NOT YET APPROVED

RESOLUTION NO. ________

RESOLUTION OF THE COUNCIL OF THE CITY OF PALO ALTO
APPROVING THE NORTHERN CALIFORNIA POWER AGENCY
THIRD PHASE AGREEMENT FOR WESTERN GEOPower
INCORPORATED RENEWABLE ENERGY POWER PURCHASE
AGREEMENT FOR THE ACQUISITION OF UP TO FIVE
AVERAGE MEGAWatts OF ENERGY OVER TWENTY YEARS
AT AN ESTIMATED COST NOT TO EXCEED $86 MILLION

WHEREAS, the City of Palo Alto ("City"), a municipal utility and a chartered city, is a
member of the Northern California Power Agency ("NCpA"); and

WHEREAS, the City and other NCpA members desire to collectively enter into a
Power Purchase Agreement ("PPA") with Western GeoPower Incorporated ("WGI") for a term of
twenty (20) years; and

WHEREAS, NCpA is authorized to execute a power purchase agreement with WGI
to purchase the entire expected Project output from the new WGI geothermal project (the
"Project") located in the Geysers Geothermal Field, located in the Mayacamas mountains of
Sonoma County and Lake County in the State of California; and

WHEREAS, NCpA on behalf of its members, will purchase the Project output for a
price of ninety-eight dollars ($98.00) per megawatt-hour in accordance with the PPA between
NCpA and WGI; and

WHEREAS, NCpA's Energy Risk and Counterparty Risk Management Regulations
require that, for power purchases and sales effected for delivery more than one week from the
date of execution of the purchase, competitive bids must be obtained; and

WHEREAS, NCpA's Risk Oversight Committee approved and the NCpA
Commission concurred in granting an exception to standard procurement policy, because the
WGI PPA is an eligible renewable resource at long-term competitive rates and has advantages
due to its physical location adjacent to the NCpA Geothermal project site, thereby giving it
competitive, operational and economic advantages other than price; and

WHEREAS, the NCpA Commission, on January 25, 2008, approved the WGI PPA and
the Third Phase Agreement; and

WHEREAS, the Third Phase Agreement allocates all costs and benefits of the WGI
PPA to participating NCpA members; and

WHEREAS, the City desires to enter into the Third Phase Agreement with NCpA for
the execution of the WGI PPA between NCpA and WGI to meet a portion its renewable energy
goals, reduce reliance on fossil fuels and their associated fuel price volatilities, and assist the State
of California in meeting its renewable energy goals; and

WHEREAS, the City has been allocated a 11.28% participation share of the Third
Phase Agreement with respect to the costs and benefits of the PPA; and
NOT YET APPROVED

WHEREAS, the City wishes to increase its participation share percentage in the Third Phase Agreement and, if the opportunity should arise, this will not exceed 20%;

NOW, THEREFORE, the Council of the City of Palo Alto does hereby RESOLVE as follows:

SECTION 1. The Council hereby approves the Northern California Power Agency Third Phase Agreement for Western GeoPower Incorporated Renewable Energy Power Purchase Agreement. The Council further approves the City of Palo Alto's participation in the Third Phase Agreement for the purchase of renewable energy of up to five (5) average megawatts of energy, within an average procurement price cap of $98/MWh. The total cost of renewable energy purchases made in accordance with this Third Phase Agreement will not exceed $86 million over the twenty-year term.

SECTION 2. With respect to the Third Phase Agreement, the Council hereby waives the creditworthiness terms and conditions requirements of Palo Alto Municipal Code section 2.30.340(d), as the same may apply to the City's purchases of energy, directly or indirectly, through NCPA.

SECTION 3. The Council finds that the adoption of this resolution does not meet the definition of a project under Section 21065 of the California Environmental Quality Act and, therefore, no environmental assessment is required.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

_____________________
City Clerk

APPROVED AS TO FORM:

_____________________
Sr. Asst. City Attorney

APPROVED:

_____________________
Mayor

_____________________
City Manager

_____________________
Director of Utilities

_____________________
Director of Administrative Services
THIRD PHASE AGREEMENT

FOR

WESTERN GEOPOWER INCORPORATED

RENEWABLE ENERGY POWER PURCHASE AGREEMENT
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>RECITALS</td>
<td>3</td>
</tr>
<tr>
<td>1. Definitions</td>
<td>4</td>
</tr>
<tr>
<td>2. Effectiveness of Agreement</td>
<td>10</td>
</tr>
<tr>
<td>3. Delivery of Electricity / Allocation of Resource Adequacy Capacity</td>
<td>11</td>
</tr>
<tr>
<td>and Environmental Attributes</td>
<td></td>
</tr>
<tr>
<td>4. Cooperation and Further Assurances</td>
<td>11</td>
</tr>
<tr>
<td>5. Payment Obligations, Security Account, Invoicing</td>
<td>12</td>
</tr>
<tr>
<td>6. Administration of Agreement</td>
<td>16</td>
</tr>
<tr>
<td>7. Transfer of Rights by Participants</td>
<td>18</td>
</tr>
<tr>
<td>8. Withdrawal of Participants</td>
<td>18</td>
</tr>
<tr>
<td>9. Term and Termination</td>
<td>18</td>
</tr>
<tr>
<td>10. Default and Remedies</td>
<td>19</td>
</tr>
<tr>
<td>11. Miscellaneous</td>
<td>23</td>
</tr>
</tbody>
</table>

EXHIBIT A
EXHIBIT B
This Third Phase Agreement for Western GeoPower Incorporated Renewable Energy Power Purchase Agreement is between the Northern California Power Agency, a joint powers agency of the State of California ("NCPA") and those of its Members who execute this Agreement ("Participants"). NCPA and the Participants are referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

A. WHEREAS, NCPA and the Participants are interested in purchasing additional renewable electric capacity and energy for the benefit of the Participants' customers:

B. WHEREAS, The Participants desire that NCPA negotiate and enter into a renewable energy power purchase agreement (PPA) with the Western GeoPower Incorporated ("Western GeoPower") for twenty (20) years; and

C. WHEREAS, NCPA has executed a PPA with Western GeoPower to purchase the entire expected Project Output from a new Western GeoPower geothermal project ("Project") located in the Geysers Geothermal Field located in Mayacamas Mountains of Sonoma and Lake Counties in the State of California; and

D. WHEREAS, NCPA, on behalf of the Participants, will purchase the Project output of for at a fixed price not to exceed ninety-eight dollars ($98.00) per megawatt hour for the initial term of twenty (20) years; and

E. WHEREAS, NCPA and the Participants wish to enter into this Agreement to provide all means necessary for NCPA to fulfill obligations incurred on behalf of NCPA and the Participants pursuant to the PPA and to enable and obligate the Participants to take delivery of and pay for such electricity and to pay NCPA for the costs of undertaking the foregoing activities; and
F. WHEREAS, NCPA and its members have (or will have) entered into the Facilities Agreement, dated September 22, 1993, which provides for services which NCPA shall perform for its members, and for the provisions to be contained in third phase agreements such as this Agreement.

G. WHEREAS, NCPA and its members have (or will have) entered into the Scheduling Coordination Program Agreement ("SCPA"), dated August 28, 2002, which provides for CAISO scheduling services and cost allocations which NCPA shall perform for its members.

NOW, THEREFORE, in consideration of the foregoing, and the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree and intend to be legally bound, as follows:

Section 1. Definitions

1.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms shall have the following respective meanings:

1.1.1 "Agreement" means this NCPA Third Phase Agreement for Western GeoPower Incorporated Renewable Energy Power Purchase Agreement, including all Exhibits attached hereto, as the same may be amended from time to time in accordance with the terms and conditions hereof.

1.1.2 "Annual Budget" means the budget for the ensuing Budget Year adopted by the Commission, as it may be amended from time to time.

1.1.3 "Associate Member" means an associate member of NCPA admitted to NCPA in accordance with Article IV, Section 7 of the Joint Powers Agreement.
1.1.4 "Budget Year" means the NCPA fiscal year; currently the twelve month period beginning July 1 and ending on the next following June 30.

1.1.5 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time.

1.1.6 "Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including, but not limited to, any accounting construct so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other such products.

1.1.7 "Claims" has the meaning set forth in Section 11.2.

1.1.8 "Commission" means the NCPA Commission.

1.1.9 Not Applicable under this Agreement.

1.1.10 "Constitutive Documents" means, with respect to NCPA, the Joint Powers Agreement and any resolutions or bylaws adopted thereunder, and with respect to each Participant, the California Government Code and other statutory provisions applicable to such Participant, any applicable agreements, charters, contracts or other documents concerning the formation, operation or decision making of such Participant, including, if applicable, its City Charter, and any codes, ordinances, bylaws, and resolutions adopted by such Participant's governing body.

1.1.11 Not applicable under this Agreement.
1.1.12 "Defaulting Party" has the meaning set forth in Section 9.1.

1.1.13 "Not applicable under this Agreement"

1.1.14 "Effective Date" has the meaning set forth in the Section 9 of this Agreement.

1.1.15 "Electric System" means, with respect to each Participant except the San Francisco Bay Area Rapid Transit District ("BART"), all properties and assets, real and personal, tangible and intangible, of the Participant now or hereafter existing, used or pertaining to the generation, transmission, transformation, distribution or sale of electric capacity and energy, or the utilization of such, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent the Participant is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described purposes, only the Participant's ownership interest in such asset or property or only the part of the asset or property used for electric purposes shall be considered to be part of its Electric System.

1.1.16 "Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the power purchase. Environmental Attributes include, but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), 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. Environmental Attributes do not include: (1) any energy, capacity, reliability or other power attributes; (2) 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: (3) 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 (4) emission reduction credits encumbered or used by the Unit(s) for compliance with local, state, or federal operating and/or air quality permits.

1.1.17 "Event of Default" has the meaning set forth in Section 5.5.3 and Section 10.1.

1.1.18 "Joint Powers Agreement" means that certain Northern California Power Agency Joint Power Agreement first made July 19, 1968 and revised as of April 1, 1973, establishing NCPA, as the same may be amended from time to time.

1.1.19 "Member" means any Member of NCPA or Associate Member of NCPA.

1.1.20 "MW" means megawatt.

1.1.21 "MWh" means megawatt hour.

1.1.22 "NCPA" has the meaning set forth in the preamble hereto.

1.1.23 "Participation Percentage." has the meaning, with respect to each Project Participant, the percentage of the total capacity of the Project, and the energy associated with such capacity, to which such Participant is entitled pursuant to the terms of this Agreement. The Project Participation Percentage for each P shall be in the percentage set forth in Exhibit B attached hereto and incorporated herein. Exhibit B, shall be amended from time to time in accordance with this Agreement.
1.1.24 "Project Cost Allocation" means the Project Costs allocated to the Participants in the Annual Budget.

1.1.25 "Project Costs" means any and all costs, directly or indirectly, incurred by NCPA as a result of entering into the PPA. NCPA costs include, but are not limited to related legal fees and associated staff time, administrative and general overhead costs, charges for transmission, transmission related costs and costs associated with the PPA or other NCPA associated Agreements, including the Facilities Agreement and the SCPA.

1.1.26 "Project Output" means all energy generated from the geothermal Project currently being developed by Western GeoPower in conjunction with this Project, related Environmental Attributes and Capacity Attributes;

1.1.27 "Participant" has the meaning set forth in the preamble hereto.

(i) "Party" or "Parties" has the meaning set forth in the preamble hereto; provided that "Third Parties" are entities that are not party to this Agreement.

1.1.28 "PPA" means the Renewable Energy Power Purchase Agreement attached hereto as Exhibit A.

1.1.29 Not applicable under this Agreement.

1.1.30 "Resource Adequacy Capacity" is that capacity in megawatts that has been approved by each Participant, as capacity available to ensure that adequate resources are available to meet peak demand and operating and planning reserves for the purposes of local area and system reliability.

1.1.31 "Revenues" means, with respect to each Participant with the exception of BART, all income, rents, rates, fees, charges, and other moneys derived by the
Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (a) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System, (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System, and (c) the proceeds derived by the Participant, directly or indirectly, from the sale, lease or other disposition of all or a part of the Electric System, but the term “Revenues” shall not include (i) customers’ deposits or any other deposits subject to refund until such deposits have become the property of the Participant or (ii) contributions from customers for the payment of costs of construction of facilities to serve them. In regards to BART, “Revenues” means, all income, rents, rates, fees, charges, grants, fares or tariffs, subventions and other moneys derived by the Participant from its operation, including, without limiting the generality of the foregoing, (i) the earnings on and income derived from the investment of such income, rents, rates, fees, charges grants, fares or tariffs, subventions or other moneys and (ii) the proceeds derived by the Participant, directly or indirectly, from the sale, lease or other disposition of all or a part of its assets, but the term “Revenues” shall not include any moneys derived from sources, the use of which is limited by law to expenditures other than operating expenses.

1.1.32 “Scheduling Protocols” means the applicable provisions of the SCPA and any other contractual or other arrangements between NCPA and the relevant Participant concerning the scheduling, delivery and metering of the PPA.

1.1.33 “Security Account” means the account established by NCPA and funded by the Participants in accordance with Section 5.3, the funds of which are available for use by NCPA in accordance with the terms and conditions hereof.

1.1.34 Not applicable under this Agreement.

THIRD PHASE AGREEMENT
FOR THE WESTERN GEOPOWER, INCORPORATED RENEWABLE POWER PURCHASE AGREEMENT
//GENSERV/18.23/WESTERNGEOPOWERIIIPHASE
1.1.35 "Term" has the meaning set forth in Section 9.

1.1.36 Not applicable under this Agreement.

1.1.37 Not applicable under this Agreement.

1.2 **Rules of Interpretation.** As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: the terms "herein," "hereto," "herewith" and "hereof" are references to this Agreement taken as a whole and not to any particular provision; the term "include," "includes" or "including" shall mean "including, for example and without limitation;" and references to a "Section," "subsection," "clause," or "Exhibit" shall mean a Section, subsection, clause or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a law, regulation or ordinance includes any amendment or modification thereof. A reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. The singular shall include the plural and the masculine shall include the feminine, and *vice versa.*

**Section 2. Effectiveness of Agreement** This Agreement shall be effective as to each Participant as of the Effective Date upon execution by the Participant, as described in Section 9 below.

**Section 3. Delivery of Electricity / Allocation of Resource Adequacy Capacity and Environmental Attributes.** By executing this Agreement, each Participant acknowledges and agrees to be bound by the take-or-pay process contained in or referenced herein. Any electricity delivered to NCPA under the PPA, shall be delivered to each Participant in proportion to such Participant's Participation Percentage and each Participant shall accept and pay for its relevant...
percentage of such electricity. To the extent Participant is unable to accept such deliveries in full, NCPA shall dispose of such surplus in its discretion, in such a manner to maximize Participant value. Notwithstanding the above, NCPA may allocate and pool capacity and energy procured through the PPA among the Participants in such percentages as NCPA may, in its reasonable discretion, determine are necessary, desirable, or appropriate. Such electricity shall be scheduled for the Participants in accordance with the Scheduling Protocols. Resource Adequacy Capacity and Environmental Attributes obtained by NCPA as a result of performance under this Agreement shall likewise be allocated to each Participant by its Participation Percentage.

3.1 Payments to Counterparty. NCPA shall pay all costs incurred hereunder using operating funds or Security Account funds, paid to NCPA in accordance with Section 5, or such other sources as may be agreed upon in writing by the Parties from time to time.

Section 4. Cooperation and Further Assurances Each of the Parties agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by any other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. Further, the Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to procure electricity from an Eligible Contract Purchase, including, with respect to negotiating and executing, any agreements to implement any credit support arrangements.

Section 5. Payment Obligations, Security Account, Invoicing

5.1 Participant Payment Obligations. Each Participant agrees to pay to NCPA each month its respective portion of the Project Costs. In addition, each Participant shall maintain working capital in accordance with NCPA’s Annual Budget, and maintain its Security Account as provided in this Agreement.
5.2 Calculation of and True-Up for Project Costs. Upon the conclusion of a Budget Year NCPA shall compare each Participant's payment of estimated Project Costs with the actual Project Costs incurred on behalf of each Participant such that overpayments will be credited to, and underpayments will debited to the Participant's account in accordance with NCPA's Annual Budget settlements.

5.3 Security Account.

5.3.1 Initial Amounts. NCPA shall notify each Participant three months prior to the expected initial delivery of power of the initial security amounts which Participant shall be obligated to pay for under this Agreement. Each Participant shall ensure that sufficient funds are on deposit in the Security Account equal to the highest (3) months of the immediately following (12) months of estimated Project Costs; provided, however, that such deposit may be satisfied, in whole or part, either in cash or through a letter of credit satisfactory to NCPA's General Manager.

5.3.2 Subsequent Deposits. Periodically, and at least quarterly, NCPA shall review and revise its estimate of all costs for which Participant shall be obligated to pay for under this Agreement for the succeeding twelve (12) months. Following such review, NCPA shall determine whether each Participant has a sufficient balance in the Security Account. To the extent that any Participant's balance in the Security Account is greater than one hundred and ten percent (110%) of the amount required herein, NCPA shall credit such amount as soon as practicable to the Participant's next following invoice. To the extent that any Participant's balance in the Security Account is less than ninety percent (90%) of the amount required herein, NCPA shall add such amount as soon as practicable to such Participant's next invoice. Credits or additions shall not be made to Participants who satisfy these Security Account requirements in whole, through the use of a letter of credit, provided that the amount of the letter of credit shall be adjusted in a like manner to assure an amount equal to the highest three (3) months of estimated Project Costs.

12
5.3.3 Use of Security Account Funds. NCPA may use any and all funds deposited into the Security Account to pay any costs it incurs hereunder, including making payments to the counterparty under the PPA. NCPA may use any and all funds without regard to any individual Participant's balance in the Security Account or proportionate share of Project Costs and irrespective of whether NCPA has issued an invoice for such costs to the Participants or whether a Participant has made timely payments of invoices. Should Participant have satisfied its Security Account requirements, in whole or in part, through a letter of credit, NCPA may draw on such letter of credit to satisfy Participant's obligations hereunder.

5.3.4 Emergency Additions. In the event that the funds are withdrawn pursuant to section 5.3.3, or if the Security Account is insufficient to allow payment of an invoice, demand, request for further assurances by Third Parties, or Claims, NCPA shall notify all Participants and then prepare and send a special or emergency assessment to the Participants. Each Participant shall pay to NCPA such assessment when and if assessed by NCPA within two (2) Business Days of the invoice date of the assessment or consent to and direct NCPA to draw on any existing letter of credit Participant has established for such purposes.

5.3.5 Accounting and Interest. NCPA shall maintain a detailed accounting of each Participant's deposits into and shares of withdrawals from the Security Account. Interest earned on the Security Account shall be proportionately credited to the Participants in accordance with their Security Account balances. Any losses in the Security Account caused by early termination of investments shall be allocated among the Participants in accordance with their proportionate Participation Percentages.

5.3.6 Return of Funds. On the termination of this Agreement with respect to a Participant or a permitted withdrawal of a Participant in accordance with this Agreement, the affected Participant or Participants may apply to NCPA for the return of their
share of Security Account funds ninety (90) days after the effective date of such termination or withdrawal. NCPA shall, in its sole discretion, as determined by the General Manager, estimate the then outstanding liabilities of the Participant(s), including any estimated contingent liabilities and shall retain all such funds until all such liabilities have been fully paid or otherwise satisfied in full. The balance of the Participant’s share of the Security Account will be refunded to the Participant.

5.4 Invoicing.

5.4.1 Invoices. As part of NCPA’s regular, monthly, advance billing or by separate special invoice, as required in the circumstances, NCPA will issue an invoice to each Participant for its proportionate share of the Project Costs due (or any adjustments thereto) based on Sections 5.1 and 5.2 above. Such invoices may include estimated costs and estimated settlement and meter data. Each invoice shall include: (i) the total Project Costs attributable to the activities under this Agreement for such month and the relevant Participant’s share thereof; (ii) the quantity of electricity, Resource Adequacy Capacity and Environmental Attributes delivered to such Participant (or an estimate thereof) and the unit price for such electricity; (iii) appropriate settlement and meter data (or an estimate thereof); (iv) including any adjustments to prior invoices required based on actual data received that was estimated in a previous invoice. In addition NCPA may invoice an amount, if any, that NCPA has paid or reasonably expects to pay using funds available in the Security Account; and amounts due from (or credited to) such Participant under Section 5.3.2.

5.4.2 Payment of Invoices. All invoices delivered by NCPA hereunder are due and payable on the date indicated on such invoice, provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day. NCPA may apply a Participant’s share of the Security Account to the payment of all or any portion of an invoice issued to such Participant, provided that application of such funds from the Security Account shall not relieve the Participant from any late payment charges.
pursuant to Section 5.4.3. To the extent that NCPA applies funds from the Security Account to pay an amount due under an invoice, following receipt of payment of such invoice by the relevant Participant, NCPA shall deposit the relevant portion of the payment into the Security Account and credit such deposit to such Participant.

5.4.3 Late Payments. Any amount due and not paid by a Participant in accordance with Section 5.4.2 shall bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America NT&SA then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

5.5 Settlement Data and Examination of Books and Records.

5.5.1 Settlement Data. NCPA will make metering and settlement data available to the Participants. Procedures and formats for the provision of such data will be as established by the Participants and NCPA from time to time.

5.5.2 Examination of Books and Records. Any Participant to this Agreement shall have the right to examine the books and records created and maintained by NCPA pursuant to this Agreement at any reasonable, mutually agreed upon time.

5.5.3 Revenue Covenant. Any failure of a Participant to meet its obligations hereunder or to cure such failure in a timely manner shall constitute a Default and the Defaulting Party shall be subject to such remedies of NCPA as provided for herein. Each Participant covenants and agrees (i) to continue to pay or advance to NCPA, from its electric department revenues only or, in the case of BART, its tariffs, fees or other sources of revenue, provided that such sources shall not include any sums derived from sources, the use of which is limited by law to expenditures other than operating expenses, its percentage share of the costs authorized by Participants in accordance with this Agreement in connection with its participation in the Project. Each Participant further agrees that it will fix the rates and charges for services provided by its electric department, or in the case of BART, its general revenues, so
that it will at all times have sufficient money in its department revenue funds to meet this obligation; (ii) to make payments under this Agreement from the Revenues of, and as an operating expense of, its Electric System, or in the case of BART, its general revenues; (iii) to make payments under this Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Agreement; such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute exists provided such interruption, interference or reduction in services is caused by forces constituting an Act of God and not reasonably contemplated by the Parties; and (iv) to operate its Electric System., or in the case of BART, its transit system, in an efficient manner and to maintain its facilities in good repair, condition and working order so that: (a) the Participant’s obligations to make payments under this Agreement are not adversely affected or threatened; and (b) NCPA’s bond rating and ability to negotiate and enter into a PPA are not adversely affected or threatened.

Section 6. **Administration of Agreement**

6.1 **General.** The NCPA Commission has sole overall responsibility and authority for the administration of this Agreement. Any acts, decisions or approvals taken, made or sought by NCPA under this Agreement shall be taken, made or sought, as applicable, in accordance with NCPA’s Constitutive Documents and Section 6.2.
6.2 **Action by Participating Members.**

(a) **Forum:** Whenever any action anticipated by this Agreement is required to be taken by the Participating Members, such actions shall be taken at a regular or special meeting of the NCPA Commission but shall be participated in only by those Commissioners, or their designated alternates, who are Participants.

(b) **Quorum:** A quorum at NCPA Commission meetings for purposes of acting upon matters relating to this Agreement shall consist of Commissioners, or their designated alternates representing at least two Participants having a combined majority interest based upon Participation Percentages.

(c) **Voting:** Each Participant shall have the right to cast one vote with respect to matters pertaining to this Agreement, with a majority vote of the Participating Members required for action subject to the following exceptions:

(i) Upon request of any Participant representative, the voting on an issue related to this Agreement shall be by Participation Percentage with a 65% or more favorable vote necessary to carry the action. The 65% required by the preceding sentence shall be reduced by the amount that the Participation Percentage of any Participant exceeds 35%, but shall not be reduced below a majority in interest.

(ii) After any decision related to this Agreement is taken by the affirmative vote of less than 65% of the Program Participants, the action can be reviewed and revised if a Participant gives notice of intention to seek such review and revision to NCPA and each of the other Participants within ten (10) days following the date on which such action was taken. Upon receipt of such a request for reconsideration, the Chair Person of the Commission shall agendize the matter for reconsideration at the next regular meeting of the Commission or at a special meeting if the circumstances so warrant. The action shall be upheld upon the affirmative vote of authorized representatives the Participants. Any action taken upon reconsideration shall be final.
Section 7. **Transfer of Rights by Participants**

7.1 A Participant has the right to make transfers, sales, assignments and exchanges (collectively "transfers(s)"") its Participation Percentage and rights thereto. If a Participant desires to transfer a portion or its entire share of the Project for a specific time interval, or permanently, NPCA will, if requested by such Participant, use its best efforts to transfer that portion of the Participant’s share of the Project.

7.2 Before NPCA may transfer an excess Project share pursuant to section 7.1 to any person or entity other than a Participant, it shall give all Participants the right to purchase the share on the same terms and conditions. Before NPCA may transfer an excess Project share pursuant to section 7.1 to any person or entity other than an NPCA member, it shall give all NPCA members the right to purchase the share on the same terms and conditions. Such right shall be exercised within thirty (30) days of receipt of notice of said right.

7.3 No transfer shall relieve a Participant of any of its obligations under this Agreement except to the extent that NPCA receives payment of these obligations from a transferee.

Section 8. **Withdrawal of Participants.** No Participant may withdraw from this Agreement except as provided herein Refer Section 7 above for discussion. However, NPCA will use its best efforts to assist any Participant that wishes to transfer all or any portion of its rights pursuant to Section 7 above.

Section 9. **Term and Termination.** This Agreement shall become effective when it has been executed and delivered to NPCA by Participants, the Participation Percentages of which, in the aggregate, equal at least 65% participation in the Project. NPCA shall provide written notices to all Participants establishing the “effective date”. The remaining Participants listed in Exhibit B shall have 45 days, following the notice of the effective date to execute and deliver counterparts of this Agreement to NPCA. If any Participants listed on Exhibit B fails to execute
and deliver this Agreement within such 45 days, unless otherwise agreed to by the Participants who have executed the Agreement, the Participating Percentages of such member or members shall be spread among those Participants in proportion to their Participation Percentages. This Agreement shall be coterminous with the PPA contained in Exhibit A.

Section 10. Default and Remedies

10.1 Events of Default. An Event of Default under this Agreement shall exist with respect to a Party ("Defaulting Party") upon the occurrence of any one or more of the following:

(i) if any Party fails to make any payment or to provide assurances as required of NCPA under this Agreement when due hereunder two (2) Business Days after receipt of notice given by NCPA of such non-payment; or

(ii) the failure of the Defaulting Party to perform any other covenant or obligation under this Agreement where such failure is not cured within ten (10) days following receipt of a notice from NCPA demanding cure (provided that this shall not apply to any failure to make payments (which is covered by Section 10.1 (i)); or

(iii) if any representation or warranty of the Defaulting Party material to the transactions contemplated hereby shall prove to have been incorrect in any material respect when made and the Defaulting Party does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within ten (10) calendar days of the date of receipt of notice from any other Party demanding cure; or

(iv) if a Participant is in default or in breach of any of its covenants under any other agreement with NCPA and such default or breach is not cured within the time periods specified in such agreement; or

(v) the failure of NCPA to perform any covenant or obligation under this Agreement following a ten (10) day notice to cure by any non-defaulting Member.
10.2 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied within the time period specified in Section 10.1, above, as may be applicable after written notice has been sent to the Defaulting Party from NCPA specifying the default and demanding that the same be remedied provided that failure of a Party to provide such notice shall not be deemed a waiver of such default.

10.3 Participation Rights Of Defaulting Party. Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default and until such Event of Default is cured, the Participant that is the Defaulting Party shall not have the right to participate under Section 6.2 on any matters with respect to this Agreement.

10.4 Remedies in the Event of Default.

10.4.1 Remedies of NCPA. Upon the occurrence of an Event of Default where a Participant is the Defaulting Party, without limiting its other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppels of any right, action or cause of action NCPA may have against the Participant, NCPA may:

(i) suspend the provision of services under this Agreement to such Defaulting Party, including the delivery of electricity and other attributes of the PPA until the Event of Default is cured; and

(ii) demand that the Defaulting Party provide further assurances to compel the correction of the default, including mandating the collection of a surcharge to produce Revenues to secure the cure of the Event of Default; and
(iii) terminate this Agreement as to the Defaulting Party on ten (10) days prior written notice to the Defaulting Party and following approval of the non-defaulting Participants.

10.4.2 Sale/Transfer of Participants Account Upon Default. Upon any default of a Participant caused by the failure of such Participant to pay any sums due, and provided that such default is not cured in a timely manner, then NCPA shall use its best efforts to sell and transfer for the defaulting Participant's account all or a portion of the Participant’s capacity and/or energy and/or Environmental Attributes for the remainder of the term of this Agreement. Notwithstanding that all or any portion of the Participant’s capacity is so sold or transferred, the Participant shall remain liable for all of its obligations hereunder unless released therefrom by NCPA upon assumption by a transeree or assignee.

10.4.3 Remedies of Participants. Upon the occurrence of an Event of Default, and following the applicable cure periods, where NCPA is the Defaulting Party, the Participant may, without limiting their other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action the Participants may have against NCPA, terminate this Agreement in whole, subject to the provisions of Section 10.5.4.

10.4.4 Special Covenants Regarding Security Account. In the event that a Participant's balance of the Security Account is insufficient to cover all invoices for costs incurred under this Agreement sent to such Participant, then, without limiting NCPA’s other rights or remedies available under this Agreement, at law or in equity, such Participant shall cooperate in good faith with NCPA and shall cure the default promptly (or within seven (7) days), on an emergency basis, taking all such action as is necessary, including, but not limited to, raising rates and charges to its customers to increase its Revenues to replenish its share of the Security Account as provided herein, drawing on its cash-on-hand and lines of credit, obtaining
further assurances by way of credit support and letters of credit, and taking all such other action as will cure the default without delay.
10.5 Effect of Termination or Suspension.

10.5.1 The suspension or termination of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged contingent liabilities or obligations arising from this Agreement until such obligations are satisfied in full, and all of the costs incurred by NCPA in connection with such suspension or termination, including reasonable attorneys' fees, the fees and expenses of other experts, including auditors and accountants, other costs and expenses that NCPA is entitled to recover under this Agreement, and other reasonable and necessary costs associated with any and all of the remedies, are paid in full.

10.5.2 Suspension by NCPA. If performance of all or any portion of this Agreement is suspended by NCPA with respect to a Participant in accordance with Section 10.4.1(i), such Participant shall pay any and all costs and obligations incurred by NCPA as a result of such suspension, including reasonable attorneys' fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such suspension and any portion of the Project Costs that were not recovered from such Participant as a result of such suspension.

10.5.3 Termination by NCPA. If this Agreement is terminated by NCPA with respect to a Participant in accordance with Section 10.4.1 (iii), (i) such Participant shall pay any and all costs and obligations incurred by NCPA as a result of such termination including reasonable attorneys' fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such termination and any portion of the Project Costs that were not, or will not be, recovered from such Participant as a result of such termination; provided, however, if NCPA terminates this Agreement with respect to the last Participant, then this Agreement shall terminate.
10.5.4 **Termination by Participants.** If this Agreement is terminated by all Participants in accordance with Section 10.4.3, or by unanimous consent of all of the Parties hereto, then the Participants shall pay to NCPA all previously unpaid costs and obligations incurred as of the date of such termination, and following such termination, the Participants shall cooperate and act in good faith to negotiate and agree upon the method of allocating among the Participants in proportion to their respective Participation Percentages the costs and benefits of the PPA and any financing agreements or commitments and any matters pertaining to the administration, management, control, operation and maintenance of the PPA. NCPA shall reasonably cooperate with the Participants in connection with implementing the foregoing and the Participants shall indemnify NCPA for any costs and obligations incurred in connection therewith, including reasonable attorneys' fees, fees and expenses of other experts, including auditors and accountants and other reasonable and necessary costs. If the Parties are unable to reach agreement as to the foregoing, then the Parties agree to submit the matter to mediation with a mutually agreed upon mediator. If the Parties are still unable to reach agreement following mediation, then the matter shall be submitted to binding arbitration subject to the rules of the American Arbitration Association, the costs of such arbitration being borne proportionally among the Participants.

Section 11. **Miscellaneous**

11.1 **Confidentiality.** The Participants and NCPA will keep confidential all confidential or trade secret information made available to them in connection with this Agreement, to the extent possible, consistent with applicable laws, including the California Public Records Act. It shall be the responsibility of the holder of the claim of confidentiality or trade secret to defend at its expense against any request that such information be disclosed. Confidential or trade secret information shall be marked or expressly identified as such.

11.2 **Indemnification and Hold Harmless.** Subject to the provisions of Section 11.4, each Participant agrees to indemnify, defend and hold harmless NCPA and its Members,
including their respective governing officials, officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts ("Claims"), to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of a Participant, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

11.3 Several Liabilities. No Participant shall be liable under this Agreement for the obligations of any other Participant, and each Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein, and the obligation of each Participant under this Agreement is a several obligation and not a joint obligation with those of the other Participants.

11.4 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY PARTICIPANT OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NCPA AND EACH PARTICIPANT EACH HEREBY WAIVES
SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.

11.5 Amendments. Except where this Agreement specifically provides otherwise, this Agreement may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

11.6 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

11.7 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

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

11.9 Notices. Any notice, demand or request required or authorized by this Agreement to be given to any Party shall be in writing, and shall either be personally delivered

THIRD PHASE AGREEMENT
FOR THE WESTERN GEOPOWER, INCORPORATED RENEWABLE POWER PURCHASE AGREEMENT
//GENSERV/18.23/WESTERNGEOPOWERIII PHASE
to a Participant and the Secretary of the Commission or transmitted to the Participant and the Secretary of the Commission at the address shown on the signature pages hereof. The designation of such address may be changed at any time by written notice given to the Secretary of the Commission who shall thereupon give written notice of such change to each Participant.

11.10 Warranty of Authority. Each Participant, and NCPA, represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms as to the Participant and as to NCPA. Upon execution of this Agreement, each Participant shall deliver to NCPA a resolution of the governing body of such Participant, evidencing approval of and authority to enter into this Agreement, that such authority was duly exercised in accordance with such Participant’s Constitutive Documents.

11.11 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

11.12 Assignment. Except as provided by Section 7 no Participant may assign or otherwise transfer its interest in its Participation Percentage or any other rights and obligations under this Agreement without the express written consent of NCPA, which shall not be unreasonably withheld.

11.13 Exercise of the Right of First Refusal. Participants shall abide by the NCPA Facilities Agreement in the exercise of any options by NCPA to purchase the underlying
assets of the PPA as per the voting procedures of this Agreement outlined in Section 6. Participation in any such purchase shall be in accordance with the then existing Participation Percentages, unless such Participation Percentages are otherwise agreed upon by the Participants.

11.14 List of Exhibits. The Exhibits referenced herein shall be denoted as follows:

Exhibit A - RENEWABLE ENERGY POWER PURCHASE AGREEMENT between NORTHERN CALIFORNIA POWER AGENCY and WESTERN GEOPower INCORPORATED

Exhibit B - PARTICIPATION PERCENTAGES
IN WITNESS WHEREOF, each Participant has executed this Agreement with the approval of its governing body, and NCPA has authorized this Agreement in accordance with the authorization of its Commission.

NORTHERN CALIFORNIA POWER AGENCY  CITY OF ALAMEDA
[Address] [Address]
[City, State, Zip] [City, State, Zip]
[Telephone] [Telephone]
[Facsimile] [Facsimile]

By: ____________________________  By: ____________________________
Title: __________________________  Title: __________________________
Date: __________________________  Date: __________________________

Approved as to form:

By: ____________________________  By: ____________________________
Its: Attorney  Its: Attorney
Date: __________________________  Date: __________________________

BART  CITY OF LODI
[Address] [Address]
[City, State, Zip] [City, State, Zip]
[Telephone] [Telephone]
[Facsimile] [Facsimile]

By: ____________________________  By: ____________________________
Title: __________________________  Title: __________________________
Date: __________________________  Date: __________________________

Approved as to form:

By: ____________________________  By: ____________________________
Its: Attorney  Its: Attorney
Date: __________________________  Date: __________________________

CITY OF LOMPOC  CITY OF PALO ALTO
RENEWABLE ENERGY POWER PURCHASE AGREEMENT

between

NORTHERN CALIFORNIA POWER AGENCY

and

WESTERN GEOPOWER, INC.

[DATE]
RENEWABLE ENERGY POWER PURCHASE AGREEMENT

This Renewable Energy Power Purchase Agreement, together with the exhibits, attachments, and any referenced collateral agreement or similar arrangement between the Parties (collectively, the “Agreement”) is made and effective as of the following date: [Insert Date] (“Effective Date”) by and between the Northern California Power Agency, a joint powers agency established pursuant to the laws of the State of California (“Buyer” or “NCPA”), and Western GeoPower, Inc., a corporation organized and existing pursuant to the laws of the State of California (“Seller”).

WHEREAS, Seller intends to construct, own, and operate a 25.5-33.5 net MW geothermal-powered generating facility, which qualifies as of the Effective Date as an eligible renewable energy resource (“ERR”) under the State of California Renewable Portfolio Standard Program (“RPS”), as codified at California Public Utilities Code Section 399.11, et seq: and desires to sell electricity produced by such generating facility together with all Environmental Attributes and Capacity Attributes, each as defined below, to Buyer pursuant to the terms and conditions set forth herein; and

WHEREAS, Buyer desires to purchase electricity generated by Seller’s generating facility, together with all Environmental Attributes and Capacity Attributes pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises hereof, and the covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller, intending to be legally bound, hereby agree as follows.
AGREEMENT

ARTICLE 1: DEFINITIONS

Unless otherwise required by the context in which any term appears, (i) initially-capitalized terms used in this Agreement shall have the meanings specified in this Article; (ii) terms defined in the singular shall include the plural and vice versa; (iii) references to "Articles," "Sections," and "Exhibits" shall be to articles, sections, or exhibits hereof; (iv) all references to a particular entity shall include a reference to such entity's successors and permitted assigns; (v) the words "herein," "hereof," and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (vi) all accounting terms not specifically defined herein shall be construed in accordance with GAAP, consistently applied; (vii) references to this Agreement shall include a reference to all appendices and Exhibits hereto, as the same may be amended, modified, supplemented, or replaced from time to time; (viii) terms used in the masculine shall include the feminine and neuter and vice versa; and (ix) the term "including," when used in this Agreement, shall mean to include without limitation.

1.1 "Adjustment Period" means (i) the actual period when inaccurate measurements were made by a defective Meter, if that period can be determined to the mutual satisfaction of the Parties, or (ii) if the actual period cannot be determined to the mutual satisfaction of the Parties, one-half the period from the date of the last previous test of the Meter to the date such failure is discovered.

1.2 "Agreement" has the meaning set forth in the recitals of this Agreement.

1.3 "Available Hours" means the number of hours in any month in which the Generating Facility is capable of delivering Energy to the Delivery Point; provided that, to the extent that the Generating Facility is not capable of delivering all of the Contract Capacity in any hour, the Available Hours with respect to such hour shall be reduced pro rata to reflect the fraction of the Contract Capacity that the Generating Facility is capable of delivering in such hour.

1.4 "Availability" means the ability of the Generating Facility to produce and of Seller to deliver Output at a level at least equal to the Contract Capacity. Availability shall be determined with the following formula:

\[
\text{Availability} = 100 \times \frac{\text{Available Hours}}{\text{Base Hours}}
\]
“Availability Shortfall Damages” equals 100% of the Contract Capacity minus the actual delivered power times $5 per MWh, computed at the end of each Contract Year.

“Base Hours” means the number of hours during any month minus the agreed upon scheduled outage hours and/or Force Majeure hours.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent, or by whom the notice, payment or delivery is received, as the context requires.

“Buyer” has the meaning set forth in the preamble of this Agreement.


“Capacity Attributes” means any and all current or future defined characteristics, certificates, tags, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including Resource Adequacy Benefits, and any tracking or accounting associated with the foregoing, attributed to or associated with the electricity generating capacity of the Generating Facility, or any unit of electricity generating capacity of the Generating Facility, during the Term.

“CEC” means the California Energy Commission.

“Commercial Operation” means that: (i) the Generating Facility has been constructed in accordance with Good Prudent Utility Practice, as defined herein, all Permits, Requirements of Law, and the specifications set forth in Exhibit 2 [Description of Generating Facility]; (ii) all of the requirements set forth in Article 7 have been satisfied; and (iii) Seller has successfully completed the Commercial Operation Performance Tests.

“Commercial Operation Date” means the date on which Commercial Operation first occurs.

“Commercial Operation Performance Tests” means the tests set forth in Exhibit 3 [Commercial Operation Performance Tests].

“Confidential Information” means information in respect of the business of either Party provided by one Party to the other in accordance with, or in furtherance of, this Agreement including this Agreement, the content of documents, ideas, business methods, finances, prices, business plans, financial development plans, manpower plans, customer lists or details, computer
systems, software, know-how, trade secrets or other matters connected with such Party’s obligations hereunder; provided, however, that “Confidential Information” shall not include information that (i) at the time of disclosure or thereafter is generally available to, or known by, the public other than as a result of a disclosure by the receiving Party or its representatives; (ii) was available to the receiving Party on a non-confidential basis from a source other than the disclosing Party; or (iii) was otherwise independently acquired or developed by the receiving Party without violating its obligations hereunder.

1.16 “Contract Capacity” means accurately prepared monthly forecast electricity generating capacity of the Generating Facility, net of all on-site and other uses permitted under this Agreement and of all line or transformation losses to the Delivery Point delivered to NCPA at least ten (10) days prior to the beginning of each month.

1.17 “Contract Price” means the price in United States Dollars. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Output, as specified in Exhibit 4 [Contract Price].

1.18 “Contractual Obligations” means, 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.

1.19 “Contract Year” means each year beginning on January 1st and ending on December 31st of such year following the Commercial Operation Date; provided, however, that the first Contract Year shall commence on the Commercial Operation Date and end on the following December 31st, and the last Contract Year shall end on the relevant anniversary of the Commercial Operation Date as set forth in Section 2.1.

1.20 “Control Area” means the electric power system (or combination of electric power systems) under the operational control of the ISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the ISO.

1.21 “Damages” has the meaning set forth in Section 9.4.

1.22 “Delay Liquidated Damages” means an amount equal to $1 per day.

1.23 “Delivery Point” means the point at which the Output will be delivered by Seller and received by Buyer hereunder, as specified in Exhibit 2 [Description of Generating Facility].

1.24 “Environmental Attributes (EA) Agency” means 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.

1.25 "Effective Date" has the meaning set forth in the preamble of this Agreement.

1.26 "Emergency" means any condition or situation which poses an imminent threat to: (i) life or property, or (ii) Buyer's, or any of its member's, ability to maintain safe, adequate, and continuous electric power and energy service to its customers.

1.27 "Energy" means the electricity generated by the Generating Facility pursuant to this Agreement, as expressed in units of kWh or MWh.

1.28 "Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facility or Expansion Plant(s), as the case may be, and its displacement of conventional energy generation. Environmental Attributes include: (i) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases 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 (iii) the reporting rights to these avoided emissions such as Green Tag Reporting Rights.

1.29 Environmental Attributes do not include: (i) any energy, capacity, reliability or other power attributes from the Generating Facility or Expansion Plant(s), (ii) Production Tax Credits associated with the construction or operation of the Generating Facility, or Expansion Plant(s), and other financial incentives in the form of credits, reductions, or allowances associated with the Generating Facility or Expansion Plant(s) 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 Seller or the owners of the Site 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 Generating Facility or Expansion Plant(s) for compliance with local, state, or federal operating and/or air quality permits.

1.30 "Environmental Attributes Reporting Rights" means all rights to report ownership of the Environmental Attributes to any Person, including under Section 1605(b) of the Energy Policy Act of 1992.
1.31 "ERR" has the meaning set forth in the recitals of this Agreement.

1.32 "Event of Default" has the meaning set forth in Article 10.

1.33 "Expansion Plant" means any expansion of the Generating Facility from its Contract Capacity. Each such expansion of the Generating Facility shall be deemed to be an Expansion Plant. Production from the equipment and/or resources defined in Exhibit 2 shall be exempt from Expansion of Plant.

1.34 "Expansion Plant Output" means all capacity and associated Energy, and associated Environmental Attributes and Capacity Attributes produced by Seller at any Expansion Plant.

1.35 "Expected Annual Contract Quantity" means the amount of Energy and Environmental Attributes that Seller expects to deliver to Buyer hereunder in a given Contract Year other than the first and last Contract Years (which may be partial years), as set forth in Exhibit 6 [Expected Annual Contract Quantity Form].

1.36 "Expected Commercial Operation Date" means the date on which the Commercial Operation Date is expected to occur, as specified in Exhibit 7 [Milestones].

1.37 "FERC" means the Federal Energy Regulatory Commission and its successor organization, if any.

1.38 "Force Majeure Event" has the meaning set forth in Section 8.1.

1.39 "GAAP" means Generally Accepted Accounting Principles in the United States of America that is consistently applied.

1.40 "Generating Facility" means Seller’s electricity generating facility as more particularly described in Exhibit 2 [Description of Generating Facility], together with all materials, equipment systems, structures, features and improvements necessary to produce electricity at such facility, excluding the Site, land rights and interests in land.

1.41 "Governmental Authority" means any federal or state government, or political subdivision thereof, including, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, any corporation or other entity owned or controlled by any of the foregoing.
"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 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 MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

"Guarantor" means a Person that guarantees the obligations of Seller by executing a Guaranty.

"Guaranty" means a guaranty in the form attached hereto as Exhibit 8 [Guaranty Agreement].

"Interconnection" means the interconnection of the Generating Facility with the Transmission System, including construction, installation, operation and maintenance of all Interconnection Facilities.

"Interconnection Agreement" means the agreement between Seller and the Transmission Provider pursuant to which Seller and the Transmission Provider set forth the terms and conditions for Interconnection of the Generating Facility to the Transmission System, as amended from time to time.

"Interconnection Facilities" means all of the facilities installed for the purpose of interconnecting the Generating Facility to the Transmission System, including transformers and associated equipment, relay and switching equipment and safety equipment.

"Interest Rate" means, for any date, the lesser of: (i) the per annum prime lending rate (or reference rate) of interest of the Bank of America NT & SA, then in effect as may from time to time be published by the Bank of America NT & SA. (or if not published on such day on the most recent preceding day on which published); and (ii) the maximum rate permitted by applicable law.

"Investment Tax Credits" or "ITC" means investment tax credits under Section 48 of the Internal Revenue Code, as amended from time-to-time during the Term.

"ISO" means the California Independent System Operator Corporation, or its functional successor.
1.51 “ISO Tariff” means the duly authorized tariff, rules, protocols and other requirements of the ISO, as amended from time to time.

1.52 “kWh” means a kiloWatt-hour of electric energy.

1.53 “Lender(s)” means any Person(s) providing money or extending credit (including any capital lease) to Seller for: (i) the construction of the Generating Facility; or (ii) the term or permanent financing of the Generating Facility.

1.54 “Meters” means the physical metering devices, data processing equipment and apparatus associated with the meters owned by Seller or Transmission Provider or its designee, and used to determine the quantities of Energy generated by the Generating Facility and to record other related parameters required for the reporting of data to Seller in accordance with the requirements of Article 4.

1.55 “Meter Service Agreement for ISO Metered Entities” has the meaning set forth in the ISO Tariff.

1.56 “Milestones” means the events that are set forth in Exhibit 7 [Milestones].

1.57 “MW” means a megaWatt of electric energy.

1.58 “MWh” means a megaWatt-hour of electric energy.

1.59 “Outage” means a physical state in which all or a portion of the Generating Facility is unavailable to provide Energy to the Delivery Point, including any duration or reduction in the capacity of the Generating Facility, whether planned or unplanned.

1.60 “Output” means (i) the Contract Capacity and associated Energy, and (ii) all Environmental Attributes and Capacity Attributes.

1.61 “Participating Generator Agreement” has the meaning set forth in the ISO tariff.

1.62 “Parties” means Buyer and Seller, and their respective successors and permitted assignees.

1.63 “Party” means Buyer or Seller, and each such Party’s respective successors and permitted assignees.

1.64 “Peak Months” means, collectively, the months of June, July, August and September during each Contract Year.

1.65 “Permits” means, collectively, all federal, state or local authorizations, certificates, permits, licenses and approvals required by any Governmental
Authority for the construction, ownership, operation and maintenance of the Generating Facility.

1.66 “Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

1.67 “Production Tax Credits” or “PTC” means production tax credits under Section 45 of the Internal Revenue Code, as amended from time-to-time during the Term.

1.68 “Prudent Utility Practice” means those practices, methods and equipment, as changed from time to time, that: (i) when engaged in, or employed, are commonly used in the State of California in prudent electrical engineering and operations to operate electricity 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.

1.69 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.

1.70 “Resource Adequacy Benefits” means the rights and privileges attached to any generating resource that satisfy any entity’s resource adequacy obligations.

1.71 “Requirements of Law” means, 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.

1.72 “RPS” or “Renewable Portfolio Standard Program” has the meaning set forth in the recitals of this Agreement.

1.73 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered on any given day or days hereunder during the Term at the Delivery Point.
1.74 "Scheduling Coordinator" means an entity certified by the ISO for the purposes of undertaking the responsibilities specified by ISO Tariff Section 2.2.6, as amended from time-to-time.

1.75 "Seller" has the meaning set forth in the preamble of this Agreement.

1.76 "Site" means the real property on which the Generating Facility is to be built and located, as more particularly described in Exhibit 2 [Description of Generating Facility].

1.77 "Site Control" means the point at which Seller satisfies one or more of the following conditions: (i) Seller is (a) the lessee under a lease, or (b) the grantee under an exclusive easement, in each case with the owner of the Site that allows Seller to construct and operate the Generating Facility at the Site during the Term in accordance with this Agreement; (ii) Seller has a fee ownership of the Site; or (iii) any other form of site control acceptable to Buyer in its reasonable discretion.

1.78 "Taxes" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.

1.79 "Term" has the meaning set forth in Section 2.1, including five (5) options to extend Term by an additional five (5) years if exercised in accordance with Section 2.4.

1.80 "Test Energy" means Energy generated by the Generating Facility prior to the Commercial Operation Date.

1.81 "Transmission Provider" means any entity or entities responsible for the interconnection of the Generating Facility with a Control Area or transmitting Energy on behalf of Seller from the Generating Facility to the Delivery Point, and on behalf of Buyer from the Delivery Point.

1.82 "Transmission System" means the facilities used for the transmission of electricity in interstate commerce, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider.
ARTICLE 2: TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS

2.1 Effective Date and Term

This Agreement shall become effective on the Effective Date and, unless earlier terminated pursuant to an express provision of this Agreement, shall continue until the day before the twentieth (20th) year anniversary of the Commercial Operation Date, unless extended or terminated pursuant to Sections 2.2 of this Agreement. ("Term").

2.2 Effect of Termination - Survival of Obligations

(a) Upon expiration or termination of this Agreement, neither Party shall have future or further rights or obligations under this Agreement.

(b) Survival of Obligations. The following rights, obligations or provisions shall survive termination or expiration of this Agreement:

(i) obligations by one Party to the other for payment of any amounts, or for performance of any duties, that have accrued or arose prior to, or have directly resulted from, the expiration or termination of this Agreement;

(ii) indemnity obligations contained in Section 9.4, which shall survive to the full extent of the statute of limitations period applicable to any third party claim;

(iii) limitation of liability provisions contained in Section 11.18;

(iv) for a period of one (1) year after the expiration or termination date, the right to dispute an invoice pursuant to Section 5.1(b); or

(v) the obligations under Section 11.5.

ARTICLE 3: PURCHASE AND SALE

3.1 Purchase and Sale of 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 Delivery Point, and Buyer shall purchase and
accept from Seller at the Delivery Point, and pay the Contract Price for, all of the Output. Seller shall only Schedule and deliver Energy and Environmental Attributes and Capacity Attributes from the Generating Facility.

b. Buyer, at Seller's request shall purchase Test Energy during the plant startup phase, provided Seller appoints Buyer as his Scheduling Coordinator (SC). Buyer shall pay Seller $88 per MWH of Test Energy delivered. As a condition of Seller selling Test Energy Seller further agrees to compensate Buyer for any cost/penalty imposed upon Buyer resulting from Seller not meeting the scheduled delivery of Test Energy which forced Buyer to not meet his +/- 3% Deviation Bend and subject to the CAISO imposed penalty.

c. Scheduled and Delivered Amounts. Following the Commercial Operation Date, Seller shall use good faith efforts to ensure that the amounts Scheduled hereunder match the amounts generated by the Generating Facility. Notwithstanding anything herein to the contrary, the Parties acknowledge that, because of the scheduling requirements of the ISO, Scheduled deliveries and metered generation may be unequal during any period.

d. Intermittent Resources. This section is not applicable under this Agreement.

3.2 Delivery Point

(a) Allocation of Costs and Risks. Seller shall be responsible for any costs or charges imposed on or associated with the Output or the delivery of the Output hereunder up to and at the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Output, or its receipt, after the Delivery Point.

(b) Title and Risk of Loss. Title to, and risk of loss related to, the Output shall transfer from Seller to Buyer after the Delivery Point.

3.3 Environmental Attributes and Capacity Attributes

(a) Generally. Throughout the Term, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all rights, titles and interest in and to the Environmental Attributes and Capacity Attributes, 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 and Capacity Attributes available to
Buyer immediately to the fullest extent allowed by applicable law upon Seller’s production or acquisition of the Environmental Attributes and Capacity Attributes. Seller agrees that the Contract Price is the full compensation for all Energy, Environmental Attributes, and Capacity Attributes.

(b) **No Assignment.** Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any portion of the Environmental Attributes and Capacity Attributes to any Person other than Buyer.

(c) **RPS Compliance.** Before delivery of any Energy hereunder, Seller shall cause: (i) the Generating Facility to be certified by the appropriate entity having jurisdiction as an ERR for purposes of the RPS legislation; and (ii) all Output delivered to Buyer from the Generating Facility to qualify as output of an ERR for purposes of the RPS legislation. Seller shall ensure that the Generating Facility maintains ERR status throughout the Term of this Agreement. Seller shall cooperate reasonably with Buyer and provide such certifications or attestations to Buyer as are reasonably necessary to verify that all Environmental Attributes attributable to the Energy have been transferred to Buyer.

(d) **Reporting Rights.** During the Term, Seller shall not report to any Person that the Environmental Attributes and Capacity Attributes granted hereunder to Buyer belong to anyone other than Buyer, and Buyer may report under any program that such attributes purchased hereunder belong to it.

(e) **Attestation.** Seller shall document the production of Environmental Attributes under this Agreement by delivering with each invoice to Buyer an attestation for Environmental Attributes produced by the Generating Facility and purchased by Buyer in the preceding calendar month. On or before March 31st of each year following a Contract Year, Seller shall document the transfer of Environmental Attributes to Buyer under this Agreement by delivering to Buyer an attestation for Environmental Attributes transferred under this Agreement in the preceding Contract Year. The form of attestation is set forth as Exhibit 11 [Form of Attestation]. Exhibit 11 [Form of Attestation] 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.

(f) **Documentation.** 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 designee, as Buyer may reasonably request. Upon notification by an 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.

3.4 **Tax Credits**

Buyer agrees and acknowledges that all PTCs, ITCs and other tax credits/incentives in effect on the Effective Date shall be owned by Seller and/or the owners of the Site. In the event that the value of such credits/incentives applicable to the Generating Facility or the Output is increased after the Effective Date and during the Term of the Agreement, Seller agrees to share with Buyer twenty-five percent (25%) of the increased value of such credits/incentives realized by Seller or its affiliates in respect of the Generating Facility or the Output.

3.5 **Right of First Refusal for Purchase of Existing Plant or Expansion of Plant and Expansion Plant Output**

(a) **Buyer’s Right to Purchase.** 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 at a contract price to be determined. The offer shall include the price to be paid by Buyer for the Expansion Plant Output, and the term of the proposed Power Purchase Agreement ("PPA"). The PPA shall otherwise conform to the terms and conditions of this Agreement. If Buyer wishes to accept such offer to purchase all (or a portion) of the Expansion Plant Output, Buyer shall so notify Seller within sixty (60) days of its receipt of such offer. The Parties shall promptly thereafter enter into a definitive PPA incorporating the terms of such offer. Until such an Expansion Plant PPA is executed, 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.

(b) **Seller’s Right to Sell to Third Parties.** If Buyer does not accept Seller’s offer to purchase all of the Expansion Plant Output within ninety (90) days of receipt of Seller’s offer, Seller shall be free to offer to sell that portion of the Expansion Plant Output not accepted by Buyer 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 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
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 nor provide Buyer’s 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.

ARTICLE 4: METERING

4.1 Metering Requirements

(a) **Meters.** The transfer of Energy from Seller to Buyer shall be measured by
revenue quality Meters at the Delivery Point or corrected to the Delivery Point.
Such Meters shall be selected, provided, installed, owned, maintained and
operated, at Seller’s sole cost and expense, by Seller or its designee in accordance
with the ISO Tariff. Seller shall exercise reasonable care in the maintenance and
operation of the Meters, 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.

(b) **SCADA.** Seller shall install and maintain all equipment and data circuits
necessary to determine and transmit real time supervisory control and data
acquisition (“SCADA”) system data and real time data from the Meter to the ISO.
Seller shall provide to Buyer a copy of each certificate of compliance issued by
ISO, if any.

(c) **Access by Buyer.** Buyer shall be provided access to all monitored SCADA
points to be used at its discretion in real time monitoring. Buyer may further, at
its sole cost and expense, install any updates or upgrades to the Meters, as well
as 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 such equipment does not
interfere with Seller’s Meters. Seller shall permit Buyer or Buyer’s representative
access to its Generating Facility for the purpose of installing and maintaining
such check meters.
(d) **ISO Requirements.** Seller shall submit to the ISO, or allow the ISO to retrieve, any meter data required by the ISO related to the Generating Facility and its Output in accordance with the ISO's settlement and billing protocol and meter data tariffs.

4.2 **Meter Inaccuracies and Retroactive Adjustments**

If a Meter fails to register, or if the measurement made by a Meter is found upon testing to be inaccurate by an amount exceeding plus or minus one percent (1%), an adjustment shall be made correcting all measurements made by the inaccurate or defective Meter during the Adjustment Period. If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (i) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation, or (ii) if not so ascertainable, by estimating on the basis of the deliveries under similar conditions during periods when the Meter was registering accurately. Upon the determination of the amount of any adjustment and upon acceptance of such adjustment by the ISO, if applicable, Buyer shall pay to Seller any additional amounts then due for deliveries of Output during the Adjustment Period at such time as other payments are due for the billing period in which the determination is made, or Buyer shall be entitled to a credit against the next subsequent payments due for the deliveries of Output, whichever case is applicable.

4.3 **Records and Audits**

Seller and Buyer shall each keep complete and accurate records and all other data required by each Party for the purposes of proper administration of this Agreement, including such records as may be required by state or federal regulatory authorities. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments and grant the other Party reasonable access to those records. Seller and Buyer, at their own expense, shall have the right to audit and to examine the billing and operating records and data kept by the other Party relating to the transactions under, and the administration of, this Agreement at any time during normal business hours throughout the Term of this Agreement and for two years thereafter. All such records and data shall be maintained by each Party throughout the Term of this Agreement and for a period of not less than two (2) years following the termination hereof. All such audits and examinations shall be conducted upon reasonable notice and during normal business hours.
ARTICLE 5: BILLING AND PAYMENT

5.1 Billing

(a) Seller shall provide to Buyer on or before the tenth (10th) day of the following month:

(i) An invoice based upon the Energy Produced and delivered to the delivery point in such previous calendar month.

(ii) The corresponding attestation pursuant to Exhibit 11 [Form of Attestation]. Such invoice shall be delivered as specified under Section 11.1.

(b) Disputes over Invoice. Should either Seller or Buyer determine at a later date, but in no event later than one (1) year after the original invoice date, that the invoice amount was incorrect, that Party shall promptly notify the other Party of the error. In the event that an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within thirty (30) Business Days of such resolution along with interest accrued at the Interest Rate from, and including, the due date to, but excluding the date paid. Inadvertent overpayments by Buyer shall be returned upon request or deducted by Seller from subsequent payments, with interest accrued at the Interest Rate from, and including, the date of such overpayment to, but excluding the date repaid or deducted by, Seller. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 5.1(b) within one (1) year after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within one (1) year after the close of the month during which performance occurred, the right to payment for such performance is waived. Failure of Buyer or its agent to withhold any payment amount is not a waiver of Buyer’s right to challenge such amount.

5.2 Payment

(a) Subject to Section 5.1(b), all invoices under this Agreement shall be due and payable on 20th day of the month in which the invoice was received or the 10th day after receipt of the invoice, whichever is later or, if such day is not a Business Day, then on the next Business Day. Each Party shall make payments by electronic funds transfer as set forth in Exhibit 12 [Payment/Wire
Instructions], or by other mutually agreeable method(s), to the account designated by the other Party.

(b) Late Payments and Interest Rate. 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 Interest Rate. Interest shall be computed on the basis of a 365-day year.

5.3 Netting of Payments

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other for the purchase and sale of Output during the monthly billing period under this Agreement, including any related damages, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

5.4 Allocation of Taxes

Seller shall pay or cause to be paid all Taxes on or with respect to the Output sold and delivered hereunder arising at, or prior to, the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the Output purchased and received from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Output and are, therefore, the responsibility of Seller). In the event Seller is required by law or regulation to remit or pay Taxes which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by law or regulation to remit or pay Taxes which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under the law. In the event that such Party does not prepare audited financial statements, such Party shall provide financial statements prepared in accordance with GAAP demonstrating its financial condition in form and substance reasonably acceptable to the other Party.

ARTICLE 6: CREDIT REQUIREMENTS

6.1 Financial Information

If requested by one Party, the other Party shall deliver: (i) within one hundred and eighty (180) days following the end of each fiscal year, a copy of the other Party's annual report containing audited consolidated financial statements for
such fiscal year, and (ii) within sixty (60) days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of the other Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the other Party diligently pursues the preparation, certification and delivery of the statements.

**ARTICLE 7: SELLER'S ADDITIONAL OBLIGATIONS**

During the Term of this Agreement, Seller hereby agrees to perform the following obligations, in addition to Seller's obligations pursuant to Articles 3, 4, 5, and 6:

7.1 **Construction, Operation and Maintenance of the Generating Facility**

(a) **Generally.** Seller shall develop, finance, construct, own, operate, and maintain the Generating Facility in accordance with this Agreement, all Requirements of Law, Contractual Obligations, Permits and Prudent Utility Practice.

(b) **Compliance.** Seller shall, in its own name and at its own expense, seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, all Permits and other authorizations that are required by any Requirements of Law or Governmental Authority as are necessary for Seller to engage in the activities and obligations required by the Agreement.

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

(d) **Disclosure.** Seller shall provide to Buyer such information regarding the permitting, engineering, construction or operations of the Generating Facility 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.

(e) **Insurance.** Seller shall obtain and maintain the policies of insurance in amounts and with coverage as set forth in Exhibit 14 [Seller's Insurance Information].
7.2 Milestones

(a) Generally. Seller covenants that it will diligently pursue all Milestones set forth in Exhibit 7 [Milestones], including the Commercial Operation Date. The Parties agree that time is of the essence in connection with the completion of the Generating Facility, and for achieving Commercial Operation, and that certain Milestones for the development, financing and construction of the Generating Facility must be achieved in a timely fashion or Buyer shall suffer damages. Seller shall achieve the Milestones by the corresponding dates set forth in Exhibit 7 [Milestones].

(b) Monthly Reports. Starting on the Effective Date, Seller shall provide to Buyer monthly progress reports concerning the progress towards completion of the Milestones. In addition, within five (5) Business Days of the completion of each Milestone, Seller shall provide a certification to Buyer (along with any supporting documentation) demonstrating the satisfaction of such 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.

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

(d) Failure To Achieve Milestone. In the event that Seller fails to meet any Milestone by the applicable Milestone deadline as set forth in Exhibit 7 [Milestones], as such deadline may be extended as a result of a Force Majeure Event in accordance with Section 7.2(e), Seller shall be liable for Delay Liquidated Damages 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 Delay Liquidated Damages on a monthly basis Buyer shall not be permitted to terminate this Agreement, provided that in no event shall the combined extensions by payment of Delay Liquidated Damages for any or all of the Milestones exceed twelve (12) months. If any Milestone has not been satisfied within twelve (12) months following the relevant Milestone deadline, or if for any reason Seller fails to pay, or discontinues paying, the monthly Delay Liquidated Damages provided for above, Seller shall have committed an Event of Default. The twelve (12) month period referred to in the prior sentence shall not be extended as a result of a Force Majeure Event.
(e) **Force Majeure Event.** In the event that a Force Majeure Event causes any delay in the achievement of a Milestone, such Milestone’s deadline may be extended, together with any Force Majeure Event extensions for other Milestones, for a period not to exceed, in the aggregate, 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. The extension provided for in this Section 7.2(e) shall be the only effect of a Force Majeure Event on Seller’s obligations with respect to the Milestones.

(f) **Waiver of Right.** Buyer may, at its discretion, grant waivers for Seller’s failure to meet any of the Milestones, but in no way shall any such waiver constitute a waiver of any future failures by Seller to meet other Milestones.

### 7.3 Commercial Operation Performance Tests

No later than fourteen (14) days prior to conducting its Commercial Operation Performance Tests, Seller shall notify Buyer of the date on which it intends to conduct such tests. Within seven (7) days of the successful completion of Seller’s Commercial Operation Performance Tests, Seller shall provide to Buyer written notification of the Commercial Operation Date, including any relevant data demonstrating that Commercial Operation has occurred. Buyer has the right to be present during any Commercial Operation Performance Test, and to receive all information, including meter and performance data associated with such tests. Seller may change the date for such tests upon written notice to Buyer, provided that Buyer has at least fourteen (14) days’ notice of the date of such tests.

### 7.4 Performance Guaranties

(a) **Availability.** By noon on Wednesday of each week throughout the Term, Seller shall deliver to Buyer a report detailing the expected Availability of the Generating Facility for the next week and the actual availability of the Generating Facility for the preceding week. The report shall include any and all full or partial unit shut-downs or derations, Force Majeure Events, scheduled maintenance, forced outages, curtailments, and other events affecting Availability. Unless challenged by Buyer within fifteen (15) days of the date of the receipt of report, Seller’s report of actual Availability shall determine such Availability. If challenged, Seller’s report shall be considered Seller’s determination of Availability and shall not be considered evidence of actual Availability. Seller shall provide to Buyer, upon request, all information concerning Availability as Buyer may reasonably request. Seller shall, with respect to each Contract Year, maintain an Availability of ninety percent (90%). Seller shall provide a quarterly performance report detailing the actual
Availability of the Generating Facility for that quarter. In the event that Seller fails to meet the Availability during any month of any Contract Year, Seller shall pay to Buyer Availability Shortfall Damages within thirty (30) days of the period performance report, or, at Buyer’s option (as effected by written notice to Seller within fifteen (15) days of the period performance report), Buyer may offset payments to Seller in the next monthly billing statement.

(b) This section is not applicable under this Agreement.

(c) Limitations. The Parties recognize and agree that (i) the actual damages to Buyer for a failure by Seller to meet the required Availability are difficult or inconvenient to determine, (ii) payment of amounts by Seller pursuant to this Section 7.4 is an appropriate remedy, and (iii) any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement.

7.5 Obligation to Schedule and Deliver

(a) Scheduling. Seller hereby elects NCPA to be its Scheduling Coordinator as provided for in a separate agreement between Buyer and Seller. Seller shall coordinate with Buyer to comply with applicable CAISO requirements and the provisions of Exhibit 10 [Operations Forecasts and Scheduling Protocols].

(b) Agreement with Transmission Provider. Seller shall, at its own cost and expense, negotiate and enter into an Interconnection Agreement and such other agreements with the Transmission Provider as needed to enable Seller to transmit Energy to the Delivery Point.

(c) Agreements with ISO. Seller shall, at its own cost and expense, negotiate and enter into any agreements with the ISO required by the ISO for generators delivering power into the ISO-controlled grid, including a Meter Service Agreement for ISO Metered Entities and a Participating Generator Agreement.

(d) Start-ups and Shut-downs. Seller shall coordinate all Generating Facility 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, as specified in Exhibit 10 [Operations Forecasts and Scheduling Protocols].

7.6 Modifications to the Generating Facility

Seller shall obtain Buyer’s written consent, which shall not be unreasonably withheld or delayed, prior to making any modifications to the Generating Facility that are likely to adversely affect Seller’s or Buyer’s ability to perform its obligations under this Agreement, including the delivery of the Expected Annual...
Contract Quantity and meeting the Availability requirements of Section 7.4. Any such modifications shall be conducted in accordance with Prudent Utility Practice and all applicable laws and reliability criteria, as such may be amended from time to time.

ARTICLE 8: FORCE MAJEURE

8.1 Force Majeure Events

(a) **Excuse.** Subject to Section 8.2 below, and except as expressly set forth herein, neither Party shall be considered in default under this Agreement for any delay or failure in its performance under this Agreement (including any obligation to deliver or accept Output) if such delay or failure is due to a Force Majeure Event, but only to the extent that:

(i) such Force Majeure Event is not attributable to fault or negligence on the part of that Party;

(ii) such Force Majeure Event is caused by factors beyond that Party’s reasonable control; and

(iii) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences.

(b) **Definition.** “Force Majeure Event” may include, subject to Section 8.1(a) above and (c) below:

(i) acts of God such as storms, floods, lightning and earthquakes;

(ii) sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;

(iii) Transmission System or generating equipment failure;

(iv) war, riot, acts of a public enemy or other civil disturbance;

(v) strike, walkout, lockout or other significant labor dispute;

(vi) curtailment by the ISO, or its successor, but only to the extent that the ISO declares a “Force Majeure” under the ISO Tariff; or
(c) Exclusion. "Force Majeure Event" does not include the following:

(i) economic hardship of either Party;

(ii) an Outage, except if caused directly by an event or circumstance that meets the requirements set forth in this Section 8.1;

(iii) failure or delay in the granting of Permits;

(iv) failures or delays by the Transmission Provider or the ISO in entering into, or performing under, all agreements with Seller contemplated by this Agreement;

(v) curtailment or interruption of transmission services, other than by the ISO where the ISO declares a "Force Majeure" under the ISO Tariff.

8.2 Conditions

In addition to the conditions set forth in Section 8.1(a) above, a Party may rely on a claim of a Force Majeure Event to excuse its performance only to the extent that such Party:

(i) provides prompt notice of such Force Majeure Event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;

(ii) exercises all reasonable efforts to continue to perform its obligations under this Agreement;

(iii) expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that settlement of strikes or other labor disputes shall be completely within the sole discretion of the Party affected by such strike or labor dispute;

(iv) exercises all reasonable efforts to mitigate or limit damages to the other Party; and

(v) provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.
8.3 Termination Due To Force Majeure Event

In addition to and without limiting any other provisions of this Agreement, if a Party is prevented from performing its material obligations under this Agreement for a period of either (i) three hundred and sixty five (365) consecutive days or more, or (ii) seven hundred and thirty (730) non-consecutive days or more (whether full or partial days), 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 9: DEFAULT/REMEDIERS/TERMINATION

9.1 Events of Default Generally

An “Event of Default” shall mean, with respect to each Party, the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within thirty (30) Business Days after written notice;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for the obligations set forth in Section 7.4, the exclusive remedies for which are provided in such Section) if such failure is not remedied within thirty (30) days after written notice (provided that if such failure is not capable of being remedied within such period, then for such longer period as is reasonably needed to effect the remedy, not to exceed one-hundred-eighty (180) days, so long as the failing Party diligently pursues such remedy);

(iv) the initiation of an involuntary proceeding against such Party under the bankruptcy or insolvency laws, which involuntary proceeding remains undischarged for sixty (60) days, or in the event of the initiation by such Party of a voluntary proceeding under the bankruptcy or insolvency laws;

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer,
the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or

(vi) with respect to each Party's Guarantor, if any:

1. if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

2. the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty made in connection with this Agreement and such failure is not remedied within three (3) Business Days after written notice;

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

4. the failure of a Guarantor's Guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party to which such Guaranty shall relate without the written consent of the other Party; or

5. if a Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty.

9.2 Additional Events of Default by Seller

In addition to the Events of Default in Sections 7.2 and 9.1 above, the following shall each constitute an "Event of Default" by Seller:

(i) Seller Schedules and/or delivers to Buyer energy or other product from a resource other than the Generating Facility specified in this Agreement;

(ii) Seller sells or transfers Buyer's share of the Output (or any individual component thereof) to any Person other than Buyer; or
9.3 Remedies; Termination for Default

(a) Termination for Default. In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 9.1 or 9.2, 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) Remedies. For all claims, causes of action and damages with respect to an Event of Default, in addition to the right to termination under Section 9.3(a), the non-defaulting Party shall be entitled to foreclose upon, or otherwise employ, any security provided by the defaulting Party, and to recover actual damages allowed by law unless otherwise limited by this Agreement. Neither the enumeration of Events of Default in Sections 9.1 and 9.2, nor the termination of this Agreement by a non-defaulting Party pursuant to Section 9.3(a), shall limit the right of a non-defaulting Party to rights and remedies available at law, including 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.

(c) Limitations. Except as otherwise specifically and expressly provided in this Agreement, neither Party shall be liable to the other under this Agreement for any indirect, special or consequential damages, including 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. Under no circumstances shall the non-defaulting Party be required to make a termination payment or other payment in respect of any damages to the defaulting Party (except for payments due under this Agreement for performance prior to termination).

9.4 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.

ARTICLE 10: REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 Seller's Representations, Warranties and Covenants

Seller represents, warrants and covenants to Buyer that as of the Effective Date:

(i) Seller is duly organized and validly existing as a corporation under the laws of the State of California, 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 Commercial Operation Date, (a) the Generating Facility is 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 C.F.R. Sections 292.601(c) and 292.602; or (b) Seller has market-based rate authority, and has made all filings required in connection with this Agreement, under Federal Power Act;

(iii) throughout the Term: (a) the Generating Facility will qualify and be certified by the CEC as an ERR under the rules and requirements in effect as of the Effective Date; and (b) the Output delivered to Buyer will qualify as output from an ERR under the requirements of the RPS Legislation and under the rules and requirements in effect as of the Effective Date;

(iv) this Agreement has been duly and validly executed and delivered by Seller and, as of the Effective Date, 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;

(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;

(vi) Seller will deliver to Buyer at the Delivery Point the Output free and
clear of all liens, security interests, claims and encumbrances or any
interest therein, or thereto, by any Person.

(vii) Seller holds and will hold throughout the Term, the rights to all
Environmental Attributes and Capacity Attributes, which it has
conveyed and has committed to convey to Buyer hereunder; and

(viii) 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.

10.2 **Buyer Representations and Warranties**

Buyer represents and warrants to Seller that as of the Effective Date:

(i) Buyer is a joint powers agency established pursuant to the laws of
the State of California, and has all requisite corporate power and
authority to own, lease, and operate its properties and to carry on its
business as is now being conducted;

(ii) Buyer is duly qualified or licensed to do business as a joint powers
agency and is in good standing in each jurisdiction in which the
property owned, leased or operated by it or the nature of the
business conducted by it makes such qualification necessary, except
where the failure to be so duly qualified or licensed and in good
standing would not have a material adverse effect;

(iii) 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;
(iv) 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;

(v) this Agreement has been duly and validly executed and delivered by Buyer and, as of the Effective Date, 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

(vi) 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 11: MISCELLANEOUS

11.1 Notices

All written notices, requests, statements or payments under this Agreement shall, unless otherwise specified herein, be deemed properly sent if delivered in person or sent by facsimile, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Exhibit 13A & B [Contacts]. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during a Business Day, and otherwise shall be effective at the close of the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its contact information by providing notice of same in accordance herewith.

11.2 Dispute Resolution

(a) Non-binding Arbitration or Mediation. Subject to Section 5.1(b), any dispute under this Agreement between Seller and Buyer shall, at the request of any Party, be referred to a senior representative of each of the Parties for resolution on an informal basis as promptly as practicable. In the event the
senior representatives are unable to resolve the dispute, the matter may be submitted to non-binding arbitration or mediation on such terms and conditions as the Parties may agree.

(b) **Litigation.** In the event the Parties are unable to satisfactorily resolve the Dispute within thirty (30) calendar days of such referral or such other period as the Parties may mutually agree, subject to any extensions of time as may be mutually agreed upon in writing, or any arbitration agreement, either Party may initiate litigation in a court of law with jurisdiction located in [To Be Determined] attorneys to discuss County, California, or pursuant to Section 11.12, if applicable, which shall be the exclusive venue to litigate disputes.

(c) **Remedies.** Nothing in this Section 11.2 shall be construed to delay the exercise of remedies pursuant to Section 9.3 pending the resolution of any dispute.

(a) **Expert Arbitration (attorneys handle).** Notwithstanding the provisions of Sections 11.2(a) or (b), disputes expressly referred for resolution under this Section 11.2(d) shall be resolved in the following manner.

(i) Each Party shall, within fourteen (14) days of referral, appoint an expert for inclusion on the arbitral panel.

(ii) Within fourteen (14) days of the later of such appointments, the two Party-appointed experts shall appoint a third expert. The third expert shall have at least five (5) years of experience in electricity generation and sales matters in California and shall not have been employed by either Party, including as a consultant, or have had any other financial relationship to either Party, in the last three (3) years.

(iii) In the event that a third expert cannot be agreed upon, within such fourteen (14) day period, the Parties shall request [*Name to be determined, attorneys to review and resolve*] to appoint the third expert.

(iv) Within fourteen (14) days of the appointment of the third expert, each Party shall provide to the experts and the other Party such materials as it determines to be relevant to the dispute. The experts may, in their judgment, convene a hearing at which each Party may be subject to inquiry by the experts and/or the other Party; provided, however, such Party shall not be required to provide materials beyond those already provided.
(v) The experts shall render a decision on the dispute by a simple majority vote within sixty (60) days of the selection of the third expert, and shall produce a written explanation for their decision.

11.3 **Regulatory Compliance**

Each Party shall at all times comply with all applicable laws, ordinances, rules and regulations applicable to it. As applicable, each Party shall give all required notices, shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith. In the event of any change to the ISO Tariff that materially impacts either Party’s obligations or ability to perform under this Agreement, either Party may request that the Parties engage in good faith negotiations to amend this Agreement such that an equitable balance of benefits and burdens may be restored to the Parties. In the event that the Parties are unable to agree upon any amendments to this Agreement within sixty (60) days of the request for negotiations, either Party may invoke the dispute resolution provisions of Section 11.2(d). Pending any resolution under Section 11.2(d), the Parties shall continue to comply with the provisions of this Agreement.

11.4 **No Dedication of Facilities**

Any undertaking by one Party to the other under any provision of this Agreement shall not constitute the dedication of the Generating Facility or any portion thereof to the public or to any portion thereof.

11.5 **Confidentiality**

All Confidential Information obtained by either Party from the other Party shall be used only in connection with such Party’s exercise of its rights or performance of its obligations under this Agreement and shall not be disclosed to any third party, except as may be required by law, applicable regulation or judicial process; provided, however, that if the receiving Party is required to disclose such Confidential Information by applicable law, regulation or legal process, the receiving Party shall promptly notify the disclosing Party of such pending disclosure prior to such disclosure; provided further that Buyer may, at any time, disclose any information (i) determined by its attorney to be required by law to be disclosed by a public entity such as the Buyer, and (ii) to those of its members that receive some or all of the Output, whether directly or indirectly, from Buyer. The provisions of this Section 11.5 shall survive for three (3) years after the termination of this Agreement.

11.6 **Assignment**
(a) **Buyer.** Buyer may, without the consent of Seller (and without relieving itself from liability hereunder) assign this Agreement or assign or delegate its rights and obligations under this Agreement, if such assignment is made to: (i) one or more of its member municipal utilities; or (ii) where such assignment does not occur by operation of law, any successor to Buyer provided such successor is a municipal utility or public utility holding a certificate of public convenience and necessity granted by the California Public Utilities Commission.

(b) **Seller.** Seller may, without the consent of Buyer (and without relieving itself from liability hereunder): pledge, encumber, or assign this Agreement or the account, revenues or proceeds hereof as collateral security in connection with any financing or other financial arrangements for the Generating Facility, provided that in connection with any such pledge, encumbrance, or assignment, the assignee agrees that upon any foreclosure or exercise of similar remedies upon the Generating Facility or material assets thereof, such assignee shall be bound by this Agreement.

(c) **Written Consent Needed.** Except as stated above, neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by either Party, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void.

(d) **Binding on Parties.** This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

11.7 **Waiver of Rights**

Waivers of any rights hereunder must be in writing and shall not be implied from performance or usage of trade. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect.

11.8 **Section Headings**

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.
11.9 **No Third Party Beneficiary**

This Agreement shall not be construed to create rights in, or to grant remedies to, any third party (other than a permitted successor or assignee bound to this Agreement) as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

11.10 **Forward Contract**

The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code.

11.11 **Applicable Law**

This 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.

11.12 **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 [To Be Determined], State of California. (attorneys to resolve)

11.13 **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. A Party 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.

11.14 **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.

11.15 Severability

Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this 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 that correspond as closely as possible to the sense and purpose of the affected provision.

11.16 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.

11.17 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 this Agreement.

11.18 Limitation of Liabilities

To the extent permitted by law, no Party’s directors, members of its governing bodies, officers or employees shall be liable to any other party or parties for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder. Any liability or damages faced by an officer or employee of a federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with federal law. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE
OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 9.4, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

11.19 Further Assurances

The Parties hereto agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information that a Party may request, and that are reasonably necessary, or appropriate, to give full force and effect to the terms and intent of this Agreement.

11.20 Time is of the Essence

Time is of the essence to this Agreement and in the performance of all of the covenants, obligations and conditions hereof.

11.21 Construction

The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity
existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

11.22 Entire Agreement; Integration

This Agreement, together with all exhibits 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.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the Effective Date first written.

BUYER:

NORTHERN CALIFORNIA POWER AGENCY

By:__________________________________________
Name:________________________________________
Title:________________________________________

SELLER:

WESTERN GEOPower, INC.

By:__________________________________________
Name:________________________________________
Title:________________________________________
**EXHIBITS**

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
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<tbody>
<tr>
<td>Exhibit 1</td>
<td>Reserved</td>
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<tr>
<td>Exhibit 2</td>
<td>Description of Generating Facility</td>
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<tr>
<td>Exhibit 3</td>
<td>Commercial Operation Performance Tests</td>
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<td>Exhibit 4</td>
<td>Contract Price</td>
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<td>Exhibit 5</td>
<td>Reserved</td>
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<td>Exhibit 6</td>
<td>Expected Annual Contract Quantity Form</td>
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<td>Exhibit 7</td>
<td>Milestones</td>
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<td>Exhibit 8</td>
<td>Guaranty Agreement</td>
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<td>Exhibit 9</td>
<td>Reserved</td>
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<td>Exhibit 10</td>
<td>Operations Forecasts and Scheduling Protocols</td>
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<td>Exhibit 11</td>
<td>Form of Attestation</td>
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<td>Exhibit 12</td>
<td>Payment / Wire Instructions</td>
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<td>Exhibit 13a</td>
<td>Contacts, Buyer</td>
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<tr>
<td>Exhibit 13b</td>
<td>Contacts, Seller</td>
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<tr>
<td>Exhibit 14</td>
<td>Seller's Insurance Information</td>
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## Exhibit 2

**DESCRIPTION OF GENERATING FACILITY**

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<tr>
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<tbody>
<tr>
<td>Owner:</td>
<td>Western GeoPower Incorporated</td>
</tr>
<tr>
<td>Location:</td>
<td>Leaseholds, County of Sonoma, State of California</td>
</tr>
<tr>
<td>(See Exhibit 2.1 attached)</td>
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<tr>
<td>Equipment:</td>
<td></td>
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<tr>
<td>Type of Facility:</td>
<td>Electric Power Generation</td>
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<td>Delivery Point:</td>
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<tr>
<td>Operator:</td>
<td>Western GeoPower Incorporated</td>
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<tr>
<th>Buyer:</th>
<th>NCPA</th>
<th>Seller:</th>
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<tbody>
<tr>
<td>Name</td>
<td>JAMES H. POPE</td>
<td>Name</td>
<td></td>
</tr>
<tr>
<td>Signature</td>
<td></td>
<td>Signature</td>
<td></td>
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<tr>
<td>Date</td>
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<td>Date</td>
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</tbody>
</table>

Western GeoPower needs to add description of power generation equipment,
Exhibit 2.1

Mayacamas Energy Leasehold:

DESCRIPTION:
All that certain real property situated in the County of Sonoma, State of California, described as follows:

PARCEL ONE:
Lots 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14 and 16 of Section 14, Township 11 North, 8 Range 9 West, M.D.B.&M., according to the official plat thereof.
SAVING AND EXCEPTING THEREFROM, that portion of Lots 3, 4, and 16, lying northerly of the center of Big Sulphur Creek.
ALSO, SAVING AND EXCEPTING THEREFROM, that portion of Lots 9 and 14 conveyed to Daniel J. Nielsen, et ux, by Deed dated January 25, 1950 and recorded February 1, 1950 as Recorder's Serial No. D-6082, Sonoma County records.
ALSO, SAVING AND EXCEPTING THEREFROM, that portion thereof lying within the bounds of the lands described in the Deed to Regan B. Kidd, et ux, dated November 25, 1951 and recorded December 7, 1951 and Recorder's Serial No. D-55754, Sonoma County Records.
ALSO SAVING AND EXCEPTING the West one-half of Lot 4, as granted to G. William Filley, by Deed dated June 20, 1962 and recorded July 9, 1962 in Book 1900 of Official Records at page 39, as Recorder's Serial No. G-99005, Sonoma County Records.

PARCEL TWO:
All that parcel of land located in Section 14, Township 11 North, Range 9 West, M.D.B. & M., lying west of the centerline of the creek closest to the west boundary of the Dewey property and south of the county road to Cloverdale, all as the location of these landmarks existed on July 30, 1951 and as the above described parcel was granted to
Buckman Inc., a corporation by Deed dated July 30, 1951 and recorded August 7, 1951 as Recorder's Serial No. D-47201, Sonoma County Records.

PARCEL THREE:

The Southwest one-quarter of the Northeast one-quarter and the Southeast one-quarter of the Northeast quarter of Section 15, in Township 11 North, Range 9 West, M.D.B. & M., according to the official plat thereof.

SAVING AND EXCEPTING THEREFROM, all mineral rights in the Southeast one-quarter of the Northeast one-quarter, as same were granted to C. William Filley, by Deed dated June 20, 1962, and recorded July 9, 1962 in Book 1900 of Official Records at page 39, as Recorder's Serial No. G-99005, Sonoma County Records.

PARCEL FOUR:

That portion of the East one-half of the Southwest one-quarter of the Southwest quarter of Section 11, Township 11 North, Range 9 West, according to the official plat thereof, lying southerly of Big Sulpher Creek.
Filley Leasehold:

DESCRIPTION:
All that certain real property situated in the County of Sonoma, State of California, described as follows:

PARCEL ONE:
The Northeast one-quarter of the Northeast one-quarter of Section 15 Township 11 North, Range 9 West, M.D.B. & M.

PARCEL TWO:
All that portion lying South of the centerline of Big Sulphur Creek of the Southeast one-quarter of the Southeast, one-quarter of Section 10, Township 11 North, Range 9 West, M.D.B. & M.

PARCEL THREE:
All that portion lying Southwesterly of the centerline of Big Sulphur Creek in the West one-half of the Southwest one-quarter of the Southwest, one-quarter of Section 11 Township 11 North, Range 9 West, M.D.B. & M.

Together with all mineral rights in the Southeast one-quarter of the Northeast One-quarter of Section 15, Township 11 North, Range 9 West M.D.B. & M.

Filley-Brown Leasehold:

DESCRIPTION:
All that real property situated in the Unincorporated Area, County of Sonoma, State of California, described as follows:

The Southwest one-quarter of the Southeast one-quarter of Section 10 and the Northwest one-quarter of the Northeast one-quarter of Section 15, Township 11 North, Range 9 West, M.D.B. & M.,
EXCEPTING THEREFROM that portion of the Southwest one-quarter of the Southeast one-quarter of Section 10, Township 11 North, M.D.B. & M., described as follows:

Beginning at an iron stake set at the southeast corner of said Southwest one-quarter of the Southeast one-quarter of Section 10, thence north 700 feet along the easterly line of the Southwest one-quarter of the Southeast one-quarter of said section 10, to an iron stake; thence west 350 feet to a point; thence south 700 feet to a point in the south line of said section 10; thence east 350 feet along said section line to the point of beginning.
Exhibit 3

COMMERCIAL OPERATION PERFORMANCE TESTS

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 Generating Facility, systems and equipment. Seller shall be responsible for and bear the costs of any Capacity Test. Buyer shall will pay for energy produced in accordance with 3.1.b. Seller shall supply a written copy of the Performance Test results to Buyer within five (5) business days following the conclusion of such test. The Performance Test shall consist of uninterrupted operation of the Generating Facility for a period of no less than seven (7) days.

1) Compliance. The Performance Test shall demonstrate the ability of the Generating Facility to comply with all material safety, system reliability, environmental, and other Requirements of Law, this Agreement, and any related Agreements, including any interconnection Agreements.

2) Contract Capacity. The Performance Test shall demonstrate the ability of the Generating Facility to reliably generate up to thirty-two (32) megawatts.
Exhibit 4

CONTRACT PRICE

$98/MWH for twenty (20) years following the Commercial Operation Date.
Exhibit 5
RESERVED
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### Exhibit 7
CONSTRUCTION MILESTONE SCHEDULE

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<th>Identify Milestone</th>
<th>Estimated Date for Completion</th>
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<tr>
<td>File CEC Certification and Verification Application</td>
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<tr>
<td>Submit Interconnection Application</td>
<td>Completed</td>
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<tr>
<td>File PRMD Permit</td>
<td>September 2007</td>
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<tr>
<td>Execute EPC Contract</td>
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<tr>
<td>Order major Equipment for Facility</td>
<td>Completed</td>
</tr>
<tr>
<td>Receive Completed System Impact Study</td>
<td>June 2008</td>
</tr>
<tr>
<td>Begin Construction of Facility</td>
<td>September 2008</td>
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<tr>
<td>Receive Conditional Use Permit</td>
<td>September 2008</td>
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<tr>
<td>Receive Completed Interconnection Facility Study</td>
<td>January 2009</td>
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<tr>
<td>Receive Authority to Construct Permit</td>
<td>July 2009</td>
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<tr>
<td>Achieve Initial Operation</td>
<td>April 2010</td>
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Exhibit 8
GUARANTY AGREEMENT

This Guaranty Agreement (the “Guaranty”) is made by [Insert Guarantor’s Name] (“Guarantor”), a [Insert Guarantor’s business registration and location thereof], in favor of Northern California Power Agency (individually and collectively, the “Counterparty”).

WHEREAS, Counterparty is a party to the Renewable Energy Power Purchase Agreement between Northern California Power Agency and Western GeoPower, Inc. (“Agreement”) a subsidiary of Guarantor (the “Company”); and

WHEREAS, the Guarantor is the parent of Company, and will receive substantial and direct benefits from the transactions contemplated by the Agreement and has agreed to enter into this Guaranty to provide assurance for the payment obligations of Company in connection with the Agreement and to induce the Counterparty to enter into the Agreement.

NOW, THEREFORE, in consideration of good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

1. **Guaranty.** The Guarantor hereby unconditionally, irrevocably and absolutely guarantees the full and punctual payment when due (subject to written demand in accordance with Paragraph 6 below) of Company’s payment obligations arising under the Agreement, as such Agreement may be amended or modified by agreement between Company and the Counterparty from time to time (the “Guaranteed Obligations”). In addition, Guarantor shall reimburse Counterparty for all sums paid to Counterparty by Company with respect to such Guaranteed Obligations which Counterparty is subsequently required to return to Company or a representative of Company’s creditors as a result of Company’s bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding. The Guarantor’s obligations and liability under this Guaranty shall be limited to payment obligations only and the Guarantor shall have no obligation to perform under the Agreement, including, without limitation, to sell, deliver, supply or transport gas, electricity or any other commodity.

If all or a part of any payment made by Guarantor to Counterparty hereunder is later determined to have been improper because such amount was not actually owed by Company to Counterparty under the Agreement, Counterparty shall repay such amount to Guarantor within ten (10) business days of written demand by Guarantor together with any interest, reasonable attorneys’ fees, and/or costs of collection, if
any, required by the Agreement to be paid by Counterparty in the collection of such amount.

2. **Guaranty Absolute.** The liability of Guarantor under this Guaranty shall be absolute, irrevocable and unconditional irrespective of:

(a) any defect or deficiency in the Agreement or any other documents executed in connection with the Agreement;

(b) any modification, extension or waiver of any of the terms of the Agreement;

(c) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from the Agreement or any other Agreement or instrument executed in connection therewith;

(d) any sale, exchange, release or non-perfection of any property standing as security for the liabilities hereby guaranteed or any liabilities incurred directly or indirectly hereunder or any setoff against any of said liabilities, or any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(e) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by the Counterparty to exercise, in whole or in part, any right or remedy held by the Counterparty with respect to the Agreement or any transaction under the Agreement;

(f) any change in the existence, structure or ownership of the Guarantor or Company, or any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Company or its assets; or

(g) subject to Guarantor's reservations in the last sentence of this Paragraph 2, any dispute between Counterparty and the Company in connection with the Guaranteed Obligations.

The obligations of the Guarantor hereunder are several and not joint with Company or any other person, and are primary obligations for which the Guarantor is the principal obligor. There are no conditions precedent to the enforcement of this Guaranty, except as expressly contained herein. It shall not be necessary for the Counterparty, in order to enforce payment by the Guarantor under this Guaranty, to exhaust its remedies against Company, any collateral pledged by Company, any other guarantor, or any other person liable for the payment or performance of the Guaranteed Obligations. This Guaranty is one of payment and not of collection and shall apply regardless of whether recovery of all such Guaranteed Obligations may be discharged, or uncollectible in any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Company or its assets. This Guaranty is a continuing guaranty and shall apply to all present and future transactions entered into under the Agreement.
Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Company is or may be entitled to arising from or out of the Agreements or otherwise, except as limited herein and except for defenses arising out of any lack of authority by Company to enter into the Guaranteed Obligations or the bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Company or its assets.

3. **Waiver.** Guarantor hereby waives:

(a) except for the acceptance required from Counterparty below, notice of acceptance of this Guaranty, notice of the creation or existence of any of the Guaranteed Obligations and notice of any action by the Counterparty in reliance hereon or in connection herewith;

(b) notice of the entry into the Agreement between Company and the Counterparty and notice of any amendments, supplements or modifications thereto; or any waiver of consent under the Agreement, including waivers of the payment and performance of the obligations thereunder;

(c) notice of any increase, reduction or rearrangement of Company's obligations under the Agreement or notice of any extension of time for the payment of any sums due and payable to the Counterparty under the Agreement;

(d) except as expressly set forth herein, presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest or any other notice of any other kind with respect to the Guaranteed Obligations; and

(e) any requirement that suit be brought against, or any other action by the Counterparty be taken against, or any notice of default or other notice be given to, or any demand be made on, Company or any other person, or that any other action be taken or not taken as a condition to the Guarantor's liability for the Guaranteed Obligations under this Guaranty or as a condition to the enforcement of this Guaranty against the Guarantor.

4. **Subrogation.** The Guarantor shall be subrogated to all rights of the Counterparty against Company in respect of any amounts paid by the Guarantor pursuant to the Guaranty, provided that the Guarantor waives any rights it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise (including, without limitation, any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. §509, or otherwise), reimbursement, exonerations, contribution, indemnification, or any right to participate in any claim or remedy of the Counterparty against Company or any collateral which the Counterparty now has or acquires, until all of the Guaranteed Obligations shall have been irrevocably paid to the Counterparty in full. If (a) the Guarantor shall perform and shall make payment to the Counterparty of all or any part of the Guaranteed Obligations and (b) all the Guaranteed Obligations shall have been paid in full, the Counterparty shall, at
the Guarantor's request, execute and deliver to the Guarantor appropriate documents
necessary to evidence the transfer by subrogation to the Guarantor of any interest in
the Guaranteed Obligations resulting from such payment by the Guarantor.

5. Notices. All demands, notices and other communications provided for hereunder
shall, unless otherwise specifically provided herein, (a) be in writing addressed to the
party receiving the notice at the address set forth below or at such other address as
may be designated by written notice, from time to time, to the other party, and (b) be
effective upon delivery, when mailed by U.S. mail, registered or certified, return
receipt requested, postage prepaid, or personally delivered. Notices shall be sent to
the following addresses:

If to Counterparty:

NORTHERN CALIFORNIA POWER AGENCY
180 Gibby Way
Roseville, CA 95678
Attention: Treasurer/Controller

If to Guarantor:

[Insert Guarantor's Address]

6. Demand and Payment. Counterparty is not entitled to make demand upon
Guarantor until a default occurs in payment of any Guaranteed Obligations by
Company to Counterparty. Any demand by the Counterparty for payment
hereunder shall be in writing, reference this Guaranty, reference the Guaranteed
Obligations, and signed by a duly authorized representative of the Counterparty and
delivered to the Guarantor pursuant to Paragraph 5 hereof. There are no other
requirements of notice, presentment or demand. The Guarantor shall pay, or cause to
be paid, such Guaranteed Obligations within ten (10) business days of receipt of such
demand.

No Waiver; Remedies. Except as to applicable statutes of limitation, no failure on the
part of Counterparty to exercise, and no delay in exercising, any right hereunder shall
operate as a waiver thereof, nor shall any single or partial exercise of any right
hereunder preclude any other or further exercise thereof or the exercise of any other
right. The remedies herein provided are cumulative and not exclusive of any
remedies provided by law.
8. **Term; Termination.** This Guaranty shall continue in full force and effect from the Effective Date until all Guaranteed Obligations arising with respect to the Agreement have been fully satisfied.

9. **Assignment; Successors and Assigns.** The Guarantor shall not assign its rights hereunder without the prior written consent of the Counterparty, and any assignment without such prior written consent shall be null and void and of no force or effect. This Guaranty shall be binding upon and inure to the benefit of the each party hereto and their respective successors and permitted assigns.

10. **Amendments, Etc.** No amendment of this Guaranty shall be effective unless in writing and signed by Guarantor and Counterparty. No waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by Counterparty. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

11. **Caption.** The captions in this Guaranty have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and provisions of this Guaranty.

12. **Representation and Warranties.**

   The Guarantor represents and warrants as follows:

   (a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty.

   (b) The execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene the Guarantor’s constitutional documents or any contractual restriction binding on the Guarantor or its assets.

   (c) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditor’s rights and to general equity principles.

13. **Foreign Currency Obligations.** Subject to the limitation of Guarantor’s total liability set forth in Paragraph 1 hereof, the Guarantor shall make payment in the currency in which the Company is required to pay its payment obligations (the “Original Currency”). For the purposes of calculating Guarantor’s total liability hereunder and applying the limitation on Guarantor’s total liability, the value of the payment obligation in the Original Currency shall be converted to US Dollars by the Guarantor.
at the rate equal to the applicable spot exchange rate of a large commercial bank located in Canada or the United States on the date that payment is made by the Guarantor.

14. **GOVERNING LAW.** THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD OR REFERENCE TO THE CONFLICT OF LAWS PRINCIPLES OF ANY JURISDICTION. GUARANTOR HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS IN SACRAMENTO, CALIFORNIA IN CONNECTION WITH ANY DISPUTE ARISING UNDER THIS GUARANTY. However, if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

15. **Entire Agreement and Termination of Prior Guaranty.** This Guaranty constitutes the entire Agreement and understanding between Guarantor and Counterparty with respect to the Guaranteed Obligations and supersedes and replaces in its entirety any and all guaranties previously issued by Guarantor to Counterparty with respect to the Guaranteed Obligations, or any part of them.
IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized representative effective as of this ____ day of __________, 200[ ] ("Effective Date").

[Guarantor's Name]

By: ______________________________
Name: ____________________________
Title: _____________________________

ACCEPTED AND AGREED TO
THIS ____ DAY OF __________, 200[ ]

By: ______________________________
Name: ____________________________
Title: _____________________________
Exhibit 10

OPERATIONS FORECASTS
and
SCHEDULING PROTOCOLS

1. Annual Operations Forecast

1.1. No later than September 10th of each Contract Year, Seller will provide an Annual Operations Forecast detailing hourly expected generation and all proposed planned outages for the next Calendar Year. The Annual Operations Forecast for the first Calendar Year shall be provided no later than ninety (90) days prior to the Commercial Operation Date.

1.2. Buyer may request modifications to the Annual Operations Forecast at any time, and Seller shall use good faith efforts to accommodate Buyer’s requested modifications.

1.3. Seller shall not conduct planned outages at times other than as set forth in its Annual Operations Forecast, unless approved in advance by Seller, which approval shall not be withheld or delayed unreasonably.

1.4. Seller shall not conduct planned outages during the Peak Months and furthermore, shall coordinate the outages with NCPA.

2. Short Term Operations Forecasts

2.1. Quarterly Operations Forecast

2.1.1. Twenty (20) days prior to beginning of each quarter, Seller shall provide a Quarterly Operations Forecast by hour of expected generation and all proposed planned outages as approved by NCPA in advance.

2.1.2. Quarterly Operations Forecast will also include any requested additions or modifications to planned outages for the next twelve (12) months.

2.1.3. Buyer will approve or require modifications to the proposed Quarterly Operations Forecast within ten (10) calendar days of receipt of the Quarterly Operations Forecast.

2.1.4. If required by Buyer, Seller will provide a modified Quarterly Operations Forecast to Buyer no later than seven (7) calendar days after receipt of required modifications from Buyer.
2.2. Weekly Update

2.2.1. No later than 14:00 each Wednesday prior to the following week (Sunday through Saturday), Seller may provide an electronic update, in a format specified by Buyer, to the Quarterly Operations Forecast for the next seven (7) calendar days.

2.2.2. The Weekly Update shall include hourly expected generation and all proposed planned Outages.

3. Outage Detail for Annual and Short Term Operations Forecasts

3.1. Outage information provided by Seller is to include, at a minimum, start and stop time of Outage, capacity out of service (kWh), equipment out of service, and reason for the Outage.

4. General Scheduling Protocols

4.1. Daily modifications to forecasts. Unless otherwise mutually agreed, Seller may make changes to the weekly forecasts by providing such changes to Buyer prior to 08:00 two (2) Business Days before the active scheduling day.

4.1.1. Active scheduling day as determined by the WECC Prescheduling calendar.

4.1.2. Example: For power that is scheduled for generation or delivery on Thursday, March 29, changes must be submitted to Buyer no later than 08:00 on Tuesday, March 27.

4.2. Hourly modifications to active schedules. Unless otherwise mutually agreed, Seller may make changes to active schedules by providing such changes to Buyer with a minimum of four (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 duration, constitutes one schedule change.

4.2.1. 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 Buyer no later than 10:00.

4.3. At Seller’s request, Buyer may modify generation and load schedules for unforeseen circumstances in accordance with the above scheduling timeline constraints and Buyer’s Schedule Coordination Agreement.

4.4. In the absence of forecasts and schedules as required by this Agreement or this Exhibit, Buyer shall utilize the most current information provided by Seller in the development and submission of Schedules.
4.5. Daily or Hourly modifications do not modify Monthly Contractual Energy for issues related to pricing or default.

5. Additional Scheduling Protocols When NCPA is the Scheduling Coordinator

5.1. Seller is to notify NCPA of all planned or forced generation outages to ensure compliance with ISO Outage Coordination and Enforcement Protocols.

5.1.1. Outage information provided by Seller is to include, at a minimum, start and stop time of Outage, capacity out of service (kW), equipment out of service, and reason for the Outage.

5.1.2. Planned Outages not included in the Annual Operations Forecast, the Quarterly Operations Forecast, or the Weekly Update, shall be provided by Seller to Buyer at least four (4) business days prior to the start of the requested outage.

5.2. Forced Outages

5.2.1. “Forced Outages” are any unplanned reduction in the capability of a generating facility.

5.2.2. Forced Outages shall be reported by Seller to NCPA within twenty (20) minutes of such outages.

5.2.3. Notice by Seller to NCPA of a Forced Outage shall include the reason for the outage (if known), expected duration of the outage, and the capacity reduction.

5.2.4. Within forty-six (46) hours of a Forced Outage, a detailed verbal report shall be provided by Seller to NCPA specifying the reason for the outage, expected duration of such outage, capacity reduction, and actions taken to mitigate such outage.

5.3. Commencement of an Outage – Seller shall not begin any planned Outage without prior approval of NCPA and the ISO.

5.4. Return to Service – Seller shall notify NCPA immediately whenever a generating unit is returned to service.

6. When NCPA is not the Scheduling Coordinator

6.1. Seller shall cause its Scheduling Coordinator to provide all required Outage reporting information directly to the ISO as required by the then existing ISO scheduling protocols.

7. Notices

7.1. All Scheduling notices and Schedules are to be submitted to Buyer by phone, fax or email to the following persons:
7.1.1. For Day Ahead Schedule changes, inform the Buyer's Pre-Scheduling Contact listed in Exhibit 13a [Contacts, Buyer].

7.1.2. For Hourly Modifications, inform the Buyer's Schedule Coordinator Contact listed in Exhibit 13a [Contacts, Buyer].

7.1.3. For forced Outages, inform the Buyer's Dispatcher Contact listed in Exhibit 13a [Contacts, Buyer].

7.1.4. For planned Outages, inform the Buyer's Dispatcher and Supervisor of Dispatch Operations Contacts listed in Exhibit 13a [Contacts, Buyer].
8. Example Form Of Day-Ahead Schedule:

June [___], 2007

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Expected Daily Temperatures (in Fahrenheit):

___ Low
___ High

Contact Information:
Scheduling Coordinator:

Facility / City:
Exhibit 11

FORM OF ATTESTATION

Environmental Attribute Attestation and Bill of Sale

[Name of Seller] ("Seller") hereby sells, transfers and delivers to Northern California Power Agency ("Buyer") the Environmental Attributes and Environmental Attributes Reporting Rights associated with the generation of the indicated energy for delivery to the grid (as such terms are defined in the Long Term Power Purchase Agreement ("Agreement") dated [Date], between Buyer and Seller) arising from the generation for delivery to the grid of the energy by the Generating Facility described below:

Facility name and location: _______ Project Name _______ (_______ County, California)
EIA ID #: _______ CEC ID #: _______ ISO Meter ID #: _______
Fuel Type: _______ Capacity (MW): _______ Operational Date: _______

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in the amount of one Environmental Attribute 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) this transfer to Buyer is the one and only sale of the Environmental Attributes and associated Environmental Attributes 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 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 Buyer all of Seller’s right, title and interest in and to the Environmental Attributes associated with the generation of the energy for delivery to the grid.

Contact Person: Name: ____________________ Phone: ____________________

WITNESS MY HAND,

Seller: ____________________

By ____________________

NCPA – 2006 Power Purchase Agreement

Page 1
Exhibit 12
PAYMENT/WIRE INSTRUCTIONS

---

NORTHERN CALIFORNIA POWER AGENCY (Buyer)

WIRE INSTRUCTIONS

The following information is to be used when wiring funds for deposit to Buyer:

U.S. Bank
ABA# 121122676
For Deposit to:
Northern California Power Agency
Acct. No. 1-534-0216-2744

For information purposes, please fax a copy of the wire instructions to Buyer at (916) 781-4255, Attention Treasurer-Controller.

The following information is to be used for all other statements or payments to Buyer by mail:

NCPA
Attention: Treasurer-Controller
180 Cirby Way, Roseville, 95678.

_________________________ [Seller’s Name] ___________________ (Seller)
WIRE INSTRUCTIONS

The following information is to be used when wiring funds for deposit to [Seller’s Name]:

_________________________
For Deposit to:

For information purposes, please fax a copy of the wire instructions to [Seller’s Name] at [Seller’s phone number], Attention [Seller’s relevant contact person].
Exhibit 13a

NCPA (BUYER) CONTACTS

1. Contract Management

Name  Phone  Email
Ken Speer  916-781-4201  Ken.Speer@ncpa.com

2. Billing/Invoice Issues

Name  Phone  Email
Bob Caracristi  916-781-4224  bob.caracristi@ncpa.com
Mike Daniels  916-781-4205  mike.daniels@ncpa.com

3. NCPA Pre-Scheduling

Monthly, weekly and daily generation schedules are to be provided to NCPA Pre-Scheduling contacts.

Name  Phone  Email
Kevin McMahan  916-786-0123  kevin.mcmahan@ncpa.com
  916-781-4227
Norm Worthington  916-786-0124  norm.worthington@ncpa.com
Don Imamura  916-781-4240  don.imamura@ncpa.com
Ken Goeke  916-781-4290  ken.goeke@ncpa.com
Pre-Scheduling  (FAX) 916-781-4239

4. NCPA Schedule Coordination

All Hour Ahead or Real-Time Schedule changes are to be provided to NCPA Scheduling Coordinator Contacts.

Name  Phone  Email
NCPA Scheduling Coordinator  916-781-4237  SC2@ncpa.com
(FAX) 916-781-4226

Exhibit 13a
5. NCPA Dispatch/Outage Coordination

All Planned and/or Forced Outages of Generating Facilities are to be provided to NCPA Dispatch/Outage Coordination.

<table>
<thead>
<tr>
<th>Name</th>
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<th>Email</th>
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<tbody>
<tr>
<td>Dave Wilke</td>
<td>916-781-4225</td>
<td><a href="mailto:dave.wilke@ncpa.com">dave.wilke@ncpa.com</a></td>
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<tr>
<td>(Supervisor of Dispatch Operations)</td>
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<tr>
<td>NCPA Dispatch</td>
<td>916-786-3518</td>
<td><a href="mailto:Dispatch@ncpa.com">Dispatch@ncpa.com</a></td>
</tr>
<tr>
<td>NCPA Scheduling Coordinator</td>
<td>916-781-4237</td>
<td><a href="mailto:SC2@ncpa.com">SC2@ncpa.com</a></td>
</tr>
<tr>
<td>NCPA Dispatch</td>
<td>(FAX) 916-781-4226</td>
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Exhibit 13b

[Name of Seller] (SELLER) CONTACTS

1. Contract Management
   
   Name                      Phone                      Email
   ______________________    ______________________  ______________________

2. Billing/Invoice Issues
   
   Name                      Phone                      Email
   ______________________    ______________________  ______________________

3. Pre-Scheduling and Dispatch/Outage Coordination
   
   Annual, Quarterly, Weekly and Daily generation schedules:
   
   Name                      Phone                      Email
   ______________________    ______________________  ______________________
   ______________________    ______________________  ______________________
   Pre-Scheduling (FAX)      ______________________  ______________________

4. Operator and Real Time Issues
   
   All Planned and/or Forced Outages of generation facilities are to be provided to NCPA Dispatch/Outage Coordination.
   
   Name                      Phone                      Email
   ______________________    ______________________  ______________________
(FAX) 916-781-4226
Exhibit 14
SELLER'S INSURANCE INFORMATION

[TOW BE DETERMINED]
Commission Staff Report

Date: January 25, 2008
To: NCPA Commission
Subject: Western GeoPower Incorporated Power Plant Project

Background
The Western GeoPower Incorporated (WGI) plans to develop a new geothermal power plant at the Geysers by 2010-11 with an expected capacity of 25-35 MW. WGI advised NCPA approximately a month ago that it was interested in entering into a Power Purchase Agreement (PPA) with us. NCPA held a special meeting of the Commission on December 19, 2007, at which we discussed the WGI project, sought members' advice, and the Commission authorized the General Manager to proceed with formal negotiations with WGI.

The General Manager and staff has negotiated with WGI and is approaching an agreement for a PPA. We are attempting to have the substance of the Agreement completed to bring to the Commission at this meeting. The basic terms of the Agreement are: (1) a take-and-pay form of contract; (2) at a negotiated price and terms, and (3) NCPA would own all of the energy, capacity, and environmental attributes of the facility. The basis for the PPA is the NGPP (Green Power Pool). A final PPA inclusive of the agreed upon terms and conditions is attached to this report.

Staff at the same time developed a Third Phase Agreement for the members to participate in this project. This Agreement is attached. The basis for this Agreement was the Market Power Purchase Agreement currently being used by some of the members.

Both of these Agreements were discussed with the Utility Directors on January 10, 2008.

Fiscal Impact
Under the proposed 'take-and-pay' PPA, and because the project is not expected to be operational until 2010/2011 time period, there is no fiscal impact until the members start receiving energy from the project. Prior to the expected operational date, staff will develop a budget for approval by the participants covering the expected cost. This budget may augment the current budget (FY 08) and will be included in the FY-09 budget.

Recommendation
Staff recommends that the Commission approve the attached Resolution which includes approval of the Third Phase Agreement and the PPA as negotiated with WGI, if available, subject to participating members approving the Third Phase Agreement. Staff further recommends that it authorize the General Manager to make any and all non-substantive changes to the Third Phase Agreement and PPA as deemed appropriate by the General Counsel.

SR: 112:8
Respectfully submitted,

JAMES H. POPE
General Manager

Prepared by:

KEN SPEER
Assistant General Manager
Generation Services

HM/KS/dg
Attachments (2)
Resolution
Third Phase Agreement

SR: 112:8
RESOLUTION OF THE COMMISSION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING THE THIRD PHASE AGREEMENT FOR THE PURCHASE OF GEOTHERMAL POWER FROM WESTERN GEOFPOWER INCORPORATED AND THE RENEWABLE ENERGY POWER PURCHASE AGREEMENT BETWEEN NORTHERN CALIFORNIA POWER AGENCY AND WESTERN GEOFPOWER INCORPORATED

WHEREAS, NCPA and the Participants are interested in purchasing additional renewable electric capacity and energy for the benefit of the Participants' customers:

WHEREAS, The Participants desire that NCPA negotiate and enter into a renewable Power Purchase Agreement (PPA) with Western GeoPower Incorporated (WGI) for twenty (20) years; and

WHEREAS, NCPA has executed a PPA with WGI to purchase the entire expected Project Output from a new Western GeoPower geothermal project ("Project") located in the Geysers Geothermal Field located in the Mayacamas Mountains of Sonoma and Lake Counties in the State of California; and

WHEREAS, NCPA, on behalf of the Participants, will purchase the project output for a price of ninety-eight dollars ($98.00) per megawatt hour; in accordance with the PPA between NCPA and WGI; and

WHEREAS, NCPA and the Participants wish to enter into this Agreement to provide all means necessary for NCPA to fulfill obligations incurred on behalf of NCPA and the Participants pursuant to the PPA and to enable and obligate the Participants to take delivery of and pay for such electricity and to pay NCPA for the costs of undertaking the foregoing activities.

NOW, THEREFORE, BE IT RESOLVED, by the Commission of the Northern California Power Agency as follows:

1. Approve the Agreement entitled "Third Phase Agreement for the Western GeoPower Incorporated Renewable Energy PPA" dated January 2008, is subject to minor and non-substantive changes made as per the advice of the General Counsel.

2. The Commission approves the Renewable Energy Power Purchase Agreement between Northern California Power Agency and WGI (subject to participating members approving the Third Phase Agreement in item 1), including any and all non-substantive changes made to document as per the advice of the General Counsel.

PASSED, ADOPTED and APPROVED this 25th day of January, 2008 by the following vote on roll call:

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PATRICK KOLSTAD
CHAIRMAN

ATTEST:  
DENISE DOW
ASSISTANT SECRETARY