRIBED AND SWORN to before me by VINCENT L. GRANQUIST this 10th day of JUNE, 2012



[Signature]

Notary Public in and for the State of

residing at:
6035 115TH ST E, NPLD MN 55057

Exhibit K

**PARTIAL WAIVER AND LIEN RELEASE
(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Earth Systems Global Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524108) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$80000.00 (Inv# 041078), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered
this Partial Waiver and Lien Release this 21 day of JUNE, 2012

Earth Systems Global Inc

By: Shelton L. Stringer
Name: Shelton L. Stringer
Title: President

STATE of _____

COUNTY of _____

SUBSCRIBED AND SWORN to before me by _____ this ____ day of
_____, 20__.

Notary Public in and for the State of
_____, residing at

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
 County of Riverside
 On June 21, 2012 before me, Kelly L. Sebero
Date Here Insert Name and Title of the Officer
 personally appeared Shelton L. Stringer
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.
 Signature Kelly L. Sebero
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Partial Waiver & Lien Release
 Document Date: June 21, 2012 Number of Pages: (1)
 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Shelton L. Stringer
 Individual
 Corporate Officer — Title(s): President
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____
 Signer Is Representing:
Earth Sys. Global, Inc.



Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____
 Signer Is Representing: _____

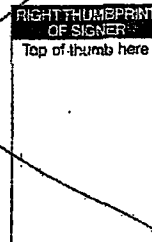


Exhibit K**PARTIAL WAIVER AND LIEN RELEASE****(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho L.L.C. a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Kancaster Construction ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 559078) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$2205.50 (Inv# 186), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

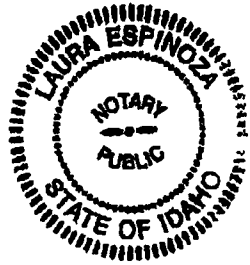
IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 3 day of May, 2012

Kancaster Construction

By: [Signature]
Name: Kancaster Construction
Title: Owner

STATE of Idaho
COUNTY of Gooding

SUBSCRIBED AND SWORN to before me by Curtis Kancaster this 3 day of May, 2012



[Signature]
Notary Public in and for the State of Idaho residing at: Terone, ID.

Commission expires 01.31.2017

Exhibit K**PARTIAL WAIVER AND LIEN RELEASE
(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Nix Excavating Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524127) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$25002.00 (Inv# 3959 3960 3961 3962 3963), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 18 day of May, 2012.

Nix Excavating Inc

By: [Signature]
Name: Keith Nix
Title: CEO - Pres.

STATE of Idaho

COUNTY of Twin Falls

SUBSCRIBED AND SWORN to before me by Keith Nix this 18 day of May, 2012

SAMANTHA ANDERSON
NOTARY PUBLIC
STATE OF IDAHO

[Signature]
Notary Public in and for the State of Idaho, residing at:
3895 N 2500E, Filer
EX 6/18/16

Exhibit K**PARTIAL WAIVER AND LIEN RELEASE****(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Nix Excavating Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524127) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$63654.75 (Inv# 3982 3983), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 18 day of June, 2012

Nix Excavating inc

By: [Signature]
Name: Keith Nix
Title: CEO/Owner

STATE of Idaho

COUNTY of Twin Falls

SUBSCRIBED AND SWORN to before me by Keith Nix this 18 day of June, 2012.

SAMANTHA ANDERSON
NOTARY PUBLIC
STATE OF IDAHO

Exp 6/18/16

[Signature]
Notary Public in and for the State of Idaho, residing at: 3895 North 2500 East, Filer, Idaho

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE
(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Sargent & Lundy LLC ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524129) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$2770.00 (Inv# 10783760), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 20 day of June, 2012.

Sargent & Lundy LLC

By: Matthew R. Thibodeau
Name: Matthew R. Thibodeau
Title: Sr. Management Consultant

STATE of Illinois

COUNTY of Cook

Matthew R.

SUBSCRIBED AND SWORN to before me by Thibodeau, this 20 day of June, 2012

Gloria Collazo
Notary Public in and for the State of IL, residing at:
2241 N 74th Ct
Elmwood Park IL 60707

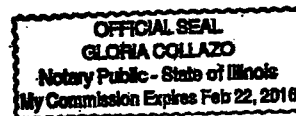


EXHIBIT G



www.fageninc.com

501 West Hwy. 212, P.O. Box 159
Granite Falls, MN 56241
320-564-3324

Civil - Mechanical - Electrical Contractors

320-564-3278 fax

July 27, 2012

Exergy Development Group of Idaho, LLC
James Carkulis
802 W. Bannock St., 12th Floor
Boise, ID 83702

Dear James:

As prescribed in the Contract, enclosed please find original Payment Application Number Seven for the Exergy Idaho Six Winds Wind Park Project in Idaho, along with the signed Contractor's Partial Waiver and Lien Release.

Also enclosed, please find a list of subcontractors to be paid from this Payment Application.

Please contact me if you have any questions or need anything further to process this Payment Application.

Thank you.

Sincerely,
FAGEN, INC.

A handwritten signature in cursive script that reads "Kirsten A. Tjosaa".

Kirsten A. Tjosaa
Controller



APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
 Notche Butte Wind Farm
 Exergy Development Group of Idaho,
 LLC
 Boise, ID 83702

PROJECT:
 Notch Butte
 9 Turbines

APPLICATION NO: 7
 PERIOD TO: 07/25/2012
 PROJECT NOS: 114034 601
 CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Fagen Inc
 501 West Highway 212
 Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	7,247,835.08
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,247,835.08
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	856,012.20
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	856,012.20
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	781,723.35
8. CURRENT PAYMENT DUE	\$	74,288.85
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 8)	\$	6,391,822.88

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

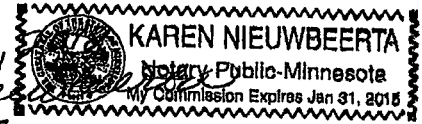
CONTRACTOR: Fagen Inc

By: Rou Anderson Date: 7/27/12

State of Minnesota
 County of: Yellow Medicine

Subscribed and sworn to before
 me this 27 day of July,

Notary Public: Karen Nieuwebeerta
 My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 7
 APPLICATION DATE: 07/27/2012
 PERIOD TO: 07/25/2012
 PROJECT NO: 114034 601
 PROJECT NAME: Notch Butte 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	590,992.08	.00	.00	.00	.00	0	590,992.08	.00
02	Turbine Receive	717,414.00	.00	.00	.00	.00	0	717,414.00	.00
03	Foundations	1,571,429.00	159,187.50	.00	.00	159,187.50	10	1,412,241.50	.00
04	Site Pads	205,934.00	20,593.40	.00	.00	20,593.40	10	185,340.60	.00
05	Crane Pads	93,990.00	.00	.00	.00	.00	0	93,990.00	.00
06	Access Roads and On	545,402.00	114,372.50	.00	.00	114,372.50	21	431,029.50	.00
07	Temporary Facilities	212,284.00	.00	.00	.00	.00	0	212,284.00	.00
08	Off-site Road Improv	114,877.00	.00	.00	.00	.00	0	114,877.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,048.00	.00	.00	.00	.00	0	704,048.00	.00
11	Fiber Optic Systems	28,486.00	.00	.00	.00	.00	0	28,486.00	.00
12	Turbine Switch Gear	228,962.00	.00	.00	.00	.00	0	228,962.00	.00
13	Communications	132,724.00	.00	.00	.00	.00	0	132,724.00	.00
14	Met Towers & Sensors	211,214.00	.00	.00	.00	.00	0	211,214.00	.00
15	Soils Testing	36,880.00	36,880.00	.00	.00	36,880.00	100	.00	.00
16	Site Remediation	42,243.00	.00	.00	.00	.00	0	42,243.00	.00
17	Site Surveying	17,601.00	7,040.40	.00	.00	7,040.40	40	10,560.60	.00
18	Misc. (phone, elect)	54,529.00	.00	.00	.00	.00	0	54,529.00	.00
19	Const Management	1,518,043.00	222,866.55	74,288.85	.00	297,155.40	20	1,220,887.60	.00
20	Mobilization	220,783.00	220,783.00	.00	.00	220,783.00	100	.00	.00
		7,247,835.08	781,723.45	74,288.85	.00	856,012.20		6,391,822.88	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Lava Beds Wind Farm, LLC
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Lava Beds
9 Turbines

APPLICATION NO: 7
PERIOD TO: 07/25/2012
PROJECT NOS: 114034 602
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	7,300,178.00
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	7,300,178.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	848,183.42
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	848,183.42
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	773,153.62
8. CURRENT PAYMENT DUE	\$	75,029.80
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	6,451,994.58

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kari Anderson Date: 7/27/12

State of Minnesota
County of Yellow Medicine
Subscribed and sworn to before me this 27 day of July
Notary Public: Karen Nieuwbeerta
My Commission expires: 1/31/15

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 7
 APPLICATION DATE: 07/27/2012
 PERIOD TO: 07/25/2012
 PROJECT NO: 114034 602
 PROJECT NAME: Lava Beds 9 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	590,981.00	.00	.00	.00	.00	0	590,981.00	.00
02	Turbine Receive	732,068.00	.00	.00	.00	.00	0	732,068.00	.00
03	Foundations	1,562,598.00	161,819.10	.00	.00	161,819.10	10	1,400,778.90	.00
04	Site Pads	159,464.00	.00	.00	.00	.00	0	159,464.00	.00
05	Crane Pads	93,989.00	.00	.00	.00	.00	0	93,989.00	.00
06	Access Roads & On Si	739,235.00	118,654.50	.00	.00	118,654.50	16	620,580.50	.00
07	Temporary Facilities	170,038.00	.00	.00	.00	.00	0	170,038.00	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	.00	.00	.00	.00	.00	0	.00	.00
10	Electrical Infrastru	704,034.00	.00	.00	.00	.00	0	704,034.00	.00
11	Fiber Optic System	28,486.00	.00	.00	.00	.00	0	28,486.00	.00
12	Turbine Switch Gear	228,957.00	.00	.00	.00	.00	0	228,957.00	.00
13	Communications Syste	155,367.00	.00	.00	.00	.00	0	155,367.00	.00
14	Met Towers & Sensors	211,210.00	.00	.00	.00	.00	0	211,210.00	.00
15	Soils Testing	29,335.00	29,335.00	.00	.00	29,335.00	100	.00	.00
16	Site Remediation	42,242.00	.00	.00	.00	.00	0	42,242.00	.00
17	Site Surveying	17,801.00	8,800.50	.00	.00	8,800.50	50	8,800.50	.00
18	Misc. (Phone, Elect)	54,528.00	.00	.00	.00	.00	0	54,528.00	.00
19	Construction Managem	1,559,266.00	233,765.52	75,029.80	.00	308,795.32	20	1,250,470.68	.00
20	Mobilization	220,779.00	220,779.00	.00	.00	220,779.00	100	.00	.00
		7,300,178.00		75,029.80		646,183.42			.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:

Rogerson Flats Wind Farm,
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:

Jack Ranch Rogerson
Flats 10 Turbines

APPLICATION NO:

7

PERIOD TO:

07/25/2012

PROJECT NOS:

114034 603

CONTRACT NO:

1

Distribution to:

- OWNER
- ARCHITECT
- CONTRACTOR

FROM CONTRACTOR:

Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	1,412,774.81
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	1,412,774.81
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	1,315,506.13
8. CURRENT PAYMENT DUE	\$	97,268.68
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	7,632,106.94

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Ron Anderson Date: 7/27/12

State of: Minnesota
County of: Yellowknife
Subscribed and sworn to before me this 27th day of July
Notary Public: Karen Nieuwbeerta
Notary Public, Minnesota
My Commission Expires: 1/31/15

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION
 PAYMENT, containing Contractor's signed Certification, is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 7
 APPLICATION DATE: 07/27/2012
 PERIOD TO: 07/25/2012
 PROJECT NO: 114034 603
 PROJECT NAME: Jack Ranch Rogerson Flats 10 Turbines

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G/C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive Asse	759,458.75	146.45	.00	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,215.50	152,301.25	.00	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	147,988.41	59,046.88	.00	207,012.09	74	74,158.68	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	454,951.95	.00	.00	454,951.95	57	341,230.05	.00
07	Temporary Facilities	142,502.75	1,060.65	.00	.00	1,060.65	1	141,442.10	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc. (Phone, elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	233,625.84	38,223.00	.00	271,848.84	28	683,586.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.58	.00	.00	32,687.58	10	294,188.17	.00
		9,044,881.75	1,155,007.43	97,288.68	.00	1,142,774.81		4,322,006.94	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
 Salmon Creek Wind Farm,
 Exergy Development Group of Idaho,
 LLC
 Boise, ID 83702

PROJECT:
 Jack Ranch
 Salmon Creeks

APPLICATION NO: 7
 PERIOD TO: 07/25/2012
 PROJECT NOS: 114034 604
 CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Fagen Inc
 501 West Highway 212
 Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet; AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	1,412,774.81
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	1,412,774.81
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	1,315,506.10
8. CURRENT PAYMENT DUE	\$	97,268.71
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	7,842,984.94

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

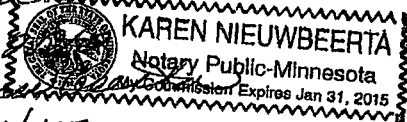
CONTRACTOR: Fagen Inc

By: Koti Anderson Date: 7/27/12

State of Minnesota
 County of Yellow Medicine

Subscribed and sworn to before me this 27th day of July, 2012

Notary Public: Karen Nieuwbeerta
 My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 7
 APPLICATION DATE: 07/27/2012
 PERIOD TO: 07/25/2012
 PROJECT NO: 114034 604
 PROJECT NAME: Jack Ranch Salmon Creeks

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.75	146.45	.00	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,215.50	152,301.25	.00	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	147,966.38	59,045.71	.00	207,012.09	74	74,158.66	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	798,182.00	454,951.95	.00	.00	454,951.95	57	341,230.05	.00
07	Temporary Facilities	142,502.75	1,060.65	.00	.00	1,060.65	1	141,442.10	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic System	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	210,878.00	.00	.00	.00	.00	0	210,878.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Electr)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	233,625.84	38,223.00	.00	271,848.84	28	683,586.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.58	.00	.00	32,687.58	10	294,188.17	.00
		9,255,759.75	3,615,061.10	97,268.71	.00	1,412,774.81		5,428,024.94	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
Cottonwood Wind Park, LLC
Exergy Development Group of Idaho,
LLC
Boise, ID 83702

PROJECT:
Jack Ranch
Cottonwood

APPLICATION NO: 7
PERIOD TO: 07/25/2012
PROJECT NOS: 114034 605
CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
Fagen Inc
501 West Highway 212
Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,044,881.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,044,881.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	1,412,774.81
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	1,412,774.81
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	1,315,506.10
8. CURRENT PAYMENT DUE	\$	97,268.71
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	7,632,106.94

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc
By: Kari Anderson Date: 7/27/12

State of: Minnesota
County of: Yellow Pine
Subscribed and sworn to before me this 27th day of July
Notary Public: KAREN NIEUWBEERTA
My Commission expires: 1/31/15

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT
By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 7
 APPLICATION DATE: 07/27/2012
 PERIOD TO: 07/25/2012
 PROJECT NO: 114034 605
 PROJECT NAME: Jack Ranch Cottonwood

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	227,123.25	0	227,123.25	.00
02	Turbine Receive	759,456.75	146.45	.00	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,215.50	152,301.25	.00	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	147,966.38	59,045.71	.00	207,012.09	74	74,158.66	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	454,951.95	.00	.00	454,951.95	57	341,230.05	.00
07	Temporary Facilities	142,502.75	1,060.65	.00	.00	1,060.65	1	141,442.10	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	766,533.50	.00	.00	.00	.00	0	766,533.50	.00
11	Fiber Optic Systems	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,726.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	.00	.00	.00	.00	.00	0	.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,436.00	233,625.84	38,223.00	.00	271,848.84	28	683,586.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,875.75	32,687.58	.00	.00	32,687.58	10	294,188.17	.00
		9,044,861.75	3,154,066.10	97,208.71	.00	3,141,274.81		7,832,106.94	.00

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE 1

TO OWNER:
 Deep Creek Wind Park, LLC
 Exergy Development Group of Idaho,
 LLC
 Boise, ID 83702

PROJECT:
 Jack Ranch
 Deep Creek

APPLICATION NO: 7
 PERIOD TO: 07/25/2012
 PROJECT NOS: 114034 606
 CONTRACT NO: 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR:
 Fagen Inc
 501 West Highway 212
 Granite Falls, MN 56241

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703 is attached.

1. ORIGINAL CONTRACT SUM	\$	9,255,759.75
2. Net change by Change Orders	\$	.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	9,255,759.75
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	1,412,774.79
5. RETAINAGE:		
a. On Completed Work (Columns D + E on G703)	\$	.00
b. On Stored Material (Column F on G703)	\$	.00
Total Retainage (Line 2a + 5b or Total in Column I of G703)	\$	.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)	\$	1,412,774.79
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	1,315,506.08
8. CURRENT PAYMENT DUE	\$	97,268.71
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	7,842,984.96

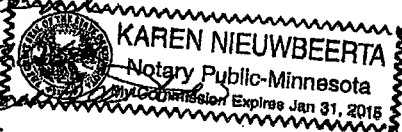
CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	.00	.00
Total changes approved in	.00	.00
TOTALS	.00	.00
NET CHANGES by Change Order		.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown here is correct.

CONTRACTOR: Fagen Inc

By: Kari Anderson Date: 7/27/12

State of: Minnesota
 County of: Yellow Medicine
 Subscribed and sworn to before me this 27 day of July, 2012
 Notary Public: Karen Nieuwebeerta
 My Commission expires: 1/31/15



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the Amount Certified.

AMOUNT CERTIFIED

\$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are charged to conform to the Amount Certified)

ARCHITECT

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of Payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA Document G702, APPLICATION AND CERTIFICATION

PAYMENT, containing Contractor's signed Certification, is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 7

APPLICATION DATE: 07/27/2012

PERIOD TO: 07/25/2012

PROJECT NO: 114034 606

PROJECT NAME: Jack Ranch Deep Creek

A	B	C	D	E	F	G	H	I	
ITEM NUMBER	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
01	Crane Rental	227,123.25	.00	.00	.00	.00	0	227,123.25	.00
02	Turbine Receive	759,456.76	146.45	.00	.00	146.45	0	759,310.30	.00
03	Foundations	1,723,215.50	152,301.25	.00	.00	152,301.25	9	1,570,914.25	.00
04	Site Pads	281,170.75	147,966.38	59,045.71	.00	207,012.09	74	74,158.66	.00
05	Crane Pads	93,723.50	.00	.00	.00	.00	0	93,723.50	.00
06	Access Roads and On	796,182.00	454,951.95	.00	.00	454,951.95	57	341,230.05	.00
07	Temporary Facilities	142,502.75	1,060.65	.00	.00	1,060.65	1	141,442.10	.00
08	Off-site Road Improv	.00	.00	.00	.00	.00	0	.00	.00
09	Substations	2,145,906.75	.00	.00	.00	.00	0	2,145,906.75	.00
10	Electrical Infrastru	768,533.50	.00	.00	.00	.00	0	768,533.50	.00
11	Fiber Optic Systems	29,006.75	.00	.00	.00	.00	0	29,006.75	.00
12	Turbine Switch Gear	253,996.75	.00	.00	.00	.00	0	253,996.75	.00
13	Communications Syste	177,728.25	3,555.00	.00	.00	3,555.00	2	174,171.25	.00
14	Met Towers & Sensors	210,878.00	.00	.00	.00	.00	0	210,878.00	.00
15	Soils Testing	35,146.25	35,146.25	.00	.00	35,146.25	100	.00	.00
16	Site Remediation	43,933.00	.00	.00	.00	.00	0	43,933.00	.00
17	Site Surveying	17,573.25	8,787.00	.00	.00	8,787.00	50	8,786.25	.00
18	Misc (Phone, Elect)	22,096.25	.00	.00	.00	.00	0	22,096.25	.00
19	Construction Managem	955,435.00	233,625.84	38,223.00	.00	271,848.84	28	683,586.16	.00
20	Mobilization	245,277.75	245,277.75	.00	.00	245,277.75	100	.00	.00
21	Main Substation Tran	326,876.75	32,687.56	.00	.00	32,687.56	10	294,188.19	.00
		8,255,756.75	3,451,506.06	97,268.71	.00	1,412,774.78		7,842,980.99	.00

Exhibit L

PARTIAL WAIVER AND LIEN RELEASE

Fagen, Inc., a Minnesota corporation ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company ("Owner"), have entered into that certain Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

For and in consideration of partial payment in the amount of five hundred thirty eight thousand three hundred ninety three and 46/100 (\$538,393.46) for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Owner, and other good and valuable consideration, Contractor does hereby, to the extent paid and contingent upon receipt thereof:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors or any of its respective employees, (b) (i) it has not received a notice of intention to claim any Liens (including Liens by, through or under any of its Subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, or to the best of its knowledge after due inquiry, by any of its Subcontractors, and (iii) there is no known basis for any such Liens; and

3. agree and certify that all amounts properly due and payable with respect to all prior Applications for Payment have been paid in full by Owner and the applicable lien waivers associated therewith are final and unconditional.

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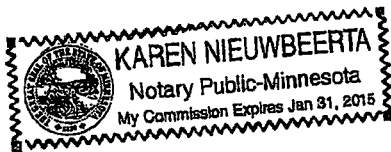
IN WITNESS WHEREOF, the undersigned has executed and delivered this Final Waiver and Lien Release this 27 day of July, 2012.

[Fagen, Inc.]

By: Jennifer A Johnson CFO
Name: Jennifer A Johnson
Title: CFO

STATE of Minnesota
COUNTY of Yellow Medicine

SUBSCRIBED AND SWORN to before me by Jennifer A Johnson this 27th day of July, 2012



Karen Nieuwbeerta
Notary Public in and for the State of
IA, residing at:
Chippewa County

Lava Beds Legal Description

EXHIBIT "A" EASEMENT

Township 1 South, Range 32, E.B.M., Bingham County, Idaho

Sections 22, 23 and 26: All of that property lying within 1320 feet south and west of the Tabor Highway/Union Pacific Rail Road right of way.

Notch Butte Legal Description

Exhibit A Legal Description

Township 6 South, Range 19 East of the Boise Meridian, Lincoln County, Idaho

Section 22: EYzEYz

EXCEPT a portion of the NE"NE" of Section 22 conveyed to the State of Idaho by Warranty Deed recorded as Instrument Number 109244, Lincoln County records.

Rogerson Flats

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO.

SECTION 7: GOV'T. LOTS 2, 3, 4, 5, 6, 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{2}$ SE $\frac{1}{4}$

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:

TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M., TWIN FALLS COUNTY, IDAHO.

SECTION 7:

BEGINNING AT A POINT ON THE SECTION LINE 763 FEET, MORE OR LESS, SOUTH OF
THE WEST QUARTER CORNER OF SECTION 7, WHICH POINT IS STATION 252+85 OF
"A" LATERAL AS LOCATED:

THENCE NORTH 65° 58' EAST 89.2 FEET;

THENCE ON A 20° CURVE TO THE LEFT, 157.2 FEET;

THENCE NORTH 34° 32' EAST 422.7 FEET;

THENCE ON A 20° CURVE TO THE RIGHT 80.8 FEET;

THENCE NORTH 50° 42' EAST 580.7 FEET;

THENCE ON A 10° CURVE TO THE RIGHT, 210 FEET;

THENCE NORTH 71° 42' EAST 457.6 FEET;

THENCE ON A 10° CURVE TO THE LEFT, 180 FEET, TO STATION 274+63.4 WHICH

POINT IS ON THE LAST EAST LINE OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ BEING GOV'T LOT 7 OF
SECTION 7 AND 865 FEET, MORE OR LESS, SOUTH OF THE NORTHEAST CORNER OF
SAID SW $\frac{1}{4}$ NW $\frac{1}{4}$ GOV'T LOT 7 OF SECTION 7, ALL SITUATED IN THE W $\frac{1}{2}$ OF SECTION
7, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M.

AND EXCEPT

THAT PORTION OF THE SE $\frac{1}{2}$ SE $\frac{1}{4}$, SECTION 7, TOWNSHIP 14 SOUTH, RANGE 16
EAST, B.M., AS DESCRIBED:

BEGINNING AT A POINT WHICH IS THE CORNER COMMON TO SECTIONS 7, 8, 17
AND 18, TOWNSHIP 14 SOUTH, RANGE 16 EAST, B.M.:

THENCE NORTH FOR 141 FEET;

THENCE SOUTH 76° 46' 32" WEST FOR 610 FEET;

THENCE EAST FOR 600 FEET TO THE CORNER COMMON TO SECTIONS 7, 8, 17 AND
18, WHICH IS THE POINT OF BEGINNING.

SECTION 8: NE $\frac{1}{2}$ SW $\frac{1}{4}$; S $\frac{1}{2}$ SW $\frac{1}{4}$

SECTION 17: GOV'T LOTS 1 AND 2, EXCEPT THE NORTH 300 FEET OF SAID LOTS;
S $\frac{1}{2}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$; S $\frac{1}{2}$ SE $\frac{1}{4}$; W $\frac{1}{2}$ OF SECTION NORTHWEST OF RAILROAD; 6.93
ACRES RAILROAD RIGHT OF WAY; W $\frac{1}{2}$ OF SECTION SOUTH AND EAST OF RAILROAD.

AND EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHEAST CORNER OF SECTION 17, ALL IN TOWNSHIP 14
SOUTH, RANGE 16 EAST, B.M., WHICH BEARS SOUTH 00° 09' 24" WEST A DISTANCE
OF 2640.66 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 17; THENCE
ON A BEARING OF NORTH 00° 09' 24" EAST A DISTANCE OF 1320.33 FEET ALONG
THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 26'
58" WEST A DISTANCE OF 450.00 FEET ALONG THE 1/16TH LINE.

Rogerson Flats

THENCE ON A BEARING OF NORTH 007° 09' 24" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF SOUTH 897° 26' 58" EAST A DISTANCE OF 450.00 FEET TO
THE EAST BOUNDARY OF SAID SECTION 17;
THENCE ON A BEARING OF SOUTH 007° 09' 24" WEST A DISTANCE OF 120.00 FEET
ALONG THE EAST BOUNDARY OF SAID SECTION 17 TO THE REAL POINT OF
BEGINNING.

SECTION 20: ALL

SECTION 29: ALL

Salmon Creek

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

SECTION 24: E $\frac{1}{2}$; E $\frac{1}{2}$ W $\frac{1}{4}$

SECTION 25: ALL

SECTION 26: E $\frac{1}{2}$ E $\frac{1}{4}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-EG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.; THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26; ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.

AND EXCEPT

A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U. S. HIGHWAY 93 PROJECT No. F-FG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35; THENCE RUNNING NORTH 28° 41' EAST, 1346.2 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE; THENCE 415.9 FEET WITH A 90° 24' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,

SECTION 35: E $\frac{1}{2}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; W $\frac{1}{2}$ NE $\frac{1}{4}$

Salmon Creek

EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-PG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E/4NW/4 AND THE NW/4NE/4 OF SECTION 35, THE SW/4SE/4 AND THE NE/4SE/4 OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,
BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,
THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26;
ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26, THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+00.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.

AND EXCEPT

A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U. S. HIGHWAY 93 PROJECT No. F-PG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E/4NW/4 AND THE NW/4NE/4 OF SECTION 35 AND THE S/4SE/4 AND THE NE/4SE/4 OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,
BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35;
THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE;
THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 780+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

SECTION 18: GOVT LOT 7, E/4SW/4, W/4SE/4

SECTION 19: ALL

EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170820;
ALSO EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170821.
THIS DEED DESCRIBES THE 6.93 ACRE PARCEL IN SECTION 17.

SECTION 30: N/4NE/4, GOVT LOT 1, NE/4NW/4

Cottonwood

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

SECTION 1: SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

SECTION 11: ALL

SECTION 12: W $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$; W $\frac{1}{2}$

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE;

BEGINNING AT A POINT ON THE SECTION LINE, 1799 FEET, MORE OR LESS, EAST OF SECTION CORNER COMMON TO SECTIONS 11, 12, 13 AND 14, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH POINT IS STATION 210+62 OF "A" LATERAL AS LOCATED;

THENCE NORTH 00° 28' EAST 37.3 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET;

THENCE NORTH 22° 28' EAST, 238.5 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 120.8 FEET;

THENCE NORTH 46° 38' EAST, 47.6 FEET;

THENCE ON A 30° CURVE TO THE RIGHT, 174.4 FEET;

THENCE SOUTH 81° 02' EAST, 407.5 FEET;

THENCE ON A 40° CURVE TO THE LEFT, 177.1 FEET;

THENCE NORTH 28° 08' EAST, 171.6 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 189.2 FEET;

THENCE NORTH 65° 58' EAST 2549 FEET TO STATION 252+85 WHICH POINT IS ON THE EAST SECTION LINE OF SECTION 12, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., AND 763 FEET, MORE OR LESS, SOUTH OF THE EAST $\frac{1}{4}$ CORNER OF SAID SECTION 12, ALL SITUATED IN THE S $\frac{1}{2}$ OF SAID SECTION 12.

SECTION 13: ALL

EXCEPT

A NINE (9) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE WEST QUARTER CORNER OF SECTION 13 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 26' 46" EAST A DISTANCE OF 2646.88 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 13; THENCE ON A BEARING OF SOUTH 00° 26' 46" WEST A DISTANCE OF 34.00 FEET ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF BEGINNING;

THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 57° 01' 03" EAST A DISTANCE OF 1900.00 FEET;

THENCE ON A BEARING OF SOUTH 32° 58' 57" EAST A DISTANCE OF 200.00 FEET;

THENCE ON A BEARING OF SOUTH 57° 01' 03" WEST A DISTANCE OF 2032.02 FEET TO THE WEST BOUNDARY OF SAID SECTION 13;

THENCE ON A BEARING OF NORTH 00° 26' 46" EAST A DISTANCE OF 239.64 FEET ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF BEGINNING.

SECTION 14: ALL

Cottonwood

EXCEPT

BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.; THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET MORE OR LESS; THENCE NORTH 81° 31' EAST, 80 FEET; THENCE NORTH 8° 29' WEST, 505 FEET, MORE OR LESS TO THE PLACE OF BEGINNING.

AND EXCEPT

A STRIP OF LAND 100 FEET WIDE LYING 50 FEET ON EACH SIDE OF THE CENTERLINE OF "A" LATERAL AS LOCATED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14; THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET, MORE OR LESS; THENCE NORTH 81° 31' EAST, 30 FEET TO THE POINT OF BEGINNING, WHICH IS PC STATION 117+79.8 OF "A" LATERAL AS LOCATED; THENCE ON A 40° CURVE TO THE LEFT FROM SEMI-TANGENT SOUTH 8° 29' EAST, A DISTANCE OF 200 FEET; THENCE SOUTH 88° 29' EAST, 206.2 FEET; THENCE ON A 40° CURVE TO THE LEFT, 165 FEET; THENCE NORTH 25° 31' EAST, 449 FEET; THENCE NORTH 37° 01' EAST, 180 FEET TO A POINT ON THE NORTH LINE OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14, 805 FEET MORE OR LESS, EAST OF THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14, ALL SITUATED IN THE SW $\frac{1}{4}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: BEGINNING AT STATION 129+80 OF "A" LATERAL SURVEY AS LOCATED WHICH POINT IS ON THE SOUTH BOUNDARY LINE OF THE NW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND 805 FEET, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF SAID FORTY; THENCE NORTH 37° 01' EAST, 224.9 FEET; THENCE ON A 20° CURVE TO THE RIGHT, 310 FEET; THENCE SOUTH 80° 59' EAST 1440.1 FEET TO STATION 149+55 WHICH STATION IS A POINT ON THE EAST LINE OF THE NE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND 1260 FEET, MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SECTION 14, ALL LYING IN THE N $\frac{1}{2}$ NW $\frac{1}{4}$.

AND ALSO EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: BEGINNING AT A POINT ON THE WEST BOUNDARY LINE OF THE NE $\frac{1}{4}$ OF SECTION 14, 1260 FEET, MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SAID SECTION 14, WHICH POINT IS STATION 149+55 OF "A" LATERAL SURVEY AS LOCATED; THENCE SOUTH 80° 59' EAST, 366.1 FEET MORE OR LESS; THENCE ON A 20° CURVE TO THE RIGHT, 190 FEET; THENCE SOUTH 42° 59' EAST, 685.5 FEET; THENCE ON A 40° CURVE TO THE LEFT, 280.8 FEET; THENCE NORTH 24° 41' EAST, 693.3 FEET; THENCE ON A 40° CURVE TO THE RIGHT 165 FEET; THENCE SOUTH 89° 19' EAST 220.5 FEET; THENCE ON A 50° CURVE TO THE LEFT, 155.7 FEET; THENCE NORTH 12° 51' EAST, 312 FEET; THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET; THENCE NORTH 34° 51' EAST, 708.6 FEET; THENCE ON A 50° CURVE TO THE RIGHT, 110.2 FEET;

Cottonwood

THENCE NORTH 89° 58' EAST, 53 FEET TO STATION 189+86, WHICH POINT IS ON THE EAST LINE OF SAID SECTION 14 AND 45 FEET SOUTH OF THE NORTHEAST CORNER, SITUATED IN THE NE¼ OF SECTION 14.

AND ALSO EXCEPT

A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 40' 16" WEST A DISTANCE OF 2640.52 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 1370.00 FEET ALONG THE NORTH BOUNDARY OF SECTION 14 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 00° 00' 00" WEST A DISTANCE OF 445.00 FEET; THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 200.00 FEET PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF NORTH 00° 00' 00" EAST A DISTANCE OF 445.00 FEET TO THE NORTH BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 89° 40' 16" EAST A DISTANCE OF 200.00 FEET ALONG THE NORTH BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING.

AND ALSO EXCEPT

A TWELVE (12) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 21' 12" EAST A DISTANCE OF 2645.57 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 1008.00 FEET ALONG THE EAST BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING; THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 884.00 FEET; THENCE ON A BEARING OF NORTH 89° 38' 48" WEST A DISTANCE OF 590.00 FEET; THENCE ON A BEARING OF NORTH 00° 21' 12" EAST A DISTANCE OF 884.00 FEET PARALLEL WITH THE EAST BOUNDARY OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 89° 38' 48" EAST A DISTANCE OF 590.00 FEET TO THE EAST BOUNDARY OF SAID SECTION 14 AND THE REAL POINT OF BEGINNING.
SECTION 23: W½W½; NE¼NW¼

Deep Creek

EXHIBIT A
Property Description

**TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO**

SECTION 15: SW $\frac{1}{4}$, STANE $\frac{1}{4}$

EXCEPT

**BEGINNING AT SURVEY STATION 115+74 OF "A" LATERAL SURVEY AS LOCATED
WHICH POINT IS ON SECTION LINE 1620.8 FEET SOUTH OF SECTION CORNER
COMMON TO SECTION 10, 11, 14 AND 15, TOWNSHIP 14 SOUTH, RANGE 15 EAST,
B.M.;**

**THENCE NORTH ALONG SAID SECTION LINE 380.8 FEET, MORE OR LESS TO THE
NORTHEAST CORNER OF THE SE $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 15;**

**THENCE WEST ALONG THE NORTH BOUNDARY OF SAID FORTY (FORTH) 100 FEET;
THENCE SOUTH 8° 29' EAST 681.3 FEET, TO A POINT ON THE EAST SECTION LINE OF
SECTION 15;**

**THENCE NORTHERLY ALONG SAID SECTION LINE 380.5 FEET, TO THE POINT OF
BEGINNING.**

SECTION 16: ALL

SECTION 21: EY $\frac{1}{2}$ W $\frac{1}{2}$, EY $\frac{1}{2}$

EXCEPT

**A TWENTY-TWO (22) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS
FOLLOWS:**

**COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 21 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2638.50 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 21;
THENCE ON A BEARING OF NORTH 007° 22' 02" EAST A DISTANCE OF 1963.97 FEET
TO THE REAL POINT OF BEGINNING;**

**THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 42'
09" WEST A DISTANCE OF 1319.23 FEET;**

THENCE ON A BEARING OF NORTH 007° 22' 03" EAST A DISTANCE OF 680.00 FEET;

**THENCE ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF 1319.23 FEET TO
THE CENTER QUARTER CORNER OF SAID SECTION 21;**

**THENCE CONTINUING ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF
100.00 FEET;**

THENCE ON A BEARING OF SOUTH 007° 17' 51" WEST A DISTANCE OF 680.00 FEET;

**THENCE ON A BEARING OF NORTH 89° 42' 09" WEST A DISTANCE OF 100.83 FEET TO
THE REAL POINT OF BEGINNING.**

SECTION 22: ALL

EXCEPT

A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:

**COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 22 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS SOUTH 89° 37' 27" EAST A
DISTANCE OF 2642.45 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 22;
THENCE ON A BEARING OF NORTH 89° 30' 21" WEST A DISTANCE OF 370.00 FEET
ALONG THE SOUTH BOUNDARY OF SAID SECTION 22 TO THE REAL POINT OF
BEGINNING;**

Deep Creek

THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF NORTH 89° 32' 27" WEST A DISTANCE OF 410.00 FEET;
THENCE ON A BEARING OF NORTH 00° 27' 33" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF NORTH 61° 56' 10" EAST A DISTANCE OF 261.77 FEET;
THENCE ON A BEARING OF SOUTH 89° 32' 27" EAST A DISTANCE OF 180.00 FEET
PARALLEL WITH THE SOUTH BOUNDARY OF SAID SECTION 22;
THENCE ON A BEARING OF SOUTH 00° 27' 33" WEST A DISTANCE OF 245.00 FEET TO
THE SOUTH BOUNDARY OF SAID SECTION 22 AND THE REAL POINT OF BEGINNING.

SECTION 26: S½NW¼

SECTION 27: NE¼; N½NW¼; SE¼NW¼

SECTION 28: N½NE¼; NE¼NW¼

EXCEPT

A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 28 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2638.50 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 28
AND BEING THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 89° 42'
57" EAST A DISTANCE OF 275.00 FEET ALONG THE NORTH BOUNDARY OF SAID
SECTION 28;
THENCE ON A BEARING OF SOUTH 00° 23' 55" WEST A DISTANCE OF 155.00 FEET;
THENCE ON A BEARING OF NORTH 89° 42' 57" WEST A DISTANCE OF 275.00 FEET
PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 28;
THENCE ON A BEARING OF NORTH 00° 23' 55" EAST A DISTANCE OF 155.00 FEET TO
THE REAL POINT OF BEGINNING.

Exergy ID Pay Request #7, 7/2012				
Detail Contractor/Subcontractor/Suppliers To Be Paid				
			Payable	
Consulting Engineers	21210 Eaton Ave	Farmington, MN 55024	\$ 13,535.00	Engineering Services
Nlx Excavating	4020 North 2600 East	Filer, ID 83328	\$ 44,840.25	Excavaing
Riedesel Engineering Inc	202 Falls Ave	Twin Falls, ID 83301	\$ 1,672.66	Surveying
Fagen Inc	P O Box 159	Granite Falls, MN 56241	\$ 478,345.55	General
Total			\$ 538,393.46	

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Consulting Engineers ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 539606) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$14639.50 (Inv# 60812JR), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 18th day of JULY, 2012

Consulting Engineers

By: [Signature]
Name: VINCENT L. GRANQVIST
Title: PRESIDENT

STATE of MINN
COUNTY of DAKOTA

SUBSCRIBED AND SWORN to before me by VINCENT L. GRANQVIST this 18th day of JULY, 2012



[Signature]
Notary Public in and for the State of MINN, residing at: 6035 115th ST E NEED MINN 55057

Exhibit K

**PARTIAL WAIVER AND LIEN RELEASE
(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Grand View Farms ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 559096 pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$6310.00 (Inv# 060512), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 23 day of July, 2012.

Grand View Farms

By: [Signature]
Name: Richard Butler
Title: Controller

STATE of Idaho
COUNTY of Elmore

SUBSCRIBED AND SWORN to before me by Richard Butler this 23 day of July, 2012



Carrie L Risher
Notary Public in and for the State of
Idaho, residing at:
Grand View Id

Exhibit K

**PARTIAL WAIVER AND LIEN RELEASE
(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

-- Kaneaster Construction ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 533709) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$2055.75 (Inv# 195), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered
this Partial Waiver and Lien Release this 3 day of July, 2012.

Kaneaster Construction

By: Kaneaster Construction
Name: Chris Kaneaster
Title: Owner

STATE of Idaho

COUNTY of Cassia

SUBSCRIBED AND SWORN to before me by Kaneaster this 3 day of
July, 2012 construction

Todd K. Barney
Notary Public in and for the State of
Idaho residing at: Boyle
Todd K. Barney

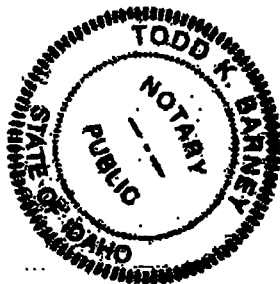


Exhibit K**PARTIAL WAIVER AND LIEN RELEASE****(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Nix Excavating Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 524127) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$123705.00 (Inv# 3990 3991 3992 3993), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 20 day of July, 2012.

Nix Excavating Inc

By: [Signature]
Name: Keith Nix
Title: CEO - Pres.

STATE of Idaho

COUNTY of Lain Falls

SUBSCRIBED AND SWORN to before me by Keith Nix this 20 day of July, 2012.

[Signature]
Notary Public in and for the State of Idaho, residing at:
3895 N 2500 E, Filer, Idaho 83288
EXP 6/18/16

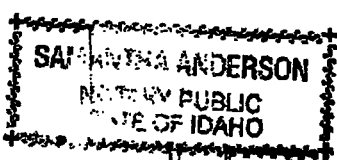


Exhibit K

**PARTIAL WAIVER AND LIEN RELEASE
(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Riedesel Engineering ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 559086) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$2134.35 (Inv# 8222), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 4 day of June, 2012.

Riedesel Engineering

By: [Signature]
Name: Aaron L Wert
Title: Principal

STATE of Iowa

COUNTY of win falls

SUBSCRIBED AND SWORN to before me by Aaron L Wert this 4 day of June, 2012.



[Signature]
Notary Public in and for the State of
Iowa, residing at:
win falls 6/21/2012

Exhibit K

PARTIAL WAIVER AND LIEN RELEASE

(SUBCONTRACTOR/SUPPLIER)

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Terracon ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 526430) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$1600.00 (Inv# T304315), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered
this Partial Waiver and Lien Release this 6th day of June, 2012

Terracon

By: [Signature]
Name: Patrick L. McCune
Title: Acct. Rep. III

STATE of Kansas

COUNTY of Johnson

SUBSCRIBED AND SWORN to before me by [Signature] this 6 day of
June, 2012

NOTARY PUBLIC-State of Kansas
PAMELA G. GIBSON
My Appt. Exp. 10-23-14

[Signature]
Notary Public in and for the State of
KS, residing at:
18001 W. 106th St Ste 300
Olathe KS 66061

Deposit Date: 5/31/2012
Lockbox: 843358
Batch: 4066
Transaction: 33

Exhibit K**PARTIAL WAIVER AND LIEN RELEASE****(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Valley Co-Op Inc ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 559092) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$2336.71 (Inv# 152205), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 19 day of June, 2012

Valley Co-Op Inc

By: _____
Name: Mary Jane Helatopp
Title: office clerk

STATE of Idaho
COUNTY of Terre

SUBSCRIBED AND SWORN to before me by Mary Jane Helatopp this 19 day of June, 2012

Leslie D. Myers
Notary Public in and for the State of ID, residing at: Terre, ID

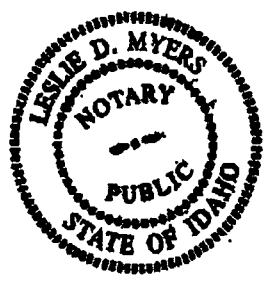


Exhibit K**PARTIAL WAIVER AND LIEN RELEASE****(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Western States Equipment ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 557675) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$9298.32 (Inv# 5103765), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens; and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 5 day of June, 2012.

Western States Equip

By: Linda Sanford
Name: LINDA SANFORD
Title: Credit Manager

STATE of IDAHO

COUNTY of ADA

SUBSCRIBED AND SWORN to before me by Linda Sanford this 5 day of June, 2012

Annette Gilbertson
Notary Public in and for the State of Idaho, residing at: Ada County

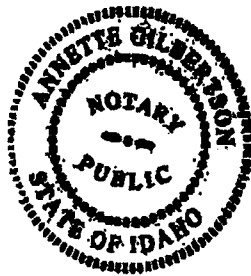


Exhibit K

**PARTIAL WAIVER AND LIEN RELEASE
(SUBCONTRACTOR/SUPPLIER)**

Fagen, Inc., a Minnesota corporation ("Contractor"), and XRG Development Group of Idaho LLC, a Idaho limited liability company ("Owner"), have entered into that certain Amended and Restated Balance of Plant Engineering, Procurement and Construction Services Agreement, dated December 31, 2011 (the "Agreement"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Agreement.

Western States Equip ("Subcontractor/Supplier") and Contractor have entered into that certain subcontract/purchase agreement attached to Fagen Purchase Orders 557675) pursuant to which Subcontractor/Supplier shall provide and Contractor shall purchase certain equipment, materials, supplies and/or services.

For and in consideration of the partial payment in the amount of \$3420.62 (Inv# 5103862), the receipt of which is hereby acknowledged, for labor, skill, equipment, services, supplies and material furnished, or to be furnished, to Contractor and Owner, and other good and valuable consideration, Subcontractor does hereby, to the extent paid:

1. irrevocably and unconditionally waive, release, discharge and relinquish any and all Liens and claims of, and rights to, Liens with respect to and on (a) the Project and all improvements thereon, (b) any material, fixtures, apparatus and machinery (and moneys, funds or other considerations due or to become due from Owner or Contractor on account of labor, services, material, fixtures, apparatus and machinery) relating to the Project, and (c) any other property of Owner (the "Released Property");

2. agree and certify that (a) there are no Liens on the Released Property by, through or under the undersigned, any of its subcontractors/suppliers or any of its respective employees, (b) (i) the undersigned has not received a notice of intention to claim any Liens (including Liens by, through or under any of its subcontractors) on the Released Property, (ii) no proceeding to establish any such Liens has been filed or instituted by it, and (iii) there is no known basis for any such Liens, and (c) all amounts due and owing to any of its subcontractors/suppliers have been paid or will be paid with the money received pursuant to this Partial Waiver and Lien Release;

3. agree to indemnify, hold harmless and defend the Owner Indemnified Parties from and against any and all Damages arising out of any Liens related to services provided by or work performed by Contractor and/or any of its subcontractors/suppliers; and agree and certify that all amounts properly due and payable with respect to all prior invoices for payment have been paid in full by Contractor to it and the applicable lien waivers associated therewith are final and unconditional.

JUL-23-2012 MON 10:26 AM Fagen Inc.

FAX NO. 3205845181

P. 03

IN WITNESS WHEREOF, the undersigned has executed and delivered this Partial Waiver and Lien Release this 23 day of July, 2012.

Western States Equip

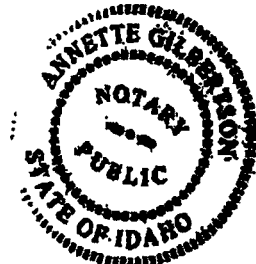
By: Linda Sanford
Name: LINDA SANFORD
Title: Credit Manager

STATE of IDAHO

COUNTY of ADA

SUBSCRIBED AND SWORN to before me by Linda Sanford this 23 day of July, 2012

Annette Gilbertson
Notary Public in and for the State of
Idaho residing at:
Ada County



ORIGINAL

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167
jrg@racinelaw.net

Attorneys for Plaintiff Fagen, Inc.

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

AUG - 4 2014

By _____ 9:00 AM
Clerk

Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576

CV-2013-26

**PLAINTIFF FAGEN, INC.'S
CERTIFICATE OF SERVICE**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and hereby certifies that on the 1st day of August, 2014, I served true and correct copies of the documents listed below to the following person(s):


Angelo L. Rosa

Attorney at Law
PO Box 1605
Boise, ID 83701
Attorney for Defendants

1. **Original** Affidavit of Lori Anderson In Support of Fagen, Inc.'s Motion for Summary Judgment;
2. **Original** Affidavit of Bradley Bormann In Support of Fagen, Inc.'s Motion for Summary Judgment;
3. **Original** Affidavit of Jennifer A. Johnson In Support of Fagen, Inc.'s Motion for Summary Judgment;
4. **Original** Affidavit of Samuel Ewald In Support of Fagen, Inc.'s Motion for Summary Judgment;
5. **Original** Affidavit of Kirsten Tjosaas In Support of Fagen, Inc.'s Motion for Summary Judgment.

DATED this 1st day of August, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of August, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
Attorney at Law
P.O. Box 1605
Boise, ID 83701
*Attorney for Exergy Development Group of
Idaho, LLC; XRG Development Partners,
LLC; et al.*

- U.S. Mail
Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 801-415-1773
- Email arosa@rosa-lp.com w/o exhibits


JOHN R. GOODELL

132

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 AUG -5 PM 4: 53

BY _____ CLERK

DEPUTY

Angelo L. Rosa (ISB No. 7546)
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants

ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF

IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

ROGERSON FLATS WIND PARK,)
)
LLC, an Idaho limited liability company;)
)
EXERGY DEVELOPMENT GROUP OF)
)
IDAHO, LLC, an Idaho limited liability)
)
company; XRG DEVELOPMEN)
)
PARTNERS, LLC, an Idaho limited)
)
liability company; and "JOHN DOES 1-)
)
10",)

**DECLARATION OF ANGELO L.
ROSA IN SUPPORT OF MOTION TO
COMPEL DEPOSITIONS**

Defendants.)

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)

vs.)

COTTONWOOD WIND PARK, LLC, an)
)
Idaho limited liability company;)

EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and “JOHN DOES 1-)
10”,)

Defendants.)

_____)
FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

SALMON CREEK WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and “JOHN DOES 1-)
10”,)

Defendants.)

_____)
FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

DEEP CREEK WIND PARK, LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and “JOHN DOES 1-)
10”,)

Defendants.)
)
_____)
FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
NOTCH BUTTE WIND PARK, LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
)
Defendants.)
_____)

COMES NOW Angelo L. Rosa, and hereby declares and states as follows:

1. I am an individual residing in the State of Idaho. I am counsel of record for the Moving Defendants in this matter. I have personal knowledge of the matters attested to in this Declaration, except to those matters that are stated on the basis of belief.

2. When I inquired of Plaintiff's counsel, Mr. John Goodell, regarding scheduling such depositions, I was referred to Plaintiff's main counsel in Minnesota. A true and correct copy of the e-mail exchange between Mr. Goodell's and myself is attached and incorporated hereto as "Exhibit A."

3. Over the past few months, both Plaintiff's Minnesota counsel and I have been attempting to obtain deposition discovery, in both the Idaho matters as well as in a proceeding involving Plaintiff and Defendant, Exergy Development Group of Idaho, L.L.C. pending in the United States District Court for the District of Minnesota, in which I serve as lead defense counsel. Minnesota counsel has been obstructive as to schedule. A true and correct copy of the initial e-mail exchange between Minnesota counsel and myself concerning this issue is attached and incorporated hereto as "Exhibit B."

4. On a number of occasions between 16 July and 18 July 2014, during Fagen's deposition of Mr. James Carkulis in the Minnesota matter, I had a number of conversations with Fagen's lead trial counsel, Keith Moheban regarding scheduling. Despite those conversations and further engagement with Fagen's counsel regarding this issue, no dates have yet been agreed to.

5. Plaintiff's Minnesota counsel continues to be evasive as to scheduling and, as of the date of this Declaration, no dates for deposition have been confirmed. It is my intention to notice up depositions in this matter and in the Minnesota matter for the last week of

August. A true and correct copy of the latest e-mails between Minnesota counsel and myself concerning this issue is attached and incorporated hereto as “Exhibit C.”

6. In short, I have extended every courtesy and opportunity to Fagen and its counsel to mutually collaborate in scheduling the depositions. Unfortunately, Fagen and its counsel have engaged in the gamesmanship documented herein. Furthermore, Fagen’s counsel in this matter has been on notice of Moving Defendants’ desire to take depositions in this matter yet has done absolutely nothing to facilitate this. An order from this Court compelling the depositions in question is therefore essential.

7. In order to avoid ambiguity, I have noticed the aforementioned depositions for 25-28 August. True and correct copies of the deposition notices in question are collectively attached and incorporated hereto as “Exhibit D”.

8. In addition, Moving Defendants are entitled to attorney’s fees and costs incurred in obtaining the Order sought by way of this Motion. I have spent, and expect to spend a total of seven (7) hours preparing this Motion, briefing any opposition to this Motion, attending oral argument on this Motion and travelling to and from Twin Falls for said hearing. My standard hourly billing rate is \$330.00, which is reasonable considering the depth and breadth of my experience, my years of practice (eleven), the complexity of this consolidated matter and the amounts in controversy. Applying the factors set forth in I.R.C.P. 54(e), an award of \$2,310.00 against Fagen and its counsel of record is appropriate.

I testify under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED: 27 July 2014



Angelo L. Rosa

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 27 July 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed: _____
Angelo L. Rosa

**EXHIBIT A TO
DECLARATION OF ANGELO L. ROSA**

Angelo L. Rosa, Esq.

From: Becky Harvey <bjh@racinelaw.net>
Sent: Wednesday, May 28, 2014 1:16 PM
To: 'arosa@rosa-lp.com'
Cc: John Goodell
Subject: Fagen v Exergy, et al. - Depositions

Dear Angelo:

John Goodell is out of the office this week. I would like to notify you that any deposition requests for the plaintiff Ronald Fagen and Fagen personnel should be coordinated through Stinson Leonard Street – in particular Keith Moheban and Tim Kelley.

Contact information as follows:

Stinson Leonard Street LLP
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402
T: 612.335.1458 - F: 612.335.1657
timothy.kelley@stinsonleonard.com or keith.moheban@stinsonleonard.com

Thank you for your cooperation.

Becky J. Harvey
Paralegal



OFFICE 208.395.0011
FAX 208.433.0167

101 S. Capitol Blvd., Suite 300
Boise, ID 83702

**EXHIBIT B TO
DECLARATION OF ANGELO L. ROSA**

Angelo L. Rosa, Esq.

From: Moheban, Keith <keith.moheban@stinsonleonard.com>
Sent: Tuesday, June 17, 2014 3:16 PM
To: arosa@rosa-lp.com
Cc: Kelley, Timothy; thomas@burkeandthomas.com
Subject: RE: depositions

Let me be absolutely clear. These depositions are not going to happen while I am out of the country. If you have a problem with that you can bring a motion to compel.

Keith S. Moheban | Partner | Stinson Leonard Street LLP
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402
T: 612.335.1544 | M: 612.839.8291 | F: 612.335.1657
keith.moheban@stinsonleonard.com | www.stinsonleonard.com
Legal Administrative Assistant: Louise Currey | 612.335.1496 | louise.currey@stinsonleonard.com

From: arosa@rosa-lp.com [mailto:aros@rosa-lp.com]
Sent: Tuesday, June 17, 2014 4:13 PM
To: Moheban, Keith
Cc: Kelley, Timothy; thomas@burkeandthomas.com
Subject: RE: depositions

Keith:

We have a settlement conference on 30 June. I'm not sure how you intend to handle that being in Oz. I am willing to reconsider noticing the depositions closer to the settlement conference but I am not going to make two trips to Minneapolis unless ordered by the Court.

Also, I am unaware of any requirement or rule of civil procedure that requires my client's deposition to be taken before your clients' depositions. So, absent an alternate date for the depositions closer to the settlement conference, they will remain as noticed.

Regarding the date of Mr. Carkulis' deposition, I will confirm those dates with him and get back with you (and/or Tim) as soon as possible.

Regards,

ALR

Angelo L. Rosa, Esq.*
P.O. Box 1605
Boise, Idaho 83701
Tel. (801) 440-4400
Fax. (801) 415-1773

*Licensed to Practice in California and Idaho

PERSONAL AND CONFIDENTIAL: This message originates from Rosa, LP and/or Angelo L. Rosa, Esq. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, protected by the attorney work product doctrine, subject to the attorney-client privilege, or is otherwise protected against unauthorized use or disclosure. This message and any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413.

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----- Original Message -----

Subject: depositions

From: "Moheban, Keith" <keith.moheban@stinsonleonard.com>

Date: Tue, June 17, 2014 1:56 pm

To: "Angelo L. Rosa, Esq. (arosa@rosa-lp.com)" <arosa@rosa-lp.com>

Cc: "Kelley, Timothy" <timothy.kelley@stinsonleonard.com>, "thomas@burkeandthomas.com" <thomas@burkeandthomas.com>

Angelo -- I am responding to your notices of depositions sent by email last week. As you know, I will be unavailable and out of the country between now and July 9, and I would be defending the noticed depositions. Accordingly, we cannot conduct the depositions on the dates you indicated. Further, given the court's order compelling the deposition of Mr. Carkulis on July 16-18, we intend to conduct that deposition before any of the Fagen witnesses. This is reasonable and appropriate given his refusal to appear for deposition back in March.

With regard to the Carkulis deposition, I would like to firm up the dates and conduct that deposition on July 17 and 18, assuming Mr. Thomas also can make those dates work. We will advise you of the location once we arrange for counsel in Helena, Montana.

In my absence, starting tomorrow afternoon, please direct all communication in this case to Tim.

Regards, Keith

Keith S. Moheban | Partner | Stinson Leonard Street LLP

150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402

T: 612.335.1544 | M: 612.839.8291 | F: 612.335.1657

keith.moheban@stinsonleonard.com | www.stinsonleonard.com

Legal Administrative Assistant: Louise Currey | 612.335.1496 | louise.currey@stinsonleonard.com

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Angelo L. Rosa, Esq.

From: Angelo L. Rosa, Esq. <arosa@rosa-lp.com>
Sent: Thursday, July 03, 2014 10:34 AM
To: 'Kelley, Timothy'
Cc: 'Moheban, Keith'; 'Michael Cockson'
Subject: RE: Fagen v. Exergy / Depositions

Tracking:	Recipient	Read
	'Kelley, Timothy'	
	'Moheban, Keith'	Read: 7/3/2014 2:48 PM
	'Michael Cockson'	

Tim:

Let's get this sorted out on Monday then.

Have a safe and happy 4th.

A

Angelo L. Rosa, Esq.*
P.O. Box 1605
Boise, Idaho 83701
Tel. (801) 440-4400
Fax. (801) 415-1773

*Licensed to Practice in California and Idaho

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-----Original Message-----

From: Kelley, Timothy [mailto:timothy.kelley@stinsonleonard.com]
Sent: Thursday, July 03, 2014 8:30 AM
To: <arosa@rosa-lp.com>
Cc: Kelley, Timothy; Moheban, Keith; Michael Cockson
Subject: Re: Fagen v. Exergy / Depositions

Angelo: Thanks for the reminder. I am going to be out for most of the day, so let's connect on this next week. Keith is back on the 10th and he will handle the depositions, so the scheduling should be coordinated with Keith.

Sent from my iPhone

On Jul 2, 2014, at 6:08 PM, "Angelo L. Rosa, Esq." <arosa@rosa-lp.com<mailto:arosa@rosa-lp.com>> wrote:

Tim:

I am in receipt of your amended deposition notice for Mr. Carkulis. As a gentle reminder, please send everything to my arosa@rosa-lp.com<mailto:arosa@rosa-lp.com> address in future as I am rarely checking my Exergy e-mail.

Since Fagen has re-opened the discovery dialogue with its notice, I want to confirm some dates during the month of July for the depositions that I have noticed of SLS, Fagen, Inc. and Ron Fagen. Please confirm with me by the end of this week what dates work.

Thanks, A

Angelo L. Rosa, Esq.*
P.O. Box 1605
Boise, Idaho 83701
Tel. (801) 440-4400
Fax. (801) 415-1773

*Licensed to Practice in California and Idaho

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Timothy M. Kelley | Partner | Stinson Leonard Street LLP
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402
T: 612.335.1458 | M: 651.270.8294 | F: 612.335.1657 timothy.kelley@stinsonleonard.com |
<http://www.stinsonleonard.com> Legal Administrative Assistant: Denise Smith | 612.335.1536 |
denise.smith@stinsonleonard.com

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**EXHIBIT C TO
DECLARATION OF ANGELO L. ROSA**

Angelo L. Rosa, Esq.

From: Angelo L. Rosa, Esq. <arosa@rosa-lp.com>
Sent: Wednesday, July 09, 2014 10:25 AM
To: 'Kelley, Timothy'
Cc: 'Moheban, Keith'; 'Michael F. Cockson'
Subject: Fagen v. Exergy / Depositions

Tim:

We have put off the discussion of scheduling my depositions long enough. This issue has dragged on since before Keith left on his Australian adventures. Being denied this discovery is prejudicing my client in this matter, is going to prolong the Idaho litigation substantially, and neither is something I will tolerate any longer.

Please confirm a range of dates during the last week of July/first week of August by the close of business today, otherwise I will set the depositions according to my schedule and they will stand and you can take up any disagreements regarding that scheduling with Judge Rau.

Thank you in advance for your cooperation,

ALR

Angelo L. Rosa, Esq.*

P.O. Box 1605
Boise, Idaho 83701
Tel. (801) 440-4400
Fax. (801) 415-1773

*Licensed to Practice in California and Idaho

PERSONAL AND CONFIDENTIAL: This message originates from Rosa, LP and/or Angelo L. Rosa, Esq. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, protected by the attorney work product doctrine, subject to the attorney-client privilege, or is otherwise protected against unauthorized use or disclosure. This message and any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you receive this message in error, please advise the sender by immediate reply and by telephone at (801) 440-4400, and by deleting the original message. Personal messages express only the view of the sender and are not attributable to Rosa, LP and/or Angelo L. Rosa, Esq.

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Subject: RE: FW: Fagen v. Exergy, et al. / Deposition Scheduling
From: arosa@rosa-lp.com
Date: Fri, Jul 25, 2014 9:27 am
To: "Denise Haugen" <haugen@burkeandthomas.com>, keith.moheban@stinsonleonard.com, "Kelley, Timothy" <timothy.kelley@stinsonleonard.com>
Cc: thomas@burkeandthomas.com, aschewan@burkeandthomas.com, "Michael Cockson" <Michael.Cockson@FaegreBD.com>

Thank you, Denise.

Keith/Tim: Please advise as to your client's availability ASAP.

Regards, ALR

Angelo L. Rosa, Esq.*
P.O. Box 1605
Boise, Idaho 83701
Tel. (801) 440-4400
Fax. (801) 415-1773

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----- Original Message -----

Subject: FW: Fagen v. Exergy, et al. / Deposition Scheduling
From: Denise Haugen <haugen@burkeandthomas.com>
Date: Fri, July 25, 2014 8:37 am
To: arosa@rosa-lp.com, keith.moheban@stinsonleonard.com, "Kelley, Timothy" <timothy.kelley@stinsonleonard.com>
Cc: thomas@burkeandthomas.com, aschewan@burkeandthomas.com

Dear Counsel:

Following are dates in September and October when Rich Thomas is available for depositions. I presume this includes the continued deposition of Mr. Carkulis. Please bear in mind that I have these dates out for other deposition commitments for Mr. Thomas.

September 2, 4, 5, 10, 11, 12, 16, 17, 18, 19, 22, 23, 24, 25, 29 and 30.

October 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30 and 31.

Please include me in your scheduling efforts, as Mr. Thomas has given me plenary authority over his calendar. Thank you.

Denise I. Haugen
Legal Assistant for Richard J. Thomas
Burke & Thomas, PLLP
Direct Dial: (651) 789-2207

From: Richard Thomas [mailto:thomas@burkeandthomas.com]
Sent: Wednesday, July 23, 2014 8:40 PM
To: Denise Haugen
Subject: Fwd: Fagen v. Exergy, et al. / Deposition Scheduling

Begin forwarded message:

From: <arosa@rosa-lp.com>
Subject: Fagen v. Exergy, et al. / Deposition Scheduling
Date: July 23, 2014 at 8:28:57 PM CDT
To: "Keith Moheban" <keith.moheban@stinsonleonard.com>, "Timothy Kelley" <timothy.kelley@stinsonleonard.com>, "Bryon Ascheman" <ascheman@burkeandthomas.com>, "Richard Thomas" <thomas@burkeandthomas.com>
Cc: "Michael Cockson" <Michael.Cockson@FaegreBD.com>

Counsel:

I am generally available at anytime after 15 August 2014 to conduct depositions. I would like to get the Minnesota (Fagen and SLS) depositions out of the way before the end of August and the HT depositions concluded by the end of September.

Please advise ASAP with your availability for deposition. As this has been something of a long-standing issue, I would like to get concurrence on dates by the end of this business week. If we cannot do so, I will file a motion to compel the Fagen and SLS depositions to ensure there is some accountability. Hopefully this will not be necessary.

Regards,

ALR

Angelo L. Rosa, Esq.*
P.O. Box 1605
Boise, Idaho 83701
Tel. (801) 440-4400
Fax. (801) 415-1773

*Licensed to Practice in California and Idaho

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Richard J. Thomas
Burke and Thomas, PLLP
3900 Northwoods Drive
Suite 200
St. Paul, MN 55112
(651) 789-2208
thomas@burkeandthomas.com

NOTICES: Pursuant to the rules of professional conduct set forth in Circular 230, as promulgated by the United States Department of the Treasury, unless we expressly state otherwise in this communication, nothing contained in this communication was intended or written to be used by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer by the Internal Revenue Code of 1986, and it cannot be used by any taxpayer for such purpose. No one, without our express prior written permission, may use or refer to any tax advice in this communication in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement relating to any one or more taxpayers.

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**EXHIBIT D TO
DECLARATION OF ANGELO L. ROSA**

Angelo L. Rosa (ISB No. 7546)
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants
ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK
WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT
PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
ROGERSON FLATS WIND PARK,)
LLC, an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENTS)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
)
Defendants.)
)

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
COTTONWOOD WIND PARK, LLC, an)
Idaho limited liability company;)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

**NOTICE OF DEPOSITION OF
RONALD FAGEN**

[I.R.C.P. 30(a)]

EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)

Defendants.)

FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

SALMON CREEK WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)

Defendants.)

FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

DEEP CREEK WIND PARK, LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)

Defendants.)
)
_____)
FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
NOTCH BUTTE WIND PARK, LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
)
Defendants.)
_____)

PLEASE TAKE NOTICE that Defendants ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, LLC, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC, by and through their counsel of record, Angelo L. Rosa, Esq. will, pursuant to Idaho Rule of Civil Procedure 30 will take the deposition of Ronald Fagen. The deposition will take place on oral examination before a notary public or other person authorized to administer oaths, and may be recorded by any means that the Idaho Rules of Civil Procedure permit, including, without limitation, by videotape, audiotape, and stenographic means (including any form of real-time reporting).

The deposition will commence at 10:00 a.m. on Wednesday, 27 August 2014 at a place agreed upon by the parties and/or ordered by the Court pursuant to that certain Motion to Compel Depositions filed by the Defendants in this matter, and will continue from day to day until completed or adjourned pursuant to stipulation of counsel.

DATED: 27 July 2014

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 27 July 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Signed



Angelo L. Rosa

Angelo L. Rosa (ISB No. 7546)
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants
ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK
WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT
PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
))
Plaintiff,)
))
vs.)
))
ROGERSON FLATS WIND PARK,)
))
LLC, an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
))
Defendants.)
))

FAGEN, INC., a Minnesota corporation,)
))
Plaintiff,)
))
vs.)
))
COTTONWOOD WIND PARK, LLC, an)
Idaho limited liability company;)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

**NOTICE OF DEPOSITION OF
JENNIFER JOHNSON**

[I.R.C.P. 30(a)]

EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)

Defendants.)

FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

SALMON CREEK WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)

Defendants.)

FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

DEEP CREEK WIND PARK, LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)

Defendants.)
)
<hr/>)
FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
NOTCH BUTTE WIND PARK, LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
)
Defendants.)
<hr/>)

PLEASE TAKE NOTICE that Defendants ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, LLC, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC, by and through their counsel of record, Angelo L. Rosa, Esq. will, pursuant to Idaho Rule of Civil Procedure 30(a) will take the deposition of Jennifer Johnson. The deposition will take place on oral examination before a notary public or other person authorized to administer oaths, and may be recorded by any means that the Idaho Rules of Civil Procedure permit, including, without limitation, by videotape, audiotape, and stenographic means (including any form of real-time reporting).

The deposition will commence at 10:00 a.m. on Thursday, 28 August 2014 at a place agreed upon by the parties and/or ordered by the Court pursuant to that certain Motion to Compel Depositions filed by the Defendants in this matter, and will continue from day to day until completed or adjourned pursuant to stipulation of counsel.

DATED: 27 July 2014

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 27 July 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

Angelo L. Rosa (ISB No. 7546)
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants
ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK
WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT
PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
ROGERSON FLATS WIND PARK,)
LLC, an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
)
Defendants.)
)

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
COTTONWOOD WIND PARK, LLC, an)
Idaho limited liability company;)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

**NOTICE OF DEPOSITION OF
FAGEN, INC.**

[I.R.C.P. 30(b)(6)]

EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and “JOHN DOES 1-)
10”,)

Defendants.)

FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

SALMON CREEK WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and “JOHN DOES 1-)
10”,)

Defendants.)

FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

DEEP CREEK WIND PARK, LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and “JOHN DOES 1-)
10”,)

Defendants.)
)
<hr/>)
FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
NOTCH BUTTE WIND PARK, LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
)
Defendants.)
<hr/>)

PLEASE TAKE NOTICE that Defendants ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, LLC, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC, by and through their counsel of record, Angelo L. Rosa, Esq. will, pursuant to Idaho Rule of Civil Procedure 30(b)(6) will take the deposition of Plaintiff Fagen, Inc. ("Fagen"). The deposition will take place on oral examination before a notary public or other person authorized to administer oaths, and may be recorded by any means that the Idaho Rules of Civil Procedure permit, including, without limitation, by videotape, audiotape, and stenographic means (including any form of real-time reporting).

Fagen is requested to designate the person or persons most knowledgeable and prepared to testify on behalf of Fagen concerning the subject matter described below.

The deposition(s) will commence at 10:00 a.m. on Monday, 25 August 2014 at a place agreed upon by the parties and/or ordered by the Court pursuant to that certain Motion to Compel Depositions filed by the Defendants in this matter, and will continue from day to day until completed or adjourned pursuant to stipulation of counsel.

DATED: 27 July 2014

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

LIST OF EXAMINATION TOPICS

1. The negotiation of any and all Engineering, Procurement and Construction (“EPC”) agreements between Fagen and Exergy Development Group of Idaho, L.L.C. (“EDG Idaho”) that is the subject of this lawsuit.
2. All communications within the Fagen organization concerning the services rendered pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
3. All communications between Fagen and EDG Idaho concerning the services rendered pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
4. All work undertaken pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
5. All objections or disagreements between Fagen and any of the named Defendants in this action concerning the services rendered pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
6. All work undertaken by Fagen during the last three (3) months of Fagen’s presence on the project sites that are at issue in this lawsuit.
7. Any allegations by landowners of any damage caused by Fagen in the rendering of services pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
8. The events leading up to the termination of work pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 27 July 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

Angelo L. Rosa (ISB No. 7546)
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants
ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK
WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT
PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
Plaintiff,)
vs.)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

ROGERSON FLATS WIND PARK,)
LLC, an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
Defendants.)

**DEFENDANTS' MOTION TO
COMPEL DEPOSITIONS**

FAGEN, INC., a Minnesota corporation,)
Plaintiff,)
vs.)
COTTONWOOD WIND PARK, LLC, an)
Idaho limited liability company;)

[I.R.C.P. 37(a)]

EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and “JOHN DOES 1-)
10”,)
)
Defendants.)

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)

vs.)

SALMON CREEK WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and “JOHN DOES 1-)
10”,)
)
Defendants.)

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)

vs.)

DEEP CREEK WIND PARK, LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and “JOHN DOES 1-)
10”,)
)

Defendants.)
)
_____)
FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
NOTCH BUTTE WIND PARK, LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
)
Defendants.)
_____)

COME NOW Defendants ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, LLC, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC (collectively, "Moving Defendants"), by and through their counsel of record, Angelo L. Rosa, Esq. and hereby move this Honorable Court pursuant to Idaho Rule of Civil Procedure 37(a)(2) for an ordering compelling Plaintiff Fagen, Inc. ("Fagen") to produce for deposition its corporate representative(s) having knowledge of the facts of this case (per I.R.C.P. 30(b)(6)), Ronald Fagen (Fagen's Chairman), and Jennifer Johnson (another Fagen executive having knowledge of the facts of this case) between 25 and 28 August 2014 in Boise, Idaho.

Good cause exists to grant the relief requested for the following reasons

1. Moving Defendants have, since the early stages of this litigation, attempted to coordinate the depositions of the parties mentioned above. Counsel for Plaintiff has referred the matter to Fagen's Minnesota counsel, who have consistently delayed and obfuscated in the scheduling of the depositions. See Declaration of Angelo L. Rosa and Exhibits thereto, filed concurrently herewith.
2. Trial is fast approaching and without this essential discovery, Moving Defendants will be forced to move to vacate and reschedule the trial date or face irreparable prejudice as a result of being denied (by constant evasion and gamesmanship by Fagen's counsel) the right to take the depositions it is entitled to take.

In addition, Moving Defendants request an award of attorney's fees and costs incurred in obtaining the Order sought by way of this motion pursuant to I.R.C.P. 37(a)(4).

This Motion is not filed for any frivolous or improper purpose and its based upon this

Motion, the Declaration of Angelo L. Rosa and exhibits thereto filed concurrently herewith, the pleadings and papers on file with the Court, and such other and further documentary and/or testimonial evidence that may be presented prior to or at the hearing on this Motion.

Oral argument is requested.

DATED: 27 July 2014

Respectfully Submitted,

ANGELO L. ROSA, ESQ.

Handwritten signature of Angelo L. Rosa in black ink.

Angelo L. Rosa
Attorney for Moving Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 27 July 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

Angelo L. Rosa (ISB No. 7546)
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants

ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
ROGERSON FLATS WIND PARK,)
)
LLC, an Idaho limited liability company;)
)
EXERGY DEVELOPMENT GROUP OF)
)
IDAHO, LLC, an Idaho limited liability)
)
company; XRG DEVELOPMEN)
)
PARTNERS, LLC, an Idaho limited)
)
liability company; and "JOHN DOES 1-)
)
10",)
)
Defendants.)
)
_____)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

[I.R.C.P. 56(c)]

COME NOW Defendants ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, LLC, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC (collectively, "Moving Defendants"), by and through their counsel of record, Angelo L. Rosa, Esq. and hereby move this Honorable Court pursuant to Idaho Rule of Civil Procedure 56 for entry of summary judgment in their favor as to the claims contained in Plaintiff, Fagen Inc.'s ("Fagen") First Amended Complaint as follows:

1. Summary judgment as to Plaintiff's claim for lien foreclosure against Defendants Rogerson Flats Wind Park, LLC, Cottonwood Wind Park, LLC, Salmon Creek Wind Park, LLC, Deep Creek Wind Park, LLC, Notch Butte Wind Park, LLC (collectively, the "Project Entity Defendants"), and Exergy Development Group of Idaho, L.L.C.

2. Summary judgment as to all of Plaintiff's claims, for lien foreclosure, breach of contract, and quantum meruit against Defendant XRG Development Partners, LLC.

Good cause exists to grant the relief requested for the following reasons:

1. Fagen has attempted to lien an interest that is not entitled to lien. Under Idaho law, a prospective lienholder may only attach the interest to which the obligor-party is entitled. Here, neither the owner of the land nor any of the sole lessees to each project, the Project Entity Defendants were parties to the agreement between Fagen and Defendant Exergy Development Group of Idaho, L.L.C., pursuant to which Fagen rendered services. Further, none of the Project Entity Defendants direct Fagen to undertake any work. Fagen cannot reach the leasehold interests held by those Lessees because the work was not done at their instance. Moreover, each leasehold interest of each Project Entity Defendant is either in default or now terminated. Thus, as a matter of law, summary judgment is appropriate.

2. Fagen's contract was with a party that had no interest in the land upon which Fagen rendered services. Fagen's contract was with Exergy Development Group of Idaho, L.L.C. Exergy Development Group of Idaho, L.L.C. holds no interest in the real property that Fagen has attempted to lien. Fagen therefore has no legitimate property interest to foreclose upon. Additionally, XRG Development Partners, LLC was not a party to the agreement with Fagen and has no interest in the property. Finally, the sole lessee of each project property, the respective Project Entity Defendants, were not parties to the contract between Exergy Development Group of Idaho, L.L.C. Without privity of contract plus a lienable interest, Fagen cannot foreclose on a lien that does not really exist. There is therefore no triable issue of material fact as to the existence of a lienable interest, making summary judgment appropriate.

3. Finally, as stated above, XRG Development Partners, LLC was neither a party to the agreement with Plaintiff nor the holder of any interest in any of the properties that Fagen has attempted to lien. It had nothing to do with anything related to this case and is not a properly named party under any theory of recovery. Thus, summary judgment as to each and every cause of action is appropriate as to Defendant XRG Development Partners, LLC.

4. A motion for summary judgment identical to the present Motion has been brought in the sister case to this proceeding pending in Bingham County (*Fagen Inc. v. Lava Beds Wind Park, et al.*, Case No. CV-2013-261). The factual allegations, causes of action, and certain parties (Exergy Development Group of Idaho, L.L.C. and XRG Development Partners, LLC) in the Bingham County action are identical to the present case. Fagen conceded both in writing and at oral argument on that motion for summary judgment that no opposition was made. Accordingly, summary judgment was entered in the Defendants' favor according to the same requests made herein. See Request for Judicial Notice, filed concurrently herewith.

Accordingly, this Court is respectfully requested to enter summary judgment on the same grounds as Moving Defendants' request is both meritorious and for the sake of consistency in adjudication of identical facts and issues.

This Motion is not filed for any frivolous or improper purpose and its based upon this Motion, the Memorandum of Points and Authorities, the Request for Judicial Notice, and the Declaration of James T. Carkulis filed concurrently herewith, the pleadings and papers on file with the Court, and such other an further documentary and/or testimonial evidence that may be presented prior to or at the hearing on this Motion.

Oral argument is requested.

DATED: 26 July 2014

Respectfully Submitted,

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 5 August 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

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Signed _____
Angelo L. Rosa

Angelo L. Rosa (ISB No. 7546)
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Boise, Idaho 83701
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Attorney for Defendants
ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK
WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
))
Plaintiff,)
))
vs.)
))
ROGERSON FLATS WIND PARK,)
))
LLC, an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
))
company; XRG DEVELOPMEN)
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PARTNERS, LLC, an Idaho limited)
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liability company; and "JOHN DOES 1-)
))
10",)
))
Defendants.)
_____)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

COME NOW Moving Defendants, by and through their counsel of record, Angelo L. Rosa, Esq. and hereby submit their memorandum in support of their Motion for Summary Judgment.

**I.
INTRODUCTION**

Moving Defendants are entitled to summary judgment as to Plaintiff, Fagen, Inc.'s ("Fagen") lien foreclosure claim. There are two simple reasons for this: One: neither the owner of the land nor the sole lessee to each project lease (the Project Entity Defendants) were parties to any agreement between Fagen and Defendant Exergy Development Group of Idaho, L.L.C., nor did any of them direct Fagen to undertake any such matters. Fagen cannot reach the leasehold interest held by Lessee because it was not done at the instance of the Lessee. Moreover, that leasehold interest is either in default or now terminated. Two: Fagen's contract was with a party that had no interest in the land upon which Fagen rendered services. Fagen's contract was with Exergy Development Group of Idaho, L.L.C. Exergy Development Group of Idaho, L.L.C. holds no interest in the real property that Fagen has attempted to lien, and neither does Defendant XRG Development Partners, LLC. Plaintiff therefore has no property interest to match its contractual relationship to create a legitimate lie claim. These are undisputable facts. Summary Judgment as to Fagen's lien foreclosure claim is therefore appropriate.

Further, XRG Development Partners, LLC was not a party to the agreement with Plaintiff and has never had any interest in the property (leasehold or otherwise). Given that Defendant XRG Development Partners, LLC had absolutely nothing to do with any of the facts giving rise to this case, that entity hereby requests summary judgment as to all causes of action brought by Fagen in this action.

**II.
STATEMENT OF RELEVANT FACTS**

In or around December 2011, Fagen and Defendant Exergy Development Group of Idaho

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT – Page 2

entered into an Engineering, Procurement and Construction Agreement for the provisions of engineering and construction services to be performed by Fagen (the “EPC Agreement”). *See* Complaint at ¶ 11; Declaration of James T. Carkulis (“Carkulis Decl.”) at ¶ 2. The objective of these services was to complete design and construct a wind energy facility. Carkulis Decl. at ¶ 2. Both Fagen and Defendant Exergy Development Group of Idaho, L.L.C. are experienced in the development, design, and construction of such facilities. There were no other parties to the EPC Agreement other than Fagen and Exergy. Complaint at Exhibit 2, Carkulis Decl. at ¶ 3.

The services that Fagen provided did not follow a traditional (or previously employed) schedule or methodology. Given the unique attributes of the project, both Fagen and Defendant Exergy Development Group of Idaho agreed it was appropriate to demonstrate continuous construction from beginning to completion. Fagen structured the schedule of services to be tendered over a longer period of time than is typical for such a project. This modification was abused by Fagen in that the work undertaken was repetitive, arbitrary, and compulsory activities that became abusive of the parties’ intent. *Id.* at ¶ 12. The land upon which Fagen’s services were rendered (the “Project Sites”) are, and all times relevant hereto, was owned by Defendant J.R. Simplot Trust (“Simplot”). *See* Complaint at ¶ 2. The land was leased to each project entity Defendant in this matter. *See id.* at ¶ 5 and Carkulis Decl.. Simplot does not, and never has had, any contractual relationship with Defendant Exergy Development Group of Idaho, L.L.C. relating to the Project Sites. *See* Carkulis Decl. Simplot does not, and never has had, any contractual relationship with Defendant XRG Development Partners, LLC relating to the land in question. *Id.* Fagen does not, and never has had, any contractual relationship with Simplot relating to the Project Sites. *Id.*

Fagen’s rendering of substantive activity upon the property in general ended prior to the alleged end date of 31 July 2012. Little to no actual modification or improvement to the property

was performed at the end of Fagen's period of work. On or about 3 August 2012, Fagen recorded (but did not file) a Claim of Lien against the property in question, *See id.* at Exhibit 1. The language of the Claim of Lien states that the lien is to secure payment "for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment." The Complaint states that this monumental amount is "The reasonable value of the benefit to the Property is equivalent to the labor, materials, and services supplied by Fagen as the amount due stated in its Claim of Lien." *See* Complaint at ¶ 16. Moving Defendants contend that the total cost of services rendered by Fagen is far less than the amount identified on the Claim of Lien and that the work undertaken by Fagen may have been substandard and therefore degraded the property rather than improved it. *See* Carkulis Decl..

III.

STATEMENT OF APPLICABLE LEGAL STANDARD

A. Standard for Motion for Summary Judgment

Idaho Rule of Civil Procedure 56(c) sets forth the standard upon which a motion to dismiss may be properly granted and states, in pertinent part:

"The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. Such judgment, when appropriate, may be rendered for or against any party to the action."

I.R.C.P. 56(c) (boldface emphasis added). A motion for summary judgment must be granted if the pleadings, depositions, and admissions on file, together with the affidavits if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as matter of law." *G&M Farms v. Funk Irrigation Company*, 119 Idaho 514, 516-17 (1991); Idaho

Rule of Civil Procedure 56(c). The primary purpose of a summary judgment is to allow the courts the ability to avoid unnecessary litigation. If the facts are not in dispute and they lead to a legal conclusion which cannot be denied, a summary judgment is proper and should be granted to the moving party. *Berg v. Fairman*, 107 Idaho 441, 444 (1984).

B. Standard for Claiming Materialmen's Lien.

Idaho Code Sections 45-501 and 45-505 identify the right to assert a materialmen's lien and the property interest that may be lawfully attached. Idaho Code Section 45-501 states:

“RIGHT TO LIEN. Every person performing labor upon, or furnishing materials to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who grades, fills in, levels, surfaces or otherwise improves any land, or who performs labor in any mine or mining claim, and every professional engineer or licensed surveyor under contract who prepares or furnishes designs, plans, plats, maps, specifications, drawings, surveys, estimates of cost, on-site observation or supervision, or who renders any other professional service whatsoever for which he is legally authorized to perform in connection with any land or building development or improvement, or to establish boundaries, has a lien upon the same for the work or labor done or professional services or materials furnished, whether done or furnished at the instance of the owner of the building or other improvement or his agent...”

Idaho Code § 45-501 (boldface emphasis added). Further, Idaho Code Section 45-505 states, in pertinent part:

“LAND SUBJECT TO LIEN. The land upon which or in connection with which any professional services are performed or any building, improvement or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof...for the same, the land belonged to the person who caused said professional services to be performed or said building, improvement or structure to be constructed, altered or repaired, or such person was acting as the agent of the owner, but if such person owns less than a fee simple estate in such land, then only the interest of the person or persons causing the services or improvement therein is subject to such lien.”

Idaho Code § 45-505 (boldface emphasis added).

IV.

ARGUMENT

Summary judgment in favor Moving Defendants must be granted because no recourse can be had against Lessee, because Lessee was not a party to the agreement with Fagen and Fagen's work was not undertaken at the instance of the Lessee.

A. No Lienable Interest Exists for Fagen to Claim.

First, Fagen has no right to lien the property it did. Idaho Code Sections 45-501 clearly states that a lienable interest only exists if the land belonged to the person who caused said professional services to be performed or said building, improvement or structure to be constructed, altered or repaired, or such person was acting as the agent of the owner. Here, Owner did not order any such work to be done, and neither did any of the Lessees. *See* Carkulis Decl. at ¶ 7. All work Fagen undertook was at the direction of Exergy Development Group of Idaho, L.L.C. No work was directed by Simplot. No work was directed any of the Wind Park, LLC Defendants. No work was directed by XRG Development Partners, LLC. *See id.* There are no facts alleged in the Complaint that indicate the work undertaken by Fagen was done at the instance of the owner of the properties in question or anyone other than Exergy Development Group of Idaho. This is because the owner did not order the work undertaken by Fagen. Furthermore, no agency relationship between Owner and the Moving Defendants existed to allow Fagen to claim a lien against the property. Thus, in order for a valid lien to exist against the property, the improvement must have been requested by the owner of the property. *Gem State Lumber Co. v. Union Grain & Elevator Co.*, 47 Idaho 747, 278 P. 775, 776 (1929). An owner's mere knowledge or acquiescence in the improvements on property is insufficient to justify a lien thereupon. *Idaho Lumber, Inc. v. Buck*, 109 Idaho 737, 741, 710 P.2d 647, 651 (1985). Further, if a contract merely gives a vendee the right to make the improvements, but does not give the owner the right to require a particular improvement, the work is not done at the "instance" of the owner. *Id.* at 742, 652. Knowledge that

the improvements were taking place (as is the case here) where a vendee has complete control over the work to be done similarly bars a lien on the property. *Id.* at 740, 650. Fagen’s assertion of a purported right to lien the properties in question is contrary to the statutory law and appellate guidance on this issue. Accordingly, summary judgment is appropriate as a matter of law.

B. No Contractual Relationship Existed between Fagen and the LesseeS.

Second, under Idaho Code Section 45-505 “if such person owns less than a fee simple estate in such land, then only the interest of the person or persons causing the services or improvement therein is subject to such lien.” In the present case, there is no privity of contract between the Lessee and the Fagen. The land upon which Fagen claims an interest was not owned by the party with which Fagen had a contract. No contract between Fagen and the lessee of the land existed. *See* Carkulis Decl. at ¶¶ 2-5. It is axiomatic to the point of being elementary that privity of contract is required to bring an action based upon the breach of a contract. *See Wing v. Martin*, 107 Idaho 267, 272, 688 P.2d 1172, 1177 (1984) (“It is axiomatic in the law of contract that a person not in privity cannot sue on a contract.”). Here, Fagen entered into a contract with a party that held no interest in the property they seek to lien. *See* Carkulis Decl. at ¶ 9. There is no way of contracting with one party and liening an interest held by another unrelated party; a lien can only exist to the extent that the party in privity with Fagen has an interest in the land. *See, e.g., BMC West Corp. v. Horkley*, 174 P.3d 399, 406, 144 Idaho 890, 897 (Idaho 2007). Finally, the lessee in question is in breach of the lease and the lease may already be terminated, thereby extinguishing any remote chance that a lien could conceivably be justified under well-established law in this jurisdiction. *See* Carkulis Decl. at ¶ 8.

C. Defendant XRG Development Partners Has Nothing to do With This Case and it should be Granted Summary Judgment as to Each and Every Claim Asserted by Fagen.

Finally, Defendant XRG Development Partners (a) was neither a party to the agreement between Fagen and Defendant Exergy Development Group of Idaho, L.L.C. nor in the lease with Simplot; (b) did not direct any work undertaken by Fagen; and (c) did not have any participation in any of the events that occurred in relation to this case. See Carkulis Decl. at ¶¶ 5, 7, 10, and 13. On this basis, and by the authority cited above with respect to both lien foreclosure and the *Wing v. Martin* case, Defendant XRG Development Partners requests summary judgment in its favor as to all counts.

**V.
CONCLUSION**

For the foregoing reasons, the Moving Defendants respectfully submit that summary judgment be entered in their favor as to Fagen's lien foreclosure claim and Defendant XRG Development Partners, LLC requests summary judgment in its favor as to all causes of action filed by Fagen in this matter.

DATED: 26 July 2014

Respectfully Submitted,

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 5 August 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

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Signed _____
Angelo L. Rosa

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Attorney for Defendants
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WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT
PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
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vs.)
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ROGERSON FLATS WIND PARK,)
)
LLC, an Idaho limited liability company;)
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EXERGY DEVELOPMENT GROUP OF)
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IDAHO, LLC, an Idaho limited liability)
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company; XRG DEVELOPMEN)
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PARTNERS, LLC, an Idaho limited)
)
liability company; and "JOHN DOES 1-)
)
10",)
)
Defendants.)
)
_____)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

REQUEST FOR JUDICIAL NOTICE

[I.R.C.P. 44(d)]

COME NOW Defendants ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, LLC, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC (collectively, "Moving Defendants"), by and through their counsel of record, Angelo L. Rosa, Esq. and hereby request that this Honorable Court take judicial notice of that certain order entered in the matter *Fagen v. Lava Beds Wind Park, LLC*, pending in Bingham County and docketed as Case No. CV-2013-261 granting Defendants summary judgment motion. This request is made pursuant to Idaho Rule of Civil Procedure 44(d).

DATED: 26 July 2014

Respectfully Submitted,

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 5 August 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
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Pocatello, Idaho 83204-1391

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- Electronic Mail



Signed _____
Angelo L. Rosa

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2014 AUG 18 PM 12: 01

BY _____
CLERK
DEPUTY

Angelo L. Rosa (ISB No. 7546)
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants

ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
Plaintiff,)
vs.)
ROGERSON FLATS WIND PARK,)
LLC, an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
Defendants.)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

**DEFENDANTS' EX PARTE
MOTION FOR RULE 56(F)
CONTINUANCE AND MOTION FOR
ORDER SHORTENING TIME FOR
RULING THEREUPON**

[I.R.C.P. 56(f), 7(b)]

COME NOW Defendants ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, LLC, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC (collectively, "Moving Defendants"), by and through their counsel of record, Angelo L. Rosa, Esq. and hereby move this Honorable Court pursuant to Idaho Rule of Civil Procedure 56(f) for a brief continuance of the time in which said Defendants may respond to the Motion for Summary Judgment filed by Plaintiff, Fagen, Inc. ("Fagen") in this matter. Moving Defendants further move this Court for an Order Shortening Time for the purposes of expediting a ruling on the present Rule 56(f) Motion.

Good cause exists to grant the requested continuance for the following reasons:

1. Moving Defendants have been trying for months to obtain the deposition of Fagen's corporate representative. This has involved significant obfuscation by Fagen's Idaho counsel and its Minnesota counsel. After months of wrangling, a deposition date of 25 August 2014 has been set for this deposition, which will take place in Minneapolis, Minnesota.
2. The deadline for responding to Fagen's pending Motion for Summary Judgment is 19 August 2014. It would be unfairly prejudicial to Moving Defendants to tender a response to that Motion without the benefit of the deposition testimony that will be given by Fagen on 25 August 2014. Accordingly, Moving Defendants request that this Court reset the briefing schedule to allow (a) an opposition by Moving Defendants to be filed by 22 August 2014, (b) a reply by Fagen to be filed seven (7) days after, by 29 August 2014, and (c) if the Court deems it necessary, a continuance of the hearing on the Motion for Summary Judgment set for 2 September 2014 to an alternate date convenient to the

DEFENDANTS' EX PARTE MOTION FOR RULE 56(F) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON – Page 2

Court.

3. The pending Motions for Summary Judgment filed by both Fagen and Moving Defendants are intended to substantially narrow down the issues that this Court will be called upon to adjudicate at trial. Judicial economy is therefore well-served by the granting of a brief continuance in order for this Court to have all salient fact discovery distilled and presented in the briefing on the pending Motions for Summary Judgment.

Additionally, good cause exists to render a ruling on this Motion on shortened time as follows:

1. As stated above, the deadline for responding to Fagen's pending Motion for Summary Judgment is 19 August 2014. The parties only finalized deposition arrangements for 25 August 2014 in the week preceding the filing of the present Motion. *See* Declaration of Angelo L. Rosa, filed concurrently herewith. Moving Defendants will not be able to tender a complete response to Fagen's Motion for Summary Judgment in the absence of an immediate review of this issue and the issuance of an Order continuing the briefing schedule to allow for the 25 August 2014 deposition to take place and be processed and integrated into the response Moving Defendants have prepared to Fagen's Motion for Summary Judgment.

2. No real prejudice will inure to Fagen if this request is granted. It was Fagen's own obfuscation that has made this request necessary. Moving Defendants are not seeking to shortchange Fagen in terms of time required to reply to their [Moving Defendants'] response to Fagen's Motion for Summary Judgment.

This Motion is not filed for any frivolous or improper purpose and its based upon this Motion, the Declaration of Angelo L. Rosa filed concurrently herewith, the pleadings and papers on file with the Court, and such other an further documentary and/or testimonial evidence that

**DEFENDANTS' EX PARTE MOTION FOR RULE 56(F) CONTINUANCE AND
MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON – Page 3**

may be presented prior to or at the hearing on this Motion.

Oral argument is requested to the extent the Court deems such to be necessary

DATED: 18 August 2014

Respectfully Submitted,

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

**DEFENDANTS' EX PARTE MOTION FOR RULE 56(F) CONTINUANCE AND
MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON – Page 4**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 18 August 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
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- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2014 AUG 18 PM 12: 02

BY _____ CLERK

dr

DEPUTY

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Boise, Idaho 83701
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Attorney for Defendants
ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK
WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT
PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
)
ROGERSON FLATS WIND PARK,)
)
LLC, an Idaho limited liability company,)
)
EXERGY DEVELOPMENT GROUP OF)
)
IDAHO, LLC, an Idaho limited liability)
)
company; XRG DEVELOPMEN)
)
PARTNERS, LLC, an Idaho limited)
)
liability company; and "JOHN DOES 1-)
)
10",)
)
Defendants.)
)
_____)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

**DECLARATION OF ANGELO L.
ROSA IN SUPPORT OF
DEFENDANTS' EX PARTE
MOTION FOR RULE 56(F)
CONTINUANCE AND MOTION FOR
ORDER SHORTENING TIME FOR
RULING THEREUPON**

**DECLARATION OF ANGELO L. ROSA IN SUPPORT OF DEFENDANTS' EX PARTE
MOTION FOR RULE 56(F) CONTINUANCE AND MOTION FOR ORDER
SHORTENING TIME FOR RULING THEREUPON – Page 1**

COMES NOW Angelo L. Rosa, and hereby declares and states as follows:

1. I am an individual residing in Ada County, in the State of Idaho. I am over eighteen (18) years of age. I have personal knowledge of the matters attested to in this Declaration, except to those matters that are stated on the basis of belief.

2. I am counsel of record for the Moving Defendants in this action. Over the course of this case, I have attempted to obtain critical discovery in the form of depositions of the corporate representative of Plaintiff, Fagen, Inc. ("Fagen"). When I inquired of Plaintiff's counsel, Mr. John Goodell, regarding scheduling such depositions several months ago, I was referred to Plaintiff's main counsel in Minnesota. That same direction was given again recently. A true and correct copy of the e-mail exchange between Mr. Goodell's and myself is collectively attached and incorporated hereto as "Exhibit A."

3. Over the past few months, both Plaintiff's Minnesota counsel and I have been attempting to obtain deposition discovery, both for this case (and its sister cases in Idaho) as well as in a proceeding involving Plaintiff and Defendant, Exergy Development Group of Idaho, L.L.C. pending in the United States District Court for the District of Minnesota, in which I serve as lead defense counsel. Minnesota counsel has been obstructive as to schedule. A true and correct copy of the initial e-mail exchange between Minnesota counsel and myself concerning this issue is attached and incorporated hereto as "Exhibit B."

4. The parties have finally reached agreement whereby Fagen will offer its corporate representative for deposition pursuant to Idaho Rule of Civil Procedure 30(b)(6). That deposition will take place on 25 August 2014 in Minneapolis Minnesota. A true and correct copy of the e-mails between Minnesota counsel and myself concerning this issue is

DECLARATION OF ANGELO L. ROSA IN SUPPORT OF DEFENDANTS' EX PARTE MOTION FOR RULE 56(F) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON – Page 2

attached and incorporated hereto as "Exhibit C."

5. Until these critical depositions are taken, there will not be adequate discovery to respond meaningfully to Fagen's pending Motion for Summary Judgment.

6. Concurrent with the service of the present Motion, I have given counsel for Fagen's the opportunity to stipulate the relief requested. In the event a stipulation can be reached and finalized in the short period of time in which this Court is respectfully asked to rule upon this Motion, the present Motion will be withdrawn.

I testify under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED: 18 August 2014



Angelo L. Rosa

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 18 August 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

DECLARATION OF ANGELO L. ROSA IN SUPPORT OF DEFENDANTS' EXPARTE MOTION FOR RULE 56(F) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON – Page 3

Angelo L. Rosa, Esq.

From: Becky Harvey <bjh@racinelaw.net>
Sent: Wednesday, May 28, 2014 1:16 PM
To: 'arosa@rosa-lp.com'
Cc: John Goodell
Subject: Fagen v Exergy, et al. - Depositions

Dear Angelo:

John Goodell is out of the office this week. I would like to notify you that any deposition requests for the plaintiff Ronald Fagen and Fagen personnel should be coordinated through Stinson Leonard Street – in particular Keith Moheban and Tim Kelley.

Contact information as follows:

Stinson Leonard Street LLP
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402
T: 612.335.1458 - F: 612.335.1657
timothy.kelley@stinsonleonard.com or keith.moheban@stinsonleonard.com

Thank you for your cooperation.

Becky J. Harvey
Paralegal



OFFICE 208.395.0011
FAX 208.433.0167

101 S. Capitol Blvd., Suite 300
Boise, ID 83702

Angelo L. Rosa, Esq.

From: John Goodell <jrg@racinelaw.net>
Sent: Monday, August 11, 2014 1:09 PM
To: 'Kelley, Timothy'; arosa@rosa-lp.com
Cc: Moheban, Keith
Subject: RE: Depositions in Twin Falls County Case

Importance: High

Angelo;

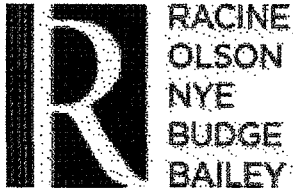
As indicated below, this will also confirm my understanding and emphasize that arrangements for scheduling of any and all depositions you are requesting to schedule and take on behalf of Defendants of Plaintiff Fagen, Inc., or its personnel, whether Rule 30(b)(6) or individuals, are being coordinated between by you and Fagen's MN counsel of the Stinson Leonard firm, namely, Keith Moheban and Tim Kelly, with whom you are in regular contact, not me, as relate to the Twin Falls/Lincoln Counties consolidated cases nos. CV-2013-573, -574, -575, -576. Notice to this effect was supplied some time ago. I simply want reiterate such here to avoid any uncertainty or confusion. As indicated below in Mr. Kelly's email to you, copied to me, such arrangements appear now to have been made or are underway. Given such arrangements, it would appear that the September 2nd hearing on Defendants' Motion to Compel Depositions is unlikely to occur and/or be moot. Please clarify. Thank you.

Sincerely,

John

John R. Goodell

Partner



OFFICE 208.395.0011
FAX 208.433.0167
CELL 208.406.4493

591 S Capitol Boulevard, Suite 300
Boise, ID 83702

From: Kelley, Timothy [mailto:timothy.kelley@stinsonleonard.com]
Sent: Friday, August 08, 2014 1:46 PM
To: arosa@rosa-lp.com
Cc: Kelley, Timothy; Moheban, Keith; John Goodell
Subject: Depositions in Twin Falls County Case

Angelo:

I am following up on the deposition notices you served in the Twin Falls County case. I understand that Keith and you spoke and you agreed that you would only proceed with the Fagen 30(b)(6) deposition. You noticed Fagen's deposition for August 25th. That date works for taking the deposition at my office.

Also, in your Notice, you identified 8 examination topics. The first topic relates to the negotiation of the EPC Contract, and the eighth topic relates to the termination of the EPC Contract. At the summary judgment hearing in Lava Beds, I understand that you acknowledged the validity of the EPC Contract and that Exergy breached it. The only issue Exergy raised was the amount of Fagen's damages/claim. Given Exergy's acknowledgments, I do not believe it is appropriate for Fagen to have to designate anyone for the first and eighth topics. Please let me know if you agree and let me know if August 25th works.

Angelo L. Rosa, Esq.

From: Angelo L. Rosa, Esq. <arosa@rosa-lp.com>
Sent: Thursday, July 03, 2014 10:34 AM
To: 'Kelley, Timothy'
Cc: 'Moheban, Keith'; 'Michael Cockson'
Subject: RE: Fagen v. Exergy / Depositions

Tracking:

Recipient	Read
'Kelley, Timothy'	
'Moheban, Keith'	Read: 7/3/2014 2:48 PM
'Michael Cockson'	

Tim:

Let's get this sorted out on Monday then.

Have a safe and happy 4th.

A

Angelo L. Rosa, Esq.*
P.O. Box 1605
Boise, Idaho 83701
Tel. (801) 440-4400
Fax. (801) 415-1773

*Licensed to Practice in California and Idaho

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-----Original Message-----

From: Kelley, Timothy [mailto:timothy.kelley@stinsonleonard.com]
Sent: Thursday, July 03, 2014 8:30 AM
To: <arosa@rosa-lp.com>
Cc: Kelley, Timothy; Moheban, Keith; Michael Cockson
Subject: Re: Fagen v. Exergy / Depositions

Angelo: Thanks for the reminder. I am going to be out for most of the day, so let's connect on this next week. Keith is back on the 10th and he will handle the depositions, so the scheduling should be coordinated with Keith.

Sent from my iPhone

On Jul 2, 2014, at 6:08 PM, "Angelo L. Rosa, Esq." <arosa@rosa-lp.com<mailto:arosa@rosa-lp.com>> wrote:

Tim:

I am in receipt of your amended deposition notice for Mr. Carkulis. As a gentle reminder, please send everything to my arosa@rosa-lp.com<mailto:arosa@rosa-lp.com> address in future as I am rarely checking my Exergy e-mail.

Since Fagen has re-opened the discovery dialogue with its notice, I want to confirm some dates during the month of July for the depositions that I have noticed of SLS, Fagen, Inc. and Ron Fagen. Please confirm with me by the end of this week what dates work.

Thanks, A

Angelo L. Rosa, Esq.*
P.O. Box 1605
Boise, Idaho 83701
Tel. (801) 440-4400
Fax. (801) 415-1773

*Licensed to Practice in California and Idaho

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Timothy M. Kelley | Partner | Stinson Leonard Street LLP
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402
T: 612.335.1458 | M: 651.270.8294 | F: 612.335.1657 timothy.kelley@stinsonleonard.com |
<http://www.stinsonleonard.com> Legal Administrative Assistant: Denise Smith | 612.335.1536 |
denise.smith@stinsonleonard.com

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Angelo L. Rosa, Esq.

From: Moheban, Keith <keith.moheban@stinsonleonard.com>
Sent: Tuesday, June 17, 2014 3:16 PM
To: arosa@rosa-lp.com
Cc: Kelley, Timothy; thomas@burkeandthomas.com
Subject: RE: depositions

Let me be absolutely clear. These depositions are not going to happen while I am out of the country. If you have a problem with that you can bring a motion to compel.

Keith S. Moheban | Partner | Stinson Leonard Street LLP
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402
T: 612.335.1544 | M: 612.839.8291 | F: 612.335.1657
keith.moheban@stinsonleonard.com | www.stinsonleonard.com
Legal Administrative Assistant: Louise Currey | 612.335.1496 | louise.currey@stinsonleonard.com

From: arosa@rosa-lp.com [mailto:aros@rosa-lp.com]
Sent: Tuesday, June 17, 2014 4:13 PM
To: Moheban, Keith
Cc: Kelley, Timothy; thomas@burkeandthomas.com
Subject: RE: depositions

Keith:

We have a settlement conference on 30 June. I'm not sure how you intend to handle that being in Oz. I am willing to reconsider noticing the depositions closer to the settlement conference but I am not going to make two trips to Minneapolis unless ordered by the Court.

Also, I am unaware of any requirement or rule of civil procedure that requires my client's deposition to be taken before your clients' depositions. So, absent an alternate date for the depositions closer to the settlement conference, they will remain as noticed.

Regarding the date of Mr. Carkulls' deposition, I will confirm those dates with him and get back with you (and/or Tim) as soon as possible.

Regards,

ALR

Angelo L. Rosa, Esq.*
P.O. Box 1605
Boise, Idaho 83701
Tel. (801) 440-4400
Fax. (801) 415-1773

*Licensed to Practice in California and Idaho

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----- Original Message -----

Subject: depositions

From: "Moheban, Keith" <keith.moheban@stinsonleonard.com>

Date: Tue, June 17, 2014 1:56 pm

To: "Angelo L. Rosa, Esq. (arosa@rosa-lp.com)" <arosa@rosa-lp.com>

Cc: "Kelley, Timothy" <timothy.kelley@stinsonleonard.com>, "thomas@burkeandthomas.com" <thomas@burkeandthomas.com>

Angelo -- I am responding to your notices of depositions sent by email last week. As you know, I will be unavailable and out of the country between now and July 9, and I would be defending the noticed depositions. Accordingly, we cannot conduct the depositions on the dates you indicated. Further, given the court's order compelling the deposition of Mr. Carkulis on July 16-18, we intend to conduct that deposition before any of the Fagen witnesses. This is reasonable and appropriate given his refusal to appear for deposition back in March.

With regard to the Carkulis deposition, I would like to firm up the dates and conduct that deposition on July 17 and 18, assuming Mr. Thomas also can make those dates work. We will advise you of the location once we arrange for counsel in Helena, Montana.

In my absence, starting tomorrow afternoon, please direct all communication in this case to Tim.

Regards, Keith

Keith S. Moheban | Partner | Stinson Leonard Street LLP
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402
T: 612.335.1544 | M: 612.839.8291 | F: 612.335.1657

keith.moheban@stinsonleonard.com | www.stinsonleonard.com

Legal Administrative Assistant: Louise Currey | 612.335.1496 | louise.currey@stinsonleonard.com

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Angelo L. Rosa, Esq.

From: Kelley, Timothy <timothy.kelley@stinsonleonard.com>
Sent: Wednesday, August 13, 2014 7:57 AM
To: Angelo L. Rosa, Esq.
Cc: John Goodell; Moheban, Keith; Kelley, Timothy
Subject: RE: Depositions in Twin Falls County Case

Angelo: We are set for August 25th at my office. Please let me know the time you want to start.

Tim

Timothy M. Kelley | Partner | Stinson Leonard Street LLP
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402
T: 612.335.1458 | M: 651.270.8294 | F: 612.335.1657
timothy.kelley@stinsonleonard.com | www.stinsonleonard.com
Legal Administrative Assistant: Denise Smith | 612.335.1536 | denise.smith@stinsonleonard.com

From: Angelo L. Rosa, Esq. [<mailto:arosa@rosa-lp.com>]
Sent: Tuesday, August 12, 2014 11:45 AM
To: Kelley, Timothy
Cc: John Goodell; Moheban, Keith
Subject: Re: Depositions in Twin Falls County Case

Tim:

Thanks. No worries, just get back to me at your earliest.

Best, A

Angelo L. Rosa, Esq.*
P.O. Box 1605
Boise, Idaho 83701
Tel. (801) 440-4400
Fax. (801) 415-1773

*Licensed to Practice in California and Idaho

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On Aug 12, 2014, at 10:42 AM, "Kelley, Timothy" <timothy.kelley@stinsonleonard.com> wrote:

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 AUG 18 PM 4:48

BY _____ CLERK
DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576
CV-2013-26

**PLAINTIFF FAGEN, INC.'S
MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANTS'
EX PARTE MOTION FOR RULE
56(F) CONTINUANCE AND
MOTION FOR ORDER
SHORTENING TIME FOR RULING
THEREUPON**

INTRODUCTION

On July 30, 2014, Plaintiff Fagen, Inc. ("Fagen") filed for summary judgment and notified Defendants that the Court would hold the summary judgment hearing on September 2, 2014. The summary judgment filing should not have surprised Defendants as the filing deadline was governed by the Court's April 22, 2014, Stipulation for Scheduling and Planning (the "Scheduling Order"). The Scheduling Order scheduled this matter for trial on October 28, 2014,

PLAINTIFF FAGEN, INC.'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' EX PARTE MOTION FOR RULE 56(f) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON - pg 1

and I.R.C.P. 56(a) required Fagen to file its summary judgment motion by July 30, 2014 (90 days before the trial date).

When Defendants received Fagen's summary judgment motion on July 30, 2014, Defendants also knew that I.R.C.P. 56(c) required them to file their response by August 19, 2014 (fourteen days before the summary judgment hearing date). *See* I.R.C.P. 56(c). Yet, Defendants waited eighteen days after service of Fagen's summary judgment motion – and the day before their filing deadline – to move for an *ex parte* Rule 56(f) continuance. Defendants' attorney later clarified that he used the terms *ex parte* and emergency interchangeably. The emergency that Defendants allege exists is that Defendants will not depose Fagen until August 25, 2014, and that it would be unfair to require Defendants to respond before the deposition. No emergency exists.

Defendants, not Fagen, scheduled Fagen's deposition for August 25, 2014. On July 27, 2014, Defendants' attorney served Fagen's Notice of Taking Deposition and scheduled the deposition for August 25, 2014. *See* Affidavit of John Goodell ("Goodell Aff."), Ex. A. Fagen agreed to that date.

Finally, Defendants attempt to justify their Rule 56(f) Motion by claiming Fagen's attorneys obstructed Defendants' efforts to schedule Fagen's deposition. This is the identical tactic Defendants' attorney attempted, unsuccessfully, in a case pending between Defendant and Exergy Development Group of Idaho, L.L.C. in Bingham County. In that case, Judge Darren B. Simpson denied the Rule 56(f) Motion and held:

This matter has been pending for over a year, and, apparently, no depositions have been taken. . . . There is no evidence about any obstruction issues, like that are being asserted . . . [T]he Court is going to deny the request for a continuance, and we'll proceed with the motions for summary judgment in this matter.

Goodell Aff., Ex. B, 19:6-7; 22:6-7; 23:8-9.¹ The Court should reach the same conclusion here.

PROCEDURAL HISTORY AND STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On April 22, 2014, the Court filed the Scheduling Order, which set this matter for trial on October 28, 2014. Scheduling Order, ¶G(4). Pursuant to I.R.C.P. 56(a), the deadline for the parties to file for summary judgment was July 30, 2014.
2. On April 25, 2014, Fagen served its responses to the discovery requests served by Defendants Rogerson Flats Wind Park, Cottonwood Wind Park, LLC, Salmon Creek Wind Park, LLC, Deep Creek Wind Park, LLC, Exergy Development Group of Idaho, L.L.C., and Notch Butte Wind Park, LLC. Goodell Aff., ¶4.
3. Defendants never objected to the sufficiency of Fagen's discovery responses. *Id.* at ¶5.
4. On July 27, 2014, Defendants, for the first time, served a Notice of Taking Deposition. Goodell Aff., Ex. A. Defendants noticed Fagen's deposition for August 25, 2014. *Id.*
5. On July 30, 2014, Fagen filed its summary judgment motion. See Fagen's Memorandum of Law in Support of Motion for Summary Judgment.

ARGUMENT

- I. **THE COURT SHOULD DENY DEFENDANTS' MOTION BECAUSE DEFENDANTS FAILED TO DILIGENTLY PURSUE DISCOVERY OR SATISFY THE REQUIREMENTS OF RULE 56(f).**

"The decision to grant or deny a Rule 56(f) continuance is within the sound discretion of the trial court." *Taylor v. AIA Services Corp.*, 151 Idaho 552, 572, 261 P.3d 829, 849 (2011) (citing *Carnell v. Barker Mgmt.*, 137 Idaho 322, 329, 48 P.3d 651, 658 (2002)). Under Rule

¹ The Bingham County case is styled as *Fagen, Inc. v. Exergy Development Group of Idaho, L.L.C.*, Case No. CV-2013-261 ("the Bingham County Litigation"). Attached as Exhibit B to the Goodell Aff. is a complete copy of the transcript from the hearing on the parties' motions for summary judgment and the Rule 56(f) Motion filed by the Defendants.

56(f), the court may grant a continuance to allow additional time for a party resisting summary judgment:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as just.

Boise Mode, LLC. V. Donahoe Pace & Partners, LTD, 154 Idaho 99, 104, 294 P.3d 1111, 1116 (2013) (quoting I.R.C.P. 56(f). Importantly, and fatal to Defendants' motion, "the legal standard governing the district court's exercise of discretion when deciding a Rule 56(f) motion permits consideration of the moving party's previous lack of diligence in pursuing discovery." *Id.* at 105, 1117.

As established below, the Defendants' Motion fails because Defendants did not diligently pursue discovery or satisfy the requirements of Rule 56(f).

A. The Court Should Deny Defendants' Motion Due to Defendants' Lack of Diligence in Pursuing Discovery.

In *Boise Mode, LLC*, the Supreme Court established that a party's failure to diligently pursue discovery is a sufficient basis by itself to deny a Rule 56(f) motion for continuance. 154 Idaho at 105, 294 P.3d at 1117. In that case, the respondent responded to the appellant's discovery requests on May 10, 2010. *Id.* The respondent then moved for summary judgment on November 24, 2010, and appellant filed a Rule 56(f) motion on December 8, 2010, arguing that some of the respondent's discovery responses were insufficient. *Id.* The Supreme Court affirmed the district court's denial of the Rule 56(f) motion based on the appellant's failure to "provide sufficient reasoning as to why six months intervened between the receipt of the initial discovery answers, which they allege were unsatisfactory, and any attempt to discover additional relevant information." *Id.*

PLAINTIFF FAGEN, INC.'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' EX PARTE MOTION FOR RULE 56(f) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON – pg 4

Here, the facts are virtually the same and compel the same result. The Court's April 22, 2014, Scheduling Order put the parties on notice that the trial was set for October 28, 2014, and as a result, the summary judgment filing deadline was July 30, 2014. *See* Scheduling Order, ¶G(4); I.R.C.P. 56(f). Fagen and the Defendants stipulated to the trial date, and I.R.C.P. 56, not Fagen, established the summary judgment filing deadlines. In addition, Fagen served its discovery responses on April 25, 2014. Goodell Aff., ¶4. Defendants never objected to the sufficiency of Fagen's discovery responses. *Id.* at ¶5. Accordingly, as of April 2014, Defendants had received Fagen's written discovery and knew the summary judgment filing deadline was July 30, 2014. Defendants, therefore, had three months to notice and conduct depositions. They did not. Instead, on July 27, 2014, Defendants noticed Fagen's deposition for August 25, 2014, which is six days *after* Defendants' deadline to respond to the summary judgment motion. Goodell Aff., Ex. A. It is clear that the "emergency" situation Defendants claim exists is one they created, and Defendants have provided the Court with no reason or basis to excuse their lack of diligence.

Rather, Defendants try to excuse their lack of diligence by accusing Fagen's attorneys of obstructing their "effort" to schedule a deposition in this case. This is an argument that Defendants already made and lost in in Bingham County Litigation. *See* Goodell Aff., Ex. B. The Court should reach the same result here. If Defendants truly believed they needed to depose Fagen, or that Fagen's counsel was obstructing their efforts to schedule a deposition in this case, Defendants would have taken appropriate action. Defendants could have served a Notice of Taking Deposition, which scheduled the deposition prior to the deadline for Defendants to respond to Fagen's summary judgment motion. They did not.

In the end, Defendants cannot hide from their lack of diligence established in this case and, for that matter, the Bingham County Litigation. Defendants' strategy is to do nothing until the very last minute – as evidenced by the timing of their Rule 56(f) Motion – and seek relief from the Court to excuse their lack of diligence. The Court should reject Defendants' strategy and deny the Rule 56(f) Motion.

B. Alternatively, the Court Should Deny Defendants' Motion Because Defendants Failed to Satisfy the Requirements of Rule 56(f).

Alternatively, the Court should deny Defendants' Rule 56(f) Motion because they failed to provide the Court with any basis, reasonable or otherwise, to believe additional discovery, in the form of the Fagen deposition, will produce any new or relevant information not previously disclosed. “[I]n order to grant a motion for additional discovery before hearing a motion for summary judgment, the moving party has the burden of setting out ‘what further discovery would reveal that is essential to justify their opposition,’ making clear ‘what information is sought and how it would preclude summary judgment.’” *Jenkins v. Boise Cascade Corp.*, 141 Idaho, 233, 239, 109 P.3d 380, 386 (2005) (quoting *Nicholas v. Wallenstein*, 266 F.3d 1083, 1088-89 (9th Cir. 2001).

Here, Defendants' Rule 56(f) Motion does not identify (1) what further discovery would reveal that is essential to justify their opposition or (2) what information is sought and how it would preclude summary judgment. *See generally*, Defendants' Rule 56(f) Motion and Declaration of Angelo Rosa. As a result, the Defendants' Rule 56(f) is deficient, and the Court should deny it.


CONCLUSION

Based on the foregoing reasons, the Court should deny Defendants' Rule 56(f) Motion and grant Fagen's Motion for Summary Judgment.

PLAINTIFF FAGEN, INC.'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' EX PARTE MOTION FOR RULE 56(f) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON – pg 6

DATED this 18th day of August, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of August, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
Attorney at Law
P.O. Box 1605
Boise, ID 83701
Attorney for Exergy Development Group of Idaho, L.L.C.; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC; Cottonwood Wind Park, LLC; Salmon Creek Wind Park, LLC; Deep Creek Wind Park, LLC; and Notch Butte Wind Park, LLC

- U.S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 801-415-1773
- Email arosa@rosa-lp.com

Keith S. Moheban
Timothy M. Kelley
STINSON LEONARD STREET LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Pro Hac Vice

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 612-335-1657
- Email
- timothy.kelley@stinsonleonard.com
- keith.moheban@stinsonleonard.com


JOHN R. GOODELL

support of Plaintiff Fagen's Opposition to Defendants' Ex Parte Motion for Rule 56(f) Continuance.

2. Attached as Exhibit A and incorporated by reference is a true and correct copy of an e-mail and the Notice of Taking Deposition of Fagen, Inc., which I received from Defendants' attorney, Angelo Rosa, on July 27, 2014. Mr. Rosa also served Notices of Taking Deposition of Ronald Fagen, Jennifer Johnson and a Motion to Compel Depositions. Mr. Rosa agreed that he did not need to proceed with the depositions of Ronald Fagen and Jennifer Johnson. Mr. Rosa also agreed to withdraw the Motion to Compel Depositions.

3. Attached as Exhibit B and incorporated by reference is a true and correct copy of the hearing transcript from the hearing in the case pending in Bingham County, Idaho, *Fagen, Inc. v. Exergy Development Group of Idaho, L.L.C., et al.*, Case No. CV-2013-261.

4. On April 25, 2014, Fagen served its responses to the discovery requests served by Defendants Rogerson Flats Wind Park, Cottonwood Wind Park, LLC, Salmon Creek Wind Park, LLC, Deep Creek Wind Park, LLC, Exergy Development Group of Idaho, L.L.C., and Notch Butte Wind Park, LLC.

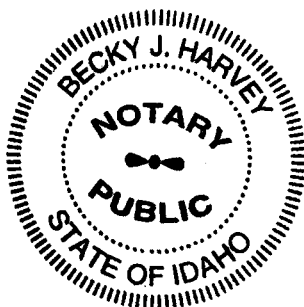
5. Defendants never objected to the sufficiency of Fagen's discovery responses.

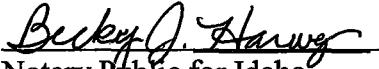
FURTHER AFFIANT SAYETH NAUGHT.

Dated this 18th day of August 2014.


John R. Goodell, Affiant

SUBSCRIBED TO AND SWORN TO before me this 18th day of August 2014.




Notary Public for Idaho
Residing at: New Plymouth, ID.
My Commission Expires: 10/30/19

CERTIFICATE OF SERVICE

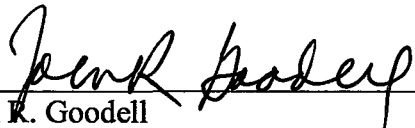
I HEREBY CERTIFY that on the 18th day of August, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
Attorney at Law
P.O. Box 1605
Boise, ID 83701
Attorney for Exergy Development Group of Idaho, L.L.C.; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC; Cottonwood Wind Park, LLC; Salmon Creek Wind Park, LLC; Deep Creek Wind Park, LLC; and Notch Butte Wind Park, LLC

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Pro Hac Vice

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- Hand Delivery
- Overnight Mail
- Facsimile 612-335-1657
- Email
- timothy.kelley@stinsonleonard.com
- keith.moheban@stinsonleonard.com



John R. Goodell

EXHIBIT A

Kelley, Timothy

Subject: FW: Exergy v. Rogerson Flats, et al.
Attachments: XRG-Fagen (Liens) (Twin Falls)-LT-ALR-JRG-07272014.pdf; XRG-Fagen (Liens) (Twin Falls)-DS-Notice of Deposition (Ronald Fagen) (XRG).pdf; XRG-Fagen (Liens) (Twin Falls)-DS-Notice of Deposition (Jennifer Johnson) (XRG).pdf; XRG-Fagen (Liens) (Twin Falls)-DS-Notice of Deposition (Fagen 30(b)(6)) (XRG).pdf; XRG-Fagen (Liens) (Twin Falls)-PL-Motion to Compel Depositions (XRG).pdf; XRG-Fagen (Liens) (Twin Falls)-PL-Declaration of ALR in Support of Motion to Compel Depositions (XRG).pdf

From: arosa@rosa-lp.com [mailto:arosa@rosa-lp.com]
Sent: Sunday, July 27, 2014 6:45 PM
To: John Goodell
Cc: Becky Harvey
Subject: Exergy v. Rogerson Flats, et al.

Please see enclosed.

Angelo L. Rosa, Esq.*
P.O. Box 1605
Boise, Idaho 83701
Tel. (801) 440-4400
Fax. (801) 415-1773

*Licensed to Practice in California and Idaho

PERSONAL AND CONFIDENTIAL: This message originates from Rosa, LP and/or Angelo L. Rosa, Esq. This message and any file(s) or attachment(s) transmitted with it are confidential, intended only for the named recipient, and may contain information that is a trade secret, proprietary, protected by the attorney work product doctrine, subject to the attorney-client privilege, or is otherwise protected against unauthorized use or disclosure. This message and any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you receive this message in error, please advise the sender by immediate reply and by telephone at (801) 440-4400, and by deleting the original message. Personal messages express only the view of the sender and are not attributable to Rosa, LP and/or Angelo L. Rosa, Esq.

Angelo L. Rosa (ISB No. 7546)
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants
ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK
WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT
PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
Plaintiff,)
vs.)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

ROGERSON FLATS WIND PARK,)
LLC, an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
Defendants.)

**NOTICE OF DEPOSITION OF
FAGEN, INC.**

FAGEN, INC., a Minnesota corporation,)
Plaintiff,)
vs.)

[I.R.C.P. 30(b)(6)]

COTTONWOOD WIND PARK, LLC, an)
Idaho limited liability company;)

EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)

Defendants.)

FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

SALMON CREEK WIND PARK, LLC,)
an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)

Defendants.)

FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

DEEP CREEK WIND PARK, LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)

Defendants.)
)
_____)
FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
NOTCH BUTTE WIND PARK, LLC, an)
Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
)
Defendants.)
_____)

PLEASE TAKE NOTICE that Defendants ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, LLC, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC, by and through their counsel of record, Angelo L. Rosa, Esq. will, pursuant to Idaho Rule of Civil Procedure 30(b)(6) will take the deposition of Plaintiff Fagen, Inc. ("Fagen"). The deposition will take place on oral examination before a notary public or other person authorized to administer oaths, and may be recorded by any means that the Idaho Rules of Civil Procedure permit, including, without limitation, by videotape, audiotape, and stenographic means (including any form of real-time reporting).

Fagen is requested to designate the person or persons most knowledgeable and prepared to testify on behalf of Fagen concerning the subject matter described below.

The deposition(s) will commence at 10:00 a.m. on Monday, 25 August 2014 at a place agreed upon by the parties and/or ordered by the Court pursuant to that certain Motion to Compel Depositions filed by the Defendants in this matter, and will continue from day to day until completed or adjourned pursuant to stipulation of counsel.

DATED: 27 July 2014

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

LIST OF EXAMINATION TOPICS

1. The negotiation of any and all Engineering, Procurement and Construction (“EPC”) agreements between Fagen and Exergy Development Group of Idaho, L.L.C. (“EDG Idaho”) that is the subject of this lawsuit.
2. All communications within the Fagen organization concerning the services rendered pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
3. All communications between Fagen and EDG Idaho concerning the services rendered pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
4. All work undertaken pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
5. All objections or disagreements between Fagen and any of the named Defendants in this action concerning the services rendered pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
6. All work undertaken by Fagen during the last three (3) months of Fagen’s presence on the project sites that are at issue in this lawsuit.
7. Any allegations by landowners of any damage caused by Fagen in the rendering of services pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
8. The events leading up to the termination of work pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 27 July 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

EXHIBIT B

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

FAGEN, INC., a Minnesota corporation,	)	Case No. CV-2013-261
Plaintiff,)	
vs.)	
LAVA BEDS WIND PARK, LLC, an Idaho)	
limited liability company; EXERGY)	
DEVELOPMENT GROUP OF IDAHO, LLC, an)	
Idaho limited liability company; XRG)	
DEVELOPMENT PARTNERS, LLC, an Idaho)	
limited liability company; TABOR WIND)	
FARMS, LLC, an Idaho limited)	
liability company; and "JOHN DOES 1 -)	
10,")	
Defendants.)	

TRANSCRIPT OF MOTIONS FOR SUMMARY JUDGMENT

This cause came on regularly for hearing at
Blackfoot, Idaho, on the 25th day of July, 2014, at the
hour of 1:07 P.M. before the HONORABLE DARREN B.
SIMPSON, District Judge, presiding.

1 APPEARANCES:

2 For Plaintiff: JOHN R. GOODELL, Esq.
3 Racine, Olson, Nye, Budge &
4 Bailey, Chtd.
5 101 South Capitol Boulevard, suite 300
6 Boise, Idaho 83702

7 For Defendants: ANGELO L. ROSA, Esq.
8 Post Office Box 1605
9 Boise, Idaho 83701

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1 summary judgment.

2 The Court has indicated that he's read the
3 affidavits. We have had some scheduling issues with
4 Fagen's lead counsel, who have been coordinating
5 discovery efforts. And I am on the verge of filing a
6 motion to compel the depositions both in that Minnesota
7 federal case as well as is in this matter and the other
8 sister matters pending in Idaho. So that is my
9 procedural report.

10 Substantively, I believe it's appropriate
11 because, while the affidavits submitted in support of
12 Fagen's motion for summary judgment are in indeed quite
13 voluminous and detailed, my client has a number of
14 disagreements with that level of detail and these
15 conclusions that they've struck in them, and there's
16 certain things that need to be ferreted out in
17 deposition.

18 And so for that reason, we would request a
19 continuance, perhaps to coincide with some sort of
20 status conference, given the fact that I'm being bounced
21 over to Minnesota to have the issue addressed.

22 As for Exergy's motion for summary judgment, I
23 understand from their opposition papers that there's no
24 opposition to --

25 THE COURT: Mr. Rosa, are you on a speakerphone?

1 MR. ROSA: I'm not, Your Honor, no. I'm tethered
2 to my desk here.

3 THE COURT: All right. Because you were just
4 fading off there, and it was muffled for a minute.

5 MR. ROSA: Oh, I apologize, Your Honor.

6 Discovery issues aside, I was just going to
7 make a brief comment about Exergy's or my client's
8 motion for summary judgment and point out that there
9 is -- that that motion is unopposed, and so it would be
10 our intention to submit judgments of dismissal for the
11 Court's review and execution.

12 THE COURT: Okay. I want to make sure -- in that
13 regard, let's clear something up here. I'm trying to
14 find -- the defendant had moved for summary judgment
15 regarding the mechanic's lien.

16 MR. ROSA: The lien foreclosure claim, Your Honor,
17 yes. That's correct.

18 THE COURT: Right.

19 MR. ROSA: And that is the only positive action
20 that we moved for summary judgment on.

21 THE COURT: And, Mr. Goodell, you've withdrawn --
22 or, actually, are asking to dismiss those matters, if I
23 understand correctly, causes of action regarding the
24 lien foreclosure?

1 our claim based on the mechanic's lien theory and also
2 withdrawing claims against XRG Development Partners,
3 LLC.

4 THE COURT: All right. Now, the one thing -- and
5 you've stated that in Fagen's memorandum of law and
6 response to the defendants' response for summary
7 judgment. The defendants' motion for summary judgment,
8 at least in part -- I'm looking at page 3 of the
9 defendant's -- the Defendant Lava Beds's motion for
10 summary judgment. It's in paragraph 3, the very last
11 sentence: "Thus, complete summary judgment as to each
12 and every party is appropriate as to Defendant XRG
13 Development Partners, LLC."

14 So that seems to suggest that there is a
15 motion for summary judgment as to all of the claims,
16 including the breach of contract. I want to make sure
17 that both parties understand the way I'm reading your
18 response is that that is still an issue, but the lien
19 foreclosures cause of actions are being dismissed; is
20 that correct?

21 MR. GOODELL: I'm not sure I'm understanding; so
22 let me restate what Fagen's position is.

23 THE COURT: Okay.

25 lien claims against all defendants.

7

1 THE COURT: Right.

2 MR. GOODELL: And Fagen also agrees to withdraw
3 its claims against XRG Development Partners, LLC, as to
4 all claims --

5 THE COURT: Okay.

6 MR. GOODELL: -- so it would be dismissed as a
7 party -- and reserves remaining claims, primarily,
8 breach of contract against Defendant Lava Beds Wind Park
9 and also against Defendant Exergy Development Group of
10 Idaho, LLC, which are breach of contract claims
11 remaining.

12 THE COURT: All right. I've got you.

13 All right. Your response, then, to the motion
14 to continue, Mr. Goodell.

15 MR. GOODELL: Thank you, Your Honor.

16 I appreciate you have read all the briefs, the
17 motions, the affidavits. They're voluminous. And in
18 addition to that, of course, the Court is familiar with
19 the prior history of this case. And I would understand
20 their Rule 56(f) motion would typically be somewhat a
21 routinely granted thing.

22 I don't think, in this case, that's

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23 appropriate for the reasons that we've stated in our
24 briefing, our motion, our filing, and for the reasons
25 given the prior procedural history in this case.

8

1 And I don't think that there has been a
2 showing under Rule 56(f) as to why it's necessary what
3 additional evidence is essential for the defendants to
4 discover that they don't have or haven't had an
5 opportunity to have.

6 And there is case law -- Boise Mode, more
7 recently -- indicating that a party who does not
8 diligently pursue discovery is not entitled to a
9 Rule 56(f) continuance.

10 And so I would submit, Your Honor, on that
11 basis and as a discretionary matter within the province
12 of discretion, that you certainly have a basis in this
13 case to deny this continuance.

14 The record, I think, demonstrates there has
15 not been a diligent pursuit of discovery on the part of
16 the defendants if they wanted to depose anybody from
17 Fagen. And they've had notice, based on Your Honor's
18 own order back from, I think, March 25th or thereabouts
19 that you were going to hear summary judgment motions in
20 four months, hence being today.

21 And so being cognizant of that scheduling

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22 order from the Court, I think it's inappropriate for
23 somebody to say they haven't had an opportunity in
24 four months to take or to whatever deposition they
25 wanted to do.

9

1 Another complicating factor here is that
2 Mr. Rosa submitted written discovery on behalf of the
3 defendants on March 25th. We responded timely 30 days
4 later, on April 25th.

5 And he writes e-mails, which are in the
6 record, to me, stating "Where's your discovery
7 response?" yet another month later, on May 25th. And as
8 it turns out, they're in his mailbox, his post office
9 box, and sitting there and have been for a month
10 unbeknownst to him.

11 So we have complied with the rules and done
12 everything we're supposed to do in terms of discovery
13 and responding, and for reasons only he can explain to
14 you, their written discovery, which was voluminous, is
15 in his post office box unopened for a month.

16 Now, the other thing that's going on here: He
17 only once, by an e-mail sent on Sunday, a Memorial Day
18 weekend -- May 25th, he wrote me an e-mail and said "I'm
19 going to depose Ron -- I'm going to notice up
20 Ron Fagen's deposition within a date range in June 11 to

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21 June something, and as a courtesy, I'm letting you know.

22 If you have a preference of date, let me know."

23 Two business days later, on Wednesday -- I was
24 out of the office. I was, of course, monitoring my
25 e-mails and correspondence and coordinating with my

10

1 office and did so.

2 My paralegal -- after I consult with Fagen's
3 counsel in Minnesota -- Fagen is from Minnesota. They
4 have counsel there. I coordinate and work with them.
5 They also have a big lawsuit going with Mr. Rosa there
6 after a wind park that was actually built involving
7 these parties that they have a dispute on. It's
8 unrelated to this wind park dispute in Idaho, but it's
9 the same parties in another wind park dispute. So he
10 deals with those counsel all the time.

11 And so two business days later, my paralegal,
12 Becky Harvey, e-mailed him back and said "Please
13 coordinate scheduling deposition of Ron Fagen of Fagen,
14 Inc., with counsel that you deal with regularly in the
15 Minnesota litigation because they want to know and be
16 apprised and they have the client contact directly."

17 That's the last I ever heard of it. I never
18 had another request for scheduling Fagen or anybody in
19 Idaho. I never had another e-mail about it. I never

07-25-14 Fagen vs Lava Beds Wind Park - Motion for Summary Judgment.txt
20 had any information from Mr. Rosa that counsel back in
21 Minnesota -- you know, there was a problem in requesting
22 or scheduling back there. And their affidavit is
23 presented to the Court -- Tim Kelley -- who says "All of
24 our dealings and contact with Mr. Rosa dealt with trying
25 to arrange and schedule depositions of Fagen's people in

11

1 the Minnesota case, not this case."

2 And then contrary to what he said in his
3 initial e-mail, he didn't go ahead and notice Ron
4 Fagen's deposition in the Idaho case. If he had, of
5 course, we would have had notice, and we would have been
6 able to deal with it in some manner.

7 And so, basically, we've had no information,
8 no request, no attempt to set or schedule any
9 depositions knowing that the written discovery is
10 responded to timely by April 25th -- although, he didn't
11 know it until May 25th -- and knowing that he's been
12 referred to other counsel and knowing summary judgment
13 is coming down the road in four months.

14 So if that isn't a clear record of
15 diligence -- lack of diligence, you know, I don't know
16 what would be.

17 And you couple that with what happened
18 before -- I had to get Your Honor's order to compel from

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19 discovery I served in October, that I didn't finally get

20 until sometime in February, or March. There's been
21 withdrawal, withdrawal of withdrawal.

22 And, you know, there's just -- it's very
23 frustrating. I'm sure it is for the Court.

24 And I typically don't -- you know, I refrain
25 from criticizing counsel.

12

1 But I think under the Supreme Court's
2 guideline and case law and authorities here, he's not
3 been diligent pursuing discovery, and he substantively
4 doesn't make the showing required by Rule 56(f). It
5 just isn't there.

6 THE COURT: All right. Mr. Rosa, any response?

7 MR. ROSA: Oh, quite a bit, Your Honor, but I'll
8 try to keep it limited.

9 I think counsel, with all due respect, is
10 speaking out of both sides of his mouth in the sense
11 that there has been a referral to Fagen's Minnesota
12 counsel for the purposes of procuring depositions.
13 Fagen's counsel in Minnesota has engaged in what I would
14 consider to be a tremendous amount of gamesmanship.

15 The affidavit -- or excuse me -- the
16 declaration that I filed with the Court on my own behalf
17 in support of the Rule 56(f) motion contains

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18 correspondence between Fagen's counsel and myself

19 regarding depositions in both matters. And as of today,
20 we are still trying to work out deposition dates. And I
21 have warned Fagen's counsel in Minnesota that there will
22 be a motion to compel brought there, and, if necessary,
23 it will be brought here.

24 However, it's, I think, somewhat contradictory
25 to refer me to Minnesota counsel whom -- or from whom

13

1 Mr. Goodell and his office take orders in this case and
2 then to say that "Oh, we don't know what's going on."
3 That's an internal communication issue between
4 Mr. Goodell's office and Fagen's Minnesota counsel that
5 I really have no control over.

6 The fact of the matter is Mr. Goodell has been
7 on notice of our desires to take the depositions in this
8 whole set of cases for some time now, and we have not
9 been able to obtain dates from Fagen. And so the time
10 has come to provide the Court with a motion to compel,
11 based on our overwhelming backed attempts to schedule
12 those in this case and with consideration to parties'
13 availability.

14 And in light of that, I do believe that there
15 has been diligent pursuit of discovery.

16 Mr. Goodell's recitation of all of the long

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17 history of this case is accurate to a point. I think

18 I've informed the Court that I've had difficulty dealing
19 with my client in earlier stages of discovery, due to
20 some illnesses and some other issues. And we have done
21 the best that we can do to get as much information
22 exchanged in the discovery process, and there has been
23 discovery exchanged.

24 And just one final point -- it's of cursory
25 significance. But I don't like the accusation regarding

14

1 discovery had been sitting in my post office box for a
2 month. I overlooked receipt of those responses. I
3 found them, and Mr. Goodell's office was very kind
4 enough to send a flash drive over with the documents
5 that were produced. But I don't appreciate the
6 intimation that was in my post office box for a month.

7 THE COURT: All right.

8 MR. ROSA: So that aside, Your Honor, I would
9 respectfully ask the Court for a continuance so that we
10 can conduct the discovery we are entitled to and which
11 Fagen itself has denied us but for --

12 MR. GOODELL: Your Honor, if I may have one point
13 that's not in the briefing? I think it's important
14 procedurally for the showing for Rule 56(f).

15 THE COURT: Quickly, please.

17 Mr. Rosa submitted declarations only. He has
18 not submitted affidavits. This is not federal court,
19 and the Idaho rule requires affidavits. What he has
20 submitted are declarations. They're unsworn,
21 un-notarized written statements. They're not in the
22 form required by Idaho Rule of Civil Procedure 56(f).

23 MR. ROSA: And, Your Honor, I would respectfully
24 submit that opposing counsel has not read the recent
25 revisions to the rules permitting the use of

15

1 declarations, I believe, earlier last year.

2 THE COURT: All right.

3 MR. ROSA: The rules of civil procedure in the
4 State of Idaho now permits the use of declarations in
5 lieu of affidavits.

6 THE COURT: All right. Let me just kind of
7 review -- like I said, I've gone through this quite a
8 bit in trying to figure out how to handle the situation,
9 and let me just review some of the procedures here.

10 In this case, it was initiated in February
11 in -- exactly February 8th of 2013, the complaint was
12 filed. Mr. Rosa filed an appearance on September 3rd of
13 2013. There was, by stipulation, an amendment to that
14 complaint that was filed on December 9th of 2013, and an

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15 answer was filed on the same day.

16 In January of 2014 -- and, in particular, on
17 the 9th of that month -- in a status conference,
18 Mr. Rosa informed the Court of his intention to withdraw
19 from the case, due to some conflicts he was having with
20 his client. On the 14th of January of this year,
21 Mr. Rosa then filed the motion to withdraw.

22 In January -- on January 23rd of 2013, the
23 plaintiff filed a motion to compel. On January 28th of
24 2014, the motion was granted, compelling the discovery
25 in this matter regarding the plaintiff's motions in that

16

1 case.

2 At that point, I denied the motion of Mr. Rosa
3 to withdraw because of some procedural defects in
4 service upon his client.

5 Mr. Rosa renewed that motion to withdraw on
6 February 10th of 2014. At a status conference on
7 March 24th of 2014, Mr. Rosa withdrew that motion to
8 withdraw as counsel.

9 At that point in time, this Court then set
10 dates based upon the representations of counsel that
11 they were going to seek motions for summary judgment,
12 and I set a date for today for summary judgment hearings
13 and directed the parties that they proceed so that they

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14 could meet the statutory -- or the rule requirements in

15 having that date for summary judgment motions.

16 As indicated in the arguments here today and
17 in the pleadings, on Sunday, May 25th, which was the
18 Memorial Day weekend, Mr. Rosa asked for Mr. Goodell to
19 confirm a date within a time range for a deposition. As
20 indicated, two days later, Mr. Goodell's paralegal
21 directs Mr. Rosa to contact Minnesota counsel to
22 schedule the depositions of Fagen.

23 I do have some concerns with that direction,
24 where the counsel that Mr. Rosa was referred to neither
25 are licensed in Idaho, based upon this Court's review of

17

1 the Desk Book, the Idaho State Bar Desk Book, and are
2 not attorneys of record in this case.

3 The Court does recognize, based upon the
4 arguments and the pleadings, that Mr. Rosa is involved
5 in a Minnesota case involving the parties in this case,
6 which is a separate action and not related to this case,
7 and that Mr. Rosa has had dealings and continues to deal
8 with the attorneys that Mr. Goodell's paralegal directed
9 that he contact.

10 On June 11th, Mr. Rosa contacts the Minnesota
11 counsel by e-mail. On June 27th, the plaintiff files
12 its motion for summary judgment in this matter.

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13 On July 10th of 2014, the defendant files an

14 opposition to the motion for summary judgment and a
15 motion and request for a continuance. In the motion to
16 continue, Mr. Rosa requests -- or sets two bases for
17 that motion, the first being that discovery is not
18 concluded and that the defendant -- or that the
19 plaintiff in this case refused to confirm dates for
20 depositions and, two, that Exergy's witness,
21 Mr. Shively, had identified facts that have to be
22 explored.

23 In the e-mails with the Minnesota attorneys,
24 Mr. Rosa, on June 17th, 2014, notices a deposition and,
25 apparently, from the response to the e-mail -- or from

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1 that e-mail, had provided a notice sometime the week of
2 June 9th of 2014. Mr. Rosa was informed that counsel
3 was not going to be available and would not be available
4 until after July 9th.

5 The e-mails in that first round do not mention
6 any of the Idaho cases. And there's basically a
7 challenge from the Minnesota attorney in that e-mail
8 that he should -- if Mr. Rosa wasn't happy, to file a
9 motion to compel. And in reading that e-mail, it
10 appeared that he was discussing that he should file that
11 motion to compel with the court in the Minnesota matter.

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12 On July 2nd, there's more e-mail

13 correspondence, and on July 9th, there's more e-mail
14 correspondence and no discussion or mention of the Idaho
15 cases.

16 On July 9th of 2014, there's then again
17 another e-mail between Mr. Rosa and the Minnesota
18 attorneys, where Mr. Rosa is apparently quite angry with
19 what is happening there and indicates in that e-mail
20 that it may have impact and prolong the Idaho
21 litigation. But it is apparent in that e-mail that he
22 is also addressing the other cases in this case -- the
23 Minnesota case in these matters.

24 So when I go through this and I see the issues
25 that are going on, there's two concerns.

19

1 This matter has been pending for over a year,
2 and, apparently, no depositions have been taken. Part
3 of that, I understand, was due to Mr. Rosa's problems
4 with his client. Part of that is probably due to
5 counsel in Minnesota -- its unavailability.

6 There is no evidence about any obstruction
7 issues, like that are being asserted, only that, during
8 this e-mail correspondence in June, that the attorney,
9 this Keith -- I think was his first name -- was out of
10 the country for a significant period of time between

12 This Court has no further correspondence
13 between Mr. Rosa and Mr. Goodell trying to meet and
14 confer regarding other availability dates.

15 In addition, there's been no motion to compel
16 filed in this matter to compel a deposition to be done
17 in this case.

18 So there appears to have been sufficient time
19 to conduct the discovery that's necessary.

20 I also say that in lieu of the fact that, even
21 though there's been no depositions, the defendants filed
22 a motion for summary judgment themselves.

23 Furthermore, when I look at Rule 56(f), the
24 rule states that "should it appear from the affidavits
25 of a party opposing the motion that a party cannot, for

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1 reasons stated, present by affidavit facts essential to
2 justify the party's opposition, the court may refuse the
3 application for judgment or may order a continuance to
4 permit affidavits to be obtained of depositions to be
5 taken or discovery to be had or may take such other
6 order as is just," end quote.

7 In the declaration of Mr. Shively, on page 2
8 paragraph 3, he states "I understand that" -- quote, "I
9 understand that Fagen, Incorporated, has sought summary

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10 judgment on the basis of breach of the Engineering,

11 Procurement, and Construction agreement between it and
12 Exergy Development Group of Idaho, LLC.

13 "Given my knowledge of the project, its
14 timeline, the relevant critical path of development
15 items, and the ultimate end result of Fagen's work,
16 there appears to be a significant discrepancy between
17 the billing tendered by Fagen, Incorporated, for the
18 work on the EPC and the amount and quality of work
19 undertaken.

20 "Further inquiry into this issue is needed in
21 order for the correct amount due (which I understand to
22 be the damages sought by Fagen in this matter) to be
23 ascertained."

24 Paragraph 4: "In addition, I am aware that
25 the last few months of Fagen's involvement on the

21

1 project did not consist of any substantive work or
2 improvements on the land in question. There appears,
3 therefore, to be a discrepancy between the billing
4 records submitted by Fagen in support of its claim and
5 the true facts of what work was (or was not) undertaken
6 and whether such work did (or did not) constitute
7 compensable work under the terms of the EPC."

8 Paragraph 5: "I am also aware that Fagen

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9 structured the schedule of services to be tendered over

10 a longer period of time than is typical for such a
11 project. This modification appears to have been
12 consistent with the work undertaken by Fagen, which were
13 repetitive, arbitrary, and compulsory activities. This
14 will, I believe, affect the true amount due to Fagen for
15 its services under the EPC," end quote.

16 Part of my concern here is, when I read that
17 declaration in support of the motion, it appears to me
18 that Mr. Shively would have sufficient information,
19 based upon what he's giving here, to review the
20 discovery that's already been done to make an opinion
21 that could constitute a material issue of fact,
22 therefore, defeating the motion for summary judgment.

23 But he doesn't tell me anything more than what
24 I've just read to you. They're kind of conclusory
25 statements and hypotheses apparently based on some type

22

1 of information that he already has.

2 And so I've not been provided with any
3 information that would show that additional discovery is
4 needed in order to contradict the motion for summary
5 judgment.

6 So based upon those findings, the Court is
7 going to deny the request for a continuance, and we'll

9 matter.

10 Again, gentlemen, as I've indicated, I've read
11 the briefing and the materials provided.

12 Mr. Goodell, on your motion for summary
13 judgment, you may be heard.

14 MR. GOODELL: Thank you, Your Honor.

15 We have submitted voluminous materials, and I
16 think it's a simple breach of contract case. I think
17 the contracts have been presented to the Court, and the
18 affidavits, citing the pertinent excerpts that are
19 operative and important. The billing and the invoices
20 in the documents have been submitted as well and shows a
21 monthly calculation of the period that work was being
22 done on the project on December 11th through July of
23 2012 and the billing documents that support that tied to
24 the contract documents as to the scheduling and
25 assessment of the work.

23

1 And so the total amount due under the
2 affidavits, particularly, of Mr. Bormann, the project
3 manager, and also the lady -- the affidavit of
4 Lonnie Anderson -- Lori Anderson, rather, support the
5 amount due of \$848,000 and change that has been
6 requested.

8 have a breach by nonpayment. We think we have the work
9 that was performed, as authorized under those -- I
10 always forget the name -- the LNTPs, which is the
11 Authorization for Work Nos. 1 to 2, with a directive and
12 the approval to go ahead and start doing the work. And
13 so they did that.

14 And so the billings, you know, follow for that
15 work being done. And the work was done in the time
16 frame that I've mentioned. And the certificates --
17 application certificates of payment is the form of
18 submission as an invoice that were submitted over that
19 time frame for the work that was being done.

20 And it's supported by Mr. Bormann's affidavit.
21 The contracts are Exhibits A to E. It's tab 9 of the
22 book. And Lori Anderson's affidavit is tab 5 of the
23 book, with the supporting Exhibits A through G as
24 essentially the invoices.

25 The work done was authorized, as I say,

24

1 December 11 to July 12 under those LNTPs No. 1 and
2 No. 2, and work continued until the July 30, 2012,
3 e-mail to cease work from Mr. Carkulis to
4 Jennifer Johnson -- and her affidavit has got that
5 exhibit attached; it's in tab 6 -- and is the directive

7 And the reason work was stopped, as stated in
8 Mr. Carkulis's affidavit, was difficulties arising at
9 the Idaho Public Utility Commission and with FERC over
10 the approvals necessary and incidental to this project
11 being able to go online and the necessary regulatory
12 approvals. It had nothing to do with any work that
13 Fagen was doing.

14 So by reason of Mr. Carkulis's direction to
15 stop work given in that July 30, 2012, e-mail, Fagen
16 stopped work and billed for what had been done.

17 So their work was authorized to commence under
18 those LNTPs 1 and 2. They were directed to stop for
19 reasons unrelated to their work. And they billed for
20 the work that they did on-site. And never, not once,
21 either in the July 30, 2012, e-mail directing them to
22 stop work did Mr. Carkulis or anybody from Exergy ever
23 say "There's a problem with your work." Quite clearly,
24 they stopped work for unrelated reasons.

25 So Fagen, of course, has people, men,

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1 equipment on-site working during those several months;
2 relies on the contracts; relies on the billings pursuant
3 to those contracts; the work authorized to commence;
4 stopped work when directed to stop; and seeks payment,

6 And if you have any questions, of course, I'm
7 happy to try to answer them, but I think that the record
8 here in support of this simple breach of contract action
9 is very well established.

10 And Mr. Carkulis, as well as Mr. Shively,
11 Your Honor, submitted an affidavit in support of the
12 Exergy defendants summary judgment motion, which seems
13 to talk quite a bit about what he knows about the
14 project.

15 So in addition to Mr. Shively, as Your Honor
16 has already reviewed and discussed, I think the same is
17 true with Mr. Carkulis, as evidenced by his affidavit
18 filed in support of the other motion, that there is a
19 capability, knowledge, and involvement by both of them
20 to have submitted something in opposition. And even in
21 his affidavit, he says he's going to submit something in
22 opposition but doesn't.

23 THE COURT: All right. Mr. Rosa?

24 MR. ROSA: Your Honor, I don't think there's a
25 dispute as to the existence of the contract. I don't --

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1 from my client's perspective, I don't believe there's a
2 question as to a breach of that contract where payment
3 is concerned.

5 to the damages that Fagen is entitled to. Those issues
6 have been touched upon in Mr. Shively's declaration.
7 And contrary to the assumptions of Fagen's counsel,
8 these are issues that still need to be explored in
9 greater depth, notwithstanding how little or how much
10 any party assumes Mr. Shively reviewed the documents
11 submitted in support of the motion for summary judgment.

12 And so it would be our position that, at the
13 very least, there is a triable issue of material of fact
14 as to the damages: the time spent on the job, the
15 amount of work done in the final months leading up to
16 the termination of Fagen's work on the project site, and
17 the genuineness of the billing. And these are things
18 that we intend to flesh out, if given the opportunity.

19 Now, I understand that the Court has denied
20 the Rule 56(f) motion for a continuance. However, I do
21 believe there is sufficient evidence in the record to
22 support perhaps a finding of entitlement to partial
23 summary judgment as to breach in Fagen's favor.

24 Damages, on the other hand, are another matter.

25 And so with the opposition that, if this Court

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1 is inclined to grant summary judgment in Fagen's favor,
2 that grant be limited to the issue of breach and that we

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3 proceed to trial on the issue of damages. We will

4 present the evidence that we need to present, and we
5 will take the depositions we need to take. And a full
6 and correct record of that dispute can be had if we
7 proceed to trial.

8 I do not believe that Fagen has made a showing
9 that there's a lack of triable fact when it comes to
10 damages. And although the affidavit -- or excuse me --
11 declaration of Mr. Shively was intended to be focused on
12 the deficiencies that give rise to need further
13 discovery, those statements also indicate a dispute as
14 to -- not the breach, per se, but how much Fagen is
15 entitled to for its efforts, given certain conduct that
16 has taken place, or, in the instances of work
17 undertaken, not taken place.

18 So it's important for us, from our
19 perspective, Your Honor, from my client's perspective,
20 to be able to put on evidence after further discovery,
21 which, I believe, we've shown an entitlement to, if not
22 to both the summary judgment motion, then certainly to
23 oppose complete summary judgment.

24 And so I would respectfully ask the Court
25 that, if it is inclined to grant motion for summary

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1 judgment, that the grant be partial and that the parties

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2 be allowed to continue and there be a trial held as to

3 damages.

4 THE COURT: Mr. Goodell, any response?

5 MR. GOODELL: Well, Your Honor, there's
6 Mr. Carkulis, who is the president and principal, in
7 paragraph 12 of his declaration filed in support of
8 defendants' motion for summary judgment, at
9 paragraph 12, refers to some of these issues over work
10 done and time and billings and so forth, as Mr. Shively
11 did, as Your Honor referred to earlier.

12 And he says in that paragraph 12, quote, "The
13 defendants also contest the amount due for the services
14 rendered by Fagen with respect to the project site.
15 These issues will be presented to the Court in depth in
16 the defendants' response to Fagen's recently filed
17 motion for summary judgment," closed quote.

18 Nothing further was submitted to contest those
19 issues by Mr. Carkulis or Mr. Shively. And if such was
20 not done in reliance or on the assumption that the
21 Rule 56(f) motion was going to be granted, it was a big
22 assumption and, I submit, done in error. But it sort of
23 assumes that they don't have to do anything on the
24 merits to oppose Fagen's summary judgment motion,
25 despite the voluminous specific facts and documents and

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1 affidavits submitted in support of it.

2 And so if there is a basis to dispute damages,
3 as counsel suggests, they didn't do it, and so the
4 record before the Court has nothing but conclusory
5 statements or speculation or assumption of what they
6 will do but have not done.

7 And so I think that situation is somewhat
8 addressed in -- well, I just think they have failed to
9 come forward, as is their burden, to establish if
10 there's a triable issue of fact based upon admissible
11 evidence or competent expert opinion testimony, with the
12 necessary foundation.

13 All they've asserted are some general
14 conclusory, pleading-like statements, and I think they
15 do so at their peril. And with four months' notice and
16 with 30 days' notice of our timely filing of this
17 motion, they had 30 days to come up with another
18 affidavit so that they could in-depth submit to this
19 Court evidence which they relied on in raising a triable
20 issue of fact as to damages, didn't do it.

21 THE COURT: All right. Mr. Rosa, we've discussed
22 your motion for summary judgment. I think, based on our
23 discussion and the pleadings, that motion has been
24 resolved; is that correct?

25 MR. ROSA: Your Honor, it is -- is it my -- am I

1 correct in assuming that the motion for summary judgment
2 is granted?

3 THE COURT: I believe so, based on the response
4 that Mr. Goodell made to me.

5 MR. ROSA: Okay. Very good. That's all I wanted
6 to clarify.

7 Would the court be willing to indulge me just
8 a few moments of rejoinder to what Mr. Goodell just
9 stated? I promise not to waste anybody's time. I just
10 have a few brief comments, if the court would allow it.

11 THE COURT: Well, very quickly, but then -- we're
12 dealing with Mr. Goodell's motion; so I give him the
13 last say.

14 MR. ROSA: Understood, Your Honor.

15 As discovery in this matter has not yet
16 closed, and regardless of whether we're entitled to a
17 Rule 56(f) continuance, we still have the right to
18 discovery. And I believe that, while the declaration of
19 Mr. Shively may not contain the same level or depth of
20 detail that -- of Fagen's moving papers and supporting
21 affidavits may contend, there is showing of a dispute as
22 to the issue of damages.

23 However slight it might be, I think the case
24 law in this jurisdiction and this court's conclusion,
25 that, whether it's a scintilla of evidence or something

1 greater, that there is, in fact, a triable issue of
2 material fact as to damages.

3 Given Mr. Shively's stated expertise and, you
4 know, his review of the documents, there have been, you
5 know, certain items that require cross-examination in
6 order to come up with the correct amount that is owed to
7 Fagen for its services.

8 And so on that basis, you know, I would
9 reiterate our request for a partial motion for summary
10 judgment, with trial to be reserved for the issue of
11 damages.

12 THE COURT: All right. Mr. Goodell, do you have
13 any response?

14 MR. GOODELL: Well, I think Your Honor has already
15 characterized Mr. Shively's affidavit as conclusory and
16 not supplying the information he said he might be able
17 to supply. And I guess the same thing is true of
18 Mr. Carkulis. And so I think that's adequate rejoinder.

19 THE COURT: Okay. All right. I will take the
20 matter under advisement. You will have a decision
21 shortly.

22 So if there's no other issues at this point,
23 we will be in recess.

24 Thank you, Mr. Rosa.

25 MR. ROSA: Thank you, Your Honor. Thank you for

1 allowing me to appear by telephone as well.

2 THE COURT: Yes, sir.

3 MR. ROSA: I appreciate it.

4 THE COURT: Mr. Goodell, thank you.

5 MR. GOODELL: Thank you, Your Honor.

6 (The hearing concluded at 1:57 P.M.)

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REPORTER'S CERTIFICATE

I, DANIEL E. WILLIAMS, CSR No. 686, Certified Shorthand Reporter, do hereby certify that the foregoing transcript, consisting of Pages 1 through 33, inclusive, is a true and accurate record of the proceedings had on the date and at the time indicated therein as stenographically reported by me to the best of my ability.

IN THE WITNESS WHEREOF, I have hereunto set my hand this 13th day of August 2014.

DANIEL E. WILLIAMS, CSR, RPR

DISTRICT COURT
TWIN FALLS, CO. IDAHO

2014 AUG 19 AM 10:11

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BY _____ CLERK
_____ DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576
CV-2013-26

**PLAINTIFF FAGEN, INC.'S
MEMORANDUM OF LAW IN
RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

INTRODUCTION

Defendants *unnecessarily* moved for summary judgment on Fagen, Inc.'s ("Fagen") mechanic's lien claims and all claims against XRG Development Group of Idaho, LLC ("XRG Dev."). In Fagen's Motion for Summary Judgment, Fagen informed the Court and Defendants that Fagen elected to withdraw its mechanic's lien claims and all claims against XRG Dev. Fagen's Motion for Summary Judgment, p. 3, ¶10, note 5. Fagen elected to withdraw its mechanic's lien claims because Defendants previously disclosed that Defendants Rogerson Flats

PLAINTIFF FAGEN, INC.'S MEMORANDUM OF LAW IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - pg. 1

Wind Park, LLC, Cottonwood Wind Park, LLC, Salmon Creek Wind Park, LLC, Deep Creek Wind Park, LLC and Notch Butte Wind Park, LLC (collectively, the "Project Entities") breached the leases for the real property that are subject to Fagen's mechanic's liens and that the leases had been terminated. Because the leases were breached and terminated, Fagen determined there likely is little monetary benefit in continuing to pursue its mechanic's lien claims.

In their motion, Defendants again state that all of the leases were breached and terminated. Declaration of James T. Carkulis ("Carkulis Dec."), ¶10. Fagen, however, is compelled to file a brief response to Defendants' motion to correct factual misstatements contained therein. Specifically, Defendants argue that Fagen's mechanic's liens fail as a matter of law because Fagen did not have a contractual relationship with the Project Entities. See Defendants' Memo., p. 7; Carkulis Dec., ¶4. That is false.

I. THE PROJECT ENTITIES CONTRACTED WITH FAGEN.

Defendants admit that the Project Entities hold or held leasehold interests in the parcels of land that are subject to Fagen's mechanic's lien claims. Carkulis Dec., ¶¶6-8. Defendants do not argue that Fagen failed to properly perfect its mechanic's liens. Rather, Defendants argue that Fagen has no right to the mechanic's liens because "there is no privity of contract between the Lessee [Project Entities] and Fagen." Defendants' Memo., p. 7.

That is false. Fagen entered into contracts with all of the Project Entities. For example:

1. Notch Butte Wind Park, LLC:

(a) On July 25, 2011, Fagen, Exergy Development Group of Idaho, L.L.C. ("Exergy") and Notch Butte Wind Park, LLC entered into a Limited Notice to Proceed (the "Notch Butte LNTP #1"). Affidavit of Brad Bormann ("Bormann Aff."), Ex. B.¹

¹ Fagen filed the Affidavit of Bradley Bormann with its summary judgment motion.

(b) On December 14, 2011, Fagen, Exergy, and Notch Butte Wind Park, LLC entered into a second Limited Notice to Proceed ("Notch Butte LNTP #2). *Id.* at Ex. C.

2. Cottonwood Wind Park, LLC, Deep Creek Wind Park, LLC, Rogerson Flats Wind Park, LLC and Salmon Creek Wind Park, LLC:

(a) On October 9, 2011, Fagen, Exergy, Cottonwood Wind Park, LLC, Deep Creek Wind Park, LLC, Rogerson Flats Wind Park, LLC and Salmon Creek Wind Park, LLC entered into a Limited Notice to Proceed. *Id.* at Ex. E.

(b) On December 14, 2011, Fagen, Exergy, Cottonwood Wind Park, LLC, Deep Creek Wind Park, LLC, Rogerson Flats Wind Park, LLC and Salmon Creek Wind Park, LLC entered into another Limited Notice to Proceed. *Id.* at Ex. F.

In each of the Limited Notices to Proceed, Exergy and the Project Entities authorized Fagen to perform certain work. *Id.* at Ex. E. Accordingly, Defendants cannot plausibly assert that Fagen has no contract with the Project Entities when the Project Entities signed multiple contracts authorizing Fagen to perform work.

Fagen, however, as it stated in its summary judgment motion, will not pursue its mechanic's lien claims further in reliance on Defendants' representation that "[e]ach of the Project Entity Defendants breached their respective lease for non-payment and all leases have been terminated." Carkulis Dec., ¶10. Fagen sees little monetary benefit to it in foreclosing on the Project Entities' leasehold interests and stepping into leases that are in default or "possibly" terminated.

CONCLUSION

For the foregoing reasons, Fagen elects not to further pursue its mechanic's lien claims and the claims against Defendant XRG Development Partners, LLC. As a result, the only pending motion before the Court is Fagen's summary judgment motion on its breach of contract claims.

DATED this 19th day of August, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

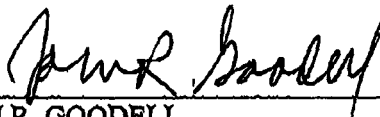
I HEREBY CERTIFY that on the 19th day of August, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
Attorney at Law
P.O. Box 1605
Boise, ID 83701
Attorney for Exergy Development Group of Idaho, L.L.C.; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC; Cottonwood Wind Park, LLC; Salmon Creek Wind Park, LLC; Deep Creek Wind Park, LLC; and Notch Butte Wind Park, LLC

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- keith.moheban@stinsonleonard.com


JOHN R. GOODELL

132

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2014 AUG 19 AM 9:26

BY _____ CLERK

_____ SP DEPUTY

Angelo L. Rosa (ISB No. 7546)
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants

ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
ROGERSON FLATS WIND PARK,)
LLC, an Idaho limited liability company,)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
)
Defendants.)
_____)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

**REPLY TO PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
EX PARTE MOTION FOR RULE
56(F) CONTINUANCE AND
MOTION FOR ORDER
SHORTENING TIME FOR RULING
THEREUPON**

REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' EX PARTE MOTION FOR RULE 56(F) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON - Page 1

Fagen's opposition to the present Ex Parte Application is both incorrect and disingenuous.

It has been Fagen's counsel who has persistently delayed in offering a witness for deposition despite a dialogue that has lasted for months. The emails attached to the Declaration of Moving Defendants' counsel confirm this. Furthermore, the earliest date that Fagen could make its witness available was 25 August. So, stripped down to a more basic wording, Fagen's counsel is arguing "you didn't move to compel our witness' deposition so it's your problem that the deadline falls before the date we agreed to make our witness available." This is precisely the sort of gamesmanship that the revisions to the Rules of Civil Procedure are intended to avoid.

Moreover, Fagen's counsel's citation to the Bingham County Court's ruling that a delay in pursuing discovery occurred is both misplaced and disingenuous. Fagen's counsel passed its responsibility for scheduling depositions to his betters in Minnesota but was chastised for doing so by the court in Bingham County, then (curiously) shortly thereafter Minnesota counsel entered appearances pro hac vice in the present consolidated matter. However, it is inapposite for Fagen to claim that this Court should follow the ruling of the Bingham County court in denying Moving Defendants the right to take discovery when it has been Fagen who has moved the goalposts on this issue. As an aside, Moving Defendants are preparing to appeal the decision of the Bingham County Court as to the denial of their Rule 56(f) motion as that denial essentially punishes Moving Defendants from acting in good faith without burdening the Court with a motion to compel and condones the intentional delays and other gamesmanship that Fagen's counsel has deliberately engaged in.

Finally, as stated in Moving Defendants' moving papers, there is no prejudice that will inure to Fagen if the requested continuance is granted but there will be substantial injury to

REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' EX PARTE MOTION FOR RULE 56(F) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON – Page 2

Moving Defendants if the motion is not granted. This Court is asked to not condone the gamesmanship that Fagen has engaged in and to allow the brief continuance requested, which can be accommodated easily within the existing briefing schedule for this Motion.

DATED: 19 August 2014

Respectfully Submitted,

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' EX PARTE MOTION FOR RULE 56(F) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON – Page 3

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 19 August 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

**REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' EX PARTE MOTION FOR
RULE 56(F) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR
RULING THEREUPON – Page 4**

COMES NOW Defendants, ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC ("Moving Defendants") by and through counsel of record and hereby file their Memorandum in Opposition to the Motion of Fagen, Inc. for Summary Judgment.

I.

INTRODUCTION

Plaintiff, Fagen, Inc. ("Fagen") is seeking summary judgment on an Engineering Procurement and Construction Agreement ("EPC") that was executed without a complete agreement or terms being formulated in December 2011, was not yet completed as of mid-2012, and is backed by billings that Exergy has demonstrated do not reflect the true work, which was far less substantive than Fagen claims. Accordingly, Moving Defendants are entitled to affirmative defenses of impossibility and unclean hands as asserted in their Answer to Fagen's First Amended Complaint, and a finding that Fagen is not entitled to summary judgment.

II.

ARGUMENT

Moving Defendants do not dispute the legal standard stated in Fagen's moving papers. However, Moving Defendants would augment that statement with the additional requirement that the burden of proving the absence of material facts is upon the moving party. *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003). Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to show that a genuine issue of material fact does exist. *Id.* A non-moving party must come forward with evidence by way of

MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT – Page 2

affidavit or otherwise which contradicts the evidence submitted by the moving party, and which establishes the existence of a material issue of disputed fact. *Id.*

Here, there is a triable issue of material fact as to the element of damages. There is also clear evidence of unclean hands and impossibility of performance, as set forth in the Declaration of James T. Carkulis, filed concurrently herewith. This evidence shows that there is no way that Fagen can claim the absence of a triable issue of material fact as to each and every element of its breach of contract claim. By virtue of the Declaration of James T. Carkulis and the exhibits thereto, Moving Defendants contend that they have met their burden of establishing the existence of a triable issue of material fact as to each and every element of its contract claim. Fagen is not the innocent aggrieved party that it purports to be. Fagen is suing on a contract that was contrived for the purposes of qualifying for a federal cash grant applicable to renewable energy projects, then undertook work of a minimal nature on the project sites while deliberately overstating the magnitude of that work. Even if this Court were to find that there are no disputable issues with the formation of the EPC, there is most certainly a substantive dispute over just how much Fagen has been damaged and what bearing its own improper conduct should have on the overall calculus of damages Fagen may be entitled to. *Gen. Auto Parts Co., Inc. v. Genuine Parts Co.*, 132 Idaho 849, 859 (1999) (stating that “Damages must be proven with reasonable certainty.”). These are issues reserved for trial under well-established law.

There is no way Fagen can avoid the evidence proffered to this Court through this opposition which show that Fagen overbilled Exergy for work done, sued on its contract after being complicit in the fact that Exergy’s performance was impossible due to economic impossibility, and further acted in bad faith by filing a lien foreclosure claim that is fashioned out

MEMORANDUM IN OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT – Page 3

of whole cloth. Even in the presence of a technical breach of the EPC by Exergy, Fagen is not entitled to the damages it claims.

III.

RULE 56(F) ISSUES

Moving Defendants have filed a Motion under Idaho Rule of Civil Procedure 56(f) on an ex parte basis due to the fact that Plaintiff has not made its corporate representative available for deposition until 25 August 2014. The Court has refused to rule on the Motion as of the date of this Memorandum and so this submission is made with the express reservation of any and all rights to supplement (and/or to seek leave to supplement) the evidence proffered in opposition to Fagen's present Motion for Summary Judgment.

IV.

CONCLUSION

For the foregoing reasons, Moving Defendants respectfully submit that Fagen's Motion for Summary Judgment be denied in full or, in the alternative, that summary judgment be granted partially with the issue of damages reserved for trial.

DATED: 19 August 2014

Respectfully Submitted,



Angelo L. Rosa
Attorney for Plaintiff

132

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

Angelo L. Rosa (ISB No. 7546)
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

2014 AUG 19 PM 4:59

BY _____
CLERK

Attorney for Defendants

ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

SR DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
Plaintiff,)
vs.)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

ROGERSON FLATS WIND PARK,)
LLC, an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPME)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
Defendants.)

DECLARATION OF JAMES T. CARKULIS IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COMES NOW James T. Carkulis, and hereby declares and states as follows:

- 1. I am an individual residing in the State of Montana. I have personal knowledge of the matters attested to in this Declaration, except to those matters that are stated on the basis of belief.

Work Undertaken by Fagen

DECLARATION OF JAMES T. CARKULIS IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT – Page 1

2. The Engineering Procurement and Construction Agreement (“EPC”) was executed in December 2011 but was not yet a completed agreement. This occurred at the behest and knowledge of Fagen, who wanted to make sure that certain financial benefits would inure to the project.

3. The work undertaken by Fagen had two purposes, one short term and one long term. The short term purpose was to demonstrate that some work of a substantial nature has commenced before the end of 2011 in order to qualify for what is known as a “UST 1603 Cash Grant” which is a federal grant given to renewable energy projects who commence benchmark work by certain periods within a given tax year where the grant is available. The long term purpose was twofold with the primary task of performing continuous construction to adhere to the precepts of the UST 1603 Cash Grant requirements and the second consisting of the construction of the projects pursuant to the terms set forth in the EPC. Thus, to serve the short term purpose of the EPC, Exergy and Fagen executed a signature page(s) on the Idaho Six Winds projects before the end of 2011 to assist in qualifying for the UST 1603 Cash Grant. The EPC contract had been in preliminary final form, but many exhibits and final terms and conditions still to be worked out, a fact which Fagen acknowledged. A true and accurate copy of correspondence between Exergy and Fagen is attached and incorporated hereto as “Exhibit A”.

4. The site work that was completed in December 2011 consisted of cutting roads, beginning excavation of foundations, and grading turbine locations.

5. There was very little new work on the site that was completed during 2012. Essentially, a continuation (stretching-out) of the road cutting, foundation excavation,

and grading was performed at the sites. The activities amounted to arriving on site and running equipment, performing work at a pace much below what is typical or necessary. Fagen did so in order to attempt to satisfy the continuous construction requirement of the UST 1603 cash grant without actually putting in the time and money to work toward project completion. This is significantly different from the work detailed in the billing, which Fagen claims entitlement to payment for.

6. Evidenced by "Exhibit B", as of July 2012, EPC contracts were still being finalized. A true and accurate copy of correspondence between Exergy and Fagen on this subject is attached and incorporated hereto as "Exhibit B".

7. Due to Fagen's lack of providing the necessary development credit for the interconnection of the projects led to power contract extension contract issues encountered with the Idaho Public Utilities Commission, and combined with other regulatory difficulties resulting in a moratorium on bank financing on wind energy project projects in Idaho. In late July 2012, I spoke with Ron Fagen and he requested a letter instructing Fagen to stop work on the projects subject to the EPC. Fagen acknowledged that performance would be impossible for Exergy. A letter in e-mail form was tendered by me to Fagen in compliance with Fagen's request. A true and accurate copy of correspondence between Exergy and Fagen is attached and incorporated hereto as "Exhibit C".

8. Fagen considered themselves partners in these projects so one of Fagen's intentions in undertaking the EPC was to qualify for the aforementioned cash grant. When project viability become uncertain, Fagen set up a scenario enabling Fagen to sue for breach of contract despite the economic impossibility.

**DECLARATION OF JAMES T. CARKULIS IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT – Page 3**

LienIssues

9. Although the lien foreclosure claims are disputed and Fagen has admitted they lack merit, it is important for the Court to understand the true purpose of those liens as Fagen and its counsel appear to have perpetrated a fraud upon this Court by alleging other than the true facts in its complaints filed in this action.

10. In early August 2012, approximately eight days after Exergy was requested by Fagen to issue a cease work on the projects, Fagen approached Exergy with the statement that the project sites shall be liened for the alleged purpose of satisfying certain bonding requirements and Fagen's bonding agent. Ron Fagen and/or Jennifer Johnson contacted me and requested that Exergy agree to such filing. Exergy was most reluctant to see this occur, did not specifically agree to such filing, but asked the liens be delayed one week due to pending Idaho Public Utility Commission action on the projects and also asked that if liens were forthcoming, that they be filed as to the correct entity.

11. To the best of my recollection, Fagen has already taken steps to filing the aforementioned liens at the time Exergy was contacted about this issue. I believe that Fagen's attempt to seek "permission phone call acknowledgement" was merely a ruse for the purposes of assuaging Exergy from engaging in a conflict regarding the liens.

QualityofWorkUndertaken

12. Fagen structured the schedule of services to be tendered over a longer period of time than is typical for such a project. This modification was abused by Fagen in that the work undertaken was repetitive, arbitrary, and compulsory activities that became abusive of the parties' intent. Furthermore, I am informed and believe and thereupon allege that the last few months of Fagen's involvement on the project did not consist of any

substantive work or improvements on the land in question. There appears to be a discrepancy between the billing records submitted by Fagen in support of its claims, and the true facts of what work was (or was not) undertaken and whether such work did (or did not) constitute compensable work under the terms of the EPC.

Summary

13. In summary Fagen overbilled Exergy for work done, sued after being complicit in the fact that Exergy's performance was impossible due to economic impossibility, and has further evidenced its approach of bad faith to these issues by filing a lien foreclosure claim that is fashioned out of whole cloth. Even in the presence of a technical breach of the EPC by Exergy, Fagen is not entitled to the damages it claims.

I testify under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED: 19 August 2014


James T. Carkulis

**DECLARATION OF JAMES T. CARKULIS IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT – Page 5**

From: KCarlton@fageninc.com [mailto:KCarlton@fageninc.com]
Sent: Saturday, December 31, 2011 3:58 PM
To: Tom Mortell
Cc: Elizabeth Woolstenhulme; James Carkulis; Paula Landholm Kluksdal; Richard Riley; jjohnson@fageninc.com
Subject: Re: Fw: EPC Signature Page

Tom,

Please see the attached signature page of Fagen, Inc. as the Contractor to the EPC Agreement for the Idaho Six Winds Project. Thank you and have a Happy New Year to you all.

Kate Carlton
 Vice President
 Corporate Counsel and
 Business Development
FAGEN, INC.
 3001 S. Lincoln Ave.
 Steamboat Springs, CO 80487
 970-879-8310 office
 320-226-2236 cell

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From: "Tom Mortell" <tmortell@hawleytroxell.com>
 To: <KCarlton@fageninc.com>
 Cc: <jcarkulis@exergydevelopment.com>, "Richard Riley" <riley@hawleytroxell.com>, "Paula Landholm Kluksdal" <pkluksdal@hawleytroxell.com>, <Elizabeth@exergydevelopment.com>
 Date: 12/31/2011 02:12 PM
 Subject: Fw: EPC Signature Page

Kate: Please see attached which is the signature page of the Six Winds EPC Agreement as signed by James on behalf of Exergy Development Group of Idaho L.L.C., the project owner.

Please send me Fagen's signature page.
Thank you. Tom

From: Tom Mortell
Sent: Saturday, December 31, 2011 12:54 PM
To: Tom Mortell
Subject: EPC Signature Page

[attachment "Static signature page Idaho Six Winds EPC.pdf" deleted by Kate Carlton/Fagen]

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

**EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

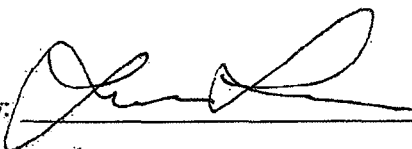
CONTRACTOR:

FAGEN, INC.

By: _____

Name:

Title:

By:  _____

Name: *Larry Lindeman*

Title: *Vice President - W.R.D.*

320-226-2236 cell

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From: "James Carkulis" <jcarkulis@exergydevelopment.com>
To: <KCarlton@fageninc.com>, "Elizabeth Woolstenhulme" <Elizabeth@exergydevelopment.com>
Date: 07/17/2012 04:23 PM
Subject: EPC

Kate:

The EPC and Reznick costing are two gating items for closing with BTMU.

Can you tell me where we are on these? I thought these were just about finished.

Thanks.

James



James T Carkulis
802 W Bannock, 12th Floor Boise, ID 83702
Office: 208.336.9793 | Mobile: 406.459.3013
jcarkulis@exergydevelopment.com
www.exergydevelopment.com

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TO THE ABOVE NAMED PARTIES AND THEIR COUNSEL OF REORD:

PLEASE TAKE NOTICE that Angelo L. Rosa (“Movant”), counsel for Defendants ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC (collectively, the “Defendants”) hereby withdraws Motion to Compel Deposition without prejudice and hereby requests that the hearing on said Motion, currently scheduled for 2 September 2014 before this Honorable Court, be vacated.

DATED: 25 August 2014

Respectfully Submitted,

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 25 August 2014 I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Keith Moheban
Timothy Kelley
STINSON LEONARD STREET, LLP
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

COMES NOW Defendants, ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. ~~MEMORANDUM DEVELOPMENT PARTNERS, LLC (MOVING DEFENDANTS)~~ by and through counsel of record and hereby file their Memorandum in Reply to Fagen, Inc.'s ("Fagen") Opposition their Motion for Summary Judgment ("Opp.").

I.

ARGUMENT

After dragging Moving Defendants through over one year of litigation, after several months passing since any document production took place, and after being given the opportunity to dismiss its claims, Fagen now "elects to withdraw its mechanic's lien claims and all claims against XRG Dev." Although Moving Defendants concur as to the lack of merit of Fagen's claims for lien foreclosure and a total lack of merit as to claims against XRG Development Partners, LLC, Fagen overlooks a few inescapable truths:

First, Fagen does not possess the latitude to unilaterally withdraw its claims, and certainly not after forcing Moving Defendants' to spend over one year and thousands of Dollars in attorney's fees and costs of suit defending those claims. Idaho Rule of Civil Procedure 41(a) sets forth the standard for dismissal of claims and states, in pertinent part:

... "an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever occurs first, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action...

"... Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper."

Id. R. Civ. P. 41(a)(1), 41(a)(2) (underscore emphasis added).

MEMORANDUM IN REPLY TO FAGEN, INC.'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT – Page 2

Fagen's determination "that there is little monetary benefit in continuing to pursue its mechanic's lien claims" (Opp. at p. 2) does not fall within any of the permitted bases for dismissing or withdrawing claims under the relevant Rules of Civil Procedure in this jurisdiction.

Second, Moving Defendants have not "unnecessarily moved for summary judgment" as Fagen contends. Moving Defendants had no notice of Fagen's purported "election" not to pursue those claims at the time they filed their present Motion for Summary Judgment. *See* Declaration of Angelo L. Rosa, filed concurrently herewith ("Rosa Decl.") at ¶ 3. However, even if Moving Defendants had notice of Fagen's purported election, that election is meaningless and is neither binding upon this Court nor obligates Moving Defendants in any way. This matter (due solely to Fagen's conduct) has progressed well past the point of dismissing claims voluntarily.

Third, the total lack of merit of Fagen's lien foreclosure claims and suit against XRG Development Partners LLC should come as no surprise to Fagen or its counsel, who have pursued litigation in that regard with neither factual nor legal justification. Several months ago, Moving Defendants, through counsel, reached out to Fagen in good faith offered instruction on the true facts justifying a withdrawal of those claims and then gave Fagen the opportunity to do so. Fagen rejected that offer. *See* Rosa Decl. at ¶ 2. Now, with remarkable (and wholly unjustified) arrogance, Fagen and its counsel have "elected" not to pursue those claims and dared to dictate to this Court that "the only pending motion before the Court is Fagen's summary judgment motion on its breach of contract claims."¹ Opp. at p.3. "Fagen's Law" does not govern this case. Idaho law

¹ While secondary to the fact that Fagen has conceded that its lien foreclosure claims lack merit, Fagen's representations to this Court that privity of contract exists between Fagen and the Project Entity Defendants in this case—by virtue of the existence of "Notices to Proceed"—is false. A "notice to proceed" is not a contract, but rather a letter of instruction allowing a contractor to undertake certain work pursuant to a contract. *See American Bar Association, The Construction Project: Phases People Terms Paperwork Processes*, at ABA-CONPR § 4.V.II. It is not a condition precedent to an owner's contractual obligation and its office is to "fix the date for the completion of the project and nothing more." *See, e.g. Ballenger Corp. v. City of Columbia*, 286 S.C. 1, 331 S.E.2d 365 (Ct. App. 1985). The only contract existing between any of the parties to this case was an Engineering and Procurement Contract ("EPC") between Fagen, Inc. and Exergy Development Group of Idaho, L.L.C. None of the Project Entity Defendants are contractually bound by the terms of that EPC.

governs this case. However, should Fagen stipulate to entry of a judgment of dismissal of the Moving Defendants and an award of the attorneys' fees and costs of suit in favor of Moving Defendants prior to the hearing on the present Motion, then the only pending motion before the Court will be Fagen's motion for summary judgment. Otherwise, Moving Defendants' motion shall stand as unopposed and, Moving Defendants respectfully contend, is appropriately granted on or before the hearing thereupon.

II.

CONCLUSION

For the foregoing reasons, Moving Defendants respectfully submit that Fagen's Memorandum of Law in Response to their Motion for Summary Judgment be deemed a non-opposition to said Motion and that Moving Defendants' pending Motion for Summary Judgment be granted.

DATED: 24 August 2014

Respectfully Submitted,



Angelo L. Rosa
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 24 August 2014 I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Keith Moheban
Timothy Kelley
STINSON LEONARD STREET, LLP
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed: _____

Angelo L. Rosa

COMES NOW Angelo L. Rosa, and hereby declares and states as follows:

1. I am an individual residing in Ada County, in the State of Idaho. I am over eighteen (18) years of age. I have personal knowledge of the matters attested to in this Declaration, except to those matters that are stated on the basis of belief.

2. I am counsel of record for the Moving Defendants in this action. Over the course of this case, I have attempted to meet and confer with counsel for Fagen, Inc., Mr. John Goodell, as to the lack of merit of Fagen's lien foreclosure claims and the lack of merit of any claims against XRG Development Partners LLC. In March 2014, I had an extensive dialogue with Mr. Goodell which resulted in Fagen refusing to dismiss. A true and correct copy of that e-mail exchange between Mr. Goodell and myself is attached and incorporated hereto as "Exhibit A."

3. My office did not receive a copy of Fagen's Motion for Summary Judgment or its Memorandum in Support of that motion until after Moving Defendants' Motion for Summary Judgment was filed in this case. However, I do not believe the receipt of that Motion and Memorandum would have affected Moving Defendants' decision to move for summary judgment in any way.

I testify under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED: 24 August 2014



Angelo L. Rosa

DECLARATION OF ANGELO L. ROSA IN REPLY TO FAGEN, INC.'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT – Page 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 24 August 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Facsimile
- Electronic Mail

Keith Moheban
Timothy Kelley
STINSON LEONARD STREET, LLP
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

Angelo L. Rosa, Esq.

From: John Goodell <jrg@racinelaw.net>
Sent: Thursday, March 13, 2014 12:06 PM
To: Angelo Rosa
Cc: Becky J. Harvey
Subject: Re: Fagen v. Exergy, et al. (Twin Falls) / Lien Foreclosure Claim

Angelo,

You have submitted no applicable legal authority to support positioning that mere voluntary forfeiture of leasehold interest affects in any respect valid lien previously attached to real property. Do so or no further consideration of the lien matter as unsupported argument.

Please advise if :

1. Exergy Dev grp of ID will stipulate to judgment for total amount principal and interest owing, costs, fees on contract claim; and
2. Judgment and decree of lien foreclosure of leasehold interests existing or once existing prior to voluntary forfeiture, plus fees and costs to foreclose; and
3. Additional fees of \$2500 for sanctions for on again/ off again motion to withdraw as counsel, and failure to timely comply with order compelling discovery and still insufficient response, despite disorganized "document dump." An additional letter will be forthcoming on specific deficiencies shortly.

Please respond by noon on Friday March 21st in writing. Absent agreement to such requests, they will be considered and appropriate motions filed.

In addition, as previously indicated, I am out of the office until 3/24 and do not anticipate further dialogue with you in the meantime.

Thank you.

John Goodell

Sent from my iPhone

On Mar 11, 2014, at 2:04 PM, "Angelo Rosa" <arosa@exergydevelopment.com> wrote:

John:

Let me try to explain this in the most straightforward way that I can:

1. Your client performed some work pursuant to a contract executed by Fagen, Inc. and Exergy Development Group of Idaho, L.L.C.
2. Fagen, Inc. did work solely at the instance of Exergy Development Group of Idaho, L.L.C.
3. Exergy Development Group of Idaho, L.L.C. does not, and never has, held an interest in the land parcels that your client has liened.
4. The only Exergy entity that held any interest in the land parcels that your client liened were the Wind Park LLCs.

5. The interests held by the Wind Park LLCs were leasehold interests.
6. The leasehold interests have been terminated. You have been provided with proof of that termination through my clients' discovery responses.
7. The Wind Park LLCs do not, and never have, had a contractual relationship with Fagen, Inc.
8. XRG Development Partners, LLC does not, and never has had, a contractual relationship with Fagen, Inc. relating to the projects in question.
9. XRG Development Partners, LLC does not, and never has, held an interest in the land parcels that your client has liened.

I suggest you review the lien statute and the cases I have cited in my clients' original motion to dismiss. Applying that law to statements above, you will find that there is no way your lien claim meets the statutory elements.

Your client is trying to foreclose on an interest for work that was performed pursuant to a contract with a party who had no interest in the land upon which work was performed. Even if you could establish some legal obligation by the Wind Park LLCs (which is doubtful), there is no leasehold interest left to lien. Therefore, there is no triable issue of material fact as to the lien foreclosure claim.

I will be filing motions for summary judgment by the end of this week. Unless you can show me authority that supports an alternate conclusion, I will also be filing a motion for sanctions given the sheer ridiculousness of the claim in light of the undisputed facts.

As a professional courtesy, I have given you the opportunity to save your client time and money by narrowing the scope of this lawsuit to what it should be: a contract dispute. The ball is in your court.

Regards, ALR

Angelo L. Rosa, Esq.*
P.O. Box 1605
Boise, Idaho 83701
Tel. (801) 440-4400
Fax. (801) 415-1773

*Licensed to Practice in California and Idaho

This electronic or printed document contains information which (a) may be LEGALLY PRIVILEGED, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE, and (b) is intended only for the use of the Addressee(s) named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above email address. Thank you.

From: John Goodell [<mailto:jrg@racinelaw.net>]
Sent: Tuesday, March 11, 2014 12:27 PM

To: Angelo Rosa
Cc: Becky J. Harvey
Subject: Re: Fagen v. Exergy, et al. (Twin Falls) / Lien Foreclosure Claim

Angelo,

Please submit for review your legal authority relied on to support position that voluntary relinquishment of lessee interest somehow affects previously attached valid lien claim. Lessee's relinquished interest would not appear to affect lien claim attachment to property. I am not aware of Idaho case law on issue. Please forward same for consideration.

Incidentally, I am out of office until 3/24 so responding to your short notice demands is a low priority.

Thank you.

Sincerely,
John Goodell

Sent from my iPhone

On Mar 10, 2014, at 11:33 AM, "Angelo Rosa" <arosa@exergydevelopment.com> wrote:

John:

This is my second (and final) attempt to meet and confer with you regarding your client's First Cause of Action in the aforementioned consolidated matter, for lien foreclosure.

The information you have been provided in the document production made thus far and my recent e-mail (with attachments) demonstrates that there is no interest to lien with respect to the properties in question.

Please advise by 5:00 p.m. Mountain Time today, 10 March 2014, if your client will voluntarily stipulate to the dismissal of that cause of action. If agreement is not reached, or a response is not received by that time, my clients will proceed to file a ~~.....~~ sanctions given the ongoing prosecution of a claim despite clear evidence showing the cause of action to be without basis.

Best Regards,

ALR

Angelo L. Rosa, Esq.*
P.O. Box 1605
Boise, Idaho 83701
Tel. (801) 440-4400
Fax. (801) 415-1773

*Licensed to Practice in California and Idaho

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you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above email address. Thank you.

ORIGINAL

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

Attorneys for Plaintiff Fagen, Inc.

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

AUG 25 2014

By _____ 9:00 AM
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576
CV-2013-26

**PLAINTIFF FAGEN, INC.'S
MOTION FOR JUDICIAL NOTICE
PURSUANT TO I.R.C.P. 44(d)**

COMES NOW Plaintiff Fagen, Inc. ("Fagen") by and through counsel of record, and hereby files its Motion for Judicial Notice, pursuant to I.R.C.P. Rule 44(d) as follows:

Fagen requests that this Court take judicial notice of the following proceedings in the related case styled *Fagen, Inc. v. Exergy Development Group of Idaho, L.L.C., et al.*, Case No. CV-2013-261 (Bingham County, ID), Hon. Darren B. Simpson, District Judge, presiding:

1. A true and correct copy of an *E-Mail* and the *Notice of Taking Deposition of Fagen, Inc., per I.R.C.P. 30(b)(6)*, both dated and received on 8/18/14, from Defendants' counsel of record, Mr. Rosa, which are adopted by reference (attached as **Exhibit A** to Affidavit of John R. Goodell dated 8/18/14 previously filed herein);
2. A true and correct copy of the *Transcript of Motions for Summary Judgment held July 25, 2014*, which is adopted by reference (attached as **Exhibit B** to Affidavit of John R. Goodell dated 8/18/14 previously filed herein);
3. A true and correct copy of the *Order Granting Plaintiff's Motion for Summary Judgment filed 8/20/14*, which is adopted by reference (attached as **Exhibit C** to Second Affidavit of John R. Goodell filed herewith);
4. A true and correct copy of the *Order Granting Defendants' Motion for Summary Judgment filed 8/20/14*, which is adopted by reference (attached as **Exhibit D** to Second Affidavit of John R. Goodell filed herewith);
5. A true and correct copy of *the Judgment filed 8/20/14*, adopted by reference (attached as **Exhibit E** to Second Affidavit of John R. Goodell filed herewith).

The foregoing are submitted for inclusion in the Court's record for purposes of determining the parties' pending respective motions for summary judgment, which are noticed for hearing on Tuesday, September 2, 2014, at 10:00 a.m., or as soon thereafter as counsel may be heard.

Fagen submits that the proceedings in the related Bingham County case, and the Court's rulings therein, are substantially similar

ORAL ARGUMENT REQUESTED.

DATED this 22nd day of August, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: John R. Goodell
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of August, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
Attorney at Law
P.O. Box 1605
Boise, ID 83701
*Attorney for Exergy Development Group of
Idaho, L.L.C.; XRG Development Partners,
LLC; Rogerson Flats Wind Park, LLC;
Cottonwood Wind Park, LLC; Salmon Creek
Wind Park, LLC; Deep Creek Wind Park,
LLC; and Notch Butte Wind Park, LLC*

- U.S. Mail
Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 801-415-1773
- Email arosa@rosa-lp.com

Keith S. Moheban
Timothy M. Kelley
STINSON LEONARD STREET LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Pro Hac Vice

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 612-335-1657
- Email
timothy.kelley@stinsonleonard.com
keith.moheban@stinsonleonard.com

John R. Goodell
JOHN R. GOODELL

support of Plaintiff Fagen's Opposition to Defendants' Ex Parte Motion for Rule 56(f) Continuance.

2. **Exhibit A** attached to my first Affidavit was a true and correct copy of an e-mail and the Notice of Taking Deposition of Fagen, Inc., which I received from Defendants' attorney, Angelo Rosa, on July 27, 2014.

3. **Exhibit B** attached to my first Affidavit was a true and correct copy of the hearing transcript from the hearing in the case pending in Bingham County, Idaho, *Fagen, Inc. v. Exergy Development Group of Idaho, L.L.C., et al.*, Case No. CV-2013-261.

4. Attached hereto as **Exhibit C** and incorporated by reference is a true and correct copy of the *Order Granting Defendants' Motion for Summary Judgment* entered by the Hon. Darren B. Simpson, District Court Judge in Bingham County, Idaho in *Fagen, Inc. v. Exergy Development Group of Idaho, L.L.C., et al.*, Case No. CV-2013-261.

5. Attached hereto as **Exhibit D** and incorporated by reference is a true and correct copy of the *Order Granting Plaintiff's Motion for Summary Judgment* entered by the Hon. Darren B. Simpson, District Court Judge in Bingham County, Idaho in *Fagen, Inc. v. Exergy Development Group of Idaho, L.L.C., et al.*, Case No. CV-2013-261.

6. Attached hereto as **Exhibit E** and incorporated by reference is a true and correct copy of the *Judgment* entered by the Hon. Darren B. Simpson, District Court Judge in Bingham County, Idaho in *Fagen, Inc. v. Exergy Development Group of Idaho, L.L.C., et al.*, Case No. CV-2013-261.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 22nd day of August 2014.

John R. Goodell
John R. Goodell, Affiant

SUBSCRIBED TO AND SWORN TO before me this ____ day of August 2014.

SEAL

(To Be Supplied)
Notary Public for Idaho
Residing at:
My Commission Expires

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of August, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
Attorney at Law
P.O. Box 1605
Boise, ID 83701
Attorney for Exergy Development Group of Idaho, L.L.C.; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC; Cottonwood Wind Park, LLC; Salmon Creek Wind Park, LLC; Deep Creek Wind Park, LLC; and Notch Butte Wind Park, LLC

- U.S. Mail
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Keith S. Moheban
Timothy M. Kelley
STINSON LEONARD STREET LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Pro Hac Vice

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 612-335-1657
- Email
- timothy.kelley@stinsonleonard.com
- keith.moheban@stinsonleonard.com



John R. Goodell

Dated this 22nd day of August 2014.

John R. Goodell
John R. Goodell, Affiant

SUBSCRIBED TO AND SWORN TO before me this 25 day of August 2014.

SEAL



Keri J. Hawker
Notary Public for Idaho
Residing at: Boise, ID
My Commission Expires Dec. 21, 2018

2014 AUG 20 AM 9:41

DEPUTY
SARA STAUB CLERK

BY Virgo DEPUTY

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

FAGEN, INC.,)
)
Plaintiff,)
)
vs.)
)
LAVA BEDS WIND PARK, LLC, an)
Idaho limited liability company; EXERGY)
DEVELOPMENT GROUP OF IDAHO,)
L.L.C., an Idaho limited liability company;)
XRG DEVELOPMENT PARTNERS, LLC,))
an Idaho limited liability company; and)
TABOR WIND FARMS, LLC, an Idaho)
limited liability company; and "JOHN)
DOES 1-10,")
)
Defendants.)
_____)

Case no. CV-2013-261

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

I. STATEMENT OF THE CASE

Plaintiff Fagen, Inc. (hereinafter "Fagen") sued the defendants to foreclose a materialman's lien against certain real property, and under theories of breach of contract and quantum meruit.¹ Fagen recently dropped its materialman's lien claim.² Earlier in

¹ See: First Amended Complaint, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed December 9, 2013) (hereinafter the "First Amended Complaint").



the proceedings, Fagen dismissed Defendant Tabor Wind Farms, LLC, an Idaho limited liability company.³ Fagen also elected not to pursue its claims against Defendant XRG Development Partners, LLC.⁴

Fagen now moves for summary judgment against “all Defendants.”⁵ Fagen later clarified that its Motion pertains only to the remaining defendants, Lava Beds Wind Park, LLC, an Idaho limited liability company (hereinafter “Lava Beds”) and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company (hereinafter “Exergy”).⁶

Fagen’s Motion was heard on July 25, 2014.⁷ Based upon the record, the relevant authorities, and the arguments of the parties, Fagen’s Motion shall be granted.

II. ISSUE PRESENTED

In its Motion, Fagen takes the position that the dispute between the parties is a simple breach of contract and damages case.⁸ At oral argument, Lava Beds and Exergy conceded both the existence of a contract and a breach.⁹ Lava Beds and Exergy argued that an issue of fact has been raised as to the amount of damages to which Fagen is

² Fagen, Inc.’s Memorandum of Law in Response to Defendants’ Motion for Summary Judgment, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed July 14, 2014) (hereinafter “**Fagen’s Response to Defendants’ Motion**”), at p. 2.

³ Order for Dismissal with Prejudice (Tabor Wind Farms, LLC Only), *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed December 9, 2013).

⁴ Fagen’s Response to Defendants’ Motion, at p. 2.

⁵ Fagen, Inc.’s Motion for Summary Judgment, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed June 27, 2014) (hereinafter “**Fagen’s Motion**”), at p. 1.

⁶ Fagen’s Response to Defendants’ Motion, at p. 2.

⁷ Minute Entry: Plaintiff’s Motion for Summary Judgment; Defendant’s Motion for Summary Judgment; Defendant’s Motion to Continue, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed August 13, 2014).

⁸ Fagen, Inc.’s Memorandum of Law in Support of Motion for Summary Judgment, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed June 27, 2014) (hereinafter “**Fagen’s Memorandum**”), at pp. 1-2.

entitled.¹⁰ Fagen responded that Lava Beds and Exergy submitted only conclusory statements regarding a dispute in Fagen's billings, which fail to meet the standard for raising a fact issue under Idaho Rule of Civil Procedure 56(f).¹¹

The parties' arguments and the record raise the following issue: Have Lava Beds and Exergy raised a material issue of fact as to the amount of damages?

III. FINDINGS OF FACT

1. Fagen contracted with Exergy (for itself and on behalf of Lava Beds) to construct and install a number of wind farms in Idaho.¹² Included in the overall construction agreement was the Lava Beds Wind Farm, located in Bingham County, Idaho.¹³ Fagen and Exergy agreed to allocate \$7,300,178.00 to the Lava Beds Wind Farm.¹⁴

2. From December 2011 through July 2012, Fagen provided labor, materials and services on the Lava Beds Wind Farm.¹⁵ The labor, materials, and services provided on the Lava Beds Wind Farm were within the Scope of Work identified in the Limited Notice to Proceed, dated August 1, 2011, and the Limited Notice to Proceed, dated December 14, 2011.¹⁶

⁹ Transcript of Motions for Summary Judgment, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed August 13, 2014) (hereinafter the "Transcript"), at p. 25, line 24 through p. 26, line 3.

¹⁰ Transcript, at p. 26, lines 4-5.

¹¹ Transcript, at p. 28, line 5 through p. 29, line 20.

¹² Affidavit of Bradley Bormann in Support of Fagen, Inc.'s Motion for Summary Judgment, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed June 27, 2014) (hereinafter the "Bormann Affidavit"), at pp. 3-4, and at Exhibits A and E.

¹³ Bormann Affidavit, at p. 2, ¶¶ 5-6.

¹⁴ Bormann Affidavit, at p. 4, ¶ 16, and at Exhibit E; See also: Affidavit of Samuel Ewald in Support of Fagen, Inc.'s Motion for Summary Judgment, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed June 27, 2014) (hereinafter the "Ewald Affidavit"), at p. 4, ¶ 15.

¹⁵ Bormann Affidavit, at p. 4, ¶ 18. Ewald Affidavit, at pp. 3-5.

¹⁶ Bormann Affidavit, at pp. 3-5; Ewald Affidavit, at p. 5, ¶ 18.

3. Applications and Certificates for Payment relating to the Lava Beds Wind Farm, dated December 27, 2011 through July 27, 2012, were mailed to Exergy.¹⁷ The total amount Fagen requested was \$848,183.42.¹⁸

4. Fagen received no payment on the amounts set forth in the Applications for payment.¹⁹

5. Fagen, Inc. never received any communication from Exergy or Lava Beds objecting to or questioning the amounts of the Applications.²⁰

6. On July 30, 2012, Jennifer Johnson, Fagen's Chief Financial Officer, received an e-mail from James Carkulis, an employee of Exergy (hereinafter the "Carkulis E-Mail"), instructing Fagen to cease further construction on the Lava Beds Wind Park.²¹ The reason stated for the work cessation was:

... the reckless actions of both Idaho Power Company and the Idaho Public Utilities Commission in their unprecedented set of filings and support for issues well outside the dictates and mandates under our PURPA contracts. These issues, which affect Exergy's current contract docket include, but are not limited to ownership of RECs, discrimination on FERC mandated interconnection rules, and curtailment of electricity from the projects for economic reasons.²²

Nothing in the Carkulis E-Mail indicates any irregularities or questions regarding the work performed by Fagen.²³

¹⁷ Affidavit of Lori Anderson in Support of Fagen, Inc.'s Motion for Summary Judgment, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed June 27, 2014) (hereinafter the "Anderson Affidavit"), at p. 2, ¶¶ 3-5. See also: Affidavit of Kirsten Tjosaas in Support of Fagen, Inc.'s Motion for Summary Judgment, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed June 27, 2014) (hereinafter the "Tjosaas Affidavit"), at p. 2, ¶ 3.

¹⁸ Anderson Affidavit, at p. 2, ¶ 4.

¹⁹ Anderson Affidavit, at p. 2, ¶ 6; Tjosaas Affidavit, at p. 2, ¶ 4.

²⁰ Anderson Affidavit, at p. 2, ¶ 7; Tjosaas Affidavit, at p. 2, ¶ 5.

²¹ Affidavit of Jennifer A. Johnson in Support of Fagen, Inc.'s Motion for Summary Judgment, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed June 27, 2014) (hereinafter the "Johnson Affidavit"), at p. 2 and at Exhibit A.

²² Johnson Affidavit, at Exhibit A.

²³ *Id.*

7. In his declaration in support of Lava Bed's and Exergy's motion for summary judgment (which Fagen did not contest), James Carkulis stated:

Fagen structured the schedule of services to be tendered over a longer period of time than is typical for such a project. This modification was abused by Fagen in that the work undertaken was repetitive, arbitrary, and compulsory activities that became abusive of the parties' intent. The Defendants' also [sic] contest the amount due for services rendered by Fagen with respect to the Project Site. These issues will be presented to the Court in depth in the Defendants' response to Fagen's recently filed Motion for Summary Judgment.²⁴

8. Dustin Shively, an engineering consultant with Exergy, declared the following in response to Fagen's Motion:

I understand that Fagen, Inc. ("Fagen") has sought summary judgment on the basis of breach of the Engineering, Procurement and Construction ("EPC") agreement between it and Exergy Development Group of Idaho, L.L.C. Given my knowledge of the project, its timeline, the relevant critical path of development items, and the ultimate end result of Fagen's work, there appears to be a significant discrepancy between the billing tendered by Fagen, Inc. for work on the EPC and the amount and quality of work undertaken. Further inquiry into this issue is needed in order for the correct amount due (which I understand to be the "damages" sought by Fagen in this matter) to be ascertained.

In addition, I am aware that the last few months of Fagen's involvement on the project did not consist of any substantive work or improvements on the land in question. There appears, therefore, to be a discrepancy between the billing records submitted by Fagen in support of its claims, and the true facts of what work was (or was not) undertaken and whether such work did (or did not) constitute compensable work under the terms of the EPC.

I am also aware that Fagen structured the schedule of services to be tendered over a longer period of time than is typical for such a project. This modification appears to have been consistent with the work undertaken by Fagen, which were [sic] repetitive, arbitrary, and

²⁴ Declaration of James T. Carkulis in Support of Defendants' Lava Beds Wind Park, LLC, Exergy Development Group of Idaho, L.L.C., and XRG Development Partners, LLC's Motion for Summary Judgment, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed June 27, 2014) (hereinafter the "**Carkulis Affidavit**"), at p. 3, ¶ 12.

compulsory activities. This will, I believe, affect the true amount due to Fagen for its services under the EPC.²⁵

9. Exergy and Lava Beds did not submit additional declarations or evidence following the filing of the Carkulis and Shively Affidavits.

10. Lava Beds' and Exergy's Answer to Fagen's First Amended Complaint is not verified.²⁶ (Lava Beds and Exergy did not formally answer Fagen's original Complaint, but instead filed a motion to dismiss.)²⁷

IV. APPLICABLE PRINCIPLES OF LAW

Standard of Review – Motion for Summary Judgment.

1. If the pleadings, depositions, and admissions on file, together with any affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law, summary judgment may be granted.²⁸ Disputed facts are construed in favor of the non-moving party and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.²⁹

²⁵ Declaration of Dustin Shively in Opposition to Fagen, Inc.'s Motion for Summary Judgment and in Support of Request for Rule 56(F) Continuance, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed July 10, 2014) (hereinafter the "Shively Affidavit"), at pp. 2-3, ¶¶ 3-5.

²⁶ See: Defendants' Answer to First Amended Complaint, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed December 9, 2013) (hereinafter "Exergy's and Lava Beds' Answer to Fagen's First Amended Complaint").

²⁷ Omnibus Motion to Dismiss Complaint, *Fagen, Inc. v. Lava Beds Wind Park, LLC*, Bingham County case no. CV-2013-261 (filed September 6, 2013).

²⁸ Rule 56(c); *Bushi v. Sage Health Care, PLLC*, 146 Idaho 764, 768, 203 P.3d 694, 698 (2009); *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 516-7, 808 P.2d 851, 853-4 (1991).

²⁹ *Bushi v. Sage Health Care, PLLC*, 146 Idaho at 768, 203 P.3d at 698; *Lockheed Martin Corp. v. Idaho State Tax Commission*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006).

2. A party against whom a summary judgment is sought cannot merely rest on its pleadings.³⁰ When faced with supporting affidavits or depositions, the opposing party must show material issues of fact which preclude the issuance of summary judgment.³¹

3. While the moving party must prove the absence of a genuine issue of material fact,³² the opposing party cannot simply speculate.³³ A mere scintilla of evidence is not enough to create a genuine factual issue.³⁴ Summary judgment is appropriate when the non-moving party cannot establish the essential elements of the claim.³⁵

4. If reasonable persons could reach differing conclusions on material issues, or draw conflicting inferences therefrom, then the motion for summary judgment must be denied.³⁶

V. ANALYSIS

Lava Beds and Exergy have Not Raised a Material Issue of Fact as to Damages.

Fagen's Motion is supported in great detail by affidavits and documentation of the contracts between the parties and the Applications and Certificates for Payment sent to Exergy. Exergy and Lava Beds do not dispute the contractual relationship between the parties, the receipt of the Applications and Certificates for Payment, or the fact that

³⁰ *Partout v. Harper*, 145 Idaho 683, 688, 183 P.3d 771, 776 (2008); *R.G. Nelson, A.I.A. v. Steer*, 118 Idaho 409, 410, 797 P.2d 117, 118 (1990).

³¹ *Esser Electric v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 919, 188 P.3d 854, 861 (2008).

³² *Watkins v. Peacock*, 145 Idaho 704, 708, 184 P.3d 210, 214 (2008); *Wait v. Leavell Cattle, Inc.*, 136 Idaho 792, 798, 41 P.3d 220, 226 (2001).

³³ *Cantwell v. City of Boise*, 146 Idaho 127, 133, 191 P.3d 205, 211 (2008).

³⁴ *Van v. Portneuf Medical Center*, 147 Idaho 552, 556, 212 P.3d 982, 986 (2009); *West v. Sonke*, 132 Idaho 133, 138, 968 P.2d 228, 233 (1998).

³⁵ *Summers v. Cambridge Joint School District No. 432*, 139 Idaho 953, 956, 88 P.3d 772, 775 (2004); *Dekker v. Magic Valley Regional Medical Center*, 115 Idaho 332, 333, 766 P.2d 1213, 1214 (1989).

³⁶ *Van v. Portneuf Medical Center*, 147 Idaho at 556, 212 P.3d at 986; *Cramer v. Slater*, 146 Idaho 868, 873, 204 P.3d 508, 513 (2009).

Exergy and/or Lava Beds made no payment upon the Applications and Certificates for Payment.

Instead, Exergy and Lava Beds make conclusory statements that a discrepancy exists between the billing tendered by Fagen and the amount and quality of work undertaken. Exergy and Lava Beds do not identify any specific work that was allegedly billed but not undertaken, or performed in a less-than-workmanlike manner. Exergy and Lava Beds do not produce any correspondence between them and Fagen evincing questions or concerns about the work performed or billed. Exergy and Lava Beds do not identify what work was allegedly “repetitive, arbitrary or compulsory.” In short, Exergy and Lava Beds have offered no evidence whatsoever to raise an issue of fact as to the amount of damages to which Fagen is entitled.

Neither can Exergy’s and Lava Beds’ look to their Answer to Fagen’s First Amended Complaint as a source of evidence of the dispute as to the amount of Fagen’s damages. Exergy’s and Lava Beds’ Answer to Fagen’s First Amended Complaint is not verified. Therefore, it does not amount to a sworn statement which might have raised a material issue of fact as to damages.³⁷

Based upon Exergy’s and Lava Beds’ concessions of a contract and a breach, and the paucity of any evidence refuting Fagen’s claim for damages, Fagen’s Motion should be granted.

³⁷ See: *Esser Electric v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 918, 188 P.3d 854, 860 (2008).

VI. CONCLUSION OF LAW

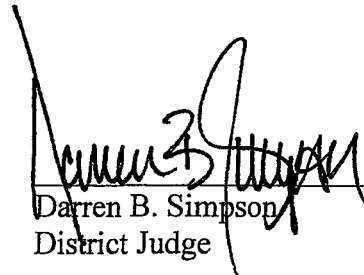
In light of the foregoing findings and analyses, the following conclusion is appropriate: Lava Beds and Exergy have not raised a material issue of fact as to the amount of damages.

VII. ORDERS OF THE COURT

Fagen's Motion for summary judgment is **granted**. Fagen shall have and recover from Exergy and Lava Beds contract damages in the amount of \$848,183.42.

IT IS SO ORDERED.

DATED this 20TH day of August 2014.



Darren B. Simpson
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Order Granting Plaintiff's Motion for Summary Judgment was mailed by first class mail with prepaid postage and/or hand delivered and/or sent by facsimile this 20th day of August 2014, to:

John R. Goodell, Esq.
RACINE, OLSON, NYE,
BUDGE & BAILEY,
CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building,
Suite 300
Boise, ID 83702

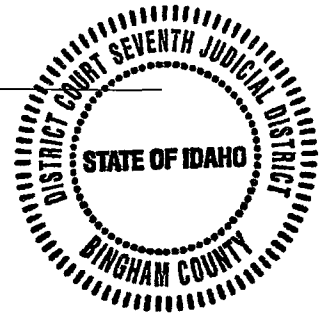
U.S. Mail Courthouse Box Facsimile

Angelo L. Rosa, Esq.
P.O. Box 1605
Boise, Idaho 83701

U.S. Mail Courthouse Box Facsimile

SARA J. STAUB, Clerk of the Court

By: *Kristen Bell*
Deputy Clerk



hearing on 25 July 2014 at 1:00 p.m. Plaintiff appeared by counsel, John Goodell. Moving Defendants appeared by counsel, Angelo L. Rosa.

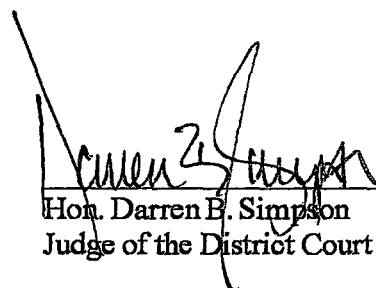
Having considered the pleadings, declarations and memoranda contained in the record, oral argument at hearing, including Plaintiff's written pleadings and Plaintiff's counsel's representations on the record at hearing that no opposition to Moving Defendants' Motion for Summary Judgment is made, being duly considered and submitted and good cause appearing therefor,

IT IS HEREBY ORDERED:

1. That Moving Defendants Lava Beds Wind Park, LLC and Exergy Development Group of Idaho, L.L.C.'s Motion for Summary Judgment as to Plaintiff's lien foreclosure claim is GRANTED.

2. That Moving Defendant XRG Development Partners, LLC's Motion for Summary Judgment as to all claims of Plaintiff for lien foreclosure, breach of contract, and quantum meruit against XRG Development Partners, LLC is GRANTED.

Dated this 20th day of August, 2014,



Hon. Darren B. Simpson
Judge of the District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Aug 20, 2014, I caused a true and correct copy of the foregoing **ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE & BAILY,
CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

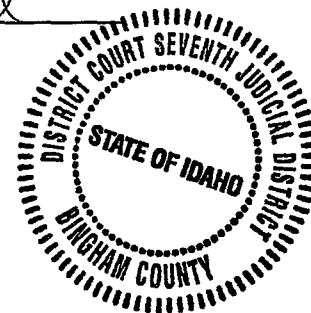
- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Angelo L. Rosa
P.O. Box 1605
Boise, Idaho 83701

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

SARA J. STAUB

Signed: Kristen Bell
Deputy Clerk of the Court



DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
BINGHAM COUNTY, IDAHO

2014 AUG 20 AM 9:41

CASE#
SARA STAUB CLERK
BY VR DEPUTY

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

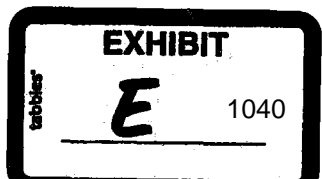
FAGEN, INC.,	)	Case no. CV-2013-261
)	
Plaintiff,	)	JUDGMENT
)	
vs.)	
)	
LAVA BEDS WIND PARK, LLC, an)	
Idaho limited liability company; EXERGY)	
DEVELOPMENT GROUP OF IDAHO,)	
L.L.C., an Idaho limited liability company;)	
XRG DEVELOPMENT PARTNERS, LLC,)	
an Idaho limited liability company; and)	
TABOR WIND FARMS, LLC, an Idaho)	
limited liability company; and "JOHN)	
DOES 1-10,")	
)	
Defendants.)	
_____)	

JUDGMENT IS ENTERED AS FOLLOWS:

Defendant Tabor Wind Farms, LLC, an Idaho limited liability company, is **dismissed with prejudice.**

Defendant XRG Development Partners, LLC, an Idaho limited liability company, is **dismissed with prejudice.**

Plaintiff Fagen, Inc. (hereinafter "Fagen") shall take nothing by its claim for foreclosure of its materialman's lien claim.

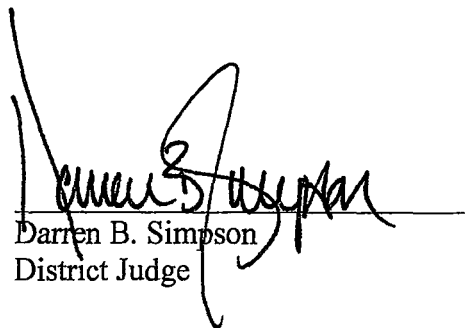


Fagen shall have and recover from Defendants Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company (hereinafter "Exergy"), and Lava Beds Wind Park, LLC, an Idaho limited liability company (hereinafter "Lava Beds"), **contract damages in the amount of \$848,183.42**. Fagen's remaining quantum meruit claim against Lava Beds and Exergy is **dismissed as moot**.

Fagen's claims against John Does 1-10 are **dismissed**.

IT IS SO ORDERED.

DATED this 20th day of August 2014.



Darren B. Simpson
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Judgment was mailed by first class mail with prepaid postage and/or hand delivered and/or sent by facsimile this 20th day of August 2014, to:

John R. Goodell, Esq.
RACINE, OLSON, NYE,
BUDGE & BAILEY,
CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building,
Suite 300.
Boise, ID 83702

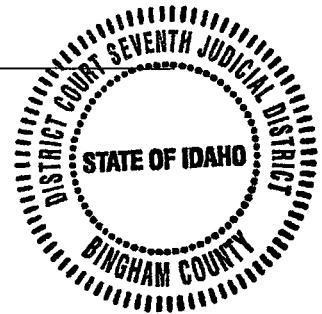
U.S. Mail Courthouse Box Facsimile

Angelo L. Rosa, Esq.
P.O. Box 1605
Boise, Idaho 83701

U.S. Mail Courthouse Box Facsimile

SARA J. STAUB, Clerk of the Court

By: Kristen Bell
Deputy Clerk



AUG 25 2014

By _____ 9:00 AM
Clerk

Deputy Clerk

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
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101 S. Capitol Boulevard
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Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,
Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",
Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576

CV-2013-26

NOTICE OF HEARING

TO: THE ABOVE-NAMED PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the undersigned will bring on for *Hearing Plaintiff Fagen, Inc.'s Motion For Judicial Notice Pursuant To I.R.C.P. 44(d)*, at the Twin Falls County Courthouse, 425 Shoshone Street North, Twin Falls, ID, before the Hon. Randy J. Stoker,

ORIGINAL

District Judge, on Tuesday, September 2, 2014, at the hour of 10:00 a.m., or as soon thereafter as counsel can be heard.

DATED this 22nd day of August, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: John R. Goodell
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of August, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
Attorney at Law
P.O. Box 1605
Boise, ID 83701
Attorney for Exergy Development Group of Idaho, L.L.C.; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC; Cottonwood Wind Park, LLC; Salmon Creek Wind Park, LLC; Deep Creek Wind Park, LLC; and Notch Butte Wind Park, LLC

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Keith S. Moheban
Timothy M. Kelley
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Pro Hac Vice

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John R. Goodell
JOHN R. GOODELL

John R. Goodell (ISB#: 2872)
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Telephone: (208) 395-0011
Fax: (208) 433-0167

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

AUG 26 2014

By _____ 11:55 AM
Clerk
Deputy Clerk

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576

CV-2013-26

**PLAINTIFF FAGEN, INC.'S REPLY
MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION

In its summary judgment motion, Fagen, Inc. ("Fagen") provided the Court with the seven Applications and Certificates for Payment (the "Applications") it submitted to Defendant Exergy Group of Idaho, L.L.C. ("Exergy"). See Affidavit of Lori Anderson ("Anderson Aff."), Ex. A-G. The Applications specified the work Fagen performed and the amount due for that work. *Id.* Defendants have never objected to or questioned the quality or scope of Fagen's

work, or the amounts invoiced in the Applications. Affidavit of Bradley Bormann ("Bormann Aff."), ¶33; Anderson Aff., ¶7; Affidavit of Kirsten Tjosaas ("Tjosaas Aff."), ¶5.¹

In their responsive brief, for the first time, Defendants make a conclusory and superficial attempt to dispute those facts, but they do not provide the Court with any correspondence or even an e-mail showing that they ever questioned Fagen's work or the amount invoiced. *See generally*, Declaration of James T. Carkulis ("Carkulis Dec."); Defendants' Memorandum in Opposition to Plaintiff's Motion for Summary Judgment ("Defendants' Memo."). Most significant, on a motion for summary judgment, Defendants do not identify any specific item of work that allegedly was not performed up to standards. *See id.* Indeed, Defendants do not even identify the standards they assert were not met in Fagen's work. Similarly, Defendants fail to identify any charge on any invoice that allegedly was excessive, was for work not performed, or that otherwise was not appropriate for payment. *See id.* Defendants offer only the conclusory allegation that "[t]here appears to be a discrepancy between the billing records submitted by Fagen in support of its claims, and the true facts of what work was (or was not) undertaken."

¹ Fagen also filed a Motion for the Court to take judicial notice of the order for summary judgment entered in the related case, *Fagen, Inc. v. Exergy Development Group of Idaho, L.L.C., Lava Beds Wind Park, LLC, et al.*, Bingham County Case No. CV-2013-261 (the "Lava Beds Litigation"). The Lava Beds Litigation involved a similar action for the amounts Fagen sought to recover for work at the Lava Beds Wind Park under the same contract. This case involves the amounts owed for work at the five additional winds park, which are the subject of the same contract. In its Order, Judge Darren B. Simpson found: (a) Lava Beds and Exergy conceded both the existence of a contract and a breach; (b) Fagen received no payment on the amounts set forth in the Applications for payment; and (c) Fagen never received any communications from Exergy or Lava Beds objecting to or questioning the amount of the Applications. Second Affidavit of John Goodell, Ex. D, p. 2; p. 4, at ¶¶4-5. Judge Simpson awarded Fagen the full amount it sought and entered judgment in favor of Fagen in the amount of \$848,183.42. *Id.* at p. 9.

In addition, the Transcript Of Motions for Summary Judgment held July 25, 2014, at pp. 25-26, evidences Defendants' counsel's admissions that the contract existed and was breached for non-payment, while attempting to argue only the amount of damages was disputed. (attached to Affidavit of John R. Goodell, Ex. B).

Carkulis Dec., ¶12 (emphasis added). Alleging that there “appears” to be a discrepancy does not satisfy the requirements of I.R.C.P. 56(e) and does not create a genuine issue of material fact for trial.

Finally, Defendants’ economic impossibility and unclean hands defenses fail as a matter of law. Defendants did not plead the defense of economic impossibility, and therefore, they waived that defense. *See Garren v. Buttigan*, 95 Idaho 355, 359, 509 P.2d 340, 344 (1973) (holding all affirmative defenses must be pleaded or raised by motion under Rule 12 or they will be waived). Even if Defendants had pled the defense of economic impossibility, the subject contract addressed the possibility that Exergy could not obtain financing and provided that Fagen was entitled to payment for the work it performed under the relevant Limited Notices to Proceed. The parties anticipated that Defendants might not issue the Notice to Proceed due to the lack of financing, and the agreement was that Defendants would still pay for the work performed under the Limited Notices to Proceed. Thus, Defendants alleged lack of funds did not render performance impossible. Indeed, the impossibility defense has never encompassed a party’s inability to pay, but rather deals with *force majeure* type events.

Defendants’ unclean hands defense also fails because that doctrine applies only to equitable claims – not claims for breach of an express contract. *See Iron Eagle Development, LLC v. Quality Design Systems, Inc.*, 138 Idaho 487, 492, 65 P.3d 509, 514 (2003) (“When parties enter into an express contract, a claim based in equity is not allowed because the express contract precludes enforcement of equitable claims.”); *Sword v. Sweet*, 140 Idaho 242, 252, 92 P.3d 492, 502 (2004) (unclean hands doctrine applies only to the party seeking an equitable remedy); *Dennett v. Kuenzli*, 130 Idaho 21, 27, 936 P.2d 219, 225 (1997) (The equitable doctrine of unclean hands “allows a court to deny equitable relief to a litigant.”). Even the Defendants

acknowledge in their Answer that their unclean hands defense applied only to Fagen's "equitable claims." Defendants' Answer to First Amended Complaint ("Defendants' Answer"), 6 [Third Affirmative Defense].

ARGUMENT

I. FAGEN IS ENTITLED TO SUMMARY JUDGMENT.

A. The Carkulis Declaration Does Not Satisfy the Requirements of I.R.C.P. 56(e).

Defendants rely solely on the Carkulis Declaration in opposing Fagen's motion for summary judgment. The Court should disregard the declaration because it fails to satisfy the requirements of I.R.C.P. 56(e). Rule 56(e) requires:

[A] party to respond to a motion for summary judgment with something more than relying on the mere allegations or denials in the pleadings. Affidavits or other proof must be presented to the court to set forth the specific facts showing that there is a genuine issue existing for trial.

Venable v. Internet Auto & Sales, Inc., 156 Idaho 574, 329 P.3d 356, 363 (2014). Thus, an affidavit that does not set forth specific facts but is only conclusory in nature and merely repeats allegations of a party's pleadings is precisely the type of a flawed affidavit contemplated by I.R.C.P. 56(e). *Corbridge v. Clark Equipment Co.*, 112 Idaho 85, 87, 730 P.2d 1005, 1007 (1986), see also *Kootenai County v. Harriman-Sayler*, 154 Idaho 13, 18, 293 P.3d 637, 642 (2012) ("conclusory assertions unsupported by specific facts are insufficient to raise a genuine issue of material fact precluding summary judgment."). The Carkulis Declaration is such a flawed affidavit or declaration.

First, in the declaration, Mr. Carkulis fails to establish that he has personal knowledge of the work he alleges Fagen did or did not perform. See Carkulis Dec., ¶¶4-5. Mr. Carkulis does not state that he ever visited the project sites or inspected Fagen's work. *Id.* Further, the

assertions in the Declaration are conclusory and unsupported by specific facts. For example, Mr. Carkulis asserts the work Fagen performed “is significantly different from the work detailed in the billing, which Fagen claims entitlement to payment for.” *Id.* at ¶5. But, he fails to identify a single charge in any of the seven Applications that the Defendants claim was (1) excessive, (2) for work not actually performed; or (3) for work that was not done in a workmanlike manner. Mr. Carkulis simply alleges “[t]here *appears* to be a discrepancy between the billing records submitted by Fagen in support of its claims, and the true facts of what work was (or was not) undertaken and whether such work did (or did not) constitute compensable work under the terms of the EPC.”² *Id.* at ¶12 (emphasis added).

If Defendants believe there is a discrepancy, I.R.C.P. 56(e) required them to identify specific facts to support that claim. They did not. As a result, Defendants failed to establish there is a genuine issue of material fact existing for trial. The Court, therefore, should grant Fagen’s summary judgment motion.

II. DEFENDANTS’ IMPOSSIBILITY DEFENSE FAILS AS A MATTER OF LAW.

A. Defendants Waived the Defense of Impossibility.

Defendants argue that the defense of impossibility – which they represent was asserted in their answer to Fagen’s First Amendment Complaint – precludes the Court from granting Fagen summary judgment. Defendants, however, did not assert the defense of impossibility. *See generally*, Defendants’ Answer. Because they did not assert the defense of impossibility, Defendants waived that defense. *See Garren v. Butigan*, 95 Idaho 355, 359, 509 P.2d 340, 344 (1973) (holding all affirmative defenses must be pleaded or raised by Rule 12 motion or they will

² The EPC refers to the Balance of Plant Engineering, Procurement and Construction Services Agreement for the Exergy Idaho Six Winds Wind Park (the “EPC Contract”)

be waived). Accordingly, the Court should disregard Defendants' unasserted defense of impossibility.

B. Even if the Court Considers the Defense of Impossibility, Fagen is Still Entitled to Summary Judgment.

Even if the Court considers the defense of impossibility, Fagen is still entitled to summary judgment. Defendants, without any analysis, claim that Exergy's "performance was impossible due to economic impossibility." Defendants' Memo., 3. Defendants, however, fail to recognize that the EPC Contract addressed the possibility that Exergy could not obtain financing to proceed with work beyond the scope of work authorized by the Limited Notices to Proceed. As set forth in Fagen's summary judgment memorandum, Fagen, in addition to the work authorized by the Limited Notices to Proceed, was to perform additional work set forth in the EPC Contract if Exergy gave Fagen the Notice to Proceed. *See* Fagen's Memo. 9-10.

Specifically, Section 6.1 provides:

- (a) [Fagen] shall promptly commence the performance of the Work upon its receipt of the Notice to Proceed issued by [Exergy]. *The Parties agree that the Notice to Proceed shall only be valid if [Exergy] presents therewith: (i) the certificate of insurance or policy of insurance evidencing insurance coverage for the All-Risk Builder's Risk insurance as required by Section 18.3.1; and (ii) evidence to [Fagen] the Project is financed in its entirety for 100% of the Contract Price.*
- (b) [Exergy] shall have no obligation to issue the Notice to Proceed and may do so at its option and discretion (subject to Section 6.1(c) and Section 13.2). *Notwithstanding anything to the contrary in any Contract Document, [Exergy] shall have no liability to [Fagen], and [Fagen] shall have no claim against [Exergy], should [Exergy] not issue the Notice to Proceed, except to the extent of Payment for Work performed by [Fagen] pursuant to any one or more Limited Notices to Proceed.*

Ex. H, § 6.1 (emphasis in italics). Accordingly, even if Exergy could not finance the Project, as it alleges, Exergy agreed that it remained liable for the work Fagen performed pursuant to the Limited Notices to Proceed. The impossibility defense simply does not apply because Fagen

only seeks to recover damages for the work it performed under the applicable Limited Notices to Proceed. Fagen's Memo., 13.

III. DEFENDANTS' UNCLEAN HANDS DEFENSE FAILS AS A MATTER OF LAW BECAUSE THE DEFENSE DOES NOT APPLY TO FAGEN'S BREACH OF CONTRACT CLAIM.

Defendants did allege unclean hands as an affirmative defense, but the defense does not apply to Fagen's breach of contract claim. *See* Defendants' Answer [Third Affirmative Defense]. The doctrine of unclean hands only applies to equitable claims – not claims for the breach of an express contract, the claim on which Fagen seeks summary judgment. *See Iron Eagle Development, LLC v. Quality Design Systems, Inc.*, 138 Idaho 487, 492, 65 P.3d 509, 514 (2003) (“When parties enter into an express contract, a claim based in equity is not allowed because the express contract precludes enforcement of equitable claims); *Sword v. Sweet*, 140 Idaho 242, 252, 92 P.3d 492, 502 (Idaho 2004) (unclean hands doctrine applies only to the party seeking an equitable remedy); *see also Dennett v. Kuenzli*, 130 Idaho 21, 27, 936 P.2d 219, 225 (1997) (The equitable doctrine of unclean hands “allows a court to deny equitable relief to a litigant.”).

In fact, in their Answer, Defendants acknowledge that the unclean hands defense applied only to Fagen's equitable claim.³ Defendants asserted that “Plaintiff's *equitable claims* are barred by the doctrine of . . . unclean hands.” Defendants' Answer, 6 [Third Affirmative Defense] (emphasis added). Because Fagen did not move for summary judgment on its equitable

³ In its First Amended Complaint, Fagen asserted an equitable claim for quantum meruit. First Amended Complaint, ¶¶26-30. Fagen moved for summary judgment on its breach of contract claim, not its claim for quantum meruit.

claim of quantum meruit, Defendants' unclean hands defense is irrelevant to the Court's decision on Fagen's summary judgment motion for breach of contract.⁴

CONCLUSION

Based on the foregoing, Fagen respectfully requests that the Court grant Fagen's Motion for Summary Judgment in its entirety.

DATED this 26th day of August, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: _____


JOHN R. GOODELL

Attorneys for Plaintiff Fagen, Inc.

⁴ Even if unclean hands was a viable defense to Fagen's breach of contract claim, which it is not, Defendants submitted insufficient evidence to create a genuine issue for trial. Defendants rely solely on the Carkulis Declaration to support this defense. Mr. Carkulis, however, does little more than hint at some vaguely asserted impropriety with the EPC Contract. He does not cite any statute, rule or other public policy that allegedly was violated by the EPC Contract. This is simply not enough to fend off summary judgment. As a result, there are insufficient specific facts alleged to generate a disputed issue of material fact.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of August, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
Attorney at Law
P.O. Box 1605
Boise, ID 83701
Attorney for Exergy Development Group of Idaho, L.L.C.; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC; Cottonwood Wind Park, LLC; Salmon Creek Wind Park, LLC; Deep Creek Wind Park, LLC; and Notch Butte Wind Park, LLC

Keith S. Moheban
Timothy M. Kelley
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*Attorneys for Plaintiff Fagen, Inc.
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- Hand Delivery
- Overnight Mail
- Facsimile 612-335-1657
- Email
timothy.kelley@stinsonleonard.com
keith.moheban@stinsonleonard.com



JOHN R. GOODELL

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 AUG 28 PM 4: 14

BY _____
CLERK
DEPUTY

Angelo L. Rosa (ISB No. 7546)
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Attorney for Defendants

ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
Plaintiff,)
vs.)
ROGERSON FLATS WIND PARK,)
LLC, an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
Defendants.)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

**SUPPLEMENTAL DECLARATION
OF ANGELO L. ROSA IN SUPPORT
OF DEFENDANTS' EX PARTE
MOTION FOR RULE 56(F)
CONTINUANCE AND MOTION FOR
ORDER SHORTENING TIME FOR
RULING THEREUPON**

**SUPPLEMENTAL DECLARATION OF ANGELO L. ROSA IN SUPPORT OF
DEFENDANTS' EX PARTE MOTION FOR RULE 56(F) CONTINUANCE AND
MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON - Page 1**

COMES NOW Angelo L. Rosa, and hereby declares and states as follows:

1. I am an individual residing in Ada County, in the State of Idaho. I am over eighteen (18) years of age. I have personal knowledge of the matters attested to in this Declaration, except to those matters that are stated on the basis of belief.

2. I am counsel of record for the Moving Defendants in this action. The purpose of this Declaration is to supplement the pleadings filed in support of Moving Defendants' Rule 56(f) Motion for Continuance.

3. As stated in my prior Declaration in support of Moving Defendants' Rule 56(f) request for continuance, over the past few months, both Plaintiff's Minnesota counsel and I have been attempting to obtain deposition discovery, both for this case (and its sister cases in Idaho) as well as in a proceeding involving Plaintiff and Defendant, Exergy Development Group of Idaho, L.L.C. pending in the United States District Court for the District of Minnesota, in which I serve as lead defense counsel. Minnesota counsel has been obstructive as to schedule.

4. The parties finally reached agreement whereby Fagen will offer its corporate representative for deposition pursuant to Idaho Rule of Civil Procedure 30(b)(6). That deposition would take place on 25 August 2014 in Minneapolis Minnesota.

5. On Monday, 25 August 2014 I took the 30(b)(6) deposition of Fagen, Inc. ("Fagen"). Three witnesses were nominated by Fagen in response to the list of topics identified in Moving Defendants' Notice of Deposition of Fagen, Inc. A true and correct copy of this Notice is attached and incorporated hereto as "Exhibit A". Once the deposition had been convened, in good faith I withdrew Moving Defendants' theretofore pending Motion to Compel Deposition.

SUPPLEMENTAL DECLARATION OF ANGELO L. ROSA IN SUPPORT OF DEFENDANTS' EX PARTE MOTION FOR RULE 56(F) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON – Page 2

6. During the deposition, it became clear that one of the witnesses, Bradley Bormann--who had personal day-to-day responsibility over Fagen's activities on the project sites that are at issues in this case--was the party having the most knowledge of the Topic Nos. 1-6 and 8. This was confirmed by Samuel Ewald--the party designated as person most knowledgeable on those topics, whose knowledge on several key areas was limited--who confirmed (under oath) that Mr. Bormann would know more. However, Mr. Bormann had only been designated by Fagen to testify as to Topic No. 7.

7. Prior to Mr. Bormann's segment of the deposition, I attempted to meet and confer with Fagen's counsel defending the deposition, Mr. Timothy Kelley. I explained my thoughts on the subject as set forth in Paragraph 4, asked for the opportunity to depose Mr. Bormann on the topics that Mr. Ewald had deferred to Mr. Bormann's knowledge on, and stated it would be the most cost effective and efficient way of obtaining the most accurate testimony on the topics contained in Moving Defendants' Notice of Deposition of Fagen, Inc. if Mr. Bormann would be permitted to answer questions on those topics. Mr. Kelley refused my request.

8. On the record, following the conclusion of my questioning of Mr. Bormann regarding his knowledge of Topic No. 7, I reiterated my position on the need to question Mr. Bormann further and stated that because there was a disagreement amongst counsel as to this issue, Moving Defendants would be filing a motion to compel. In response, Mr. Kelley stated that Fagen disagreed with that position.

9. A transcript of the deposition testimony is not yet available, otherwise it would be provided to the Court.

10. The deposition testimony I am seeking on behalf of Moving Defendants is, I

SUPPLEMENTAL DECLARATION OF ANGELO L. ROSA IN SUPPORT OF DEFENDANTS' EX PARTE MOTION FOR RULE 56(F) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON – Page 3

believe in good faith to be, critical to ascertaining the precise nature of work allegedly done on site and the magnitude of that work, which (as stated previously) is disputed.

This runs directly to the existence of a triable issue of material fact as to the element of damages of Fagen's breach of contract claim.

11. I am in the process of preparing a motion to compel further testimony, which will be filed as soon as a rough draft of the aforementioned deposition transcript can be obtained.

12. In light of the need for filing a motion to compel, and the direct correlation between this testimony and Moving Defendants' ability to respond to Fagen's Motion for Summary Judgment, it is imperative that the hearing on that Motion (currently set for hearing on 2 September 2014 at 10:00 a.m.) be reset to a date after Moving Defendants' Motion to Compel can be heard and, if that Motion is granted, to a date after deposition testimony can be taken. A proposed order to that effect is being submitted concurrently herewith.

I testify under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED: 28 August 2014



Angelo L. Rosa

SUPPLEMENTAL DECLARATION OF ANGELO L. ROSA IN SUPPORT OF DEFENDANTS' EX PARTE MOTION FOR RULE 56(F) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON - Page 4

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 28 August 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Keith Moheban
Timothy Kelley
STINSON LEONARD STREET, LLP
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

SUPPLEMENTAL DECLARATION OF ANGELO L. ROSA IN SUPPORT OF DEFENDANTS' EX PARTE MOTION FOR RULE 56(F) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON – Page 5

Angelo L. Rosa (ISB No. 7546)
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants
ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK
WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT
PARTNERS, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
Plaintiff,)
vs.)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

ROGERSON FLATS WIND PARK,)
LLC, an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES I-)
10",)
Defendants.)

NOTICE OF DEPOSITION OF
FAGEN, INC.

FAGEN, INC., a Minnesota corporation,)
Plaintiff,)
vs.)

[I.R.C.P. 30(b)(6)]

COTTONWOOD WIND PARK, LLC, an)
Idaho limited liability company,)

EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMEN)
 PARTNERS, LLC, an Idaho limited)
 liability company; and "JOHN DOES 1-)
 10",)

Defendants.)

FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

SALMON CREEK WIND PARK, LLC,)
 an Idaho limited liability company,)
 EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMEN)
 PARTNERS, LLC, an Idaho limited)
 liability company; and "JOHN DOES 1-)
 10",)

Defendants.)

FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

DEEP CREEK WIND PARK, LLC, an)
 Idaho limited liability company,)
 EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMEN)
 PARTNERS, LLC, an Idaho limited)
 liability company; and "JOHN DOES 1-)
 10",)

Defendants.)
)
 _____)
 FAGEN, INC., a Minnesota corporation,)
)
 Plaintiff,)
)
 vs.)
)
 NOTCH BUTTE WIND PARK, LLC, an)
 Idaho limited liability company,)
 EXERGY DEVELOPMENT GROUP OF)
 IDAHO, LLC, an Idaho limited liability)
 company; XRG DEVELOPMEN)
 PARTNERS, LLC, an Idaho limited)
 liability company; and "JOHN DOES 1-)
 10",)
)
 Defendants.)
 _____)

PLEASE TAKE NOTICE that Defendants ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, LLC, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC, by and through their counsel of record, Angelo L. Rosa, Esq. will, pursuant to Idaho Rule of Civil Procedure 30(b)(6) will take the deposition of Plaintiff Fagen, Inc. ("Fagen"). The deposition will take place on oral examination before a notary public or other person authorized to administer oaths, and may be recorded by any means that the Idaho Rules of Civil Procedure permit, including, without limitation, by videotape, audiotape, and stenographic means (including any form of real-time reporting).

Fagen is requested to designate the person or persons most knowledgeable and prepared to testify on behalf of Fagen concerning the subject matter described below.

The deposition(s) will commence at 10:00 a.m. on Monday, 25 August 2014 at a place agreed upon by the parties and/or ordered by the Court pursuant to that certain Motion to Compel Depositions filed by the Defendants in this matter, and will continue from day to day until completed or adjourned pursuant to stipulation of counsel.

DATED: 27 July 2014

ANGELO L. ROSA, ESQ.



Angelo L. Rosa
Attorney for Moving Defendants

LIST OF EXAMINATION TOPICS

1. The negotiation of any and all Engineering, Procurement and Construction (“EPC”) agreements between Fagen and Exergy Development Group of Idaho, L.L.C. (“EDG Idaho”) that is the subject of this lawsuit.
 2. All communications within the Fagen organization concerning the services rendered pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
 3. All communications between Fagen and EDG Idaho concerning the services rendered pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
 4. All work undertaken pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
 5. All objections or disagreements between Fagen and any of the named Defendants in this action concerning the services rendered pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
 6. All work undertaken by Fagen during the last three (3) months of Fagen’s presence on the project sites that are at issue in this lawsuit.
 7. Any allegations by landowners of any damage caused by Fagen in the rendering of services pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
 8. The events leading up to the termination of work pursuant to the EPC between Fagen and EDG Idaho that is the subject of this lawsuit.
-

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

AUG 29 2014

By _____ 10:55 AM
Clerk

Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff,)
)
vs.)
)
ROGERSON FLATS WIND PARK,)
)
LLC, an Idaho limited liability company;)
)
EXERGY DEVELOPMENT GROUP OF)
)
IDAHO, LLC, an Idaho limited liability)
)
company; XRG DEVELOPMEN)
)
PARTNERS, LLC, an Idaho limited)
)
liability company; and "JOHN DOES 1-)
)
10",)
)
Defendants.)
_____)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

~~RECEIVED~~ ORDER RE:
DEFENDANTS' EX PARTE
MOTION FOR RULE 56(F)
CONTINUANCE AND MOTION FOR
ORDER SHORTENING TIME FOR
RULING THEREUPON

The Motion of Defendants ROGERSONFLATS WIND PARK, LLC, COTTONWOOD WIND PARK, LLC, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCHBUTTE WINDPARK, EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. and XRG DEVELOPMENT PARTNERS, LLC (collectively, "Moving Defendants") for a Rule 56(f) Cotinuanace and Motion for Order Shortening Time Thereupon having come before this court on an Ex Parte basis, having been duly considered and submitted and good cause appearing therefor,

ORDERRE: DEFENDANTS' EXPARTE MOTION FOR RULE 56(F) CONTINUANCE AND MOTION FOR ORDER SHORTENING TIME FOR RULING THEREUPON – Page 1

IT IS HEREBY ORDERED:

- 1. That Moving Defendants' Motion for Order Shortening Time is GRANTED / DENIED.
- 2. That Moving Defendants' Motion for a continuance pursuant to Rule 56(f) is ~~GRANTED / DENIED.~~ Will Be Argued ON 9/3/14 AT 10:00 a.m.
- 3. That ~~Moving Defendants' shall file a Motion to Compel Further Deposition no later than _____ [date].~~
- 4. That ~~the hearing on the aforementioned Motion to Compel Further Deposition shall be heard on _____ [date] at _____ a.m. / p.m.~~
- 5. That the hearing on Fagen, Inc.'s pending Motion for Summary Judgment shall be currently set for hearing on 2 September 2014 at 10:00 a.m. is hereby VACATED and reset for hearing on _____ [date] at _____ a.m. / p.m. will be heard unless the Rule 56(f) motion is granted - Counsel

IT IS FURTHER ORDERED:

Should Be Prepared to Argue All Matters that ARE Noticed for Hearing on 9/3/14.

DATED: 8/29/14
10:40 AM.

[Signature]
Judge of the District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 8-29-14, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Angelo L. Rosa
P.O. Box 1605
Boise, Idaho 83701

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Keith Moheban
Timothy Kelley
STINSON LEONARD STREET, LLP
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail *c/o John Goodell*

Signature *Francis J. Mulla*
Clerk of the Court

COMES NOW Chuck Dickerson, and hereby declares and states as follows:

1. I am an individual residing in Flathead County, in the State of Montana. I am over eighteen (18) years of age. I have personal knowledge of the matters attested to in this Declaration, except to those matters that are stated on the basis of information and/or belief.
2. I am employed by BCL & Associates Inc., a privately-owned construction company headquartered in Desert Hot Springs, California ("BCL"). My position is construction manager. I have 31 years of experience in the construction of renewable energy projects.
3. BCL was involved in the construction of the Idaho Six Wind Projects, five of which are at issue in this lawsuit, with the four projects located in Twin Falls County (Cottonwood, Deep Creek, Rogerson Flats, and Salmon Falls) known as "Jack Ranch". Fagen, Inc. was the lead contractor on those projects. BCL's role was construction management.
4. I have reviewed Exhibits A through G of the Affidavit of Lori Anderson ("Anderson Affidavit"), filed in support of Fagen, Inc.'s Motion for Summary Judgment in this matter, which consist of applications for payment made by Fagen for work allegedly conducted on the Idaho Six Wind Project sites.
5. In reviewing Exhibits A through G of the Anderson Affidavit, I consulted my own project notes and have identified the following discrepancies in Fagen's billing:
6. The work identified in Exhibit A contains the following discrepancies:
 - a. Foundations 1, 3, and 4 were drilled and ready for blasting.
 - Foundations 6 and 7 were excavated to a depth of approximately six (6) feet.
 - Foundation were 8 excavated to a depth of approximately two (2) feet.
7. The work identified in Exhibit B contains the following discrepancies:

**DECLARATION OF CHUCK DICKERSON IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF MOVING
DEFENDANTS' RULE 56(F) MOTION – Page 2**

- a. Crews were off of site from 01/01/12 – 01/03/12.
 - b. There was a total of 2 people on site. Project manager and equipment operator.
 - c. Foundation 2 was partially excavated and stopped due to lava tub. Foundation 4 was partially excavated and stopped due to rock. Foundation 5 was excavated to a depth of approx. 6 feet. Foundations 8 and 9 partially excavated and stopped due to rock. All of the excavation sites had safety fence installed around them.
8. The work identified in Exhibit C contains the following discrepancies:
- a. On 02/10/12 Project manager, Dave Ellis, quit and left the site.
 - b. Equipment operator, Juan Sanchez, is on site for approximately half of the month.
 - c. Project manager, Brad Bormann, visited the site approximately two times during the month to do overall check and start equipment.
 - d. No construction was completed that month.
9. The work identified in Exhibit D contains the following discrepancies:
- a. 03/13/12 Equipment operator, Juan Sanchez, was removed from the site and sent to another job.
 - b. Project manager, Brad Bormann, visited the site approximately once a week to do overall check and start equipment after Juan Sanchez is removed.
 - c. No construction progress was completed that month.
10. The work identified in Exhibits E, F, and G contains the following discrepancies:

**DECLARATION OF CHUCK DICKERSON IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF MOVING
DEFENDANTS' RULE 56(F) MOTION – Page 3**

- a. Project manager, Brad Bormann, visits the site approx. once a week to do overall check and start equipment.
 - b. No construction progress is completed this month.
11. The actual staffing of the Lava Beds Project was as follows:
- a. 01/04/12 – 02/10/12 Fagen had only two people on site.
 - b. 02/11/12 – 03/08/12 Fagen had only one person on site.
 - c. 03/08/12 – 07/30/12 Fagen checked the site once a week and started equipment.
 - d. 01/04/12 – 01/26/12 Fagen had one excavator operating on site. To the best of my knowledge from 01/26/12 – 07/30/12 no equipment was operating on site.
12. The actual staffing of the Notch Butte Project was as follows:
- a. 01/04/12 – 07/30/12 Fagen had only one person on site that operated one excavator. Little to no construction progress was made during this time.
 - b. 01/06/12 Fagen Subcontractor pulled personnel off of the site.
13. The actual staffing of the Jack Ranch Projects were as follows:
- a. 01/04/12 – 07/30/12: Fagen had only one person on site.
 - b. 01/06/12 – 01/09/12: Rock crusher was set up and operating. Due to lack of permit crusher was shut down 01/09/12.
 - c. 01/13/12 – 04/13/12: Fagen's subcontractor had one to two people on site operating a dozer, blade and sheep's foot compactor working on pads and roads.
 - d. 04/14/12 – 06/06/12: Fagen's subcontractor had two to four people

**DECLARATION OF CHUCK DICKERSON IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF MOVING
DEFENDANTS' RULE 56(F) MOTION – Page 4**


on site operating a dozer, blades, scrapers, sheeps foot compactor and water trucks working on pads and roads.

e. 06/06/13-07/30/12: Fagen's subcontractor had one to three people on site operating blades, scrapers, sheep's foot compactor and water trucks working on pads and roads.

14. I light of the foregoing, it is my professional opinion that the excavation and management costs identified by Fagen are incorrect and should be further investigated.

I testify under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED: 29 August 2014


Chuck Dickerson

DECLARATION OF CHUCK DICKERSON IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF MOVING DEFENDANTS' RULE 56(F) MOTION - Page 5

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 29 August 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Keith Moheban
Timothy Kelley
STINSON LEONARD STREET, LLP
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

**DECLARATION OF CHUCK DICKERSON IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF MOVING
DEFENDANTS' RULE 56(F) MOTION - Page 6**

September 2, 2014 1:32 PM

By _____ Clerk
_____ Deputy Clerk

**FIFTH JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF TWIN FALLS
427 SHOSHONE STREET NORTH
TWIN FALLS, IDAHO 83301**

Fagen, Inc., A Minnesota Corporation)

vs.)

Rogerson Flats Wind Park, LLC, etal.)

Case No: CV-2013-0000573

Amended
NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Pretrial Conference
Judge:
Courtroom:

Monday, September 29, 2014 01:30 PM
Randy J. Stoker
District Courtroom #2

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on September 2nd, 2014.

Alternate Judges: Notice is hereby given that the presiding judge assigned to this case intends to utilize the provisions of I.C.R. 25(a)(6). Notice is given that if there are multiple defendants, any disqualification pursuant to I.C.R. 25(a)(1) is subject to prior determination under I.C.R. 25(a)(3). The panel of alternate judges consists of the following judges who have otherwise not been disqualified in this action: Judges Bevan, Brody, Butler, Crabtree, Elgee, Hurlbutt, McDermott, Schroeder, Stoker, Wildman and Williamson.

- Copy to: Angelo L Rosa 1168 E. 1700 South, Salt Lake City, UT, 84105 (Defense Attorney);
- Copy to: John R Goodell 101 S Capitol Blvd., Ste 300, Boise, ID, 83702 (Plaintiff Attorney);
- Copy to: Keith S Moheban 150 South Fifth Street, Suite 2300, Minneapolis, MN, 54402 (Plaintiff Attorney);
- Copy to: Timothy M Kelley 150 South Fifth Street, Suite 2300, Minneapolis, MN, 55402 (Plaintiff Attorney)

Mailed Hand Delivered

Dated: September 2nd, 2014
Kristina Glascock
Clerk of the District Court

By: *Kristina Glascock*
Deputy Clerk

SEP - 9 2014

By _____ 4:30 P.M.
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:

CV 2013-573 (lead case)

CV 2013-574

CV 2013-575

CV 2013-576

CV-2013-26 (Lincoln County)

**ORDER GRANTING AND
DENYING MOTIONS ON HEARING
HELD 9/2/14**

The parties' several Motions filed herein came regularly came on for hearing before the Court, pursuant to notice, on Tuesday, September 2, 2014 at 10:00 a.m. Counsel John Goodell personally appeared on behalf of Plaintiff Fagen, Inc. ("Fagen"). Counsel Angelo Rosa personally appeared on behalf of Defendants Rogerson Flats Wind Park, LLC, Cottonwood Wind Park, LLC, Salmon Creek Wind Park, LLC, Deep Creek Wind Park, LLC, Exergy Development Group of Idaho, LLC ("Exergy"), and XRG Development Partners, LLC ("XRG") (collectively referred to as "All Defendants").

The Court having heard oral argument of counsel, and reviewed the file and entire record herein, and being fully informed in the premises, and good cause appearing therefor, made the following rulings from the bench on the parties' various Motions, and as further confirmed below herein:

1. Fagen's Motion To Take Judicial Notice is unopposed, and is therefore GRANTED, with regard to the legal rulings and proceedings in the related Bingham County case.
2. All Defendants' Motion for Rule 56(f) Motion for Continuance of Fagen's Motions for Summary Judgment is hereby DENIED.

(intentionally left blank)

3. Plaintiff Fagen's Motions For Summary Judgment are GRANTED in favor of Fagen and against the following Defendants in the amounts sought as stated below:

A. In favor of Fagen and against Defendants Rogerson Flats Wind Park, LLC, and Exergy, jointly and severally, in the total principal sum of \$1,412,774.81, exclusive of prejudgment interest, costs, and attorney fees which are reserved.

B. In favor of Fagen and against Defendants Cottonwood Wind Park, LLC, and Exergy, jointly and severally, in the total principal sum of \$1,412,774.81, exclusive of prejudgment interest, costs, and attorney fees which are reserved.

- C. In favor of Fagen and against Defendants Salmon Creek Wind Park, LLC, and Exergy, jointly and severally, in the total principal sum of \$1,412,774.81, exclusive of prejudgment interest, costs, and attorney fees which are reserved.
- D. In favor of Fagen and against Defendants Deep Creek Wind Park, LLC, and Exergy, jointly and severally, in the total principal sum of \$1,412,774.81, exclusive of prejudgment interest, costs, and attorney fees which are reserved.
- E. In favor of Fagen and against Defendants Notch Butte Wind Park, LLC, and Exergy, jointly and severally, in the total principal sum of \$856,012.20, exclusive of prejudgment interest, costs, and attorney fees which are reserved.

The Court finds and concludes that liability is established for breach of contract, and each of the above gross principal amounts are due and owing by the Defendants as stated above as a matter of law, based on Fagen's submitted Affidavits of Bradley Bormann, Samuel Ewald, Jennifer A. Johnson, Kirsten Tjosaas, and Lori Anderson, and Exhibits attached thereto.

However, the Court does not enter final judgment for the above amounts at this time. Rather, All Defendants shall have an opportunity at the court trial to establish "offsets" to potentially reduce the above gross principal amount of damages at trial, based on specific invoices or line items which may be challenged, or for alleged "work not performed."

The Court elects to give All Defendants such opportunity at the court trial in the sound exercise of its discretion, despite finding and concluding that the Declaration of James T. Carkulis dated 8/19/14 ("Carkulis Declaration") filed herein is conclusory and insufficient to raise a triable issue of fact on the issue of damages or "offsets."

The Court elects to give All Defendants such opportunity at the court trial in the sound exercise of its discretion,

(intentionally left blank)

concludes that the Dickerson Declaration, if considered, despite its ~~untimeliness~~ ^{late filing}, is sufficient to raise a triable issue of fact. *Limited to The "offset" issue.*

4. Discovery Rulings: All Defendants may take the further deposition of Fagen's Bradley Bormann limited to the "offset" on the issue of damages only for alleged "improper billings" or "work not performed." Fagen may take the depositions of Carkulis and/or Dickerson. All discovery, including such depositions, are to be completed by the 9/29/14 date of the Pretrial Conference.
5. Pretrial Conference: The Pretrial Conference is rescheduled to be held on Monday, September 29, 2014, at 1:30 p.m., per the Court's separate Amended Notice of Hearing filed 9/2/14. At the Pretrial Conference, the Court advised counsel for All Defendants' counsel to provide specific listing of challenges to

each billing which is controverted in support of potential "offsets" to the gross amounts billed by and awarded to Fagen as stated above on the issue of damages.

6. Court Trial: The Court trial will proceed as scheduled for four days commencing October 28-31, 2014. Fagen has been granted all relief sought on its Complaint by the above rulings on its Motions ~~For~~for Summary Judgment, subject to the defense of "offsets" by All Defendants as described above. Therefore, the order of proof at trial will be All Defendants proceeding with their "offset" defense limited to the issue of damages only as discussed above by calling witnesses and presenting such evidence. Fagen will thereafter have the opportunity to call any rebuttal witnesses and such evidence.

7. Plaintiff's claims for lien foreclosure as to all Defendants is hereby DISMISSED with prejudice.

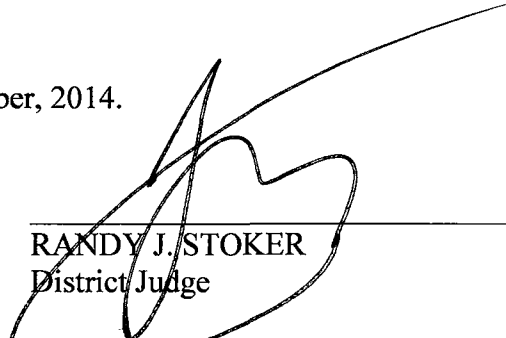
8. Plaintiff's claims against Defendant XRG Development Partners, LLC are hereby DISMISSED with prejudice in their entirety.

(intentionally left blank)

Defendants' expert witness disclosure shall not be amended.

IT IS SO ORDERED.

DATED this 9 day of September, 2014.



RANDY J. STOKER
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9 day of August, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

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P.O. Box 1605
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Attorney for Exergy Development Group of Idaho, L.L.C.; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC; Cottonwood Wind Park, LLC; Salmon Creek Wind Park, LLC; Deep Creek Wind Park, LLC; and Notch Butte Wind Park, LLC

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Attorneys for Plaintiff Fagen, Inc.

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CLERK/Deputy Clerk

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BY _____ CLERK
 _____ DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

<p>FAGEN, INC., Plaintiff, vs. ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, LLC, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, NOTCH BUTTE WIND PARK, LLC, XRG DEVELOPMENT GROUP OF IDAHO, LLC, XRG DEVELOPMENT PARTNERS, LLC. and "JOHN DOES 1-10", Defendants.</p>

Consolidated Cases Nos.:
 CV 2013-573 (lead case)
 CV 2013-574
 CV 2013-575
 CV 2013-576

CV-2013-26

**PLAINTIFF FAGEN, INC.'S
 MOTION TO EXCLUDE
 DEFENDANTS' EXPERT AND
 LAY WITNESSES**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and hereby moves the Court for an order to exclude defendants' lay and expert witnesses on the following grounds.

1. The defendants failed to comply with the *Stipulation for Scheduling and Planning* ("Pre-Trial Stipulation") filed with the court on April 22, 2014. Mr. Rosa agreed and signed the

Pre-Trial Stipulation which specified a 60-day pre-trial deadline to disclose defendants' expert and lay witnesses.

2. As referenced in the Pre-Trial Stipulation, I.R.C.P. Rule 26(b)(4) sets forth the requirements to properly disclose of experts, their opinions, facts known and the substance of the anticipated testimony of each expert.

Idaho Rule of Civil Procedure 26(b)(4) (A) (i) requires the following disclosure for expert witnesses:

A complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

The deadline for defendants to disclose expert witnesses was Saturday, August 30, 2014. Considering the due date fell on a weekend and the following Monday was Labor Day, a court holiday, Fagen's counsel expected to receive the disclosure of expert witnesses at least by close of business on Tuesday, September 2, 2014. No such disclosure was received.

Additionally, Plaintiff's Interrogatory No. 3 asked for specific details regarding any experts retained by defendants. On February 24, 2014, defendants responded to plaintiff's **Interrogatory No. 3** stating: "*None at present. Defendants anticipate retaining one or more experts offer testimony [sic]. Defendants shall supplement their response to this Interrogatory at that time. Discovery is ongoing. Defendants reserve the right to amend this response as additional information is available or as a result of inadvertence, mistake, excuse or neglect.*"

Defendants failed to timely disclose their expert witnesses and failed to provide any

supplemental responses as required by Idaho Rule of Civil Procedure 26(e)(1)(B) to identify experts, the subject matter, and the substance of expert testimony

3. The pre-trial deadlines were raised in Mr. Rosa's presence at the hearing held on September 2, 2014. Even so, Mr. Rosa failed to provide Fagen's counsel with a list of witnesses as discussed above. The same deadlines applied to both lay witness and expert witness disclosures. As a result of defendants' failure to comply with the deadline, they should be barred from calling any lay witnesses at trial.

Additionally, in Response to plaintiff's Interrogatory No. 4, defendants were asked to identify non-expert witnesses and the substance of their testimony. Defendants provided a list of four witnesses with little detail as to the knowledge they possess surrounding the facts of this case. Again, defendants reserved "*the right to amend this response as additional information is available...*" Defendants did not amend their response even though Mr. Rosa repeatedly makes reference to information obtained in these matters "that supports offsets to the amounts claimed by Fagen as damages..." See Motion for Reconsideration at 2, ¶1 filed on September 3, 2014. If such information has become available to defendants, the discovery responses should have been amended and served upon plaintiff's counsel to provide the opportunity to conduct further discovery of admissible evidence at trial.

4. The witness Declarations, namely, Dustin Shively and James Carkulis, provided by defendants in prior motions and proceedings in this matter, do not meet the requirements of Idaho discovery rules and rules of evidence and as such, have not set forth any admissible facts. The Declarations, as the court has duly noted, are merely conclusory statements that lack details, specifics and do not point to any evidence. Defendants' lack of providing substantive, concrete facts and tangible evidence make it difficult for Fagen's counsel

to prepare for trial. As a result, Fagen will be prejudiced if such witnesses are allowed to testify at trial.

5. Further, since defendants' counsel has not complied with the requirements set forth in the rules of discovery and has not met the deadlines set forth in the Pre-Trial Stipulation, Fagen's counsel should not have to expend time and resources to conduct discovery, particularly to take witnesses' depositions, whose testimony is likely inadmissible and should be prohibited at the trial in this matter. The potential factual witnesses identified thus far in this proceeding have not provided enough detail to make a deposition worthwhile and productive. Again, as previously stated, defendants' counsel has a duty under Idaho Rule of Civil Procedure 26(e) to provide supplemental discovery responses. Pursuant to this rule, "the trial court may exclude the testimony of witnesses" if the "party fails to seasonably supplement the responses as required". The lack of a timely lay witness disclosure and failure to supplement and/or amend the discovery responses when additional information became known makes it impractical for plaintiff's counsel to adequately prepare for depositions and ultimately trial.

As it is clear that defendants failed to: a) timely disclose their expert and lay witnesses in accordance with the Idaho Rules of Procedure and the Pre-Trial Stipulation, and b) supplement their discovery responses as required by these rules, the Court should grant Fagen's *Motion to Exclude Expert and Lay Witnesses* and preclude defendants from offering any retained expert testimony and lay witness testimony at trial. For these reasons, the trial court has the basis to exercise its discretion and exclude witness testimony.

ORAL ARGUMENT REQUESTED.

DATED this 22nd day of September, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED



By: _____
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

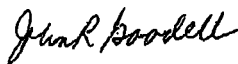
I HEREBY CERTIFY that on the 22nd day of September, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
MARSH ROSA LLP
344 West Hale Street #301
Boise, ID 83706
Attorney for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; and Lava Beds Wind Park, LLC

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Timothy M. Kelley
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JOHN R. GOODELL

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DISTRICT COURT
 Fifth Judicial District
 County of Twin Falls - State of Idaho

SEP 23 2014 AM 8:00

By SR Clerk
 Deputy Clerk

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

<p>FAGEN, INC., Plaintiff, vs. ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, LLC, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, NOTCH BUTTE WIND PARK, LLC, XRG DEVELOPMENT GROUP OF IDAHO, LLC, XRG DEVELOPMENT PARTNERS, LLC. and "JOHN DOES 1-10", Defendants.</p>

Consolidated Cases Nos.:
 CV 2013-573 (lead case)
 CV 2013-574
 CV 2013-575
 CV 2013-576
 CV-2013-26

PRE-TRIAL MEMORANDUM
I.R.C.P. 16(d)

Plaintiff Fagen, Inc. ("Fagen") hereby submits the following Pre-Trial Memorandum pursuant to the Court's December 5, 2013 *Civil Pre-Trial Order* at ¶3.

Fagen understands that the *Order Granting and Denying Motions on Hearing Held 9/2/14* supersedes the Pre-Trial order issued on December 5, 2013.

Fagen's Motions for Summary Judgment have been granted in favor of Fagen for the gross principal amounts as against each defendant. Therefore, the only issue remaining is that of

the alleged "offsets" to damages which can potentially reduce the gross amount due and owing on the judgments.

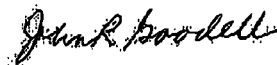
To date, defendants have not produced any admissible evidence to prove the alleged offsets. Discovery is to be completed by 9/29/14 which is the date of the Pre-Trial Conference. Depositions are being taken at this time. Fagen reserves the right to cross-examine all witnesses which may be called by the defendants, including but not limited to James T. Carkulis and witness Dickerson. Additionally, Fagen plans to call the witnesses identified on the witness disclosure filed with the court on July 30, 2014.

This Pre-Trial Memorandum is submitted to preserve Fagen's right to call rebuttal witnesses and present evidence to rebut any issue of damages which defendants may raise. At this time, defendants have not identified any witnesses (or exhibits) which may be used to prove its offset defense. A Motion to Exclude Defendants' Expert and Lay Witnesses is filed concurrently herein

Further, Fagen further reserves the right to call all witnesses who have provided affidavits and to utilize supporting materials to those affidavits at trial in this matter.

DATED this 22nd day of September, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED



By: _____
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of September, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

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DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

SEP 25 2014

By _____ 3:15 PM
Clerk
Deputy Clerk

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
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CV-2013-26

**PLAINTIFF FAGEN, INC.'S
MOTION TO SHORTEN TIME AND
REQUEST FOR HEARING ON
FAGEN'S MOTION TO EXCLUDE
DEFENDANTS' EXPERT AND LAY
WITNESSES**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record,
and hereby moves the Court for an Order to Shorten Time and Request for Hearing on *Plaintiff
Fagen's Motion to Exclude Defendants' Expert and Lay Witnesses* ("Motion to Exclude") on

**PLAINTIFF FAGEN, INC.'S MOTION TO SHORTEN TIME and
REQUEST FOR HEARING ON FAGEN'S MOTION TO
EXCLUDE DEFENDANTS' EXPERT AND LAY WITNESSES - Page 1**

Monday, September 29, 2014 at 1:30 p.m. before the Hon. Randy J. Stoker, Dist. Judge. The parties are scheduled to appear for the Pre-Trial Conference at that same time and place.

The Motion to Exclude presently pending before the Court is a subject matter which falls within the guidelines of IRCP 16(c), "*Subjects to be discussed at pre-trial conferences.*", in particular sub-section (5).

This Motion to Shorten Time is based on the following grounds:

- a) It is logical for this matter to be heard at the pre-trial conference presently set by the Court;
- b) It promotes judicial economy since the Court and the parties have already reserved this date and time.

DATED this 25th day of September, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: John R. Goodell
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

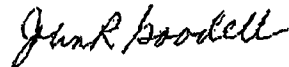
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JOHN R. GOODELL

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

SEP 25 2014

By _____ 3:15PM
Clerk
Deputy Clerk

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Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
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SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
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"JOHN DOES 1-10",

Defendants.

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CV 2013-576

CV-2013-26

**PLAINTIFF FAGEN, INC.'S
MEMORANDUM IN SUPPORT OF
MOTION TO EXCLUDE
DEFENDANTS' EXPERT AND
LAY WITNESSES**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record,
and hereby submits its Memorandum In Support of Motion to Exclude Defendants' Expert and
Lay Witnesses ("Motion to Exclude") filed with the Court on September 22, 2014.

Plaintiff Fagen's Motion to Exclude should be granted. The Idaho Supreme Court issued
an opinion on September 19, 2014, Docket No. 40793-2013, 2014 Opinion No. 95 which is the

same situation as the parties find themselves in this present case. See *Cummings v. Stephens*, 2014 Ida. LEXIS 261 (2014).

The Supreme Court at pp. 15-18 addresses the failure to timely disclose witnesses. Counsel for Fagen attaches excerpts of this opinion for the Court's review that affirmed the District Court's decision to exclude expert witnesses stating that it is clearly within the court's discretion and in so doing, the District Court acted within the applicable legal standards.

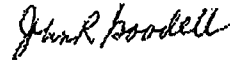
As stated by the Supreme Court at p. 16, "*Exclusion of testimony based on late disclosure is a sanction under I.R.C.P. 39(b)*". In support of the Motion to Exclude, Fagen hereby invites the District Court to consider this recent opinion since it is the same set of circumstances and legal standards with which it is faced herein.

Fagen will suffer prejudice and be at a disadvantage due to Defendants' failure to comply with the deadlines set forth in the Pre-Trial Stipulation filed on April 22, 2014 and their lack of compliance with I.R.C.P. 26(b)(4)(A)(i) and 26(e). Defendants have had ample time to timely disclose expert and lay witnesses and to provide any expert reports in a timely manner to counsel for Fagen. The trial in this matter is now a little over one month away and the defendants still have not provided any witnesses, evidence or reports regarding the "offsets".

Fagen filed a Motion to Shorten Time concurrently with this Memorandum and accordingly, requests oral argument on an expedited basis.

DATED this 25th day of September, 2014.

RACINE, OLSON, NYE, BUDGE &
RAYBY CHARTERED

By: 

JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

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John R. Goodell

JOHN R. GOODELL

CUMMINGS v. STEPHENS

2014 Opinion No. 95

**ATTACHMENT TO PLAINTIFF FAGEN, INC.'S MEMORANDUM IN
SUPPORT OF MOTION TO EXCLUDE DEFENDANTS' EXPERT AND
LAY WITNESSES**

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 40793-2013

STEVEN B. CUMMINGS,)	
	)	Boise, August 2014 Term
Plaintiff-Appellant,)	
	)	2014 Opinion No. 95
v.)	
	)	Filed: September 19, 2014
ROGER L. STEPHENS,)	
	)	Stephen W. Kenyon, Clerk
Defendant-Respondent,)	
)	
and)	
)	
NORTHERN TITLE COMPANY OF)	
IDAHO, INC., an Idaho corporation,)	
)	
Defendant-Respondent-Cross)	
Appellant.)	

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, in and for Bear Lake County. Hon. David C. Nye, District Judge.

The judgment of the district court is affirmed in part and reversed in part.

Nathan M. Olsen, Petersen Moss Hall & Olsen, Idaho Falls, argued for appellant.

Randall C. Budge, Racine Olson Nye Budge & Bailey, Pocatello, argued for respondent Roger L. Stephens.

Aaron K. Bergman, Bearson & Caldwell, Logan, Utah, argued for respondent Northern Title Company of Idaho, Inc.

EISMANN, Justice.

This is an appeal out of Bear Lake County from a judgment denying the buyer of real property an award of damages against the seller and awarding the buyer a judgment against a title company that prepared an inaccurate legal description of the real property. We affirm the denial of damages against the seller and reverse the award of damages against the title company.

Northern Title to rerecord the warranty deed. It was testified extensively at trial that Northern Title's understanding was that only the property on the west side was involved in the transaction." Next, the court addressed whether Northern Title acted in bad faith in denying Mr. Cummings's claim. The court held that Mr. Cummings had failed to prove bad faith, stating, "The bad faith claim has failed for the reasons explained above, and the Court will not take up whether the denial to pay was the result of a good faith mistake, except to say that Plaintiff has offered nothing to prove this point."

Mr. Cummings has not challenged any of these factual findings on appeal. Thus, even if this Court were to adopt the bad faith tort as requested by Mr. Cummings, he would not prevail on that claim. Therefore, we need not address the issue of whether we should adopt such a tort.

V.

Did the District Court Err in Preventing Mr. Cummings's Expert from Testifying Due to Mr. Cummings's Violation of the Scheduling Order?

On January 27, 2012, the district court entered a scheduling order setting this case for trial to commence on July 31, 2012. The order included a discovery cut-off of June 2, 2012. It required Mr. Cummings to disclose expert witnesses 140 days before trial (by March 13, 2012) and Northern Title to disclose its expert witnesses 105 days before trial (by April 17, 2012). The order required the disclosures to be in the manner and specificity required by Idaho Rule of Civil Procedure 26(b)(4)(A)(i). That rule stated:

A complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

I.R.C.P. 26(b)(4)(A)(i) (2012).

The scheduling order also included the statement, "Witnesses not disclosed in responses to discovery and/or as required herein will be excluded at trial, unless allowed by the Court in the interest of justice." Both Mr. Cummings and Northern Title intended to have expert witnesses testify as to the value of the 83 acres.

On June 20, 2012, Mr. Cummings filed a motion to exclude Northern Title's expert on the ground that Northern Title had failed to comply with the scheduling order by timely disclosing the information required by Rule 26(b)(4)(A)(i). The information was due on April 17, 2012, but Northern Title did not provide it until June 14, 2012, when it gave Mr. Cummings a copy of its expert's report. The motion was argued on July 3, 2012, and on July 6, 2012, the court entered its order granting the motion on the ground that Northern Title's disclosure prior to the deadline of April 17, 2012, did not meet the requirements of Rule 26(b)(4)(A)(i) and Northern Title had not shown that it was in the interest of justice to permit an untimely disclosure.

On July 2, 2012, Northern Title moved to exclude Mr. Cummings's expert on the ground that Mr. Cummings had also failed to comply with the court's scheduling order with respect to the specificity required by Rule 26(b)(4)(A)(i). That motion was argued on July 17, 2012. The information was required to be disclosed by March 13, 2012, but Mr. Cummings did not provide it until June 14, 2012, when he gave Northern Title a copy of his expert's report. His excuse for failing to provide the information sooner was that the expert did not provide a written report until that date. At the conclusion of the hearing, the court ordered that Mr. Cummings's expert was likewise excluded from testifying because Mr. Cummings did not comply with the scheduling order by disclosing the material required by Rule 26(b)(4)(A)(i) by his deadline of March 13, 2012. The court added that if the parties desired, they could work out a stipulation permitting both experts to testify.

On July 24, 2012, Mr. Cummings filed a motion asking the court to reconsider its order excluding Mr. Cummings's expert from testifying. That motion was heard on July 30, 2012, the day before the start of the trial. Mr. Cummings argued that he would be more prejudiced not to have his expert witness testify than Northern Title would be prejudiced by not having its expert witness testify. The court denied the motion.

"Exclusion of testimony based on late disclosure is a sanction under I.R.C.P. 37(b), and is subject to an abuse of discretion review." *Bramwell v. S. Rigby Canal Co.*, 136 Idaho 648, 651, 39 P.3d 588, 591 (2001). "To determine if there has been an abuse of discretion, this Court applies the following three factors: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of this discretion and consistent with the legal standards applicable to the specific choices available to it; and (3)

whether the trial court reached its decision by an exercise of reason.” *City of McCall v. Seibert*, 142 Idaho 580, 586, 130 P.3d 1118, 1124 (2006).

The district court correctly perceived that its decision to exclude Mr. Cummings’s expert was a matter of discretion, it acted within the boundaries of its discretion, and it reached its decision by an exercise of reason. Mr. Cummings contends that the court did not act consistent with the applicable legal standards because it did not balance the equities.

He argues that Northern Title had its expert’s report in its possession some time before it disclosed the report on June 14, 2012, while Mr. Cummings did not receive his expert’s report until June 14, 2012, when he disclosed it. Mr. Cummings was required to disclose the information required by Rule 26(b)(4)(A)(i) by March 13, 2012. There is no reason shown why the report was not obtained early enough to be timely disclosed. As a practical matter, there is no difference between being derelict in providing a report timely to the opposing party after it has been received and being derelict in failing to have the expert complete the report so it could be provided timely to the opposing party. In either circumstance, the opposing party will not receive the report by the deadline set forth in the scheduling order.

At the motion to exclude Northern Title’s expert, Mr. Cummings argued that “it’s highly prejudicial when expert disclosures get filed late, and particularly when there’s no excuse for doing so.” The same argument applied to his late disclosure. The district court imposed the same sanction for Mr. Cummings’s late disclosure as it imposed, at Mr. Cummings’s request, for Northern Title’s late disclosure. If anything, Mr. Cummings was more dilatory for the late disclosure because his disclosure was about three months late while Northern Title’s disclosure was about two months late.

At the hearing on the motion to reconsider held on July 30, 2012, the court asked Northern Title what prejudice there would be if both experts were permitted to testify. Northern Title answered that it had released its expert, and therefore it had not had its expert prepare a report to respond to the opinion of Mr. Cummings’s expert. That is not surprising since the court had excluded Northern Title’s expert on July 6, 2012.

Mr. Cummings argues that it is more prejudicial for him to be deprived of his expert on valuation than for Northern Title to be deprived of its expert on the same subject. He does not provide any logical reason supporting that statement.

In its scheduling order, the district court clearly set forth what it required with respect to the disclosure of information concerning an expert's testimony. The court also admonished the parties that "[w]itnesses not disclosed in responses to discovery and/or as required herein will be excluded at trial, unless allowed by the Court in the interest of justice." Mr. Cummings was over three months late in providing the required disclosures, and he did not provide any legitimate reason for violating the order. In excluding Mr. Cummings's expert witness from testifying, the district court acted in a manner that was consistent with the applicable legal standards, *Aguilar v. Coonrod*, 151 Idaho 642, 647, 262 P.3d 671, 676 (2011); *Bramwell*, 136 Idaho at 652, 39 P.3d at 592.

VI

Did the District Court Err in Failing to Award Mr. Cummings Additional Damages?

The district court awarded Mr. Cummings \$50,000, the amount he paid to Three Bar Ranches for an assignment of its contract to purchase the Stephenses' property. Mr. Cummings argues on appeal that the court erred in not awarding him additional damages. He contends that if the Stephenses retain the 83 acres, then he should have been awarded the value of the 83 acres and benefits received for the land being in the Conservation Reserve Program (CRP). He begins by stating, "Cummings's post trial brief set forth a number of consequential and proximate damages suffered as a result of Northern Title's misconduct." He then states that the damages listed in his post-trial brief included, "[a]mong other damages listed, . . . being deprived of the 83 acres lying on the east side of the highway and any foreseeable income that was generated from that property, i.e. the CRP funds." After stating the amount of those funds, he concludes, "Cummings proposed value of the lost property was also covered in detail in the brief."

Idaho Appellate Rule 35(a)(6) provides that the appellant's brief shall contain, in the argument section, "the contentions of the appellant with respect to the issues presented on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcript and record relied upon." "We will not consider assignments of error not supported by argument and authority in the opening brief." *Hogg v. Wolske*, 142 Idaho 549, 559, 130 P.3d 1087, 1097 (2006). Merely referring this Court to the party's brief filed in the trial court does not comply with Rule 35(a)(6).

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

SEP 25 2014

By _____ 3:15 PM
_____ Clerk
_____ Deputy Clerk

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Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576

CV-2013-26

**PLAINTIFF FAGEN, INC.'S
ERRATA TO MOTION TO
EXCLUDE DEFENDANTS' EXPERT
AND LAY WITNESSES**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record,
and hereby makes this Errata to the Motion to Exclude Defendants' Expert and Lay Witnesses.

The following paragraph on pp. 3-4 is corrected herein and should read as follows:

4. The witness Declarations, namely, ~~Dustin Shively~~ Chuck Dickerson and James T. Carkulis, provided by defendants in prior motions and proceedings in this matter, do not meet the

requirements of Idaho discovery rules and rules of evidence and as such, have not set forth any admissible facts. The Declarations, as the court has duly noted, are merely conclusory statements that lack details, specifics and do not point to any evidence. Defendants' lack of providing substantive, concrete facts and tangible evidence make it difficult for Fagen's counsel to prepare for trial. As a result, Fagen will be prejudiced if such witnesses are allowed to testify at trial.

DATED this 25th day of September, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: *John R. Goodell*
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of September, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
MARSH ROSA LLP
344 West Halc Street #301
Boise, ID 83706
Attorney for Exergy Development Group of Idaho, LLC; XRG Development Partners, LLC; and Lava Beds Wind Park, LLC

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John R. Goodell
JOHN R. GOODELL

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

SEP 25 2014

By _____ 3:30 PM
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:

CV 2013-573 (lead case)

CV 2013-574

CV 2013-575

CV 2013-576

CV-2013-26

**ORDER GRANTING PLAINTIFF
FAGEN, INC.'S MOTION TO
SHORTEN TIME; ORDER
SETTING HEARING**

Good cause appearing, **IT IS HEREBY ORDERED** that Plaintiff Fagen, Inc.'s Motion to Shorten Time is hereby **GRANTED**. Therefore, *Plaintiff Fagen, Inc.'s Motion to Exclude Defendants' Expert and Lay Witnesses* will be heard on Monday, September 29, 2014 at 1:30 p.m. in District Courtroom #2.

DATED this 25th day of September, 2014.


RANDY J. STOKER, District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25 day of September, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
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Clerk/Deputy Clerk

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 SEP 26 PM 1:24

BY _____
CLERK
DEPUTY

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
Plaintiff,)
vs.)
ROGERSON FLATS WIND PARK,)
LLC, an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMEN)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
Defendants.)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

**OBJECTION TO MOTION FOR
ORDER SHORTENING TIME**

Defendants hereby object to Plaintiff, Fagen, Inc.'s Motion for an Order Shortening Time on the following grounds:

1. Fagen's Memorandum in support of its evidentiary motion is untimely and is properly stricken pursuant to Idaho Rule of Civil Procedure 12(f). Idaho Rule of Civil Procedure 7(b)(3)(C) clearly states:

"It shall not be necessary to file a brief or memorandum of law in support of a motion, but the moving party must indicate upon the face of the motion whether the party desires to present oral argument or file a brief within fourteen (14) days with the court in support of the motion."

Fagen's Motion neither reserved the right to file a brief nor included a brief concurrently with filing. As Fagen and its counsel have insisted on strict interpretation of rules and orders in this matter, then that stringency must be applied unilaterally.

2. Judicial economy is not promoted by Fagen filing a significant evidentiary motion five (5) court days prior to the date on which Fagen wishes to have that motion heard. Defendants have the right to brief the issue. If Fagen and its counsel deemed the issue as significant as they claim, then a timely motion seeking the relief in question would have been filed. While the Motion is properly stricken in its entirety on this basis, Defendants respectfully submit to this Court that should it indulge Fagen's motion, it would be an abuse of this Court's discretion to permit that motion to be heard without Defendants being given the time and opportunity to brief the issues.

3. While under ordinary circumstances it would be logical to address the issues raised in Fagen's motion at a pre-trial conference, Fagen's failure (whether intentional or otherwise) to timely notice its motion for hearing and provide briefing makes it illogical to address the issues at the upcoming hearing. If the motion in question is not stricken, then a briefing schedule should be ordered and a hearing held after that briefing has been submitted to the Court.

For these reasons, Defendants respectfully submit that this Honorable Court both deny the pending Motion for Order Shortening Time and strike the pending evidentiary motion.

OBJECTION TO MOTION FOR ORDER SHORTENING TIME – Page 2

DATED: 2 September 2014

Respectfully Submitted,

MARSH ROSA, LLP



Angelo L. Rosa
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 26 September 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

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Minneapolis, Minnesota 55402

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- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

Defendants hereby provide their Pre-Trial Statement in this matter as follows:

This Court has held that there is no triable issue of material of material fact as to (a) the existence of the EPC agreement between Fagen, Inc. (“Fagen”) and Defendant Exergy Development Group of Idaho, L.L.C. (“Exergy”), (b) non-payment by Exergy under that contract, and (c) performance by Fagen under that contract. This Court has granted Exergy leave to prove up offsets to Fagen’s claim for damages and permitted the parties to complete final discovery relevant to that issue. That discovery was concluded a few days ago, on Friday 26 September 2014.

With this discovery completed, Exergy respectfully submits that lawful offsets to Fagen’s damages claim exist, which fit under four (4) categories: (1) force majeure events providing an affirmative defense to all damages claimed by Fagen, (2) events that created a total frustration of purpose of the agreement between Fagen and Exergy, providing an affirmative defense to all damages claimed, (3) facts establishing that Exergy’s obtaining financing for the projects was an understood condition precedent to payment, and (4) without prejudice to the three aforementioned factors, inaccurate and excessive billing (as itemized below) justifies a partial offset of the damages claimed.

I. DEFENDANTS ARE ENTITLED TO A TOTAL OFFSET OF DAMAGES ON THE GROUNDS OF FORCE MAJEURE.

The EPC agreement between Fagen and Exergy contained a force majeure provision, which stated, in pertinent part, that:

“10.3 Force Majeure Event Affecting Owner. If Owner is affected by a Force Majeure Event, it shall provide notice thereof to Contractor and the extent to which such Force Majeure Event affects the performance by Owner of its obligations under the Contract Documents. **Owner shall not be liable for its failure to comply with any of its obligations as a result of a Force Majeure Event** and shall use all reasonable efforts to mitigate or limit the effects of such

Force Majeure Event on the performance of its obligations under the Contract Documents. Owner shall notify Contractor in writing when it is able to resume the performance of its obligations.”¹

A “force majeure event” is defined in the EPC as:

““Force Majeure Event” means, with respect to a Party, **any event or circumstance which is beyond the reasonable control of such Party and having a direct effect on such Party's performance of the Contract Documents, and which (a) could not be avoided, prevented or removed by such Party's commercially reasonable efforts and (b) is not caused by or does not result from the negligence of such Party**, or breach or failure of such Party to perform its obligations under the Contract Documents; provided that such Party has taken all reasonable precautions, care and alternate measures to avoid or mitigate the effects thereof. Force Majeure Events shall include, but not be limited to: natural disasters, fire, hurricanes, tornadoes, dust or sand storms, mudslides, subsidence, lightning, flood, earthquake, explosions, acts of God, terrorism or similar actions by the public enemy, strikes or lockouts affecting the industry in general (national or regional in scope) where such strike or lockout has a direct affect on the performance of the Contract Documents, public disorder or civil disturbance, blockages, insurrections, riots, war, hostilities, sabotage, expropriation or confiscation, epidemic or quarantine, **or other action or inaction (not a Change in Law) by any Governmental Authority; and with respect to Owner any event of force majeure under any other agreement or contract relating to the Project with a third party.** Notwithstanding anything to the contrary, Force Majeure Events shall not be deemed to include failure of Owner to make timely payment to Contractor as required under this Agreement.”

The procedure for terminating the EPC agreement on force majeure grounds is defined in the EPC as follows:

“14.2.1 Force Majeure Events. If a Force Majeure Event continues for more than six (6) months after a notice of a Force Majeure Event is given and if the Force Majeure Event has rendered impossible the performance of this Agreement in accordance with the Contract Times or Turbine Supplier Delivery Schedule by either Party, **Owner may terminate this Agreement by giving Contractor at least five (5) days' prior written notice of termination.**”

On DATE, Defendants sent Fagen a notice of force majeure coupled with a notice to stop

¹ True and correct copies of the relevant excerpts of the EPC agreement, as produced by Fagen in discovery in this matter, are collectively attached and incorporated hereto as Exhibit A.

work on the projects at issue.² This notice was sent directly to Fagen by Defendants' principal, and (at Defendants' request) by their counsel at the Hawley Troxell law firm. The force majeure event in question was the moratorium on wind project development triggered by the filing of a generic PURPA docket by the Idaho Public Utilities Commission ("IPUC")³, which created a situation where lenders were unwilling to finance renewable energy projects given regulatory uncertainty. This effectively halted the development of wind projects in the State of Idaho and prevented them from moving forward. Defendants' principal, James T. Carkulis testified under oath on Wednesday, 24 September 2014 to these facts.⁴

A party relying on a force majeure clause to excuse performance bears the burden of proving that the event was beyond its control and without its fault or negligence. 30 Williston on Contracts § 77:31 (4th ed.) Accordingly, courts may determine that a contractual act has become impracticable when it can only be done at an excessive, unreasonable, and unbargained for cost. *Id. Haessly v. Safeco Title Ins. Co.*, 121 Idaho 463, 465 (1992); *Sutheimer v. Stoltenberg*, 127 Idaho 81, 85 (Ct.App.1995). Here, the regulatory moratorium on development made it impossible for the parties' to continue development or construction on the projects at issue. The consequences of this moratorium could not be foreseen and in the absence of the moratorium, the development could continue.

On the basis of these facts and the applicable law, Exergy respectfully submits that (a)

² A true and correct copy of this correspondence, produced during discovery in this matter, is attached and incorporated hereto as Exhibit B.

³ Under the federal Public Utility Regulatory Policies Act ("PURPA"), off-takers (i.e. utilities such as Idaho Power Company) are obligated to purchase energy generated by Qualified Facilities ("QFs") of which the projects at issue in this case were. The IPUC's generic PURPA investigation addressed key issues such a price, size, duration, and curtailment: all of these have the potential to substantially affect the economic performance (and thus economic feasibility) of projects such as those at issue in this case.

⁴ Mr. Carkulis has been designated as a witness that Defendants intend to call at trial in this matter. That designation was made in Defendants' discovery responses dated 24 February 2014.

force majeure events exist by virtue of the moratorium imposed by the Idaho Public Utilities Commission, and (b) these events are a bar to recovery by Fagen of any damages claimed relating to the breach of contract at issue.

II. DEFENDANTS ARE ENTITLED TO A TOTAL OFFSET OF DAMAGES ON THE GROUNDS OF FRUSTRATION OF PURPOSE.

Exergy's nonperformance under the EPC Agreement was due to the filing of a generic PURPA docket by the IPUC, which effectively halted all wind energy projects in the State of Idaho and destroyed Exergy's ability to finance and complete the projects at issue in this case.

The doctrine of frustration of contract purpose "operates in a proper situation to excuse a promisor's duty of performance if some supervening event has destroyed the value of the counterperformance bargained for by the promisor, even though the counterperformance is still literally possible." *Twin Harbors Lumber Co. v. Carrico*, 92 Idaho 343, 349 (1968). The testimony of James T. Carkulis in this matter at deposition, and at trial, will establish that those circumstances arose and rendered it impossible for the projects to continue. "The excuse of frustration serves to mitigate the costs of disaster, not to provide a means of escape from a contract less profitable than anticipated." *Waegemann v. Montgomery Ward & Co.*, 713 F.2d 452, 455 (9th Cir. 1983). The events identified above were nothing short of disastrous for the projects at issue in this case and, consequently, they meet the standard for asserting the defense of frustration of purpose. As such, they provide a complete defense to performance by Exergy.

III. EXERGY'S PROCUREMENT OF FINANCING WAS A CONDITION PRECEDENT TO FAGEN RECEIVING PAYMENT UNDER THE EPC AGREEMENT.

The EPC agreement between Fagen and Exergy contemplates payment by the fifteenth

(15th) day of the month following submission of an application for payment. However, the actions of the parties are at material variance with this provision and the memoranda of understanding that governed work undertaken on the project sites. Notably, on 20 December 2011, Fagen and Exergy entered into an Amended and Restated Memorandum of Understanding (“Amended MOU”) concerning (in part) the projects that are as issue in this case. The plain language of the Amended MOU contemplates Exergy obtaining financing for the projects as the understood means by which Fagen would be paid for its services rendered pursuant to the Limited Notices to Proceed that came before the formal EPC agreement and for those services rendered after its execution. This language includes the following:

“..XRG shall cause any purchaser or financing source of any or all of any XRG Projects or any of the XRG Project Companies to assume all related obligations to Fagen, including without limitation, the assumption of all applicable EPC/BOP contracts, allow Fagen to perform the work under any such EPC/BOP contracts, and be bound by all of the terms of this Amended and Restated MOU, including without limitation, the use, retention and promotion and retention of Fagen as the EPC/BOP Contractor.”

“XRG will continue to have the obligation to obtain the land and land leases, the right to use and control the XRG Project sites, all applicable permits and approvals, power purchase agreements and interconnection agreements, the wind turbine generators and utilize Fagen’s Lump Sum Price to pursue and obtain project financing for the XRG Projects, which may be debt, equity, or any other type of financing (or combination of financing methods then available).”

“In the event XRG abandons any XRG Project due to lack of funding or otherwise, Fagen shall have the first right to assume the development of any such abandoned XRG Project and/or XRG Project Company. In such event, XRG shall assign any and all applicable XRG Project agreements, permits and rights, which include, but are not limited to, power purchase agreements, interconnect agreements, conditional use permits and applicable land leases, as well as ownership of any such XRG Project Company, for no additional consideration to Fagen. Free and clear of all liens and encumbrances.”⁵

As work was undertaken, Fagen submitted monthly Applications for Payment but continued to work on the projects for seven (7) months until receiving a notice of force majeure from Exergy.

⁵ A true and correct copy of the Amended MOU is attached and incorporated hereto as Exhibit C.

During that time, Exergy did not tender any payment nor were any demands for past-due payments made. Fagen's failure to demand payment shows actions in conformity with the understanding reached and memorialized in the Amended MOU. Evidence of actions in conformity with prior agreements is admissible to properly construe the intent of the parties, notwithstanding the general inadmissibility of parole evidence. *Simons v. Simons*, 134 Idaho 824, 828 (2008), *Hall v. Hall*, 116 Idaho 483, 484 (1989). Accordingly, the evidence in the record in this matter confirms that in the absence of the project being financed, no payment would be made under the agreement.

IV. WITHOUT WAIVING THE AFOREMENTIONED CLAIMS FOR TOTAL MITIGATION OF DAMAGES, DEFENDANTS ARE ENTITLED TO A PARTIAL OFFSET OF DAMAGES ON THE GROUNDS OF INACCURATE AND/OR EXCESSIVE BILLING.

The excessive nature of Fagen's management costs with respect to the wind projects at issue in this case (as well as both management and equipment costs with respect to the Lava Beds litigation pending in the Bingham County District Court) has been testified to by a representative of BCL Associates, one Mr. Chuck Dickerson, under oath at deposition conducted on 26 September 2014.⁶ The following table represents the minimum number of discrepancies between billing submitted by Fagen and the owner's contractor reports produced in discovery⁷:

<u>No.</u>	<u>Date</u>	<u>Project</u>	<u>Work Identified by Fagen</u>	<u>Inaccuracy</u>	<u>Supporting Evidence</u>
1	12/31/2011	Jack Ranch	Work claimed as undertaken.	Little to no work done.	Chuck Dickerson Daily Log (produced in discovery) ("CD Daily Log")

⁶ True and correct copies of excerpts of the rough transcript of Mr. Dickerson's deposition transcript is attached and incorporated hereto as Exhibit D.

⁷ The following abbreviations are used in the table: CW: Cottonwood Wind Park; DC: Deep Creek Wind Park; RF: Rogerson Flats Wind Park; SF: Salmon Falls Wind Park.

2	1/1/2012	Jack Ranch	Work claimed as undertaken.	No work done. Crews off.	CD Daily Log
3	1/2/2012	Jack Ranch	Work claimed as undertaken.	No work done. Crews off.	CD Daily Log
4	1/5/2012	Jack Ranch	Work claimed as undertaken.	No work done.	CD Daily Log
5	1/8/2012	Jack Ranch	Work claimed as undertaken.	No work done.	CD Daily Log
6	1/12/2012	Jack Ranch	Work claimed as undertaken.	Quarry shut down due to permitting issues.	CD Daily Log
7	1/24/2012	Jack Ranch	Work claimed as undertaken.	Site too wet to run equipment.	CD Daily Log
8	1/28/2012	Jack Ranch	Work claimed as undertaken.	No work done. Crews off.	CD Daily Log
9	1/29/2012	Jack Ranch	Work claimed as undertaken.	No work done. Crews off.	CD Daily Log
10	1/31/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
11	2/1/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
12	2/2/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
13	2/3/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
14	2/5/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
15	2/7/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
16	2/8/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC.	CD Daily Log
17	2/9/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC.	CD Daily Log
18	2/10/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC.	CD Daily Log
19	2/13/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC.	CD Daily Log
20	2/14/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC.	CD Daily Log
21	2/15/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC.	CD Daily Log
22	2/16/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
23	2/17/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log

24	2/20/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC.	CD Daily Log
25	2/21/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC.	CD Daily Log
26	2/22/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/DC.	CD Daily Log
27	2/23/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC/DC.	CD Daily Log
28	2/24/2012	Jack Ranch	Work claimed as undertaken.	No work done. Crews off.	CD Daily Log
29	2/25/2012	Jack Ranch	Work claimed as undertaken.	No work done. Crews off.	CD Daily Log
30	2/26/2012	Jack Ranch	Work claimed as undertaken.	No work done. Crews off.	CD Daily Log
31	2/27/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC/DC. Bormann off site.	CD Daily Log
32	2/28/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC.	CD Daily Log
33	2/29/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC.	CD Daily Log
34	3/1/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC.	CD Daily Log
35	3/2/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
36	3/3/2012	Jack Ranch	Work claimed as undertaken.	No work done. Crews off.	CD Daily Log
37	3/4/2012	Jack Ranch	Work claimed as undertaken.	No work done. Crews off.	CD Daily Log
38	3/5/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
39	3/6/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
40	3/7/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
41	3/8/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC/DC.	CD Daily Log
42	3/10/2012	Jack Ranch	Work claimed as undertaken.	No work done. Crews off.	CD Daily Log
43	3/11/2012	Jack Ranch	Work claimed as undertaken.	No work done. Crews off.	CD Daily Log
44	3/12/2012	Jack Ranch	Work claimed as undertaken.	No work done. Crews off.	CD Daily Log
45	3/13/2012	Jack Ranch	Work claimed as undertaken.	No work on SC/DC.	CD Daily Log

46	3/14/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/DC.	CD Daily Log
47	3/16/2012	Jack Ranch	Work claimed as undertaken.	No work on CD/SC/DC.	CD Daily Log
48	3/19/2012	Jack Ranch	Work claimed as undertaken.	No work done.	CD Daily Log
49	3/20/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/SC/DC.	CD Daily Log
50	3/23/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/SC/DC.	CD Daily Log
51	3/26/2012	Jack Ranch	Work claimed as undertaken.	No work done.	CD Daily Log
52	3/27/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
53	3/28/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
54	3/29/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
55	3/30/2012	Jack Ranch	Work claimed as undertaken.	No work done.	CD Daily Log
56	4/2/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
57	4/3/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
58	4/5/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
59	4/6/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
60	4/9/2012	Jack Ranch	Work claimed as undertaken.	Improper equipment used.	CD Daily Log
61	4/10/2012	Jack Ranch	Work claimed as undertaken.	Appears to be duplicate due to previous use of wrong equipment.	CD Daily Log
62	4/11/2012	Jack Ranch	Work claimed as undertaken.	Work limited to work truck.	CD Daily Log
63	4/12/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
64	4/13/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
65	4/16/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
66	4/17/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
67	4/18/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log

68	4/19/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
69	4/20/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
70	4/23/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/DC.	CD Daily Log
71	4/24/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/DC.	CD Daily Log
72	4/25/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/DC.	CD Daily Log
73	4/26/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
74	4/27/2012	Jack Ranch	Work claimed as undertaken.	No work due to rain.	CD Daily Log
75	4/30/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
76	5/1/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
77	5/2/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
78	5/3/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC.	CD Daily Log
79	5/4/2012	Jack Ranch	Work claimed as undertaken.	No work done on CW/RF/DC. T8 pad failed compaction test.	CD Daily Log
80	5/7/2012	Jack Ranch	Work claimed as undertaken.	No work on SC/DC.	CD Daily Log
81	5/8/2012	Jack Ranch	Work claimed as undertaken.	No work on SC/DC.	CD Daily Log
82	5/10/2012	Jack Ranch	Work claimed as undertaken.	No work on SC/DC.	CD Daily Log
83	5/11/2012	Jack Ranch	Work claimed as undertaken.	No work on SC/DC.	CD Daily Log
84	5/14/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC/DC.	CD Daily Log
85	5/15/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC/DC.	CD Daily Log
86	5/16/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC/DC.	CD Daily Log
87	5/17/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC/DC.	CD Daily Log
88	5/18/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC.	CD Daily Log
89	5/21/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log

90	5/22/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
91	5/23/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
92	5/25/2012	Jack Ranch	Work claimed as undertaken.	No work done. Crews off.	CD Daily Log
93	5/29/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC.	CD Daily Log
94	5/30/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC.	CD Daily Log
95	5/31/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC.	CD Daily Log
96	6/1/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC/DC.	CD Daily Log
97	6/4/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC/DC.	CD Daily Log
98	6/5/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC.	CD Daily Log
99	6/6/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC.	CD Daily Log
100	6/7/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC.	CD Daily Log
101	6/8/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/DC. Appears repetitive work done to water roads.	CD Daily Log
102	6/11/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/DC. Appears repetitive work done to water roads.	CD Daily Log
103	6/12/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/DC. Appears repetitive work done to water roads.	CD Daily Log
104	6/13/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/DC. Appears repetitive work done to water roads.	CD Daily Log
105	6/14/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/DC. Appears repetitive work done to	CD Daily Log

				water roads.	
106	6/15/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/DC. Appears repetitive work done to water roads.	CD Daily Log
107	6/18/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC/DC.	CD Daily Log
108	6/19/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC/DC. Appears repetitive work done to water roads.	CD Daily Log
109	6/20/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC/DC. Appears repetitive work done to water roads.	CD Daily Log
110	6/21/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC/DC. Appears repetitive work done to water roads.	CD Daily Log
111	6/22/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC/DC. Appears repetitive work done to water roads.	CD Daily Log
112	6/25/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC/DC. Appears repetitive work done to water roads.	CD Daily Log
113	6/26/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/SC/DC. Appears repetitive work done to water roads.	CD Daily Log
114	7/3/2012	Jack Ranch	Work claimed as undertaken.	No work on RF/SC/DC.	CD Daily Log
115	7/6/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
116	7/9/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log

117	7/10/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/SC.	CD Daily Log
118	7/13/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/DC. Appears repetitive work done to water roads.	CD Daily Log
119	7/16/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/DC. Appears repetitive work done to water roads.	CD Daily Log
120	7/17/2012	Jack Ranch	Work claimed as undertaken.	No work on CW/RF/DC. Appears repetitive work done to water roads.	CD Daily Log

Further, the testimony of Fagen’s own on-site supervisor, Mr. Bradley Bormann, testified to the overly simplistic nature of the work and the long time frame over which the work was dragged out for the mere purpose of showing work was being done for the sake of qualifying for the federal tax grant scheme applicable to the projects in question.

Fagen’s applications for payment cover work undertaken between 31 December 2011 and 27 July 2012, for a total 144 work days. The discrepancies documented above establish disputed work on 120 of those days, or 83.3%. Management costs billed for this period total \$1,067,795.60 according to the Applications for Payment submitted in this matter. Accordingly, the damages claimed by Fagen should, at a minimum, be reduced by \$889,607.84 ($\$1,067,795.60 \times 0.833$).

V. READINESS FOR TRIAL

Exergy stands ready to proceed with trial as scheduled in this matter.

Exergy will offer the testimony of James T. Carkulis and Chuck Dickerson as witnesses as confirmed in Exergy’s initial discovery disclosures. Exergy further anticipates offering the

deposition transcripts of various deponents, including Chuck Dickerson, Bradley Bormann, Kate Carlton, and Samuel Ewald as evidence of various data points.

As the legal issues implicated by each of the four (4) aforementioned categories of offset are primarily legal questions to be determined by this court, Exergy anticipates needing no more than two (2) days to present documentary and testimonial evidence necessary for the Court to make its determinations.

DATED: 28 September 2014

Respectfully Submitted,

MARSH ROSA, LLP



Angelo L. Rosa
Attorneys for Defendants

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on 28 September 2014, I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Keith Moheban
Timothy Kelley
STINSON LEONARD STREET, LLP
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Signed 
_____ Angelo L. Rosa

**EXHIBIT A TO
DEFENDANTS' PRE-TRIAL STATEMENT**

**BALANCE OF PLANT
ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

FOR THE

EXERGY IDAHO SIX WINDS WIND PARK

BY AND BETWEEN

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.,

as Owner

and

FAGEN, INC.,

as Contractor

Dated December 31, 2011

**BALANCE OF PLANT ENGINEERING,
PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

This Balance of Plant Engineering, Procurement and Construction Agreement is entered into on December 30, 2011 by and between Fagen, Inc., a corporation organized and existing under Minnesota law ("Contractor"), and Exergy Development Group of Idaho, L.L.C., an Idaho limited liability company organized and existing under Idaho law ("Owner") (each of Contractor and Owner, a "Party", and together, the "Parties").

WITNESSETH:

A. Owner is developing, financing and constructing the aggregate 116MW wind generation Project (as herein defined) located at the six (6) Project Sites (as herein defined) in the State of Idaho.

B. Owner desires to contract with Contractor for the provision of engineering, procurement, construction and other services and supply of materials and equipment for the Balance of Plant (as herein defined) on a single point responsibility, and firm and lump sum basis, all as described in, and subject to the terms and conditions of, this Agreement, and Contractor desires to provide such goods and services.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth below, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following definitions:

"Affiliate" means, with respect to a Person, any other Person, directly or indirectly, in control of, controlled by, or under common control with, that Person. For purposes of this Agreement, "control," "controlled" and their derivatives, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person so controlled, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Balance of Plant Engineering, Procurement and Construction Services Agreement, including all Exhibits, appendices and attachments hereto and thereto, as the same may be amended, modified or supplemented, from time to time, in accordance with the terms hereof.

"All-Risk Builder's Risk" has the meaning set forth in Section 18.3.1.

"Applicable Laws" means all federal, state and local laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations having the force of law and permits of any Governmental Authority having jurisdiction over a Party, the Project, any Project Site, the performance of the Work, the Contract Documents and

amended; (f) Occupational Safety and Health Act of 1970, as amended; (g) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., as amended; and (h) any other similar applicable federal, state or local law.

“Excluded Work” has the meaning set forth in Section 3.1(d).

“Exhibits” means the exhibits and appendices referenced in or attached to this Agreement or any such exhibit or appendix, each of which is incorporated into and made a part of this Agreement.

“Final Application for Payment” has the meaning set forth in Section 13.6.

“Final Payment” has the meaning set forth in Section 13.6.

“Final Punch List” has the meaning set forth in Section 13.5(b).

“Final Punch List Holdback Amount” has the meaning set forth in Section 13.5(b).

“Financing Documents” means the agreements with the Financing Parties providing financing for the design, engineering, procurement, supply of materials and equipment, construction and other goods and services for or of, or the term financing of, the Project.

“Financing Parties” means (a) any and all lenders or creditors providing any senior or subordinated interim or long-term financing; and (b) any and all providers of leveraged lease-financing or refinancing for the Project.

“Force Majeure Event” means, with respect to a Party, any event or circumstance which is beyond the reasonable control of such Party and having a direct effect on such Party’s performance of the Contract Documents, and which (a) could not be avoided, prevented or removed by such Party’s commercially reasonable efforts and (b) is not caused by or does not result from the negligence of such Party, or breach or failure of such Party to perform its obligations under the Contract Documents; provided that such Party has taken all reasonable precautions, care and alternate measures to avoid or mitigate the effects thereof. Force Majeure Events shall include, but not be limited to: natural disasters, fire, hurricanes, tornadoes, dust or sand storms, mudslides, subsidence, lightning, flood, earthquake, explosions, acts of God, terrorism or similar actions by the public enemy, strikes or lockouts affecting the industry in general (national or regional in scope) where such strike or lockout has a direct affect on the performance of the Contract Documents, public disorder or civil disturbance, blockages, insurrections, riots, war, hostilities, sabotage, expropriation or confiscation, epidemic or quarantine, or other action or inaction (not a Change in Law) by any Governmental Authority; and with respect to Owner any event of force majeure under any other agreement or contract relating to the Project with a third party. Notwithstanding anything to the contrary, Force Majeure Events shall not be deemed to include failure of Owner to make timely payment to Contractor as required under this Agreement.

“Foundation Completion” has the meaning set forth in Exhibit A-1, Appendix 1.

“Foundation Completion Certificate” has the meaning set forth in Section 7.1.

9.3 Changes for a Material Event and Other Matters.

(a) In the event of the occurrence of a Material Event, Contractor shall be entitled to request a Change and submit a Change Order for an equitable adjustment to the Contract Price and/or the Contract Times, in which case Contractor shall notify Owner in writing of its request for a Change (and a description of the Change) and submit a proposal to Owner stating its proposed adjustment to the Contract Price (if any) and/or to any Contract Time (if any) that would result from such Change.

(b) Owner shall, within ten (10) Business Days of its receipt of such request of a Change and proposal for a Change Order, accept or reject in writing Contractor's proposals in relation to such Change or Change Order. If Owner agrees with such proposal for a Change and Change Order, the Parties shall execute a written Change Order stating the agreed-upon matters described above in Section 9.2(b) (in respect of the definition of "Change Order"). In the event that Owner rejects Contractor's proposal for such Change or Change Order, Owner may notify Contractor that it requests additional information regarding Contractor's proposal, in which case the process described above in this Section 9.3(b) shall be repeated, or Section 9.4 shall apply. Should Owner fail to respond to Contractor in writing within ten (10) Business Days of Owner's receipt of Contractor's proposal for a Change or Change Order, Owner shall be deemed to reject such proposal.

(c) In the event that Owner does not issue the Notice to Proceed on or before December 15, 2011, Section 13.2 shall apply in respect of an adjustment, if any, to the Contract Price, and Section 6.1(c) shall apply in respect of an adjustment, if any, to the Contract Times.

9.4 Disputes Regarding Change Orders. If the Parties are unable to agree upon an appropriate adjustment to the Contract Price or Contract Times resulting from a Change Order, either Party may initiate the dispute resolution procedures set forth in Article XXI. Notwithstanding any such disagreement, if the Parties are unable to mutually agree upon the terms of an adjustment to the Contract Price or Contract Time and the value of such disagreement does not exceed five hundred thousand U.S. Dollars (\$500,000.00), Contractor shall perform the Work and Owner shall pay Contractor based on the Change Order adjustment proposed by Owner until the Parties reach agreement on the final adjustment to the Contract Price or Contract Time or such disagreement is resolved pursuant to the dispute resolution procedures set forth in Article XXI.

ARTICLE X

CONTRACTOR MATERIAL EVENTS; OWNER FORCE MAJEURE

10.1 Material Event for Contractor. Upon the occurrence of a Material Event which materially and adversely affects the Work, Contractor shall be entitled to request a Change Order pursuant to the procedures set forth in Section 9.3. For the purposes of this Agreement, a "Material Event" shall mean: material delays affecting the Work and resulting from: (a) an Owner Caused Delay; (b) a Force Majeure Event; (c) the discovery of any Hazardous Substance, not brought on the relevant Project Site (or not materially exacerbated) by Contractor or any of its Subcontractors or other Persons for whom Contractor or any Subcontractor is responsible or

as a consequence of the Work or acts or omissions of Contractor or any of its Subcontractors or such Persons; (d) a Change in Law; (e) any requirement after the Effective Date of a Governmental Authority that the Work is required to be performed by Contractor at the then prevailing wages for labor as specified by such Governmental Authority or as referred by it to any Applicable Law; (f) the suspension of the Work in whole or in part by Owner pursuant to Section 14.1 (if the Work was in fact in conformity with the Requirements and Owner had no just cause to stop the Work) except where such suspension is related to a Contractor Event of Default; (g) the occurrence of the event described in Section 4.22(b); and (h) the discovery of any Unforeseen Subsurface Condition; (i) the occurrence of a Weather Delay; or (j) a delay in the completion and installation of the Project Interconnection Facilities beyond May 30, 2012 that causes a delay in the achievement in Project Site Substantial Completion of any of the Project Sites, including the High Voltage Substation.

10.2 Procedures upon a Material Event. Contractor shall comply with the following conditions precedent to the right to seek an equitable adjustment to the Contract Price or Contract Times through a Change Order:

(a) Contractor shall give Owner written notice describing the particulars of such Material Event, such notice to be given promptly after the occurrence of such Material Event but not later than five (5) Business Days after it becomes aware of such occurrence, which notice shall include an estimate of such Material Event's expected duration and probable impact on the performance of its obligations hereunder, and Contractor shall continue to furnish timely, regular reports during the continuation of such Material Event;

(b) any necessary suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by such Material Event;

(c) no liability or obligation of Contractor that is not affected directly by such Material Event shall be excused as a result of the occurrence of such Material Event;

(d) Contractor shall exercise all reasonable efforts to mitigate or limit damages to Owner and delays as a result of such Material Event by promptly taking appropriate and sufficient corrective action, including the expenditure of all reasonable sums of money;

(e) Contractor shall use reasonable efforts to continue to perform its obligations under the Contract Documents and to correct or cure such Material Event excusing performance; and

(f) when such Material Event is no longer in existence or applicable, or, if such Material Event resulted in Contractor suspension of any Work, when Contractor is able to resume performance of such Work, Contractor shall give Owner written notice to that effect.

10.3 Force Majeure Event Affecting Owner. If Owner is affected by a Force Majeure Event, it shall provide notice thereof to Contractor and the extent to which such Force Majeure Event affects the performance by Owner of its obligations under the Contract Documents. Owner shall not be liable for its failure to comply with any of its obligations as a result of a Force Majeure Event and shall use all reasonable efforts to mitigate or limit the effects of such Force

Majeure Event on the performance of its obligations under the Contract Documents. Owner shall notify Contractor in writing when it is able to resume the performance of its obligations.

ARTICLE XI
HAZARDOUS SUBSTANCES AND SITE CONDITIONS

11.1 Hazardous Substance Handling Program. Contractor shall implement and administer a Hazardous Substance handling program for all of its employees and all Subcontractors and other Persons for whom they are responsible, which shall include development of guidelines and training with respect to the proper handling, use and disposal of Hazardous Substance and the development, implementation and enforcement of procedures for notification to Owner and appropriate Governmental Authorities about, and clean-up of, spills and other release or emissions of Hazardous Substance. Owner shall have the right to review, comment on and approve such program prior to the commencement of the Work at a Project Site.

11.2 Use of Hazardous Substances. Contractor shall not bring or store (and shall prohibit Subcontractors from bringing or storing) Hazardous Substances to or on any Project Site, and shall not utilize any construction materials containing radioactivity, asbestos, polychlorinated biphenyls or urea formaldehyde; provided, however, Contractor may use and store in reasonable quantities the following materials required to perform the Work, but only in accordance with applicable Environmental Laws: gasoline, diesel fuel, fuel oil, grease, lube oil, sealants, anti-freeze, cleansers, paint, form oil, solvents, adhesives and other materials of a type and quantity consistent with normal and customary construction practices for construction of a project similar in nature and scope to the Project. Any other Hazardous Substances to be brought to or stored on any Project Site shall require specific written authorization of Owner. Contractor shall comply, and shall cause its Subcontractors (and other Persons for whom Contractor or any Subcontractor is responsible) to comply, with all applicable Environmental Laws. Owner shall not require (by Change Order or otherwise) Contractor to use Hazardous Substances for the Work or at the Project Site in violation of Applicable Laws, including Environmental Laws.

11.3 Discovery of Hazardous Substances. If, in the course of performance of the Work, Contractor encounters on any Project Site any matter which it reasonably believes is a Hazardous Substance that may be dangerous or may require response, removal, cleanup or other remedial action under applicable Environmental Laws, Contractor shall immediately suspend the Work in the area affected and report the condition to Owner by telephone and in writing. In any such event, the obligations and duties of the Parties hereto shall be as follows:

(a) If such condition involves a Pre-Existing Hazardous Substance, then Contractor shall have no obligation with respect to such condition (except to the extent that Contractor, a Subcontractor or any Person for whom Contractor or any Subcontractor is responsible materially exacerbates such Pre-Existing Hazardous Substance) and Owner shall promptly respond in compliance with Applicable Laws.

(b) To the extent such condition involves a Pre-Existing Hazardous Substance that was materially exacerbated by Contractor, a Subcontractor or any Person for whom Contractor or Subcontractor is responsible, then any response, removal, cleanup or other

Subcontractors and Contractor and invoiced under such Final Application for Payment. Each month with Contractor's application for Payment, Contractor will provide a list of all Subcontractors who were paid with the previous month's Payment received by Contractor from the Owner and who may have lien rights against any real property where Work has been performed. Contractor agrees to comply with reasonable requests by the Financing Parties related to Owner obtaining construction financing for the Projects.

ARTICLE XIV SUSPENSION AND TERMINATION

14.1 Construction Suspension. Owner may order Contractor to suspend the Work, or any part thereof, for such time and in such manner as Owner may consider necessary, including reason of a Contractor Event of Default. Contractor, during a suspension, shall properly protect and secure the Work or such part thereof so far as is necessary in the reasonable opinion of Owner. In the event of a suspension (and except for any such suspension relating to a Contractor Event of Default), Contractor shall be entitled to request a Change Order pursuant to Section 9.3 and reimbursed costs incurred by it for demobilization and remobilization costs, direct costs, additional equipment rental and any other costs incurred as applicable.

14.2 Owner's Right to Suspend or Terminate for Cause and Force Majeure Events. Owner may suspend or terminate this Agreement as follows:

14.2.1 Force Majeure Events. If a Force Majeure Event continues for more than six (6) months after a notice of a Force Majeure Event is given and if the Force Majeure Event has rendered impossible the performance of this Agreement in accordance with the Contract Times or Turbine Supplier Delivery Schedule by either Party, Owner may terminate this Agreement by giving Contractor at least five (5) days' prior written notice of termination.

14.2.2 Contractor Event of Default. If: (a) (i) Contractor shall assign or transfer this Agreement or any right or interest herein, or if the interest of Contractor shall devolve upon any Person, otherwise than as herein permitted; (ii) Contractor shall fail without cause to make timely payment for labor, services, equipment, materials or supplies; (iii) Contractor shall persistently disregard laws or ordinances or lawful requirements of any competent Governmental Authority or Applicable Laws; or (iv) if Contractor otherwise commits a material breach of its representations and warranties or obligations under this Agreement (it being understood that an immaterial deviation from the Master Construction Schedule shall not constitute such a breach); or (b) Contractor shall become voluntarily or involuntarily the subject of proceedings under any bankruptcy or insolvency law, or other law or procedure for the relief of financially distressed debtors, or is unable, or admits in writing its inability, to pay its debts as they mature, or takes or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any part of its assets or elects or institutes or has instituted against it a case under the United States Bankruptcy Code (in each case as described in Sections 14.2.2(a) and (b), a "Contractor Event of Default"), then Owner, shall have the rights set forth in Sections 14.2.3 and 14.2.4 below.

14.2.3 In the case of a Contractor Event of Default under Section 14.2.2(b), this Agreement shall terminate immediately upon written notice by Owner to Contractor. Upon the

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

CONTRACTOR:

**EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

FAGEN, INC.

By: 

By: _____

Name: James T. Carkulis

Name:

Title: President

Title:

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:

**EXERGY DEVELOPMENT GROUP
OF IDAHO, L.L.C.**

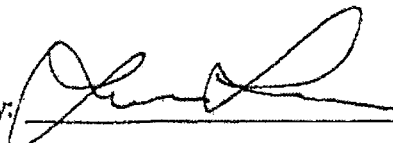
By: _____

Name:

Title:

CONTRACTOR:

FAGEN, INC.

By:  _____

Name: *Larry Lindeman*

Title: *Vice President - W.R.D.*

**EXHIBIT B TO
DEFENDANTS' PRE-TRIAL STATEMENT**

From: James Carkulis
Sent: Monday, July 30, 2012 10:28 AM
To: jjohnson@fageninc.com; Elizabeth Woolstenhulme
Subject: Idaho Projects

Jennifer:

At this time, Exergy requests that Fagen, Inc. cease further construction on the set of Idaho Projects for Exergy Development Group of Idaho, LLC., including Cottonwood Wind Park, Rogerson Flats Wind Park, Salmon Creek Wind Park, Deep Creek Wind Park, Notch Butte Wind Park, and Lava Beds Wind Park.

This request is predicated on the reckless actions of both Idaho Power Company and the Idaho Public Utilities Commission in their unprecedented set of filings and support for issues well outside the dictates and mandates under our PURPA contracts. These issues, which affect Exergy's current contract docket include, but are not limited to ownership of RECs, discrimination on FERC mandated interconnection rules, and curtailment of electricity from the projects for economic reasons. Others have filed in support of our position include Simplot Company, Clearwater Paper, GE, and others.

These issues are now before the IPUC as well as FERC under our ownership position with Idaho Wind Partners. Amicus or intervening filings at the FERC level has even come from financial institutions for our positions. Exergy shall also be filing additional claims at the IPUC and then with FERC. If necessary and we feel not without precedent after legal review, we may be seeking a racketeering action at the federal level under RICO.

We shall be submitting a Force Majeure letter to you later today.

James



James T Carkulis
802 W Bannock, 12th Floor Boise, ID 83702
Office: 208.336.9793 | Mobile: 406.459.3013
carkulis@exergydev.com
Exergy Development

This electronic or printed document contains information which (a) may be LEGALLY PRIVILEGED, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE, and (b) is intended only for the use of the Addressee(s) named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above email address. Thank you!

**EXHIBIT C TO
DEFENDANTS' PRE-TRIAL STATEMENT**

AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING

THIS Amended and Restated Memorandum of Understanding ("Amended and Restated MOU") is made this 20th day of December, 2011, by and between Exergy Development Group of Idaho, L.L.C. ("XRG") for itself and on behalf of the XRG Project Companies listed in Section I below and Fagen, Inc., a Minnesota corporation ("Fagen"), as the EPC/BOP Contractor (as hereinafter defined) for the XRG Projects listed in Section I below. XRG and Fagen are sometimes referred to individually as a "Party" and collectively as "Parties."

WHEREAS, XRG is in the business of developing clean-energy power production facilities, which among other projects include the XRG Projects and XRG Project Companies.

WHEREAS, Fagen is a construction company engaged in the business of building industrial facilities, including wind power production facilities, and has made secured loans to XRG on behalf of and in connection with certain of the XRG Projects and the XRG Project Companies (collectively, the "Loans").

WHEREAS, XRG and Fagen have entered into that certain Balance of Plant Engineering, Procurement and Construction Services Agreement, dated as of September 30, 2011, for the wind farm commonly known as the "Big Blue Wind Farm" by and between Big Blue Wind Farm, LLC, a Minnesota limited liability company, and Fagen for the engineering, procurement and construction services of the Big Blue Project (as hereinafter defined) ("Big Blue EPC Contract"), pursuant to which Fagen is currently performing its obligations on behalf of XRG and the Big Blue Project; and

WHEREAS, XRG and Fagen entered into the first limited notice to proceed, dated August 1, 2011, for Fagen's performance of geotechnical soil borings for turbine locations and the meteorological tower location on the Lava Beds Project (as hereinafter defined), pursuant to which Fagen performed and completed work on behalf of XRG and the Lava Beds Project; and

WHEREAS, XRG and Fagen entered into the first limited notice to proceed, dated July 25, 2011, for Fagen's performance of geotechnical soil borings for the turbine and meteorological tower locations for the Notch Butte Project (as hereinafter defined), pursuant to which Fagen performed and completed work on behalf of XRG and the Notch Butte Project; and

WHEREAS, XRG and Fagen entered into the first limited notice to proceed ("Jack Ranch LNTP #1"), dated August 2, 2011, for Fagen's performance of geotechnical soil borings for: fifty three (53) turbine locations, four (4) meteorological tower locations, and a substation for the Idaho Six Winds Project (as hereinafter defined and previously identified as the Jack Ranch Project) pursuant to which Fagen performed and completed such work; and

WHEREAS, Fagen has continued to perform additional work on the Jack Ranch Project for the surveying, engineering and installation of site roads, securing the Twin Falls County, Idaho building permits, engineering of the Idaho Six Winds Projects project sites underground and overhead collection systems, engineering, procurement, blasting and installation of the turbine foundations and grounding and pvc conduit for such turbine foundations, and all such work under the Jack Ranch LNTP #1 and otherwise has been or is currently being performed on the Cottonwood, Deep Creek, Salmon Creek, Rogerson Flats and the Jack Ranch Wind Park Projects (all as hereinafter defined); and

WHEREAS, XRG desires that Fagen be the EPC/BOP Contractor for all XRG Projects and XRG Project Companies and Fagen desires to be the EPC/BOP Contractor for the XRG Projects and XRG Project Companies; and

WHEREAS, in connection therewith, the Parties desire to enter into this Amended and Restated MOU, which amends and restates in its entirety that certain Memorandum of Understanding between the Parties made June 15, 2011, in order to set forth their rights and responsibilities regarding Fagen's role as the EPC/BOP Contractor for the XRG Projects and XRG Project Companies and XRG's role and responsibilities to Fagen to ensure Fagen is the EPC/BOP Contractor for the XRG Projects and XRG Project Companies.

NOW, THEREFORE, in consideration for the promises and mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency thereof is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

I. The XRG Projects and XRG Project Companies, as applicable, are comprised of the following:

- A. Big Blue Wind Farm, LLC, the XRG Project Company for a wind farm consisting of 36 megawatts (MW) of wind generated power using approximately eighteen (18) wind turbines, located near Blue Earth, Minnesota (Big Blue Project) and an indirect and wholly-owned subsidiary of XRG; and
- B. XRG Development Partners, LLC ("XRG Development"), a direct wholly-owned subsidiary of XRG and the current XRG Project Company for a wind farm consisting of 116 MW of wind generated power utilizing fifty eight (58) wind turbines and one High Voltage Substation, located in Idaho (Idaho Six Winds Project) and XRG Development's following wholly-owned subsidiaries:

1. Lava Beds Wind Park, LLC, for 18 MW of wind generated power using approximately nine (9) wind turbine generators, located near Black Foote, Bingham County, Idaho ("Lava Beds Project"); and
 2. Notch Butte Wind Park, LLC, for 18 MW of wind generated power using approximately nine (9) wind turbine generators, located near Dietrich, Lincoln County, Idaho, ("Notch Butte Project"); and
 3. Jack Ranch Wind Park, LLC, which is the current leaseholder of the Simplot properties for the Cottonwood Project, Deep Creek Project, Salmon Creek Project, and Rogerson Flats Project (all as defined herein); and
 4. Cottonwood Wind Park, LLC, for 20 MW of wind generated power using ten (10) wind turbine generators, located in Twin Falls County, Idaho ("Cottonwood Project"); and
 5. Deep Creek Wind Park, LLC, for 20 MW of wind generated power using ten (10) wind turbine generators, located in Twin Falls County, Idaho ("Deep Creek Project"); and
 6. Salmon Creek Wind Park, LLC, for 20 MW of wind generated power using ten (10) wind turbine generators, located in Twin Falls County, Idaho ("Salmon Creek Project"); and
 7. Rogerson Flats Wind Park, LLC, for 20 MW of wind generated power using ten (10) wind turbine generators, and substation comprised of a generator step-up transformer, related electric gear and the substation building to interconnect Cottonwood, Deep Creek, Salmon Creek, and Rogerson Flats to the Idaho Power electric grid ("Rogerson Flats Project"); and
- C. Idaho Six Winds, LLC, a Delaware limited liability company and an indirect wholly-owned subsidiary of XRG Development and Idaho Six Winds Holdings, LLC, a Delaware limited liability company and direct wholly-owned subsidiary of XRG Development.

II. In consideration, among other things, of Fagen making the Loans to XRG on behalf of certain of the XRG Project Companies and for the purpose of assisting XRG in furthering the development of the XRG Projects and the XRG Project Companies in general, XRG shall continue to use, retain and promote Fagen as the exclusive engineering, procurement, construction/balance of plant contractor for all XRG Projects and for the XRG Project

Companies ("EPC/BOP Contractor") and XRG shall cause any purchaser or financing source of any or all of any XRG Projects or any of the XRG Project Companies to assume all related obligations to Fagen, including without limitation, the assumption of all applicable EPC/BOP contracts, allow Fagen to perform the work under any such EPC/BOP contracts, and be bound by all of the terms of this Amended and Restated MOU, including without limitation, the use, retention and promotion and retention of Fagen as the EPC/BOP Contractor.

III. Fagen shall provide a lump sum price to XRG for the Idaho Six Winds Project (the "Lump Sum Price") no later than December 16, 2011 and the Lump Sum Price shall be included in the EPC/BOP Contract for the Idaho Six Winds Project, which is to be prepared as contemplated in Section VI below. The Lump Sum Price shall reflect the Idaho Six Winds Project's overall scope of work, bulk material pricing, current labor market rates and the Idaho Six Winds Project scheduling requirements. The Lump Sum Price shall be binding upon the Parties. XRG will continue to have the obligation to obtain the land and land leases, the right to use and control the XRG Project sites, all applicable permits and approvals, power purchase agreements and interconnection agreements, the wind turbine generators and utilize Fagen's Lump Sum Price to pursue and obtain project financing for the XRG Projects, which may be debt, equity, or any other type of financing (or combination of financing methods then available).

IV. Neither Party may assign any or all of its rights or obligations under this Amended and Restated MOU without the prior written consent of the other Party, such consent not to be unreasonably withheld.

V. In the event XRG abandons any XRG Project due to lack of funding or otherwise, Fagen shall have the first right to assume the development of any such abandoned XRG Project and/or XRG Project Company. In such event, XRG shall assign any and all applicable XRG Project agreements, permits and rights, which include, but are not limited to, power purchase agreements, interconnect agreements, conditional use permits and applicable land leases, as well as ownership of any such XRG Project Company, for no additional consideration to Fagen, free and clear of all liens and encumbrances.

VI. The Parties agree and acknowledge that they are using the Big Blue EPC Contract as the template for the preparation of the EPC/BOP contract for the Idaho Six Winds Project and agree to continue to use this template on each XRG Project, with only conforming changes being made to the template only to accommodate the specific attributes of each XRG Project, such as changes for state specific laws and pricing for the specific XRG Project.

VII. Each Party represents to the other Party that (i) it has full right, power and authority to execute and deliver this Amended and Restated MOU, and to perform each and all of its obligations under this Amended and Restated MOU (XRG for itself and on behalf of each XRG

Project Company; and Fagen for itself); (ii) each entity is duly formed and validly existing under the laws of its state of its formation; and (iii) the performance of the obligations by each Party under this Amended and Restated MOU will not violate any provision of any applicable law, its charter or bylaws or any indenture, agreement or instrument to which it is a party, or by which it may be bound.

VIII. No modification or amendment to this Amended and Restated MOU shall be binding upon the Parties unless reduced to writing and signed by the Parties. Each Party shall appoint an individual who shall be that Party's designated contact person during negotiation of all XRG and Fagen EPC/BOP agreements ("Designated Representative"). XRG appoints James Carkulis as its Designated Representative. Fagen appoints Ron Fagen as its Designated Representative.

IX. The failure of either Party to enforce at any time any of the provisions of this Amended and Restated MOU, or to require at any time performance by the other Party of any of the provisions hereof, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Amended and Restated MOU, or the right of either Party thereafter to enforce each and every provision.

X. This Amended and Restated MOU shall be governed by and construed in accordance with the laws of the State of New York.

XI. This Amended and Restated MOU contains the entire understanding and agreement of the Parties with respect to the subject-matter hereof and supersedes all prior agreements and understandings, written or oral, with respect to the subject-matter hereof.

XII. This Amended and Restated MOU may be executed in counterparts with the same effect as if all signing parties had signed the same document. This Amended and Restated MOU may be delivered by facsimile or electronic transmission and such copies shall be duly binding and effective for all purposes. Fax and electronic signatures on this Amended and Restated MOU shall be treated the same as original signatures.

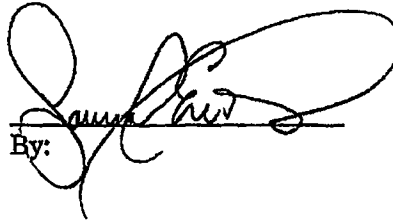
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IN WITNESS WHEREOF, XRG and Fagen have caused this Agreement to be executed in their respective names by persons duly authorized to do so on their behalf.

EXERGY DEVELOPMENT
GROUP OF IDAHO, L.L.C.

By: 

FAGEN, INC.

By: 

**EXHIBIT D TO
DEFENDANTS' PRE-TRIAL STATEMENT**

1 7:16 a.m.

2 EXAMINATION

3 BY MR. KELLEY:

4 Q Good morning, Mr. Dickerson. We met briefly before
5 we started but for the record. My name is Tim Kelley. I
6 represent the Plaintiff, Fagen, Incorporated. Can you please
7 state your full name for the record?

8 A Chuck M. Dickerson.

9 Q Is it all right if I call you Chuck?

10 A That's fine.

11 Q Now, have you ever had your deposition taken before?

12 A No.

13 Q I just want to go over a few ground rules before we
14 start. The first one is, as you can see the court reporter is
15 here taking down everything that's said today, and so it's
16 very important that you give verbal responses to my questions.
17 Shaking your head or making hand gestures can't be taken down
18 by the court reporter.

19 A I understand, yeah.

20 Q And then another rule is that please let me finish
21 my question before you start answering it and I will give you
22 the same courtesy and let you finish your answer before I ask
23 you another question, okay?

24 A Okay.

25 Q And I'm not here to trick or confuse you so if you

1 don't understand a question I ask, please tell me you don't
2 understand it, and I will try to restate the question, okay?

3 A Okay.

4 Q Because if you don't say, you don't understand a
5 question, I'm going to assume that you do understand it.

6 A Yes.

7 Q Now, do you understand this lawsuit involves claims
8 brought by Fagen, Incorporated?

9 A I don't really understand who is doing what
10 honestly.

11 Q Well, I can represent to you the plaintiff in this
12 case is Fagen, Incorporated, and you are familiar with that
13 company, right?

14 A Yes, I am.

15 Q Okay. And I just want to list the names of the
16 defendants so you understand, okay?

17 A Yep.

18 Q Okay. One of the defendants is XRG Development
19 Group of Idaho, LLC.

20 A Yes.

21 Q And is it okay if I refer to that entity as XRG?

22 A Yes.

23 Q Another defendant -- and forgive me if I
24 mispronounce some of these names -- is Notch Butte Wind Park,
25 LLC.

1 A Yes.

2 Q And it's okay if I require to that defendant as
3 Notch Butte?

4 A Yeah, NB or Notch Butte works for me.

5 Q Okay. Another defendant is Rogerson Flats Wind
6 Park, LLC?

7 A Yes.

8 Q And I will refer to that as Rogerson Flats?

9 A Yes.

10 Q Another defendant is Salmon Creek Wind Park, LLC?

11 A Yes.

12 Q And I will refer to that entity as Salmon Creek?

13 A Yes.

14 Q And another defendant is Deep Creek Wind Park, LLC,?

15 A Yes.

16 Q And I will refer to that defendant as Deep Creek.

17 A Yes.

18 Q And finally, another defendant is Cottonwood Wind
19 Park, LLC.

20 A Yes.

21 Q And I will refer to that entity as Cottonwood.

22 A Yep.

23 Q Now, are you on any -- do you have any medical or
24 health condition that affects your ability to testify today?

25 A No.

1 Q Are you on any type of medication that would affect
2 your ability to testify today?

3 A No.

4 Q Now, are you represented by Mr. Rosa in this
5 deposition?

6 A Yes, I am today, yes.

7 Q When did you retain Mr. Rosa?

8 A Approximately a week ago.

9 Q And do you have a written retainer agreement with
10 him?

11 A No, I do not. It is was verbal.

12 Q And are you paying Mr. Rosa to represent you?

13 A No, I am not.

14 Q And do you know who is paying Mr. Rosa to represent
15 you?

16 A No, I do not.

17 Q You have had no discussions with anyone regarding
18 payment of Mr. Rosa's fees?

19 A No.

20 Q Has any entity or person promised you any monetary
21 compensation for testifying today?

22 A No.

23 Q Has any entity or person promised you any
24 nonmonetary compensation for testifying today?

25 A No.

1 Q I just want to briefly go over your background. Did
2 you graduate from college?

3 A No.

4 Q Do you hold any professional licenses?

5 A No.

6 Q Are you currently employed?

7 A Self-employed.

8 Q And do you have a company that you own?

9 A Yes, I do.

10 Q What's the name of that company?

11 A CM Dickerson Management.

12 Q Is that a corporation or an LLC?

13 A No, it's a sole proprietor.

14 Q What kind of work do you do?

15 A Construction management.

16 Q And how long have you operated under CM Dickerson
17 Management?

18 A I believe 2006.

19 Q And before that, did you have a job?

20 A Self-employed.

21 Q What type of work did you do then?

22 A Construction management.

23 Q How long have you done construction management?

24 A I have been in the management business since I
25 believe around 1998.

1 your affidavit, can you take a moment to read paragraph 8 to
2 yourself and let me know when you are done.

3 A Okay.

4 Q Do you recall which wind park the statements in
5 paragraph 8 relate to?

6 A That is Lava Beds.

7 (Exhibit E was marked for identification.)

8 BY MR. KELLEY:

9 Q Mr. Dickerson, I'm going to show you what's been
10 marked as Exhibit E for the purpose of your deposition, and I
11 will represent to you that that is a true and correct copy of
12 Exhibit D to Lori Anderson's affidavit.

13 A Okay.

14 Q And if you can take a moment to review paragraph 9
15 of your affidavit, and let me know when you are done.

16 A Okay.

17 Q Do you recall which wind park the statements in
18 paragraph 9 relate to?

19 A Lava Beds.

20 Q Mr. Dickerson, can you take a moment to review
21 paragraph 10 of your affidavit and let me know when you are
22 done.

23 A Okay.

24 Q Do you recall which wind park the statements in
25 paragraph 10 of your affidavit relate to?

1 A Lava Beds.

2 Q And if you turn to paragraph 14 of your affidavit.
3 Can you take a moment to read that to yourself and let me know
4 when you are done.

5 A Okay.

6 Q And does your statement in paragraph 14 relate only
7 to the Lava Beds project?

8 A No.

9 Q Which wind parks does it relate to?

10 A That particular statement relates directly to
11 Rogerson Flats projects and I guess it could -- it could
12 relate also to all projects -- I should say all projects.

13 Q So all projects involved in this lawsuit, including
14 Lava Beds?

15 A Correct.

16 Q And for Notch Butte, that project, what is the
17 factual basis for your opinion that the excavation and
18 management costs identified by Fagen are incorrect?

19 A Notch Butte? I believe that when I looked at that
20 the management costs were excessive in my opinion. I had no
21 opinion as to the cost for the excavation or the personnel
22 that was there.

23 Q For the Rogerson Flats Wind Park, what is the
24 factual basis for your opinion that the excavation and
25 management costs identified by Fagen are incorrect?

1 A Only relating to the management cost, I found that
2 the cost was excessive.

3 Q And for Salmon Creek, Deep Creek and Cottonwood,
4 would your answer be the same?

5 A It would all be the same. I do not refer to
6 anything construction-wise. I didn't have construction
7 contracts in the beginning of the job so --

8 Q So when you reviewed the applications for payment,
9 your only concern was the amount charged for management costs?

10 A Correct.

11 Q Okay.

12 A Can I -- I should take that back. That's not
13 completely all true. I would have to look through those
14 reports again to give you a correct answer on that.

15 Q Review which reports?

16 A The exhibits of -- of A, B, C, all the -- all the
17 main exhibits.

18 MR. KELLEY: Can we take a five-minute break?

19 MR. ANGELO: Sure.

20 MR. KELLEY: Thanks.

21 (A recess was taken.)

22 BY MR. KELLEY:

23 Q Back on the record.

24 A I would like to clarify -- I believe it would be my
25 last statement as far as regarding my opinion on the excessive

1 charges, and that opinion is -- that the -- is solely based on
2 the management cost of the project.

3 Q It is solely based on management costs?

4 A Yes, it is.

5 Q And so with respect to Rogerson Flats, Notch Butte,
6 Salmon Creek, Deep Creek and Cottonwood, your only concern
7 after your review of the applications for payment was the
8 management costs charged?

9 A Correct. I don't know if I caught that when you
10 just spoke. Was Lava Beds included in that?

11 Q Lava Beds was not included.

12 A I believe I -- Lava Beds, that I read was -- in my
13 statement would be included in that, the management costs were
14 excessive.

15 Q Okay. But with Lava Beds, your concerns are
16 management costs and the costs for excavation?

17 A Correct.

18 Q Okay. But the other five wind parks, your only
19 concerns are regarding management costs?

20 A That is correct.

21 Q Now, who was your main contact at Fagen for these
22 projects?

23 A Brad Borman.

24 Q And you had worked with Mr. Borman before on other
25 projects?

1 A No.

2 Q And how often were you in contact with him on
3 average when you are on the project?

4 A Daily.

5 Q During your time on the job, did you live in Idaho?

6 A Yes, I did.

7 Q And your understanding was Mr. Borman was the
8 project manager for Fagen?

9 A Yes.

10 Q Now, did Mr. Borman ever submit to you any type of
11 daily reports?

12 A Periodically, yes.

13 Q And by periodically what do you mean?

14 A It wasn't every day.

15 Q Okay. Was it --

16 A I requested at one point to get his daily reports.

17 Q And so do you recall when you requested that you
18 receive his daily reports?

19 A No, I do not recall.

20 Q And after you made that request, did he provide you
21 with daily reports?

22 A Yes, he did.

23 Q And would he send those to you by e-mail?

24 A Yes.

25 Q And did you provide those daily reports to anyone

1 the BCL?

2 A I'm not sure if I did or not honestly.

3 Q Did you send any of those daily reports to XRG?

4 A No.

5 Q Did you have a point of contact at XRG when you were
6 working on these projects?

7 A I had a point of contact, yes.

8 Q Do you recall who that was?

9 A Dustin -- I don't remember his last name.

10 Q Shively?

11 A Yes, that's correct.

12 Q And for the record, I believe that is spelled
13 S-H-I-V-E-L-Y.

14 MR. ROSA: Correct, counsel.

15 BY MR. KELLEY:

16 Q And do you recall how often you were in contact with
17 Mr. Shively?

18 A Over -- over a five, six month period, I probably
19 only had spoke to him five or six times.

20 Q Did you ever deal directly with a gentleman named
21 James Carkulis?

22 A No.

23 Q Are you familiar with the term EPC contract?

24 A Yes.

25 Q Can you just briefly give me a description of what

1 you understand that to mean?

2 A The -- I believe it's proceed to work on the project
3 type of a contract that, you know, says that, you know,
4 there's a power purchase agreement or, you know, the project
5 is a go.

6 Q Did you ever receive copies of any contracts between
7 Fagen and XRG?

8 A No, I did not.

9 MR. KELLEY: I have no other questions.

10 MR. ROSA: Okay. I do have about six
11 questions, and then I will be done too. Do you mind
12 if we take a five-minute break?

13 MR. KELLEY; Sure.

14 MR. ROSA: Thanks.

15 (A recess was taken.)

16 EXAMINATION

17 BY MR. ROSA:

18 Q Go back on the record if everyone is ready. Chuck,
19 it was your testimony that you considered some of the
20 management costs relating to these projects excessive; is that
21 correct?

22 A That is correct.

23 Q And what specifically do you mean when you are
24 referring to those costs as being excessive?

25 A Well, as I went through the exhibits, I seen the

1 cost of management I believe it was approximately around
2 \$72,000 monthly.

3 Q And you considered that excessive?

4 A I -- I have been in this business for a long time,
5 and I don't know anybody that charges that kind of money for a
6 paid employee.

7 Q Now, in terms of the work that was undertaken on the
8 project and let's just focus on the Jack Ranch projects, the
9 four projects in Twin Falls County.

10 MR. KELLEY: Excuse me, Mr. Rosa. Can we
11 just define Jack Ranch for the record?

12 BY MR. ROSA:

13 Q Yeah, absolutely. We can define Jack Ranch as
14 encompassing Rogerson Flats Wind Park, Salmon Creek Wind Park,
15 Deep Creek Wind Park and Cottonwood Wind Park. And my
16 question relating to those projects, Chuck, is, you have a
17 familiarity with the work that was done by management at
18 Fagen --

19 A Yes.

20 Q -- for those projects, correct?

21 A Yes.

22 Q And you are aware of the cost of that management as
23 it has been billed, correct?

24 A Yes.

25 Q Now, what facts specifically are you referring to

1 when you make the statement that the cost was excessive?

2 A Well, honestly, I don't know how the contract was
3 written so I don't know if that was in the original contract.
4 What I seen in these exhibits was the billing. But normally,
5 whether the site is going full force or whether it's -- in
6 the -- the way it was ran in this instance, the management fee
7 typically would be the same but in any -- the fact is though
8 whether it was going full force or in the state that it was
9 operating, that I believe the fee was excessive.

10 Q And you have reviewed the daily sheets prepared by
11 Fagen with respect to these projects; is that correct?

12 A Yes.

13 Q And in reviewing those documents, are there any
14 other facts that you are aware of that would support your
15 conclusion that the billing was excessive as you have
16 testified?

17 MR. KELLEY: Objection, misstates his
18 testimony.

19 BY MR. ROSA:

20 Q You can answer.

21 A Well, I don't remember exactly what Brad Borman's
22 rotation schedule was so typically he was there three to four
23 weeks and went home a week. That was part of my judgment on
24 that because part of that every three, four, five -- I mean, I
25 would have to look at the records. He would -- you know,

1 there was no management there. So it was based on a
2 three-week month or, you know, four weeks and then the one
3 week off so -- so that's part of the reasoning and just the
4 fact that nobody charges that much money for management fees.
5 I'm in the business, self-employed. I don't charge that much
6 with my expenses.

7 Q And this case is obviously not about Lava Beds.
8 However, is your opinion with respect to that project and the
9 management costs incurred for that project the same?

10 MR. KELLEY: Objection, irrelevant.

11 BY MR. ROSA:

12 Q You can answer.

13 A I would say, yes, it would -- the management cost
14 was excessive.

15 Q Were there any other components of work relating to
16 the Lava Beds project that you would consider to be excessive
17 as well?

18 MR. KELLEY: Objection, irrelevant. Mr.
19 Rosa, this is not about Lava Beds. I'm not going to
20 sit here and wait for you to question him on a case
21 that is not part of this deposition.

22 BY MR. ROSA:

23 Q I understand. You can answer.

24 A Being that -- could you restate the question.

25 MR. ROSA: Could you please read that back.

1 (The court reporter read back.)

2 THE WITNESS: Yeah, I believe the excavation
3 cost was excessive due to the fact that the
4 excavation wasn't completed.

5 BY MR. ROSA:

6 Q Was not completed?

7 A Was not completed. And typically excavating a hole
8 that size on any project doesn't cost that much whether it is
9 completed or not. That seemed to be very high to me.

10 MR. ROSA: Thank you. I have no other
11 questions.

12 MR. KELLEY: I just want to state for the
13 record that obviously this deposition notice does
14 not involve Lava Beds case which is a separate
15 lawsuit and so if the need arises, I will be
16 deposing Mr. Dickerson again regarding that project.

17 MR. ROSA: Noted

18 MR. KELLEY: I have no other questions. Do
19 you want to --

20 MR. ROSA: What we are going to do is the
21 court reporter will take down your testimony, as she
22 has been. She is going to prepare it into a booklet
23 form. You can review it, make any changes that are
24 necessary if you think it's necessary to make your
25 testimony as accurate as possible and truthful as

1 possible, and then we will read it, sign it, and
2 then a signed copy will be delivered to the custody
3 of Fagen's counsel.

4 THE WITNESS: Is that something we are doing
5 right now?

6 MR. ROSA: No, no, it will happen in the
7 coming days. And you will have a reasonable period
8 of time, 30 days but if you could do it as soon as
9 you can, that would be great.

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DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 SEP 30 AM 9:09

BY  CLERK

DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC, and
"JOHN DOES 1-10,"

Defendants.

Case Nos. CV-2013-0573
CV-2013-0574
CV-2013-0575
CV-2013-0576
CV-2013-0026

**ORDER ON PLAINTIFF'S MOTIONS TO
SHORTEN TIME AND TO EXCLUDE
DEFENDANTS' EXPERT AND LAY
WITNESSES AND PRE-TRIAL ORDER**

This matter came before the Court on September 29, 2014 for a pre-trial conference and on Plaintiff's Motions to Shorten Time and to Exclude Defendants' Expert and Lay Witnesses. Based upon the fact that trial in this case is scheduled to begin in approximately one month, Plaintiff's Motion to Shorten Time was GRANTED. Plaintiff's Motion to Exclude Defendants' Expert Witnesses is GRANTED in that Defendants have not disclosed any experts. Plaintiff's Motion to Exclude Defendants' Lay Witnesses is DENIED. However, Defendants may only call witnesses James

**ORDER ON PLAINTIFF'S MOTIONS TO SHORTEN TIME AND TO EXCLUDE
DEFENDANTS' EXPERT AND LAY WITNESSES AND PRE-TRIAL ORDER - 1**

Carkulis and Chuck Dickerson and may only use the depositions of Dickerson, Bradley Bormann, Samuel Ewald, and Kate Carlton as permitted by the Idaho Rules of Civil Procedure.

IT IS HEREBY ORDERED that Defendants' witnesses shall not be permitted to testify beyond the fair scope of what has previously been testified to in their depositions or what has otherwise been disclosed through discovery.

IT IS HEREBY FURTHER ORDERED that the only issue to be tried to the Court is the final amount of damages due and owing to Plaintiff. Defendants shall be limited to setting forth evidence of any "offset" that may be claimed against the amounts previously ordered due and owing to Plaintiff pursuant to the Court's September 9, 2014 Order. Any such "offset" shall consist only of Defendants' objections to Plaintiff's construction management costs. The total value of such objections may not exceed \$889,607.84.

Finally, based upon the representations of defense counsel, IT IS HEREBY FURTHER ORDERED that Defendant shall be limited to offering the following exhibits at trial: Plaintiff's daily project meeting agendas (Defendants' Exhibit 'A'), Plaintiff's applications for payment from Exergy Development Group of Idaho, LLC (Defendants' Exhibit 'B'), Chuck Dickerson's daily work logs (Defendants' Exhibit 'C'), an amended and restated memorandum of the work performed in this matter (Defendants' Exhibit 'D'), the engineering procurement and construction agreement (Defendants' Exhibit 'E'), a refined and more complete spreadsheet summarizing Defendants' objections to the construction management costs (Defendants' Exhibit 'F'), and various e-mails that have previously been disclosed in discovery (Defendants' Exhibit 'G'), in addition to portions

of the deposition transcripts for the five witnesses set forth above. Defendants' counsel shall, in advance of trial, disclose to Plaintiff's counsel specifically which deposition transcripts, including page numbers, will be offered at trial, pursuant to the schedule set forth below.

By stipulation of the parties, Defendants' Exhibits 'A' through 'G' are deemed admitted, subject to review and any objections by Plaintiff's counsel upon receipt of such exhibits, pursuant to the schedule set forth below.

Disclosure of Defendants' Exhibits 'A' through 'G' shall be made by Defendants' counsel on the following schedule: Defendants' Exhibits 'A' through 'G,' excluding Defendants' Exhibit 'F,' shall be delivered to Plaintiff's counsel's office by 5:00 p.m. on Wednesday, October 1, 2014. Defendants' Exhibit 'F' shall be delivered to Plaintiff's counsel's office by 5:00 p.m. on Friday, October 3, 2014.

Plaintiff's counsel shall notify Defendants' counsel regarding whether Plaintiff does or does not object to the admission of Exhibits 'A' through 'G,' excluding Defendants' Exhibit 'F,' by 5:00 p.m. on Friday, October 3, 2014. Further, Plaintiff's counsel shall notify Defendants' counsel regarding whether Plaintiff does or does not object to the admission of Defendants' Exhibit 'F' by 5:00 p.m. on Friday, October 10, 2014. As stated above, the Court shall deem as admitted any of Defendants' Exhibits to which Plaintiff's counsel does not object.

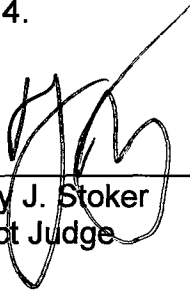
With regard to the deposition transcripts, Defendants' counsel shall disclose which deposition transcripts, including page numbers, will be offered at trial by 5:00 p.m. on Monday, October 6, 2014. Such deposition transcripts shall be limited to the five witnesses set forth above.

Plaintiff's counsel shall have until 5:00 p.m. on Friday, October 10, 2014 to submit rebuttal exhibits, if any, to Defendants' counsel.

An original copy and a bench copy of all exhibits shall be submitted to the Court by 5:00 p.m. on Tuesday, October 21, 2014.

IT IS SO ORDERED.

DATED this ³⁰ day of September 2014.



Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 30 day of September 2014, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

John R. Goodell
Attorney at Law
101 S. Capitol Blvd., Ste. 300
Boise, ID 83702

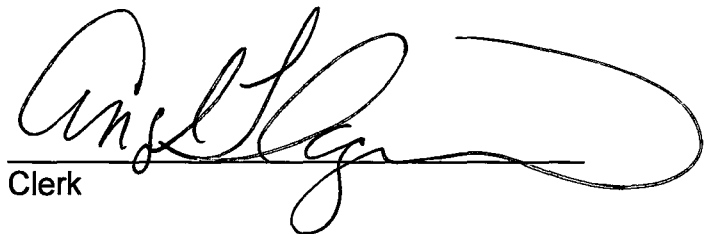
U.S. Mail
 Hand delivered
 Faxed
 Court Folder

Keith S. Moheban
Pro Hac Vice Counsel
150 S. Fifth St., Ste 2300
Minneapolis, MN 55402

U.S. Mail
 Hand delivered
 Faxed
 Court Folder

Angelo Rosa
Attorney at Law
P.O. Box 1605
Boise, ID 83701

U.S. Mail
 Hand delivered
 Faxed
 Court Folder


Clerk

OCT 22 2014

By _____ 4:30 P.M.
Clerk
Deputy Clerk

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576

CV-2013-26

**STIPULATION FOR ENTRY OF
JUDGMENT AND TO VACATE
TRIAL SETTING**

COME NOW Plaintiff Fagen, Inc. ("Fagen"), and Defendants Rogerson Flats Wind Park, LLC ("Rogerson Flats WP"), Cottonwood Wind Park, LLC ("Cottonwood WP"), Salmon Creek Wind Park, LLC ("Salmon Creek WP"), Deep Creek Wind Park, LLC ("Deep Creek WP"), Notch Butte Wind Park, LLC ("Notch Butte WP"), Exergy Development Group of Idaho, LLC

("Exergy"), by and through their respective undersigned counsel of record, and hereby stipulate and agree as follows:

1. On September 9, 2014 the Court's prior *Order Granting and Denying Motions On Hearing Held 9/2/14* was filed ("Summary Judgment Order"). The Summary Judgment Order granted summary judgment in favor of Fagen and against the various Defendants in the Gross Amounts stated at paragraph (3) (A-E) thereof, exclusive of prejudgment interest, costs and attorney fees, which were reserved; and also subject to "offset" for the final Net Amount of damages to be awarded following the court trial scheduled October 28-31, 2014.
2. On September 29, 2014 the Court held the Pre-Trial Conference. Additional motions were argued and submitted. On September 30, 2014, the Court's *Order On Plaintiff's Motions to Shorten Time and to Exclude Defendants' Expert and Lay Witnesses and Pre-Trial Order* was filed ("Pre-Trial Order"). The Pre-Trial Order reserved the "offset" damages issue for the court trial and described as follows:

"IT IS HEREBY FURTHER ORDERED that the only issue to be tried to the Court is the final amount of damages due and owing to Plaintiff. Defendants shall be limited to setting forth evidence of any 'offset' that may be claimed against the amounts previously ordered due and owing to Plaintiff pursuant to the Court's September 9, 2014 Order. Any such 'offset' shall consist only of Defendants' objections to Plaintiff's *construction management costs*. *The total value of such objections may not exceed \$889,607.84.*" (italics added).

3. Subsequently, in lieu of proceeding to trial on the remaining "offset" damages issue, the parties have reached a compromise settlement agreement over the disputed "construction management costs," not to exceed the \$889,607.84 total amount for all five (5) Wind Parks. The parties agree to reduce the construction management portion of the Fagen Pay Applications by \$239,000, which is a compromise between the Fagen position that no

reduction was appropriate, and the Defendants' position that there should be a reduction of \$889,607.84. The parties agree that the judgment against Exergy thus should be reduced by \$239,000, and also agree to equitably allocate this total equally to the five (5) Wind Parks, which is a reduction of \$47,800 to each of the Wind Parks ($\$239,000 \div 5$).


4. Based on the foregoing, the parties agree to entry of judgment in favor of Fagen and against each of the five (5) Wind Parks, and Exergy, in the Net Amount, representing the *principal amount due and owing*, exclusive of prejudgment interest, costs and attorney fees, as stated in the Table below:

	<u>Gross Amount</u>	<u>(Less Reduction)</u>	<u>Net Amount</u>
Rogerson Flats WP	1,412,774.81	(47,800)	1,364,974.81
Cottonwood WP	1,412,774.81	(47,800)	1,364,974.81
Salmon Creek WP	1,412,774.81	(47,800)	1,364,974.81
Deep Creek WP	1,412,774.81	(47,800)	1,364,974.81
Notch Butte WP	<u>856,012.20</u>	<u>(47,800)</u>	<u>808,212.20</u>
Exergy	6,507,111.44	(239,000)	6,268,111.44

5. Prejudgment interest, costs and attorney fees claimed are specifically reserved for further proceedings herein.
6. An agreed suitable form of Judgment is submitted herewith.
7. Given this Stipulation and proposed form of Judgment, there is no "offset" damages issue remaining for court trial, which should be vacated.
8. The foregoing Stipulation and Judgment requested to be entered hereon is without prejudice to any parties' right of appeal otherwise existing.

DATED this 22nd day of October, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

DATED this 27 day of October, 2014.

MARSH ROSA LLP



By: _____

ANGELO L. ROSA
*Attorneys for Defendants Exergy
Development Group of Idaho,
L.L.C.; XRG Development Partners,
LLC; Rogerson Flats Wind Park,
LLC; Cottonwood Wind Park, LLC;
Salmon Creek Wind Park, LLC;
Deep Creek Wind Park, LLC; and
Notch Butte Wind Park, LLC*

COPY

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 22nd day of October, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
MARSH ROSA LLP
344 West Hale Street #301
Boise, ID 83706
Attorneys for Exergy Development Group of Idaho, L.L.C.; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC; Cottonwood Wind Park, LLC; Salmon Creek Wind Park, LLC; Deep Creek Wind Park, LLC; and Notch Butte Wind Park, LLC

- U.S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 801-415-1773
- Email arosa@marshrosa.com

Keith S. Moheban, *Pro Hac Vice*
Timothy M. Kelley, *Pro Hac Vice*
STINSON LEONARD STREET LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 612-335-1657
- Email
- timothy.kelley@stinsonleonard.com
- keith.moheban@stinsonleonard.com



JOHN R. GOODELL

OCT 23 2014

By _____ 8:00 A.M.
Clerk

Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576
CV-2013-26

JUDGMENT

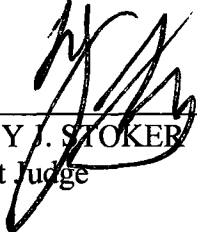
JUDGMENT IS ENTERED AS FOLLOWS:

1. Plaintiff Fagen, Inc. shall have and recover from Defendants Rogerson Flats Wind Park, LLC, and Idaho limited liability company, and Exergy Development Group of Idaho, LLC, an Idaho limited liability company, jointly and severally, contract damages in the principal amount of \$1,364,974.81. Said principal amount is exclusive of prejudgment interest, costs and attorney fees, which are reserved.

2. In addition, Plaintiff Fagen, Inc. shall have and recover from Defendants Cottonwood Wind Park, LLC, and Idaho limited liability company, and Exergy Development Group of Idaho, LLC, an Idaho limited liability company, jointly and severally, contract damages in the principal amount of \$1,364,974.81. Said principal amount is exclusive of prejudgment interest, costs and attorney fees, which are reserved.
3. In addition, Plaintiff Fagen, Inc. shall have and recover from Defendants Salmon Creek Wind Park, LLC, and Idaho limited liability company, and Exergy Development Group of Idaho, LLC, an Idaho limited liability company, jointly and severally, contract damages in the principal amount of \$1,364,974.81. Said principal amount is exclusive of prejudgment interest, costs and attorney fees, which are reserved.
4. In addition, Plaintiff Fagen, Inc. shall have and recover from Defendants Deep Creek Wind Park, LLC, and Idaho limited liability company, and Exergy Development Group of Idaho, LLC, an Idaho limited liability company, jointly and severally, contract damages in the principal amount of \$1,364,974.81. Said principal amount is exclusive of prejudgment interest, costs and attorney fees, which are reserved.
5. In addition, Plaintiff Fagen, Inc. shall have and recover from Defendants Notch Butte Wind Park, LLC, and Idaho limited liability company, and Exergy Development Group of Idaho, LLC, an Idaho limited liability company, jointly and severally, contract damages in the principal amount of \$808,212.20. Said principal amount is exclusive of prejudgment interest, costs and attorney fees, which are reserved.

6. In summary, the total principal amount awarded to Plaintiff Fagen, Inc. and against Defendant Exergy Development Group of Idaho, LLC alone equals \$6,268,111.14, representing the sum of awards per paragraphs 1-5 above. Said principal amount is exclusive of prejudgment interest, costs and attorney fees, which are reserved.

DATED this 23 day of October, 2014.



RANDY J. STOKER
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23 day of October, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
MARSH ROSA LLP
344 West Hale Street #301
Boise, ID 83706
Attorney for Exergy Development Group of Idaho, L.L.C.; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC; Cottonwood Wind Park, LLC; Salmon Creek Wind Park, LLC; Deep Creek Wind Park, LLC; and Notch Butte Wind Park, LLC

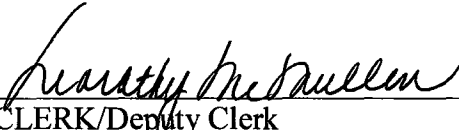
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John R. Goodell
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U.S. Bank Plaza Building, Ste. 300
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Fax: (208) 433-0167
Attorneys for Plaintiff Fagen, Inc.

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 Overnight Mail
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jrg@racinelaw.net

Keith S. Moheban, *Pro Hac Vice*
Timothy M. Kelley, *Pro Hac Vice*
STINSON LEONARD STREET LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Attorneys for Plaintiff Fagen, Inc

U.S. Mail, Postage Prepaid
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 Facsimile 612-335-1657
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timothy.kelley@stinsonleonard.com
keith.moheban@stinsonleonard.com




CLERK/Deputy Clerk

DISTRICT COURT
TWIN FALLS, CO. IDAHO
FILED

2014 OCT 30 PM 2:56

BY _____ CLERK

 _____ DEPUTY

Angelo L. Rosa (ISB No. 7546)
MARSHROSALLP
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants/Appellants
ROGERSONFLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK
WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC,
and EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff/Respondent,)
)
vs.)
)
ROGERSON FLATS WIND PARK,)
LLC, an Idaho limited liability company;)
EXERGYDEVELOPMENTGROUPOF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
)
Defendants/Appellants.)
_____)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

NOTICE OF APPEAL

TO: FAGEN, INC. and its counsel of record, and to the CLERK OF THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND OR THE COUNTY OF TWIN FALLS:

NOTICE IS HEREBY GIVEN THAT:

1. The title of the action is as stated above.

2. The above named Defendants/Appellants, ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC, and EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. (collectively, "Defendants/Appellants"), by and through their counsel, Angelo L. Rosa of the MARSH ROSA LLP law firm, hereby appeal to the Idaho Supreme Court from the ruling dated 2 September 2014 entered by the Honorable Randy J. Stoker, granting Plaintiff/Respondent's Motion for Summary Judgment, the Court's ruling dated 29 September 2014 denying Defendants/Appellants leave to amend their Answer to the First Amended Complaint to conform to the evidence, the Judgment entered in Plaintiff/Respondent's favor dated 23 October 2014, any award of attorney's fees and costs pursuant to Respondent's Memorandum of Fees and Costs and all other interlocutory or other orders deemed included in the final judgment set forth in Idaho Appellate Rule ("I.A.R.") 17(e)(1).

3. Defendants/Appellants have a right to appeal to the Idaho Supreme Court, and the order described above is an appealable order under I.A.R. 11(a), including without limitation I.A.R. 11(a)(1) and 11(a)(7).

4. The issues on appeal which Defendants/Appellants intend to assert in the appeal are (a) whether the District Court erred in denying Defendants/Petitioners' Motion for a Continuance under I.R.C.P. 56(f); (b) whether the District Court erred in granting summary judgment in favor of

Plaintiff/Respondent; and (c) whether any additional rulings adverse to Defendants/Petitioners were made in error.

5. No order has been entered sealing the record.

6. Appellants request the preparation of the entire reporter's transcript under I.A.R. 25, to include transcripts of the following proceedings:

- a. 9 September 2013 status conference;
- b. 2 December 2013 hearing on Motion to Amend Complaint and Motion to Dismiss;
- c. 6 January 2014 telephonic status conference;
- d. 31 January 2014 hearing on Motion to Withdraw as Counsel and Motion to Compel;
- e. 3 March 2014 hearing on hearing on Motion to Withdraw as Counsel;
- f. 14 April 2014 scheduling conference;
- g. 2 September 2014 hearing on Motions for Summary Judgment; and
- h. 29 September 2014 pre-trial conference.

7. Appellants request the preparation of the entire clerk's record as set forth in I.A.R. 28.

8. Appellants further request the following documents to be included in the clerk's record in addition to those automatically included pursuant to I.A.R. 28:

- a. Copies of all Motions and supporting paperwork filed in the above mentioned matter, including specifically (but not limited to) (i) Petitioner/Respondent's Motion for Summary Judgment and supporting documents; (ii) Defendants/Appellants' Motion for Summary Judgment and supporting documents; (iii) Defendants/Appellants' Motion for I.R.C.P. 56(f) Continuance and supporting

documents; (iv) Defendants/Appellants' Motion for Costs and Attorney's Fees; and (v) Defendants/Appellants' Pre-Trial Statement, and all rulings and order issued in relation thereto.

9. A copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

a. Nancy Barksdale, c/o Fourth District Court, 425 Shoshone Street N., Twin Falls, Idaho 83301.

10. The Clerk of the Court has been paid the estimated fee for preparation of the reporter's transcript and the clerk's record.

11. The applicable appellate filing fee has been paid.

12. Service has been made on all parties required to be served pursuant to I.A.R. 20.

DATED: 30 October 2014

Respectfully Submitted,

MARSH ROSA, LLP



Angelo L. Rosa
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 30 October 2014 I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
101 South Capitol Blvd., Suite 300
Boise, Idaho 83702

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Keith Moheban
Timothy Kelley
STINSONLEONARDSTREET, LLP
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

132
ORIGINAL

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

Attorneys for Plaintiff Fagen, Inc.

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 NOV -6 AM 10:54

BY _____
CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:

CV 2013-573 (lead case)

CV 2013-574

CV 2013-575

CV 2013-576

CV-2013-26

**PLAINTIFF FAGEN, INC.'S
MOTION FOR AWARD OF
PREJUDGMENT INTEREST,
COSTS AND ATTORNEYS FEES**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and hereby submits its Motion for Award of Prejudgment Interest, Costs, and Attorney Fees against Defendants Rogerson Flats Wind Park, LLC, Cottonwood Wind Park, LLC, Salmon Creek Wind Park, LLC, Deep Creek Wind Park, LLC, Notch Butte Wind Park, LLC, Exergy Development Group of Idaho, LLC as the prevailing party, and entry of an amended or supplemental judgment

**PLAINTIFF FAGEN, INC.'S MOTION FOR AWARD OF PREJUDGMENT
INTEREST, COSTS AND ATTORNEY FEES – pg. 1**

including such awards, pursuant to the parties' EPC Contract, Section 13.7 (10% per annum recoverable on late payments), IRCP 54(d)(1)(B-C) and (e)(1-3), and/or I.C. §12-120(3)(contract or "commercial transaction").

This Motion is made on the following grounds and reasons:

1. Fagen seeks award of prejudgment interest which is sought from September 1, 2012 to October 22, 2014 date of entry of Judgment for the principal amount @ the rate of 10% per annum, pursuant to the parties' written Engineering, Procurement, and Construction Services Agreement ("EPC Contract"), Section 13.7. A true and correct copy of EPC Contract, Section 13.7 is attached as **Exhibit A** to the Affidavit of John R. Goodell ("Goodell Affidavit") filed herewith and adopted by reference.¹

Prejudgment interest is calculated as follows:

A. Rogerson Flats:

781 days (from 9/1/12 to 10/22/14 date of entry of Judgment) times \$373.97 per diem (\$1,364,974.81 times 10% divided by 365) which equals \$292,067.21.

B. Cottonwood Wind Park:

781 days (from 9/1/12 to 10/22/14 date of entry of Judgment) times \$373.97 per diem (\$1,364,974.81 times 10% divided by 365) which equals \$292,067.21.

¹ The EPC Contract, Section 13.7, is included in the record as part of Exhibit H attached to the Affidavit of Bradley Bormann In Support of Fagen, Inc.'s Motion for Summary Judgment filed herein. It is excerpted and attached hereto as **Exhibit A** for ease of reference.

C. Salmon Creek Wind Park:

781 days (from 9/1/12 to 10/22/14 date of entry of Judgment) times \$373.97 per diem (\$1,364,974.81 times 10% divided by 365) which equals \$292,067.21.

D. Deep Creek Wind Park:

781 days (from 9/1/12 to 10/22/14 date of entry of Judgment) times \$373.97 per diem (\$1,364,974.81 times 10% divided by 365) which equals \$292,067.21.

E. Notch Butte Wind Park:

781 days (from 9/1/12 to 10/22/14 date of entry of Judgment) times \$221.43 per diem (\$808,212.20 times 10% divided by 365) which equals \$172,935.27.

F. Exergy Development:

The total prejudgment interest 781 days (from 9/1/12 to 10/22/14 date of entry of Judgment) times \$1,717.29 per diem (\$6,268,111.44 times 10% divided by 365), which equals \$1,341,204.12 as to Exergy Development.


2. Fagen seeks award of total costs claimed as a matter of right pursuant to IRCP 54(d) (1) (C)(1 and 2) for Court filing fees, service of process fees, and deposition transcript taking/obtaining copies fees. The specific amounts and breakdown of such costs are **\$2,681.50**, as more fully set forth in Fagen's Memorandum of Costs and Fees filed herewith, which is adopted by reference as though fully set forth herein.

3. Fagen seeks award of attorney fees claimed as a matter of right pursuant to I.C. § 12-120(3) (contract or "commercial transaction"). Fagen seeks award of the amount of attorney and paralegal fee in the total amount of **\$102,133.50**, as more fully set forth in the Memorandum of Costs and Fees, and Goodell Affidavit and Kelly Affidavit filed herewith.

ORAL ARGUMENT REQUESTED.

DATED this 5th day of November, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of November, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
MARSH ROSA LLP
344 West Hale Street #301
Boise, ID 83706
Attorney for Exergy Development Group of Idaho, L.L.C.; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC; Cottonwood Wind Park, LLC; Salmon Creek Wind Park, LLC; Deep Creek Wind Park, LLC; and Notch Butte Wind Park, LLC

- U.S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 801-415-1773
- Email arosa@marshrosa.com

Keith S. Moheban
Timothy M. Kelley
STINSON LEONARD STREET LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Pro Hac Vice

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 612-335-1657
- Email
- timothy.kelley@stinsonleonard.com
- keith.moheban@stinsonleonard.com


JOHN R. GOODELL

132
John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
101 S. Capitol Boulevard
U.S. Bank Plaza Building, Ste. 300
Boise, ID 83702
Telephone: (208) 395-0011
Fax: (208) 433-0167

Attorneys for Plaintiff Fagen, Inc.

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED
2014 NOV -6 AM 10: 54
BY _____
CLERK
DEPUTY

ORIGINAL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576

CV-2013-26

**PLAINTIFF FAGEN, INC.'S
MEMORANDUM OF COSTS AND
FEES**

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and hereby submits the following Memorandum of Costs and Fees, as the prevailing party, and requests award of the same to be included in or by the final Judgment, Amended Judgment, or Supplemental Judgment, pursuant to IRCP 54(d, e), as follows:

I. COSTS CLAIMED AS A MATTER OF RIGHT PER RULE 54d)(1)(C):

Summary: Separate filing fees were incurred in each separately-filed case prior to consolidation of \$96.00.

Service of process fees were incurred in Notch Butte Wind Park case of \$40.00.

Pro hac vice court filing fees of \$325 each, or \$750 total, were incurred for two counsel, Mssrs. Moheban and Kelly, who were extensively involved in preparation and prosecution of Plaintiff Fagen's claims in all suits, including depositions. Mr. Moheban also appeared at the Pre-Trial Conference in person.

All depositions costs are attributed to the Rogerson Flats Wind Park suit as incurred after the Order for Consolidation.

Costs:

1. Cottonwood Wind Park

Court filing fees: \$ 96.00

See, Affidavit of John R. Goodell In Support of Prejudgment Interest, Costs, and Attorney Fees Claims, Ex. B, filed herewith ("Goodell Affidavit").

2. Salmon Creek Wind Park

Court filing fees: \$ 96.00

See, Goodell Affidavit, Ex. C.

3. Deep Creek Wind Park

Court filing fees: \$ 96.00

See, Goodell Affidavit, Ex. D.

4. Notch Butte Wind Park

Court filing fees: \$ 96.00

Service of process fees: \$ 40.00

Subtotal: \$136.00

See, Goodell Affidavit, Ex. E.

5. **Rogerson Flats Wind Park**

Court filing fees:	\$ 96.00
Service of process fees:	\$ 60.00
Pro Hac Vice filing fee (Moheban)	\$ 325.00
Pro Hac Vice filing fee (Kelly)	\$ 325.00

Deposition transcript copy (Ewald)	\$ 547.20
Deposition transcript copy, Vol. 1 (Bormann)	\$ 117.95
Deposition transcript copy, Vol II (Bormann)	\$ 225.00
Deposition transcript copy (Carlton)	\$ 206.35
Deposition transcript taken (Dickerson)	<u>\$ 355.00</u>

Subtotal: \$2,257.50

See, Goodell Affidavit, Ex. F.

See also, Affidavit of Timothy M. Kelly filed herewith (Kelly Affidavit) (deposition costs).

TOTAL COSTS: \$2,681.50

II. FEES CLAIMED AS A MATTER OF RIGHT PER .C. § 12-120(3):

Plaintiff claims fees as a matter of right pursuant to I.C. § 12-120(3) (contract debt, or “commercial transaction”); and in an amount as deemed proper in the sound exercise of the Court’s discretion, and based on the supporting Goodell Affidavit and Kelly Affidavit, filed herewith.

The Racine firm fees claim is broken down as incurred each Wind Park separately to the date of entry of the Order of Consolidation. After that date, all fees claimed are billed only to the Rogerson Flats Wind Park case.

A total fees claim for the Racine firm is then stated on a cumulative basis.

In addition, the total fees claim for *pro hac vice* counsel are separately stated.

Finally, total attorney fees for all counsel are stated.

RACINE FIRM FEES:

1. Cottonwood Wind Park

John R. Goodell, ID lead counsel attorney of record
(including partner, associates, and paralegal assistant)
(12.5 hours @ varying rates): \$ 2,915.00

See, Goodell Affidavit, Ex. B.

2. Salmon Creek Wind Farm

John R. Goodell, ID lead counsel attorney of record
(including partner, associates, and paralegal assistant)
(10.8 hours @ varying rates): \$ 2,570.00

See, Goodell Affidavit, Ex. C.

3. Deep Creek Wind Farm

John R. Goodell, ID lead counsel attorney of record
(including partner, associates, and paralegal assistant)
(12.3 hours @ varying rates): \$ 2,895.00

See, Goodell Affidavit, Ex. D.

4. Notch Butte Wind Farm

John R. Goodell, ID lead counsel attorney of record
(including partner, associates, and paralegal assistant)
(14 hours @ varying rates): \$ 3,362.50

See, Goodell Affidavit, Ex. E.

5. Rogerson Flats Wind Farm

John R. Goodell, ID lead counsel attorney of record
(including partner, associates, and paralegal assistant)
(145.70 hours @ varying rates): \$30,517.50

See, Goodell Affidavit, Ex. F.

SUBTOTAL RACINE FIRM FEES: \$42,260.00

STINSON LEONARD FIRM FEES:

Timothy M. Kelly, Fagen's MN supporting co-counsel
(91.20 hours @ \$435/hour rate): \$39,672.00

Keith S. Moheban, Fagen's MN supporting co-counsel
(36.50 hours @ \$480/hour rate): \$17,520.00

See, Kelly Affidavit.

SUBTOTAL STINSON LEONARD FEES: **\$57,192.00**

TOTAL FEES: **\$99,452.00**


GRAND TOTAL ALL COSTS AND FEES: **\$102,133.50**

CERTIFICATION

The undersigned hereby certified on behalf of Plaintiff that to the best of his knowledge and belief the items are correct and the costs and fees claimed are in compliance with IRCP 54(d, e).

DATED this 5th day of November, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of November, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
MARSH ROSA LLP
344 West Hale Street #301
Boise, ID 83706
Attorney for Exergy Development Group of Idaho, L.L.C.; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC; Cottonwood Wind Park, LLC; Salmon Creek Wind Park, LLC; Deep Creek Wind Park, LLC; and Notch Butte Wind Park, LLC

- U.S. Mail
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- Facsimile 801-415-1773
- Email arosa@marshrosa.com

Keith S. Moheban
Timothy M. Kelley
STINSON LEONARD STREET LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Pro Hac Vice

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 612-335-1657
- Email
- timothy.kelley@stinsonleonard.com
- keith.moheban@stinsonleonard.com



JOHN R. GOODELL

132
ORIGINAL

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
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Telephone: (208) 395-0011
Fax: (208) 433-0167
Attorneys for Plaintiff Fagen, Inc.

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 NOV -6 AM 10: 54

BY _____
CLERK
SP
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576

CV-2013-26 (Lincoln County)

**AFFIDAVIT OF
TIMOTHY M. KELLEY**

STATE OF MINNESOTA)
 :ss.
COUNTY OF HENNEPIN)

TIMOTHY M. KELLEY, being first duly sworn upon oath, deposes and states as follows:

1. Your Affiant is the citizen of the United States, a resident of Ramsey County, Minnesota, of legal age and competent to be a witness. I am an attorney licensed to practice law in the State of Minnesota and have assisted attorney, John R. Goodell in this matter. The Court also admitted me *Pro Hac Vice* on August 15, 2014. Specifically, I assisted Mr.

Goodell in responding to the Defendants' discovery requests, preparing all summary judgment pleadings and Affidavits, and taking and defending all depositions conducted in this case.

2. I hereby affirm the following facts and matters based on my personal knowledge. This Affidavit is submitted in support of Plaintiff Fagen, Inc.'s ("Fagen") request for an award of attorney fees, costs, and disbursements.
3. I am a partner at Stinson Leonard Street LLP. Stinson Leonard Street LLP is a national law firm with fourteen (14) offices in the Midwest, Mountain West, Southwest and Washington, D.C. I focus my practice in the areas of real estate litigation and banking and lending litigation. I have been licensed to practice law since 2000. My hourly rate in 2014 is \$435.00.
4. In addition, Keith S. Moheban, a partner at Stinson Leonard Street LLP, also worked on this matter. The Court admitted Mr. Moheban to appear in this case *Pro Hac Vice* on August 15, 2014. Mr. Moheban has been licensed to practice law since 1990. He focuses his practice on construction litigation and other complex litigation. Mr. Moheban's hourly rate in 2014 is \$480.00. Mr. Moheban was set to first chair the trial in this case, which was scheduled to start during the week of October 27, 2014.
5. I have set forth the billing entries to document the amount of attorney fees, costs and disbursements Fagen seeks to recover for the time Mr. Moheban and I worked and billed on this matter, which were necessarily incurred by Fagen.
6. Below are the time entries for the attorney fees Fagen seeks to recover for this matter:

Date	Timekeeper	Description	Hours	Amount
07/28/14	Timothy M Kelley	Prepare Affidavits of Bradley Bormann, Jennifer Johnson, Samuel Ewald and Lori Anderson in support of motion for summary judgment in	5.70	2,479.50

Date	Timekeeper	Description	Hours	Amount
07/29/14	Timothy M Kelley	consolidated Idaho Litigation. Revise Affidavits of Kirsten Tjosaas, Jennifer Johnson, Bradley Bormann, and Sam Ewald in support of motion for summary judgment in consolidated case pending in Idaho; correspondence to client regarding same; prepare Memorandum of Law in Support of Motion for Summary Judgment in consolidated case pending in Idaho.	7.00	3,045.00
07/30/14	Timothy M Kelley	Finalize Memorandum of Law in Support of Summary Judgment in consolidated case involving Idaho wind farms; telephone conference with John Goodell, local counsel regarding same; correspondence to Jennifer Johnson regarding same.	1.10	478.50
08/08/14	Timothy M Kelley	Review deposition notices for Idaho consolidated case; review Idaho Rules of Civil Procedure regarding limit on duration of depositions; draft correspondence to Angelo Rosa regarding date and location of depositions.	1.20	522.00
08/12/14	Timothy M Kelley	Review and respond to correspondence regarding deposition scheduling; correspondence to Jennifer Johnson, Brad Bormann, Sam Ewald and Kate Carlton regarding same; telephone conference with Kate Carlton regarding same.	0.90	391.50
08/14/14	Timothy M Kelley	Correspondence to Brad Bormann regarding conference call for deposition preparation; correspondence to Samuel Ewald regarding same; correspondence to Brad Bormann and Samuel Ewald regarding same; prepare Memorandum of Law in Response to Defendants' Motion for Summary Judgment in consolidated wind park case in Idaho.	2.10	913.50
08/15/14	Timothy M Kelley	Review summary judgment filings in consolidated wind park litigation to prepare for call with Sam Ewald to prepare for deposition; correspondence to Sam Ewald regarding same; telephone conference with Sam Ewald regarding same; correspondence to Kate Carlton regarding deposition preparation; correspondence to Jennifer Johnson regarding response to Defendants' motion for summary judgment in consolidated wind park case.	5.10	2,218.50
08/18/14	Timothy M Kelley	Review Defendants' Motion for Rule 56(f) Ex Parte Continuance in Consolidated Case; prepare	4.50	1,957.50

Date	Timekeeper	Description	Hours	Amount
		Memorandum of Law and Affidavit of John Goodell in Opposition to same; correspondence to John Goodell regarding same; correspondence to Jennifer Johnson regarding Defendants Motion for Rule 56(f) Continuance and response to Defendants' Motion.		
08/18/14	Keith S Moheban	Review Exergy's "ex parte" motion in Idaho; correspondence regarding same; telephone conference with John Goodell regarding same; review opposition brief.	1.00	480.00
08/19/14	Keith S Moheban	Review Exergy reply in Twin Falls case; evaluate same.	0.80	384.00
08/20/14	Timothy M Kelley	Telephone conference with Kate Carlton to prepare for deposition; review Defendants' response to motion for summary judgment in consolidated Idaho Wind Park case; prepare Reply Memorandum of Law in Support of Motion for Summary Judgment.	4.40	1,914.00
08/25/14	Timothy M Kelley	Prepare for and attend depositions of Kate Carlton, Samuel Ewald and Bradley Bormann; revise Reply Memorandum of Law in Support of Motion for Summary Judgment in consolidated wind park case in Idaho.	10.40	4,524.00
08/28/14	Timothy M Kelley	Review and respond to correspondence from John Goodell regarding deposition and summary judgment hearing.	0.70	304.50
09/03/14	Timothy M Kelley	Draft correspondence to Bradley Bormann regarding deposition; review Pretrial Schedule Order in Consolidated Wind Park litigation in Idaho.	0.30	130.50
09/04/14	Timothy M Kelley	Correspondence with Angelo Rosa regarding scheduling depositions of Brad Bormann, Chuck Dickerson and James Carkulis in consolidated wind park litigation; conference with Ron Fagen and Jennifer Johnson regarding status of consolidated wind park litigation.	0.60	261.00
09/05/14	Timothy M Kelley	Draft correspondence to Brad Bormann regarding deposition in consolidated wind park litigation.	0.20	87.00
09/09/14	Timothy M Kelley	Review and respond to correspondence from Angelo Rosa regarding scheduling of depositions in Idaho consolidated case; prepare Notice of Taking Deposition for James T. Carkulis and Chuck Dickerson; correspondence to Angelo Rosa regarding same.	0.60	261.00

Date	Timekeeper	Description	Hours	Amount
09/12/14	Timothy M Kelley	Meeting with Brad Bormann to prepare for deposition; attend Brad Bormann's deposition.	6.50	2,827.50
09/18/14	Timothy M Kelley	Draft and respond correspondence to Angelo Rosa regarding depositions in consolidated wind park case; correspondence to Angelo Rosa regarding discovery documents; conference regarding status of consolidated wind park case.	0.30	130.50
09/22/14	Timothy M Kelley	Review file and prepare for deposition of James Carkulis.	0.40	174.00
09/23/14	Timothy M Kelley	Prepare for deposition of James Carkulis; travel to Helena, Montana for deposition.	7.40	3,219.00
09/24/14	Timothy M Kelley	Attend deposition of James Carkulis; travel from Helena, Montana to Minneapolis.	13.10	5,698.50
09/25/14	Timothy M Kelley	Prepare for deposition of Chuck Dickerson; travel to Mitchell, South Dakota regarding same.	10.00	4,350.00
09/26/14	Timothy M Kelley	Attend deposition of Chuck Dickerson.	1.00	435.00
09/26/14	Keith S Moheban	Correspondence with John Goodell regarding pre-trial submissions and strategy.	1.80	864.00
09/28/14	Timothy M Kelley	Telephone conference regarding Pretrial Conference in consolidated wind park case.	0.30	130.50
09/28/14	Keith S Moheban	Travel to Boise, ID for pre-trial; review late filed submissions from opposing counsel; telephone conference regarding motions and case issues; review deposition transcript of Chris Dickenson.	5.00	2,400.00
09/29/14	Timothy M Kelley	Review Defendants' Pretrial Memorandum in consolidated wind park case; draft correspondence regarding affirmative defenses asserted by Defendants, provisions of EPC Contract regarding force majeure events and provisions of Court's prior summary judgment ruling; telephone conference regarding same; draft correspondence to Jennifer Johnson regarding pretrial hearing.	2.70	1,174.50
09/29/14	Keith S Moheban	Travel to Twin Falls, ID for pre-trial conference; meet with John Goodall to discuss hearing strategy; appear at pre-trial conference; report to team and client; return to Boise, ID.	8.00	3,840.00
09/30/14	Timothy M Kelley	Telephone conference with Keith Moheban regarding identifying witnesses for trial in consolidated wind park litigation; draft correspondence to Samuel Ewald regarding scheduling of conference call.	0.20	87.00
10/01/14	Keith S Moheban	Conference call with Sam Ewald regarding construction supervision documentation; review documents regarding same.	3.00	1,440.00

Date	Timekeeper	Description	Hours	Amount
10/02/14	Keith S Moheban	(Rogerson) Review Idaho pre-trial submissions.	0.60	288.00
10/03/14	Timothy M Kelley	Review Court's Order on Plaintiff's Motion to Shorten Time and to Exclude Defendant's Expert and Lay Witnesses and Pretrial Order in consolidated wind park case; review Defendant's Trial Exhibits; e-mail to Keith Moheban regarding same; telephone conference with Keith Moheban regarding same.	0.70	304.50
10/03/14	Keith S Moheban	Review Exergy produced documents; review and respond to Exergy deposition designations; review Idaho trial order.	3.00	1,440.00
10/08/14	Keith S Moheban	Trial preparation.	2.00	960.00
10/09/14	Timothy M Kelley	Office conference with Keith Moheban regarding trial exhibits for consolidated wind park litigation and discovery responses; e-mail to Keith Moheban regarding discovery responses.	0.30	130.50
10/09/14	Keith S Moheban	Prepare trial exhibits.	2.50	1,200.00
10/10/14	Timothy M Kelley	Telephone conference with Keith Moheban and Jennifer Johnson regarding potential settlement offer in consolidated wind park case; review trial exhibits for same; office conference with Keith Moheban regarding same.	0.80	348.00
10/10/14	Keith S Moheban	Conference call with client to discuss trial preparation; conference call with attorney team to discuss settlement options; prepare trial exhibits with local counsel; extend settlement offer.	2.50	1,200.00
10/15/14	Keith S Moheban	Settlement discussions.	1.00	480.00
10/16/14	Timothy M Kelley	E-mails to Keith Moheban regarding status of settlement negotiations in consolidated wind park litigation; review timeline for appeal and decision by Idaho Supreme Court.	0.40	174.00
10/16/14	Keith S Moheban	Settlement discussions and correspondence with TMK and John Goodell regarding settlement terms.	1.50	720.00
10/20/14	Timothy M Kelley	Review proposed settlement agreement in consolidated wind park litigation; e-mail to Keith Moheban regarding separate judgments against each project entity and allocation of agreed upon reduction in construction management fees; review Payment Applications regarding construction management fees; e-mail to Keith Moheban regarding same.	1.30	565.50
10/20/14	Keith S Moheban	Negotiate final terms of Twin Falls settlement;	3.80	1,824.00

Date	Timekeeper	Description	Hours	Amount
10/23/14	Timothy M Kelley	revise settlement agreement; correspondence regarding same; review and revise judgment and stipulation; correspondence with co-counsel, opposing counsel and court regarding same. Review e-mails from John Goodell regarding entry of judgment in consolidated wind park litigation; prepare Affidavit of Timothy M. Kelley in support of motion for award of attorney's fees and costs.	1.00	435.00

Timekeeper	Hours	Rate	Total
Timothy M. Kelley	91.20	\$435.00	\$39,672.00
Keith S. Moheban	36.50	\$480.00	<u>\$17,520.00</u>
			\$57,192.00

7. The time entries set forth above do not include the time John R. Goodell.
8. Fagen also seeks an award of the costs and disbursements set forth below:

09/02/14	Depo International Invoice 13578 for deposition transcript of Samuel Ewald (Fagen v. Rogerson Flats)	547.20
09/02/14	Depo International Invoice 13577 for deposition transcript of Bradley Bormann (Fagen v. Rogerson Flats)	117.95
09/02/14	Depo International Invoice 13579 for deposition transcript of Kate Carlton (Fagen v. Rogerson Flats)	206.35
09/18/14	Deposition - Benchmark Reporting Agency, Inc. Invoice 96796 for deposition transcript of Bradley Bormann (Vol. II)	225.00
09/26/14	Deposition as requested by Timothy M Kelley to Prairie Reporting Invoice 3955 for deposition of Chuck Dickerson	355.00

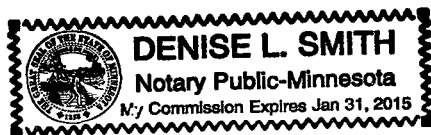
Total Disbursements: \$1,431.50

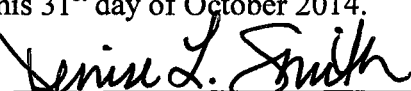
FURTHER AFFIANT SAYETH NAUGHT.

Dated this 31st day of October 2014.


 Timothy M. Kelley, Affiant

SUBSCRIBED TO AND SWORN TO before me this 31st day of October 2014.




 Notary Public for Minnesota
 Residing at: Wright County, Minnesota
 My Commission Expires: Jan 31, 2015

CERTIFICATE OF SERVICE

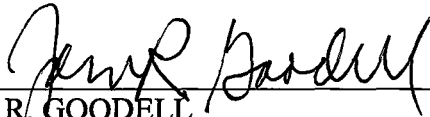
I HEREBY CERTIFY that on the 5th day of November, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
MARSH ROSA LLP
344 West Hale Street #301
Boise, ID 83706
Attorney for Exergy Development Group of Idaho, L.L.C.; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC; Cottonwood Wind Park, LLC; Salmon Creek Wind Park, LLC; Deep Creek Wind Park, LLC; and Notch Butte Wind Park, LLC

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- Email ~~arosa@rosa-lp.com~~
marshrosa.com

Keith S. Moheban
Timothy M. Kelley
STINSON LEONARD STREET LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Pro Hac Vice

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- Email
timothy.kelley@stinsonleonard.com
keith.moheban@stinsonleonard.com



JOHN R. GOODELL

132
ORIGINAL

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 NOV -6 AM 10: 54

BY _____
CLERK
DEPUTY

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
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Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,

Plaintiff,

vs.

ROGERSON FLATS WIND PARK, LLC,
COTTONWOOD WIND PARK, LLC,
SALMON CREEK WIND PARK, LLC,
DEEP CREEK WIND PARK, LLC,
EXERGY DEVELOPMENT GROUP OF
IDAHO, LLC, NOTCH BUTTE WIND
PARK, LLC, XRG DEVELOPMENT
GROUP OF IDAHO, LLC, XRG
DEVELOPMENT PARTNERS, LLC. and
"JOHN DOES 1-10",

Defendants.

Consolidated Cases Nos.:
CV 2013-573 (lead case)
CV 2013-574
CV 2013-575
CV 2013-576

CV-2013-26

**AFFIDAVIT OF JOHN R. GOODELL
SUPPORTING AWARD OF
PREJUDGMENT INTEREST,
COSTS AND ATTORNEY FEES**

STATE OF IDAHO)
 : ss.
COUNTY OF Bannock)

JOHN R. GOODELL, being first duly sworn, deposes and states as follows:

1. Your Affiant is a citizen of the United States, a resident of Ada County, Idaho, of legal age and competent to be a witness. I am an attorney licensed to practice law in the State of

Idaho, and counsel of record for the Plaintiff Fagen, Inc. (“Fagen”) herein. I hereby affirm the following facts and matters based on my personal knowledge. This Affidavit is submitted in support of Plaintiff Fagen’s Motion for Award of Pre-Judgment Interest, Costs and Attorney Fees, and Fagen’s Memorandum of Costs and Fees, filed herewith. Fagen seeks such awards in addition to the principal amounts due on the contract claims under the Judgment filed October 22, 2014 herein. Fagen seeks such awards by entry of another judgment, amended judgment, or supplemental judgment herein.

2. **Prejudgment Interest Claimed and Calculation:** Fagen seeks award of prejudgment interest from September 1, 2012 to October 22, 2014 date of entry of judgment for the principal amount of each of the five wind park projects @ the rate of 10% per annum, pursuant to the parties’ written Engineering, Procurement, and Construction Services Agreement (“EPC Contract”), Section 13.7. A true and correct copy of EPC Contract, Section 13.7 relied on is attached as **Exhibit A** and adopted by reference.¹

Prejudgment interest is calculated as follows for each of the five wind park projects and set forth as a total for Exergy Development Group.

A. Rogerson Flats:

781 days (from 9/1/12 to 10/22/14 date of entry of Judgment) times \$373.97 per diem (\$1,364,974.81 times 10% divided by 365) which equals \$292,067.21.

¹ The EPC Contract, Section 13.7, is included in the record as part of Exhibit E attached to the Affidavit of Bradley Bormann In Support of Fagen, Inc.’s Motion for Summary Judgment filed herein. It is excerpted and attached hereto as **Exhibit A** for ease of reference.

B. Cottonwood Wind Park:

781 days (from 9/1/12 to 10/22/14 date of entry of Judgment) times \$373.97 per diem (\$1,364,974.81 times 10% divided by 365) which equals \$292,067.21.

C. Salmon Creek Wind Park:

781 days (from 9/1/12 to 10/22/14 date of entry of Judgment) times \$373.97 per diem (\$1,364,974.81 times 10% divided by 365) which equals \$292,067.21.

D. Deep Creek Wind Park:

781 days (from 9/1/12 to 10/22/14 date of entry of Judgment) times \$373.97 per diem (\$1,364,974.81 times 10% divided by 365) which equals \$292,067.21.

E. Notch Butte Wind Park:

781 days (from 9/1/12 to 10/22/14 date of entry of Judgment) times \$221.43 per diem (\$808,212.20 times 10% divided by 365) which equals \$172,935.27.

F. Exergy Development:

The total prejudgment interest 781 days (from 9/1/12 to 10/22/14 date of entry of Judgment) times \$1,717.29 per diem (\$6,268,111.44 times 10% divided by 365), which equals \$1,341,204.12 as to Exergy Development.

Fagen's above calculation of interest commences to run on September 1, 2012, which is 30 days from the date of the last payment application, thus avoiding potential issues over timing of submission of Fagen's Applications of Certificates for Payment, and/or Exergy's "holdbacks" or "retentions," and Fagen waives any prejudgment interest amounts recoverable prior to September 1, 2012 actually recoverable under the contract for ease of calculation.

3. Costs Claimed: Fagen seeks award of total costs claimed as a matter of right pursuant to

IRCP 54(d) (1) (C)(1 and 2) for Court filing fees, service of process fees, and deposition

transcript taking/obtaining copies fees. The specific amounts and breakdown of such costs are \$2,681.50, as more fully set forth in Fagen's Memorandum of Costs and Fees filed herewith, which is adopted by reference as though fully set forth herein.

4. **Attorney/Paralegal Fees Claimed:** Fagen seeks award of attorney fees claimed as a matter of right pursuant to I.C. § 12-120(3) (contract or "commercial transaction"). Fagen seeks award of the amount of attorney and paralegal fee in the total amount of \$102,133.50, as more fully set forth in the Memorandum of Costs and Fees, and Goodell Affidavit and Kelly Affidavit filed herewith.

Such amount is properly awarded as a reasonable amount considering the undersigned's experience and qualifications, which includes over 32 years of litigation experience in Idaho's state and federal courts in civil litigation, including practice areas of mechanic's lien foreclosures, real estate and construction litigation, commercial and collections litigation, and personal injury/property damage/and wrongful death insurance defense litigation, in all Idaho's state and federal courts, and similar experience for over 22 years in Wyoming's state and federal courts. The undersigned was licensed in Idaho in 1982 and in Wyoming in 1992. Such experience includes handling as lead counsel many multi-million dollar claims and cases, many court and jury trials, numerous appeals to the Idaho Supreme Court and Idaho Court of Appeals, and at least one appeal to the Wyoming Supreme Court. In addition, the undersigned's rate of \$250/hour is clearly reasonable in light of such experience and qualifications, and is *substantially less* than the hourly rates reported by Defendants' counsel, Mr. Rosa of \$330/hour per his fee claim filed herein, or by Fagen's Minnesota supporting counsel, Mr. Kelly, which is reportedly \$435/hour and Mr. Moheban, which is \$480/hour.

Other assistance and support was supplied by partner Dan Green at the same rate, and associates Brett Cahoon and Rachael Miller, and paralegal Becky Harvey, at lesser and reasonable local Idaho rates.

In addition, the Affidavit of Timothy M. Kelly (“Kelly Affidavit”), supporting MN counsel for Fagen, is separately filed herewith. It similarly lists a detailed itemization of the time and work, charges therefor, and description of work performed by Mr. Kelly and Mr. Moheban. It likewise includes only fees claimed for time and work relating to Fagen’s successful breach of contract claim only. Mr. Kelly’s time and work are described relating primarily to Fagen’s successful motion for summary judgment, preparation of affidavits of supporting Fagen personnel, memoranda of law, deposition scheduling, deposition preparation and attendance at various depositions of key witnesses. Mr. Kelly’s total hours are 91.20 hours for such matters, times his \$435/hour rate, equals **\$39,672.00**. Such amount is properly awarded and reasonable in light of his reported time and work, and experience and qualifications.

Mr. Moheban’s time and work are described as telephone conferences with local counsel, travel to and from Idaho for pre-trial conference, review of various pleadings and deposition transcripts and trial preparation. Mr. Moheban’s total hours are 36.50 for such matters, times his \$480/hour rate, equals **\$17,520.00**. The total attorneys fees for MN counsel equals **\$57,192.00** as indicated on the Kelly Affidavit.

In addition to the “time and work” and “experience and qualifications of counsel/paralegal” factors relied on and explained above, Fagen further relies on the following separate pursuant to IRCP 54(e)(3) as supporting its fees claim herein as reasonable in amount, which the entire Court file and record herein support, namely:

- Subsection (B): novelty and difficulty of the questions;
- Subsection (C): skill requisite to perform the legal service properly, and experience an ability of the attorneys in the particular field of law as discussed above;
- Subsection (E): Fixed fee with Fagen;
- Subsection (G): Amount involved and results obtained;
- Subsection (L): Any other factor the Court may deem appropriate in this particular case, if any.

Based on the foregoing, the attorney fees and paralegal fees are sought in the total amount of \$99,452.00, based in particular on “time and work” performed; the “amount involved and results obtained,” but also on the other factors noted above. Such fee award is reasonable and appropriate and, indeed, considered relatively limited and modest.

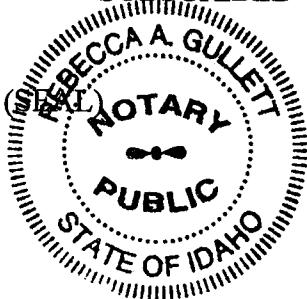
FURTHER AFFIANT SAYETH NAUGHT.

Dated this 5th day of November, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: John R. Goodell
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

SUBSCRIBED TO AND SWORN TO before me this 5th day of November, 2014.



Rebecca A. Gullett
Notary Public for Idaho
Residing at: Bozello
Commission Expires: 2-26-2016

AFFIDAVIT OF JOHN R. GOODELL SUPPORTING
AWARD OF PREJUDGMENT INTEREST, COSTS
AND ATTORNEY FEES— pg. 6

CERTIFICATE OF SERVICE

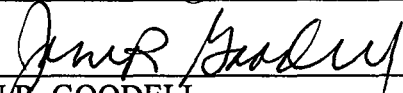
I HEREBY CERTIFY that on the 5th day of November, 2014, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Angelo L. Rosa
MARSH ROSA LLP
344 West Hale Street #301
Boise, ID 83706
Attorney for Exergy Development Group of Idaho, L.L.C.; XRG Development Partners, LLC; Rogerson Flats Wind Park, LLC; Cottonwood Wind Park, LLC; Salmon Creek Wind Park, LLC; Deep Creek Wind Park, LLC; and Notch Butte Wind Park, LLC

- U.S. Mail
Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 801-415-1773
- Email arosa@marshrosa.com

Keith S. Moheban
Timothy M. Kelley
STINSON LEONARD STREET LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Pro Hac Vice

- U.S. Mail, Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile 612-335-1657
- Email
timothy.kelley@stinsonleonard.com
keith.moheban@stinsonleonard.com



JOHN R. GOODELL

EXHIBIT “A”

**(Contract Cover Sheet and
“Late Payment Interest”
provision at ¶ 13.7)**

**BALANCE OF PLANT
ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICES AGREEMENT**

FOR THE

EXERGY IDAHO SIX WINDS WIND PARK

BY AND BETWEEN

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.,

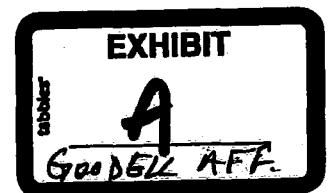
as Owner

and

FAGEN, INC.,

as Contractor

Dated December 31, 2011



FAGEN 0172
1207

Completion has been successfully achieved for all the Project Sites. Owner shall make payment of the Final Application for Payment in accordance with Section 13.4.3 (the "Final Payment").

13.7 Late Payment Interest. Payments which are due and payable but not paid when due and payable by Owner to Contractor in accordance with this Article XIII, and payments which are due and payable but not paid when due and payable by Contractor to Owner in accordance with this Agreement, shall bear interest commencing five (5) Business Days after payment is due and payable in accordance with the terms of this Agreement at the rate of ten percent (10%) per annum for the number of days elapsed from and including such fifth Business Day until but not including the date of payment calculated based on a 365 day year.

13.8 Lien Waivers.

(a) Contractor shall perform and, upon transfer of title thereto in accordance with Article XX, deliver the Work free and clear of all Liens by Contractor, Subcontractors or any other Persons capable of claiming Liens by reason of having performed any portion of the Work, other than any Lien that arises from Owner's unexcused failure to pay when due and payable, for Work performed by Contractor or its Subcontractors as required by this Agreement. Except to the extent of Owner's unexcused failure to pay when due and payable, for Work performed by Contractor or its Subcontractors, Contractor shall not (and shall cause its Subcontractors not to) directly or indirectly create, incur, assume or suffer to be created any Lien on or affecting the Project, any Project Site, the Work or any part of or interest therein. Contractor shall promptly notify Owner of any Lien on or against the Project, any Project Site, the Work or any part thereof upon learning of such Lien.

(b) Except for Liens arising from Owner's unexcused failure to pay, when due and payable, for Work performed by Contractor or its Subcontractor, Contractor shall, and shall cause its Subcontractors to, discharge, release and remove of record all Liens within fifteen (15) days after the date on which Contractor becomes aware of the Lien or Owner notifies Contractor of the Lien, whichever is earliest. Upon the failure of Contractor to comply with the requirements of the preceding sentence, Owner may, but shall not be obligated to, pay, discharge and release such Lien or obtain a bond, letter of credit or other security for such Lien, and upon such payment, discharge, release or posting of security therefor, Owner shall be entitled to immediately recover from Contractor all costs and expenses incurred by Owner in connection with such payment, discharge, release or posting, or set off of all such amounts against any sums owed by Owner to Contractor.

(c) In respect of all Work performed and invoiced by Contractor under an Application of Payment, Contractor shall submit to Owner together with such Application of Payment: (i) waiver and lien releases in the form of Exhibit K signed by each relevant Subcontractor and relating to the Work performed by such Subcontractor and invoiced under the immediately preceding Application for Payment submitted by Contractor to Owner and for which payment has been made by or on behalf of Owner; (ii) a waiver and lien release in the form of Exhibit L or Exhibit M, as applicable signed by Contractor with respect to the Work performed by Contractor and invoiced under such Application for Payment; and (iii) in the case of the Final Application for Payment, waiver and lien releases in the form of Exhibit M signed by each relevant Subcontractor and Contractor relating to the Work performed by such

EXHIBIT “B”

Costs and Fees – Detail Transaction File List

Racine File #43264.01

Cottonwood Wind Park

**(Itemization of Costs and Attorney Fees
Incurred Prior to Consolidation Order)**

Detail Transaction File List
 RACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERED

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>		<u>Ref #</u>
0.4326401		09/16/2013	BRC	A	60	200.00	1.20	240.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DRAFTED PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO LANDOWNERS DEFENDANTS FAGEN, INC.	ARCH
0.4326401		09/17/2013	BRC	A	54	200.00	0.20	40.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISED PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF EXERGY ENTITIES FAGEN, INC.	ARCH
0.4326401		09/17/2013	BRC	A	54	200.00	0.20	40.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISED PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO LANDOWNERS DEFENDANTS FAGEN, INC.	ARCH
0.4326401		09/23/2013	BRC	A	232	200.00	1.20	240.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DISCUSSION WITH LEAD COUNSEL AND CO-COUNSEL REGARDING DISCOVERY REQUESTS; REVISED DISCOVERY REQUESTS BASED UPON COMMENTS AND DISCUSSION WITH LEAD AND CO-COUNSEL FAGEN, INC.	ARCH
0.4326401		09/27/2013	DCG	A	60	250.00	0.60	200.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DRAFT MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS FAGEN, INC.	ARCH
0.4326401		09/30/2013	DCG	A	58	250.00	0.80	200.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW EMAIL FROM KEITH REVISE MEMORANDUM OPPOSING MOTION TO DISMISS; TELEPHONE CONFERENCE WITH JRG FAGEN, INC.	ARCH
0.4326401		09/30/2013	JRG	A	58	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW EXERGY RELEASES OF LEASEHOLD INTEREST FAGEN, INC.	ARCH
0.4326401		10/01/2013	DCG	A	60	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DRAFT INTERROGATIONS AND REQUEST FOR PRODUCTION OF DOCUMENTS TO LANDOWNER FAGEN, INC.	ARCH
0.4326401		10/02/2013	DCG	A	60	250.00	1.30	325.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DRAFT INTERROGATIONS AND REQUEST FOR PRODUCTION OF DOCUMENTS TO EXERGY FAGEN, INC.	ARCH
0.4326401		10/03/2013	DCG	A	53	250.00	0.40	100.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FINALIZE DISCOVERY REQUESTS TO EXERGY AND SIMPLOT FAGEN, INC.	ARCH
0.4326401		10/09/2013	DCG	A	62	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW AND REVISE SECOND AFFIDAVIT IN SUPPORT OF 56(F) MOTION FAGEN, INC.	ARCH
0.4326401		10/17/2013	JRG	A	62	250.00	0.30	75.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW SIMPLOT TRUST 2014 AND MOTION TO DISMISS DECEMBER 2ND; NOTICE TO APPEAR BY PHONE, WITHDRAWAL, AND FORWARD TO LEONARD; CALENDER FAGEN, INC.	ARCH
0.4326401		10/17/2013	JRG	A	54	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT JRG 2ND AFFIDAVIT FOR FAGEN RULE 5B(F) MOTION TO CONTINUE FAGEN, INC.	ARCH
0.4326401		10/18/2013	JRG	A	56	250.00	0.40	100.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE FAGEN AMENDED NOTICE OF HEARING; REVIEW EXERGY AMENDED NOTICE OF HEARING; EMAILS FAGEN, INC.	ARCH
0.4326401		10/28/2013	JRG	A	62	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW FILINGS AND SECOND AMENDED NOTICE OF HEARING FOR DEC 9TH FAGEN, INC.	ARCH
0.4326401		11/21/2013	RAM	A	55	200.00	1.10	220.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RESEARCHED AND DISCUSSED SERVICE OF TRUSTEES IN RESPONSE TO DEFENDANT'S MOTION FAGEN, INC.	ARCH
0.4326401		11/22/2013	RAM	A	55	200.00	0.60	120.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RESEARCH AND DISCUSS ISSUES OF ISSUES OF TRUSTEES IN RESPONSE TO DEFENDANTS MOTION	ARCH

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>H Atty</u>	<u>P Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
	0.4326401	11/25/2013	JRG	A 56	250.00	0.80	150.00	ARCH
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE STIPULATION AND ORDER DISMISSAL WITH PREJUDICE; FORWARD EMAIL TO SIMPLOT TRUST COUNSEL TO SIGN AND RETURN TO FILE	
	0.4326401	11/26/2013	JRG	A 56	250.00	0.30	75.00	ARCH
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE PARTIAL RELEASE OF CLAIM IN FAVOR OF SIMPLOT TRUST ONLY	
	0.4326401	11/27/2013	JRG	A 54	250.00	0.20	50.00	ARCH
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE PARTIAL RELEASE OF LIEN PER SIMPLOT TRUST COUNSEL	
	0.4326401	11/27/2013	JRG	A 58	250.00	0.20	50.00	ARCH
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW SIGNED STIPULATION FROM SIMPLOT TRUST COUNSEL, SIGN, FINALIZE, AND MAIL FOR FILING	
	0.4326401	11/27/2013	JRG	A 58	250.00	0.10	25.00	ARCH
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW RECORDED PARTIAL RELEASE OF CLAIMS OF LIEN; FORWARD TO CLIENT	
	0.4326401	12/02/2013	JRG	A 74	250.00	1.40	350.00	ARCH
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TRAVEL TO TWIN FALLS FROM BOISE FOR COURT APPEARANCE FOR HEARING MOTIONS (PRO RATA)	
	0.4326401	12/04/2013	JRG	A 56	250.00	0.50	125.00	ARCH
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE STATUS LETTER TO LEONARD COUNSEL REPORT-HEARING DECEMBER 2ND AND FORWARD DOCUMENTS	
	0.4326401	12/05/2013	JRG	A 227	250.00	0.20	50.00	ARCH
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL EXCHANGE WITH EXERGY COUNSEL, CONFIRM ON DRAFT ORDER FAX CONSOLIDATION TO SUBMIT TO COURT	
	0.4326401	12/05/2013	JRG	A 227	250.00	0.40	100.00	ARCH
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EXCHANGE EMAILS ON JURY TRIAL WAIVER FORWARD	
	0.4326401	12/12/2013	JRG	A 58	250.00	0.10	25.00	ARCH
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW COURT ORDER RE: CONSOLIDATION, MOTION AMEND, MOTION TO CONTINUE, MOTION TO DISMISS, DECEMBER 4, 2013	
	0.4326401	01/07/2014	JRG	A 56	250.00	0.50	125.00	ARCH
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE FAGAN MOTION TO COMPEL DISCOVERY, AFFIDAVIT, NOTICE OF HEARING	
	0.4326401	01/08/2014	JRG	A 54	250.00	0.50	125.00	ARCH
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT FAGAN MOTION TO COMPEL DISCOVERY; AFFIDAVIT; NOTICE OF HEARING	
	0.4326401	03/03/2014	JRG	A 53	250.00	0.50	125.00	ARCH
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FINALIZE AND FILE 1ST AMENDED COMPLAINT IN COTTONWOOD WP CASE	
							FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	
Total for Fees						26.00	6,055.00	
					Non-billable	1.20	240.00	
					Total	27.20	6,295.00	
Expenses								
	0.4326401	02/06/2013	JRG	A 125			96.00	ARCH
							FILING FEE FAGEN, INC.	
	0.4326401	09/16/2013	JRG	A 135			18.51	ARCH
							MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION POSTAGE FAGEN, INC.	
	0.4326401	10/11/2013	JRG	A 135			18.29	ARCH
							MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION POSTAGE - UPS FAGEN, INC.	
	0.4326401	12/04/2013	JRG	A 129			137.50	ARCH
							MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RT MILEAGE BOISE/TWIN FALLS 12/2/13 - JRG FAGEN, INC.	
							MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	

Detail Transaction File List
RACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERED

<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
Total for Expenses					Billable	0.00	270.30	

GRAND TOTALS

Billable	28.00	6,325.30
Non-billable	1.20	240.00
Total	27.20	6,565.30

EXHIBIT “C”

Costs and Fees – Detail Transaction File List

Racine File #43264.03

Salmon Creek Wind Park

**(Itemization of Costs and Attorney Fees
Incurred Prior to Consolidation Order)**

Fees	Client	Trans Date	Atty	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #	
0.4326403		08/02/2012	JRG	A	62	250.00	1.00	250.00	REVIEW RECORDS INCIDENTAL TO PREPARE LIEN CLAIM FAGEN, INC.	ARCH
0.4326403		08/02/2012	JRG	A	56	250.00	1.00	250.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE AND REVISE AND EDIT CLAIM OF LIEN FINAL DRAFT AND EXHIBITS A&B FAGEN, INC.	ARCH
0.4326403		08/03/2012	JRG	A	54	250.00	1.00	250.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT AND FINALIZE FAGEN CLAIM OF LIEN, TELEPHONE CONFERENCE WITH TITLE COMPANY, TELEPHONE CONFERENCE WITH JENSEN, PREPARE LETTER TO FATCO IN TF FAGEN, INC.	ARCH
0.4326403		02/05/2013	JRG	A	56	250.00	1.00	250.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE COMPLAINT AND EX. ONE FOR LIEN FORECLOSURE FAGEN, INC.	ARCH
0.4326403		02/06/2013	JRG	A	54	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT AND FINALIZE COMPLAINT FOR LIEN FORECLOSURE TO FILE FAGEN, INC.	ARCH
0.4326403		08/20/2013	BRC	A	380	200.00	0.20	40.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION INTEROFFICE MEETING TO DISCUSS STATUS OF FAGAN LIEN FORECLOSURE ACTIONS AND EXERGY DEFENDANTS MOTION TO DISMISS AND ACTIONS TO BE TAKEN IN RESPONSE TO SUCH MOTION FAGEN, INC.	ARCH
0.4326403		08/20/2013	RAM	A	62	200.00	0.30	60.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW OPPOSING COUNSEL'S PLEADINGS FAGEN, INC.	ARCH
0.4326403		08/21/2013	RAM	A	189	200.00	1.00	200.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION WRITING, RESEARCHING, EDITING RULE 56(F) MOTION, MEMORANDUM, AND AFFIDAVIT; WRITING, RESEARCHING, EDITING MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS FAGEN, INC.	ARCH
0.4326403		08/22/2013	RAM	A	189	200.00	1.00	200.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION WRITING, RESEARCHING, EDITING RULE 56(F) MOTION, MEMORANDUM, AND AFFIDAVIT; WRITING, RESEARCHING, EDITING MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS FAGEN, INC.	ARCH
0.4326403		09/04/2013	JRG	A	58	250.00	0.10	25.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW NOTICE OF HEARING FOR WIND PARK LLC, EXERGY DEV; XRG FAGEN, INC.	ARCH
0.4326403		09/10/2013	JRG	A	56	250.00	1.00	250.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE MOTION AMEND COMPLAINT, AMENDED COMPLAINT, MOTION RULE 56(f) CONTINUANCE, JRG AFFIDAVIT, MEMORANDUM SUPPORTING FAGEN, INC.	ARCH
0.4326403		09/10/2013	JRG	A	56	250.00	0.30	75.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE LETTER TO ROSA, STACEY, MEULEMAN, AND FORWARD NEW PLEADINGS AND COMMENTS ON REASSIGNMENT PER STOKER HEARING ON SALMON CREEK WP FAGEN, INC.	ARCH
0.4326403		09/11/2013	JRG	A	56	250.00	0.30	75.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL AND FORWARD TO FAGEN PLEADINGS AND MOTIONS TO MN COUNSEL FAGEN, INC.	ARCH
0.4326403		09/17/2013	BRC	A	60	200.00	0.30	60.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DRAFTED PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF EXERGY ENTITIES; DRAFTED PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO LAND OWNERS DEFENDANTS FAGEN, INC.	ARCH
0.4326403		09/27/2013	DCG	A	60	250.00	0.80	200.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DRAFT MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS FAGEN, INC.	ARCH
0.4326403		09/30/2013	DCG	A	58	250.00	0.80	200.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW EMAIL FROM KEITH REVISE MEMORANDUM OPPOSING MOTION TO DISMISS; TELEPHONE CONFERENCE WITH JRG FAGEN, INC.	ARCH

Fees	Client	Trans Date	Atty	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
0.4326403		09/30/2013	JRG	A	58	250.00	0.20	50.00	ARCH
0.4326403		10/01/2013	DCG	A	60	250.00	0.70	175.00	ARCH
0.4326403		10/03/2013	DCG	A	53	250.00	0.40	100.00	ARCH
0.4326403		10/09/2013	DCG	A	62	250.00	0.20	50.00	ARCH
0.4326403		10/17/2013	JRG	A	62	250.00	0.30	75.00	ARCH
0.4326403		10/17/2013	JRG	A	54	250.00	0.20	50.00	ARCH
0.4326403		10/18/2013	JRG	A	56	250.00	0.60	150.00	ARCH
0.4326403		11/25/2013	JRG	A	56	250.00	0.60	150.00	ARCH
0.4326403		11/26/2013	JRG	A	56	250.00	0.30	75.00	ARCH
0.4326403		11/27/2013	JRG	A	54	250.00	0.20	50.00	ARCH
0.4326403		11/27/2013	JRG	A	58	250.00	0.20	50.00	ARCH
0.4326403		11/27/2013	JRG	A	58	250.00	0.10	25.00	ARCH
0.4326403		12/02/2013	JRG	A	74	250.00	1.40	350.00	ARCH
0.4326403		12/04/2013	JRG	A	56	250.00	0.50	125.00	ARCH
0.4326403		12/12/2013	JRG	A	58	250.00	0.10	25.00	ARCH
0.4326403		01/07/2014	JRG	A	56	250.00	0.50	125.00	ARCH
0.4326403		01/08/2014	JRG	A	54	250.00	0.50	125.00	ARCH
0.4326403		03/03/2014	JRG	A	53	250.00	0.50	125.00	ARCH

Detail Transaction File List
 RACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERED

<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
Fees								
SALMON CREEK WP CASE FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION								
Total for Fees					Billable	18.00	4,370.00	
					Non-billable	0.20	40.00	
					Total	18.20	4,410.00	
Expenses								
0.4326403	02/06/2013	JRG	A	125			96.00	FILING FEE FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION ARCH
Total for Expenses					Billable	0.00	96.00	
GRAND TOTALS								
					Billable	18.00	4,466.00	
					Non-billable	0.20	40.00	
					Total	18.20	4,506.00	

EXHIBIT “D”

Costs and Fees – Detail Transaction File List

Racine File #43264.04

Deep Creek Wind Park

**(Itemization of Costs and Attorney Fees
Incurred Prior to Consolidation Order)**

Detail Transaction File List
 RACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERED

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>		<u>Ref #</u>
0.4326404		08/02/2012	JRG	A	62	250.00	1.00	250.00	REVIEW RECORDS INCIDENTAL TO PREPARE LIEN CLAIM	ARCH
0.4326404		08/02/2012	JRG	A	56	250.00	1.00	250.00	FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	ARCH
0.4326404		08/03/2012	JRG	A	54	250.00	1.00	250.00	PREPARE AND REVISE AND EDIT CLAIM OF LIEN FINAL DRAFT AND EXHIBITS A&B	ARCH
0.4326404		02/05/2013	JRG	A	56	250.00	1.00	250.00	FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	ARCH
0.4326404		02/06/2013	JRG	A	54	250.00	0.60	150.00	REVISE AND EDIT AND FINALIZE FAGEN CLAIM OF LIEN, TELEPHONE CONFERENCE WITH TITLE COMPANY, TELEPHONE CONFERENCE WITH JENSEN, PREPARE LETTER TO FATCO IN TF	ARCH
0.4326404		08/20/2013	RAM	A	62	200.00	0.30	60.00	FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	ARCH
0.4326404		08/21/2013	RAM	A	189	200.00	1.00	200.00	REVIEW OPPOSING COUNSEL'S PLEADINGS	ARCH
0.4326404		08/22/2013	RAM	A	189	200.00	1.00	200.00	FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	ARCH
0.4326404		08/22/2013	RAM	A	189	200.00	1.00	200.00	WRITING, RESEARCHING, EDITING RULE 56(F) MOTION, MEMORANDUM, AND AFFIDAVIT; WRITING, RESEARCHING. EDITING MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS	ARCH
0.4326404		09/04/2013	JRG	A	58	250.00	0.10	25.00	FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	ARCH
0.4326404		09/10/2013	JRG	A	56	250.00	1.00	250.00	RECEIVE AND REVIEW NOTICE OF HEARING FOR WIND PARK LLC, EXERGY DEV; XRG	ARCH
0.4326404		09/10/2013	JRG	A	56	250.00	0.30	75.00	FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	ARCH
0.4326404		09/11/2013	JRG	A	58	250.00	0.20	50.00	PREPARE MOTION AMEND COMPLAINT, AMENDED COMPLAINT, MOTION RULE 56(f) CONTINUANCE, JRG AFFIDAVIT, MEMORANDUM SUPPORTING	ARCH
0.4326404		09/17/2013	BRC	A	60	200.00	0.30	60.00	FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	ARCH
0.4326404		09/27/2013	DCG	A	60	250.00	0.80	200.00	PREPARE LETTER TO ROSA, STACEY, MEULEMAN, AND FORWARD NEW PLEADINGS AND COMMENTS ON REASSIGNMENT PER STOKER HEARING ON DEEP CREEK WP	ARCH
0.4326404		09/30/2013	DCG	A	58	250.00	0.80	200.00	FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	ARCH
									PREPARE EMAIL AND FORWARD TO FAGEN PLEADINGS AND MOTIONS TO MN COUNSEL	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	ARCH
									DRAFTED PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO EXERGY ENTITIES; DRAFTED PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO LANDOWNERS DEFENDANTS	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	ARCH
									DRAFT MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	ARCH
									RECEIVE AND REVIEW EMAIL FROM KEITH REVISE MEMORANDUM OPPOSING MOTION TO DISMISS; TELEPHONE CONFERENCE WITH JRG	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	ARCH

Fees	Client	Trans Date	Atty	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #	
	0.4326404	09/30/2013	JRG	A	58	250.00	0.20	50.00	RECEIVE AND REVIEW EXERGY RELEASE OF LEASEHOLD INTEREST FAGEN, INC.	ARCH
	0.4326404	10/01/2013	DCG	A	60	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DRAFT INTERROGATIONS AND REQUEST FOR PRODUCTION TO LANDOWNER FAGEN, INC.	ARCH
	0.4326404	10/02/2013	DCG	A	60	250.00	0.90	225.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DRAFT INTERROGATIONS AND REQUEST FOR PRODUCTION OF DOCUMENTS TO EXERGY FAGEN, INC.	ARCH
	0.4326404	10/03/2013	DCG	A	53	250.00	0.40	100.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FINALIZE DISCOVERY REQUESTS TO EXERGY AND SIMPLOT FAGEN, INC.	ARCH
	0.4326404	10/09/2013	DCG	A	62	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW AND REVISE SECOND AFFIDAVIT IN SUPPORT OF 56(F) MOTION FAGEN, INC.	ARCH
	0.4326404	10/17/2013	JRG	A	62	250.00	0.30	75.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW SIMPLOT TRUST 2014 AND MOTION TO DISMISS DECEMBER 2ND; NOTICE TO APPEAR BY PHONE, WITHDRAWAL, AND FORWARD TO LEONARD; CALENDER FAGEN, INC.	ARCH
	0.4326404	10/17/2013	JRG	A	54	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT JRG 2ND AFFIDAVIT FOR FAGEN RULE 5B(F) MOTION TO CONTINUE FAGEN, INC.	ARCH
	0.4326404	10/18/2013	JRG	A	56	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE FAGEN AMENDED NOTICE OF HEARING; REVIEW EXERGY AMENDED NOTICE OF HEARING; EMAILS FAGEN, INC.	ARCH
	0.4326404	10/28/2013	JRG	A	62	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW BILLINGS AND PREPARE SECOND AMENDED NOTICE OF HEARING FOR PENDING MOTIONS TO DEC 2ND FAGEN, INC.	ARCH
	0.4326404	11/25/2013	JRG	A	58	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE STIPULATION AND ORDER; DISMISS WITH PREJUDICE; FORWARD TO SIMPLOT TRUST COUNSEL TO SIGN AND RETURN TO FILE CLERK FAGEN, INC.	ARCH
	0.4326404	11/25/2013	JRG	A	56	250.00	0.50	125.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE CLERK FILING LETTER FOR ALL 4 CASES ON GAGEN SIMPLOT TRUST STIPULATION AND ORDER DISMISS FAGEN, INC.	ARCH
	0.4326404	11/25/2013	JRG	A	75	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH DEP. CLERK DOROTHY MCMULLEN SEND ONE LETTER WITH ALL FOUR CASES SEPARATE STIPULATIONS AND ORDERS FAGEN, INC.	ARCH
	0.4326404	11/26/2013	JRG	A	56	250.00	0.30	75.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE PARTIAL RELEASE OF CLAIM OF LIEN IN FAVOR OF SIMPLOT TRUST ONLY FAGEN, INC.	ARCH
	0.4326404	11/27/2013	JRG	A	54	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE PARTIAL RELEASE OF LIEN PER SIMPLOT TRUST COUNSEL FAGEN, INC.	ARCH
	0.4326404	11/27/2013	JRG	A	58	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW RECORDED PARTIAL RELEASE OF CLAIMS OF LIEN; FORWARD TO CLIENT FAGEN, INC.	ARCH
	0.4326404	11/27/2013	JRG	A	58	250.00	0.10	25.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW RECORDED PARTIAL RELEASE OF CLAIMS OF LIEN; FORWARD TO CLIENT FAGEN, INC.	ARCH
	0.4326404	12/02/2013	JRG	A	74	250.00	1.40	350.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TRAVEL TO TWIN FALLS FROM BOISE FOR COURT APPEARANCE FOR HEARING MOTIONS (PRO RATA) FAGEN, INC.	ARCH
	0.4326404	12/04/2013	JRG	A	58	250.00	0.50	125.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE STATUS LETTER TO LEONARD COUNSEL FAGEN, INC.	ARCH

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
								REPORT-HEARING DECEMBER 2ND AND FORWARD DOCUMENTS FAGEN, INC.	
	0.4326404	12/12/2013	JRG	A	58	250.00	0.10	25.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW COURT ORDER RE: CONSOLIDATION, MOTION AMEND, MOTION TO CONTINUE, MOTION TO DISMISS, DECEMBER 4, 2013	ARCH
	0.4326404	01/07/2014	JRG	A	58	250.00	0.50	125.00 FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE FAGAN MOTION TO COMPEL DISCOVERY, AFFIDAVIT, NOTICE OF HEARING	ARCH
	0.4326404	03/03/2014	JRG	A	53	250.00	0.50	125.00 FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FINALIZE AND FILE 1ST AMENDED COMPLAINT IN DEEP CREEK WP CASE	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	
Total for Fees						Billable	20.10	4,845.00	
Expenses									
	0.4326404	02/06/2013	JRG	A	125			96.00 FILING FEE FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	ARCH
Total for Expenses						Billable	0.00	96.00	
GRAND TOTALS									
						Billable	20.10	4,941.00	

E X H I B I T “E”

Costs and Fees – Detail Transaction File List

Racine File #43264.06

Notch Butte Wind Park

**(Itemization of Costs and Attorney Fees
Incurred Prior to Consolidation Order)**

Detail Transaction File List
RACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERED

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H Code/ P</u>	<u>Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>		<u>Ref #</u>
0.4326406		08/02/2012	JRG	A	62	250.00	1.00	250.00	REVIEW RECORDS INCIDENTAL TO PREPARE LIEN CLAIM	ARCH
									FAGEN, INC.	
0.4326406		08/02/2012	JRG	A	56	250.00	1.00	250.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE AND REVISE AND EDIT CLAIM OF LIEN FINAL DRAFT AND EXHIBITS A&B	ARCH
									FAGEN, INC.	
0.4326406		08/03/2012	JRG	A	54	250.00	1.00	250.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT AND FINALIZE FAGEN CLAIM OF LIEN, TELEPHONE CONFERENCE WITH TITLE COMPANY, TELEPHONE CONFERENCE WITH JENSEN, PREPARE LETTER TO FATCO IN TF	ARCH
									FAGEN, INC.	
0.4326406		02/05/2013	JRG	A	56	250.00	1.00	250.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE COMPLAINT AND EX. ONE FOR LIEN FORECLOSURE	ARCH
									FAGEN, INC.	
0.4326406		02/05/2013	DCG	A	54	250.00	0.50	125.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE COMPLAINT TO FORECLOSE LIEN	ARCH
									FAGEN, INC.	
0.4326406		02/06/2013	JRG	A	54	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT AND FINALIZE COMPLAINT FOR LIEN FORECLOSURE TO FILE	ARCH
									FAGEN, INC.	
0.4326406		07/25/2013	JRG	A	62	250.00	1.00	250.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW TWO FEE OWNERS ANSWERS, COUNTERCLAIMS, AND CROSSCLAIMS	ARCH
									FAGEN, INC.	
0.4326406		07/29/2013	JRG	A	75	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH DEFENDANT ASTLE COUNSEL; EXPLAIN BACKGROUND AND STAND STILL PLAN	ARCH
									FAGEN, INC.	
0.4326406		07/29/2013	JRG	A	75	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH DEFENDANT SHAW COUNSEL; EXPLAIN BACKGROUND AND STAND STILL PLAN	ARCH
									FAGEN, INC.	
0.4326406		07/29/2013	JRG	A	56	250.00	0.80	200.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE LETTER TO ASTLE AND SHAW COUNSEL, CONFIRM DISCUSSION	ARCH
									FAGEN, INC.	
0.4326406		07/29/2013	JRG	A	56	250.00	0.40	100.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE LETTER TO TOM JENSEN, FORWARD TO SHAW AND ASTLE ANSWERS, COUNTERCLAIMS AND CROSS CLAIMS WITH COMMENTS	ARCH
									FAGEN, INC.	
0.4326406		08/20/2013	BRC	A	380	200.00	0.20	40.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION INTEROFFICE MEETING TO DISCUSS STATUS OF FAGAN LIEN FORECLOSURE ACTIONS AND EXERGY DEFENDANTS MOTION TO DISMISS AND ACTIONS TO BE TAKEN IN RESPONSE TO SUCH MOTION	ARCH
									FAGEN, INC.	
0.4326406		08/20/2013	RAM	A	62	200.00	0.30	60.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW OPPOSING COUNSEL'S PLEADINGS	ARCH
									FAGEN, INC.	
0.4326406		08/21/2013	RAM	A	189	200.00	1.00	200.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION WRITING, RESEARCHING, EDITING RULE 56(F) MOTION, MEMORANDUM, AND AFFIDAVIT; WRITING, RESEARCHING. EDITING MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS	ARCH
									FAGEN, INC.	
0.4326406		08/22/2013	RAM	A	189	200.00	1.00	200.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION WRITING, RESEARCHING, EDITING RULE 56(F) MOTION, MEMORANDUM, AND AFFIDAVIT; WRITING, RESEARCHING. EDITING MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS	ARCH
									FAGEN, INC.	
0.4326406		09/04/2013	JRG	A	58	250.00	0.10	25.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW NOTICE OF HEARING FOR WIND PARK LLC, EXERGY DEV; XRG	ARCH
									FAGEN, INC.	
0.4326406		09/05/2013	DCG	A	54	250.00	0.50	125.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT MOTION FOR RULE 56 (F) MOTION AND SUPPORTING AFFIDAVIT	ARCH
									FAGEN, INC.	
0.4326406		09/10/2013	JRG	A	56	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE LETTER TO CLUFF AND MESERRY,	ARCH

Detail Transaction File List
RACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERED

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
									FORWARD NEW PLEADINGS AND COMMENTS ON STOKER HEARING ON NOTCH BUTTE WP FAGEN, INC.
0.4326406		09/11/2013	JRG	A	56	250.00	0.20	50.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL AND FORWARD TO FAGEN PLEADINGS AND MOTIONS TO MN COUNSEL FAGEN, INC.
0.4326406		09/17/2013	BRC	A	60	200.00	0.50	100.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DRAFTED PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO EXERGY ENTITIES; DRAFTED PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO FIRST SET OF LANDOWNER DEFENDANTS, AND FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION ON SECOND SET OF LANDOWNERS FAGEN, INC.
0.4326406		09/17/2013	DCG	A	224	250.00	0.40	100.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION ANALYSIS REGARDING RELEASE OF LANDOWNERS FROM LAWSUIT FAGEN, INC.
0.4326406		09/18/2013	JRG	A	75	250.00	0.80	200.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH OWNERS COUNSEL IN NOTCH BUTTE CASE; SEEK EARLY RESOLUTION TO FORWARD MORTGAGE AND LOAN DOCUMENTS ESTABLISHING PRIORITY OVER MECHANIC LIEN CLAIM OF FAGEN FAGEN, INC.
0.4326406		09/18/2013	JRG	A	75	250.00	0.60	150.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE ON MORTGAGE VS MECHANIC LIEN PRIORITIES AND FEE OWNERS DESIRE TO GET OUT OF SUIT; PROS AND CONS FAGEN, INC.
0.4326406		09/27/2013	DCG	A	60	250.00	0.80	200.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DRAFT MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS FAGEN, INC.
0.4326406		09/30/2013	DCG	A	58	250.00	0.80	200.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW EMAIL FROM KEITH REVISE MEMORANDUM OPPOSING MOTION TO DISMISS; TELEPHONE CONFERENCE WITH JRG FAGEN, INC.
0.4326406		09/30/2013	JRG	A	58	250.00	0.20	50.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW EXERGY RELEASE OF LEASEHOLD INTEREST FAGEN, INC.
0.4326406		10/02/2013	DCG	A	60	250.00	0.70	175.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DRAFT INTERROGATIONS AND REQUEST FOR PRODUCTION OF DOCUMENTS TO PROPERTY OWNER FAGEN, INC.
0.4326406		10/03/2013	DCG	A	53	250.00	0.40	100.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FINALIZE DISCOVERY REQUESTS TO EXERGY AND SHAW FAGEN, INC.
0.4326406		10/09/2013	JRG	A	58	250.00	0.60	150.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW ENERGY MOTION/ SHORTEN TIME AND CONTINUE MOTION/ DISMISS; ROSA DECLARATION; PROPOSED ORDER FAGEN, INC.
0.4326406		10/09/2013	JRG	A	62	250.00	0.60	150.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW MULTIPLE EMAILS OF COUNSEL ON RESCHEDULING FINALLY TO DEC 17 HEARING/ DATE ON EXERGY MOTION TO DISMISS FAGEN, INC.
0.4326406		10/09/2013	JRG	A	75	250.00	0.20	50.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH CLERK RUTH QUERY ABOUT COURT ORDERED STATUS CONFERENCE HEARING/ SET OCTOBER 15TH ALSO CONTINUED TO DECEMBER 17 FAGEN, INC.
0.4326406		10/09/2013	JRG	A	56	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL ALL COUNSEL REQUESTING STIPULATION AMENDED COMPLAINT TO AVOID OCTOBER 15TH HEARING FAGEN, INC.
0.4326406		10/09/2013	JRG	A	56	250.00	0.40	100.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL FAGEN COUNSEL FORWARD DRAFT FAGEN WRITTEN DISCOVERY FOR

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
								APPROVAL TO SERVE AND RATIONALE SUPPORTING FAGEN RULE 58 (F) CONTINUANCE MOTION FAGEN, INC.	
0.4326406		10/09/2013	JRG	A	227	250.00	0.60	150.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAILS EXCHANGED WITH FAGEN COUNSEL REGARDING DISCOVERY AND MOTIONS STRATEGY IN ID CASES FAGEN, INC.	
0.4326406		10/09/2013	JRG	A	58	250.00	0.40	100.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW DEFENDANTS SHAW WRITTEN DISCOVERY TO FAGEN; FORWARD TO FAGEN FAGEN, INC.	
0.4326406		10/09/2013	DCG	A	62	250.00	0.20	50.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW AND REVISE SECOND AFFIDAVIT IN SUPPORT OF 58(F) MOTION FAGEN, INC.	
0.4326406		10/15/2013	JRG	A	62	250.00	0.20	50.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW MESERRY 2 EMAILS ON ASTLE, FEE OWNER, DISMISSAL POSSIBILITY FAGEN, INC.	
0.4326406		10/15/2013	JRG	A	56	250.00	0.80	200.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE MESERRY AND CLUFF EMAIL ON FEE OWNERS POSSIBLE DISMISSAL FAGEN, INC.	
0.4326406		10/15/2013	JRG	A	56	250.00	0.20	50.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE 2 EMAILS TO FAGAN MN COUNSEL ON FEEOWNERS AND COUNSEL CONTACTS FAGEN, INC.	
0.4326406		10/15/2013	JRG	A	56	250.00	0.10	25.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE AMENDED NOTICE OF HEARING ON FAGEN MOTION RULE 58(F) CONTINUANCE TO DECEMBER 17TH NEW HEARING DATE FAGEN, INC.	
0.4326406		10/15/2013	JRG	A	56	250.00	0.50	125.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE STIPULATION AMEND COMPLAINT AND ORDER, EMAIL AND FORWARD TO ALL COUNSEL FAGEN, INC.	
0.4326406		10/17/2013	JRG	A	227	250.00	1.00	250.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION VARIOUS EMAILS EXCHANGED AND FORWARDED BY MESERY, JRG, LEONARD FAGEN ON STRATEGY ON HANDLING POSSIBLE, LEE OWENS ASTLE AND SHAW DISMISSAL FAGEN, INC.	
0.4326406		11/04/2013	JRG	A	56	250.00	0.30	75.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL TO DEFENDANT SHAW COUNSEL; 2D REQUEST FOR INDEFINITE EXTENSION FOR FAGEN RESPONSE TO WRITTEN DISCOVERY FAGEN, INC.	
0.4326406		11/04/2013	JRG	A	56	250.00	0.20	50.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL FORWARD WITH COMMENTS TO LEONARD COUNSEL ON DISCOVERY EXTENSION REQUEST DUE NOVEMBER 12TH FAGEN, INC.	
0.4326406		11/04/2013	JRG	A	56	250.00	0.10	25.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL TO LEONARD COUNSEL IF RESPONSE TO MAP SETTLEMENT EFFORT RECEIVED YET FAGEN, INC.	
0.4326406		11/13/2013	JRG	A	75	250.00	0.60	150.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH MESERVY; DRIVERS LANDOWNER, ASTLE, POSITION LAND OF TITLE VALUE AND MOTION FOR SUMMARY JUDGEMENT TO BE FILED FAGEN, INC.	
0.4326406		11/13/2013	JRG	A	58	250.00	0.40	100.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW CLUFF EMAIL AND MORTGAGE AND SUBORDINATION AGREEMENT RECORDED MAY 31, 2012 FAGEN, INC.	
0.4326406		11/13/2013	JRG	A	62	250.00	0.50	125.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW PAYETTE LUMBER V. FETT CASE PER MESERVY CITATION FAGEN, INC.	
0.4326406		11/13/2013	JRG	A	56	250.00	1.20	300.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL MEMO DISCUSSION ASTLE AND SHAW MOTIONS FOR SUMMARY JUDGMENT; PLANNED FILING NOVEMBER 15TH AND RELATED	

Detail Transaction File List
 RACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERED

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
									AND SHAW QUERY FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH DEFENDANT ASTLE COUNSEL MR. MESERVY, CONVEY SETTLEMENT OFFER; CALL BACK CONFIRM ACCEPTANCE FAGEN, INC.
0.4326406		11/25/2013	JRG	A	75	250.00	0.40	100.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE STIPULATION AND ORDER DISMISS ASTLE AND SHAW; FORWARD SAID DEFENDANTS COUNSEL TO SIGN AND RETURN TO FILE WITH CLERK FAGEN, INC.
0.4326406		11/25/2013	JRG	A	66	250.00	0.60	150.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH BEN CLUFF, SHAW AGREES TO STIPULATION DISCUSS AND ORDER, EACH PARTY TO BEAR COSTS AND FEES, WANTS RELEASE OF LIEN CLAIM DOCUMENT TO RECORD FAGEN, INC.
0.4326406		11/27/2013	JRG	A	75	250.00	0.20	50.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE PARTIAL RELEASE OF CLAIM OF LIEN IN FAVOR OF ASTLE AND SHAW; EMAIL FORWARD TO THEIR COUNSEL FOR REVIEW AND APPROVAL BEFORE EXECUTING AND DELIVERING OF ORIGINAL FAGEN, INC.
0.4326406		11/27/2013	JRG	A	54	250.00	0.20	50.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE PARTIAL RELEASE OF LIEN FAGEN, INC.
0.4326406		12/04/2013	JRG	A	54	250.00	0.10	25.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT PARTIAL RELEASE AND CLAIM OF LIEN FOR "LINCOLN" COUNTY FAGEN, INC.
0.4326406		12/04/2013	JRG	A	227	250.00	0.10	25.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL RECEIVED FROM ASTLE COUNSEL ON STIPULATION IN PROCESS AND CONFIRM REVISED PARTIAL RELEASE OF CLAIM OF LIEN OK FAGEN, INC.
0.4326406		12/04/2013	JRG	A	227	250.00	0.10	25.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL ASTLE COUNSEL; REQUEST STIPULATION SIGNATURE PAGE FAGEN, INC.
0.4326406		12/10/2013	JRG	A	58	250.00	0.10	25.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE RECORDED PARTIAL RELEASE OF CLAIM OF LIEN; FORWARD TO LEONARD COUNSEL FAGEN, INC.
0.4326406		12/10/2013	JRG	A	225	250.00	0.10	25.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FORWARD RECORDED PARTIAL RELEASE OF LIEN TO FEE OWNERS ASTLE AND SHAW COUNSEL FAGEN, INC.
0.4326406		12/13/2013	JRG	A	58	250.00	0.60	150.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE FAGEN SUPPLEMENTAL BRIEF SUPPLYING JUDGE STOKER ORDERS IN NOTCH BUTTE CASE TO FOLLOW SAME RUCINGS REQUESTED FAGEN, INC.
0.4326406		12/16/2013	JRG	A	66	250.00	0.20	50.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL FORWARD LEONARD COUNSEL ENERGY NOTICE VACATING OMNIBUS MOTION; DISMISS AND FAGEN NOTICE VACATING MOTION RULE 56(F) CONTINUANCE FAGEN, INC.
0.4326406		12/17/2013	JRG	A	75	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH COURT AND COUNSEL FOR ORDERED STATUS CONFERENCE FAGEN, INC.
0.4326406		12/17/2013	JRG	A	66	250.00	0.20	50.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE LETTER TO CLERK FORWARD DUPLICATE ORIGINAL FIRST AMENDED COMPLAINT FOR FILING AND NOTICE OF SERVICE FAGEN, INC.
0.4326406		12/17/2013	JRG	A	66	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE STATUS CONFERENCE REPORT LETTER TO LEONARD COUNSEL ON DECEMBER 17TH HIRING; FORWARD COPIES FILE STAMPED STIPULATION AND ORDER; DISMISSING SHAW AND ASTLE

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0.4326406		12/19/2013	JRG	A	75	250.00	0.20	50.00	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH DEPUTY CLERK ON PHONE APP/ FOR COURT ORDERED STATUS CONFERENCE GIVEN MOTIONS WITHDRAWN AND HEARING OR PERSONAL APP UNNECESSARY
0.4326406		12/19/2013	JRG	A	58	250.00	0.20	50.00	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW ENERGY MOTION; WITHDRAW MOTION DISMISS AND TO VACATE HEARING
0.4326406		12/19/2013	JRG	A	56	250.00	0.40	100.00	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE FAGEN MOTION WITHDRAW RULE 56(F) CONTINUANCE MOTION AND HEARING
0.4326406		12/23/2013	JRG	A	58	250.00	0.50	125.00	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW JUDGES ORDERS FOR CONSOLIDATION AND REASSIGNMENT (BUTLER TO BEVAN) AND ORDER ASSIGNMENT (BEVAN TO STOKER); PREPARE EMAIL TO LEONARD COUNSEL FORWARDING ORDERS AND UPDATE OF 5 CASES REASSIGNED TO STOKER; 1 CASE LAVA BEDS WP REMAINS SIMPSON AS DIFFERENT JUDICIAL DISTRICT
0.4326406		01/07/2014	JRG	A	56	250.00	0.50	125.00	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE FAGAN MOTION TO COMPEL DISCOVERY, AFFIDAVIT, NOTICE OF HEARING
0.4326406		01/08/2014	JRG	A	54	250.00	0.50	125.00	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT FAGEN MOTION TO COMPEL DISCOVERY; AFFIDAVIT; NOTICE OF HEARING
0.4326406		01/27/2014	BJH	A	62	125.00	0.10	12.50	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW SIGNED ORDER FROM COURT CLERK, SCAN AND SAVE IN ELECTRONIC FILE
0.4326406		03/03/2014	JRG	A	53	250.00	0.50	125.00	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FINALIZE AND FILE 1ST AMENDED COMPLAINT IN NOTCH BUTTE WP CASE
0.4326406		03/06/2014	DCG	A	58	250.00	0.50	125.00	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW MULTIPLE EMAILS RE: DISCOVERY RECEIVED EXERGY
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION
Total for Fees								<u>44.70</u> <u>0.90</u> <u>45.60</u>	<u>10,795.00</u> <u>202.50</u> <u>10,997.50</u>
Expenses									
0.4326406		02/06/2013	JRG	A	125			96.00	ARCH
									FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION
0.4326406		02/15/2013	JRG	A	135			20.67	ARCH
									POSTAGE - UPS FAGEN, INC.
0.4326406		06/14/2013	JRG	A	130			40.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION SERVICE OF PROCESS FEE - MRS. ASTLE FAGEN, INC.
0.4326406		06/14/2013	JRG	A	130			40.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION SERVICE OF PROCESS FEE - MRS. SHAW FAGEN, INC.
0.4326406		06/14/2013	JRG	A	130			40.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION SERVICE OF PROCESS FEE FAGEN, INC.
0.4326406		10/11/2013	JRG	A	135			20.67	ARCH
									POSTAGE - UPS FAGEN, INC.
0.4326406		12/04/2013	JRG	A	139			16.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECORDING FEE - LINCOLN COUNTY FAGEN, INC.
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION
Total for Expenses								<u>0.00</u>	<u>273.34</u>

Detail Transaction File List
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<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
GRAND TOTALS								
						<u>44.70</u>	<u>11,068.34</u>	
						<u>0.90</u>	<u>202.50</u>	
						<u>45.60</u>	<u>11,270.84</u>	

E X H I B I T “F”

Costs and Fees – Detail Transaction File List

Racine File #43264.02

Rogerson Flats Wind Park

**(Itemization of Costs and Attorney Fees
Incurred *Prior to & After*
Consolidation Order)**

Fees	Client	Trans Date	Atty	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount		Ref #
	0.4326402	08/02/2012	JRG	A	62	250.00	1.00	250.00	REVIEW RECORDS INCIDENTAL TO PREPARE LIEN CLAIM FAGEN, INC.	ARCH
	0.4326402	08/02/2012	JRG	A	56	250.00	1.00	250.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE AND REVISE AND EDIT CLAIM OF LIEN FINAL DRAFT AND EXHIBITS A&B FAGEN, INC.	ARCH
	0.4326402	08/03/2012	JRG	A	54	250.00	1.00	250.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT AND FINALIZE FAGEN CLAIM OF LIEN, TELEPHONE CONFERENCE WITH TITLE COMPANY, TELEPHONE CONFERENCE WITH JENSEN, PREPARE LETTER TO FATCO IN TF FAGEN, INC.	ARCH
	0.4326402	02/05/2013	JRG	A	56	250.00	1.00	250.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE COMPLAINT AND EX. ONE FOR LIEN FORECLOSURE FAGEN, INC.	ARCH
	0.4326402	02/06/2013	JRG	A	54	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT AND FINALIZE COMPLAINT FOR LIEN FORECLOSURE TO FILE FAGEN, INC.	ARCH
	0.4326402	07/26/2013	JRG	A	75	250.00	0.50	125.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH TOM JENSEN, ROGERSON FLATS "SUBSTATION DEAL" DISCUSSIONS AND SUIT "STANDSTILL" REQUEST FOR FAGAN, JACK RANCH ENTITY, SIMPLOT TRUST ENTITY FAGEN, INC.	ARCH
	0.4326402	07/26/2013	JRG	A	75	250.00	0.40	100.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH CHIP LION, JACK RANCH CA COUNSEL, DISCUSS "STANDSTILL" AND ACCEPTANCE OF SERVICE AGREED FAGEN, INC.	ARCH
	0.4326402	07/26/2013	JRG	A	56	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE ACCEPTANCE OF SERVICE FORM FOR JACK RANCH FAGEN, INC.	ARCH
	0.4326402	07/26/2013	JRG	A	56	250.00	0.40	100.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE LETTER TO LION CONFIRM INDEFINITE EXTENSION AND FORWARD ACCEPTANCE OF SERVICE FORM TO SIGN AND RETURN FAGEN, INC.	ARCH
	0.4326402	07/26/2013	JRG	A	227	250.00	0.10	25.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL LION LETTER AND DOCUMENTS FAGEN, INC.	ARCH
	0.4326402	07/26/2013	JRG	A	227	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL JENSEN EMAIL AND LION LETTER AND DOCUMENTS FAGEN, INC.	ARCH
	0.4326402	08/12/2013	JRG	A	62	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW CALENDAR ORDER; SCHEDULING CONFERENCE; EMAIL JENSEN ON STAY OR ONE JUDGE FAGEN, INC.	ARCH
	0.4326402	08/12/2013	JRG	A	75	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH COURT CLERK ON POSSIBILITY OF STAY OR INACTIVE ORDERS FAGEN, INC.	ARCH
	0.4326402	08/16/2013	JRG	A	58	250.00	0.20	50.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW HEARING NOTICE AND CALENDAR PHONE CONFERENCE FAGEN, INC.	ARCH
	0.4326402	08/19/2013	JRG	A	56	250.00	2.00	500.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND ANALYZE DEFENDANT ENERGY OMNIBUS MOTION TO DISMISS AND MEMORANDUM FAGEN, INC.	ARCH
	0.4326402	08/19/2013	JRG	A	56	250.00	1.00	250.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL UPDATE FORWARD TO DEFENDANT ENERGY MOTION AND MEMORANDUM TO LEONARD COUNSEL FAGEN, INC.	ARCH
	0.4326402	08/19/2013	JRG	A	55	250.00	1.00	250.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RESEARCH IDAHO LIEN STATUTES AND ROGERSON FLATS FILE ON MOTION REBUTTAL DEVELOPMENT FAGEN, INC.	ARCH
	0.4326402	08/20/2013	BRC	A	380	200.00	0.20	40.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION INTEROFFICE MEETING TO DISCUSS STATUS OF	ARCH

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
									FAGAN LIEN FORECLOSURE ACTIONS AND EXERGY DEFENDANTS MOTION TO DISMISS AND ACTIONS TO BE TAKEN IN RESPONSE TO SUCH MOTION FAGEN, INC.
0.4326402		08/20/2013	BRC	A	62	200.00	0.70	140.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEWED LIMITED NOTICE TO PROCEED #1 AND #3 AND EXCERPTS FROM CONTRACT BETWEEN FAGAN AND EXERGY PERTAINING TO IDAHO PROJECT WORK RELATED TO REPRESENTATIONS MADE EVIDENCING LANDOWNERS CONSENT; EMAIL TO JENSEN REQUESTING ADDITIONAL DOCUMENTS AND COMPLETE COPY OF CONTRACT FAGEN, INC.
0.4326402		08/20/2013	DCG	A	35	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION MEETING WITH JRG REGARDING STRATEGY TO DEFENDANTS MOTION TO DISMISS FAGEN, INC.
0.4326402		08/20/2013	RAM	A	62	200.00	0.40	80.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW OPPOSING COUNSEL'S PLEADINGS FAGEN, INC.
0.4326402		08/21/2013	RAM	A	189	200.00	1.00	200.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION WRITING, RESEARCHING, EDITING RULE 56(F) MOTION, MEMORANDUM, AND AFFIDAVIT; WRITING, RESEARCHING, EDITING MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS FAGEN, INC.
0.4326402		08/22/2013	BRC	A	58	200.00	1.40	280.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVED AND REVIEWED ENGINEERING, PROCUREMENT AND CONSTRUCTION SERVICE AGREEMENT FOR FACTS AND TERMS THAT SUPPORT LIEN FORECLOSURE PROCEEDINGS AGAINST LANDOWNERS; NOTED SUPPORTIVE PROVISIONS FAGEN, INC.
0.4326402		08/22/2013	RAM	A	189	200.00	1.00	200.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION WRITING, RESEARCHING, EDITING RULE 56(F) MOTION, MEMORANDUM, AND AFFIDAVIT; WRITING, RESEARCHING, EDITING MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS FAGEN, INC.
0.4326402		08/23/2013	BRC	A	227	200.00	0.30	60.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL CORRESPONDENCE WITH FAGEN ATTORNEYS REGARDING CONTRACT FOR SERVICES AND RELATION TO FORECLOSURE ACTIONS FAGEN, INC.
0.4326402		08/23/2013	DCG	A	62	250.00	2.30	575.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW INFORMATION IN FILES; PREPARE FIRST AMENDED COMPLAINT AND MOTIONS FOR LEAVE TO AMEND FAGEN, INC.
0.4326402		08/28/2013	BRC	A	340	200.00	2.00	400.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION BEGAN DRAFTING PORTION OF BRIEF IN SUPPORT OF OBJECTION AND RESPONSE TO DEFENDANTS OMNIBUS MOTION TO DISMISS RELATED TO AT INSTANCE OF OWNER AND AGENCY ARGUMENT FAGEN, INC.
0.4326402		08/29/2013	BRC	A	340	200.00	1.00	200.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION COMPLETED PORTION OF BRIEF RELATED TO ARGUMENT IN FAVOR OF LIEN AGAINST LANDOWNER'S FEE INTEREST IN REAL PROPERTY FAGEN, INC.
0.4326402		08/30/2013	BRC	A	62	200.00	0.20	40.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEWED CONTRACT WITH EXERGY AND PULLED EXCERPTS FORM CONTRACT TO ATTACH TO PROPOSED AMENDED COMPLAINT FAGEN, INC.
0.4326402		08/30/2013	DCG	A	54	250.00	1.50	375.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT MOTION FOR 56 (F) RELIEF - REVISE MEMORANDUM IN SUPPORT OF MOTION FOR 56 RELIEF; REVISE MOTION FOR LEAVE TO AMEND COMPLAINT; EMAIL PLEADINGS TO CLIENT FOR REVIEW FAGEN, INC.
0.4326402		09/04/2013	JRG	A	58	250.00	0.10	25.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW NOTICE OF HEARING FOR WIND PARK LLC, EXERGY DEV; XRG

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0.4326402		09/27/2013	DCG	A	54	250.00	1.00	250.00	ARCH
0.4326402		09/30/2013	BRC	A	232	200.00	0.30	60.00	ARCH
0.4326402		09/30/2013	DCG	A	58	250.00	0.80	200.00	ARCH
0.4326402		09/30/2013	JRG	A	58	250.00	0.20	50.00	ARCH
0.4326402		10/01/2013	DCG	A	60	250.00	0.70	175.00	ARCH
0.4326402		10/02/2013	DCG	A	60	250.00	2.10	525.00	ARCH
0.4326402		10/03/2013	DCG	A	53	250.00	0.40	100.00	ARCH
0.4326402		10/17/2013	JRG	A	54	250.00	0.20	50.00	ARCH
0.4326402		10/17/2013	JRG	A	75	250.00	0.10	25.00	ARCH
0.4326402		10/17/2013	JRG	A	62	250.00	0.30	75.00	ARCH
0.4326402		10/18/2013	JRG	A	56	250.00	0.60	150.00	ARCH
0.4326402		10/18/2013	JRG	A	75	250.00	0.30	75.00	ARCH
0.4326402		10/18/2013	JRG	A	75	250.00	0.20	50.00	ARCH
0.4326402		11/06/2013	JRG	A	227	250.00	0.50	125.00	ARCH
0.4326402		11/15/2013	JRG	A	62	250.00	0.20	50.00	ARCH
0.4326402		11/15/2013	JRG	A	56	250.00	0.50	125.00	ARCH

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0.4326402		11/19/2013	JRG	A	58	250.00	0.60	150.00	ARCH
0.4326402		11/19/2013	JRG	A	227	250.00	0.40	100.00	ARCH
0.4326402		11/19/2013	JRG	A	227	250.00	0.30	75.00	ARCH
0.4326402		11/22/2013	JRG	A	75	250.00	0.50	125.00	ARCH
0.4326402		11/22/2013	JRG	A	58	250.00	0.20	50.00	ARCH
0.4326402		11/25/2013	JRG	A	56	250.00	0.50	125.00	ARCH
0.4326402		11/26/2013	JRG	A	56	250.00	0.30	75.00	ARCH
0.4326402		11/27/2013	JRG	A	54	250.00	0.20	50.00	ARCH
0.4326402		11/27/2013	JRG	A	58	250.00	0.10	25.00	ARCH
0.4326402		11/27/2013	JRG	A	58	250.00	0.20	50.00	ARCH
0.4326402		12/02/2013	JRG	A	74	250.00	1.40	350.00	ARCH
0.4326402		12/02/2013	JRG	A	56	250.00	0.60	150.00	ARCH
0.4326402		12/04/2013	JRG	A	56	250.00	0.50	125.00	ARCH
0.4326402		12/12/2013	JRG	A	58	250.00	0.10	25.00	ARCH
0.4326402		01/06/2014	JRG	A	56	250.00	0.30	75.00	ARCH
0.4326402		01/06/2014	JRG	A	227	250.00	0.20	50.00	ARCH

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
								CONFERENCE FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	
0.4326402		01/06/2014	JRG	A	231	250.00	0.30	75.00	ARCH
								STATUS UPDATE LEONARD COUNSEL, EXERGY COUNSEL MOTION TO WITHDRAW FAGEN, INC.	
0.4326402		01/06/2014	JRG	A	58	250.00	0.20	50.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW EXERGY ERRATA ON MOTION TO WITHDRAW INCLUDING NOTCH BUTTE WITH WP INSTEAD OF LAVA BEDS WP; FORWARD TO LEONARD COUNSEL FAGEN, INC.	
0.4326402		01/07/2014	JRG	A	56	250.00	0.50	125.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE FAGAN MOTION TO COMPEL DISCOVERY, AFFIDAVIT, NOTICE OF HEARING FAGEN, INC.	
0.4326402		01/07/2014	JRG	A	56	250.00	1.00	250.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL STATUS REPORT UPDATE ON 2 JANUARY HEARINGS IN ALL CASES WITH 2 COURTS; MOTIONS TO WITHDRAW BY ROSA; PLANNED FAGAN MOTIONS TO COMPEL DISCOVERY; JANUARY 21ST HEARING SET IN TWIN FALLS COUNTY AND LINCOLN COUNTY RECONSOLIDATED CASES WITH JUDGE STOKER; JANUARY 28TH HEARING SET IN BINGHAM COUNTY CASE WITH JUDGE SIMPSON AND FORWARD COPIES TO ROSA MOTION TO WITHDRAW AND ERRATA IN T7 CASES FAGEN, INC.	
0.4326402		01/07/2014	BJH	A	35	125.00	2.50	312.50	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION MEETING WITH JRG REGARDING ASSIGNMENT AND EXPLAIN CONSOLIDATED CASES; READ AND REVIEW ORDER OF CONSOLIDATION FROM JUDGE STOKER; PREPARE CONSOLIDATED CAPTION FOR SERVICE OF PLEADINGS; DRAFT MOTION TO COMPEL DISCOVERY REQUESTS FOR ALL DEFENDANTS; DRAFT AFFIDAVIT OF JRG IN SUPPORT OF MOTION TO COMPEL; PREPARE AND ORGANIZE ALL EXHIBITS TO ATTACH TO AFFIDAVIT; PREPARE HEARING NOTICE; ORGANIZE. ORDERS FOLDER FOR THE NOTCH BUTTE ACTION FAGEN, INC.	
0.4326402		01/08/2014	JRG	A	54	250.00	0.50	125.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT FAGEN MOTION TO COMPEL DISCOVERY; AFFIDAVIT; NOTICE OF HEARING FAGEN, INC.	
0.4326402		01/08/2014	JRG	A	56	250.00	0.50	125.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL TO LEONARD COUNSEL FORWARD FAGEN MOTION TO COMPEL AND SUPPORTING DOCUMENTS; ALSO RAISE ISSUES OF COLLECTIBLE OF ANY JUDGMENT IF NO ASSETS AND NO VEIN PIERCING CLAIM VS OTHER EXERGY ENTITIES IN MN OR ELSEWHERE FAGEN, INC.	
0.4326402		01/08/2014	BJH	A	62	125.00	2.50	312.50	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE CAPTION ON HEARING NOTICE; MOTION TO COMPEL; ORGANIZE AND COPY ADDITIONAL EXHIBITS FOR JRG AFFIDAVIT; ORGANIZE ROGERSON ORDERS FILE; FINALIZE MOTION TO COMPEL DISCOVERY; AFFIDAVIT; NOTICE OF HEARING; PREPARE TRANSMITTAL LETTER TO COURT CLERK; PREPARE FAX COVER SHEET; COPY ALL PLEADINGS; FAX TO A ROSA; SCAN ALL DOCUMENTS AND EMAIL TO A ROSA; SAVE ALL .PDFS IN ELECTRONIC FILE FAGEN, INC.	
0.4326402		01/22/2014	JRG	A	75	250.00	0.30	75.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH KEITH MUELEMAN , DISCUSS STATUS AND T7 CONSOLIDATED AND FORWARD LITIGATION PLAN FAGEN, INC.	
0.4326402		01/27/2014	JRG	A	56	250.00	0.20	50.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL TO ROSA ADVISE SAME; FAGEN POSITION ON TWIN FALLS COUNTY CASES; CONFIRM ROSA TO PLACE FAGEN, INC.	
0.4326402		01/29/2014	JRG	A	227	250.00	0.30	75.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL TO LEONARD COUNSEL PLANNED ATTENDANCE BY PHONE CONFERENCE ON TWIN	

Detail Transaction File List
RACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERED

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									FALLS COUNTY CASE HEARING ON JANUARY 31ST MOTION TO WITHDRAW AND MOTION TO COMPEL DISCOVERY FAGEN, INC.
0.4326402		01/31/2014	JRG	A	360	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION COURT APPEARANCE AND PREPARATION FOR COURT BY TELEPHONE CONFERENCE CALL ON ROSA MOTION TO WITHDRAW; AND FAGEN MOTION TO COMPEL DISCOVERY; ROSA FAILED TO APPEAR; COURT MADE FAVORABLE RULINGS FAGEN, INC.
0.4326402		01/31/2014	JRG	A	58	250.00	0.70	175.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE ORDER DENYING ROSA MOTION TO WITHDRAW WITHOUT PREJUDICE, AND ORDER GRANTING FAGEN MOTION TO COMPEL AND \$750 FEES AWARDED PER COURT'S REQUEST; FORWARD TO CLERK AND COPY SENT TO ROSA FAGEN, INC.
0.4326402		01/31/2014	JRG	A	227	250.00	0.10	25.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAILS EXCHANGED WITH ROSA ON HEARING RULINGS FAGEN, INC.
0.4326402		01/31/2014	JRG	A	58	250.00	0.30	75.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE SIGNED ORDERS FROM COURT; FORWARD TO LEONARD FAGEN, INC.
0.4326402		02/06/2014	JRG	A	58	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW ROSA RENEWED MOTION TO WITHDRAW AS COUNSEL AND MARCH 31ST NOTICE OF HEARING FAGEN, INC.
0.4326402		02/06/2014	JRG	A	75	250.00	0.10	25.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH COURT CLERK REQUEST EARLIER HEARING DATE GIVEN AND DELAY FAGEN, INC.
0.4326402		02/06/2014	JRG	A	58	250.00	0.20	50.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL TO ROSA AND COURT CLERK REQUESTING EARLIER HEARING DATE FAGEN, INC.
0.4326402		02/06/2014	JRG	A	227	250.00	0.20	50.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL TO LEONARD COUNSEL, REVIEW MOTION; NOTICE OF HEARING; EMAIL TO COURT CLERK AND ROSA WITH EXPLANATION FAGEN, INC.
0.4326402		02/06/2014	JRG	A	227	250.00	0.30	75.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAILS ON RESCHEDULING EARLIER HEARING DATE ON ROSA MOTION TO WITHDRAW FAGEN, INC.
0.4326402		02/06/2014	JRG	A	227	250.00	0.60	150.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION ADDITIONAL EMAILS WITH ROSA AND COURT CLERK; HEARING ON AMENDED MOTION TO WITHDRAW FAGEN, INC.
0.4326402		02/08/2014	JRG	A	58	250.00	0.20	50.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW ROSA AMENDED NOTICE OF HEARING ON MOTION TO WITHDRAW FAGEN, INC.
0.4326402		02/08/2014	JRG	A	58	250.00	0.20	50.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE EMAIL ROSA REQUEST COPY PROPOSED ORDERS TO WITHDRAW PRIOR TO HEARINGS IN BOTH CASES FAGEN, INC.
0.4326402		02/19/2014	JRG	A	227	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EXCHANGE EMAILS WITH MR. ROSA; DENY REQUEST FOR INFORMAL DISCOVERY EXTENSION; SET INTENT TO WITHDRAW AS COUNSEL REAFFIRMED, ETC. FAGEN, INC.
0.4326402		02/19/2014	JRG	A	227	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL ON ABOVE EXCHANGED WITH LEONARD COUNSEL EMAILS ON ABOVE EXCHANGED WITH LEONARD COUNSEL FAGEN, INC.
0.4326402		02/21/2014	BJH	A	227	125.00	0.10	12.50	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAILS TO AND FROM A ROSA REGARDING DISCOVERY RESPONSES; NOTIFY WHEN DOCUMENTS ARE DOWNLOADED TO DROPBOX FAGEN, INC.

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0.4326402		02/24/2014	BJH	A	62	125.00	0.70	87.50	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW DISCOVERY RESPONSES, OPTICAL CHARACTER RECOGNITION, PRINT AND SAVE TO ELECTRONIC FILE, EMAILS TO/FROM A ROSA REGARDING DISCOVERY RESPONSES AND DOCUMENTS, CONVERSATION WITH D GREEN, DOWNLOAD DOCUMENTS FROM DROPBOX FAGEN, INC.
0.4326402		03/03/2014	JRG	A	75	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE STATUS CONFERENCE WITH COURT AND COUNSEL; ROSA WITHDRAWS HIS MOTION TO WITHDRAW AS COUNSEL; COURT RESCHEDULES STATUS CONFERENCE FOR APRIL 14TH 10 AM FAGEN, INC.
0.4326402		03/03/2014	JRG	A	62	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW THREE EMAILS ON ROSA'S ALLEGED THREE SUPPLEMENTS OF DISCOVERY IN 2 CASES; DOCUMENTS NOT RECEIVED VIA DROPBOX AS STATED PER PARALEGAL FAGEN, INC.
0.4326402		03/03/2014	JRG	A	62	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION CURSORY REVIEW TWIN FALLS AND LINCOLN COUNTIES DOCUMENTS PRODUCED AND PLEADING D FAGEN, INC.
0.4326402		03/03/2014	JRG	A	227	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION SEND FOUR EMAILS TO ROSA VERIFYING NO DISCOVERY SUPPLEMENTS RECEIVED BY DROPBOX FAGEN, INC.
0.4326402		03/03/2014	JRG	A	56	250.00	1.00	250.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE STATUS UPDATE EMAIL TO LEONARD COUNSEL FAGEN, INC.
0.4326402		03/03/2014	JRG	A	53	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FINALIZE AND FILE 1ST AMENDED COMPLAINT IN ROGERSON FLATS WP CASE FAGEN, INC.
0.4326402		03/03/2014	JRG	A	75	250.00	0.20	50.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH DEPUTY CLERK, DOROTHY MCMULLEN, DISCUSS NECESSITY TO FILE 5 1ST AMENDED COMPLAINTS AS SEPARATE DOCUMENTS, AS COPY ATTACHED TO MOTIONS CANNOT BE DETACHED AND FILED AS ORIGINAL FAGEN, INC.
0.4326402		03/03/2014	JRG	A	56	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE LETTER TO DEPUTY CLERK TO FILE 5 1ST AMENDED COMPLAINTS WITH EXPLANATION PER PHONE CALL FAGEN, INC.
0.4326402		03/03/2014	BJH	A	62	125.00	0.40	50.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW EMAILS FROM A ROSA, REVIEW NOTICE TO WITHDRAW MOTION TO WITHDRAW, VARIOUS EMAILS TO A ROSA RE: SUPPLEMENTAL DISCOVERY DOCUMENTS FAGEN, INC.
0.4326402		03/05/2014	JRG	A	58	250.00	0.60	150.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND FORWARD FIVE DEFENDANT'S DISCOVERY REQUESTS TO LEONARD COUNSEL WITH COMMENTS AND RESPONSE PLAN FAGEN, INC.
0.4326402		03/05/2014	JRG	A	58	250.00	0.80	200.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW ROSA REQUEST TO STIPULATION DISMISSAL FAGEN LIEN CLAIMS, AND "RELEASE OF LEASEHOLD INTEREST" DOCUMENTS AND FORWARD TO LEONARD COUNSEL WITH COMMENTS; ALSO RAISE XRG DEVELOPMENT GROUP PARTY STATUS AS POSSIBLY UNNECESSARY; ALSO RAISE "UNJUST ENRICHMENT" CLAIM AS POSSIBLY UNNECESSARY FAGEN, INC.
0.4326402		03/05/2014	JRG	A	227	250.00	0.40	100.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REPLY EMAIL TO GOTTLIEB ON ROSA AND CARKULIS INTENTIONS AND LITIGATION OUTLOOK FAGEN, INC.
0.4326402		03/05/2014	BJH	A	56	125.00	0.30	37.50	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION UPLOAD DISCOVERY DOCUMENTS FROM DROPBOX, LOAD TO SYSTEM, INSTRUCTIONS TO

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								CLERICAL TO PRINT, ORGANIZE, READ AND REVIEW EMAILS TO CO-COUNSEL FAGEN, INC.	
0.4326402		03/06/2014	BJH	A	62	125.00	0.40	50.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TO ATTORNEY ROSEN REGARDING DEFICIENT RESPONSES AND DOCUMENTS PRODUCTION, INSTRUCTIONS TO CLERICAL REGARDING DISCOVERY DOCUMENTS FAGEN, INC.	ARCH
0.4326402		03/07/2014	JRG	A	75	250.00	0.50	125.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH LEONARD COUNSEL ON FURTHER ID SUITS LITIGATION PLAN; MOTION FOR SUMMARY JUDGMENT AND MOTION FOR FEES OR SANCTIONS ETC.; FAGEN, INC.	ARCH
0.4326402		03/10/2014	BJH	A	227	125.00	0.40	50.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL TO A ROSA TO SEND WORD VERSIONS OF DISCOVERY DOCUMENTS; PREPARE A TEMPLATE FOR DISCOVERY RESPONSES DRAFTS; REVIEW DISCOVERY REQUESTS FAGEN, INC.	ARCH
0.4326402		03/11/2014	JRG	A	58	250.00	0.30	75.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND ANALYZE ROSA EMAIL SEEKING STIPULATION ON DEFENDANT'S MOTION TO SUMMARY JUDGMENT FAGEN, INC.	ARCH
0.4326402		03/11/2014	JRG	A	56	250.00	0.70	175.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE REPLY EMAIL TO ROSA REJECTING DEFENDANTS MOTION TO SUMMARY JUDGMENT REQUEST; REPLY FAGEN MOTION TO SUMMARY JUDGMENT DEMAND AND \$2500 FEES FOR SANCTION FOR DELAY AND INADEQUATE DISCOVERY RESPONSE BY "DOCUMENT DUMP" FAGEN, INC.	ARCH
0.4326402		03/14/2014	BJH	A	54	125.00	0.30	37.50 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE, EDIT, FINALIZE LETTER REGARDING INSUFFICIENT DISCOVERY RESPONSES, INSTRUCTIONS TO CLERICAL TO SCAN, COPY FAX AND MAIL; COMPOSE AND SEND EMAIL TO ATTORNEY MOHEBAN IN MINNESOTA, CC JRG FAGEN, INC.	ARCH
0.4326402		03/14/2014	JRG	A	232	250.00	0.30	75.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DISCOVERY DISPUTE LETTER TO ATTORNEY A ROSA TO REQUEST COMPLETE RESPONSES TO PLAINTIFF'S DISCOVERY REQUESTS FAGEN, INC.	ARCH
0.4326402		03/14/2014	JRG	A	56	250.00	0.80	200.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE AND REVISE AND EDIT DISCOVERY RESPONSE INSUFFICIENT; LETTER TO ROSA FAGEN, INC.	ARCH
0.4326402		03/18/2014	BJH	A	227	125.00	0.20	25.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAILS TO AND FROM JRG AND K MOHEBAN REGARDING WOOLSTENHULME DEPOSITION; ARRANGE FOR COURT REPORTER FAGEN, INC.	ARCH
0.4326402		03/24/2014	BJH	A	56	125.00	0.30	37.50 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION CHECK ON DISCOVERY DUE DATES; EMAIL DRAFT DISCOVERY RESPONSES TO K MOHEBAN FAGEN, INC.	ARCH
0.4326402		03/28/2014	JRG	A	227	250.00	0.30	75.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EXCHANGE EMAILS WITH MOHEBAN ON FAGEN WRITTEN DISCOVERY RESPONSES COORDINATION FAGEN, INC.	ARCH
0.4326402		04/02/2014	JRG	A	227	250.00	0.40	100.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL WITH LEONARD COUNSEL ON EXTENSION FOR EXERGY SUPPLEMENTAL DISCOVERY RESPONSE TO APRIL 9TH; AND FAGEN INITIAL DISCOVERY RESPONSES TO APRIL 25TH FAGEN, INC.	ARCH
0.4326402		04/02/2014	BJH	A	62	125.00	0.70	87.50 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW EXHIBITS TO AMENDED COMPLAINT; REVIEW DISCOVERY DOCUMENTS FROM A ROSA; DETERMINE KEY DOCUMENTS AND IDENTIFY BATES NOS.; COMPOSE AND SEND EMAIL TO JRG WITH A SUMMARY OF THE DOCUMENTS AND INFORMATION REGARDING PERTINENT DOCUMENTS; CALENDAR 3-WEEK EXTENSION	ARCH

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0.4326402		04/17/2014	JRG	A	227	250.00	0.10	25.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAILS RECEIVED AND REVIEWED ON CONFERENCE CALL APRIL EIGHTEENTH TO SCHEDULE AT 7:30 AM MOUNTAIN TIME	
0.4326402		04/18/2014	JRG	A	75	250.00	0.50	125.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH LEONARD COUNSEL TO COORDINATE IDAHO SUITS WITH MINNESOTA SUIT	
0.4326402		04/18/2014	JRG	A	75	250.00	1.20	300.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH CLERK ON FALL 2014 TRIAL DATES AND SCHEDULING ORDER FORM TO SUBMIT	
0.4326402		04/18/2014	JRG	A	56	250.00	0.80	200.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE DRAFT SCHEDULING ORDER AND EMAIL AND FAX FORWARD TO ROSA	
0.4326402		04/18/2014	BJH	A	232	125.00	2.00	250.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION COORDINATE DISCOVERY RESPONSES AND DOCUMENTS WITH T KELLEY IN MINNEAPOLIS; LOCATE PLEADINGS AND EMAIL TO T KELLY; UPLOAD ALL DISCOVERY DOCUMENTS TO BOX.COM AND NOTIFY T KELLY; SEND EMAIL WITH SUMMARY OF FAGEN PRODUCTION DOCUMENTS; EMAIL AND FAX A ROSA THE PROPOSED STIPULATED TRIAL SCHEDULE	
0.4326402		04/21/2014	BJH	A	53	125.00	0.50	62.50	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FINALIZE LETTER TO COURT CLERK, EMAIL AND MAIL CLERK LETTER AND FINAL STIPULATION FOR SCHEDULING TO A ROSA; UPDATE C&C WITH NEW ROSA CONTACT INFORMATION	
0.4326402		04/24/2014	BJH	A	62	125.00	0.50	62.50	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW DRAFTS OF DISCOVERY RESPONSES FROM T KELLEY AT STINSON LEONARD, ORGANIZE FOLDER FOR PRODUCTION RESPONSE	
0.4326402		04/25/2014	BJH	A	62	125.00	2.00	250.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW, EDIT, REVISE DISCOVERY RESPONSES AND BATES NUMBERED DOCUMENTS, EMAILS TO AND FROM T. KELLEY AT STINSON LEONARD REGARDING FINALIZE, SERVE, PREPARE NOTICES OF SERVICE OF DISCOVERY RESPONSES, TRANSMITTAL LETTER TO COURT CLERK TO FILE NOTICES, ASSIST WITH COPIES, MAILING, ORGANIZE FINAL WORD DOCUMENTS	
0.4326402		04/28/2014	JRG	A	56	250.00	0.80	200.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE LETTER TO LEONARD COUNSEL FORWARD FINAL SET DISCOVERY RESPONSES AND FLASH DRIVE AS SIGNED AND SERVED	
0.4326402		04/28/2014	BJH	A	62	125.00	0.20	25.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW JRG EMAIL REGARDING TRIAL SETTING ORDER, T KELLEY EMAIL REGARDING MOTION FOR SUMMARY JUDGMENT	
0.4326402		04/29/2014	BJH	A	62	125.00	0.20	25.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION INSTRUCTIONS TO CLERICAL TO SCAN ALL DISCOVERY RESPONSES, ORGANIZE FILES	
0.4326402		05/27/2014	BJH	A	62	125.00	0.70	87.50	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW EMAILS, PULL NOTICES OF SERVICE FOR ALL FAGEN DISCOVERY RESPONSES AND LETTER, EMAIL ATTORNEY A ROSA NOTICES STATING DISCOVERY RESPONSES TIMELY, EMAIL J GOODELL	
0.4326402		05/28/2014	JRG	A	227	250.00	1.50	375.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION SEVERAL EMAILS AND TELEPHONE CONFERENCES WITH LEONARD COUNSEL AND BJH; RESPOND NO ROSA EMAIL ON "DISCOVERY NOT RECEIVED" AND TOM FAGEN DEPOSITION REQUEST OF DATES IN JUNE, MOTION FOR SUMMARY JUDGMENT PREPARATION AND TIMING	

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0.4326402		05/28/2014	BJH	A	227	125.00	0.20	25.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAILS TO AND FROM A ROSA REGARDING FAGEN'S DISCOVERY RESPONSES AND DEPOSITION OF PLAINTIFF AND STAFF FAGEN, INC.	
0.4326402		05/30/2014	JRG	A	227	250.00	0.50	125.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAILS EXCHANGED ON DISCOVERY FAGEN SEVERAL SETS OF DISCOVERY VERIFICATIONS RECEIVED AND FORWARDED TO ROSA FAGEN, INC.	
0.4326402		05/30/2014	BJH	A	227	125.00	0.50	62.50	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL FROM T KELLEY; EXTRACT VERIFICATIONS FROM DISCOVERY RESPONSES; SAVE SEPARATELY; EMAIL TO A ROSA FAGEN, INC.	
0.4326402		06/09/2014	BJH	A	227	125.00	0.30	37.50	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAILS TO/FROM A ROSA. UPLOAD DISCOVERY DOCUMENTS TO DROPBOX FOR A ROSA FAGEN, INC.	
0.4326402		07/16/2014	BJH	A	62	125.00	0.20	25.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION SEND XRG DISCOVERY REQUESTS TO STINSON LEONARD FAGEN, INC.	
0.4326402		07/28/2014	BJH	A	62	125.00	1.10	137.50	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW DEPOSITION NOTICES FOR FAGEN WITNESSES; REVIEW ROSA'S MOTION TO COMPEL; PRINT, SAVE IN E-FILE; SEND TO T. KELLY, K. MOHEBAN, SEND SCHEDULING ORDER TO T KELLY AT STINSON LEONARD; RESPOND TO DEADLINES INQUIRY; DRAFT WITNESS DISCLOSURE AND SEND TO KELLY TO REVIEW FAGEN, INC.	
0.4326402		07/29/2014	BJH	A	53	125.00	4.00	500.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION ASSIST AND COORDINATE FINALIZING ALL MOTION FOR SUMMARY JUDGMENT, AFFIDAVITS, EXHIBITS, PREPARE CERTIFICATE OF SERVICE; PREPARE COVER LETTER; ORGANIZE AND PREPARE TO FILE FAGEN, INC.	
0.4326402		07/30/2014	JRG	A	54	250.00	1.50	375.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FINAL REVISE AND EDIT FAGEN MEMORANDUM SUPPORTING MOTION FOR SUMMARY JUDGMENT AND COORDINATE LEONARD COUNSEL BY EMAILS AND PHONE FAGEN, INC.	
0.4326402		07/30/2014	JRG	A	53	250.00	0.50	125.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FINALIZE ORIGINAL AND "JUDGE'S COPY" FAGEN MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MATERIALS FILING, INCLUDE; TELEPHONE CONFERENCE WITH CLERK'S OFFICE TO COORDINATE DJ TO DRIVE TO TWIN FALLS AND PHYSICALLY FILE BY DEADLINE TODAY FAGEN, INC.	
0.4326402		08/01/2014	BJH	A	227	125.00	0.50	62.50	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION SCAN, COPY, AND EMAIL ORIGINAL AFFIDAVITS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; PREPARE, SERVE A ROSA FAGEN, INC.	
0.4326402		08/04/2014	JRG	A	58	250.00	0.50	125.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW FAGEN MOTIONS SUMMARY JUDGMENT AND SUPPORTING MATERIALS, AND FAGEN DISCLOSURE LAY AND EXPERT WITNESSES, JULY 30TH FILE-STAMPED FIRST PAGES, FORWARD TO LEONARD COUNSEL, CONFIRM NO DEFENDANTS DISCLOSURE WITNESSES RECEIVED BY JULY 30TH DUE DATE OR DEFENDANTS MOTION FOR SUMMARY JUDGMENT; COORDINATE MOTIONS PRO HAC VICE LEONARD COUNSEL AND AUGUST NOTICE DEPOSITION BY DEFENDANTS FAGEN, INC.	
0.4326402		08/04/2014	BJH	A	58	125.00	0.30	37.50	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW AND FORWARD ORIGINAL SIGNED FIVE AFFIDAVITS, FAGEN PERSONNEL SUPPORTING MOTION FOR SUMMARY JUDGMENT (COPIES PREVIOUSLY FILED); TELEPHONE CONFERENCE WITH CLERK TO CONFIRM COPIES VOLUMINOUS EXHIBITS ATTACHED, NEED NOT BE RE-FILED AS UNNECESSARY DUPLICATION	

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0.4326402		08/07/2014	JRG	A	62	250.00	0.20	50.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW IBCR FOR PVH ADMISSION, REQUEST MN BAR CERTIFICATE BY BOARD STANDING FOR LEONARD LAWYERS	
0.4326402		08/11/2014	JRG	A	227	250.00	0.30	75.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL ROSA REITERATING FAGEN DEPOSITIONS SCHEDULING TO BE DONE WITH LEONARD FIRM COUNSEL	
0.4326402		08/11/2014	JRG	A	227	250.00	0.10	25.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL ROSA TO USE CORRECT SERVICE BY MAIL ADDRESS TO BOISE OFFICE, NOT POCATELLO OFFICE	
0.4326402		08/11/2014	BJH	A	471	125.00	0.30	37.50	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION SAVE MOTION FOR SUMMARY JUDGMENT DOCUMENTS IN DIRECTORY; FORWARD PLEADINGS TO LEONARD COUNSEL	
0.4326402		08/13/2014	JRG	A	56	250.00	0.20	50.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FORWARD DEFENDANTS MOTION TO TAKE JUDICIAL NOTICE, AND NOTICE OF HEARING, TO LEONARD COUNSEL	
0.4326402		08/13/2014	BJH	A	62	125.00	1.50	187.50	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW EMAIL FROM A ROSA; EMAIL PLEADINGS	
0.4326402		08/14/2014	JRG	A	227	250.00	0.40	100.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL WITH DOCUMENTS AND INFO TO LEONARD COUNSEL TO PURPOSE FAGEN RESPONSE TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT	
0.4326402		08/14/2014	BJH	A	53	125.00	1.00	125.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FINALIZE PRO HAC VICE DOCUMENTS; REQUEST CHECKS; PREPARE LETTER TO ISB AND SUBMIT WITH CERTIFICATES OF GOOD STANDING; PREPARE LETTER TO DISTRICT COURT CLERK; PREPARE COPIES, SCAN, MAIL ALL DOCUMENTS; EMAIL TO K MOHEBAN AND T KELLEY; EMAIL TO A ROSA	
0.4326402		08/15/2014	JRG	A	206	250.00	0.10	25.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FORWARD SHAW CROSSCLAIM AGAINST ENERGY TO LEONARD COUNSEL PER REQUEST	
0.4326402		08/15/2014	JRG	A	58	250.00	0.10	25.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW JULY 25 2014 MINUTES ENTRY AND ORDER; FORWARD TO LEONARD COUNSEL	
0.4326402		08/15/2014	JRG	A	58	250.00	0.20	50.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW CERTIFIED TRANSCRIPT OF HEARING JULY 25; FORWARD TO LEONARD COUNSEL	
0.4326402		08/15/2014	BJH	A	206	125.00	0.50	62.50	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PRINT AND ORGANIZE XRG MOTIONS FOR SUMMARY JUDGMENT AND MOTION TO COMPEL DEPOSITION, INSTRUCTIONS TO CLERICAL TO MAKE UP FOLDERS FOR HARD COPIES	
0.4326402		08/18/2014	JRG	A	75	250.00	1.00	250.00	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH LEONARD COUNSEL ON OPPOSITIONS TO DEFENDANTS MOTION FOR RULE 56 (F) EXTENSION TO FILE OPPOSITION TO FAGEN MOTION FOR SUMMARY JUDGMENT RELATED EMAILS; SIGN AND SEND FOR FILING	
0.4326402		08/18/2014	BJH	A	54	125.00	0.50	62.50	ARCH
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EDIT, PROOF, AND FINALIZE OPPOSITION TO XRG'S RULE 56(F) MOTION TO CONTINUE, FAX FILE WITH COURT, SERVE ROSA; EMAIL TO LEONARD COUNSEL; PREPARE LETTER TO CLERK WITH JRG ORIGINAL 2ND AFFIDAVIT IN OPPOSITION	
								FAGEN, INC. MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	

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0.4326402		08/19/2014	JRG	A	62	250.00	0.40	100.00	ARCH
								REVIEW DEFENDANTS REPLY TO FAGEN OPPOSITION TO DEFENDANTS EX PARTE MOTION FOR RULE 56(F) CONTINUANCE ETC; FORWARD COPIES TO LEONARD COUNSEL FAGEN, INC.	
0.4326402		08/19/2014	BJH	A	54	125.00	0.70	87.50	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EDIT, PROOF, FINALIZE RESPONSE TO XRG'S MOTION FOR SUMMARY JUDGEMENT, FAX FILE WITH COURT, SERVE ROSA, EMAIL TO LEONARD COUNSEL FAGEN, INC.	
0.4326402		08/20/2014	BJH	A	62	125.00	1.20	150.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW FILES; REQUEST XRG ANSWERS TO COMPLAINT FROM TWIN FALLS COUNTY CLERK; CONFERENCE ALL WITH JRG; LEONARD COUNSEL REGARDING ROSA COMPLAINT FAGEN, INC.	
0.4326402		08/21/2014	BJH	A	227	125.00	0.10	12.50	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL XRG ANSWERS TO COMPLAINT TO LEONARD COUNSEL FAGEN, INC.	
0.4326402		08/22/2014	JRG	A	56	250.00	1.50	375.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE MOTION FOR JUDICIAL NOTICE, AND SECOND GODELL AFFIDAVIT, AND NOTICE OF HEARING FAGEN, INC.	
0.4326402		08/22/2014	BJH	A	58	125.00	0.70	87.50	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE DRAFTS OF MOTION FOR JUDICIAL NOTICE; SECOND AFFIDAVIT OF JRG WITH EXHIBITS FAGEN, INC.	
0.4326402		08/25/2014	JRG	A	58	250.00	0.20	50.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW DEFENDANTS WITHDRAW MOTION TO COMPEL DEPOSITION AS MOOT; EMAIL FORWARD LEONARD COUNSEL FAGEN, INC.	
0.4326402		08/25/2014	JRG	A	58	250.00	0.40	100.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW DEFENDANTS REPLY BRIEF SUPPORTING DEFENDANTS MOTION FOR SUMMARY JUDGMENT; EMAIL FORWARD TO LEONARD COUNSEL FAGEN, INC.	
0.4326402		08/26/2014	JRG	A	54	250.00	1.00	250.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FINAL REVISE AND EDIT, SIGN, AND FILE FAGEN REPLY MEMORANDUM SUPPORTING FAGEN'S MOTION FOR SUMMARY JUDGMENT FAGEN, INC.	
0.4326402		08/26/2014	BJH	A	53	125.00	0.50	62.50	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FINALIZE, SERVE, FILE FAGEN REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; EMAIL TO LEONARD COUNSEL FAGEN, INC.	
0.4326402		08/28/2014	BJH	A	38	125.00	0.30	37.50	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PRINT AND SAVE ROSA'S SUPPLEMENTAL DEC IN SUPPORT OF RULE 56(F) MOTION; REVISED PROPOSED ORDER; EMAIL TO LEONARD COUNSEL FAGEN, INC.	
0.4326402		09/01/2014	JRG	A	62	250.00	3.50	875.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW MOTIONS, AFFIDAVITS, BRIEFS AND PRE-ORAL ARGUMENTS ON SEVERAL PARTIES' PENDING MOTIONS TO PREPARE FOR HEARING FAGEN, INC.	
0.4326402		09/01/2014	JRG	A	54	250.00	0.50	125.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW NEW DICKERSON AFFIDAVIT; DEFENDANTS 2D RULE 56(F) MOTION AND AFFIDAVIT FAGEN, INC.	
0.4326402		09/02/2014	JRG	A	74	250.00	5.00	1,250.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TRAVEL TO TWIN FALLS FROM BOISE AND RETURN FOR HEARING FAGEN, INC.	
0.4326402		09/02/2014	JRG	A	360	250.00	2.00	500.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION COURT APPEARANCE FOR HEARING ON MOTIONS AND ORAL ARGUMENT FAGEN, INC.	
0.4326402		09/02/2014	JRG	A	75	250.00	0.60	150.00	ARCH
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TELEPHONE CONFERENCE WITH LEONARD COUNSEL REPORT HEARING AND RULINGS FAGEN, INC.	

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	0.4326402	09/03/2014	BJH	A	227	125.00	1.70	212.50	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAIL, SCAN AMENDED PRE-TRIAL CONFERENCE NOTICE TO LEONARD COUNSEL; DRAFT MOTION TO EXCLUDE XRG EXPERT & LAY WITNESSES FAGEN, INC.
	0.4326402	09/08/2014	JRG	A	58	250.00	2.00	500.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE DRAFT ORDER FOR MOTIONS HEARING 9/2/14 PER COURT REQUEST FAGEN, INC.
	0.4326402	09/09/2014	BJH	A	62	125.00	0.30	37.50	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW COURT'S ORDER; CHECK COURT DOCKET AND FILES FOR DEF. WITNESS DISCLOSURE; EMAIL TO JRG FAGEN, INC.
	0.4326402	09/11/2014	JRG	A	62	250.00	0.60	150.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW MULTIPLE EMAILS BETWEEN ROSA AND LEONARD COUNSEL ON SCHEDULING DEPOSITIONS CARKULIS AND DICKERSON FOR IDAHO CASES FAGEN, INC.
	0.4326402	09/22/2014	JRG	A	58	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE AND REVISE AND EDIT PRETRIAL STATEMENT FAGEN, INC.
	0.4326402	09/22/2014	JRG	A	58	250.00	0.50	125.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE AND REVISE AND EDIT FAGEN MOTION TO EXCLUDE DEFENDANT'S LAY AND EXPERT WITNESSES FAGEN, INC.
	0.4326402	09/22/2014	JRG	A	62	250.00	0.80	225.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW ORDER SEPT 2ND; REVIEW SCHEDULING ORDER FOR PRETRIAL STATEMENT REQUESTS; EMAIL LEONARD COUNSEL ON PRETRIAL CONFERENCE PLAN; REVISE AND EDIT FAGEN MOTIONS TO EXCLUDE WITNESSES FAGEN, INC.
	0.4326402	09/22/2014	BJH	A	55	125.00	4.00	500.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION CONDUCT RESEARCH; PREPARE FINALIZE, FAX FILE PRETRIAL MEMORANDUM AND MOTION TO EXCLUDE DEFENDANT WITNESSES; PHONE CALL TO COURT CLERK, SERVE ALL COUNSEL, PDF AND SAVE IN EFILE FAGEN, INC.
	0.4326402	09/25/2014	JRG	A	62	250.00	1.00	250.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW FAGEN MOTION EXCLUDE WITNESS AND PRETRIAL STATEMENT; PREPARE ERRATA FOR REFERENCE TO DICKINSON AFFIDAVIT CORRECTION TO SHIVLEY AFFIDAVIT; PREPARE NOTICE OF HEARING FOR MOTION EXCLUDE WITNESSES FOR SEPTEMBER 29 PRETRIAL CONFERENCE FAGEN, INC.
	0.4326402	09/25/2014	JRG	A	55	250.00	1.60	400.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RESEARCH AND REVIEW ISCT CUMMINGS OPINION AND PREPARE FAGEN MEMORANDUM SUPPORT MOTION EXCLUDE WITNESSES FAGEN, INC.
	0.4326402	09/25/2014	BJH	A	62	125.00	4.00	500.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW SUPPLEMENTAL COURT OPINION; PREPARE MEMO IN SUPPORT OF MOTION TO EXCEL DEFENDANT WITNESSES; ERRATA TO MOTION; MOTION TO SHORTEN TIME/HEARING NOTICE; PROPOSED ORDER; PHONE CALL TO COURT CLERK; FINALIZE ALL DOCUMENTS; FAX FILE WITH COURT; FAX AND EMAIL TO DEFENDANT COUNSEL AND LEONARD COUNSEL; PDF AND SAVE ALL DOCUMENTS IN EFILE FAGEN, INC.
	0.4326402	09/28/2014	JRG	A	58	250.00	0.10	25.00	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW ORDER SHORTENING TIME GRANTED FAGEN, INC.
	0.4326402	09/26/2014	BJH	A	62	125.00	1.10	137.50	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW, PRINT, SAVE SIGNED ORDER REGARDING MOTION TO SHORTEN TIME; EXCLUDE WITNESSES; UPDATE JRG CALENDAR; REVIEW DEFENDANT OBJECTION TO MOTION TO SHORTEN TIME; RESEARCH NOTICE REQUIREMENT/HARMLESS ERROR IN IRCP; PULL

Fees	Client	Trans Date	Atty	H P	Code/ Task Code	Rate	Hours to Bill	Amount	Ref #
								CASES FROM LEXIS, PRINT, SAVE IN E-FILE FAGEN, INC.	
0.4328402		09/27/2014	JRG	A	62	250.00	4.00	1,000.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW FILE, MOTIONS, PRETRIAL ORDER TO PLAN COURT APPEARANCE FOR PRETRIAL CONFERENCE SEPTEMBER 29 FAGEN, INC.	ARCH
0.4328402		09/29/2014	JRG	A	131	250.00	2.00	500.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION TRAVEL TO TWIN FALLS FOR PRETRIAL CONFERENCE FAGEN, INC.	ARCH
0.4328402		09/29/2014	JRG	A	62	250.00	2.00	500.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW DEFENDANTS LAST MINUTE FILED PRETRIAL STATEMENT AND PREPARE REBUTTAL ARGUMENT FAGEN, INC.	ARCH
0.4328402		09/29/2014	JRG	A	35	250.00	1.00	250.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION MEETING WITH HEITH MOHEBAN, COORDINATE AND PREPARE PRETRIAL CONFERENCE FAGEN, INC.	ARCH
0.4328402		09/29/2014	JRG	A	360	250.00	1.50	375.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION COURT APPEARANCE ATTEND PRETRIAL CONFERENCE, PRESENT FAGEN MOTION TO EXCLUDE WITNESSES, ADDRESS EXHIBITS AND WITNESSES FOR TRIAL LIMITED TO "CONTRACT MANAGEMENT FEE" DISPUTED ONLY FAGEN, INC.	ARCH
0.4328402		09/29/2014	BJH	A	62	125.00	0.70	87.50 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW DEF XRG PRE-TRIAL MEMO; REVIEW APPS FOR PAYMENT (EXHS TO ANDERSON AFFIDAVIT); REVIEW AND PRINT PORTION OF EPC CONTRACT REGARDING FORCE MAJEURE; CALCULATE TOTAL JUDGMENT; REVIEW EMAILS FROM LEONARD COUNSEL; SAVE PRE-TRIAL MEMO IN E-FILE FAGEN, INC.	ARCH
0.4328402		10/02/2014	JRG	P	227	250.00	0.80	200.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAILS EXCHANGED WITH MOHEBAN ON PROPOSED FINDING AND CONCLUSIONS DUE OCT 14TH; EXHIBITS IN SUPPORT OF "CONTRACT MANAGEMENT FEE" AND EXHIBIT LIST FORM DUE OCT 10TH; EMAIL EXPLANATION OF "CONTRACT MANAGEMENT FEE" BASES AND ITEMS INCLUDED HELPFUL AND AS DIRECTED BY EXERGY FAGEN, INC.	107
0.4328402		10/02/2014	BJH	P	56	125.00	0.40	50.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION DOWNLOAD EXHIBIT B FROM DROPBOX; REVIEW ORDER EXCL WITNESSES, EXHIBITS; EMAIL LEONARD COUNSEL REGARDING PRE-TRIAL DEADLINES; CALENDAR DEADLINES FAGEN, INC.	109
0.4328402		10/03/2014	BJH	P	75	125.00	0.30	37.50 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PHONE CALL; EMAILS TO AND FROM LEONARD COUNSEL REGARDING TRIAL EXHIBIT DEADLINE FAGEN, INC.	110
0.4328402		10/10/2014	JRG	P	54	250.00	0.30	75.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVISE AND EDIT FAGEN EXHIBIT LIST FOR TRIAL FAGEN, INC.	111
0.4328402		10/10/2014	BJH	P	75	125.00	1.00	125.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PHONE CONVERSATION WITH LEONARD COUNSEL REGARDING EXHIBITS; MARK EXHIBITS AND BATES NUMBER; PREPARED EXHIBIT LIST; .PDF; EMAIL LIST AND EXHIBITS TO A ROSA; EMAIL TO A ROSA REGARDING EXHIBIT F FAGEN, INC.	116
0.4328402		10/13/2014	BJH	P	227	125.00	0.20	25.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION EMAILS TO AND FROM ROSA REGARDING EXHIBIT F FAGEN, INC.	118
0.4328402		10/15/2014	JRG	P	62	250.00	1.20	300.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW PLAINTIFF FAGEN PRETRIAL, EXHIBITS; EXERGY EXHIBITS FAGEN, INC.	112
0.4328402		10/16/2014	JRG	P	55	250.00	0.40	100.00 MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RESEARCH IAR RULES 13 AND 16 ON STIPULATION AND STAY ORDER AGAINST ISSUANCE OF WRIT OF EXECUTION PENDING APPEAL, AND EMAIL INFORMATION TO LEONARD COUNSEL FAGEN, INC.	113
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>	
	0.4326402	10/16/2014	JRG	P	227	250.00	0.80	200.00	EMAIL RESPONSE TO LEONARD COUNSEL ON PROPOSED STIPULATION OF DAMAGES ITEM FOR "MANAGEMENT FEE" AND ENTRY OF STIPULATED JUDGMENT IN FIVE CONSOLIDATED CASES IN TWIN FALLS COUNTY; TIME FOR APPEALS ESTIMATE ONE YEAR IN ALL CASES FAGEN, INC.	114
	0.4326402	10/16/2014	BJH	P	206	125.00	1.30	162.50	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PRINT DEFENDANTS EXERGY TRIAL EXHIBITS; PRINT AND MARK ORIGINAL COPY OF FAGEN TRIAL EXHIBITS; PREPARE BENCH COPY OF EXHIBITS; PREPARE TRANSMITTAL LETTER TO COURT; EMAIL COVER LETTER TO COUNSEL FAGEN, INC.	117
	0.4326402	10/20/2014	JRG	P	62	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION REVIEW SEVERAL COUNSEL EMAILS FROM LEONARD COUNSEL AND ROSA ON SETTLEMENT AGREEMENT; SEND PREPARED AND PROPOSED STIPULATION AND JUDGMENT FAGEN, INC.	118
	0.4326402	10/20/2014	JRG	P	75	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PHONE CALL WITH COURT CLERK; ADVISE SETTLEMENT AND VACATE TRIAL SETTING AND ARRANGE COUNSEL AND COURT PHONE CONFERENCE TO CONFIRM FAGEN, INC.	119
	0.4326402	10/20/2014	JRG	P	58	250.00	3.20	800.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION PREPARE DRAFT STIPULATION FOR ENTRY OF JUDGMENT AND TO VACATE TRIAL AND JUDGMENT FORM FAGEN, INC.	120
	0.4326402	10/23/2014	JRG	P	58	250.00	0.60	150.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW JUDGMENT FILED 10.23.14, CONTACT CLERK REQUEST CERTIFIED COPY FOR RECORDING AND FILE-STAMPED STIPULATION; EMAILS WITH ST COUNSEL TO COORDINATE POST-JUDGMENT FILING FOR SUPPLEMENTAL AWARDS OF PREJUDGMENT INTEREST, COSTS AND ATTORNEY FEES FAGEN, INC.	121
	0.4326402	10/30/2014	JRG	P	58	250.00	0.40	100.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW RECORDED JUDGMENT IN LINCOLN COUNTY FOR NOTCH BUTE WP; RECORDED JUDGMENT IN TWIN FALLS COUNTY; FORWARD COPIES TO LEONARD COUNSEL FAGEN, INC.	122
	0.4326402	10/30/2014	JRG	P	58	250.00	0.40	100.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION RECEIVE AND REVIEW EXERGY, ET AL.; NOTICE OF APPEAL FILED 10-30-14; FORWARD COPY TO LEONARD COUNSEL FAGEN, INC.	123
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	
Total for Fees						<u>Billable</u> 164.70		<u>35,197.50</u>		
						<u>Non-billable</u> 0.90		<u>215.00</u>		
						<u>Total</u> 165.60		<u>35,412.50</u>		
Expenses										
	0.4326402	02/08/2013	JRG	A	125			98.00	FILING FEE FAGEN, INC.	ARCH
	0.4326402	07/02/2013	JRG	A	130			60.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION SERVICE OF PROCESS FEE FAGEN, INC.	ARCH
	0.4326402	09/16/2013	JRG	A	135			18.51	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION POSTAGE - UPS FAGEN, INC.	ARCH
	0.4326402	08/04/2014	JRG	A	135			9.60	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION POSTAGE FAGEN, INC.	ARCH
	0.4326402	08/14/2014	JRG	A	125			325.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FILING FEE - PRO HAC VICE FAGEN, INC.	ARCH
	0.4326402	08/14/2014	JRG	A	125			325.00	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION FILING FEE - PRO HAC VICE FAGEN, INC.	ARCH
	0.4326402	08/21/2014	JRG	A	75			13.50	MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION COPIES - TWIN FALLS COUNTY FAGEN, INC.	ARCH
									MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION	

Detail Transaction File List
 RACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERED

<u>Client</u>	<u>Trans Date</u>	<u>Atty</u>	<u>H P</u>	<u>Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
Expenses								
0.4326402	09/03/2014	JRG	A	131			148.90	TRAVEL TO TWIN FALLS FAGEN, INC.
								ARCH
0.4326402	10/07/2014	JRG	P	131			144.64	TRAVEL FAGEN, INC.
								8
0.4326402	10/07/2014	JRG	P	132			29.04	MEALS FAGEN, INC.
								9
								MECHANIC'S LIEN CLAIM AND FORECLOSURE ACTION
Total for Expenses					Billable	0.00	1,168.19	

GRAND TOTALS

Billable	164.70	36,365.69
Non-billable	0.90	215.00
Total	165.60	36,580.69

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 NOV 19 PM 4:21

BY _____
CLERK
_____ *hb* DEPUTY

Angelo L. Rosa (ISB No. 7546)
MARSHROSALLP
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants/Appellants
ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK
WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC,
and EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
Plaintiff/Respondent,)
)
vs.)
)
ROGERSON FLATS WIND PARK,)
LLC, an Idaho limited liability company;)
EXERGY DEVELOPMENT GROUP OF)
IDAHO, LLC, an Idaho limited liability)
company; XRG DEVELOPMENT)
PARTNERS, LLC, an Idaho limited)
liability company; and "JOHN DOES 1-)
10",)
)
Defendants/Appellants.)
_____)

Consolidated Cases:
Case No. CV 2013-573
Case No. CV 2013-574
Case No. CV 2013-575
Case No. CV 2013-576

**OBJECTION TO FAGEN, INC.'S
MOTION FOR FEES AND COSTS**

COMESNOW Defendants ROGERSON FLATS WIND PARK, LLC, an Idaho limited liability company; EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, an Idaho limited liability company; and XRG DEVELOPMENT PARTNERS, LLC, an Idaho limited liability company (collectively, "Objecting Defendants") by and through their counsel of record, Angelo L. Rosa, Esq. and hereby object to Fagen, Inc.'s ("Fagen") Memorandum of Fees and Costs pursuant to Idaho Rule of Civil Procedure ("I.R.C.P.") 54(b)(6).

Good cause exists to curtail and/or deny Fagen's fee request for the following reasons:

1. The request for attorney's fees contains a request for an unreasonable and disproportionate billing in relation to the amount of work undertaken in this matter, the issues at hand, and the time burdens involved. This Court is obligated to consider the factors set forth in I.R.C.P. 54(e)(3) and must consider all of those factors. *Nalenv. Jenkins*, 113 Idaho 79 (Ct. App. 1987). This Court is aware from the record and can reasonably determine the value of the work done given the constant intersection of that work with the Court's own processes.
2. This Court is permitted to examine the reasonableness of the time and labor expended by the attorney under I.R.C.P. 54(e)(3)(A) and need not blindly accept the figures advanced by Fagen's counsel. *Craft Wall of Idaho v. Stonebraker*, 108 Idaho 704, 705-706 (Ct. App. 1985). Such scrutiny is overwhelmingly needed here.
3. For the sake of clarification, Defendant XRG Development Partners, LLC has been dismissed as a party to this lawsuit. That entity was neither a party to the agreement that forms the basis of Fagen's claim nor has there been any adjudication of liability with respect to that entity. Any allocation of fees or costs to the contrary would be improper as there is no way Fagen can be characterized as a "prevailing party" for the purposes of awarding fees and/or costs.

DATED: 19 November 2014

Respectfully Submitted,

MARSH ROSA, LLP



Angelo L. Rosa
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 19 November 2014 I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
101 South Capitol Blvd., Suite 300
Boise, Idaho 83702

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Keith Moheban
TimothyKelley
STINSON LEONARD STREET, LLP
150 South Fifth Street, Suite 2300
Minneapolis,Minnesota55402

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail



Signed _____
Angelo L. Rosa

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2015 JAN 14 AM 9:02

BY _____ CLERK

AR DEPUTY

Angelo L. Rosa (ISB No. 7546)
MARSH ROSA LLP
P.O. Box 1605
Boise, Idaho 83701
Telephone: (801) 440-4400
Fax: (801) 415-1773

Attorney for Defendants/Appellants
ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK
WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC,
and EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,	)	Consolidated Cases:
	)	Case No. <u>CV 2013-573</u>
Plaintiff/Respondent,	)	Case No. CV 2013-574
	)	Case No. CV 2013-575
vs.	)	Case No. CV 2013-576
)	
ROGERSON FLATS WIND PARK,)	
LLC, an Idaho limited liability company;)	
EXERGY DEVELOPMENT GROUP OF)	
IDAHO, LLC, an Idaho limited liability)	
company; XRG DEVELOPMENT)	
PARTNERS, LLC, an Idaho limited)	
liability company; and "JOHN DOES 1-)	
10",)	
)	
Defendants/Appellants.)	
_____)	

AMENDED NOTICE OF APPEAL

TO: FAGEN, INC. and its counsel of record, and to the CLERK OF THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND OR THE COUNTY OF TWIN FALLS:

NOTICE IS HEREBY GIVEN THAT:

1. The title of the action is as stated above.
2. The above named Defendants/Appellants, ROGERSON FLATS WIND PARK, LLC, COTTONWOOD WIND PARK, SALMON CREEK WIND PARK, LLC, DEEP CREEK WIND PARK, LLC, NOTCH BUTTE WIND PARK, LLC, and EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C. (collectively, "Defendants/Appellants"), by and through their counsel, Angelo L. Rosa of the MARSH ROSA LLP law firm, hereby appeal to the Idaho Supreme Court from the ruling dated 2 September 2014 entered by the Honorable Randy J. Stoker, granting Plaintiff/Respondent's Motion for Summary Judgment, the Court's ruling dated 29 September 2014 denying Defendants/Appellants leave to amend their Answer to the First Amended Complaint to conform to the evidence, the Judgment entered in Plaintiff/Respondent's favor dated 23 October 2014, any award of attorney's fees and costs pursuant to Respondent's Memorandum of Fees and Costs and all other interlocutory or other orders deemed included in the final judgment set forth in Idaho Appellate Rule ("I.A.R.") 17(e)(1).
3. Defendants/Appellants have a right to appeal to the Idaho Supreme Court, and the order described above is an appealable order under I.A.R. 11(a), including without limitation I.A.R. 11(a)(1) and 11(a)(7).
4. The issues on appeal which Defendants/Appellants intend to assert in the appeal are (a) whether the District Court erred in denying Defendants/Petitioners' Motion for a Continuance under I.R.C.P. 56(f); (b) whether the District Court erred in granting summary judgment in favor of

AMENDED NOTICE OF APPEAL – Page 2

Plaintiff/Respondent; and (c) whether any additional rulings adverse to Defendants/Petitioners were made in error.

5. No order has been entered sealing the record.
6. Appellants request the preparation of the entire reporter's transcript under I.A.R. 25, to include transcripts of the following proceedings:
 - a. 09/09/2013 status conference;
 - b. 12/02/2013 hearing on Motion to Amend Complaint and Motion to Dismiss;
 - c. 06/01/2014 telephonic status conference;
 - d. 01/31/2014 hearing on Motion to Withdraw as Counsel and Motion to Compel;
 - e. 03/03/2014 hearing on hearing on Motion to Withdraw as Counsel;
 - f. 04/14/2014 scheduling conference;
 - g. 09/02/2014 hearing on Motions for Summary Judgment; and
 - h. 09/29/2014 pre-trial conference.
7. Appellants request the preparation of the entire clerk's record as set forth in I.A.R. 28.
8. Appellants further request the following documents to be included in the clerk's record in addition to those automatically included pursuant to I.A.R. 28:
 - a. 09/06/2013 Plaintiff's Motion for Leave to Amend Complaint;
 - b. 09/06/2013 Plaintiff Fagen's Motion for Rule 56(f) Continuance;
 - c. 09/06/2013 Plaintiff Fagen's Memorandum in Support of Motion for Rule 56(f) Continuance;
 - d. 09/06/2013 Affidavit of John R. Goodell in Support of Motion for Rule 56(f) Continuance;

- e. 09/06/2013 Omnibus Motion To Dismiss Complaint;
- f. 09/06/2013 Memorandum in Support of Omnibus Motion to Dismiss Complaint;
- g. 09/06/2013 Certificate Of Service (Omnibus Motion to Dismiss);
- h. 09/23/2013 Notice Of Hearing;
- i. 09/26/2013 Notice Of Hearing;
- j. 10/01/2013 Plaintiff Fagen Inc.'s Memorandum Opposing Defendants' Omnibus Motion to Dismiss Complaint;
- k. 10/02/2013 J.R. Simplot Self-Declaration of Revocable Trust's Notice of Non-Opposition to Plaintiff's Motion for Leave to Amend Complaint;
- l. 10/15/2013 Notice Of Hearing on J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss and Notice of Intent to Appear by Telephone;
- m. 10/15/2013 Notice Of Service;
- n. 10/18/2013 Amended Notice of Hearing;
- o. 10/18/2013 Amended Notice Of Hearing;
- p. 10/18/2013 Second Affidavit of John R. Goodell in Support of Motion for Rule 56(f) continuance;
- q. 10/18/2013 Notice of Non-Opposition to Motion to Amend Complaint;
- r. 11/15/2013 Notice Of Hearing on J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss;
- s. 11/15/2013 J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss;
- t. 11/15/2013 Memorandum in Support of J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss;

- u. 11/26/2013 Stipulation for Dismissal with Prejudice of Defendant Jack Ranch Wind Land Holdings LLC;
- v. 11/26/2013 Order for Dismissal with Prejudice of Defendant Jack Ranch Wind Land Holdings LLC;
- w. 11/27/2013 J.R. Simplot Self-Declaration of Revocable Trust's Notice of Withdrawal of Motion to Dismiss and Notice of Non-Opposition;
- x. 11/29/2013 Stipulation for Dismissal with Prejudice (Fagen Claims Against Defendant J.R. Simplot Self-Declaration of Revocable Trust Only);
- y. 12/02/2013 Order for Dismissal with Prejudice (J.R. Simplot Self-Revocable Trust Only);
- z. 12/02/2013 Order for Leave to File First Amended Complaint;
- aa. 12/04/2013 Order Re Consolidation, Motion to Amend, Motion to Continue and Motion to Dismiss;
- bb. 12/04/2013 Order for Scheduling Conference;
- cc. 12/04/2013 Civil Pre-Trial Order;
- dd. 12/09/2013 Defendants' Answer To First Amended Complaint;
- ee. 01/09/2014 Plaintiff Fagen Inc.'s Motion for Order to Compel Discovery;
- ff. 03/03/2014 Order for Scheduling Conference;
- gg. 03/05/2014 First Amended Complaint - Rogerson Flats;
- hh. 03/05/2014 First Amended Complaint - Cottonwood;
- ii. 03/05/2014 First Amended Complaint - Deep Creek;
- jj. 03/05/2014 First Amended Complaint - Salmon Creek;
- kk. 03/05/2014 First Amended Complaint - Notch Butte, Lincoln;
- ll. 04/22/2014 Stipulation for Scheduling and Planning;

- mm. 04/22/2014 Order Approving Stipulated Scheduling Order, Pretrial and Court Trial Notice;
- nn. 04/24/2014 Amended Order Approving Stipulated Scheduling Order, Pretrial and Court Trial Notice;
- oo. 04/28/2014 Notice of Service of Plaintiff's Discovery Responses;
- pp. 07/30/2014 Plaintiff Fagen Inc.'s Disclosure of Fact and Expert Witnesses;
- qq. 07/30/2014 Plaintiff Fagen Inc.'s Certification of Service;
- rr. 07/30/2014 Plaintiff Fagen Inc.'s Memorandum of Law in Support of Motions for Summary Judgment;
- ss. 07/30/2014 Plaintiff Fagen Inc.'s Motion for Summary Judgment;
- tt. 07/30/2014 Affidavit of Samuel Ewald in Support of Fagen Inc.'s Motion for Summary Judgment;
- uu. 07/30/2014 Affidavit of Jennifer A. Johnson in Support of Fagen Inc.'s Motion for Summary Judgment;
- vv. 07/30/2014 Affidavit of Bradley Bormann in Support of Fagen Inc.'s Motion for Summary Judgment;
- ww. 07/30/2014 Affidavit of Kirsten Tjosaas in Support of Fagen Inc.'s Motion for Summary Judgment;
- xx. 07/30/2014 Affidavit of Lori Anderson in Support of Fagen Inc.'s Motion for Summary Judgment;
- yy. 08/04/2014 Plaintiff's Fagen Inc.'s Certificate of Service;
- zz. 08/05/2014 Declaration of Angelo L. Rosa in support of Motion to Compel Depositions;

- aaa. 08/18/2014 Defendant's Ex Parte Motion for Rule 56(F) Continuance and Motion for Order Shortening Time for Ruling Thereupon;
- bbb. 08/18/2014 Declaration of Angelo L. Rosa in Support of Defendants' Ex Parte Motion for Rule 56(F) Continuance and Motion for Order Shortening Time for Ruling Thereupon;
- ccc. 08/18/2014 Plaintiff Fagen Inc.'s Memorandum of Law in Opposition to Defendants Ex Parte Motion for Rule 56(F) Continuance and Motion for Order Shortening Time for Ruling Thereupon;
- ddd. 08/19/2014 Affidavit of John R. Goodell;
- eee. 08/19/2014 Plaintiff Fagen Inc.'s Memorandum of Law in Response to Defendants' Motion for Summary Judgment;
- fff. 08/19/2014 Reply to Plaintiff's Opposition to Defendants' Ex Parte Motion for Rule 56(f) Continuance and Motion for Order Shortening Time for Ruling Thereupon;
- ggg. 08/19/2014 Memorandum in Opposition to Plaintiff's Motion for Summary Judgment;
- hhh. 08/19/2014 Declaration of James T. Carkulis in Opposition to Plaintiff's Motion for Summary Judgment;
- iii. 08/19/2014 Exhibits to Declaration of James; T. Carkulis in Opposition to Plaintiff's Motion for Summary Judgment;
- jjj. 08/25/2014 Notice Of Withdrawal of Motion to Compel Deposition;
- kkk. 08/25/2014 Memorandum in Reply to Opposition to Defendants' Motion for Summary Judgment;

lll. 08/25/2014 Declaration of Angelo L. Rosa in Reply to Fagen Inc.'s Opposition to Defendants' Motion for Summary Judgment;

mmm. 08/25/2014 Plaintiff Fagen Inc.'s Motion for Judicial Notice Pursuant to IRCP 44(d);

nnn. 08/25/2014 Second Affidavit of John R. Goodell;

ooo. 08/25/2014 Notice Of Hearing;

ppp. 08/26/2014 Plaintiff Fagen Inc.'s Reply Memorandum of Law in Support of Motion for Summary Judgment;

qqq. 08/28/2014 Supplemental Declaration of Angelo L. Rosa in Support of Defendants' Ex Parte Motion for Rule 56(f) Continuance and Motion for Order Shortening time for Ruling Thereupon;

rrr. 09/02/2014 Declaration of Chuck Dickerson in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Moving Defendants' Rule 56(f) Motion;

sss. 09/02/2014 Amended Notice Of Hearing;

ttt. 09/09/2014 Order Granting and Denying Motions on Hearing Held 9-2-14

uuu. 09/23/2014 Plaintiff Fagen Inc.'s Motion to Exclude Defendants' Expert and Lay Witnesses;

vvv. 09/23/2014 Pre-Trial Memorandum;

www. 09/25/2014 Plaintiff Fagen Inc.'s Motion to Shorten time and Request for Hearing on Fagen's Motion to Exclude Defendants Expert and Lay Witnesses;

xxx. 09/25/2014 Plaintiff Fagen Inc.'s Memorandum in Support of Motion to Exclude Defendants Expert and Lay Witnesses;

- yyy. 09/25/2014 Plaintiff Fagen Inc.'s Errate Motion to Exclude Defendants Expert and Lay Witnesses;
- zzz. 09/25/2014 Order Granting Plaintiff Fagen Inc.'s Motion to Shorten Time, Order Setting Hearing;
- aaaa. 09/26/2014 Objection to Motion for Order Shortening Time;
- bbbb. 09/29/2014 Defendants' Pre-Trial Statement;
- cccc. 09/30/2014 Order on Plaintiff's Motions to Shorten Time and To Exclude Defendants' Expert and Lay Witnesses and Pre-Trial Order;
- dddd. 10/22/2014 Stipulation for Entry of Judgment and to Vacate Trial Setting;
- eeee. 10/23/2014 Judgment
- ffff. 10/30/2014 Notice Of Appeal
- gggg. 11/06/2014 Plaintiff Fagen, Inc.'s Motion for Award of Prejudgment Interest, Costs and Attorney's Fees
- hhhh. 11/06/2014 Plaintiff Fagen, Inc.'s Memorandum Of Costs and Fees
- iiii. 11/06/2014 Affidavit of Timothy M. Kelley
- jjjj. 11/06/2014 Affidavit of John R. Goodell supporting Award of Prejudgment Interest, Costs and Attorney Fees
- kkkk. 11/19/2014 Objection to Fagen, Inc.'s Motion for Fees and Costs

9. A copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

- a. Tracy Barksdale, RPR, c/o Fifth Judicial District Court, 425 Shoshone Street N., Twin Falls, Idaho 83301.

10. The Clerk of the Court has been paid the estimated fee for preparation of the reporter's transcript and the clerk's record.

- 11. The applicable appellate filing fee has been paid.
- 12. Service has been made on all parties required to be served pursuant to I.A.R. 20.

DATED: 14 January 2015

Respectfully Submitted,

MARSH ROSA, LLP

Angelo L. Rosa
Attorneys for Defendants/Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 14 January 2015 I caused a true and correct copy of the document herein by the method indicated below, and addressed to the following:

John R. Goodell
RACINE, OLSEN, NYE, BUDGE &
BAILY, CHTD.
101 South Capitol Blvd., Suite 300
Boise, Idaho 83702

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Keith Moheban
Timothy Kelley
STINSON LEONARD STREET, LLP
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Tracy Barksdale, RPR
c/o Fifth Judicial District Court
425 Shoshone Street N.
Twin Falls, Idaho 83303

- U.S. First Class Mail, Postage Prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Signed _____
Angelo L. Rosa

1 IN THE SUPREME COURT OF THE STATE

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

2 FEB - 6 2015 AM 8:30

3 FAGEN, INC., a Minnesota)
4 corporation,)

By _____)
Supreme Ct. 42684) *AK* Clerk
Deputy Clerk

5 Plaintiff/Respondent,)

NOTICE OF LODGING

6 vs.)

7 ROGERSON FLATS WIND PARK,)
8 LLC, an Idaho limited)
9 liability company; et al.,)

10 Defendants/Appellants,)

11 and)

12 J.R. SIMPLOT SELF-)
13 DECLARATION OF REVOCABLE)
14 TRUST, et al.,)

15 Defendants.)

16 To: THE CLERK OF THE IDAHO SUPREME COURT

17 NOTICE IS HEREBY GIVEN that on February 5,
18 2015, I lodged a transcript of 214 pages in length for
19 the above-referenced appeal with the District Court
20 Clerk of Twin Falls County in the Fifth Judicial
21 District. The transcript includes:

22 Status Conference, Monday, September 9, 2013;
23 Motion to Amend Complaint, Motion to Dismiss, Monday,
24 December 2, 2013; Status Conference, Monday, January 6,
25 2014; Motion to Withdraw, Motion to Compel, Friday,
2014; Motion to Withdraw, Monday, March 3,
2014; Scheduling Conference, Tuesday, April 14, 2014;

1 Motion for Summary Judgment, Tuesday, September 2,
2 2014; Pretrial Conference, Monday, September 29, 2014.

3 A PDF copy of the transcript will be emailed
4 to sctfilings@idcourts.net.

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TRACY E. BARKSDALE, RPR, CSR 999

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Date	Code	User	Judge
2/8/2013	NCOC	SCHULZ	New Case Filed-Other Claims Randy J. Stoker
	APER	SCHULZ	Plaintiff: Fagen, Inc., A Minnesota Corporation Appearance John R Goodell Randy J. Stoker
		SCHULZ	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Racine, Olson, Nye, Budge, Bailey Receipt number: 1303243 Dated: 2/8/2013 Amount: \$96.00 (Check) For: Fagen, Inc., A Minnesota Corporation (plaintiff) Randy J. Stoker
	COMP	SCHULZ	Complaint Filed Randy J. Stoker
	SMIS	SCHULZ	Summons Issued Randy J. Stoker
6/24/2013		SCHULZ	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Meuleman Mollerup Receipt number: 1316155 Dated: 6/24/2013 Amount: \$66.00 (Check) For: J.R. Simplot Self-Declaration Of Revocable Trust (defendant) Randy J. Stoker
	NOAP	SCHULZ	Notice Of Appearance Randy J. Stoker
6/25/2013	APER	SCHULZ	Defendant: J.R. Simplot Self-Declaration Of Revocable Trust Appearance Richard L Stacey Randy J. Stoker
6/27/2013	ACSV	PIERCE	Acceptance Of Service Randy J. Stoker
8/2/2013	HRSC	MCMULLEN	Hearing Scheduled (Status 09/09/2017 10:00 AM) Randy J. Stoker
		MCMULLEN	Notice Of Hearing Randy J. Stoker
8/5/2013	ACSV	PIERCE	Acceptance Of Service Randy J. Stoker
	NOFG	PIERCE	Plaintiff's Notice of Filing of Acceptance of Service Randy J. Stoker
8/7/2013		MCMULLEN	Notice Of Hearing Randy J. Stoker
8/13/2013	NINT	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Notice of Intent to Appear by Telephone Randy J. Stoker
9/3/2013		SCHULZ	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Angelo L. Rosa Receipt number: 1322338 Dated: 9/3/2013 Amount: \$66.00 (Credit card) For: Cottonwood Wind Park, Llc An Idaho Limited Liabili (defendant), Exergy Development Group Of Idaho, LLC (defendant) and XRG Development Partners, LLC (defendant) Randy J. Stoker
		SCHULZ	Filing: Technology Cost - CC Paid by: Angelo L. Rosa Receipt number: 1322338 Dated: 9/3/2013 Amount: \$3.00 (Credit card) For: Cottonwood Wind Park, Llc An Idaho Limited Liabili (defendant), Exergy Development Group Of Idaho, LLC (defendant) and XRG Development Partners, LLC (defendant) Randy J. Stoker
	NOAP	SCHULZ	Notice Of Appearance Randy J. Stoker

Date	Code	User	Judge
9/4/2013	APER	SCHULZ	Defendant: Cottonwood Wind Park, Llc An Idaho Limited Liabili Appearance Angelo L Rosa Randy J. Stoker
	APER	SCHULZ	Defendant: Exergy Development Group Of Idaho, LLC Appearance Angelo L Rosa Randy J. Stoker
	APER	SCHULZ	Defendant: XRG Development Partners, LLC Appearance Angelo L Rosa Randy J. Stoker
9/6/2013	MOAM	PIERCE	Plaintiff's Motion for Leave to Amend Complaint Randy J. Stoker
	MOCT	PIERCE	Plaintiff Fagen's Motion for Rule 56(f) Continuance Randy J. Stoker
	MEMO	PIERCE	Plaintiff Fagen's Memorandum in Support of Motion for Rule 56(f) Continuance Randy J. Stoker
	AFFD	PIERCE	Affidavit of John R. Goodell in Support of Motion for Rule 56(f) Continuance Randy J. Stoker
	MDIS	PIERCE	Omnibus Motion To Dismiss Complaint Randy J. Stoker
	MEMO	PIERCE	Memorandum in Support of Omnibus Motion to Dismiss Complaint Randy J. Stoker
	CESV	PIERCE	Certificate Of Service (Omnibus Motion to Dismiss) Randy J. Stoker
9/9/2013	DCHH	MCMULLEN	Hearing result for Status scheduled on 09/09/2013 11:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Mr. Stacey will initiate the call to 735-4384 Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes Randy J. Stoker
9/23/2013	NOHG	PIERCE	Notice Of Hearing Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Motion to Amend 10/21/2013 10:00 AM) Randy J. Stoker
9/26/2013	NOHG	PIERCE	Notice Of Hearing Randy J. Stoker
10/1/2013	MEMO	PIERCE	Plaintiff Fagen Inc.'s Memorandum Opposing Defendants' Omnibus Motion to Dismiss Complaint Randy J. Stoker
10/2/2013	NOTC	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Notice of Non-Opposition to Plaintiff's Motion for Leave to Amend Complaint Randy J. Stoker
10/7/2013	NOCA	PIERCE	Notice Of Change Of Address Randy J. Stoker
10/15/2013	NOHG	PIERCE	Notice Of Hearing on J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss and Notice of Intent to Appear by Telephone Randy J. Stoker
	NINT	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Notice of Intent to Appear by Telephone Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Motion to Dismiss 12/02/2013 10:00 AM) Simplot's Motion to Dismiss Randy J. Stoker

Date	Code	User	Judge
10/15/2013	NOWD	PIERCE	Notice Of Withdrawal of Intent to Appear by Telephone [Re: October 21 & December 2, 2013, Hearings]
	NOSV	PIERCE	Notice Of Service
10/18/2013	HRVC	MCMULLEN	Hearing result for Motion to Amend scheduled on 10/21/2013 10:00 AM: Hearing Vacated
	NOHG	PIERCE	Amended Notice Of Hearing
	AFFD	PIERCE	Second Affidavit of John R. Goodell in Support of Motion for Rule 56(f) continuance
	NOTC	PIERCE	Notice of Non-Opposition to Motion to Amend Complaint
10/30/2013	NOHG	BANYAI	Second Amended Notice Of Hearing
11/15/2013	NOHG	PIERCE	Notice Of Hearing on J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss
	MDIS	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Motion To Dismiss
	MEMO	PIERCE	Memorandum in Support of J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss
11/27/2013	NOWD	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Notice of Withdrawal of Motion to Dismiss and Notice of Non-Opposition
11/29/2013	STIP	MCMULLEN	Stipulation for Dismissal With Prejudice (Fagen Claims Against Defendant J.R. Simplot Self-Declaration Revocable Trust Only)
12/2/2013	ORDR	MCMULLEN	Order for Dismissal With Prejudice (J.R. Simplot Self-Declaration Revocable Trust Only)
	CDIS	MCMULLEN	Civil Disposition/Judgment entered: entered for: J.R. Simplot Self-Declaration Of Revocable Trust, Defendant; Fagen, Inc., A Minnesota Corporation, Plaintiff. Filing date: 12/2/2013
	ORDR	MCMULLEN	Order for Leave to File First Amended Complaint
	DCHH	MCMULLEN	Hearing result for Motion to Dismiss scheduled on 12/02/2013 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Simplot's Motion to Dismiss, Motion to Amend
	ADVS	MCMULLEN	Case Taken Under Advisement
	CMIN	MCMULLEN	Court Minutes
12/4/2013	ORDR	MCMULLEN	Order Re Consolidation, Motion to Amend, Motion to Continue, and Motion to Dismiss

Date	Code	User	Judge
12/4/2013	CDIS	MCMULLEN	Civil Disposition/Judgment entered: entered for: Cottonwood Wind Park, Llc An Idaho Limited Liabili, Defendant; Exergy Development Group Of Idaho, LLC, Defendant; J.R. Simplot Self-Declaration Of Revocable Trust, Defendant; John Does 1-10,, Defendant; XRG Development Partners, LLC, Defendant; Fagen, Inc., A Minnesota Corporation, Plaintiff. Filing date: 12/4/2013
12/5/2014	SCDF	COOPE	Supreme Court -- Filed Notice of Appeal. Clerk's Record & Reporter's Transcript Due 02-04-15
12/15/2014	SCDF	COOPE	Supreme Court -- Entered Order RE: Reporter's Transcript Fee Payment Due in 7 Days
	SCDF	COOPE	Supreme Court Document Filed- Order Re: Reporter's Transcript
12/31/2014	SCDF	COOPE	Supreme Court Set Due Date - Transcript and Clerk's Record Due 03-11-15
1/6/2015	SCDF	COOPE	Supreme Court -- Entered Notice of Defect Order. Amended Notice of Appeal Reflecting Date, Title of Documents and Service to Reporter to be Filed Within 14 Days or this Appeal will Proceed on the Clerk's Record Only Pursuant to I.A.R. 28
	SCDF	COOPE	Supreme Court Document Filed- Order of Defect
1/14/2015	NTOA	COOPE	Amended Notice Of Appeal
1/27/2015	SCDF	COOPE	Supreme Court -- 01-21-15: Filed Amended Notice of Appeal Due Date for Transcript and Clerk's Record Reset for 03-26-15
2/18/2015	NOTC	COOPE	Notice of Balance Due on Clerk's Record
3/10/2015	SCDF	COOPE	Supreme Court -- Filed Notice of Balance Due for Preparation of Clerk's Record (\$869.05) - Please See Attachment. Appellant Must Submit Payment to the District Court Clerk Within Seven (7) Days or by Friday 03-13-15
3/30/2015	SCDF	COOPE	Supreme Court Filed Amended Motion to Consolidate Appeals (42592 & 42684) and Declaration of Angelo L. Rosa in Support
	SCDF	COOPE	Supreme Court Received Receipt of Payment from District Court Clerk for Preparation of Clerk's Record (\$869-05) Therefore Due Date Reset For Transcripts and Clerk's Record to 5-15-2015

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 FEB -8 PM 3:46

BY _____ CLERK
PS _____ DEPUTY

John R. Goodell (ISB#: 2872)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)

Plaintiff,)

vs.)

COTTONWOOD WIND PARK, LLC, an)

Idaho limited liability company; EXERGY)

DEVELOPMENT GROUP OF IDAHO,)

LLC, an Idaho limited liability company;)

XRG DEVELOPMENT PARTNERS, LLC,)

an Idaho limited liability company;)

J. R. SIMPLOT SELF-DECLARATION OF)

REVOCABLE TRUST, an Idaho revocable)

trust; and "JOHN DOES 1-10,")

Defendants.)

Case No. CV-2013-574

COMPLAINT

Fee Code: (A)(\$96.00)

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and for its Complaint against the above-named Defendants, and any other persons or entities claiming any right to possession or interest of the subject property, states and alleges as follows:

1. Plaintiff Fagen is a corporation duly organized under the laws of the State of Minnesota. Fagen is a registered contractor pursuant to Idaho Code § 54-5204, license number RCE-26001, and in good standing.

2. Defendant J. R. Simplot Self-declaration of Revocable Trust (“Simplot Trust”), an Idaho revocable trust, is the owner or reputed owner and lessor of real property and improvements thereon (hereinafter described as the “Property”), as more fully described in Exhibit A attached to the Claim of Lien recorded as Instrument No. 2012014944 on 8/8/2012 in the Twin Falls County Recorder’s Office.

A true and correct copy of said Claim of Lien is attached as Exhibit One hereto and adopted by reference as though fully set forth herein (“Claim of Lien”).

3. Defendant Exergy Development Group of Idaho, LLC (hereinafter described as “Exergy”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with XRG and/or Cottonwood Wind Park, LLC.

4. Defendant XRG Development Partners, LLC (hereinafter described as “XRG”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or Cottonwood Wind Park, LLC.

5. Defendant Cottonwood Wind Park, LLC (hereinafter described as “Cottonwood Wind Park”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to lease(s) entered with the with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or XRG.

6. Exergy, XRG, and/or Cottonwood Wind Park, are the owner(s) or reputed owner(s) of certain improvements, facilities, and structures being constructed on the Property (“hereinafter described as the “Project”).

7. Fagen claims an interest in the Property pursuant to its Claim of Lien in the amount of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law.

8. Defendants “John Does 1-10” are additional unnamed persons or parties may claim and interest in the property who are presently unknown. Fagen reserves the right to amend this Complaint to add such additional persons or parties at a later time.

9. Jurisdiction is proper in this Court pursuant to Idaho Code § 5-514 as the Defendants have transacted business and/or this action relates to ownership, use or possession of real property located within the State of Idaho.

10. Venue is proper in this Court pursuant to Idaho Code § 5-401.

11. In 2011 Fagen entered into agreements and/or memorandum of understanding(s) to supply labor, materials, and engineering, procurement and construction services with Exergy, upon, and for the benefit, of the Property.

12. Fagen supplied labor, materials, and services upon and for the benefit of the Property, commencing work in 2011.

13. Fagen continued to provide labor, furnish materials, and supply services for the improvement to the Property until July 31, 2012, when it ceased doing so due to non-payment by Exergy.

14. Fagen performed this work in a conforming, workmanlike manner pursuant to its agreement with Exergy.

15. As a result of Exergy's failure to pay Fagen for labor, materials and services supplied for improvements to the Property, Fagen filed its Claim of Lien as described above.

16. The reasonable value of the benefit to the Property is equivalent to the labor, materials, and services supplied by Fagen as the amount due stated in its Claim of Lien.

17. True and correct copies of Fagen's Claim of Lien were timely served by certified mailing on Defendants.

18. Fagen is entitled to a judgment foreclosing its Claim of Lien for the amount thereof, together with accrued interest pursuant to law; a determination that its Claim of Lien is superior and has priority to any interest claimed by all Defendants, and each of them; and for foreclosure sale with application of the proceeds of sale to amount due to Fagen.

19. Fagen is entitled to recover costs and reasonable attorney fees to maintain this action, pursuant to Idaho Code § 45-501 *et seq.* The sum of \$10,000 is reasonable should this matter be resolved by default.


WHEREFORE, Fagen prays for judgment against Defendants as follows:

- A. An order foreclosing Fagen's Claim of Lien against the Property, and declaring the amount due of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law;
- B. An order declaring the Defendants, and all persons or entities claiming an interest in the Property or any part thereof, to be barred and foreclosed of all right, title, interest, claim or equity of redemption in and to the Property;
- C. An order for sale of the Property according to law and directing the proceeds of sale be applied to the amount due Fagen;

- D. An award of costs incurred;
- E. An award of reasonable attorney fees;
- F. Such further relief as the Court deems just in the premises.

DATED this 6th day of February, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

John R. Goodell (ISB #2872)
 Daniel C. Green (ISB #3213)
 Ferrell S. Ryan, III (ISB # 8414)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109

TWIN FALLS COUNTY
 RECORDED FOR:
 FIRST AMERICAN TITLE - TWIN FA
 12:38:39 PM 08-08-2012
2012014944
 NO. PAGES 13 FEE: \$46.00
 KRISTINA GLASCOCK
 COUNTY CLERK
 DEPUTY: DJW
 Electronically Recorded by Simplifile

Attorneys for Claimant Fagen, Inc.

_____)
 FAGEN, INC., a Minnesota corporation,)
)
 Claimant,)
)
 vs.)
)
 COTTONWOOD WIND PARK, LLC, an)
 Idaho limited liability company; EXERGY)
 DEVELOPMENT GROUP OF IDAHO,)
 LLC, an Idaho limited liability company;)
 XRG DEVELOPMENT PARTNERS, LLC)
 (ID), an Idaho limited liability company;)
 J. R. SIMPLOT SELF-DECLARATION OF)
 REVOCABLE TRUST, an Idaho revocable)
 trust,)
)
 Owners/Reputed Owners.)
 _____)

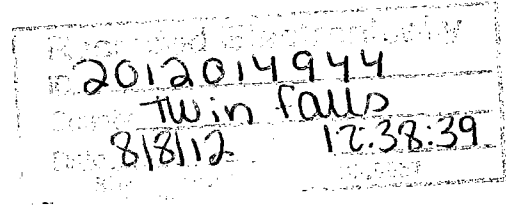
CLAIM OF LIEN (I.C. § 45-507)

NOTICE IS HEREBY GIVEN:

That FAGEN, INC., 501 W. Highway 212, P. O. Box 159, Granite Falls, MN 56241, hereby claims the benefit of the law relative to liens of mechanics and materialmen upon real property as provided by the laws of the State of Idaho, I.C. § 45-501 *et seq.*, and does hereby claim a lien upon that certain tract of land and improvements thereon as hereinafter described, and in the following amounts:



John R. Goodell (ISB #2872)
 Daniel C. Green (ISB #3213)
 Ferrell S. Ryan, III (ISB # 8414)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109



Attorneys for Claimant Fagen, Inc.

FAGEN, INC., a Minnesota corporation,)
)
 Claimant,)
)
 vs.)
)
 COTTONWOOD WIND PARK, LLC, an)
 Idaho limited liability company; EXERGY)
 DEVELOPMENT GROUP OF IDAHO,)
 LLC, an Idaho limited liability company;)
 XRG DEVELOPMENT PARTNERS, LLC)
 (ID), an Idaho limited liability company;)
 J. R. SIMPLOT SELF-DECLARATION OF)
 REVOCABLE TRUST, an Idaho revocable)
 trust,)
)
 Owners/Reputed Owners.)

CLAIM OF LIEN (I.C. § 45-507)

NOTICE IS HEREBY GIVEN:

That FAGEN, INC., 501 W. Highway 212, P. O. Box 159, Granite Falls, MN 56241, hereby claims the benefit of the law relative to liens of mechanics and materialmen upon real property as provided by the laws of the State of Idaho, I.C. § 45-501 *et seq.*, and does hereby claim a lien upon that certain tract of land and improvements thereon as hereinafter described, and in the following amounts:

1. That the principal sum of **\$1,412,774.81** in accordance with the Accounts Receivable History By Customer statement attached hereto as **Exhibit B** and adopted by reference, is owed for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment for the COTTONWOOD WIND PARK, LLC, a wind park project, located at or near Rogerson, Twin Falls, County, Idaho.

In addition, prejudgment interest is owed on the above principal installment amounts from the indicated due date on the invoices listed in **Exhibit B** pursuant to the parties' underlying written contract, and/or Idaho's statutory rate @ 12% per annum, until paid or entry of judgment; plus costs and attorney fees incurred in collection.

2. That said amounts are due, and owing, after deducting all just credits and offsets, for said claim for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, in and for those certain improvements of said land located at Twin Falls County, Idaho, more particularly described in **Exhibit A** attached hereto and adopted by reference, commonly known as COTTONWOOD WIND PARK, LLC, located at or near Rogerson, Twin Falls, County, Idaho, said land being the subject of lease(s) to COTTONWOOD WIND PARK, LLC and/or EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, and/or XRG DEVELOPMENT PARTNERS, LLC (ID), Lessees; and said land also being owned by the J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, Lessor.¹

¹Said Lessor's Trust established by written instrument dated December 21, 1989, and registered in the Fourth Judicial District of the State of Idaho, Ada County, as No. 3T-788.

In addition, **Exhibit C** attached hereto and adopted by reference are two color-coded maps and engineering drawings which locate and identify COTTONWOOD WIND FARM, LLC.

3. That the name(s) and address(es) of the person(s) and/or entity(ies) who/which contracted with claimant and for whom claimant performed labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, are:

COTTONWOOD WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

COTTONWOOD WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

COTTONWOOD WIND PARK, LLC
Attn: Mark A. Ellison, Registered Agent
205 N. 10th St., 4th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

4. Claimant's last item of labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment occurred on July 31, 2012.

5. That the owner(s) or reputed owner(s) of said property to be charged with said lien are:

COTTONWOOD WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

COTTONWOOD WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

COTTONWOOD WIND PARK, LLC
Attn: Mark A. Ellison, Registered Agent
205 N. 10th St., 4th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.

Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

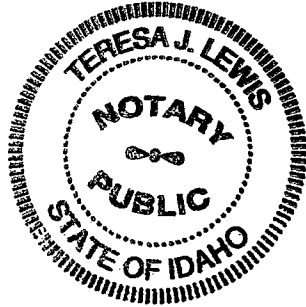
J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707


J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

6. That the description of the property to be charged with said lien, and upon which said improvements were made, and which is situated Twin Falls County, Idaho, is more fully described in **Exhibits A and C** attached hereto and adopted by reference.

SUBSCRIBED AND SWORN TO before me this 3rd day of August, 2012.

(SEAL)




NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello, Idaho
My Commission Expires: 7-20-18

Cottonwood

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 1: SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

SECTION 11: ALL

SECTION 12: W $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$; W $\frac{1}{2}$

EXCEPT

A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE;

BEGINNING AT A POINT ON THE SECTION LINE, 1799 FEET, MORE OR LESS, EAST OF
SECTION CORNER COMMON TO SECTIONS 11, 12, 13 AND 14, TOWNSHIP 14 SOUTH,
RANGE 15 EAST, B.M., WHICH POINT IS STATION 210+62 OF "A" LATERAL AS
LOCATED;

THENCE NORTH 00° 28' EAST 37.3 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET;

THENCE NORTH 22° 28' EAST, 238.5 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 120.8 FEET;

THENCE NORTH 46° 38' EAST, 47.6 FEET;

THENCE ON A 30° CURVE TO THE RIGHT, 174.4 FEET;

THENCE SOUTH 81° 02' EAST, 407.5 FEET;

THENCE ON A 40° CURVE TO THE LEFT, 177.1 FEET;

THENCE NORTH 28° 08' EAST, 171.6 FEET;

THENCE ON A 20° CURVE TO THE RIGHT, 189.2 FEET;

THENCE NORTH 65° 58' EAST 2549 FEET TO STATION 252+85 WHICH POINT IS ON
THE EAST SECTION LINE OF SECTION 12, TOWNSHIP 14 SOUTH, RANGE 15 EAST,
B.M., AND 763 FEET, MORE OR LESS, SOUTH OF THE EAST $\frac{1}{4}$ CORNER OF SAID
SECTION 12, ALL SITUATED IN THE S $\frac{1}{2}$ OF SAID SECTION 12.

SECTION 13: ALL

EXCEPT

A NINE (9) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE WEST QUARTER CORNER OF SECTION 13 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 26' 46" EAST A
DISTANCE OF 2646.88 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 13;
THENCE ON A BEARING OF SOUTH 00° 26' 46" WEST A DISTANCE OF 34.00 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING;

THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 57° 01'
03" EAST A DISTANCE OF 1900.00 FEET;

THENCE ON A BEARING OF SOUTH 32° 58' 57" EAST A DISTANCE OF 200.00 FEET;

THENCE ON A BEARING OF SOUTH 57° 01' 03" WEST A DISTANCE OF 2032.02 FEET
TO THE WEST BOUNDARY OF SAID SECTION 13;

THENCE ON A BEARING OF NORTH 00° 26' 46" EAST A DISTANCE OF 239.64 FEET
ALONG THE WEST BOUNDARY OF SAID SECTION 13 TO THE REAL POINT OF
BEGINNING.

SECTION 14: ALL



Cottonwood

EXCEPT

**BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14,
TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET MORE OR LESS;
THENCE NORTH 81° 31' EAST, 80 FEET;
THENCE NORTH 8° 29' WEST, 505 FEET, MORE OR LESS TO THE PLACE OF
BEGINNING.**

AND EXCEPT

**A STRIP OF LAND 100 FEET WIDE LYING 50 FEET ON EACH SIDE OF THE CENTERLINE
OF "A" LATERAL AS LOCATED AND DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14;
THENCE SOUTH ALONG THE SECTION LINE A DISTANCE OF 505 FEET, MORE OR LESS;
THENCE NORTH 81° 31' EAST, 30 FEET TO THE POINT OF BEGINNING, WHICH IS PC
STATION 117+79.8 OF "A" LATERAL AS LOCATED;
THENCE ON A 40° CURVE TO THE LEFT FROM SEMI-TANGENT SOUTH 8° 29' EAST, A
DISTANCE OF 200 FEET;
THENCE SOUTH 88° 29' EAST, 206.2 FEET;
THENCE ON A 40° CURVE TO THE LEFT, 165 FEET;
THENCE NORTH 25° 31' EAST, 449 FEET;
THENCE NORTH 37° 01' EAST, 180 FEET TO A POINT ON THE NORTH LINE OF THE
SW $\frac{1}{4}$ NW $\frac{1}{4}$, OF SAID SECTION 14, 805 FEET MORE OR LESS, EAST OF THE
NORTHWEST CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14, ALL SITUATED IN THE
SW $\frac{1}{4}$ NW $\frac{1}{4}$.**

AND ALSO EXCEPT

**A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:
BEGINNING AT STATION 129+80 OF "A" LATERAL SURVEY AS LOCATED WHICH
POINT IS ON THE SOUTH BOUNDARY LINE OF THE NW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND
805 FEET, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF SAID FORTY;
THENCE NORTH 37° 01' EAST, 224.9 FEET;
THENCE ON A 20° CURVE TO THE RIGHT, 310 FEET;
THENCE SOUTH 80° 59' EAST 1440.1 FEET TO STATION 149+55 WHICH STATION IS
A POINT ON THE EAST LINE OF THE NE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 14 AND 1260 FEET,
MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SECTION 14, ALL LYING IN
THE N $\frac{1}{2}$ NW $\frac{1}{4}$.**

AND ALSO EXCEPT

**A STRIP OF LAND 100 FEET WIDE, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING
DESCRIBED CENTERLINE:
BEGINNING AT A POINT ON THE WEST BOUNDARY LINE OF THE NE $\frac{1}{4}$ OF SECTION
14, 1260 FEET, MORE OR LESS, SOUTH OF THE NORTH $\frac{1}{4}$ CORNER OF SAID SECTION
14, WHICH POINT IS STATION 149+55 OF "A" LATERAL SURVEY AS LOCATED;
THENCE SOUTH 80° 59' EAST, 366.1 FEET MORE OR LESS;
THENCE ON A 20° CURVE TO THE RIGHT, 190 FEET;
THENCE SOUTH 42° 59' EAST, 685.5 FEET;
THENCE ON A 40° CURVE TO THE LEFT, 280.8 FEET;
THENCE NORTH 24° 41' EAST, 693.3 FEET;
THENCE ON A 40° CURVE TO THE RIGHT 165 FEET;
THENCE SOUTH 89° 19' EAST 220.5 FEET;
THENCE ON A 50° CURVE TO THE LEFT, 155.7 FEET;
THENCE NORTH 12° 51' EAST, 312 FEET;
THENCE ON A 20° CURVE TO THE RIGHT, 110 FEET;
THENCE NORTH 34° 51' EAST, 708.6 FEET;
THENCE ON A 50° CURVE TO THE RIGHT, 110.2 FEET;**

Cottonwood

THENCE NORTH 89° 58' EAST, 53 FEET TO STATION 189+86, WHICH POINT IS ON THE EAST LINE OF SAID SECTION 14 AND 45 FEET SOUTH OF THE NORTHEAST CORNER, SITUATED IN THE NE¼ OF SECTION 14.

AND ALSO EXCEPT

A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 40' 16" WEST A DISTANCE OF 2640.52 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 14;
THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 1370.00 FEET ALONG THE NORTH BOUNDARY OF SECTION 14 TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 00° 00' 00" WEST A DISTANCE OF 445.00 FEET;
THENCE ON A BEARING OF NORTH 89° 40' 16" WEST A DISTANCE OF 200.00 FEET PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 14;
THENCE ON A BEARING OF NORTH 00° 00' 00" EAST A DISTANCE OF 445.00 FEET TO THE NORTH BOUNDARY OF SAID SECTION 14;
THENCE ON A BEARING OF SOUTH 89° 40' 16" EAST A DISTANCE OF 200.00 FEET ALONG THE NORTH BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING.

AND ALSO EXCEPT

A TWELVE (12) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHEAST CORNER OF SECTION 14 ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 00° 21' 12" EAST A DISTANCE OF 2645.57 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 14; THENCE ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 1008.00 FEET ALONG THE EAST BOUNDARY OF SAID SECTION 14 TO THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF SOUTH 00° 21' 12" WEST A DISTANCE OF 884.00 FEET;
THENCE ON A BEARING OF NORTH 89° 38' 48" WEST A DISTANCE OF 590.00 FEET;
THENCE ON A BEARING OF NORTH 00° 21' 12" EAST A DISTANCE OF 884.00 FEET PARALLEL WITH THE EAST BOUNDARY OF SAID SECTION 14;
THENCE ON A BEARING OF SOUTH 89° 38' 48" EAST A DISTANCE OF 590.00 FEET TO THE EAST BOUNDARY OF SAID SECTION 14 AND THE REAL POINT OF BEGINNING.
SECTION 23: W½W½; NE¼NW¼

DATE 7/30/12 ARP064
 *** SUMMARY ***

01 000 Fagen Inc

ACCOUNTS RECEIVABLE HISTORY BY CUSTOMER

TIME 16.52

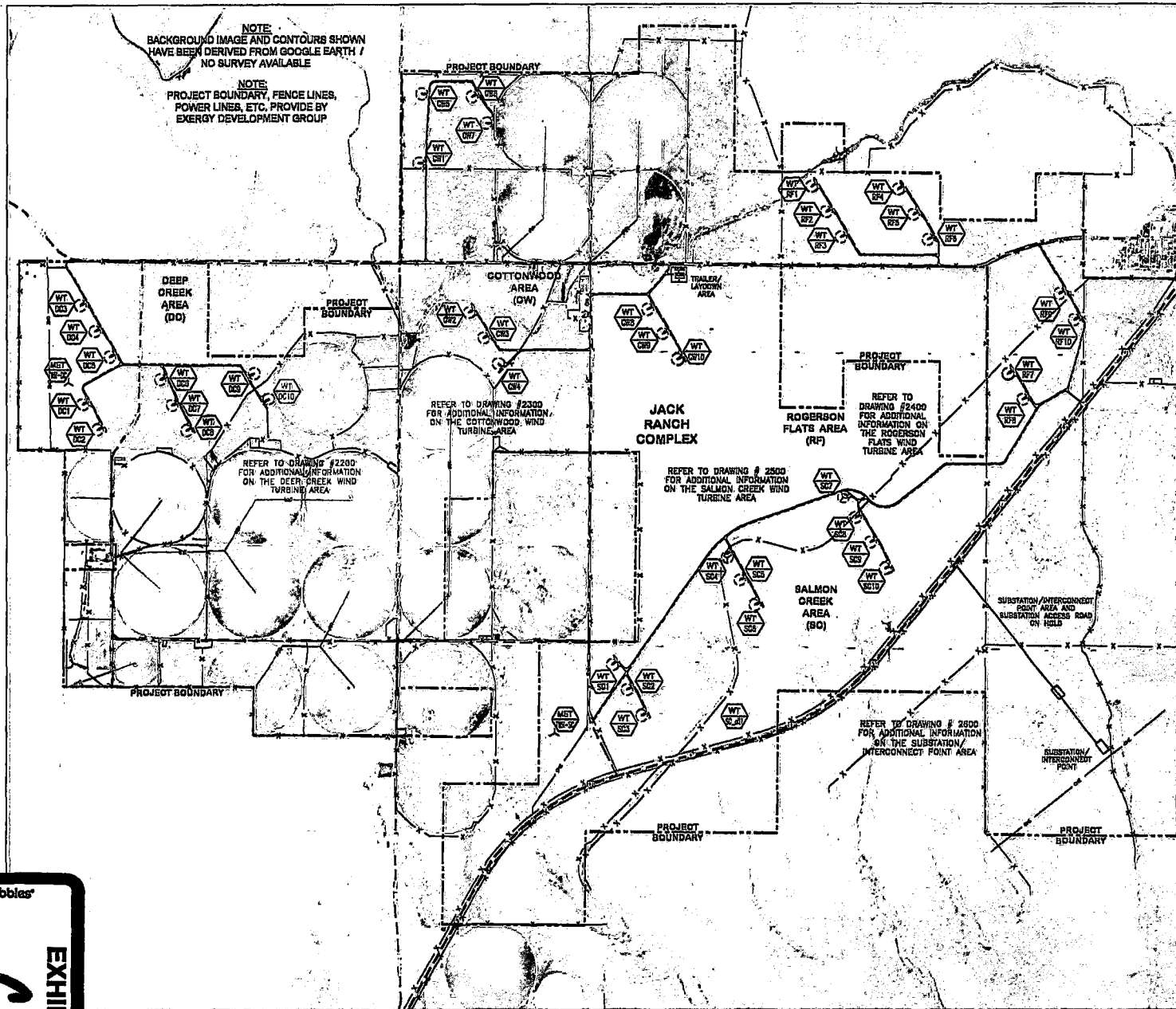
PAGE 2

INVOICE DATES 00/00/0000 - 99/99/9999

CHECK DATES 00/00/0000 - 99/99/9999

-----INVOICE-----			JOB SUB	---REFERENCE---	INVOICE	DSCT	CHECK	CHECK	CHECK		
NUMBER	DATE	DESCRIPTION	NUMBER	JOB	NUMBER	DATE	AMT	DATE	NUMBER	AMOUNT	
02210 Cottonwood Wind Park, LLC											
00001	12/27/2011	APPLICATION #1	114034	605			.00	12/27/2011	999999	.00	
00010	12/27/2011	APPLICATION #1	114034	605			398603.75			.00	
00002	02/03/2012	APPLICATION #2	114034	605			88359.58			.00	
00003	03/16/2012	APPLICATION #3	114034	605			.00	03/16/2012	999999	.00	
00030	03/16/2012	APPLICATION #3	114034	605			19114.00			.00	
00004	04/25/2012	APPLICATION #4	114034	605			220281.78			.00	
00005	05/25/2012	APPLICATION #5	114034	605			420708.40			.00	
00006	06/29/2012	APPLICATION #6	114034	605			168438.59			.00	
00007	07/27/2012	APPLICATION #7	114034	605			97268.71			.00	
*** SUBJOB TOTAL ***							1,412,774.81			.00	
** BALANCE **										1,412,774.81	
*** JOB TOTAL ***							1,412,774.81			.00	.00
** BALANCE **										1,412,774.81	
** CUSTOMER TOTAL **							1,412,774.81			.00	.00
** BALANCE **										1,412,774.81	





NOTE:
BACKGROUND IMAGE AND CONTOURS SHOWN
HAVE BEEN DERIVED FROM GOOGLE EARTH /
NO SURVEY AVAILABLE

NOTE:
PROJECT BOUNDARY, FENCE LINES,
POWER LINES, ETC. PROVIDE BY
ENERGY DEVELOPMENT GROUP

REFER TO DRAWING #2200
FOR ADDITIONAL INFORMATION
ON THE DEER CREEK WIND
TURBINE AREA

REFER TO DRAWING #2300
FOR ADDITIONAL INFORMATION
ON THE COTTONWOOD WIND
TURBINE AREA

REFER TO DRAWING # 2500
FOR ADDITIONAL INFORMATION
ON THE SALMON CREEK WIND
TURBINE AREA

REFER TO DRAWING #2400
FOR ADDITIONAL INFORMATION
ON THE ROGERSON
FLATS WIND
TURBINE AREA

REFER TO DRAWING # 2600
FOR ADDITIONAL INFORMATION
ON THE SUBSTATION/
INTERCONNECT POINT AREA

**WIND TURBINE LOCATIONS
DEEP CREEK AREA (DC)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
DC1	N 42.204684857°	W 114.70989099°
DC2	N 42.20270801°	W 114.7044828°
DC3	N 42.21216888°	W 114.7083289°
DC4	N 42.21028220°	W 114.7048088°
DC5	N 42.20320572°	W 114.7032012°
DC6	N 42.20693328°	W 114.6997792°
DC7	N 42.20464898°	W 114.6998844°
DC8	N 42.20289942°	W 114.6953472°
DC9	N 42.20710523°	W 114.6984901°
DC10	N 42.20518968°	W 114.6982822°
WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
DC-SODA	N 42.20241978°	W 114.69391603°

**WIND TURBINE LOCATIONS
COTTONWOOD AREA (CW)**

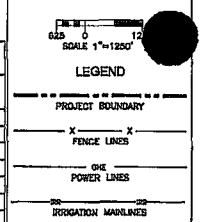
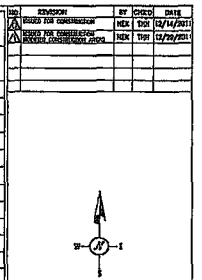
WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
CW1	N 42.22338784°	W 114.6718328°
CW2	N 42.21188394°	W 114.6884828°
CW3	N 42.20920717°	W 114.6849435°
CW4	N 42.20798281°	W 114.683428°
CW5	N 42.22082878°	W 114.6718550°
CW6	N 42.22631468°	W 114.6864834°
CW7	N 42.22838883°	W 114.6848146°
CW8	N 42.2122020°	W 114.68482146°
CW9	N 42.21033728°	W 114.6848874°
CW10	N 42.20639071°	W 114.684518°
DC-SODA	N 42.20782868°	W 114.6447708°

**WIND TURBINE LOCATIONS
ROGERSON FLATS AREA (RF)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
RF1	N 42.22177052°	W 114.6318188°
RF2	N 42.21882386°	W 114.6301022°
RF3	N 42.21787738°	W 114.6285848°
RF4	N 42.22182342°	W 114.6227918°
RF5	N 42.21887888°	W 114.6212741°
RF6	N 42.21773028°	W 114.6197688°
RF7	N 42.20748472°	W 114.611484°
RF8	N 42.20583618°	W 114.6099488°
RF9	N 42.2135898°	W 114.6063158°
RF10	N 42.21188323°	W 114.6047981°
RF-SODA	N 42.20786348°	W 114.61211072°

**WIND TURBINE LOCATIONS
SALMON CREEK AREA (SC)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
SC1	N 42.19453031°	W 114.6918104°
SC2	N 42.18289178°	W 114.6989837°
SC3	N 42.18104817°	W 114.6848770°
SC4	N 42.18349009°	W 114.6401204°
SC5	N 42.18180392°	W 114.6388034°
SC6	N 42.18888898°	W 114.6370888°
SC7	N 42.18816029°	W 114.6281705°
SC8	N 42.18837883°	W 114.6286785°
SC9	N 42.18443228°	W 114.6283588°
SC10	N 42.18248588°	W 114.6283418°
WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
SC-SODA	N 42.17988800°	W 114.6873739°
SC-SODA	N 42.18224331°	W 114.6232209°



The original of this drawing was issued and sealed by J. J. Fagan, Engineer.
Date: 3/22/2011, Registration No. 2252.
and is in the files of Fagen Engineering LLC
corporate office in Grangeville, Idaho.

FAGEN
ENGINEERING LLC
Civil - Structural - Mechanical - Electrical - Estimating

100 8th Avenue, P.O. Box 180
Grangeville, ID 83424 Tel. 208-684-4323

This drawing was prepared for use on a specific site and is not suitable for use on other projects other than that of a similar nature. It is not to be used for any other purpose without the written permission of Fagen Engineering LLC. © Copyright

ENERGY DEVELOPMENT GROUP
USA, IDAHO

**JACK RANCH COMPLEX
PROJECT LAYOUT**

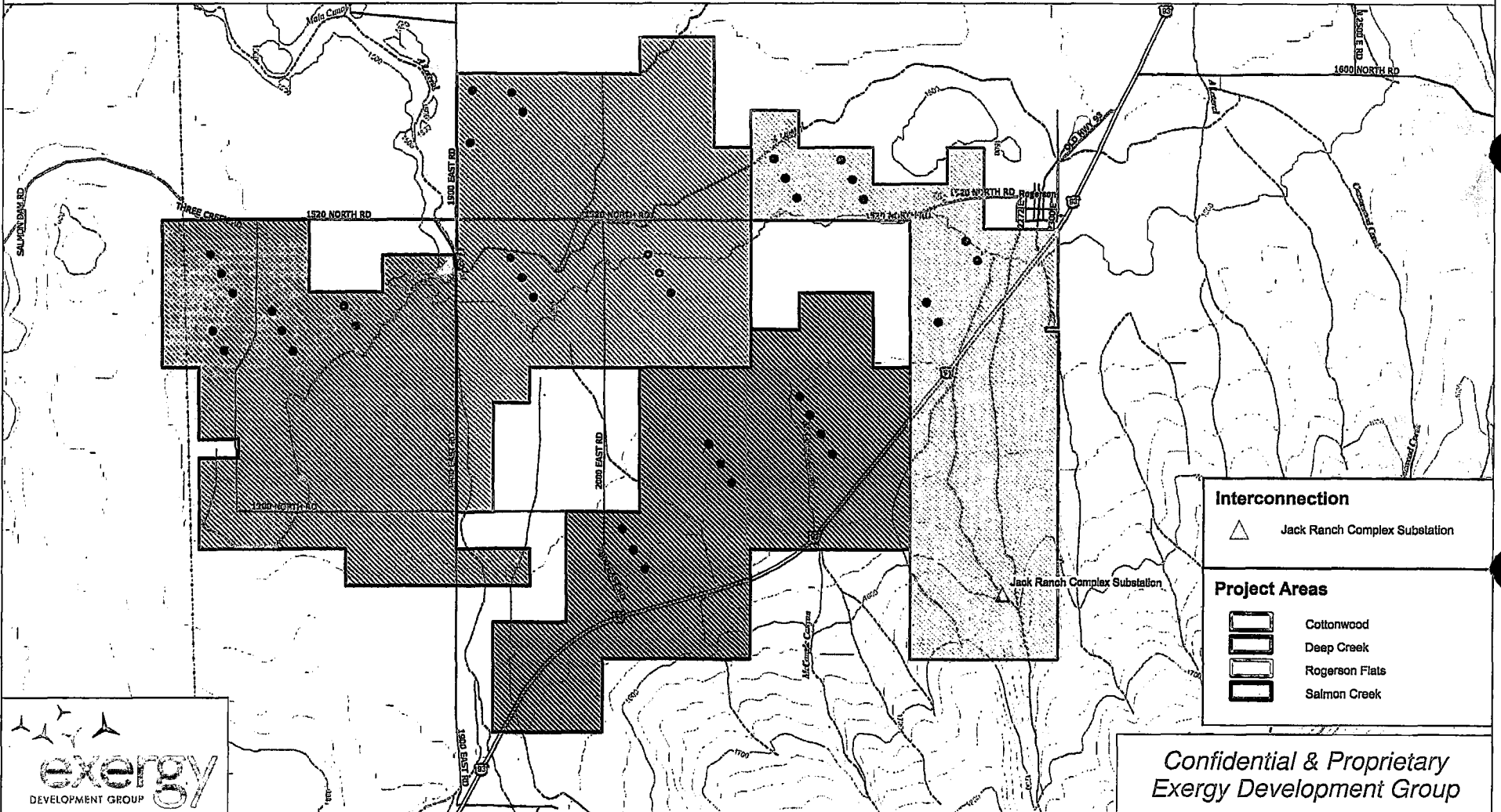
DESIGNER	DATE	SCALE	SHEET NO.	TOTAL SHEETS
EGJ/2002	12/14/2011	1" = 1200'	2101	2101
PROJECT NUMBER	EGJ2002			

tabbles®

EXHIBIT

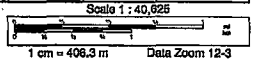
2

Jack Ranch Complex



Confidential & Proprietary
Exergy Development Group

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www.delorme.com



Date	Code	User	Judge
2/8/2013	NCOC	SCHULZ	New Case Filed-Other Claims
	APER	SCHULZ	Plaintiff: Fagen, Inc., A Minnesota Corporation Appearance John R Goodell
		SCHULZ	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Racine, Olson, Nye, Budge & Bailey Receipt number: 1303258 Dated: 2/8/2013 Amount: \$96.00 (Check) For: Fagen, Inc., A Minnesota Corporation (plaintiff)
	COMP	SCHULZ	Complaint Filed
	SMIS	SCHULZ	Summons Issued
6/24/2013		SCHULZ	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Meuleman Mollerup Receipt number: 1316158 Dated: 6/24/2013 Amount: \$66.00 (Check) For: J.R. Simplot Self-Declaration Of Revocable Trust (defendant)
	NOAP	SCHULZ	Notice Of Appearance
6/25/2013	APER	SCHULZ	Defendant: J.R. Simplot Self-Declaration Of Revocable Trust Appearance Richard L Stacey
6/27/2013	ACSV	PIERCE	Acceptance Of Service
8/5/2013	ACSV	PIERCE	Acceptance Of Service
	NOFG	PIERCE	Plaintiff's Notice of Filing of Acceptance of Service
9/3/2013		SCHULZ	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Angelo L. Rosa Receipt number: 1322339 Dated: 9/3/2013 Amount: \$66.00 (Check) For: Exergy Development Group Of Idaho, LLC (defendant), Salmon Creek Wind Park, LLC (defendant) and XRG Development Partners, LLC (defendant)
		SCHULZ	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Angelo L Rosa Receipt number: 1322343 Dated: 9/3/2013 Amount: \$66.00 (Credit card) For: Exergy Development Group Of Idaho, LLC (defendant), Salmon Creek Wind Park, LLC (defendant) and XRG Development Partners, LLC (defendant)
		SCHULZ	Filing: Technology Cost - CC Paid by: Angelo L Rosa Receipt number: 1322343 Dated: 9/3/2013 Amount: \$3.00 (Credit card) For: Exergy Development Group Of Idaho, LLC (defendant), Salmon Creek Wind Park, LLC (defendant) and XRG Development Partners, LLC (defendant)
	NOAP	SCHULZ	Notice Of Appearance
9/4/2013	APER	SCHULZ	Defendant: Salmon Creek Wind Park, LLC Appearance Angelo L Rosa

Date	Code	User	Judge
9/4/2013	APER	SCHULZ	Defendant: Exergy Development Group Of Idaho, LLC Appearance Angelo L Rosa
	APER	SCHULZ	Defendant: XRG Development Partners, LLC Appearance Angelo L Rosa
9/6/2013	MDIS	PIERCE	Omnibus Motion to Dismiss Complaint
	MEMO	PIERCE	Memorandum in Support of Omnibus Motion to Dismiss Complaint
	CESV	PIERCE	Certificate Of Service (Omnibus Motion to Dismiss)
9/12/2013	MOAM	PIERCE	Plaintiff's Motion for Leave to Amend Complaint
	MOCT	PIERCE	Plaintiff Fagen's Motion for Rule 56(f) Continuance
	MEMO	PIERCE	Plaintiff Fagen's Memorandum in Support of Motion for Rule 56(f) Continuance
	AFFD	PIERCE	Affidavit of John R. Goodell in Support of Motion for Rule 56(f) Continuance
9/16/2013	ORAS	SCHORZMAN	Order Of Assignment
	CHJG	SCHORZMAN	Change Assigned Judge
9/23/2013	NOHG	PIERCE	Notice Of Hearing
	HRSC	MCMULLEN	Hearing Scheduled (Motion to Amend 10/21/2013 10:00 AM)
10/1/2013	MEMO	PIERCE	Plaintiff Fagen Inc.'s Memorandum Opposing Defendants' Omnibus Motion to Dismiss Complaint
10/2/2013	NOTC	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Notice of Non-Opposition to Plaintiff's Motion for Leave to Amend Complaint
10/4/2013	NOHG	PIERCE	Notice Of Hearing
10/7/2013	NOCA	PIERCE	Notice Of Change Of Address
10/15/2013	NOHG	PIERCE	Notice Of Hearing on J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss and Notice of Intent to Appear by Telephone
	NINT	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Notice of Intent to Appear by Telephone
	HRSC	MCMULLEN	Hearing Scheduled (Motion to Dismiss 12/02/2013 10:00 AM) Simplot's Motion to Dismiss
	NOWD	PIERCE	Notice Of Withdrawal of Intent to Appear by Telephone [Re: October 21 & December 2, 2013, Hearings]
	NOSV	PIERCE	Notice Of Service
10/18/2013	HRVC	MCMULLEN	Hearing result for Motion to Amend scheduled on 10/21/2013 10:00 AM: Hearing Vacated

Date	Code	User		Judge
10/18/2013	NOHG	PIERCE	Amended Notice Of Hearing	Randy J. Stoker
	AFFD	PIERCE	Second Affidavit of John R. Goodell in Support of Motion for Rule 56(f) continuance	Randy J. Stoker
	NOTC	PIERCE	Notice of Non-Opposition to Motion to Amend Complaint	Randy J. Stoker
11/15/2013	NOHG	PIERCE	Notice Of Hearing on J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss	Randy J. Stoker
	MDIS	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Motion To Dismiss	Randy J. Stoker
	MEMO	PIERCE	Memorandum in Support of J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss	Randy J. Stoker
11/27/2013	NOWD	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Notice of Withdrawal of Motion to Dismiss and Notice of Non-Opposition	Randy J. Stoker
11/29/2013	STIP	MCMULLEN	Stipulation for Dismissal with Prejudice (Fagen Claims Against Defendant J.R. Simplot Self-Declaration Revocable Trust Only)	Randy J. Stoker
12/2/2013	ORDR	MCMULLEN	Order for Dismissal with Prejudice (J.R. Simplot Self-Declaration of Revocable Trust Only)	Randy J. Stoker
	CDIS	MCMULLEN	Civil Disposition/Judgment entered: entered for: J.R. Simplot Self-Declaration Of Revocable Trust, Defendant; Fagen, Inc., A Minnesota Corporation, Plaintiff. Filing date: 12/2/2013	Randy J. Stoker
	ORDR	MCMULLEN	Order for Leave to File First Amended Complaint	Randy J. Stoker
	DCHH	MCMULLEN	Hearing result for Motion to Dismiss scheduled on 12/02/2013 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Simplot's Motion to Dismiss, Motion to Amend	Randy J. Stoker
	ADVS	MCMULLEN	Case Taken Under Advisement	Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes	Randy J. Stoker
12/4/2013	ORDR	MCMULLEN	Order Re Consolidation, Motion to Amend, Motion to Continue and Motion to Dismiss	Randy J. Stoker
	CDIS	MCMULLEN	Civil Disposition/Judgment entered: entered for: Exergy Development Group Of Idaho, LLC, Defendant; J.R. Simplot Self-Declaration Of Revocable Trust, Defendant; John Does 1-10,, Defendant; Salmon Creek Wind Park, LLC, Defendant; XRG Development Partners, LLC, Defendant; Fagen, Inc., A Minnesota Corporation, Plaintiff. Filing date: 12/4/2013	Randy J. Stoker
12/5/2014	SCDF	COOPE	Supreme Court -- Filed Notice of Appeal. Clerk's Record & Reporter's Transcript Due 02-04-15	Randy J. Stoker 1287

Date	Code	User	Judge
12/15/2014	SCDF	COOPE	Supreme Court -- Entered Order RE: Reporter's Transcript Fee Payment Due in 7 Days
	SCDF	COOPE	Supreme Court Document Filed- Order RE: Reporter's Transcript
12/31/2014	SCDF	COOPE	Supreme Court Set Due Date - Transcript and Clerk's Record Due 03-11-15
1/6/2015	SCDF	COOPE	Supreme Court -- Entered Notice of Defect Order. Amended Notice of Appeal Reflecting Date, Title of Documents and Service to Reporter to be Filed Within 14 Days or this Appeal will Proceed on the Clerk's Record Only Pursuant to I.A.R. 28
	SCDF	COOPE	Supreme Court Document Filed- Order of Defect
1/14/2015	NTOA	COOPE	Amended Notice Of Appeal
1/27/2015	SCDF	COOPE	Supreme Court -- 01-21-15: Filed Amended Notice of Appeal Due Date for Transcript and Clerk's Record Reset for 03-26-15
2/18/2015	NOTC	COOPE	Notice of Balance Due on Clerk's Record
3/10/2015	SCDF	COOPE	Supreme Court -- Filed Notice of Balance Due for Preparation of Clerk's Record (\$869.05) - Please See Attachment. Appellant Must Submit Payment to the District Court Clerk Within Seven (7) Days or by Friday 03-13-15
3/30/2015	SCDF	COOPE	Supreme Court Filed Amended Motion to Consolidate Appeals (42592 & 42684) and Declaration of Angelo L. Rosa in Support
	SCDF	COOPE	Supreme Court Received Receipt of Payment from District Court Clerk for Preparation of Clerk's Record (\$869-05) Therefore Due Date Reset For Transcripts and Clerk's Record to 5-15-2015

John R. Goodell (ISB#: 2872)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109

DISTRICT COURT
 TWIN FALLS CO., IDAHO
 FILED

2013 FEB -8 PM 4: 05

BY _____ CLERK
 PS _____ DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
 Plaintiff,)

Case No. *CV-2013-715*

vs.)

COMPLAINT

SALMON CREEK WIND PARK, LLC, an)
 Idaho limited liability company; EXERGY)
 DEVELOPMENT GROUP OF IDAHO,))
 LLC, an Idaho limited liability company;))
 XRG DEVELOPMENT PARTNERS, LLC,))
 an Idaho limited liability company;)
 J. R. SIMPLOT SELF-DECLARATION OF)
 REVOCABLE TRUST, an Idaho revocable)
 trust; and "JOHN DOES 1-10,")

Fee Code: (A)(\$96.00)

Defendants.)
)
 _____)

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and for its Complaint against the above-named Defendants, and any other persons or entities claiming any right to possession or interest of the subject property, states and alleges as follows:

1. Plaintiff Fagen is a corporation duly organized under the laws of the State of Minnesota. Fagen is a registered contractor pursuant to Idaho Code § 54-5204, license number RCE-26001, and in good standing.

2. Defendant J. R. Simplot Self-declaration of Revocable Trust (“Simplot Trust”), an Idaho revocable trust, is the owner or reputed owner and lessor of real property and improvements thereon (hereinafter described as the “Property”), as more fully described in Exhibit A-1 attached to the Claim of Lien recorded as Instrument No. 2012014943 on 8/8/2012 in the Twin Falls County Recorder’s Office.

A true and correct copy of said Claim of Lien is attached as Exhibit One hereto and adopted by reference as though fully set forth herein (“Claim of Lien”).

3. Defendant Exergy Development Group of Idaho, LLC (hereinafter described as “Exergy”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with XRG and/or Salmon Creek Wind Park, LLC.

4. Defendant XRG Development Partners, LLC (hereinafter described as “XRG”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or Salmon Creek Wind Park, LLC.

5. Defendant Salmon Creek Wind Park, LLC (hereinafter described as Salmon Creek Wind Park”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to lease(s) entered with the with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or XRG.

6. Exergy, XRG, and/or Salmon Creek Wind Park are the owner(s) or reputed owner(s) of certain improvements, facilities, and structures being constructed on the Property (“hereinafter described as the “Project”).

7. Fagen claims an interest in the Property pursuant to its Claim of Lien in the amount of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law.

8. Defendants “John Does 1-10” are additional unnamed persons or parties may claim and interest in the property who are presently unknown. Fagen reserves the right to amend this Complaint to add such additional persons or parties at a later time.

9. Jurisdiction is proper in this Court pursuant to Idaho Code § 5-514 as the Defendants have transacted business and/or this action relates to ownership, use or possession of real property located within the State of Idaho.

10. Venue is proper in this Court pursuant to Idaho Code § 5-401.

11. In 2011 Fagen entered into agreements and/or memorandum of understanding(s) to supply labor, materials, and engineering, procurement and construction services with Exergy, upon, and for the benefit, of the Property.

12. Fagen supplied labor, materials, and services upon and for the benefit of the Property, commencing work in 2011.

13. Fagen continued to provide labor, furnish materials, and supply services for the improvement to the Property until July 31, 2012, when it ceased doing so due to non-payment by Exergy.

14. Fagen performed this work in a conforming, workmanlike manner pursuant to its agreement with Exergy.

15. As a result of Exergy's failure to pay Fagen for labor, materials and services supplied for improvements to the Property, Fagen filed its Claim of Lien as described above.

16. The reasonable value of the benefit to the Property is equivalent to the labor, material, and services supplied by Fagen as the amount due stated in its Claim of Lien.

17. True and correct copies of Fagen's Claim of Lien were timely served by certified mailing on Defendants.

18. Fagen is entitled to a judgment foreclosing its Claim of Lien for the amount thereof, together with accrued interest pursuant to law; a determination that its Claim of Lien is superior and has priority to any interest claimed by all Defendants, and each of them; and for foreclosure sale with application of the proceeds of sale to amount due to Fagen.

19. Fagen is entitled to recover costs and reasonable attorney fees to maintain this action, pursuant to Idaho Code § 45-501 *et seq.* The sum of \$10,000 is reasonable should this matter be resolved by default.


WHEREFORE, Fagen prays for judgment against Defendants as follows:

- A. An order foreclosing Fagen's Claim of Lien against the Property, and declaring the amount due of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law;
- B. An order declaring the Defendants, and all persons or entities claiming an interest in the Property or any part thereof, to be barred and foreclosed of all right, title, interest, claim or equity of redemption in and to the Property;
- C. An order for sale of the Property according to law and directing the proceeds of sale be applied to the amount due Fagen;

- D. An award of costs incurred;
- E. An award of reasonable attorney fees;
- F. Such further relief as the Court deems just in the premises.

DATED this 6th day of February, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

John R. Goodell (ISB #2872)
Daniel C. Green (ISB #3213)
Ferrell S. Ryan, III (ISB # 8414)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

TWIN FALLS COUNTY
RECORDED FOR:
FIRST AMERICAN TITLE - TWIN FA
12:38:33 PM 08-08-2012
2012014943
NO. PAGES 12 FEE: \$43.00
KRISTINA GLASCOCK
COUNTY CLERK
DEPUTY: DJW
Electronically Recorded by Simplifile

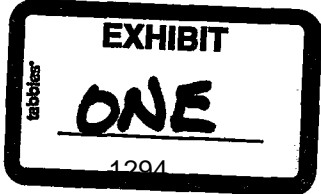
Attorneys for Claimant Fagen, Inc.

FAGEN, INC., a Minnesota corporation,)
Claimant,)
vs.)
SALMON CREEK WIND PARK, LLC, an)
Idaho limited liability company; EXERGY)
DEVELOPMENT GROUP OF IDAHO,)
LLC, an Idaho limited liability company;)
XRG DEVELOPMENT) PARTNERS, LLC)
(ID), an Idaho limited) liability company;)
J. R. SIMPLOT SELF-DECLARATION OF)
REVOCABLE) TRUST, an Idaho revocable)
trust,)
Owners/Reputed Owners.)

CLAIM OF LIEN (I.C. § 45-507)

NOTICE IS HEREBY GIVEN:

That FAGEN, INC., 501 W. Highway 212, P. O. Box 159, Granite Falls, MN 56241, hereby claims the benefit of the law relative to liens of mechanics and materialmen upon real property as provided by the laws of the State of Idaho, I.C. § 45-501 *et seq.*, and does hereby claim a lien upon that certain tract of land and improvements thereon as hereinafter described, and in the following amounts:



John R. Goodell (ISB #2872)
 Daniel C. Green (ISB #3213)
 Ferrell S. Ryan, III (ISB # 8414)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109

2012014943
 Twin Falls
 8/8/12 12:38:33

Attorneys for Claimant Fagen, Inc.

_____)
 FAGEN, INC., a Minnesota corporation,)
)
 Claimant,)
)
 vs.)
)
 SALMON CREEK WIND PARK, LLC, an)
 Idaho limited liability company; EXERGY)
 DEVELOPMENT GROUP OF IDAHO,)
 LLC, an Idaho limited liability company;)
 XRG DEVELOPMENT) PARTNERS, LLC)
 (ID), an Idaho limited) liability company;)
 J. R. SIMPLOT SELF-DECLARATION OF)
 REVOCABLE) TRUST, an Idaho revocable)
 trust,)
)
 Owners/Reputed Owners.)
 _____)

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1. That the principal sum of \$1,412,774.81 in accordance with the Accounts Receivable History By Customer statement attached hereto as **Exhibit B** and adopted by reference, is owed for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment for the SALMON CREEK WIND PARK, LLC, a wind park project, located at or near Rogerson, Twin Falls, County, Idaho.

In addition, prejudgment interest is owed on the above principal installment amounts from the indicated due date on the invoices listed in **Exhibit B** pursuant to the parties' underlying written contract, and/or Idaho's statutory rate @ 12% per annum, until paid or entry of judgment; plus costs and attorney fees incurred in collection.

2. That said amounts are due, and owing, after deducting all just credits and offsets, for said claim for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, in and for those certain improvements of said land located at Twin Falls County, Idaho, more particularly described in **Exhibit A** attached hereto and adopted by reference, commonly known as SALMON CREEK WIND PARK, LLC, located at or near Rogerson, Twin Falls, County, Idaho, said land being the subject of lease(s) to SALMON CREEK WIND PARK, LLC and/or EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, and/or XRG DEVELOPMENT PARTNERS, LLC (ID), Lessees; and said land also being owned by the J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, Lessor.¹

¹Said Lessor's Trust established by written instrument dated December 21, 1989, and registered in the Fourth Judicial District of the State of Idaho, Ada County, as No. 3T-788.

In addition, **Exhibit C** attached hereto and adopted by reference are two color-coded maps and engineering drawings which locate and identify SALMON CREEK WIND FARM, LLC.

3. That the name(s) and address(es) of the person(s) and/or entity(ies) who/which contracted with claimant and for whom claimant performed labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, are:

SALMON CREEK WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

SALMON CREEK WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

SALMON CREEK WIND PARK, LLC
Attn: Peter J. Richardson
515 N. 27th St.
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

4. Claimant's last item of labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment occurred on July 31, 2012.

5. That the owner(s) or reputed owner(s) of said property to be charged with said lien are:

SALMON CREEK WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

SALMON CREEK WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

SALMON CREEK WIND PARK, LLC
Attn: Peter J. Richardson
515 N. 27th St.
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
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XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

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802 W. Bannock, 12th Floor
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Attn: Ronald N. Graves
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Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

6. That the description of the property to be charged with said lien, and upon which said improvements were made, and which is situated Twin Falls County, Idaho, is more fully described in **Exhibits A and C** attached hereto and adopted by reference.

7. That the mailing address for this Claimant is:

FAGEN, INC.
Attn: Jennifer A. Johnson,
Chief Financial Officer
501 W. Highway 212
P. O. Box 159
Granite Falls, MN 56241

8. That the undersigned certifies that a true and correct copy of this Claim of Lien following recording will either be served personally, or served by mailing a copy thereof by U.S. mail, certified - return receipt requested, within the time prescribed by statute for doing so, upon the owners or reputed owners who/which are identified above.

Dated this 3rd day of August, 2012.

CLAIMANT:
FAGEN, INC.

By: _____



JOHN R. GOODELL
Attorney and Authorized Representative
for Claimant

Salmon Creek

EXHIBIT A
Property Description

**TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO**

SECTION 24: E $\frac{1}{2}$; E $\frac{1}{2}$ W $\frac{1}{2}$

SECTION 25: ALL

SECTION 26: E $\frac{1}{2}$ E $\frac{1}{2}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$

**EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..**

**BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26;
ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.**

AND EXCEPT

A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U. S. HIGHWAY 93-PROJECT No. F-FG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE S $\frac{1}{2}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..

**BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35;
THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE;
THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,**

SECTION 35: E $\frac{1}{2}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; W $\frac{1}{2}$ NE $\frac{1}{4}$



Salmon Creek

EXCEPT (NOTE THIS IS OLD U.S. HIGHWAY 93 AND WAS REMOVED FROM THE HIGHWAY SYSTEM IN 1956. THE DOCUMENT WAS RECORDED IN 1997.)
A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF SAWTOOTH PARK F-FG 2391(4) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35, THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST OF THE WEST QUARTER CORNER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.;
THENCE RUNNING NORTH 28° 41' EAST, 4510.0 FEET TO STATION 691+00 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1320 FEET SOUTH AND 1468.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26;
ALSO BEGINNING AT STATION 693+89 OF SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1070.0 FEET SOUTH AND 1320.0 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 26; THENCE RUNNING NORTH 28° 41' EAST, 1219.0 FEET TO STATION 706+08.0 OF SAID SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 767.0 FEET WEST FROM THE EAST QUARTER CORNER OF SECTION 26.

AND EXCEPT

A STRIP OF LAND 200.00 FEET WIDE, BEING 100.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE OF HIGHWAY AS SURVEYED AND SHOWN ON THE OFFICIAL PLAT OF U. S. HIGHWAY 93-PROJECT No. F-FG 2391(5) HIGHWAY SURVEY ON FILE IN THE OFFICE OF THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 4 OF THE STATE OF IDAHO AND LYING OVER AND ACROSS THE E $\frac{1}{2}$ NW $\frac{1}{4}$ AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 35 AND THE S $\frac{1}{2}$ SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M..
BEGINNING AT STATION 645+90 OF THE SAID HIGHWAY SURVEY, WHICH STATION IS A POINT ON TANGENT APPROXIMATELY 1670.0 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 35;
THENCE RUNNING NORTH 28° 41' EAST, 1346.1 FEET TO STATION 659+36.1 OF SAID SURVEY, WHICH STATION IS A POINT OF CURVATURE;
THENCE 4115.9 FEET WITH A 00° 54' CURVE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45° 33' TO STATION 700+52.0, WHICH STATION IS A POINT ON CURVE APPROXIMATELY 1295.0 FEET NORTH FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 15 EAST, B.M.,

TOWNSHIP 14 SOUTH, RANGE 16 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

SECTION 18: GOV'T LOT 7; E $\frac{1}{2}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$

SECTION 19: ALL

EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170820.
ALSO EXCEPT THAT PORTION DEEDED TO THE OREGON SHORT LINE RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 25, 1924 AS INSTRUMENT No. 170821.
THIS DEED DESCRIBES THE 6.93 ACRE PARCEL IN SECTION 17.

SECTION 30: N $\frac{1}{2}$ NE $\frac{1}{4}$; GOV'T LOT 1; NE $\frac{1}{4}$ NW $\frac{1}{4}$

DATE 7/30/12 ARP064
 *** SUMMARY ***

01 000 Fagen Inc

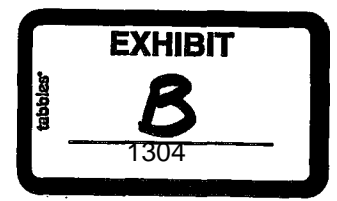
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TIME 16.52

PAGE 2

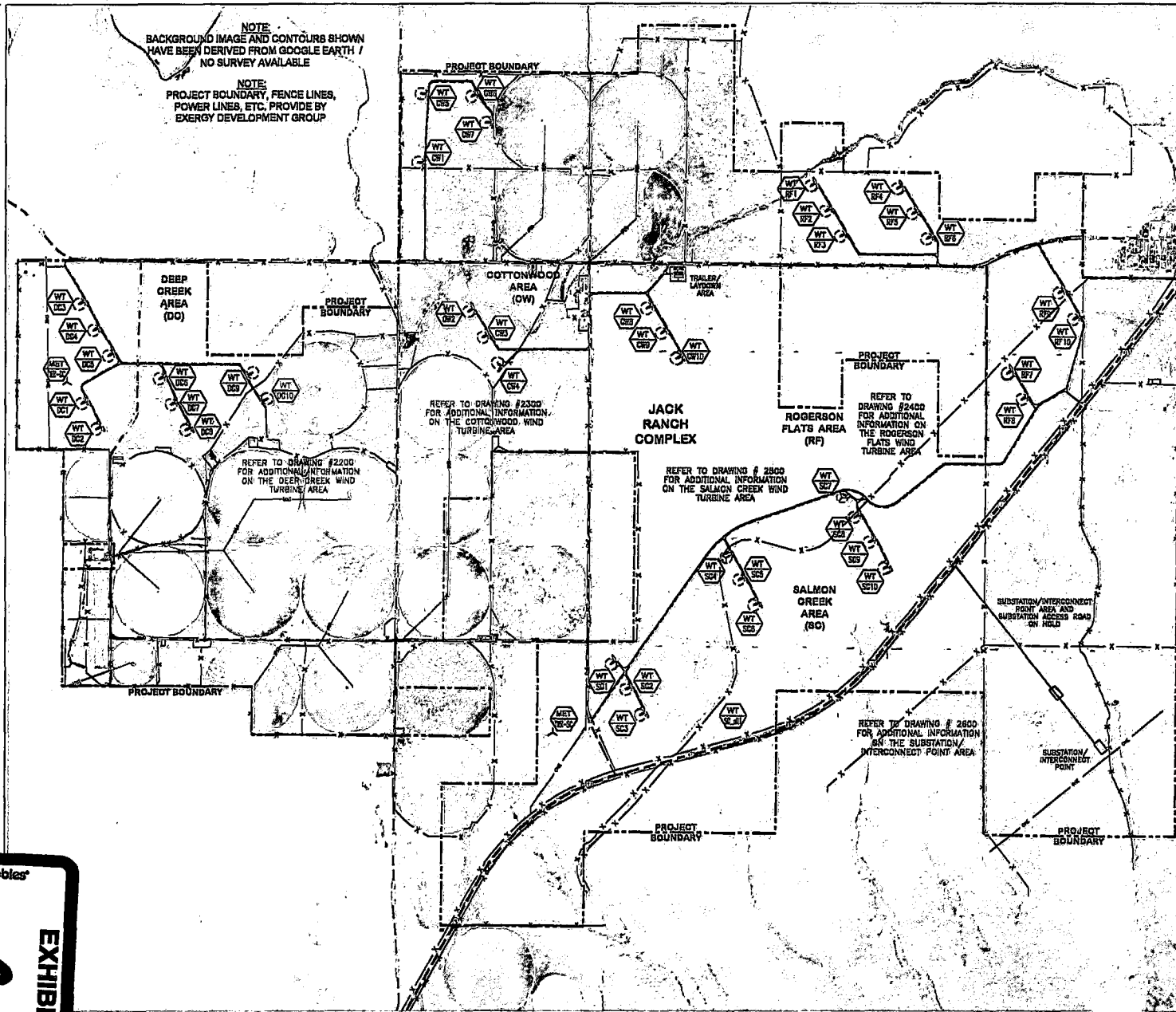
CHECK DATES 00/00/0000 - '99/99/9999

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00010	12/27/2011	APPLICATION #1	114034	604		398603.75			
00002	02/03/2012	APPLICATION #2	114034	604		88359.58			
00003	03/16/2012	APPLICATION #3	114034	604		.00	03/16/2012	999999	
00030	03/16/2012	APPLICATION #3	114034	604		19114.00			
00004	04/25/2012	APPLICATION #4	114034	604		220281.78			
00005	05/25/2012	APPLICATION #5	114034	604		420708.40			
00006	06/29/2012	APPLICATION #6	114034	604		168438.59			
00007	07/27/2012	APPLICATION #7	114034	604		97268.71			
*** SUBJOB TOTAL ***						1,412,774.81			.00
** BALANCE **									1,412,774.81
*** JOB TOTAL ***						1,412,774.81			.00
** BALANCE **									1,412,774.81
** CUSTOMER TOTAL **						1,412,774.81			.00
** BALANCE **									1,412,774.81



NOTE
BACKGROUND IMAGE AND CONTOURS SHOWN
HAVE BEEN DERIVED FROM GOOGLE EARTH /
NO SURVEY AVAILABLE

NOTE:
PROJECT BOUNDARY, FENCE LINES,
POWER LINES, ETC. PROVIDE BY
EXERGY DEVELOPMENT GROUP



**WIND TURBINE LOCATIONS
DEEP CREEK AREA (DC)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
DC1	N 42.20468457°	W 114.7089899°
DC2	N 42.20270591°	W 114.7044828°
DC3	N 42.21218889°	W 114.7083289°
DC4	N 42.21028222°	W 114.7048289°
DC5	N 42.20832572°	W 114.7032812°
DC6	N 42.20656328°	W 114.6960792°
DC7	N 42.20464569°	W 114.6898444°
DC8	N 42.20268942°	W 114.6853472°
DC9	N 42.20710823°	W 114.6884801°
DC10	N 42.20518968°	W 114.6888928°
DC11	N 42.20632010°	W 114.7074878°
DC-SCADA	N 42.20241879°	W 114.6889163°

**WIND TURBINE LOCATIONS
COTTONWOOD AREA (CW)**

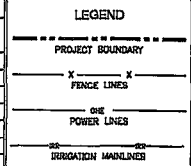
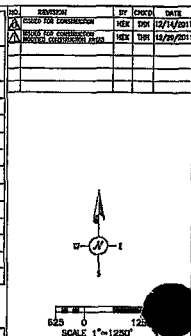
WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
CW1	N 42.23330754°	W 114.6718328°
CW2	N 42.21186374°	W 114.6884828°
CW3	N 42.20980717°	W 114.6849435°
CW4	N 42.20789051°	W 114.683426°
CW5	N 42.22828278°	W 114.6718658°
CW6	N 42.22831462°	W 114.683612°
CW7	N 42.22838831°	W 114.6846434°
CW8	N 42.21220201°	W 114.6482148°
CW9	N 42.21033728°	W 114.6486974°
CW10	N 42.20839071°	W 114.64818°
CW-SCADA	N 42.20782608°	W 114.64477081°

**WIND TURBINE LOCATIONS
ROGERSON FLATS AREA (RF)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
RF1	N 42.22177052°	W 114.6318198°
RF2	N 42.21982398°	W 114.6301022°
RF3	N 42.21787739°	W 114.6285648°
RF4	N 42.22162342°	W 114.627918°
RF5	N 42.21987685°	W 114.6212741°
RF6	N 42.21773022°	W 114.6107868°
RF7	N 42.20748472°	W 114.611464°
RF8	N 42.20683818°	W 114.6080468°
RF9	N 42.2138688°	W 114.6083185°
RF10	N 42.21108323°	W 114.6047881°
RF-SCADA	N 42.20726348°	W 114.61211072°

**WIND TURBINE LOCATIONS
SALMON CREEK AREA (SC)**

WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
SC1	N 42.18463631°	W 114.6818104°
SC2	N 42.18289179°	W 114.6498937°
SC3	N 42.18194817°	W 114.6484770°
SC4	N 42.18348008°	W 114.6401804°
SC5	N 42.18180352°	W 114.6386034°
SC6	N 42.18906698°	W 114.6370288°
SC7	N 42.18910029°	W 114.6281708°
SC8	N 42.18837883°	W 114.6288788°
SC9	N 42.18443228°	W 114.6263368°
SC10	N 42.18248888°	W 114.6238418°
SC11	N 42.17988800°	W 114.6573739°
SC-SCADA	N 42.18224331°	W 114.6232289°



The original of this drawing was issued and sealed by J. HUBBARD, JORDAN.
Date: JUNE 2001, Registration No. 2101
and is on file at Fagen Engineering
corporate office in Grangeville, ID.



320 8th Avenue, P.O. Box 189
Grangeville, Idaho 83424 Tel. 208-684-4573

This drawing was prepared for use on a specific site and is not intended for use on different project sites or is a field plan. All rights are reserved, no duplicate or other uses, by any means, are permitted, in any form, without the express written consent of Fagen Engineering LLC. © Copyright

EXERGY DEVELOPMENT GROUP
USA, IDAHO

**JACK RANCH COMPLEX
PROJECT LAYOUT**

PROJECT NO: 101
DATE: 10/14/2011
SCALE: 1" = 1250'

JOB NUMBER: E33202

REVISION NUMBER: 1

2101



Date	Code	User	Judge
2/8/2013	NCOC	SCHULZ	New Case Filed-Other Claims G. Richard Bevan
	APER	SCHULZ	Plaintiff: Fagen, Inc., A Minnesota Corporation Appearance John R Goodell G. Richard Bevan
		SCHULZ	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Racine, Olson, Nye, Budge & Bailey Receipt number: 1303264 Dated: 2/8/2013 Amount: \$96.00 (Check) For: Fagen, Inc., A Minnesota Corporation (plaintiff) G. Richard Bevan
	COMP	SCHULZ	Complaint Filed G. Richard Bevan
	SMIS	SCHULZ	Summons Issued G. Richard Bevan
6/24/2013		SCHULZ	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Meuleman Mollerup Receipt number: 1316159 Dated: 6/24/2013 Amount: \$66.00 (Check) For: J.R. Simplot Self-Declaration Of Revocable Trust (defendant) G. Richard Bevan
	NOAP	SCHULZ	Notice Of Appearance G. Richard Bevan
6/25/2013	APER	SCHULZ	Defendant: J.R. Simplot Self-Declaration Of Revocable Trust Appearance Richard L Stacey G. Richard Bevan
6/27/2013	ACSV	PIERCE	Acceptance Of Service G. Richard Bevan
8/5/2013	ACSV	PIERCE	Acceptance Of Service G. Richard Bevan
	NOFG	PIERCE	Plaintiff's Notice of Filing of Acceptance of Service G. Richard Bevan
9/3/2013		SCHULZ	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Angelo L Rosa Receipt number: 1322341 Dated: 9/3/2013 Amount: \$66.00 (Credit card) For: Deep Creek Wind Park, LLC (defendant), Exergy Development Group Of Idaho, LLC (defendant) and XRG Development Partners, LLC (defendant) G. Richard Bevan
		SCHULZ	Filing: Technology Cost - CC Paid by: Angelo L Rosa Receipt number: 1322341 Dated: 9/3/2013 Amount: \$3.00 (Credit card) For: Deep Creek Wind Park, LLC (defendant), Exergy Development Group Of Idaho, LLC (defendant) and XRG Development Partners, LLC (defendant) G. Richard Bevan
	NOAP	SCHULZ	Notice Of Appearance G. Richard Bevan
9/4/2013	APER	SCHULZ	Defendant: Deep Creek Wind Park, LLC Appearance Angelo L Rosa G. Richard Bevan
	APER	SCHULZ	Defendant: Exergy Development Group Of Idaho, LLC Appearance Angelo L Rosa G. Richard Bevan
	APER	SCHULZ	Defendant: XRG Development Partners, LLC Appearance Angelo L Rosa G. Richard Bevan
9/6/2013	MDIS	PIERCE	Omnibus Motion To Dismiss Complaint G. Richard Bevan

Date	Code	User	Judge
9/6/2013	MEMO	PIERCE	Memorandum in Support of Omnibus Motion to Dismiss Complaint
	CESV	PIERCE	Certificate Of Service (Omnibus Motion to Dismiss)
9/12/2013	MOAM	PIERCE	Plaintiff's Motion for Leave to Amend Complaint
	MOCT	PIERCE	Plaintiff Fagen's Motion for Rule 56(f) Continuance
	MEMO	PIERCE	Plaintiff Fagen's Memorandum in Support of Motion for Rule 56(f) Continuance
	AFFD	PIERCE	Affidavit of John R. Goodell in Support of Motion for Rule 56(f) Continuance
9/16/2013	ORAS	SCHORZMAN	Order Of Assignment
	CHJG	SCHORZMAN	Change Assigned Judge
9/23/2013	NOHG	PIERCE	Notice Of Hearing
10/1/2013	MEMO	PIERCE	Plaintiff Fagen Inc.'s Memorandum Opposing Defendants' Omnibus Motion to Dismiss Complaint
10/2/2013	NOTC	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Notice of Non-Opposition to Plaintiff's Motion for Leave to Amend Complaint
10/4/2013	NOHG	PIERCE	Notice Of Hearing
10/7/2013	NOCA	PIERCE	Notice Of Change Of Address
10/15/2013	NOHG	PIERCE	Notice Of Hearing on J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss and Notice of Intent to Appear by Telephone
	NINT	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Notice of Intent to Appear by Telephone
	HRSC	MCMULLEN	Hearing Scheduled (Motion to Dismiss 12/02/2013 10:00 AM) Simplot's Motion to Dismiss
	NOWD	PIERCE	Notice Of Withdrawal of Intent to Appear by Telephone [Re: October 21 & December 2, 2013, Hearings]
	NOSV	PIERCE	Notice Of Service
10/18/2013	HRVC	MCMULLEN	Hearing result for Motion to Amend scheduled on 10/21/2013 10:00 AM: Hearing Vacated Also Motion to Dismiss
	NOHG	PIERCE	Amended Notice Of Hearing
	AFFD	PIERCE	Second Affidavit of John R. Goodell in Support of Motion for Rule 56(f) continuance
	NOTC	PIERCE	Notice of Non-Opposition to Motion to Amend complaint
10/30/2013	NOHG	BANYAI	Second Amended Notice Of Hearing

Date	Code	User	Judge
11/15/2013	NOHG	PIERCE	Notice Of Hearing on J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss
	MDIS	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Randy J. Stoker Motion To Dismiss
	MEMO	PIERCE	Memorandum in Support of J.R. Simplot Self-Declaration of Revocable Trust's Motion to Dismiss
11/27/2013	NOWD	PIERCE	J.R. Simplot Self-Declaration of Revocable Trust's Randy J. Stoker Notice of Withdrawal of Motion to Dismiss and Notice of Non-Opposition
11/29/2013	STIP	MCMULLEN	Stipulation for Dismissal with Prejudice (Fagen Claims Against Defendant J.R. Simplot Self-Declaration Revocable Trust Only)
12/2/2013	ORDR	MCMULLEN	Order for Dismissal with Prejudice (Fagen Claims Against Defendant J.R. Simplot Self-Declaration of Revocable Trust Only)
	CDIS	MCMULLEN	Civil Disposition/Judgment entered: entered for: J.R. Simplot Self-Declaration Of Revocable Trust, Defendant; Fagen, Inc., A Minnesota Corporation, Plaintiff. Filing date: 12/2/2013
	ORDR	MCMULLEN	Order for Leave to File First Amended Complaint
	DCHH	MCMULLEN	Hearing result for Motion to Dismiss scheduled on 12/02/2013 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Simplot's Motion to Dismiss, Motion to Amend
	ADVS	MCMULLEN	Case Taken Under Advisement
	CMIN	MCMULLEN	Court Minutes
12/4/2013	ORDR	MCMULLEN	Order Re Consolidation, Motion to Amend, Motion to Continue and Motion to Dismiss
	CDIS	MCMULLEN	Civil Disposition/Judgment entered: entered for: Deep Creek Wind Park, LLC, Defendant; Exergy Development Group Of Idaho, LLC, Defendant; J.R. Simplot Self-Declaration Of Revocable Trust, Defendant; John Does 1-10,, Defendant; XRG Development Partners, LLC, Defendant; Fagen, Inc., A Minnesota Corporation, Plaintiff. Filing date: 12/4/2013
12/5/2014	SCDF	COOPE	Supreme Court -- Filed Notice of Appeal. Clerk's Record & Reporter's Transcript Due 02-04-15
12/15/2014	SCDF	COOPE	Supreme Court -- Entered Order RE: Reporter's Transcript Fee Payment Due in 7 Days
	SCDF	COOPE	Supreme Court Document Filed- Order RE: Reporter's Transcript

Date	Code	User	Judge
12/31/2014	SCDF	COOPE	Supreme Court Set Due Date - Transcript and Clerk's Record Due 03-11-15 Randy J. Stoker
1/6/2015	SCDF	COOPE	Supreme Court -- Entered Notice of Defect Order. Amended Notice of Appeal Reflecting Date, Title of Documents and Service to Reporter to be Filed Within 14 Days or this Appeal will Proceed on the Clerk's Record Only Pursuant to I.A.R. 28 Randy J. Stoker
	SCDF	COOPE	Supreme Court Document Filed- Order of Defect Randy J. Stoker
1/14/2015	NTOA	COOPE	Amended Notice Of Appeal Randy J. Stoker
1/27/2015	SCDF	COOPE	Supreme Court -- 01-21-15: Filed Amended Notice of Appeal Due Date for Transcript and Clerk's Record Reset for 03-26-15 Randy J. Stoker
2/18/2015	NOTC	COOPE	Notice of Balance Due on Clerk's Record Randy J. Stoker
3/10/2015	SCDF	COOPE	Supreme Court -- Filed Notice of Balance Due for Preparation of Clerk's Record (\$869.05) - Please See Attachment. Appellant Must Submit Payment to the District Court Clerk Within Seven (7) Days or by Friday 03-13-15 Randy J. Stoker
3/30/2015	SCDF	COOPE	Supreme Court Filed Amended Motion to Consolidate Appeals (42592 & 42684) and Declaration of Angelo L. Rosa in Support Randy J. Stoker
	SCDF	COOPE	Supreme Court Received Receipt of Payment from District Court Clerk for Preparation of Clerk's Record (\$869-05) Therefore Due Date Reset For Transcripts and Clerk's Record to 5-15-2015 Randy J. Stoker

John R. Goodell (ISB#: 2872)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109

DISTRICT COURT
 TWIN FALLS CO., IDAHO
 FILED

2013 FEB -8 PM 4: 18

BY _____ CLERK
 PS _____ DEPUTY

Attorneys for Plaintiff Fagen, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC., a Minnesota corporation,)
)
 Plaintiff,)
)
 vs.)
)
 DEEP CREEK WIND PARK, LLC, an Idaho)
 limited liability company; EXERGY)
 DEVELOPMENT GROUP OF IDAHO,)
 LLC, an Idaho limited liability company;)
 XRG DEVELOPMENT PARTNERS, LLC,)
 an Idaho limited liability company;)
 J. R. SIMPLOT SELF-DECLARATION OF)
 REVOCABLE TRUST, an Idaho revocable)
 trust; and "JOHN DOES 1-10,")
)
 Defendants.)
 _____)

Case No. CV-2013-5710

COMPLAINT

Fee Code: (A)(\$96.00)

COMES NOW Plaintiff Fagen, Inc. ("Fagen"), by and through counsel of record, and for its
 Complaint against the above-named Defendants, and any other persons or entities claiming any right
 to possession or interest of the subject property, states and alleges as follows:

1. Plaintiff Fagen is a corporation duly organized under the laws of the State of
 Minnesota. Fagen is a registered contractor pursuant to Idaho Code § 54-5204, license number RCE-
 26001, and in good standing.

2. Defendant J. R. Simplot Self-declaration of Revocable Trust (“Simplot Trust”), an Idaho revocable trust, is the owner or reputed owner and lessor of real property and improvements thereon (hereinafter described as the “Property”), as more fully described in Exhibit A-1 attached to the Claim of Lien recorded as Instrument No. 2012014942 on 8/8/2012 in the Twin Falls County Recorder’s Office.

A true and correct copy of said Claim of Lien is attached as Exhibit One hereto and adopted by reference as though fully set forth herein (“Claim of Lien”).

3. Defendant Exergy Development Group of Idaho, LLC (hereinafter described as “Exergy”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with XRG and/or Deep Creek Wind Park, LLC.

4. Defendant XRG Development Partners, LLC (hereinafter described as “XRG”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to Wind Project Ground Lease(s) and Agreement(s) entered with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or Deep Creek Wind Park, LLC.

5. Defendant Deep Creek Wind Park, LLC (hereinafter described as Deep Creek Wind Park”), an Idaho limited liability company, is a tenant or reputed tenant which claims an interest in the Property pursuant to lease(s) entered with the with the Simplot Trust or affiliates; and/or pursuant to contract, assignment, agreement, or other instrument entered with Exergy and/or XRG.

6. Exergy, XRG, and/or Deep Creek Wind Park are the owner(s) or reputed owner(s) of certain improvements, facilities, and structures being constructed on the Property (“hereinafter described as the “Project”).

7. Fagen claims an interest in the Property pursuant to its Claim of Lien in the amount of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law.

8. Defendants “John Does 1-10” are additional unnamed persons or parties may claim and interest in the property who are presently unknown. Fagen reserves the right to amend this Complaint to add such additional persons or parties at a later time.

9. Jurisdiction is proper in this Court pursuant to Idaho Code § 5-514 as the Defendants have transacted business and/or this action relates to ownership, use or possession of real property located within the State of Idaho.

10. Venue is proper in this Court pursuant to Idaho Code § 5-401.

11. In 2011 Fagen entered into agreements and/or memorandum of understanding(s) to supply labor, materials, and engineering, procurement and construction services with Exergy, upon, and for the benefit, of the Property.

12. Fagen supplied labor, materials, and services upon and for the benefit of the Property, commencing work in 2011.

13. Fagen continued to provide labor, furnish materials, and supply services for the improvement to the Property until July 31, 2012, when it ceased doing so due to non-payment by Exergy.

14. Fagen performed this work in a conforming, workmanlike manner pursuant to its agreement with Exergy.

15. As a result of Exergy's failure to pay Fagen for labor, materials and services supplied for improvements to the Property, Fagen filed its Claim of Lien as described above.

16. The reasonable value of the benefit to the Property is equivalent to the labor, material, and services supplied by Fagen as the amount due stated in its Claim of Lien.

17. True and correct copies of Fagen's Claim of Lien were timely served by certified mailing on Defendants.

18. Fagen is entitled to a judgment foreclosing its Claim of Lien for the amount thereof, together with accrued interest pursuant to law; a determination that its Claim of Lien is superior and has priority to any interest claimed by all Defendants, and each of them; and for foreclosure sale with application of the proceeds of sale to amount due to Fagen.

19. Fagen is entitled to recover costs and reasonable attorney fees to maintain this action, pursuant to Idaho Code § 45-501 *et seq.* The sum of \$10,000 is reasonable should this matter be resolved by default.


WHEREFORE, Fagen prays for judgment against Defendants as follows:

- A. An order foreclosing Fagen's Claim of Lien against the Property, and declaring the amount due of \$1,412,774.81, together with prejudgment interest accruing thereon pursuant to law;
- B. An order declaring the Defendants, and all persons or entities claiming an interest in the Property or any part thereof, to be barred and foreclosed of all right, title, interest, claim or equity of redemption in and to the Property;
- C. An order for sale of the Property according to law and directing the proceeds of sale be applied to the amount due Fagen;

- D. An award of costs incurred;
- E. An award of reasonable attorney fees;
- F. Such further relief as the Court deems just in the premises.

DATED this 6th day of February, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
JOHN R. GOODELL
Attorneys for Plaintiff Fagen, Inc.

John R. Goodell (ISB #2872)
 Daniel C. Green (ISB #3213)
 Ferrell S. Ryan, III (ISB # 8414)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109

TWIN FALLS COUNTY
 RECORDED FOR:
 FIRST AMERICAN TITLE - TWIN FA
 12:38:26 PM 08-08-2012
2012014942
 NO. PAGES 12 FEE: \$43.00
 KRISTINA GLASCOCK
 COUNTY CLERK
 DEPUTY: DJW
 Electronically Recorded by Simplifile

Attorneys for Claimant Fagen, Inc.

_____)
 FAGEN, INC., a Minnesota corporation,)
)
 Claimant,)
)
 vs.)
)
 DEEP CREEK WIND PARK, LLC, an Idaho)
 limited liability company; EXERGY)
 DEVELOPMENT GROUP OF IDAHO,)
 LLC, an Idaho limited liability company;)
 XRG DEVELOPMENT) PARTNERS, LLC)
 (ID), an Idaho limited) liability company;)
 J. R. SIMPLOT SELF-DECLARATION OF)
 REVOCABLE) TRUST, an Idaho revocable)
 trust,)
)
 Owners/Reputed Owners.)
 _____)

CLAIM OF LIEN (I.C. § 45-507)

NOTICE IS HEREBY GIVEN:

That FAGEN, INC., 501 W. Highway 212, P. O. Box 159, Granite Falls, MN 56241, hereby claims the benefit of the law relative to liens of mechanics and materialmen upon real property as provided by the laws of the State of Idaho, I.C. § 45-501 *et seq.*, and does hereby claim a lien upon that certain tract of land and improvements thereon as hereinafter described, and in the following amounts:

John R. Goodell (ISB #2872)
 Daniel C. Green (ISB #3213)
 Ferrell S. Ryan, III (ISB # 8414)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109

2012014942
 Twin Falls
 8/8/12 12:38:16

Attorneys for Claimant Fagen, Inc.

_____)
 FAGEN, INC., a Minnesota corporation,)
)
 Claimant,)
)
 vs.)
)
 DEEP CREEK WIND PARK, LLC, an Idaho)
 limited liability company; EXERGY)
 DEVELOPMENT GROUP OF IDAHO,)
 LLC, an Idaho limited liability company;)
 XRG DEVELOPMENT) PARTNERS, LLC)
 (ID), an Idaho limited) liability company;)
 J. R. SIMPLOT SELF-DECLARATION OF)
 REVOCABLE) TRUST, an Idaho revocable)
 trust,)
)
 Owners/Reputed Owners.)
 _____)

CLAIM OF LIEN (I.C. § 45-507)

NOTICE IS HEREBY GIVEN:

That FAGEN, INC., 501 W. Highway 212, P. O. Box 159, Granite Falls, MN 56241, hereby claims the benefit of the law relative to liens of mechanics and materialmen upon real property as provided by the laws of the State of Idaho, I.C. § 45-501 *et seq.*, and does hereby claim a lien upon that certain tract of land and improvements thereon as hereinafter described, and in the following amounts:

1. That the principal sum of **\$1,412,774.81** in accordance with the Accounts Receivable History By Customer statement attached hereto as **Exhibit B** and adopted by reference, is owed for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment for the DEEP CREEK WIND PARK, LLC, a wind park project, located at or near Rogerson, Twin Falls, County, Idaho.

In addition, prejudgment interest is owed on the above principal installment amounts from the indicated due date on the invoices listed in **Exhibit B** pursuant to the parties' underlying written contract, and/or Idaho's statutory rate @ 12% per annum, until paid or entry of judgment; plus costs and attorney fees incurred in collection.

2. That said amounts are due, and owing, after deducting all just credits and offsets, for said claim for labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, in and for those certain improvements of said land located at Twin Falls County, Idaho, more particularly described in **Exhibit A** attached hereto and adopted by reference, commonly known as DEEP CREEK WIND PARK, LLC, located at or near Rogerson, Twin Falls, County, Idaho, said land being the subject of lease(s) to DEEP CREEK WIND PARK, LLC and/or EXERGY DEVELOPMENT GROUP OF IDAHO, LLC, and/or XRG DEVELOPMENT PARTNERS, LLC (ID), Lessees; and said land also being owned by the J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST, Lessor.¹

¹Said Lessor's Trust established by written instrument dated December 21, 1989, and registered in the Fourth Judicial District of the State of Idaho, Ada County, as No. 3T-788.

In addition, **Exhibit C** attached hereto and adopted by reference are two color-coded maps and engineering drawings which locate and identify DEEP CREEK WIND FARM, LLC.

3. That the name(s) and address(es) of the person(s) and/or entity(ies) who/which contracted with claimant and for whom claimant performed labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment, are:

DEEP CREEK WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

DEEP CREEK WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

DEEP CREEK WIND PARK, LLC
Attn: Mark A. Ellison, Registered Agent
205 N. 10th St., 4th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

4. Claimant's last item of labor performed, materials furnished, and/or provision of engineering, procurement, construction and other services and supply of materials and equipment occurred on July 31, 2012.

5. That the owner(s) or reputed owner(s) of said property to be charged with said lien are:

DEEP CREEK WIND PARK, LLC
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

DEEP CREEK WIND PARK, LLC
802 W. Bannock, 12th Floor
Boise, ID 83702

DEEP CREEK WIND PARK, LLC
Attn: Mark A. Ellison, Registered Agent
205 N. 10th St., 4th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
802 W. Bannock, 12th Floor
Boise, ID 83702

EXERGY DEVELOPMENT GROUP OF IDAHO, L.L.C.
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: James Carkulis
801 W. Bannock
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
802 W. Bannock, 12th Floor
Boise, ID 83702

XRG DEVELOPMENT PARTNERS, LLC (ID)
Attn: Molly O'Leary, Registered Agent
515 N. 27th St.
Boise, ID 83702

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Ronald N. Graves
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
Attn: Doug Zandersmith
P. O. Box 27
999 Main Street, Suite 1300
Boise, ID 83707

6. That the description of the property to be charged with said lien, and upon which said improvements were made, and which is situated Twin Falls County, Idaho, is more fully described in **Exhibits A and C** attached hereto and adopted by reference.

7. That the mailing address for this Claimant is:

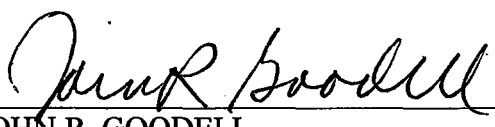
FAGEN, INC.
Attn: Jennifer A. Johnson,
Chief Financial Officer
501 W. Highway 212
P. O. Box 159
Granite Falls, MN 56241

8. That the undersigned certifies that a true and correct copy of this Claim of Lien following recording will either be served personally, or served by mailing a copy thereof by U.S. mail, certified - return receipt requested, within the time prescribed by statute for doing so, upon the owners or reputed owners who/which are identified above.

Dated this 3rd day of August, 2012.

CLAIMANT:
FAGEN, INC.

By: _____


JOHN R. GOODELL
Attorney and Authorized Representative
for Claimant

Deep Creek

EXHIBIT A
Property Description

TOWNSHIP 14 SOUTH, RANGE 15 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY,
IDAHO

SECTION 15: S $\frac{1}{2}$; S $\frac{1}{2}$ NE $\frac{1}{4}$

EXCEPT

BEGINNING AT SURVEY STATION 115+74 OF "A" LATERAL SURVEY AS LOCATED
WHICH POINT IS ON SECTION LINE 1620.8 FEET SOUTH OF SECTION CORNER
COMMON TO SECTION 10, 11, 14 AND 15; TOWNSHIP 14 SOUTH, RANGE 15 EAST,
B.M.;

THENCE NORTH ALONG SAID SECTION LINE, 300.8 FEET, MORE OR LESS TO THE
NORTHEAST CORNER OF THE SE $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 15;

THENCE WEST ALONG THE NORTH BOUNDARY OF SAID FORTY (FORTH), 100 FEET;
THENCE SOUTH 8° 29' EAST 681.3 FEET, TO A POINT ON THE EAST SECTION LINE OF
SECTION 15;

THENCE NORTHERLY ALONG SAID SECTION LINE 380.5 FEET, TO THE POINT OF
BEGINNING.

SECTION 16: ALL

SECTION 21: E $\frac{1}{2}$ W $\frac{1}{2}$; E $\frac{1}{2}$

EXCEPT

A TWENTY-TWO (22) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS
FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 21 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2638.50 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 21;
THENCE ON A BEARING OF NORTH 00° 22' 02" EAST A DISTANCE OF 1963.97 FEET
TO THE REAL POINT OF BEGINNING;

THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF NORTH 89° 42'
09" WEST A DISTANCE OF 1319.23 FEET;

THENCE ON A BEARING OF NORTH 00° 22' 03" EAST A DISTANCE OF 680.00 FEET;

THENCE ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF 1319.23 FEET TO
THE CENTER QUARTER CORNER OF SAID SECTION 21;

THENCE CONTINUING ON A BEARING OF SOUTH 89° 42' 09" EAST A DISTANCE OF
100.00 FEET;

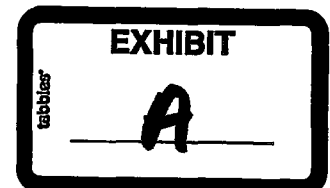
THENCE ON A BEARING OF SOUTH 00° 17' 51" WEST A DISTANCE OF 680.00 FEET;

THENCE ON A BEARING OF NORTH 89° 42' 09" WEST A DISTANCE OF 100.83 FEET TO
THE REAL POINT OF BEGINNING.

SECTION 22: ALL

EXCEPT

A TWO (2) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTH QUARTER CORNER OF SECTION 22 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS SOUTH 89° 32' 27" EAST A
DISTANCE OF 2642.45 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 22;
THENCE ON A BEARING OF NORTH 89° 30' 21" WEST A DISTANCE OF 370.00 FEET
ALONG THE SOUTH BOUNDARY OF SAID SECTION 22 TO THE REAL POINT OF
BEGINNING;



Deep Creek

THENCE FROM THIS REAL POINT OF BEGINNING AND CONTINUING ON A BEARING OF NORTH 89° 32' 27" WEST A DISTANCE OF 410.00 FEET;
THENCE ON A BEARING OF NORTH 00° 27' 33" EAST A DISTANCE OF 120.00 FEET;
THENCE ON A BEARING OF NORTH 61° 56' 10" EAST A DISTANCE OF 261.77 FEET;
THENCE ON A BEARING OF SOUTH 89° 32' 27" EAST A DISTANCE OF 180.00 FEET
PARALLEL WITH THE SOUTH BOUNDARY OF SAID SECTION 22;
THENCE ON A BEARING OF SOUTH 00° 27' 33" WEST A DISTANCE OF 245.00 FEET TO
THE SOUTH BOUNDARY OF SAID SECTION 22 AND THE REAL POINT OF BEGINNING.

SECTION 26: S $\frac{1}{2}$ NW $\frac{1}{4}$

SECTION 27: NE $\frac{1}{4}$; N $\frac{1}{2}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$

SECTION 28: N $\frac{1}{2}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$

EXCEPT

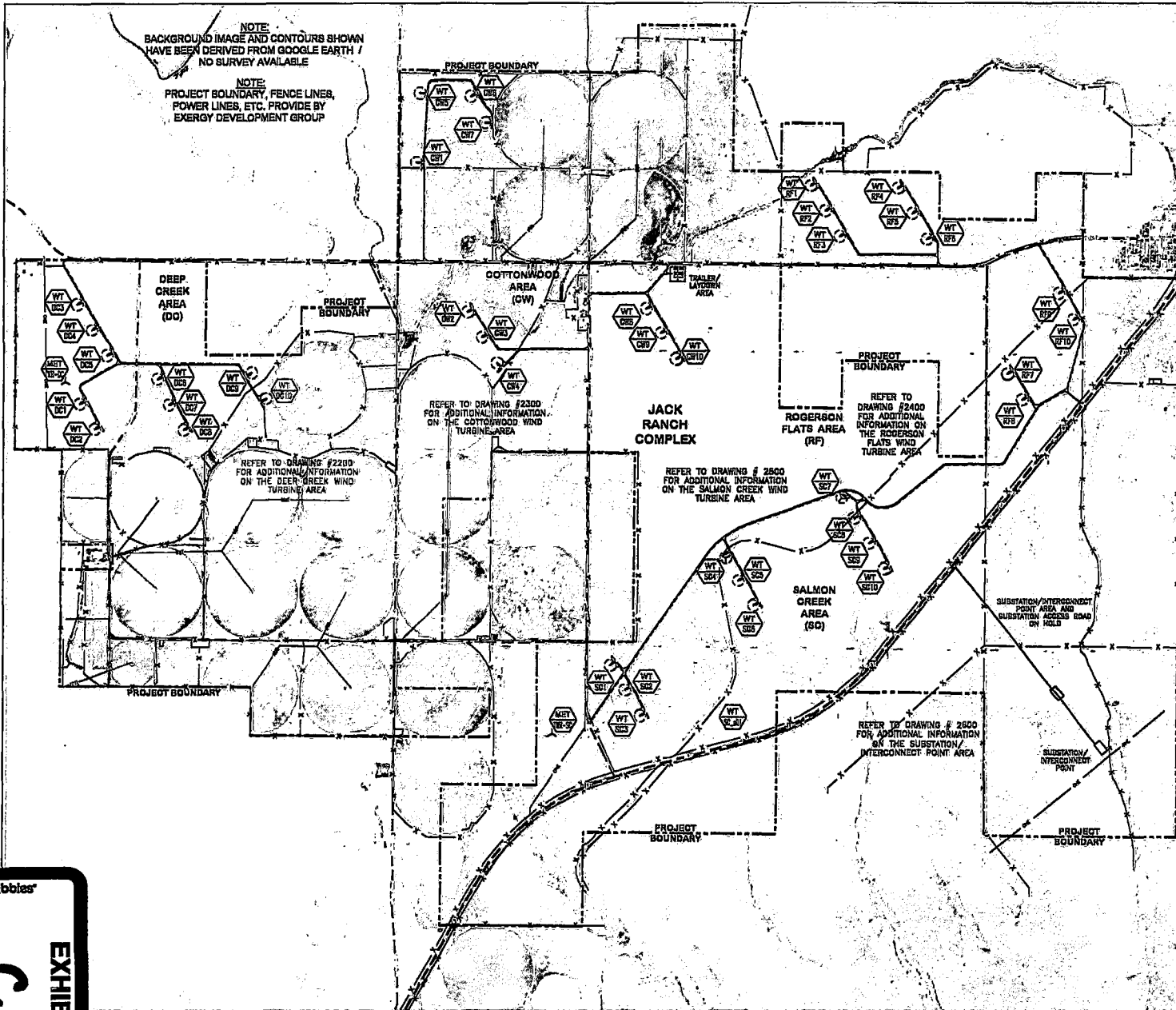
A ONE (1) ACRE PARCEL MORE OR LESS, SPECIFICALLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 28 ALL IN TOWNSHIP
14 SOUTH, RANGE 15 EAST, B.M., WHICH BEARS NORTH 89° 42' 57" WEST A
DISTANCE OF 2638.50 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 28
AND BEING THE REAL POINT OF BEGINNING;
THENCE FROM THIS REAL POINT OF BEGINNING ON A BEARING OF SOUTH 89° 42'
57" EAST A DISTANCE OF 275.00 FEET ALONG THE NORTH BOUNDARY OF SAID
SECTION 28;
THENCE ON A BEARING OF SOUTH 00° 23' 55" WEST A DISTANCE OF 155.00 FEET;
THENCE ON A BEARING OF NORTH 89° 42' 57" WEST A DISTANCE OF 275.00 FEET
PARALLEL WITH THE NORTH BOUNDARY OF SAID SECTION 28;
THENCE ON A BEARING OF NORTH 00° 23' 55" EAST A DISTANCE OF 155.00 FEET TO
THE REAL POINT OF BEGINNING.

DATE 7/30/12 ARP064
 *** SUMMARY ***

01 000 Fagen Inc
 ACCOUNTS RECEIVABLE HISTORY BY CUSTOMER TIME 16.52 PAGE
 INVOICE DATES 00/00/0000 - 99/99/9999 CHECK DATES 00/00/0000 - 99/99/9999

-----INVOICE-----			JOB	SUB	-----REFERENCE----		INVOICE	DSCT	CHECK	CHECK	CHECK	
NUMBER	DATE	DESCRIPTION	NUMBER	JOB	NUMBER	DATE	AMOUNT	AMT	DATE	NUMBER	AMOUNT	
02211 Deep Creek Wind Park, LLC												
00001	12/27/2011	APPLICATION #1	114034	606			.00	.00	12/27/2011	999999	.00	
00010	12/27/2011	APPLICATION #1	114034	606			398603.75	.00			.00	
00002	02/03/2012	APPLICATION #2	114034	606			88359.56	.00			.00	
00003	03/16/2012	APPLICATION #3	114034	606			.00	.00	03/16/2012	999999	.00	
00030	03/16/2012	APPLICATION #3	114034	606			19114.00	.00			.00	
00004	04/25/2012	APPLICATION #4	114034	606			220281.79	.00			.00	
00005	05/25/2012	APPLICATION #5	114034	606			420708.38	.00			.00	
00006	06/29/2012	APPLICATION #6	114034	606			168438.60	.00			.00	
00007	07/27/2012	APPLICATION #7	114034	606			97268.71	.00			.00	
*** SUBJOB TOTAL ***							1,412,774.79		.00		.00	
** BALANCE **											1,412,774.79	





NOTE:
BACKGROUND IMAGE AND CONTOURS SHOWN
HAVE BEEN DERIVED FROM GOOGLE EARTH /
NO SURVEY AVAILABLE

NOTE:
PROJECT BOUNDARY, FENCE LINES,
POWER LINES, ETC. PROVIDE BY
ENERGY DEVELOPMENT GROUP

WIND TURBINE LOCATIONS DEEP CREEK AREA (DC)		
WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
DC1	N 42.20468487°	W 114.7098989°
DC2	N 42.20270801°	W 114.7044828°
DC3	N 42.21118885°	W 114.7033289°
DC4	N 42.21028228°	W 114.7046088°
DC5	N 42.20830572°	W 114.7032812°
DC6	N 42.20839338°	W 114.6980792°
DC7	N 42.20468486°	W 114.6988844°
DC8	N 42.20289842°	W 114.6983472°
DC9	N 42.20710523°	W 114.6984821°
DC10	N 42.20518966°	W 114.6989828°
WT DIRECTION	N 42.20632910°	W 114.7074878°
DC-SCDA	N 42.20241878°	W 114.6991663°

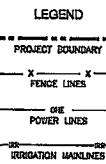
WIND TURBINE LOCATIONS COTTONWOOD AREA (CW)		
WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
CW1	N 42.22338784°	W 114.6716329°
CW2	N 42.21183374°	W 114.6884625°
CW3	N 42.20980717°	W 114.6949435°
CW4	N 42.20786081°	W 114.6834625°
CW5	N 42.22652378°	W 114.6718555°
CW6	N 42.22631488°	W 114.6683812°
CW7	N 42.22635883°	W 114.6684834°
CW8	N 42.21202021°	W 114.6482148°
CW9	N 42.21033728°	W 114.6488974°
CW10	N 42.20833071°	W 114.64518°
DC-SCDA	N 42.20782808°	W 114.6447708°

WIND TURBINE LOCATIONS ROGERSON FLATS AREA (RF)		
WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
RF1	N 42.22177052°	W 114.6310188°
RF2	N 42.21862386°	W 114.6301022°
RF3	N 42.21787739°	W 114.6285845°
RF4	N 42.22182342°	W 114.6227918°
RF5	N 42.21897665°	W 114.6212741°
RF6	N 42.21773028°	W 114.6197886°
RF7	N 42.20748472°	W 114.611494°
RF8	N 42.20583810°	W 114.6099488°
RF9	N 42.2135898°	W 114.6063125°
RF10	N 42.21188323°	W 114.6047881°
RF-SCDA	N 42.20726348°	W 114.61211072°

WIND TURBINE LOCATIONS SALMON CREEK AREA (SC)		
WT DWG#	LATITUDE (DECIMAL)	LONGITUDE (DECIMAL)
SC1	N 42.18493681°	W 114.6818104°
SC2	N 42.18289174°	W 114.6499937°
SC3	N 42.18104517°	W 114.6484770°
SC4	N 42.18343009°	W 114.641204°
SC5	N 42.18180352°	W 114.6388034°
SC6	N 42.18350596°	W 114.6370888°
SC7	N 42.18816028°	W 114.6281705°
SC8	N 42.18837883°	W 114.6288785°
SC9	N 42.18443228°	W 114.6233888°
SC10	N 42.18246888°	W 114.6238418°
WT DIRECTION	N 42.17868800°	W 114.6273738°
DC-SCDA	N 42.18224331°	W 114.62322065°



SCALE 1"=1200'



This copy of this drawing was issued and sealed by: **33281.A.10254**

Date: 3/22/2011, Register No: 2011
 I am an EIT in the State of Idaho. I am a duly licensed Professional Engineer in the State of Idaho.



FAGEN ENGINEERING LLC

Civil - Structures - Mechanical - Electrical - Excavation

120 E3 Avenue, P.O. Box 109
 Grangeville, ID 83424 Tel: 208-684-0373

This drawing was prepared for use on a specific site and is not to be used on any other project area or of a later date. It does not represent an original or other work in the field of engineering.

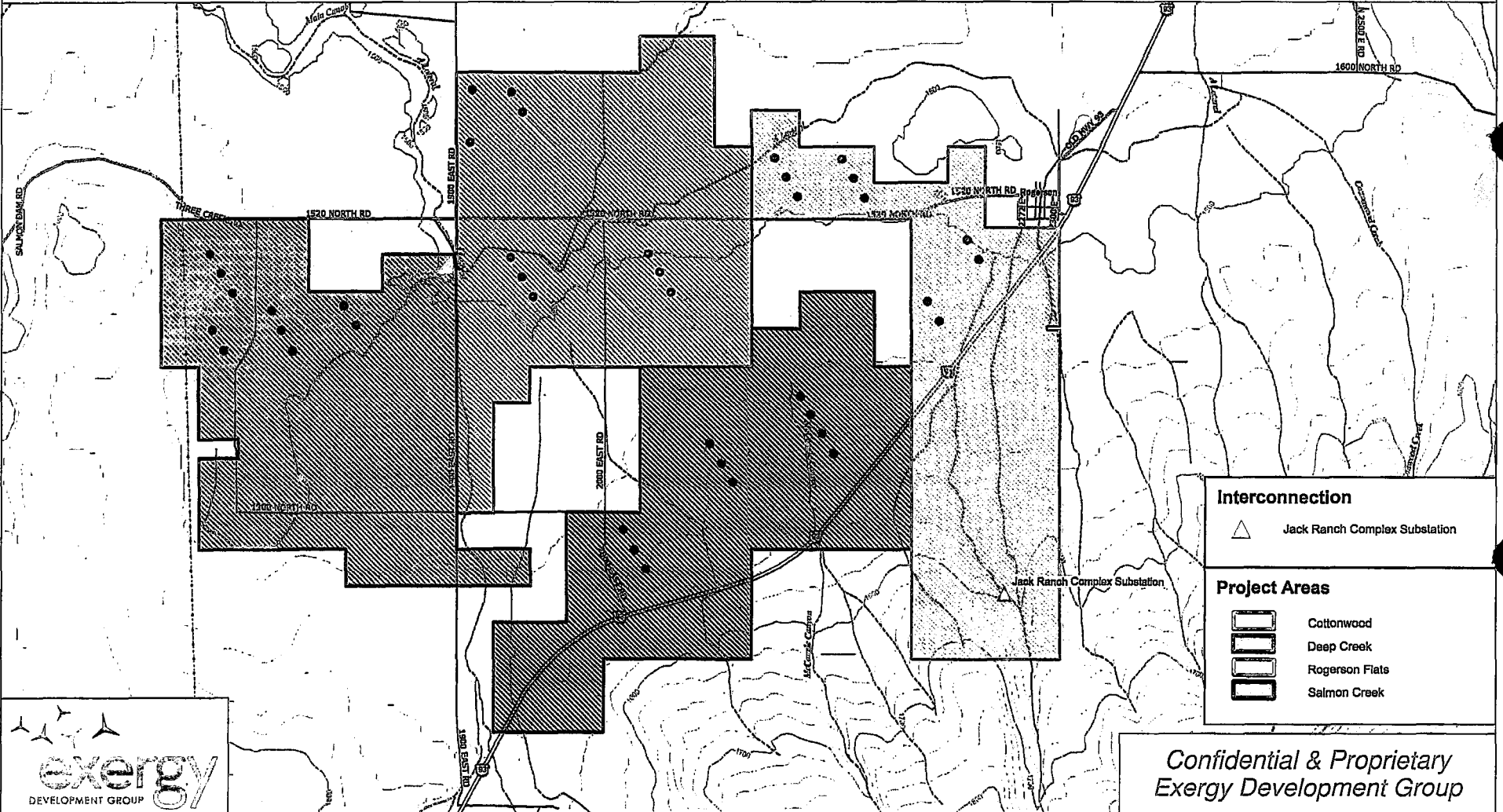
ENERGY DEVELOPMENT GROUP
 USA, IDAHO

JACK RANCH COMPLEX
 PROJECT LAYOUT

DATE: 03/22/2011
 TIME: 12:14:20 PM
 SCALE: 1" = 1200'
 DRAWING NO: 2101
 SHEET NO: 02/01/001
 PROJECT NO: 02/01/001



Jack Ranch Complex



Interconnection

- △ Jack Ranch Complex Substation

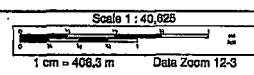
Project Areas

- [Diagonal lines] Cottonwood
- [Horizontal lines] Deep Creek
- [Vertical lines] Rogerson Flats
- [Cross-hatch] Salmon Creek



Confidential & Proprietary
Exergy Development Group

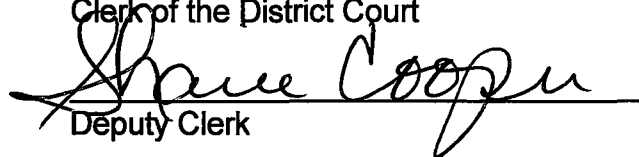
Data use subject to license.
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www.delorme.com



I do further certify that there are no exhibits, offered or admitted in the above-entitled cause.

WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 17th day of February, 2015.

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

FAGEN, INC.,)	
)	
Plaintiff/Respondent,	)	SUPREME COURT NO. 42684
	)	CASE NOS. CV 13-573,
vs	)	CV 13-574, CV 13-575,
	)	CV 13-576
)	
ROGERSON FLATS WIND PARK, LLC, an)	
Idaho Limited Liability Company; EXERGY	)	CERTIFICATE OF SERVICE
DEVELOPMENT GROUP OF IDAHO, LLC)	
an Idaho Limited Liability Company; XRG)	
DEVELOPMENT PARTNER, LLC, an Idaho)	
Limited Liability Company; COTTONWOOD)	
WIND PARK, LLC, an Idaho Limited Liability)	
Company; SALMON CREEK WIND PARK,)	
LLC, an Idaho Limited Liability Company;)	
DEEP CREEK WIND PARK, LLC, an Idaho)	
Limited Liability Company; NOTCH BUTTE)	
WIND PARK, LLC, an Idaho Limited Liability)	
Company,)	
)	
Defendants/Appellants.)	
)	
and)	
)	
J.R. SIMPLOT SELF-DECLARATION OF)	
REVOCABLE TRUST; JACK RANCH)	
WIND LAND HOLDINGS, LLC, a Delaware)	
Limited Liability Company; and JOHN)	
DOES 1-10,)	
)	
Defendants.)	

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the CLERK'S RECORD

and REPORTER'S TRANSCRIPT to each of the Attorneys of Record in this cause as follows:

ANGELO L. ROSA
Marsh Rosa LLP
P.O. Box 1605
Boise, Idaho 83701

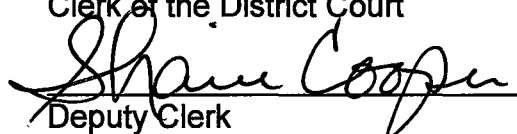
JOHN R. GOODELL,
Racine, Olsen, Nye, Budge
& Baily, Chtd.
101 South Capitol Blvd, Ste. 300
Boise, Idaho 83702

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said this 5th day of April, 2015.

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk