



**UTILITIES DEPARTMENT
RESOURCE MANAGEMENT DIVISION**

**REQUEST FOR PROPOSAL (RFP) NUMBER 130699
FOR UTILITY COMMODITIES**

RENEWABLE ELECTRIC POWER

PRE-PROPOSAL CONFERENCE:	11:00 A.M. Tuesday, March 31, 2009
RFP SUBMITTAL DEADLINE:	3:00 P.M. Tuesday, April 14, 2009
CONTRACT ADMINISTRATOR:	Carolynn Bissett
PROJECT MANAGER:	James Stack

**CITY OF PALO ALTO
PURCHASING/CONTRACT ADMINISTRATION
250 HAMILTON AVENUE
PALO ALTO, CA 94301
(650) 329-2271**

**REQUEST FOR PROPOSAL (RFP) NO. 130699
FOR UTILITY COMMODITIES**

TITLE: RENEWABLE ELECTRIC POWER

1. INTRODUCTION

The City of Palo Alto (City) is seeking proposals from qualified firms to provide electric power generated by new renewable resources to meet the City's renewable portfolio needs. Renewable electric power includes but is not limited to bundled electric energy, capacity, and environmental attributes.

This Request for Proposal (RFP) process entails soliciting electric power supplies with the intent of negotiating and executing one or more Power Purchase Agreements (PPA) with one or more Bidders at different time periods within a period of six months to two years after the initial award of contract with the highest rated and most qualified vendors for a variety of renewable resources. Renewable resources include wind, small hydroelectric (30 MW peak or less), geothermal, landfill gas, biomass, photovoltaic, solar thermal (with or without natural gas assist), qualifying municipal solid waste conversion, digester gas, fuel cells employing renewable fuel, ocean wave, ocean thermal, wave and tidal current.

The City seeks to contract for up to 150 GWh/year (average 17 MW) of renewable electric power for terms of up to 30 years¹ from any eligible renewable resource. A full product specification is provided in Attachment C. Note that REC-only proposals will not be considered.

Each proposal submitted in response to this RFP shall be for only one proposed energy resource, and can include more than one generator of like kind. Respondents may, however, submit more than one project in their proposal. Each proposal may also include several different price structures, project terms, and business/ownership structures.

Projects must have a delivery point located within the Western Electricity Coordinating Council (WECC) region, although the City has a preference for projects located within California. Projects within California must have an on line date on or after January 1, 1997, and those outside of California must have an online date after January 1, 2005. All projects must have a projected online date on or before December 31, 2012.

Projects other than solar must be at least one (1) average MW in size; one average MW is equivalent to 8.76 GWh per year. Solar proposals must be at

¹ The City does not have a preference for proposed term of the agreement, other than the limits specified above. Proposals of varying terms will be evaluated by converting future costs using a discount rate that reflects the City's investment portfolio's rate of return.

least fifty (50) average kW, equivalent to 440 MWh per year, and may consist of multiple smaller units at different locations that in aggregate meet the minimum size requirement. However, please note that there is no specific carve-out requirement for any specific renewable energy technology in this RFP.

The City is a chartered city located in the San Francisco Bay Area in northern California. The City provides utility services to customers within its boundaries through its Utilities Department, under the management of the Director of Utilities, who reports to the City Manager. The City Manager reports to the City Council. Electricity rates for customers are set by the City Council.

The City has a peak demand of 190 MW and an annual energy demand of 1,000 GWh, which is currently satisfied through a variety of resources, including rights to output of the Calaveras hydroelectric plant, a contract for power from the Central Valley Project through the Western Area Power Administration, several renewable energy contracts, and various bilateral power purchase agreements.

Palo Alto's financial condition is sound. Standard & Poor's and Moody's rate the City's general obligation bonds AAA and Aaa, respectively. The corresponding Utility Revenue Bond ratings are AA- and Aa3, respectively. The City's Utilities Enterprise Fund financial statement for FY 2004 and prior year financial statements may be reviewed at: <http://www.cityofpaloalto.org>.

The City has Council-imposed renewable energy supply targets of 20% by 2008, 30% by 2012, and 33% by 2015. The Council's adopted plan does not include penalties for falling short of these targets. Web-based information related to the City's municipal codes and Utilities Department can be found at: <http://www.cityofpaloalto.org/government/municipalcode.html> and <http://www.cpau.com/> respectively.

2. ATTACHMENTS

The attachments below are included with this Request for Proposals (RFP) for your review and submittal (see asterisk):

- Attachment A – Proposer's Information Form and Questionnaire*
- Attachment B – Certification of Non-discrimination*
- Attachment C – Product Specification
- Attachment D – Term Sheet
- Attachment E – Sample NCPA Scheduling Protocol
- Attachment F – City of Palo Alto Interim Electric utility Resource Adequacy Program, Section 1.9
- Attachment G – Sample Power Purchase Agreement

The items identified with an asterisk (*) shall be filled out, signed by the appropriate representative of the company and returned with submittal.

3. INSTRUCTIONS TO BIDDERS

3.1 Pre-proposal Conference Call

A pre-proposal conference call will be held Tuesday, March 31, 2009 at 11:00 a.m. in City Hall, Council Conference Room (first floor), 250 Hamilton Avenue, Palo Alto, CA. All prospective Bidders are strongly encouraged to participate by teleconference. Access the teleconference by calling AT&T at 1-877-336-1831 using Access Code 5301570.

3.2 Examination of Proposal Documents

The submission of a proposal shall be deemed a representation and certification by the Bidder that they:

- 3.2.1 Have carefully read and fully understand the information that was provided by the City to serve as the basis for submission of this proposal.
- 3.2.2 Have the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.
- 3.2.3 Represent that all information contained in the proposal is true and correct.
- 3.2.4 Have not, in any way, colluded or conspired to agree, directly or indirectly, with any person, firm, corporation or other Bidder in regard to the amount, terms or conditions of this proposal.
- 3.2.5 Acknowledge that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Bidder, and Bidder hereby grants the City permission to make these inquiries, and to provide any and all related documentation in a timely manner.

No request for modification of the proposal shall be considered after its submission on grounds that Bidder was not fully informed to any fact or condition.

3.3 Addenda/Clarifications

Should discrepancies or omissions be found in this RFP or should there be a need to clarify this RFP, questions or comments regarding this RFP must be put in writing and received by the City no later than 1:00 p.m. on Wednesday, April 8, 2009. Correspondence shall be addressed toCarolynn Bissett, Contract Administrator, City of Palo Alto, 250 Hamilton Avenue, Palo Alto, CA 94301 or e-mailed to carolynn.bissett@cityofpaloalto.org. Responses from the City will be

communicated in writing to all recipients of this RFP. Inquiries received after the date and time stated will not be accepted and will be returned to senders without response. All addenda shall become a part of this RFP and shall be acknowledged on the Bidder's Form.

The City shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the City or its representatives.

3.4 Submission of Proposals

All proposals shall be submitted to:

City of Palo Alto
Purchasing and Contracts Administration
250 Hamilton Avenue, Mail Stop MB
Palo Alto, CA 94301

Proposals must be delivered no later than 3:00 p.m. on **Tuesday, April 14, 2009**. All proposals received after that time will be returned to the Bidder unopened.

The Bidder shall submit five (5) copies of its proposal in a sealed envelope, addressed as noted above, bearing the Bidder's name and address clearly marked, "RFP NO. 130699 FOR UTILITY COMMODITIES: RENEWABLE ELECTRIC POWER." The use of double-sided printing with a minimum 30% post-consumer recycled content paper is strongly encouraged.

3.4 Withdrawal of Proposals

A Bidder may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Bidder.

3.5 Rights of the City of Palo Alto

This RFP does not commit the City to enter into a contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract. The City reserves the right to:

- Make the selection based on its sole discretion;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;

- Postpone opening for its own convenience;
- Remedy technical errors in the Request for Proposals process;
- Approve or disapprove the use of particular subconsultants;
- Negotiate with any, all or none of the Bidders;
- Accept other than the lowest price offer;
- Waive informalities and irregularities in the Proposals and/or
- Enter into an agreement with another Bidder in the event the originally selected Bidder defaults or fails to execute an agreement with the City.

An agreement shall not be binding or valid with the City unless and until it is executed by authorized representatives of the City and of the Bidder.

4. Proposed RFP Timeline

The RFP Timeline is as follows:

RFP Issued	March 17, 2009
Pre-Proposal Meeting/Conference Call	March 31, 2009
Deadline for Questions, Clarifications	April 8, 2009 - 1:00 p.m. PDT
Proposals Due	April 14, 2009
Respondent Interviews	If needed, April 20-23, 2009
Finalists Identified	April 30, 2009
Contract Preparation	Varies by supplier and project
Contract Awarded	Oct. 2009 – Oct. 2011

5. Information to be Submitted (in this order only)

These instructions outline the guidelines governing the format and content of the proposal and the approach to be used in its development and presentation. The intent of the RFP is to encourage responses that clearly communicate the Bidder's understanding of the City's requirements and its approach to successfully provide the products and/or services defined herein. Only that information which is essential to an understanding and evaluation of the proposal should be submitted. Items not specifically and explicitly related to the RFP and proposal, e.g. promotional brochures, marketing material, etc. will not be considered in the evaluation.

All proposals shall address the following items in the order listed below and shall be numbered 1 through 8 in the proposal document.

5.1 Chapter 1 – Proposal Summary

This Chapter shall discuss the highlights, key features and distinguishing points of the Proposal. A separate sheet shall include a list of individuals

and contacts for this Proposal and how to communicate with them. Limit this Chapter to a total of three (3) pages including the separate sheet.

5.2 Chapter 2 – Profile on the Proposing Firm(s)

This Chapter shall include a brief description of the Prime Bidder's firm and its corporate organization structure, including the names of all affiliates, history and future plans. Include a discussion of the Prime Bidder firm's financial stability, capacity and resources. Include all other firms participating in the Proposal, including similar information about the firms.

Additionally, this section shall include a listing of any lawsuit or litigation that could affect the viability of respondent's proposal or respondent's financial stability. Describe any threatened or asserted claims against the Respondent or the project offered in the proposal. Describe regulatory proceeding issues that may impact the proposal. Describe of all currently held certificates, licenses, permits, franchises or other governmental approvals associated with the proposal and list all liabilities associated with these such as notices of violation, litigation, etc.

5.3 Chapter 3 – Qualifications of the Firm

This Chapter shall include a brief description of the Bidder's and sub-Bidder's qualifications and previous experience on similar or related projects. Provide descriptions of pertinent project experience with other public municipalities and private sector that includes a summary of the projects, supply arrangements, and the name, title, and phone number of client's to be contacted for references.

5.4 Chapter 4 – Work Plan or Proposal

This Chapter shall present a well-conceived plan. Include a full but concise description of the project and the product being offered and the proposed project(s) from which the energy supplies will be generated. Succinctly describe in general terms the proposed approach for addressing the City's requirements and the firm's ability to meet the City's schedule.

Include, as appropriate, the following information:

- 5.4.1 Project's original commercial on-line date;
- 5.4.2 Proposal term (beginning and end dates);
- 5.4.3 Technology;
- 5.4.4 Energy source;
- 5.4.5 Location;
- 5.4.6 Delivery point/busbar description,

- 5.4.7 Describe the transmission path to NP-15;
- 5.4.8 Status (e.g. existing project, contract commitments, permitting, site control, construction, fuel supply, etc);
- 5.4.9 Timeline (e.g. permitting completion, construction start, on-line date, etc). For projects that have not yet been constructed, provide the anticipated construction milestone schedule leading up to the commercial operation date, when energy deliveries to Palo Alto would commence;
- 5.4.10 Joint action partners;
- 5.4.11 Environmental benefits;
- 5.4.12 Green certifications;
- 5.4.13 Business structure (e.g. Joint development, share of larger project, sharing of tax credits, equity sale, sale of distressed or otherwise valuable property, contract etc.);
- 5.4.14 Permits required and permitting status;
- 5.4.15 CEQA lead agency;
- 5.4.16 Describe the environmental and other permitting review process anticipated and/or already conducted for the project(s);
- 5.4.17 Planned and potential facility expansion opportunities;
- 5.4.18 Identify key contingencies that may alter pricing or timing;
- 5.4.19 Respondents that have offered the same capacity and/or energy to purchasers other than Palo Alto shall disclose this information to Palo Alto in their offer;
- 5.4.20 Explain assumptions for financing if the energy source is not yet built;
- 5.4.21 Any other information necessary for Palo Alto to evaluate the proposal.

The City recognizes that many proposals may depend on construction or other contingencies, and that alternative projects emerge regularly in the renewable energy field. Selected Bidders may offer to substitute alternate projects during the course of contract negotiation, subject to approval by the City at its sole discretion. Alternative facilities must use the same renewable resource and have substantially similar product characteristics.

5.5 Chapter 5 – Detailed Operating Characteristics

Provide all information needed by Palo Alto to document or interpret the operating characteristics of the proposal.

- 5.5.1. Energy – Projected energy deliveries by year, month, and time of day. Include expected, 1-in-10 high, and 1-in-ten low estimates.

- 5.5.2. Capacity - Capacity and/or rate of delivery by year, month and time of day. Include expected, 1-in-10 high, and 1-in-ten low estimates.
- 5.5.3. Forced Outages - Expected forced outage rate. Explain the basis for the estimate.
- 5.5.4. Maintenance - Expected annual maintenance requirements, including the duration, frequency, flexibility, and ease of scheduling. Explain the basis for the estimate.
- 5.5.5. Operation Requirements - Explain the degree to which the project can be curtailed, dispatched, and/or scheduled. Provide information on minimum operating levels (MW), maximum operating levels (MW), ramp rates, capacity factor, seasonal and daily output variability, and minimum down times. Explain any environmental or other operating constraints or information necessary to evaluate how the project will be integrated into the transmission system.
- 5.5.6. Firmness – Identify means by which intermittent resources such as wind will be managed (if any) to improve the predictability of energy deliveries hour-ahead, day-ahead, and month-ahead.
- 5.5.7. Other Capabilities – Define any other capabilities the proposal provides (e.g. Ancillary Services).
- 5.5.8. Scheduling - Palo Alto anticipates that respondents will provide Scheduling services for the proposed supplies. Palo Alto's loads and resources are scheduled into the CAISO by the Northern California Power Agency (NCPA). A sample Scheduling Protocol for NCPA-scheduled generation resources is provided in Attachment E. Bidders may request that NCPA provide scheduling services for the proposed resources. Please indicate whether Scheduling services will be provided by the Bidder, or if the Bidder requests scheduling via NCPA. Proposers may use entities other than NCPA as their Scheduling Coordinator, provided that they are willing to meet NCPA Scheduling Protocols.

The Bidder may also suggest technical or procedural innovations that have been used successfully on other engagements and which may provide the City with better service delivery. In this Chapter discuss any ideas, innovative approaches, or specific new concepts included in the Proposal that would provide benefit to the City, i.e. innovative methods or technologies for firming intermittent resources.

5.6 Chapter 6 – Project Staffing

This Chapter shall discuss how the Bidder would propose to staff this project. Key project team members shall be identified by name, title and specific responsibilities on the project. An organizational chart for the project team and resumes for key Bidder personnel shall be included.

5.7 Chapter 7 – Proposal Exceptions

This Chapter shall discuss any exceptions or requested changes that Bidder has to the City's RFP conditions, requirements and term sheet. If there are no exceptions noted, it is assumed the Bidder will accept all conditions and requirements identified in Attachment D: Term Sheet. Items not excepted will not be open to later negotiation.

5.8 Chapter 8 – Proposal Pricing

This Chapter shall include the proposed pricing to provide the energy supply specified in this RFP. More than one pricing structure may be proposed. Provide all information needed by the City to document or interpret the price provisions of the proposal.

- 5.8.1. Price Summary – Price at the Delivery Point in either (1) \$/MWh, or (2) \$/MWh plus \$/kW-Month if capacity is priced separately. All prices are stated in U.S. dollars.
- 5.8.2. Other Information – As Appropriate, provide the following and/or all other information necessary to interpret the Price Summary information provided.
 - 5.8.2.1. Escalators - If the proposed pricing is structured as a base price combined with an escalator (rather than a fixed price schedule) identify and explain the escalator. For example, the escalator associated with the cost of natural gas might be composed of an inflation component, a real natural gas cost component and a transportation component. Identify all components of escalators and proposed market indices.
 - 5.8.2.2. Price Provisions - Describe any proposed provisions for price floors, price ceilings, or other fixed obligations.
 - 5.8.2.3. Heat Rates - If the price being proposed is a function of a heat rate and a fuel price, indicate the heat rate, the source of the fuel and expectations of fuel price escalation. Provide both the high heat value and low heat value.
 - 5.8.2.4. Rebates or Credits – If the project pricing includes Federal, State or other grants, rebates, loans etc, provide sufficient information for Palo Alto to evaluate pricing credibility. Indicate dependence on financial incentives and the degree to which the availability or non-availability of such incentives relate to pricing. Describe the degree to which incentives for which the proposed projects may qualify will lower the cost to the City.
 - 5.8.2.5. Market Price Index: If pricing depends in whole or in part on one or more published market price indices, indicate the specific source of the index, annual fees (if any) necessary for the City to receive the index data, and suggested replacement

or alternative should the proposed index become unavailable during the term of the proposed agreement.

Although the City has a strong preference for standard PPA structures, it could consider a prepayment arrangement if the financial terms, compared to a risk adjusted internal rate of return, and sufficient collateral and other financial assurances are deemed acceptable to the City. Equipment by itself will not constitute sufficient collateral.

The City may consider taking a shared equity position in an investment only with another public entity.

6. Contract Type and Method of Payment

Although the City is aware that the terms and conditions in a PPA will fluctuate widely depending on the type of resource being proposed, a sample power purchase agreement is included in Attachment G of this solicitation. The City intends to develop custom agreements with one or more selected Bidder(s) at different time periods within a period of six months to two years² after the initial award of contract, the terms of which may vary.

Bidders shall be prepared to accept the terms and conditions listed in the Attachment D: Term Sheet. If a Bidder desires to take exception to the Term Sheet, Bidder shall provide the following information in Chapter 7 of their submittal package. Please include the following:

- 6.1 Bidder shall clearly identify each proposed change to the Term Sheet.
- 6.2 Bidder shall furnish the reasons for the exception, as well as specific recommendations for alternative language.

The above factors will be taken into account in evaluating proposals. Proposals that take substantial exceptions to the proposed Term Sheet may be determined by the City, at its sole discretion, to be unacceptable and no longer considered for award.

7. Review and Selection Process

City staff will evaluate the proposals provided in response to this RFP based on the following criteria:

² The City intends to complete negotiations as expeditiously as possible, with the goal of signing PPAs with successful proposers by October 31, 2009. That would be followed quickly (based on available agenda space) by the City Council decision regarding approval of the PPA.

- 7.1. **Quality and completeness of proposal** – which shall include the bidder’s compliance with applicable laws, regulations, and policies (including City Council policies), and bidder’s acceptance of proposed Term Sheet.
- 7.2. **Bidder’s experience (including prior record of performance with the City or others), qualifications, and financial stability.**
- 7.3. **Proposed project’s compatibility with City of Palo Alto’s existing electric portfolio** – which shall include consideration of the project’s location and deliverability to Palo Alto; monthly energy and capacity pattern fit with the City’s needs; product flexibility and firmness; and long-term and short-term resource predictability.
- 7.4. **Total cost of proposal and value to City** – which shall include consideration of the cost of transmission of power to the City and ongoing costs to manage the proposed supplies; value of the energy and non-energy attributes including capacity value and ancillary services value; time-of-delivery value associated with resources whose output varies over time; and benefit to the environment.

The committee will make a recommendation to the awarding authority. The acceptance of the proposal will be evidenced by written notice from the City’s Purchasing/Contract Administration Division to the successful Bidders. Finalist(s) so notified will enter into PPA negotiations with the City.

Any agreement is expressly subject to:

- a. Negotiation of a mutually satisfactory Power Purchase Agreement; and
- b. Palo Alto City Council approval.

8. Oral Interviews

Bidders may be required to participate in an oral interview. A panel composed of members of the selection committee will conduct the oral interview.

Bidders may only ask questions that are intended to clarify the questions that they are being asked to respond to.

Each Bidder’s time slot for oral interviews will be determined randomly. Bidders who are selected shall make every effort to attend. If representatives of the City experience difficulty on the part of any Bidder in scheduling a time for the oral interview, it may result in disqualification from further consideration.

9. Public Nature of Proposal Material

Responses to this RFP become the exclusive property of the City of Palo Alto. Under a recent court decision, no later than such time as the Administrative Services Department recommends the firm(s) to the City Manager or to the City Council, as applicable, all proposals received in response to this RFP become a matter of public record and shall be regarded as public records, with the possible

exception of those elements in each proposal which are defined by the Bidder as business or trade secrets and plainly marked as “Confidential,” “Trade Secret,” or “Proprietary”. The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as “Confidential,” “Trade Secret,” or “Proprietary” or if disclosure is required under the Public Records Act, or if all or part thereof is not deemed confidential or proprietary under California Law. Any proposal which contains language purporting to render all or significant portions of the proposal “Confidential,” “Trade Secret,” or “Proprietary” shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Palo Alto may not accept or approve that the information a Bidder submits is a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” the City shall provide the Bidder who submitted the information with reasonable notice to allow the Bidder to seek exemption from disclosure by a court of competent jurisdiction.

10. Collusion

By submitting a proposal, each Bidder represents and warrants that its proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that the Bidder has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that the Bidder has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

11. Disqualification

Factors such as, but not limited to, any of the following may be considered just cause to disqualify a proposal without further consideration:

- 11.1 Evidence of collusion, directly or indirectly, among Bidders in regard to the amount, terms or conditions of this proposal;
- 11.2 Any attempt to improperly influence any member of the evaluation team;
- 11.3 Existence of any lawsuit, unresolved contractual claim or dispute between Bidder and the City;
- 11.4 Evidence of incorrect information submitted as part of the proposal;
- 11.5 Evidence of Bidder’s inability to successfully complete the responsibilities and obligation of the proposal; and
- 11.6 Bidder’s default under any previous agreement with the City, which results in termination of the Agreement.

12. Non-Conforming Proposal

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the City.

13. Gratuities

No person shall offer, give or agree to give any City employee any gratuity, discount or offer of employment in connection with the award of contract by the City. No City employee shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a City contract.

Attachment A: BIDDER's INFORMATION FORM AND QUESTIONNAIRE

1. Summary Information:

- a. Company Name: _____
- b. Resource Type: _____
- c. Project Location(s): _____

2. General Information:

- a. Authorized Contact: _____
- c. Street Address: _____
- d. City: _____
- e. State & Zip Code: _____
- f. Phone Number: _____
- g. Fax Number: _____
- h. Email Addresses: _____

3. Project Owners

	Name	Ownership %	Website
a.	_____	_____	_____
b.	_____	_____	_____

4. Proposal Abstract:

Provide a proposal abstract with no more than 200 words.

5. Generation Type:

- a. Check one of the following:
 - System Firm Capacity and Energy
 - Firmed Intermittent Capacity and Energy
 - Unit Contingent Firm Capacity and Energy
 - As-Available Energy (Non-Firm)
- b. Check the following as applicable:
 - Baseload
 - Dispatchable
 - Intermittent
 - Intermittent with firming

6. Renewable Resource Type: (check only one of the following)

- Wind
- Small Hydroelectric (30 MW or less)
- Geothermal
- Landfill Gas
- Biomass
- Photovoltaic
- Solar Thermal

- Solar Thermal w/Natural Gas Assist
- Digester Gas
- Qualifying Municipal Solid Waste Conversion
- Fuel Cell Employing Renewable Fuel
- Ocean Wave, Ocean Thermal, or Tidal Current
- Other _____

7. Resource/Technology Description:

- a. What is the capacity available (in megawatts)? _____
 - b. Is the source in operation? _____
 - c. When is (was) the expected operational date? _____
 - d. Has the source been certified by the California Energy Commission in accordance with California P.U.C. 399.13? _____
 - e. Specify the energy source location. _____
 - f. Is the facility registered with WREGIS? _____
 - g. Who will be the WREGIS Qualified Reporting Entity (QRE)? _____
-
- h. Identify any green certifications that apply.
 - California Energy Commission
 - Green-e
 - Ecologo
 - Low-Impact Hydropower Institute
 - Other _____

8. Project Details:

- a. What agency is the CEQA lead agency? _____
- b. What is the interconnect voltage? _____
- c. Is the energy source connected to the WECC electric grid? _____
- d. Is there an existing transmission path to NP-15? _____
- e. Describe how the technology has been demonstrated in operations. _____
- f. Who are manufacturers of the major components of the project? Briefly describe their experience and qualifications. _____
- g. What is the expected equivalent availability factor (NERC Definition)? (annual equivalent hours available/8760) _____
- h. Renewable Energy Generation Profile and Variability:
 - i. Provide the projected hourly energy production, expressed in MWh or Capacity Factor (%), and average (mean) capacity in MW by hour and month in the format shown in Table 1 below.
 - ii. Provide one table each for Projected Average, 1-in-10 high, and 1-in-10 low projected deliveries.

iii. An Excel spreadsheet version of Table 1 will be posted on the RFP web page: [LINK](#).

**Table 1: Projected Average Hourly Renewable Energy Profile
(Net Energy MWh/hr, or Capacity Factor, %)**

Hour Ending	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
01												
02												
03												
04												
05												
06												
07												
08												
09												
10												
11												
12												
13												
14												
15												
16												
17												
18												
19												
20												
21												
22												
23												
24												
ON-Peak MWh or Capacity Factor %												
OFF-Peak MWh or Capacity Factor %												
AVERAGE Capacity (MW or %)												
Capacity (MW)												

9. Company Information:

a. Legal name: _____

b. Contact Person in regard to credit: _____ Tel. _____

c. Legal Status (check one):

- 1. Federal or Foreign Governmental _____
- 2. State or Province _____
- 3. State Joint Action Agency _____
- 4. Municipal _____
- 5. Not for profit cooperative _____
- 6. Investor Owned Utility _____
 - a) Parent _____
 - b) Subsidiary _____
- 7. Power Marketer _____
 - a) Parent _____
 - b) Subsidiary _____
- 8. Other _____

d. Number of years in electric business (check one):

- 1. 10 or more years in total; in California more than 3 years _____
- 2. 10 or more years in total; in California less than 3 years _____
- 3. 10 or more years in total; none in California _____
- 4. Less than 10 years (whether or not in California) _____

e. Status of generation and transmission (check one):

- 1. Own generation & transmission _____
- 2. Own generation _____
- 3. Own transmission _____
- 4. Transmission Rights _____
- 5. No ownership of generation or transmission _____

f. Are you a Western State Power Pool (WSPP) Member? _____

g. Credit & financial data submitted herein applies to:

- 1. Entity requesting credit review _____
- 2. Parent company _____
- 3. Both _____

h. Web Site Address for publicly available financial data:

i. Credit Ratings

(Provide copy of analyst report or web address to access each):

- 1. Standard & Poors _____ Access address _____
- 2. Moody's _____ Access address _____

3. Fitch	_____	Access address	_____
4. Duff & Phelps	_____	Access address	_____
5. Shear Line	_____	Access address	_____

j. Describe the nature and amount of any parent guarantees or other credit-support the Bidder will provide.

k. Provide entity's:

1. Federal Tax Identification Number _____
2. DUNS number _____

l. Attach a list of names, addresses, contact persons and telephone numbers of the your banking at least three other credit references in the electric power industry.

m. Furnish the names of at least three power customers in California, including any municipal entities customers, plus the name, address and phone number of a management-level employee for each customer whom the City may contact.

10. Additional Information

Provide any additional pertinent information that was not expressly requested, but may be essential to the City's understanding of the project.

Attachment B: Certification of Nondiscrimination

As suppliers of goods or services to the City of Palo Alto, the firm and individuals listed below certify that they do not discriminate in employment of any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person; that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

1. If Bidder is an **INDIVIDUAL**, sign here:

Date: _____

Bidder's Signature

Bidder's typed name and title

2. If Bidder is a **PARTNERSHIP** or **JOINT VENTURE**, at least (2) Partners or each of the Joint Venturers shall sign here:

Partnership or Joint Venture Name (type or print)

Date: _____

Member of the Partnership or Joint Venture signature

Date: _____

Member of the Partnership or Joint Venture signature

3. If Bidder is a **CORPORATION**, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

_____ and _____
Title Title

Of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

Corporation Name (type or print)

By: _____ Date: _____

Title: _____

By: _____ Date: _____

Title: _____

Attachment C: PRODUCT SPECIFICATION

For the purposes of this RFP, the City will consider power purchase agreements tied to specific generating facilities, which may include an equity ownership share in a project. The requested product includes all energy, capacity, and environmental attributes associated with the proposed share of a renewable energy generating facility. Proposals for equipment, projects that must be built or operated by the City, or unbundled energy and environmental attributes or renewable energy credits will not be accepted.

Delivery Point:	Any delivery point located within the WECC. Proposals will be valued based on costs to move power to NP-15. Palo Alto has a preference for projects located within the state of California.
Energy:	Up to 150 GWh/year (average 17 MW) for terms greater than 5 years for any eligible renewable resource.
Capacity:	All capacity (MW) attributable to the generating facility, proportional to Palo Alto's share of the project.
Environmental Attributes:	Measured in megawatt-hours (MWh), equal to Palo Alto's proportional share of the energy generated by the project. Environmental Attributes shall be evidenced by Renewable Energy Credits (RECs) delivered to the City by the Supplier. RECs shall be certified by the California Energy Commission in accordance with California P.U.C. 399.13(d) and registered with WREGIS or any subsequent replacement tracking system pursuant to California P.U.C. 399.13(a).
Term:	Maximum 30 years.
On-line date:	The commercial on-line date for the facility must be on or after January 1, 1997 and on or before December 31, 2012.
Ancillary Services: (Optional)	Palo Alto will accept proposals whose resources can provide ancillary services in addition to the associated energy, capacity, and environmental attributes.

<p>Firmness:</p>	<p>The bundled power supply may be offered as either:</p> <ol style="list-style-type: none"> 1. System Firm Capacity and Energy: Capacity and energy supplied by the Seller to the City at the Delivery Point which is available at all times required in the PPA unless interrupted by a Force Majeure event as defined in the PPA, and for which the Seller carries operating reserves in compliance with the WECC Minimum Operating Reliability Criteria. 2. Firmed Intermittent Capacity and Energy: Capacity and Energy supplied by the Seller to the City at the Delivery Point, for which the hourly delivery schedule is firm at least one day in advance irrespective of the actual generation pattern, and available at all times required in the PPA unless interrupted by a Force Majeure event as defined in the PPA. 3. Unit Contingent Firm Capacity and Energy: Capacity and Energy which is delivered by the Seller at all times when the project generation is on line, and which is required to meet the project availability requirements in the PPA. <p>or</p> <ol style="list-style-type: none"> 4. As-Available Energy: Energy delivered to the City at the Delivery Point whenever it can be produced by the project, though no minimum plant availability factor is enforced. Curtailments are due to plant unavailability only, not due to economics or other reasons. <p>Palo Alto has a preference for projects that generate a substantial portion of their energy in the first and fourth quarters of the calendar year (October through March), or whose energy can be delivered to the City during those periods.</p>
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Scheduling	It is the City's intent that the scheduling of resource deliveries shall be accomplished according to industry practices applied in the WECC region. Each Respondent shall be responsible for scheduling, forecasting and managing the exposure to and cost of any imbalance penalty that they may be charged for their operations. Current industry practices for a 5-day/week pre-scheduling regime will apply. Resources with uncontrolled fuel sources shall negotiate project specific agreement terms and conditions with the City on these issues.
Eligible Resources:	<p>As defined in California P.U.C. 399.12(b) and Section 25741(B) of the California Public Resources Code. These resources include, with some limitations:</p> <ul style="list-style-type: none"> Biomass¹ Digester Gas Geothermal Small Hydroelectric (less than 30 MW maximum capacity and must not require a new or increased appropriation or diversion of water) Landfill Gas Municipal Solid Waste Conversion² Fuel Cell Employing Renewable Fuel Photovoltaic Solar Thermal Electric Tidal Current Ocean Wave Ocean Tide Ocean Thermal Wind

Note 1: Biomass facilities must certify to the satisfaction of the California Energy Commission that the fuel utilization complies with California Public Utilities Code 383.5(d)(6) and Public Resources Code Section 25743(f).

Note 2: Municipal Solid Waste Conversion facilities must certify to the satisfaction of the California Energy Commission that the fuel utilization complies with California Public Utilities Code 383.5(b)(1)(C) and Public Resources Code Section 25741(b)(3).

DEFINITIONS:

Capacity: Generating capacity (MW) that meets the Qualified Capacity Criteria as defined in the City of Palo Alto Interim Electric utility Resource

Adequacy Program, Section 1.9, which is provided in this RFP as Appendix F.

Environmental Attribute - as provided in CPUC D.04-06-014 (June 9, 2004):

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the generation from the Unit(s), and its displacement of conventional energy generation. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Unit(s), (ii) production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Unit(s) for compliance with local, state, or federal operating and/or air quality permits. If Seller’s Unit(s) is a biomass or landfill gas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from such facility.”

Off-Peak: Those hours which the WECC defines as off peak, consisting of hours ending 22 through 24 and 01 through 06 all weekdays and Saturday, and all hours Sundays and Holidays

On-Peak: All hours defined by WECC as on peak, consisting of all hours that are not defined as off peak.

PPA: The ultimate definitive Power Purchase Agreement between the City and with the selected Bidder.

Renewable Energy Credit (REC) - as provided in CPUC D.08-08-028 (August 28, 2008):

A renewable energy credit (REC) for compliance with the California renewables portfolio standard (RPS) is:

a certificate of proof, issued through the Western Renewable Generation Information System, that one megawatt-hour of electricity was generated by an RPS-eligible renewable energy resource and delivered for consumption by California end-use retail customers. A REC includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, including any avoided emission of pollutants to the air, soil or water; any avoided emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, or any other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of global climate change; and the reporting rights to these avoided emissions, such as Green Tag reporting rights.

A REC does not include any emissions reduction credit issued pursuant to § 40709 of the Health and Safety Code or any credits or payments associated with the reduction of solid waste or treatment benefits created by the utilization of biomass or biogas fuels. A REC also does not include any energy, capacity, reliability or other power attributes of the generation; any tax credits or other financial incentives in the form of credits, reductions, or allowances associated with the generation that are applicable to a state or federal income taxation obligation; any fuel-related subsidies or "tipping fees" or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits; or emission reduction credits (whether issued pursuant to § 40709 of the Health and Safety Code or any other authority) that are encumbered or used by the generator for compliance with local, state, or federal operating and/or air quality permits.

The electricity underlying a REC must be delivered for consumption by California end-use retail customers, in accordance with the definition of delivery implemented by the California Energy Commission (CEC).

No REC may be created based on any electricity generated pursuant to any contract with a California retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of the RECs. A REC may not be created based on any electricity generated pursuant to a contract with a qualifying facility pursuant to the Public Utility Regulatory Policies Act of 1978 that was executed after January 1, 2005.

A REC can not be created with respect to electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a *de minimus* quantity as determined by the CEC.

WECC: Western Electricity Coordinating Council, the western regional council of the North American Electric Reliability Council (NERC).

WREGIS: Western Renewable Energy Generation Information System, an independent, renewable energy tracking system for the region covered by the Western Electricity Coordinating Council (WECC). WREGIS tracks renewable energy generation from units that register in the system using verifiable data and creates renewable energy certificates (RECs) for this generation. WREGIS was developed through a collaborative process between the Western Governors' Association, the Western Regional Air Partnership, and the California Energy Commission. WREGIS is administered by the WECC. For more information see <http://www.wregis.org>.

Attachment D: TERM SHEET

Palo Alto Municipal Code Requirements (Summary): Unless waived by resolution by the Palo Alto City Council, utility commodity purchase contracts must include the following terms and conditions:

- (1) governing law shall be the laws of the state of California;
- (2) choice of venue shall be the county of Santa Clara; and
- (3) a counterparty shall obtain and maintain during the term of the contract the minimum credit rating established as of the date of award of contract of not less than a BBB- credit rating established by Standard & Poors and a Baa3 credit rating established by Moody's Investors Services.

In order for the City Council to waive any of these conditions, the purchase must provide substantial benefits to the City. Respondents who are unable to meet the creditworthiness conditions listed above should describe in Chapter 7 Proposal Exceptions what steps the Bidder will take to establish sufficient credit, and whether the Bidder will furnish a corporate guaranty from an investment-grade rated parent, collateral, or step-in rights for Palo Alto to operate the facility.

Supplier Credit Assurances: The type of security or any other forms of performance guarantee that would be provided to Palo Alto. Such security would be used to mitigate the risk to Palo Alto of a project failing to come on-line in a timely manner or failing to fulfill its obligations for the term of the contract.

City Credit Assurances: In light of Palo Alto's ability to recover cost via retail rates, Palo Alto prefers not to be subject to collateral thresholds or be required to post any collateral.

Supplier Financial Information: Audited financial statements for the supplier or the entity providing credit support for the supplier shall be provided to the City during negotiation of the definitive agreement and during the term of the agreement.

Termination Payment: Palo Alto will not accept any contract termination provision that provides a defaulting party with any termination payment or settlement amount for energy or services that are not delivered.

Option to Extend or to Buy: The City prefers to include an option for the City to extend the term of the contract in one to five year increments, and/or to purchase the facility.

Right of First Refusal or Offer: The PPA should include a right of first refusal or first offer to the City for additional bundled renewable energy that is made available during the term of the PPA through additions to the facilities, termination of sales agreements with other customers, or other means. The right should be a minimum

of the City's proportional share in the project, up to 100% of the energy made available.

Assignment: The City prefers the right to assign the PPA to an alternate qualified buyer. Seller may assign the PPA to a qualified affiliate or other qualified supplier subject to approval by the City.

Availability: The City prefers that suppliers provide a discounted price or other financial consideration if the facility is unable to meet minimum availability of 75%.

Resource Adequacy (RA): Supplier will take such measures as are necessary for the project facilities to qualify as a resource that counts toward the City's RA requirements, if any, as those requirements may change from time to time. Buyer will also have exclusive rights to all RA-related products such as capacity tags, capacity credits, or installed capacity products. Seller shall comply with any CPUC or CAISO requirements for meeting RA.

Confidentiality: The City will use reasonable efforts to maintain the confidentiality of trade secret and confidential/proprietary information, subject to the California Public Records Act and other applicable law. The agreement and the RFP response are public records.

Dispute Resolution Process: The City's order of preference is negotiation, mediation, then litigation in lieu of binding arbitration. The City strongly prefers that neither party forego any remedies available to resolve potential disputes. Under "7.11 Acceptance of Proposed Term Sheet" criteria, the City will score lower any Bidder who requests binding arbitration or a jury trial waiver.

Scheduling: Respondent may request that scheduling be performed by NCPA. Scheduling timelines will be consistent with the CAISO (or its successor) tariffs, protocols, operating procedures and scheduling practices. Sample NCPA scheduling protocols are provided in Attachment E.

Payment: provisions shall allow payments to be made at least 20 days after the last day of the month in which energy was delivered.

Palo Alto Municipal Code 2.30.340(c) as reference:

(c) Required Contract Terms for Gas and Electric Procurement Contracts. The city shall use standardized form contracts for the procurement of gas and electricity, as practicable, including, but not limited to, form contracts created and copyrighted by the Edison Electric Institute, the Western States Power Pool, and the North American Energy Standards Board, Inc. Unless waived by resolution of the city council, a contract for procurement of gas or electricity and any amendment to the contract shall not be awarded by the city and executed by the duly authorized representatives of the city, unless the following terms and conditions are required: (1) governing law shall be the laws of the state of

California; (2) choice of venue shall be the county of Santa Clara; and (3) a counterparty shall obtain and maintain during the term of the contract the minimum credit rating established as of the date of award of contract of not less than a BBB- credit rating established by Standard & Poors and a Baa3 credit rating established by Moody's Investors Services.

Attachment E: SAMPLE NCPA SCHEDULING PROTOCOLS

1. Prior to three (3) workdays before the end of a month, Seller is to provide to NCPA and Buyer a monthly forecast of loads and/or generation for the following month. At a minimum, monthly forecasts will be hourly kilowatt (kW) values by weekday, Saturday, and Sunday/Holiday.
2. No later than 14:00 each Thursday, Seller is to provide a forecast of loads and/or generation for the following week to the extent different from the monthly forecast in Paragraph 1. Weekly forecasts will be hourly kW values for each hour of the week.
3. Daily modifications to forecasts. Unless otherwise mutually agreed, Seller may make changes to the Weekly forecast by providing such changes to NCPA prior to 08:00 two (2) workdays before the active scheduling day.
 - a. Example: For power that is scheduled for generation or delivery on Thursday, March 29, changes must be submitted to NCPA no later than 08:00 on Tuesday, March 27.
4. Hourly modifications to active schedules. Unless otherwise mutually agreed, Seller may make changes to active schedules by providing such changes to NCPA with a minimum of 4 hours notice before the active hour to be changed. Changes to active schedules are limited to two (2) changes per day, excluding forced outages, unless otherwise agreed to between the parties. One request for a schedule change, of one hour or multiple hours in duration, constitutes one schedule change.
 - a. Example: For power that is scheduled for generation or delivery in hour ending 15:00 (for the period from 14:01 to 15:00), changes must be submitted to NCPA no later than 11:00.
5. NCPA is to be notified of all planned or forced generation outages.
6. At Seller's request, NCPA will modify generation and load schedules for unforeseen circumstances in accordance with the above scheduling timeline constraints and NCPA Schedule Coordination Agreement.
7. All notices and schedules are to be submitted to NCPA by phone, fax or email to the following persons: Chief Dispatcher/Scheduler.
8. In the absence of forecasts and schedules as noted above, NCPA will utilize the most current information provided by Seller in the development and submission of schedules.

EXAMPLE FORM OF DAY-AHEAD SCHEDULE

For: June ____, 2009

Hour Ended:	Expected Capability
1	2
2	2
3	2
4	2
5	2
6	2
7	1
8	1
9	2
10	2
11	2
12	2
13	0
14	0
15	0
16	1
17	2
18	2
19	2
20	2
21	2
22	2
23	2
24	2

Expected Daily Temperatures, F

_____ Low

_____ High

Contact Information:

Scheduling Coordinator:

Facility:

CITY:

**ATTACHMENT F:
CITY OF PALO ALTO INTERIM ELECTRIC UTILITY RESOURCE ADEQUACY
PROGRAM, Section 1.9**

1.9 Qualified Capacity Criteria

1.9.1 Net Dependable Capacity

Net Dependable Capacity (“NDC”) defined by North American Electric Reliability Council (“NERC”) Generating Availability Data System (“GADS”) information will be used to determine the Qualified Capacity of some of the resource types identified in Section 1.9. For the purpose of Section 1.9, NDC is equal to Gross Dependable Capacity (“GDC”) less the unit capacity utilized for the unit station service or auxiliaries. GDC is equal to Gross Maximum Capacity (“GMC”) modified for seasonal limitations over a specified period of time. GMC is the maximum capacity a unit can sustain over a specified period of time when not restricted by seasonal or other deratings.

1.9.2 NCPA System

As defined in the Metered Subsystem Aggregator Agreement, the NCPA System means all transmission and distribution facilities owned or controlled by the NCPA MSS members, and all Generating Units within the ISO Control Area owned or controlled by NCPA members.

1.9.3 Jointly-Owned Facilities

A jointly-owned facility must either be identified in Schedule 14 of the Metered Subsystem Aggregation Agreement, located within the NCPA System, a Participating Generator, or a Qualified Facility to be considered Qualified Capacity. The Qualified Capacity for the entire facility will be determined based on the type of resource as described elsewhere in Section 1.9. The NCPAB member’s entitlement to the Qualified Capacity of the facility may encompass the entire Qualified Capacity of the facility, or may be limited to a portion of the Qualified Capacity of the facility. The total amount of Qualified Capacity that may be identified in the annual and either the monthly Resource Adequacy Plan is limited to the total jointly-owned facility Qualified Capacity determined in Section 1.9.

1.9.4 Thermal

Thermal generating facilities must either be identified in Schedule 14 of the Metered Subsystem Aggregation Agreement, located within the NCPA System, a Participating Generator, or a Qualified Facility to be considered Qualified Capacity. Thermal generating facilities that are not required to sign a Participating Generator Agreement pursuant to Section 2.2.1 of the CAISO Participating Generator Agreement are also eligible to be identified as Qualified Capacity. The Qualified Capacity of thermal facility will be based on Net Dependable Capacity as defined in Section 1.9.1.

1.9.5 Hydro

Hydro generating facilities must either be identified in Schedule 14 of the Metered Subsystem Aggregation Agreement, located within the NCPA System, a Participating Generator, or a Qualified Facility to be considered Qualified Capacity. The Qualified Capacity of a pond or pumped storage hydro facility will be based on Net Dependable Capacity as defined in Section 1.9.1, minus variable head de-rate based on current reservoir levels with dry year (1-in-5 dry year) forecasted inflows. The Qualified Capacity of a run-of-river hydro facility will be based on Net Dependable Capacity as defined in Section 1.9.1, minus actual or forecasted conveyance flow, stream flow, or canal head de-rate.

1.9.6 Unit-Specific Contracts

Unit-specific contracts will fully qualify as Resource Adequacy Qualified Capacity. The generating facility identified in the contract must either be identified in Schedule 14 of the Metered Subsystem Aggregation Agreement, located within the NCPA System, a Participating Generator, or a Qualified Facility to be considered Qualified Capacity. The generating facilities identified in the contract that are not required to sign a Participating Generator Agreement pursuant to Section 2.2.1 of the CAISO Participating Generator Agreement are also eligible to be identified as Qualified Capacity.

1.9.7 Firm Physical Contracts

Firm energy contracts that contain provisions to ensure reliable physical delivery and that contemplate suspension of performance for non-delivery, or that contain provisions that identify non-delivery as a default condition subject to contract termination, will fully qualify as Resource Adequacy Qualified Capacity.

1.9.8 Industry Standard Contracts with Liquidated Damages Provisions

N/A – City does not purchase industry standard LD Contracts for its portfolio. City's firm energy contracts fall under the definition of Section 1.9.7.

1.9.9 Wind and Solar

The Qualified Capacity of firm wind and solar generating facilities, with backup sources of generation, will be based on Net Dependable Capacity as defined in Section 1.9.1.

Wind and solar generating facilities without backup sources of generation and larger than five MW must be participants in the CAISO's Participating Intermittent Resource Program ("PIRP"). The Qualified Capacity of wind and solar facilities without backup sources of generation will be based on their monthly historic noon to 6:00 p.m. capacity factor, using a three-year rolling average.

New wind and solar generating facilities without backup sources of generation which do not have three years of historic performance data will be assigned a default Qualified Capacity for each year of missing historical performance as follows: the Qualified Capacity of another solar or wind generator with historic data

with similar technology adjusted for the nameplate capacity ratio of a new generator and the similarly situated proxy generator, and adjusted by wind speed or other meteorological data for the location of the new generator. Alternatively, the Qualified Capacity could be based on modeled performance. The default Qualified Capacity values will be replaced on a year by year basis with actual performance data as the data becomes available to form a three year rolling average.

1.9.10 Geothermal

Geothermal generating facilities must either be identified in Schedule 14 of the Metered Subsystem Aggregation Agreement, located within the NCPA System, a Participating Generator, or a Qualified Facility to be considered Qualified Capacity. The Qualified Capacity of a geothermal facility will be based on Net Dependable Capacity as defined in Section 1.9.1, adjusted for steam field degradation.

1.9.11 Treatment of Qualified Capacity of QFs

The NCPAB members do not currently have any Qualifying Facilities (“QFs”) with effective contracts under the Public Utility Regulatory Policies Act as of the drafting of this document. Therefore, the NCPAB members LRA have not identified Qualified Capacity Criteria in Section 1.9 for Qualifying Facilities. If in the future the NCPAB members decide to acquire and identify Qualified Capacity in either the annual or monthly Resource Adequacy Plan sourced from Qualifying Facilities, the NCPAB members LRA reserves the right to establish Qualified Capacity Criteria in Section 1.9.

1.9.12 Dispatchable Demand Resource and Participating Loads

Dispatchable Demand resources and Non-Dispatchable Demand resources must either be identified in Schedule 10B of the Metered Subsystem Aggregation Agreement or located within the NCPA System to be considered Qualified Capacity. Participating Loads must either be identified in Schedule 14 of the Metered Subsystem Aggregation Agreement or located within the NCPA System to be considered Qualified Capacity. Dispatchable Demand resources, Non-Dispatchable Demand resources, and Participating Loads must be available at least 48 hours during the five summer months (May – September) to be counted in either the annual or monthly Resource Adequacy Plan as Qualified Capacity. If a Dispatchable Demand resource or Participating Load is available for the minimum requirement, the megawatt quantity reduction stipulated in the contract or program will be treated as supply and be eligible to be listed as Qualified Capacity. If a Non-Dispatchable Demand resource is available for the minimum requirement, the megawatt quantity reduction stipulated in the contract or program, adjusted to reflect the contract or programs average historical performance, will be treated as supply and be eligible to be listed as Qualified Capacity.

1.9.13 Facilities under Construction

The Qualified Capacity for facilities under construction will be determined based on the type of resource as described elsewhere in Section 1.9. The facility will be

eligible to be identified as Qualified Capacity in the annual or monthly Resource Adequacy Plan of the NCPAB members pursuant to the anticipated operational date of the facility.

1.9.14 Dynamically Scheduled System Resources

The Qualified Capacity of a Dynamically Scheduled System Resource to which the NCPAB member has an entitlement shall be the amount of the NCPAB member's entitlement, subject to the deliverability screen pursuant to the provisions of the CAISO Tariff and to, and or, the applicable provisions of the Metered Subsystem Aggregator Agreement. Eligibility as Qualified Capacity is contingent upon the NCPAB members securing transmission through any intervening Control Areas for the resource entitlement that cannot be curtailed for economic reasons or bumped by higher priority transmission. The Qualified Capacity provided by a Dynamically Scheduled System Resource will be limited by the NCPAB member's allocated import capacity at the import Scheduling Points, which is determined pursuant to the provisions of the CAISO Tariff.

1.9.15 Non-Dynamically Scheduled System Resources

The Qualified Capacity of a Non-Dynamically Scheduled System Resources to which the NCPAB member has an entitlement shall be the amount of the NCPAB member's entitlement, subject to the deliverability screen pursuant to the provisions of the CAISO Tariff and to, and or, the applicable provisions of the Metered Subsystem Aggregator Agreement. The Qualified Capacity provided by a Non-Dynamically Scheduled System Resource will be limited by the NCPAB member's allocated import capacity at the import Scheduling Points, which is determined pursuant to the provisions of the CAISO Tariff.

1.9.16 NCPA System Transmission Ownership Rights in the ISO Control Area at Control Area Scheduling Points

The capacity entitlement, measured in megawatts, of the NCPA system transmission ownership rights in the CAISO Control Area at the Control Area Scheduling Points will be eligible to be identified as Qualified Capacity in the annual and monthly Resource Adequacy Plans. The capacity entitlement of the NCPA system transmission ownership rights in the CAISO Control Area at the Control Area Scheduling Points are listed in Schedule 13 of the Metered Subsystem Aggregator Agreement, and include but are not limited to the COTP Terminus (as described in the ISO-SMUD Interconnected Control Area Operating Agreement) and the Plumas-Sierra Rural Electric Cooperative transmission ownership rights up to the Marble Substation Scheduling Point (as described in the ISO's Interconnected Control Area Operating Agreement with Sierra Pacific Power Co. for the Marble Substation intertie).

1.9.17 CAISO's Backstop RCST Procurement Allocated to the City of Palo Alto

In the event that the CAISO uses its backstop procurement authority to purchase capacity under the proposed Reliability Capacity Services Tariff (RCST) and

allocates the cost of such capacity to the NCPAB members on the basis of the CAISO-defined local capacity shortfall of the NCPAB members, then the MW value of the City's share of the capacity procurement shall fully count towards meeting the City's monthly Demand Forecast plus the monthly Planning Reserve Margin in the monthly Resource Adequacy Plan for all months that the RCST product is purchased and the cost allocated to the City.

1.9.18 Other Resources

At such time that the City purchases, or enters into a contract for, a resource not listed in Section 1.9, the City's LRA reserves the right to establish Qualified Capacity Criteria in Section 1.9 for the new resource. Future resources could include, but are not limited to: customer-owned distributed generation; ocean/tidal generation; small solar projects (<5MW); local Resource Adequacy (capacity only) products; and system Resource Adequacy (capacity only) products.

**ATTACHMENT F:
SAMPLE POWER PURCHASE AGREEMENT**

POWER PURCHASE AGREEMENT

This Power Purchase Agreement is entered into this ____ day of _____, 2009 by and between The City of Palo Alto, a chartered city organized under the laws of the State of California and _____.

RECITALS

1. Seller intends to develop, finance, build, own and operate a _____ electric generating facility to be located at _____ in the City of _____, _____, on a site leased from _____, which owns the _____.
2. Buyer is engaged in the procurement and supply of electricity to residential and commercial customers in the City of Palo Alto.
3. Buyer wishes to purchase a portion of the Output of the Plant and intends to resell related Energy to its residential and commercial customers.
4. Buyer is willing to purchase, and Seller is willing to sell, a portion of the Output of the Plant, on the terms and conditions and at the prices set forth in this Agreement.
5. Seller may determine to expand the Plant in the future depending on the availability of _____ and other factors in accordance with the terms of this Agreement.
6. Buyer will have a right of first refusal to purchase Expansion Plant Output, such right to be exercisable as provided in this Agreement.

NOW THEREFORE, in consideration of these premises and the mutual promises set forth below, Seller and Buyer agree as follows.

AGREEMENT

ARTICLE I - DEFINITIONS

Initially capitalized terms, whenever used in this Agreement, have the meanings set forth below unless otherwise herein defined. The term "including," when used in this Agreement, shall mean to include "without limitation."

- 1.1 Agreement:** This Power Purchase Agreement, including all appendices, as it may be amended from time to time.

1.2 Availability Threshold: The mechanical availability of the Plant calculated as of the end of each calendar month during the Term as a percentage in accordance with the following:

$$A = 100 \times \frac{\text{Available Hours}}{\text{Base Hours}}$$

Where:

A = Availability Threshold

Available Hours = the number of hours during the twenty-four (24) prior months in which the Plant is capable of delivering Energy to the Point of Interconnection; provided that, to the extent that the Plant is not capable of delivering all of the net Initial Capacity in any hour, the Available Hours with respect to such hour shall be reduced *pro rata* to reflect the fraction of the net Initial Capacity the Plant is capable of delivering in such hour.

Base Hours = the number of hours during the twenty-four (24) prior months; provided that, to the extent that the Plant is partially or wholly incapable or otherwise unable to deliver Energy in any hour as a result of a Force Majeure Event or because of fuel unavailability in any hour due to no fault or negligence of Seller, that hour (or if the Plant's capacity is only partially constrained, the *pro rata* portion of that hour) shall be excluded from the Base Hours.

There shall be no Availability Threshold during the first twelve (12) months following the Commercial Operation Date. Starting with the thirteenth (13th) month after the Commercial Operation Date and continuing through the twenty-fourth (24th) month, the above formula will be used to determine the Availability Threshold with the exception that both Available Hours and Base Hours will be calculated starting with the first hour of operation on the Commercial Operation Date and including all relevant hours thereafter to the end of the month relevant. Starting with the twenty-fifth (25th) month, the Availability Threshold shall be calculated on a rolling basis using the previous twenty-four (24) months.

1.3 Buyer: The City of Palo Alto, a chartered city organized under the laws of the State of California, and any successor or permitted assignee.

1.4 Change in Law: The enactment or issuance of any new law or regulation, the amendment, alteration, modification or repeal of any existing law or regulation or any authoritative interpretation of any existing law or regulation issued by a competent court, tribunal or Governmental Authority contrary to the existing official interpretation thereof, in each case coming into effect after the date of this Agreement and which must be complied with in order for the Plant to be constructed and operated lawfully.

1.5 Commercial Operation: The condition of the Plant whereupon it (a) is certified by Seller to be complete in accordance with manufacturers' recommendations except

for punch list items, and (b) has passed the performance test set forth in Appendix E while synchronized with the LDC System or ISO transmission grid.

- 1.6 Commercial Operation Date:** The date upon which Commercial Operation first occurs.
- 1.7 Contractual Obligations:** As to Seller, any material agreement, instrument or undertaking to which Seller is a party or by which it or any of its property is bound.
- 1.8 EA Agency:** Any local, state or federal entity, or any other Person, that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including the Clean Air Markets Division of the United States Environmental Protection Agency, the California Resources, Conservation and Development Commission, the California Public Utilities Commission, and any successor agency thereto.
- 1.9 Emergency:** Any condition or situation which (i) endangers life or property or (ii) affects Buyer's physical ability to maintain safe, adequate, and continuous electric power and energy to Buyer's customers.
- 1.10 Energy:** The electricity generated by the Plant and delivered to Buyer by the Seller, pursuant to this Agreement, at the Point of Interconnection, as expressed in units of kilowatt-hours (kWh) or megawatt-hours (MWh), including Test Energy.
- 1.11 Environmental Attributes:** Any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Plant or Expansion Plant(s), as the case may be, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Plant or Expansion Plant(s), (ii) production tax credits associated with the construction or operation of the Plant,

Expansion Plant(s), or any other associated contract or right, and other financial incentives in the form of credits, reductions, or allowances associated with the Plant, Expansion Plant(s), or any other associated contract or right, that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the Seller or the owner of the _____ for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Plant or Expansion Plant(s) for compliance with local, state, or federal operating and/or air quality permits.

- 1.12 Environmental Attributes Reporting Rights:** All rights to report ownership of the Environmental Attributes to any person or entity, under Section 1605(b) of the Energy Policy Act of 1992 or otherwise.
- 1.13 Environmental Law:** Any federal, state and local laws including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or hazardous substances, as amended from time to time.
- 1.14 Expansion Plant:** Any expansion of the Plant from its Initial Capacity, or any other electricity generating facility owned or controlled by Seller or its affiliate(s) located at the _____. Each such expansion of the Plant or additional facility shall be deemed to be an “Expansion Plant.”
- 1.15 Expansion Plant Output:** All capacity, energy, associated Environmental Attributes, ancillary services, contributions towards resource adequacy or reserve requirements (if any) and any other reliability or power attributes produced by Seller at any Expansion Plant.
- 1.16 FERC:** Federal Energy Regulatory Commission and its successor organization, if any.
- 1.17 Force Majeure Event:** Any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement to the extent that such act or event is reasonably unforeseeable and beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. Force Majeure Events typically include: (i) acts of God or the elements, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event, acts of public enemy, war, blockade, civil insurrection, riot, civil disturbance or strike or other labor difficulty caused or suffered by a Party; (ii) any restraint or restriction imposed by law or by rule, regulation or other acts or omissions of governmental authorities, whether federal, state or local which by exercise of due diligence and in compliance with applicable law a Party could not

reasonably have been expected to avoid and to the extent which, by exercise of due diligence and in compliance with applicable law, has been unable to overcome (so long as the affected Party has not applied for or assisted such act by a governmental authority); and (iii) electric transmission interruptions or curtailments (not including any such event that results from a failure by Buyer to obtain firm transmission or similar rights, or otherwise to make congestion-related payments); *provided that* the term “Force Majeure Event” does not include (a) economic conditions that render a Party’s performance of this Agreement at the Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy or Environmental Attributes at a lower price, or Seller’s ability to sell Energy or Environmental Attributes at a higher price, than the Price), (b) a governmental act by Buyer that delays or prevents Buyer from timely performing its obligations under this Agreement, (c) a Plant Outage, except, in any case, if caused by an event or circumstance that meets the requirements set forth in this Section 1.18 (other than as described in (iii) above), (d) failure or delay in grant of Permits, or (e) failures or delays by the LDC or the ISO in entering into all agreements with Seller contemplated by this Agreement.

1.18 GAAP: Generally Accepted Accounting Principles.

1.19 Governmental Authority: Any federal or state government, or political subdivision thereof, including, without limitation, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing.

1.20 Initial Capacity: The installed gross capacity of the Plant on the Commercial Operation Date, such capacity to be not less than 3 MW and not more than 4.3 MW (gross nameplate), and not less than 2.8 MW and not more than 4.1 MW (net at the Point of Interconnection) and as further specified pursuant to Section 4.3(c).

1.21 Interconnection: Construction, installation, operation and maintenance of all Interconnection Facilities.

1.22 Interconnection Agreement: The agreement between Seller and LDC pursuant to which Seller and LDC set forth the terms and conditions for Interconnection of the Plant to the LDC System, as amended from time to time.

1.23 Interconnection Facilities: All the facilities installed for the purpose of interconnecting the Plant to the LDC System, including, but not limited to, transformers and associated equipment, relay and switching equipment and safety equipment.

1.24 ISO: The California Independent System Operator Corporation, or its functional successor.

- 1.25 LD Amount:** The Monthly LD Amount multiplied by 12 (twelve).
- 1.26 LDC:** _____, the Local Distribution Company.
- 1.27 LDC System:** The electric power generation, transmission, substation and distribution facilities owned, operated and/or maintained by LDC, which shall include, without limitation, after construction and installation, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect LDC's facilities with the Plant.
- 1.28 Lender(s):** Any Person(s) providing money or extending credit (including any capital lease) to Seller for (i) the construction of the Plant, (ii) the term or permanent financing of the Plant, or (iii) working capital or other ordinary business requirements for the Plant. "Lender(s)" shall not include trade creditors of Seller.
- 1.29 Monthly LD Amount:** The product of \$___ per MW and the Initial Capacity specified under Section 4.3(c) (net at the Point of Interconnection).
- 1.30 MW:** Megawatt.
- 1.31 MWh:** Megawatt hour.
- 1.32 Outage:** A physical state in which all or a portion of the Plant is unavailable to provide Energy to the Point of Interconnection, or in which any portion of the LDC System is unavailable to receive Energy, to the extent that the unavailability affects the LDC System's ability to accept delivery of Energy at the Point of Interconnection, whether planned or unplanned.
- 1.33 Output:** All actual capacity of the Initial Capacity and associated Energy, as well as the following, as associated with the Initial Capacity and/or associated Energy: Environmental Attributes; ancillary services; contributions towards resource adequacy or reserve requirements (if any) and any other reliability or power attributes.
- 1.34 Parties:** Buyer and Seller, and their respective successors and permitted assignees.
- 1.35 Party:** Buyer or Seller, and each such Party's respective successors and permitted assignees.
- 1.36 Permits:** All material federal, state or local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Plant.

- 1.37 Person:** An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.
- 1.38 Plant:** The generation facilities described in the Recitals to be constructed and owned by Seller and located on the Site for the generation and delivery of electricity, including the step-up transformer, revenue quality meter and all other facilities up to the Point of Interconnection, but not including any Expansion Plant.
- 1.39 Point of Interconnection:** The point on the electrical system where the Plant is physically interconnected with the LDC System, which is anticipated to be at the high side of Seller's step-up transformers at the Plant.
- 1.40 Price:** As defined in Section 2.3.
- 1.41 Production Incentives:** Any and all tax credits, deductions, allowances and exemptions applicable to federal, state and local taxes and any other payment, credit, deduction, benefit, grant or monetary incentive provided by any federal, state or local governmental authority or any Person, and all air emission credits, reductions or offsets, whether now in effect or arising in the future, in each case arising from the activities contemplated by this Agreement, including "Renewable Energy Production Incentive Payments" from the U.S. Department of Energy. Notwithstanding the foregoing, Production Incentives shall not include anything that qualifies as Output as defined herein (including any Environmental Attributes), and shall include Section 29 Credits and Section 45 Credits.
- 1.42 Prudent Utility Practice:** Those practices, methods and equipment, as changed from time to time, that:
- (i) when engaged in are commonly used in the United States of America in prudent electrical engineering and operations to operate _____ generation electric equipment and related electrical equipment lawfully and with safety, reliability, efficiency and expedition; or
 - (ii) in the exercise of reasonable judgment considering the facts known, when engaged in could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency and expedition.
- Prudent Utility Practices are not limited to an optimum practice, method, selection of equipment or act, but rather are a range of acceptable practices, methods, selections of equipment or acts.
- 1.43 REC:** A renewable energy credit for compliance with the California renewables portfolio standard (RPS) is a certificate of proof, issued through WREGIS, that one megawatt-hour of electricity was generated by an RPS-eligible renewable energy

resource and delivered for consumption by California end-use retail customers. A REC includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, including any avoided emission of pollutants to the air, soil or water; any avoided emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, or any other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of global climate change; and the reporting rights to these avoided emissions, such as Green Tag reporting rights.

A REC does not include any emissions reduction credit issued pursuant to § 40709 of the Health and Safety Code or any credits or payments associated with the reduction of solid waste or treatment benefits created by the utilization of biomass or biogas fuels. A REC also does not include any energy, capacity, reliability or other power attributes of the generation; any tax credits or other financial incentives in the form of credits, reductions, or allowances associated with the generation that are applicable to a state or federal income taxation obligation; any fuel-related subsidies or "tipping fees" or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits; or emission reduction credits (whether issued pursuant to § 40709 of the Health and Safety Code or any other authority) that are encumbered or used by the generator for compliance with local, state, or federal operating and/or air quality permits.

The electricity underlying a REC must be delivered for consumption by California end-use retail customers, in accordance with the definition of delivery implemented by the California Energy Commission (CEC).

No REC may be created based on any electricity generated pursuant to any contract with a California retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of the RECs. A REC may not be created based on any electricity generated pursuant to a contract with a qualifying facility pursuant to the Public Utility Regulatory Policies Act of 1978 that was executed after January 1, 2005.

A REC can not be created with respect to electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a *de minimus* quantity as determined by the CEC.

1.44 Requirements of Law: Collectively, any federal or state law, treaty, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon Seller or Buyer or any of their property or to which Seller or Buyer or any of their respective properties are subject.

- 1.45 Section 29 Credits:** Those tax credits available under Section 29 of Subtitle A, Chap. 1A, Part IV of the Internal Revenue Code of 1986, as amended as of the date of this Agreement.
- 1.46 Section 45 Credits:** Those tax credits available under Section 45 of Subtitle A, Chap. 1A, Part IV of the Internal Revenue Code of 1986, as amended, or any other similar state, federal or local tax credits, deductions, payments or benefits arising from the generation and sale of electricity using qualifying renewable resources, not including any Environmental Attributes.
- 1.47 Seller:** _____, and any successor or permitted assignee.
- 1.48 Site:** The real property in _____ on which the Plant is to be built and located, as more particularly described in Appendix A.
- 1.49 Site Control:** The point at which Seller satisfies one or more of the following conditions: (1) Seller is (a) the lessee under a lease, or (b) the grantee under an exclusive easement, with the owner (or its subsidiary) of the _____ that allows Seller to construct and operate the Plant at the Site during the Term in accordance with this Agreement; (2) Seller has a fee ownership of the Site; or (3) any other form of site control acceptable to Buyer in its reasonable discretion.
- 1.50 Station Service Power:** The energy used by Seller to operate the Plant.
- 1.51 Term:** The period of time during which the Agreement is in effect.
- 1.52 Test Energy:** Energy generated by the Plant and delivered to the Point of Interconnection prior to the Commercial Operation Date.
- 1.53 WREGIS:** The Western Renewable Energy Generation Information System, an independent, renewable energy tracking system for the region covered by the Western Electricity Coordinating Council (WECC). WREGIS tracks renewable energy generation from units that register in the system using verifiable data and creates renewable energy certificates (RECs) for this generation. WREGIS was developed through a collaborative process between the Western Governors' Association, the Western Regional Air Partnership, and the California Energy Commission. WREGIS is administered by the WECC.

ARTICLE II

TERM, PURCHASE AND SALE

2.1 Term

This Agreement shall be effective upon execution by authorized representatives of both Parties and, unless earlier terminated pursuant to an express provision of this Agreement, shall continue until the _____ anniversary of the Commercial Operation Date.

2.2 Purchase and Sale of the Output

(a) In accordance with the terms and conditions hereof, commencing on the Commercial Operation Date and continuing throughout the Term, Seller shall sell and deliver at the Point of Interconnection, and Buyer shall purchase, accept from Seller at the Point of Interconnection and pay for, the Output produced during the Term pursuant to the terms of this Agreement. Prior to the Commercial Operation Date, Buyer shall purchase and accept from Seller at the Point of Interconnection and pay for, the Output relating to Test Energy pursuant to the terms of this Agreement. All Test Energy shall be scheduled in accordance with the procedures set forth in Appendix D. Seller shall not sell to any other party, and Buyer may claim credit for, the Output as may be available to Buyer from time to time.

(b) Throughout the Term, Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Environmental Attributes associated with the Output, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Output purchased by Buyer from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. If Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall be entitled to retain sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from such facility. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Environmental Attributes to any Person other than Buyer. Seller makes no written or oral representation or warranty, either express or implied, regarding the current or future existence of any Environmental Attributes.

(c) During the Term, Seller shall not report to any person or entity that the Environmental Attributes granted hereunder to Buyer belong to anyone other than

Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

(d) Seller will document the production of Environmental Attributes under this Agreement by delivering with each invoice to Buyer an attestation for Environmental Attributes produced by the Plant and purchased by Buyer in the preceding calendar month. The form of attestation is set forth as Appendix B. Appendix B shall be updated or changed by the Parties, as necessary, to ensure that Buyer receives full and complete title to, and the ability to record with any EA Agency as its own, all of the Environmental Attributes purchased hereunder. At Buyer's request, the Parties, each at their own expense, shall execute all such documents and instruments in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer or its designees as Buyer may reasonably request. In the event of the promulgation of a scheme involving Environmental Attributes administered by EA Agency, upon notification by EA Agency that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to the EA Agency to effectuate any transfers.

2.3 Price

Subject to the provisions of Section 4.1(k), Buyer shall pay Seller \$0.059 per kWh of Energy delivered or tendered to Buyer at the Point of Interconnection, which price shall be escalated at a rate of 1.5% (of the then-current price) annually on the anniversary of (i) the first day of the first full month following the Commercial Operation Date or (ii) if the Commercial Operation Date falls on the first day of the month, the Commercial Operation Date. The Price shall be the total compensation owed by Buyer for Output delivered or tendered to Buyer hereunder.

2.4 Tax Credits

Buyer agrees and acknowledges that all Production Incentives shall be owned by Seller and/or the owner of the _____; provided, that to the extent Buyer pays in full for emission offsets and otherwise makes any additional payments pursuant to Section 4.3(j) in full, Seller shall pay Buyer the net economic value (net of reasonable transaction fees) realized by Seller from the Section 45 Credits until Seller has reimbursed Buyer for all such payments made by Buyer pursuant to Section 4.3(j). Buyer shall not claim Production Incentives. Buyer agrees to cooperate with Seller and/or the owner of the _____ as may be necessary to allow maximization of the value of, and realization of, all Production Incentives; provided that Buyer shall not be required to incur additional costs or accept any diminution in value of its rights under this Agreement or of the Output purchased hereunder. In addition, Buyer shall not take any action (except as otherwise permitted under this Agreement), that would in any way reduce or eliminate the availability to Seller or the owner of the _____ of any Production Incentive,

including without limitation the Section 29 Credits, and Buyer shall forego any credits or benefits available to it (other than Environmental Attributes) to the extent necessary to allow Seller and the owner of the _____ to obtain the full benefit of the Production Incentives, but in no event shall Buyer be required to forego receipt of Energy.

2.5 Right of First Refusal for Expansion Plant and Expansion Plant Output

(a) Seller may in its sole discretion determine, from time to time, during the Term to develop, finance, construct and/or operate an Expansion Plant. Each time such a determination is made, Seller shall notify Buyer of such determination and shall offer in writing to sell the Expansion Plant Output to Buyer. The offer shall include the price to be paid by Buyer for the Expansion Plant Output, the term of the proposed power purchase agreement and the other principal terms and conditions of the proposed sale. If Buyer wishes to accept such offer to purchase all (but not less than all) of the Expansion Plant Output, Buyer shall so notify Seller within sixty (60) days of its receipt of such offer. Buyer and Seller shall promptly thereafter enter into good faith negotiation of a definitive power purchase agreement incorporating the terms of such offer. Until such an Expansion Plant PPA is executed, the Seller's proposal, accepted by Buyer (including any modifications agreed upon in writing by both parties), shall control all dealings between the Parties relating to the Expansion Plant. Should any issue arise that is not covered by such documentation, the terms of this Agreement shall apply.

(b) If Buyer does not accept Seller's offer to purchase the Expansion Plant Output within sixty (60) days of receipt of Seller's offer, Seller shall be free to offer to sell that portion of the Expansion Plant Output to one or more third parties at a price and on other terms and conditions which, taken as a whole, are at least as favorable to Seller as the price and other terms and conditions set forth in Seller's offer to Buyer. If Seller offers to break up the Expansion Plant Output to sell to multiple independent buyers, Seller shall notify Buyer in writing of the terms and conditions of such offers and Buyer shall again have the right of first refusal consistent with the terms set forth above for each of the lesser amounts being offered to the third parties. If Buyer does not purchase the Expansion Plant Output and Seller sells such Expansion Plant Output to a third party, it shall promptly certify in writing to Buyer that the terms and conditions of sale of such Expansion Plant Output to such third party, taken as a whole, are at least as favorable to Seller as the price and other terms and conditions set forth in Seller's offer to Buyer, and Seller shall provide the relevant contract and any other supporting documentation for such certification. Upon the sale of such Expansion Plant Output in compliance with this Agreement, Buyer shall have no further rights to be offered or to purchase such Expansion Plant Output. Buyer's refusal of the Expansion Plant Output from one Expansion Plant shall not affect Buyer's right to purchase the Expansion Plant Output from a later Expansion Plant under the terms of this Agreement. Seller shall not sell or provide the Expansion Plant Output to any third party unless it can do so without compromising in any material way its ability to provide the Output to Buyer

hereunder. The materiality of any such impact shall be determined by Buyer in its reasonable discretion.

2.6 Option to Install Emission Controls

Buyer may at its option, exercised from time to time, install emission controls on the Plant in connection with the Initial Capacity and on any Expansion Plant from which Buyer purchases Expansion Plant Output (so long as Buyer purchases all such Expansion Plant Output) beyond those then required to meet the Requirements of Law applicable to Seller or the Plant; provided that (a) Buyer shall (i) bear all costs and financial, regulatory and operational risks thereof, including without limitation the capital cost thereof and any increase in operation or maintenance expenses, and (ii) shall keep Seller whole in all respects, including for decreases in Output and other adverse effects on the Initial Capacity and the Expansion Capacity and its performance, increases in operations and maintenance costs and failures of such emission controls to operate, and (b) Buyer shall not make any such changes to the Initial Capacity or the Expansion Capacity without the consent of Seller to the design and plan for implementation of such changes, such approval not to be unreasonably withheld.

ARTICLE III

METERING AND BILLING

3.1 Metering Requirements

The transfer of Energy from Seller to Buyer shall be measured by revenue quality metering equipment at the Point of Interconnection. Such metering equipment, including any equipment required for communicating meter data (e.g., a dedicated data line) to Buyer or the ISO, shall be selected, provided, installed, owned, maintained and operated, at Seller's sole cost and expense, by Seller or its designee in accordance with applicable ISO rules. Seller shall exercise reasonable care in the maintenance and operation of any such metering equipment, and shall test and verify the accuracy of each meter at least annually. Seller shall inform Buyer in advance of the time and date of these tests, and shall permit Buyer to be present at such tests and to receive the results of such tests. Subject to Buyer paying the cost of any update or upgrade to such metering equipment pursuant to a new requirement of the ISO, the LDC or any other Governmental Authority adopted following the Commercial Operation Date, each of Seller's meters shall be accurate to the metering specifications then in effect for ISO meter accuracy. Seller shall further install and maintain all equipment and data circuits necessary to transmit all monitored real time supervisory control and data acquisition ("SCADA") system data and real time data from the ISO meter to the ISO and NCPA, while adhering to both ISO and NCPA communications protocols. Seller shall provide a copy of each Certificate of Compliance issued by ISO, if any.

Buyer and NCPA shall be provided access to all monitored SCADA points to be used at their discretion in real time monitoring. Buyer may further, at its sole cost and expense, install and maintain check meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Energy delivered under this Agreement provided that said equipment does not interfere with the Seller's metering equipment. Seller shall permit Buyer or Buyer's representative access to its Plant for the purpose of installing and maintaining such check meters. Seller shall submit to the ISO, or allow the ISO to retrieve, any meter data required by the ISO related to the Plant output in accordance with the ISO's settlement and billing protocol and meter data tariffs. Buyer shall have reasonable access to relevant meters and associated facilities, as well as real time access to all meter data, as is necessary for Buyer or its agent to perform its duties as scheduling coordinator and comply with the requirements of the ISO Tariff.

3.2 Billing

Seller shall read the meter at the end of each calendar month of the Term, and provide to Buyer on or before the 10th day of the following month an invoice based upon the meter data for Energy delivered in such calendar month and the corresponding attestation pursuant to Section 2.2(d). Such invoice may be transmitted electronically via e-mail to *AcctsPayable@ncpa.com, or to any other email address designated in writing by Buyer, with a copy to follow via United States Mail to the notice address designated below. Should either the Seller or the Buyer determine at a later date, but in no event later than two (2) years after the original invoice date, that the invoice amount was incorrect, that Party shall promptly notify the other Party of the error. If the amount invoiced was too low, Buyer shall, upon receiving verification of the error and supporting documentation from the Seller, pay any undisputed portion of the difference within thirty (30) days of receipt of verification. If the amount invoiced was too high, Seller shall, upon receiving verification of the error and supporting documentation from the Buyer, pay any undisputed portion of the difference within thirty (30) days of receipt of verification. Any such amount shall be subject to the interest rate as designated in Section 3.3 running from the original due date of payment.

3.3 Payment

For Energy delivered to Buyer pursuant this Agreement, Buyer or its agent shall pay Seller by electronic transfer of funds by the later of the 20th day of the month or the 10th business day after the invoice is received in accordance with Section 3.2. If such due date falls on a weekend or legal holiday, such due date shall be the next day which is not a weekend or legal holiday. Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at an annual rate equal to two percent (2%) plus the average daily prime rate as determined from the "Money Rates" section of the West Coast Edition of *The Wall Street Journal* for the days of the late payment period multiplied by the number of days elapsed from

and including the day after the due date, to and including the payment date. Interest shall be computed on the basis of a 365-day year. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index. Should Buyer in good faith dispute the amount of an invoice, Buyer or its agent may withhold such disputed amounts until the dispute is resolved by arbitration or other permissible method. Such disputed amounts shall bear interest at the interest rate described above. Failure of Buyer or its agent to withhold any amount is not a waiver of Buyer's right to challenge such amount. Both Parties shall maintain all records relating to the other Party or this Agreement for a minimum of two (2) years, and shall permit the other Party, upon reasonable notice, to inspect and audit such records as the requesting Party deems reasonably necessary to protect its rights.

ARTICLE IV

SELLER'S OBLIGATIONS

During the Term, Seller hereby agrees to perform the following affirmative obligations:

4.1 **Development, Finance, Construction and Operation of the Plant**

Seller shall:

- (a) Develop, finance and construct the Plant.
- (b) Provide Buyer access to a "real time" Plant monitoring system (which, at a minimum, shall provide "real time" information regarding the net output of the Plant) that is anticipated to be internet-based and include alarms.
- (c) Seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, all Permits, certificates or other authorizations which are required by any Requirements of Law or Governmental Authority as prerequisites to engaging in the activities required of Seller by the Agreement and to meeting Seller's obligation to operate the Plant consistently with the terms of the Agreement.
- (d) Operate, maintain, and repair the Plant in accordance with this Agreement, all Requirements of Law applicable to Seller or the Plant, Contractual Obligations, Permits and in accordance with Prudent Utility Practice, including with respect to efforts to maintain availability of the Initial Capacity.
- (e) Obtain and maintain the policies of insurance in amounts and with coverages as set forth in Appendix C.

(f) Operate and maintain in a manner consistent with Prudent Utility Practice the facilities it will own and otherwise cooperate with LDC in the physical interconnection of the Plant to the LDC System in accordance with the Interconnection Agreement.

(g) By October 1st of each year of the Term, provide Buyer and NCPA with an annual projection of scheduled Outages for the following calendar year. Should Seller make any changes to such projection, it will notify Buyer and NCPA of such changes at least fourteen (14) days in advance of any newly scheduled or rescheduled Outage. If Buyer requests a change to the scheduled date of any Outage (including to a date set forth in a change notice from Seller), Seller shall consider such request in good faith and notify Buyer of its decision within seven (7) days. In no instance will Seller schedule Outages of more than twenty-four (24) hours between June 1st and September 30th during the Term. In connection with any Outage, whether a scheduled or unscheduled Outage, Seller shall notify Buyer and NCPA, as soon as practicable, of the percentage of Plant expected to be out of service and how long the Outage is expected to last. If the Outage is total and is due to failure of the Plant rather than the transmission and distribution system beyond the Point of Interconnection, Seller shall give Buyer and NCPA at least four (4) hours notice before re-energizing the Plant. In addition, Seller will comply with NCPA's reasonable scheduling protocols, as they may be changed from time to time. A copy of the current version of NCPA's scheduling protocols, which the Parties agree are reasonable, is attached as Exhibit D.

(h) Negotiate and enter into an Interconnection Agreement with LDC to enable Buyer to transmit Energy received at the Point of Interconnection through the ISO-controlled grid. Seller shall be responsible for and pay all initial non-recurring costs and charges arising under the Interconnection Agreement (even if not actually incurred) prior to the Commercial Operation Date in compliance with the Interconnection Agreement and associated rules and requirements in place as of the Commercial Operation Date. All other out-of-pocket costs and charges related to interconnection other than these initial non-recurring costs and charges will be reimbursed by the Buyer. During the Term of this Agreement prior to any Expansion Plant becoming available for commercial service, Buyer will reimburse Seller for such out-of-pocket costs and charges under the Interconnection Agreement paid or required to be paid by Seller to LDC or its successor; provided, however, Buyer shall be responsible for such out-of-pocket costs and charges under the Interconnection Agreement only to the extent Buyer has approved in writing, in the sole discretion of Buyer, the Interconnection Agreement, including any amendments (which shall not include changes in relevant tariffs) from time to time. Seller shall cooperate with Buyer to minimize any such costs as are to be reimbursed by Buyer.

(i) Negotiate and enter into a Participating Generator Agreement and a Meter Service Agreement for ISO Metered Entities with the ISO, who is the load control area operator for the LDC System to which the Plant is interconnected. Buyer shall

pay for or reimburse Seller for any such costs or charges associated with these agreements, except to the extent such cost or charge is required to be paid by Seller under this Agreement in Sections 3.1 and 4.1(h). Seller shall cooperate with Buyer to minimize any such costs as are to be reimbursed by Buyer.

(j) Coordinate all Plant start-ups and shut-downs, in whole or in part, with Buyer in accordance with ISO scheduling protocols and the reasonable protocols established by Buyer that are not inconsistent with the ISO Tariff and ISO procedures.

(k) Maintain an Availability Threshold of seventy percent (70%). Should Seller fail to maintain such an Availability Threshold, the Price applicable to Output sold and purchased during each month during which the Availability Threshold is below seventy percent (70%) shall be seven and one-half percent (7.5%) below the Price that would otherwise be in effect pursuant to Section 2.3 until the Availability Threshold is increased to at least seventy percent (70%). Except as otherwise expressly stated in Sections 6.4 and 7.6, the foregoing shall be Buyer's sole remedy for any shortfall of or failure to produce Output or failure to maintain any particular Availability Threshold.

4.2 General Obligations

(a) Seller shall obtain in its own name and at its own expense any and all pollution or environmental credits or offsets necessary to operate the Plant in compliance with the Environmental Laws.

(b) Seller shall keep complete and accurate operating and other records and all other data for the purposes of proper administration of the Agreement, including such records as may be required by any Governmental Authority or Prudent Utility Practice.

(c) Seller shall continue to (i) preserve, renew and keep in full force and effect its organizational existence and good standing, and take all reasonable action to maintain all applicable Permits, rights, privileges, licenses and franchises necessary or desirable in the ordinary course of its business; and (ii) comply with all Contractual Obligations and Requirements of Law applicable to Seller or the Plant.

(e) Seller shall provide to Buyer such other information regarding the permitting, engineering, construction or operations of the Plant as Buyer may from time to time reasonably request, subject to licensing or other restrictions of Seller or a third party with respect to confidentiality, disclosure or use.

(f) Seller shall enter into any agreements with the ISO required by the ISO for generators delivering power into the ISO-controlled grid. Except for such costs and charges as are expressly identified in this Agreement as Seller's costs, Buyer shall

reimburse Seller for all costs and charges under such agreements. Seller shall cooperate with Buyer to minimize any such costs as are to be reimbursed by Buyer.

(g) Seller shall provide Buyer with a copy of its ultimate corporate parent's audited financial statements as at the end of its accounting year prepared in accordance with GAAP, no later than four (4) months after the end of such accounting year of such entity. Seller shall also provide, on a quarterly basis, an unaudited financial statement in the form of Appendix F, prepared in accordance with GAAP consistently applied for Seller and for Seller's ultimate corporate parent. Such financial statements shall be certified by an officer of Seller as fairly presenting the financial condition of the Seller subject only to what would typically be included in year-end audit adjustments and footnotes. If, from time to time, an audited year-end financial statement is prepared for Seller, Seller shall provide it to Buyer no later than four (4) months after the end of Seller's accounting year.

4.3 Construction Milestones

(a) The Parties agree that time is of the essence and that certain milestones ("Milestones") for the development, financing and construction of the Plant must be achieved in a timely fashion or Buyer shall suffer damages. Seller shall provide Buyer with documentation satisfactory to Buyer, in Buyer's reasonable discretion, to support the achievement of Milestones by the dates set forth below.

(b) The following events are all of the Milestones:

(i) By the date ninety (90) days following the date of this Agreement, Seller shall have obtained Site Control.

(ii) By the date twenty (20) months following the date that Buyer approves the Agreement, Seller shall (a) have obtained all Permits necessary, in final form, to commence construction of the Plant and (b) have entered into an Interconnection Agreement.

(iii) By the date one (1) month following the later of (a) the finalization of all necessary Permits described in Section 4.3(b)(ii), and (b) entering into an Interconnection Agreement, Seller shall have arranged financing for construction of the Plant or otherwise made funds available to commence and complete construction.

(iv) By the date twelve (12) months following the later of (a) the finalization of all necessary Permits described in Section 4.3(b)(ii), and (b) entering into an Interconnection Agreement, Seller shall have commenced construction of the Plant.

(v) By the date eighteen (18) months following the arrangement of financing or availability of funds for construction, Seller shall have achieved the Commercial Operation Date.

(c) Starting on the effective date of this Agreement, Seller shall provide to Buyer monthly progress reports concerning the progress towards completion of the Milestones. In addition, within five business days of the completion of each

Milestone, Seller shall provide a certification to Buyer (along with any supporting documentation, demonstrating the satisfaction of the Milestone. Seller shall provide to Buyer additional information concerning Seller's progress towards, or confirmation of, achievement of the Milestones, as Buyer may reasonably request from time to time. Within seven (7) days of the later of (i) obtaining the authority to construct for the Plant from the applicable air quality management district or (ii) Seller's receipt of the system impact and facility cost studies from the LDC, but in no event later than the date set forth in Section 4.3(b)(ii), Seller shall specify the Initial Capacity of the Plant (which shall be subject to the limits contained in Section 1.20).

(d) Upon becoming aware that it will, or is reasonably likely to, fail to achieve a Milestone by the required date, for any reason including Force Majeure Event, Seller shall so notify Buyer in writing as soon as is reasonably practical. Such notice shall explain the cause the delay, provide an updated date for achievement of the Milestone(s) and describe Seller's plan for meeting the Milestone. Seller's notice will also explain any impact such delay may or will have on any other Milestone, and measures to be taken to mitigate such impact.

(e) In the event that a Force Majeure Event causes any delay to the achievement of the Milestones set forth in Sections 4.3(b)(iii), (iv), or (v), such Milestone's deadline may be extended, together with any Force Majeure Event extensions for other Milestones, for a period not to exceed six (6) months. The extension of the deadline for any Milestone shall extend the deadline for all subsequent Milestones, provided that in no event shall the combined extensions for Force Majeure Events for any or all of the Milestones exceed six (6) months.

(f) In the event that Seller fails to meet the Milestone set forth in Section 4.3(b)(i) for any reason, Buyer may terminate this Agreement, without liability of either Party to the other, by giving notice to Seller in writing of such termination at any time prior to Seller curing its failure. Such option to terminate shall be Buyer's sole remedy for any failure to meet the Milestone set forth in Section 4.3(b)(i).

(g) In the event that Seller fails to meet the Milestone set forth in Section 4.3(b)(ii) for any reason, Buyer may terminate this Agreement, without liability of either Party to the other, within ten (10) business days after the Milestone date by giving notice to Seller in writing of such termination. If Seller meets the Milestone set forth in Section 4.3(b)(ii) prior to Buyer giving written notice of termination, this Agreement shall remain in full force and effect. If Buyer does not terminate this Agreement within ten (10) business days after the Milestone date, Seller shall continue to pursue satisfaction of the relevant Milestone and Buyer must give Seller sixty (60) days notice to terminate this Agreement, during which period if Seller cures such defect and achieves the relevant Milestone, such termination shall be void and this Agreement shall remain in full force and effect. Such option to terminate shall be Buyer's sole remedy for any failure to meet the Milestone set forth in Section 4.3(b)(ii).

(h) In the event that Seller fails to meet the Milestone set forth in Section 4.3(b)(iv) within six (6) months after the relevant Milestone date for any reason (or up to twelve (12) months if also delayed by a Force Majeure Event), Seller may deposit an amount, per month, equal to the Monthly LD Amount into a segregated escrow account reasonably acceptable to Buyer by the first day of such month, for every month after such date until the Milestone is met. Such funds will be used towards any liquidated damages as set forth in Section 7.4(c), and shall be held in escrow until such time that liquidated damages, if any, become payable to Buyer. Should the amount in the escrow account exceed the final amount of liquidated damages, such excess funds shall be returned to Seller. Should Seller (i) at any time fail to make such monthly deposits or (ii) fail to satisfy the Milestone set forth in Section 4.3(b)(iv) for more than twelve (12) months, Buyer may terminate this Agreement upon written notice to Seller of such termination. Upon such termination, Seller will pay to Buyer, within thirty (30) days of the termination notice, an amount equal to the LD Amount as liquidated damages. Such Seller escrow option, Buyer option to terminate, and liquidated damages shall be Buyer's sole remedy for any failure of Seller to meet the Milestones set forth in Section 4.3(b)(iii) or (iv).

(i) Seller covenants that it will diligently pursue all Milestones including the Commercial Operation Date, which Seller envisions will occur within thirty (30) months following the execution of this Agreement.

(j) In the event that any of the approvals described in Section 4.3(b)(ii) are not obtained by the date specified in Section 4.3(b)(ii) for satisfaction of the relevant Milestone or are obtained on a basis not reasonably satisfactory to Seller, including without limitation, in the case of the air permit, approval of construction and operation of the Plant on a basis not consistent with internal combustion engines without emission controls, pollution or environmental credits or offsets, Seller may terminate this Agreement without liability of either Party to the other by giving notice to Buyer in writing of such termination; provided that such notice must be given no later than fourteen (14) days following the earlier of (a) the date on which a given approval not satisfactory to Seller is received in writing or (b) the date specified in Section 4.3(b)(ii) for satisfaction of the relevant Milestone; further provided, that such notice and such termination shall not be effective if Buyer, by written notice to Seller within fourteen (14) days following such notice from Seller, agrees (i) to pay Seller with the first invoice following the Commercial Operation Date the reasonable all-in cost (including reasonable broker fees, if any) to purchase all such offsets sufficient to operate the Plant at full Initial Capacity (less reasonably projected scheduled Outages for maintenance) for the term of this Agreement, and (ii) to adjust equitably the price payable under Section 2.3 of this Agreement and within thirty (30) days thereafter agrees with Seller in writing (each in their sole discretion) to an amendment of this Agreement revising such price. Failure to provide notice of termination by the date specified above shall constitute a waiver of the right to terminate this Agreement as provided in this Section 4.3(j). In the event that Seller exercises such termination right, Buyer shall have a right of first refusal to purchase

the output of any electricity generating facility owned or controlled by Seller or its affiliate(s) located at the Site. Such right of first refusal shall conform to the provisions of Section 2.5. The provisions of this Section 4.3(j) shall survive termination of this Agreement under this Section 4.3(j) for a period of five (5) years from such termination.

ARTICLE V

BUYER'S OBLIGATIONS

5.1 Delivery and Transmission

Except for Seller's obligations pursuant to Sections 3.1 and 4.1(h), Buyer shall be solely responsible for paying costs and charges associated with the receipt of Energy, under this Agreement, at the Point of Interconnection and for the transmission and delivery of the Energy from the Point of Interconnection to any other point downstream of the Point of Interconnection (including, without limitation, transmission costs and charges, competition transition charges, applicable control area service charges, transmission congestion charges, inadvertent energy flows, any other ISO charges related to the transmission of such Energy by the ISO and any charge assessed or collected in the future pursuant to any utility tariff or rate schedule, however defined, for transmission or transmission-related service rendered by or for any transmission-owning or operating entity). The Northern California Power Agency ("NCPA"), acting on behalf of Buyer, shall be scheduling coordinator for the transmission of Energy from the Plant in accordance with applicable ISO rules. Buyer's duties as scheduling coordinator shall be limited to those duties as are specifically required of scheduling coordinators in the ISO Tariff and the ISO protocols. Commercial arrangements for such transmission and delivery services will be coordinated and settled by NCPA directly with the ISO or other third parties. At the option of Buyer, the Plant may be included within NCPA's metered sub-system in connection with the scheduling of power over the ISO grid and related functions; provided that such inclusion shall have no adverse effect on Plant operations or Seller (or any such effect shall be fully mitigated by Buyer). Seller will do all things reasonably needed to allow Buyer to comply with any obligations, and minimize any potential liability, under the ISO Tariff; provided, that if such actions require any actions beyond the giving of notice provided by Buyer, then Buyer shall reimburse Seller for all out-of-pocket costs and charges of such actions. If and to the extent that Seller fails to comply with the notice provision in Section 4.1(g) concerning Outages or with its obligations as outlined in the previous sentence, Seller shall be wholly responsible for all imbalances, deviations, or any other ISO charges or penalties associated with such Outage or ISO Tariff obligation. Buyer may replace NCPA as Scheduling Coordinator for the Plant. If NCPA ceases to be Scheduling Coordinator for the Plant and Buyer is unable, upon fourteen days notice from Seller, to appoint jointly a replacement Scheduling Coordinator, Seller shall have the right to appoint a replacement Scheduling Coordinator on Buyer's

behalf, and Buyer shall enter into all reasonable and appropriate agreements with such replacement Scheduling Coordinator at their own cost.

5.2 Taxes

Buyer shall pay and be fully responsible for any sales, use, gross receipts, utility or other taxes, assessments or fees, if any, incurred or imposed on the sale or transfer of Energy from Seller to Buyer under this Agreement. Buyer shall not be responsible for any taxes measured on the net income of Seller or *ad valorem* taxes paid by Seller associated with the Site.

5.3 Notification of Transmission Outages

Buyer will exercise reasonable efforts to provide Seller with as much advance notice as practicable of any Outage on the LDC System or other transmission or delivery facilities which may adversely affect the delivery of Energy to Buyer.

ARTICLE VI

FORCE MAJEURE

6.1 Force Majeure Events

It is understood that at times unavoidable delays or interruptions in delivery or performance may result from Force Majeure Events. The performance of each Party under this Agreement may be subject to interruptions or reductions due to a Force Majeure Event. Both Parties shall in good faith use such effort as is reasonable under all the circumstances known to that Party affected by the Force Majeure Event at the time to remove or remedy the cause(s) and mitigate the inability to perform. However, the obligation to use such reasonable efforts shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty.

6.2 Remedial Action

Subject to the limitation on extensions of Milestones set forth in Section 4.3(e), a Party shall not be liable to the other Party if the Party is prevented from performing its obligations hereunder due to a Force Majeure Event. The Party rendered unable to fulfill an obligation by reason of a Force Majeure Event shall take all action necessary to remove such inability with all due speed and diligence. The nonperforming Party shall be prompt and diligent in attempting to remove the cause of its failure to perform, and nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed.

Notwithstanding the foregoing, the existence of a Force Majeure Event shall not excuse any Party from its obligations to make payment of amounts due hereunder.

6.3 Notice

In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall, as soon as practicable under the circumstances, notify the other Party in writing of the nature, cause, date of commencement thereof and the anticipated extent of any delay or interruption in performance.

6.4 Termination Due To Force Majeure Event

Subject to Section 4.3(e), if a Party is prevented from performing its material obligations under this Agreement for a period of twelve (12) consecutive months or longer, the unaffected Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) days written notice at any time during the Force Majeure Event.

ARTICLE VII

DEFAULT/REMEDIES/TERMINATION

7.1 Events of Default by Buyer

The following shall each constitute an “Event of Default” by Buyer:

(a) Buyer breaches any material obligation (other than one covered by Section 7.1(b) or (c) of this Agreement) and fails to cure such breach within thirty (30) days after written notification of breach by Seller or such longer period as may be necessary to cure such breach as long as Buyer is exercising diligent efforts to cure such default.

(b) Buyer fails to make any payment due under this Agreement within thirty (30) days after written notice that such payment is due.

(c) The initiation of an involuntary proceeding against Buyer under the bankruptcy or insolvency laws, which involuntary proceeding remains undismissed for sixty (60) consecutive days, or in the event of the initiation by Buyer of a voluntary proceeding under the bankruptcy or insolvency laws.

7.2 Events of Default by Seller

(1) The following shall each constitute an “Event of Default” by the Seller if Seller does not cure within the time set forth in clause (2), below:

(a) Seller breaches any material obligation (other than ones covered by Sections 7.2(b), (c), (d), (e) or (f) of this Agreement or for which a remedy is specified).

(b) Seller fails to make any payment due under this Agreement within thirty (30) days after written notice that such payment is due.

(c) The initiation of an involuntary proceeding against Seller under the bankruptcy or insolvency laws, which involuntary proceeding remains undismissed for sixty (60) consecutive days, or in the event of the initiation by Seller of a voluntary proceeding under the bankruptcy or insolvency laws.

(d) Seller sells or transfers the Output (or any individual component thereof) or Expansion Plant Output (or any individual component thereof) or the right to the Output (or any individual component thereof) or Expansion Plant Output (or any individual component thereof), to the extent that such Expansion Plant Output is purchased by Buyer, to any Person other than Buyer.

(e) Seller fails to comply with the terms of Buyer's right of first refusal as described in Section 2.6 of this Agreement.

(f) Subject to Section 7.4(c), Seller fails, for any reason other than an unauthorized act or omission by Buyer, to achieve the Commercial Operation Date by the applicable Milestone deadline as set forth in Section 4.3(b)(v), as such deadline may be extended as a result of a Force Majeure Event in accordance with Section 4.3(e).

(2) Time for Cure. Nothing described in Section 7.2(1)(a) above shall constitute an Event of Default if Seller cures the event, failure or circumstance within (30) days after written notification by Buyer or such longer period as may be necessary to cure as long as Seller is exercising diligent efforts to cure.

7.3 Termination for Default

(a) In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 7.1 or 7.2, as applicable, the non-defaulting Party may terminate the Agreement by notifying the defaulting Party in writing of (i) the decision to terminate and (ii) the effective date of the termination.

(b) Upon termination of the Agreement by Buyer pursuant to Section 7.3(a) due to an Event of Default by Seller, (i) Buyer shall have no future or further obligation to purchase the Output of the Plant or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the effective date of termination, and (ii) Seller shall, if Buyer has paid in full for emission offsets pursuant to Section 4.3(j), either (A) reimburse Buyer *pro rata* for any unused such offsets paid for by Buyer or (B) transfer to Buyer title to any

unused such offsets paid for by Buyer. Upon termination of the Agreement by Seller pursuant to Section 7.3(a) due to an Event of Default by Buyer, Seller shall have no future or further obligation to deliver the Output of the Plant to Buyer or to satisfy any other obligation of this Agreement, except for payments or other obligations arising or accruing prior to the effective date of termination. After the effective date of termination, the Agreement shall not be construed to provide any residual value to either Party or any successor or any other Person, for rights to, use of or benefits from the Plant to any Person.

7.4 Damages

(a) For all claims, causes of action and damages the Parties shall be entitled to the recovery of actual damages allowed by law unless otherwise limited by the Agreement. Neither the enumeration of Events of Default in Sections 7.1 and 7.2, nor the termination of this Agreement by a non-defaulting Party pursuant to Section 7.3(a), shall limit the right of a non-defaulting Party to rights and remedies available at law, including, but not limited to, claims for breach of contract or failure to perform by the other Party and for direct damages incurred by the non-defaulting Party as a result of the termination of this Agreement.

(b) Except as otherwise specifically and expressly provided in the Agreement, neither Party shall be liable to the other Party under this Agreement for any indirect, special or consequential damages, including but not limited to loss of use, loss of revenues, loss of profit, interest charges, cost of capital or claims of its customers or members to which service is made. Except as set forth in Section 4.1(k) and except to the extent Seller violates its undertaking not to provide or sell rights to part or all of the Output to a party other than Buyer, Seller shall not be liable to Buyer for failure to provide any specific amount of Output hereunder.

(c) In the event that Seller fails to meet the Commercial Operation Date by the applicable Milestone deadline as set forth in Section 4.3(b)(v), as such deadline may be extended as a result of a Force Majeure Event in accordance with Section 4.3(e), Seller shall be liable for liquidated damages in the amount, per month, equal to the Monthly LD Amount for each full month (with parts of a month *pro rated*) that Seller is late in satisfying the Milestone. So long as Seller is paying such liquidated damages on a monthly basis, up to twelve (12) months, Buyer shall not be permitted to terminate this Agreement. If after twelve (12) months following the relevant Milestone deadline Seller has failed to achieve Commercial Operation, or if for any reason Seller fails to pay, or discontinues paying, the monthly liquidated damages provide for above, Buyer may terminate this Agreement by written notice to Seller. This twelve (12) month period shall not be extended as a result of a Force Majeure Event. Upon such termination, Seller shall pay Buyer, within thirty (30) days of the termination notice, a lump sum equal to the LD Amount. No other damages or remedy shall be available to Buyer on the basis of such failure to meet the Milestone set forth in Section 4.3(b)(v) or termination of this Agreement based

on failure to achieve Commercial Operation within twelve (12) months of that Milestone deadline.

(d) The Parties agree that the liquidated damages set forth in Sections 4.3(h) and 7.4(c) are reasonable and represent a fair and genuine estimate of the damages Buyer will suffer upon the failure of Seller to achieve Commercial Operation by the agreed upon date(s). The Parties acknowledge that it would be impracticable or extremely difficult to fix Buyer's actual damages, and therefore have deemed the liquidated damages set forth above to be the amount of damage sustained by Buyer upon such a failure. The Parties further agree that payment of such amount shall be as liquidated damages and not as a penalty, and is therefore not subject to avoidance under California Civil Code section 1671.

7.5 Indemnification

Seller and Buyer agree to defend, indemnify, and hold each other, and their respective officers, directors, employees and agents, harmless from and against all claims, demands, losses, liabilities, and expenses (including reasonable attorneys' fees) (collectively "Damages") for personal injury or death to persons and damage to each other's physical property or facilities or the property of any other Person to the extent arising out of, resulting from, or caused by the negligent or intentional and wrongful acts, errors, or omissions of the indemnifying Party. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the indemnitees but the indemnifying Party's liability to pay Damages to the indemnified Party shall be reduced in proportion to the percentage by which the indemnitees' negligent or intentional acts, errors or omissions caused the Damages. Neither Party shall be indemnified for its Damages resulting from its sole negligence or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

7.6 Buyer's Right to Operate

If Seller (i) fails to maintain the Availability Threshold for a period of nine (9) months in any twelve (12) month period, or (ii) fails to generate Energy for sixty (60) consecutive days, then Buyer or its designee may, but shall not be obligated to, step-in and assume operational control from Seller of the Plant; provided that Buyer shall not be permitted to step-in and take control so long as Seller or any of Seller's Lenders are using commercially reasonable efforts to remedy the failures described in (i) or (ii) above. Buyer, its employees, contractors and designees shall have the unrestricted right to enter the Plant to the extent necessary to operate the Plant. Upon the exercise of this right, Buyer or its designee shall at all times operate the Plant using Prudent Utility Practice and shall comply, to the extent commercially practicable, with the terms of this Agreement. Notwithstanding the foregoing, Seller shall not be excused from any obligation or remedy available to Buyer as a result of Buyer's operation of, or election not to operate, the Plant. Buyer shall pay Seller the

applicable rate for Output provided hereunder, less any costs incurred by Buyer to operate the Plant. Buyer shall indemnify and hold Seller harmless from any liability to third parties arising out of Buyer's failure to operate the Plant using Prudent Utility Practice. Upon Buyer's satisfaction that Seller has the ability to operate the Plant in accordance with this Agreement, Seller shall resume operational control.

Should Seller's Lender(s) refuse to finance the Plant, or materially condition such financing, solely as a result of this Section 7.6, and Seller gives Buyer written notice of such refusal to finance, Buyer shall have the following options: (1) terminate this Agreement without liability of one Party to the other; (2) renegotiate this Section 7.6 with Seller and Lender(s) in a manner mutually acceptable; (3) delete this Section 7.6 in its entirety (which deletion will not require Seller's additional consent); or (4) arrange for financing for the Plant under materially equivalent terms and conditions as the Lender(s) were prepared to provide but for this Section 7.6. If Buyer fails to elect and complete one of these options within sixty (60) days of written notice from Seller, Seller shall have the right to terminate this Agreement without liability of one party to the other.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

8.1 Seller's Representations and Warranties

Seller represents and warrants to Buyer that as of the date of execution of this Agreement:

- (i) Seller is duly organized and validly existing as a limited liability company under the laws of Delaware, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (ii) Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder; all such actions have been duly authorized by all necessary proceedings on its part. As of the date of execution hereof, (a) the Plant shall on the Commercial Operation Date be a "qualifying small power production facility" as that term is defined in Section 3(17)(C) of the Federal Power Act, and will possess all of the exemptions from regulation provided in 18 CFR Sections 292.601(c) and 292.602; and (b) this Agreement is not required to be filed with FERC and no approval (except with respect to "qualifying small power production facility" status) with respect to this Agreement is required from FERC. In the event that the Plant is not a "qualifying small power production facility" on the Commercial Operation Date or any date thereafter, Seller shall make appropriate filings

under the Federal Power Act within sixty (60) days so as to comply with applicable law, subject at all times to the provisions of Article IX of this Agreement;

- (iii) The execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any applicable laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected;
- (iv) This Agreement has been duly and validly executed and delivered by Seller and, as of the date first set forth herein, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; and
- (v) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement.

8.2 Buyer Representations and Warranties

Buyer represents and warrants to Seller that as of the date of execution of this Agreement:

- (i) Buyer is The City of Palo Alto, a chartered city and municipal corporation, duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Buyer is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (ii) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (iii) The execution, delivery and performance of this Agreement by Buyer will not conflict with its governing documents, any applicable laws or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;
- (iv) This Agreement has been duly and validly executed and delivered by Buyer and, as of the first date set forth herein, constitutes a legal, valid and binding

obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; and

- (v) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer's ability to perform its obligations under this Agreement.

ARTICLE IX

NO CHANGE TO RATES, TERMS OR CONDITIONS

No change may be made to the rates, terms or conditions of this Agreement at the request of any Party, or by FERC acting *sua sponte* on behalf of any Party, except as required by FERC in the public interest. To that end and to the extent any such rights exist, each Party waives any and all rights to seek changes to the rates, terms and conditions contained in this Agreement pursuant to sections 205 or 206 of the Federal Power Act or otherwise. The terms of this Agreement shall be interpreted as being fixed and subject only to the "public interest" standard of review, consistent with the interpretation by the Federal Energy Regulatory Commission of *United Gas Pipe Line Co. v. Mobile Gas Svcs.*, 350 U.S. 332 (1956), and *F.P.C. v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956), as of the date of execution of this Agreement.

ARTICLE X

MISCELLANEOUS

10.1 Assignment

The rights and obligations of this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may use subcontractors without Buyer's consent to comply with the terms of this Agreement provided that notwithstanding the use of said subcontractors, Seller shall remain responsible for all its obligations under this Agreement. Buyer may furthermore use any agent it so designates for scheduling and billing purposes, so long as Buyer remains responsible for all of its obligations under this Agreement. Any purported assignment of this Agreement in the absence of the required consent, except as provided in 10.2, shall be void.

10.2 Financing

Notwithstanding Section 10.1, Seller may, without the consent of Buyer, collaterally assign its rights under this Agreement to Lenders as collateral security in connection with any financing of the purchase or operation of the Plant, provided that such Lender(s) or its designee agree(s) in writing that upon assuming any of Seller's prospective rights under this Agreement, such Lender also shall be bound by all of Seller's prospective obligations under this Agreement. Notwithstanding any such assignment, Seller's obligations under this Agreement shall continue in their entirety in full force and effect and Seller shall remain fully liable for all of its obligations under or relating to this Agreement. Each such collateral assignment and any purchaser or transferee shall be subject to Buyer's rights and defenses hereunder and under applicable law. Seller shall provide prior written notice to Buyer at least seven (7) days prior to any such collateral assignment.

In order to facilitate the obtaining of financing of the Plant, Buyer shall execute, upon request, a commercially reasonable consent to assignment, with respect to a collateral assignment hereof to Lenders in connection with the documentation of the financing or refinancing for the Plant. Any assignment in violation of this Agreement shall be void, *ab initio*. Buyer shall consider in good faith any amendments to this Agreement proposed by Seller which relate to financing of the Plant or other amendments requested by Seller in order to receive or maintain financing from Lenders.

10.3 Notices

Any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested with postage prepaid, to:

The City of Palo Alto
250 Hamilton Avenue, Third Floor
Palo Alto, CA 94301
Attention: Senior Assistant City Attorney / Utilities

Telecopier: (650) 329-2946

on behalf of Buyer;

with a copy to:

The City of Palo Alto
250 Hamilton Avenue, Third Floor
Palo Alto, CA 94301
Attention: Director of Utilities

Telecopier: (650) 329-2946

and to:

Northern California Power Agency
180 Cirby Way
Roseville, CA 95678
Attention: Power Contracts Administrator

Telecopier: (916) 781-4255

and to:

Seller Address
Attention: General Counsel

Telecopier: (xxx) xxx-xxxx
Telephone: (xxx) xxx-xxxx

with a copy to:

Seller Address
Attention: Executive Officer or Project Manager

Telecopier: (xxx) xxx-xxxx
Telephone: (xxx) xxx-xxxx

on behalf of Seller.

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice delivered in the manner set forth in this Section 10.3. Any such notice, demand, request, or communication shall be deemed received (i) if delivered by hand by a Party or sent by facsimile or (ii) upon receipt by the receiving Party if sent by courier or U.S. mail.

10.4 Captions

All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.

10.5 No Third Party Beneficiary

No provision of the Agreement is intended to, nor shall it in any way, inure to the benefit of any customer, property owner or any other third party, so as to constitute

any such Person a third-party beneficiary under the Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any Person not a Party hereto.

10.6 No Dedication

No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect Seller as an independent entity and not a public utility.

10.7 Entire Agreement; Integration

This Agreement, together with all Appendices attached hereto, constitutes the entire agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the Parties.

10.8 Applicable Law

The Agreement is made in the State of California and shall be interpreted and governed by the laws of the State of California and/or the laws of the United States, as applicable.

10.9 Venue

The Parties hereby submit to the exclusive jurisdiction of the federal courts for the Northern District of the State of California; provided, however, that if such federal courts sitting in the Northern District of the State of California refuse jurisdiction, the Parties agree to the exclusive jurisdiction of the state courts sitting in the County of San Francisco, State of California.

10.10 Nature of Relationship

The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and Buyer shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.

10.11 Good Faith and Fair Dealing; Reasonableness

The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) wherever the Agreement requires the consent, approval or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

10.12 Severability

Should any provision of the Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in full force and effect. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision.

10.13 Confidentiality

All information disclosed by Seller, including without limitation all engineering documents, designs, specifications and financial information, shall be kept confidential and shall not be disclosed to any third party except as provided in this Section 10.13. Buyer acknowledges Seller's request to hold all information regarding this Agreement confidential. Buyer shall disclose such information to third parties only to the extent required by California law (including, without limitation, the California Constitution, the California Public Records Act and the Brown Act). Notwithstanding the foregoing, either Party may disclose this Agreement to _____ or its representatives, the Northern California Power Agency or its representatives, or to Lenders or potential Lenders or their representatives; provided that prior to such disclosure, the recipient shall agree in writing to keep the material confidential under terms no less stringent than as set forth in this Section 10.13. Buyer also shall be permitted to disclose this Agreement and related information to the City Council of Palo Alto for the express purpose of obtaining approval to execute this Agreement; provided that in connection with such disclosure Buyer shall only disclose such information to the extent required by California law (including, without limitation, the California Constitution, the California Public Records Act and the Brown Act). Each Party shall be bound by its obligations of confidentiality hereunder for a period of two (2) years from expiration or any earlier termination of this Agreement. Notwithstanding anything to the contrary in this Section 10.13, nothing shall restrict any Party from using or disclosing confidential information in any manner it chooses which (i) is or becomes generally available to the public other than as a result of a disclosure directly or indirectly by the disclosing Party or its representative; (ii) was within the using or

disclosing Party's possession prior to it being furnished hereunder, provided that such information is not subject to another confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any other party with respect to such information; (iii) is rightfully obtained by a Party from third parties authorized to make such disclosure without restriction; or (iv) is legally required to be disclosed by judicial or other governmental action as determined by such Party's attorney acting in good faith (including, but not limited to, the California Constitution, the California Public Records Act and the Brown Act), provided that prompt notice of said judicial or other governmental action shall have been given to the non-disclosing Party and that the non-disclosing Party shall, at its sole cost and expense, be afforded the opportunity (consistent with the legal obligations of the disclosing Party) to exhaust all reasonable legal remedies to maintain the confidential information in confidence.

10.14 Cooperation

The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under the Agreement.

10.15 Counterparts

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of, which shall be deemed an original.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

<p>SELLER</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>THE CITY OF PALO ALTO APPROVAL AS TO FORM:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: Senior Assistant City Attorney</p> <p>Date: _____</p>
<p>CITY OF PALO ALTO APPROVAL BY ADMINISTRATIVE SERVICES DIRECTOR</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: Administrative Services Director</p> <p>Date: _____</p>	<p>CITY OF PALO ALTO APPROVAL BY UTILITIES DIRECTOR</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: Utilities Director</p> <p>Date: _____</p>
<p>CITY OF PALO ALTO APPROVAL BY CITY MANAGER</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: City Manager</p> <p>Date: _____</p>	<p>CITY OF PALO ALTO APPROVAL BY MAYOR:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: Mayor</p> <p>Date: _____</p>

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF _____)

COUNTY OF _____)

On _____, before me, _____, a notary public in and for said County, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature of Notary Public

APPENDIX G-1

SITE DRAWINGS

Seller shall provide to Buyer final Site Drawings prior to the Commercial Operation Date.

APPENDIX G-2

**FORM OF ATTESTATION
SELLER**

Environmental Attribute Attestation and Bill of Sale

SELLER hereby sells, transfers and delivers to

_____ ("Customer")
the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated energy for delivery to the grid (as such term(s) are defined in the _____ (identify contract) (the "Contract") dated _____, 200_ between SELLER and Customer) arising from the generation for delivery to the grid of the energy by the Facility described below:

Facility name and location: _____ Fuel Type: _____

Capacity (MW): _____ Operational Date: _____

(for facility that has added renewable capacity, show operational date and amount of new capacity)

As applicable: CEC Reg. no. ____ Energy Admin. ID no. ____ Q.F. ID no. ____

<u>Dates</u>	<u>MWhrs generated</u>
_____ 200_	_____
_____ 200_	_____
_____ 200_	_____

in the amount of one Environmental Attribute or its equivalent for each megawatt hour generated; and SELLER further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to Customer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and

[check one:]

iv) SELLER owns the Facility.

iv) to the best of SELLER's knowledge, each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from SELLER to Customer all of SELLER's right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the energy for delivery to the grid.

Contact Person: _____ tel: (xxx) xxx-xxxx; fax: (xxx) xxx-xxxx

WITNESS MY HAND,

SELLER

By _____

Its _____

Date: _____

APPENDIX G-3

INSURANCE COVERAGES

At its own expense, Seller shall secure and maintain during the Term the following insurance with the coverage amounts indicated for occurrences during and arising out of Seller's performance of this Agreement. Such insurance shall be placed with responsible and reputable insurance companies in compliance with Requirements of Law applicable to Seller.

1. Workers' Compensation/Employer's Liability. Seller shall maintain Workers' Compensation Insurance and Employer's Liability Insurance which comply with Requirements of Law applicable to Seller.
2. Automobile Liability. Seller shall maintain Automobile Liability Insurance in compliance with Requirements of Law applicable to Seller, including coverage for owned, non-owned and hired automobiles for both bodily injury (including death) and property damage, including automobile liability contractual endorsement and uninsured/underinsured motorist protection endorsements.
3. Third Party Liability. Seller shall maintain third party liability insurance in compliance with Requirements of Law applicable to Seller on a project-specific basis covering against legal responsibility to others as a result of bodily injury, property damage and personal injury arising from the operation and maintenance of the Plant. Such policy shall be written with a limit of liability not less than \$10,000,000 and a deductible not to exceed \$10,000. Such liability may be in any combination of primary and excess/umbrella. Coverage shall include, but not be limited to, premises/operations, explosion, collapse, underground hazards, broad form property damage and personal injury liability. Such coverage shall not contain exclusions for punitive or exemplary damages.

APPENDIX G-4

SCHEDULING PROTOCOLS

See example Scheduling Protocols in Appendix E above.

APPENDIX G-5

PERFORMANCE TEST

The Seller shall coordinate and schedule with Buyer a Performance Test after completion of all equipment startup and commissioning activities. This performance test may be performed before completing punch list items. Buyer shall be permitted to witness the Performance Test, including access to and copies of control room logs, control system display screens, and instrumentation data for a reasonable period of time before, during and after the Performance Test, and may also concurrently conduct a site inspection of the _____ and Plant and associated facilities, systems and equipment. Seller shall supply a written copy of the Performance Test results to Buyer within five (5) business days following the conclusion of the test.

The Performance Test shall continue for one hundred twenty (120) consecutive hours (the "Test Period") to demonstrate the following:

- 1) Net Generator Output: The power output for each generator shall be recorded for the Test Period to verify the net initial capacities. This Performance Test shall be performed for all engine/generators simultaneously and will be considered successful if the average net output for the Test Period is equal to eighty percent (80%) of the net Initial Capacity designated in this Agreement. All power measurements shall be based on a power factor of 0.90.
- 2) Compliance: The Performance Test shall also demonstrate the ability of the Plant to comply with all material safety, system reliability, environmental, and other requirements of its permits, this Agreement, and any interconnection agreements.

APPENDIX G-6

SELLER'S SAMPLE QUARTERLY FINANCIAL STATEMENT

Balance Sheets
December 31, 2003 and 2002

ASSETS

Current assets:

- Cash and cash equivalents
- Restricted cash
- Accounts receivable
- Prepaid and other current assets
- Total current assets

Other assets:

- Project assets, net
- Due from member
- Debit issuance costs, net
- Total other assets

LIABILITY AND MEMBER'S EQUITY

Current liabilities:

- Current portion of long-term debt
- Accounts payable
- Accrued expenses
- Total current liabilities

Long-term liabilities:

- Long-term debt, less current portion
- Deferred tax liabilities
- Total long-term liabilities

Member's equity

Statements of Operations
Years Ended December 31, 2008 and 2007

Revenues:

Electricity Sales

Costs of revenue:

Operation and maintenance

Depreciation of project assets

Gross profit (loss)

Operating expenses:

Selling, general and administrative

Operating income (loss)

Interest and other financing costs

Income (loss) before tax benefit (provision)

Income tax benefit (provision)

Net income (loss)

Statements of Cash Flows
Years Ended December 31, 2008 and 2007

Cash flows from operating activities:

Net income (loss)
Adjustments to reconcile net income (loss) to
net cash provided by operating activities:
 Depreciation and amortization
 Amortization of deferred issuance costs
 Deferred taxes
Change in assets and liabilities:
(Increase) decrease in:
 Accounts receivable
 Prepaid expenses
 Accounts payable
 Due to (from) member
 Net cash provided by operating activities

Cash flows from investing activities:

Accounts payable relating to construction activity
Accrued expenses relating to construction activity
Purchase of project assets
 Net cash used in investing activities

Cash flows from financing activities:

Increase in restricted cash
Capital contributions
Distributions to member
Proceeds from debt issuance
Debt issuance costs
 Net cash provided by financing activities

Net increase in cash and cash equivalents

Cash and cash equivalents, beginning of year

Cash and cash equivalents, end of year

Supplemental disclosure of cash flow information:

Cash paid during the year for:
Interest

Income taxes

Supplemental disclosure of non-cash transactions:

Accrued purchases of project assets