City of Palo Alto (ID # 4791)

City Council Staff Report

Report Type: Consent Calendar **Meeting Date: 6/2/2014**

Council Priority: Environmental Sustainability

Summary Title: Hayworth Solar Renewable Power Purchase Agreement

Title: Finance Committee Recommendation to Adopt a Resolution Approving a Power Purchase Agreement with 65HK 8me LLC for up to 60,000 Megawatt-hours Per Year of Energy Over 34 Years for a Total Not to Exceed Amount of $130 Million

From: City Manager

Lead Department: Utilities

Recommendation

Staff, the Utilities Advisory Commission (UAC), and the Finance Committee recommend that the City Council adopt the attached resolution to:

1. Approve a Power Purchase Agreement (PPA) with 65HK 8me LLC (Hayworth), a Delaware limited liability company, for the acquisition of up to 60,000 Megawatt-hours (MWh) per year of solar energy over a maximum of thirty-four years at a total cost not to exceed $130 million;

2. Waive the application of the investment-grade credit rating requirement of Section 2.30.340(d) of the Palo Alto Municipal Code, which applies to energy companies that do business with the City, as Hayworth will provide a $1.875 million letter of credit as a development assurance deposit, and a subsequent $2.5 million letter of credit as a performance assurance deposit;

3. Delegate to the City Manager or his designee, the authority to execute on behalf of the City the PPA with Hayworth, the two contract term extensions available to the City under the PPA, and any documents necessary to administer the agreements that are consistent with the Palo Alto Municipal Code and City Council approved policies; and,

4. Waive the application of the anti-speculation requirement of Section D.1 of the City's Energy Risk Management Policy as it may apply to surplus electricity purchases resulting from the City's participation in the Hayworth PPA, including during the 2017-2020 time

frame, due to the variability of the City's hydroelectric resources and the potential uncertainties associated with the timeliness and viability of the renewable energy projects in the City's portfolio that are still under development.

Executive Summary

As part of ongoing efforts to meet the City's Renewable Portfolio Standard (RPS) of at least 33% of sales from qualifying renewable resources by 2015, staff issued a request for proposals (RFP) for renewable resources in the fall of 2013 and evaluated the proposals based on price, value, viability and compatibility with the City's needs. After thorough review, staff concluded that the Hayworth solar photovoltaic (PV) project proposal had the best total score.

When it begins operating in mid-2015, the 25-megawatt (MW) project will provide about 6 percent of the City's annual energy needs, and will be sited on low productivity, water-constrained agricultural land in Kern County. The project was proposed by a team comprising 8minutenergy, a California-based solar PV project development company with a portfolio of more than 2,000 MW of solar PV projects, and Saferay Inc. (Saferay), a German independent solar power producer that was spun off from the panel manufacturer Q-Cells International in 2010.

The Hayworth PPA, presented in Attachment B, is structured as a 27-year initial term, followed by a three-year extension term option that can be exercised by either party and a four-year extension term option that can only be exercised by Palo Alto. The project's pricing (which equates to a levelized price of $68.72 per MWh if both extension term options are exercised) is slightly lower than the prices of the three solar PV project PPAs that were approved by the Council last year. As with these three prior contracts, Palo Alto will make no upfront payments under the Hayworth PPA; energy will be paid for only after it is delivered.

In addition, the Hayworth project will be a "fully deliverable" project and is to be located in what is currently a local capacity requirements (LCR) area, as defined by the California Independent System Operator. This means that the City will be able to count Hayworth's capacity towards its LCR, which provides significant value that many renewable energy projects are not able to provide, at no additional cost.

The Hayworth PPA has been reviewed and approved by staff and by the City Attorney's Office, has been executed by the seller, and awaits Council consideration and approval before the City executes it. Both the UAC and the Finance Committee unanimously recommended that Council approve the proposed PPA.

Committee Review and Recommendation

On March 26, 2014, staff presented a recommendation to the UAC to recommend Council approval of the PPA with 65HK 8me LLC. The UAC unanimously recommended that Council approve the PPA as presented by staff. The excerpted minutes from the UAC's discussion of the proposed PPA at its March 26, 2014 meeting are provided as Attachment D.

At its May 6, 2014, meeting, the Finance Committee discussed the proposed PPA. The Finance Committee staff report (Staff Report 4671), which contains a detailed evaluation of the PPA and its impact on the City's electric supply portfolio, is provided as Attachment C. Staff described the process of issuing the RFP and winnowing down the 92 proposals received to the one finalist, and presented an analysis of how the proposed project will fit in the overall electric supply portfolio and help meet the City's ambitious RPS and Carbon Neutral Plan goals. Staff described the key features of the project and PPA, and discussed the risks involved in executing such an agreement and the measures staff negotiated into the PPA to mitigate these risks. (For a detailed discussion of Recommendation #2—the waiver of the investment grade credit rating requirement—see pages 11-12 of the Finance Committee staff report. And for a discussion of Recommendation #4—the waiver of the anti-speculation requirement—see pages 13-14 of the Finance Committee staff report.) Finally, staff discussed the confluence of factors that have led to the attractive renewable energy prices available in today's market and the reasons that staff believes this is an appropriate time to commit the City to another long-term PPA for a solar PV resource.

Finance Committee members commented on the low price for the PPA and that the market for renewable energy is good at this point in time. Regarding the fact that, if all the contracted renewable energy projects are built, the City could have more resources than it needs to meet its requirements for some period of time (until the older PPAs begin to expire starting in 2021), committee members noted that the City could sell the energy and the renewable energy attributes.

After discussion, the Finance Committee voted unanimously to recommend that the Council adopt a resolution approving the PPA with 65HK 8me LLC; delegating to the City Manager or his designee the authority to execute the PPA, the two contract term extensions, and any documents necessary to administer the agreement; waiving the application of the investment-grade credit rating requirement; and waiving the application of the anti-speculation requirement as it may apply to this purchase. The excerpted minutes from the Finance Committee's discussion of the Hayworth PPA at its May 6, 2014 meeting are provided as Attachment E.

Resource Impact

The cost of renewable energy supplies from Hayworth is expected to be up to $130 million over the 34-year term of the agreement. The annual expected cost is up to $4.2 million. Approval of the PPA would result in a retail rate impact from all renewable resources, including the three new projects, of up to 0.20¢/kWh, beginning in 2017. The expected future cost for procuring renewable resources to meet the City's RPS goal is already included in the current five-year financial forecast.

Policy Implications

Approval of the proposed PPA is in conformance with the City's Long-term Energy Acquisition Plan (LEAP), specifically the City's RPS to meet at least 33% of the electric sales from renewable energy by 2015. Approval of the proposed PPA would also further the City's efforts to achieve a carbon neutral electric supply portfolio entirely through the acquisition of additional "hard resources" that supply the City with both energy and environmental attributes (Staff Report 3550).

Environmental Review

Approval of this agreement does not meet the definition of a project under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065. However, the City intends to receive output from a project that will constitute a project for the purposes of CEQA. The project developer will be responsible for acquiring necessary environmental reviews and permits on the project to be developed.

During the development phase of the project, the City will become a "responsible agency" under the CEQA proceedings. As such, the PPA allows for the City to review the project CEQA documents and issue a notice of determination with respect to its review of the projects. Staff anticipates working with the City Attorney's Office and the Planning Department to undertake this assessment.

Attachments:

- Attachment A: Resolution to Approve PPA with 65HK 8me LLC (PDF)
- Attachment B: PPA with 65HK 8me LLC (PDF)
- Attachment C: Finance Committee Staff Report 4671, Hayworth Solar Renewable PPA (without attachments) (PDF)
- Attachment D: Excerpted Final Minutes of the March 26, 2014 UAC Meeting (PDF)
- Attachment E: Excerpted Draft Action Minutes of the May 6, 2014 Finance Committee Meeting (PDF)

ATTACHMENT A

* NOT YET APPROVED *

Resolution No. _____
Resolution of the Council of the City of Palo Alto Approving a Long Term Power Purchase Agreement with 65HK 8me LLC for the Purchase of Solar Electricity

R E C I T A L S

A. On April 12, 2011, the Governor approved Senate Bill ("SB") X1-2, which requires that all retail sellers of electricity in California, including publicly-owned utilities, serve 33 percent of their retail electricity sales with renewable energy by 2020.

B. On April 16, 2012, Council approved an update to the Long-term Electric Acquisition Plan's (LEAP) strategy related to the Renewable Portfolio Standard (RPS). The updated strategy specifies that the City's objective is to reduce the carbon intensity of the electric portfolio by pursuing a minimum level of renewable purchases of at least 33 percent of retail electricity sales by 2015.

C. On March 4, 2013, Council approved a Carbon Neutral Plan, which enabled the City to achieve a carbon neutral electric supply portfolio starting in calendar year 2013.

D. The City is interested in purchasing power generated by renewable resources for the benefit of its electric customers.

E. By purchasing renewable energy resources, the City will help reduce the production of greenhouse gases, will meet its RPS requirements under SB X1-2 and LEAP, and will meet its Carbon Neutral Plan goals.

F. 65HK 8me LLC ("Hayworth") through its parent companies, 8minutenergy Renewables LLC and Saferay Inc., proposed its project in response to the City's Request for Proposals 151223 ("RFP") in October 2013. Its proposal is highly competitive with other RFP respondent proposals.

G. The execution of a power purchase agreement ("PPA") with Hayworth is anticipated to enable the City to meet a six-percent portion of its goal of sourcing 33 percent of its electric needs from renewable resources and its goal to implement the Carbon Neutral Plan.

H. Under the terms of this PPA, the City is allocated a 100 percent share of the power from Hayworth's solar project located in Kern County, California, which will yield approximately 25 megawatts of plant net output.

I. The PPA is for a twenty-seven year base contract term and will allow the City or Hayworth to extend the PPA at either party's option for an additional three-year term (First Option). After the First Option is exercised, the PPA allows the City to extend the PPA at its sole option for an additional four-year term (Second Option).

J. The City's participation in the Hayworth PPA may result in surplus electric purchases that are inconsistent with the anti-speculation requirement of Section D.1 of the City's existing Energy Risk Management Policy, including during the 2017-2020 time frame, due to variability of the City's hydroelectric resources, and potential uncertainties associated with the timeliness and viability of the renewable energy projects in the City's portfolio still under development.

The Council of the City of Palo Alto does RESOLVE as follows:

SECTION 1. The Council approves the Power Purchase Agreement (PPA) between 65HK 8me LLC, as seller, and the City of Palo Alto, as buyer. The delivery term of the PPA is up to thirty-four (34) years, commencing upon the commercial operation date of the planned electric generation facility, which date is expected to be no later than June 30, 2015. The City will receive a 100 percent share of the facility's net output. Spending authority under the PPA shall not exceed one hundred thirty million dollars ($130,000,000).

SECTION 2. The Council delegates to the City Manager, or his designee, the authority to execute the PPA with 65HK 8me LLC on behalf of the City, and the authority to execute any documents necessary to administer the PPA that are consistent with the Palo Alto Municipal Code and City Council approved policies.

SECTION 3. As permitted by section 2.30.290 of the Palo Alto Municipal Code, the Council delegates to the City Manager, or his designee, the authority to exercise the First Option and Second Option as defined herein, to extend the twenty-seven year base contract to a full thirty-four year contract term for the City.

SECTION 4. With respect to the Council's award of the PPA referred to in Section 1 above, the Council waives the creditworthiness requirements of Palo Alto Municipal Code Section 2.30.340(c), as that requirement may apply to 65HK 8me LLC.

SECTION 5. With respect to the Council's award of the PPA referred to in Section 1 above, the Council waives the anti-speculation requirement of Section D.1 of the City's existing Energy Risk Management Policy, as that requirement may apply to surplus electricity purchases caused by the City's participation in the Hayworth PPA.

SECTION 6. The Council's approval of this PPA does not meet the definition of a project under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065. However, the City intends to receive output from a project that will constitute a project for the purposes of CEQA. The project developer will be responsible for acquiring necessary environmental reviews and permits on the project to be developed. During the development phase of the project, the City will become a "responsible agency" under the CEQA proceedings. As such, the PPA allows for the City to review the project CEQA documents and issue a notice of determination with respect to its review of the projects. Staff anticipates

working with the City Attorney's Office and the Planning Department to undertake this assessment and make a determination.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

_____
City Clerk

_____
Mayor

APPROVED AS TO FORM:

APPROVED:

_____
Senior Deputy City Attorney

_____
City Manager

_____
Director of Utilities

_____
Director of Administrative Services

Attachment B

[Execution Version]

POWER PURCHASE AGREEMENT

Between

The City of Palo Alto

and

65HK 8me, LLC

Dated as of _____, 2014

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EXHIBITS

POWER PURCHASE AGREEMENT

This Power Purchase Agreement (the "**Agreement**"), dated as of _____, 2014 (the "**Effective Date**"), is entered into by and between the City of Palo Alto, a California chartered municipal corporation, and 65HK 8me, LLC, a Delaware limited liability company (individually, a "**Party**" and, collectively, the "**Parties**").

RECITALS:

1. Seller intends to develop, finance, build, own and operate a solar photovoltaic electric generating facility (the "**Plant**"), to be located at the Site.

2. Buyer is engaged in the procurement and supply of electricity to residential and commercial customers in Palo Alto, California.

3. Buyer wishes to purchase the Output of the Plant and intends to resell related Energy to its residential and commercial customers.

4. Buyer is willing to purchase, and Seller is willing to sell, the Output of the Plant, on the terms and conditions and at the prices set forth in this Agreement.

5. Buyer is purchasing this Output to meet Buyer's needs at a known price and timing.

NOW THEREFORE, in consideration of the recitals above and the following covenants, terms and conditions, the Parties agree:

AGREEMENT:

ARTICLE I

DEFINITIONS

The following initially capitalized terms, whenever used in this Agreement, not otherwise defined in the preamble or herein, have the meanings set forth below, unless the context of their use otherwise indicates. The terms "includes" and "including" mean to include, "without limitation."

AC: Alternating current.

Agreement: Has the meaning set forth in the preamble, and includes all exhibits and appendices thereto, as may be amended from time to time.

Buyer: The City of Palo Alto and any successor or permitted assignee.

Buyer CEQA Approval Deadline: Has the meaning set forth in Section 10.19.

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

Calculation Period: The twenty-four (24) month periods (i.e., two full Contract Years) ending on (and including) each anniversary of the Commercial Operation Date, commencing at the second anniversary of the Commercial Operation Date.

Calculation Period Deemed Delivered Energy Amount: For each Calculation Period, an amount expressed in MWh equal to the sum of (i) the total Energy actually delivered by Seller to the Point of Interconnection in such Calculation Period plus (ii) the Seller Excused Energy Amount for such Calculation Period.

CARB: Has the meaning set forth in the definition of EA Agency.

CEC: Has the meaning set forth in the definition of EA Agency.

CEQA: The California Environmental Quality Act.

CEQA Deadline: Has the meaning set forth in Section 10.19.

CEQA Disapproval: Has the meaning set forth in Section 10.19.

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

Change of Control: Any circumstance in which the Ultimate Parents Ownership Percentage ceases to be equal to or greater than fifty percent (50%).

COD Certification: Seller's certification of Commercial Operation in the form set forth in Exhibit E, duly executed by Seller and the licensed professional engineer.

Commercial Operation: The condition of the Plant, whereupon (a) it is certified by Seller to be complete in accordance with manufacturers' recommendations except for punch list items and (b) Seller has delivered to Buyer the COD Certification.

Commercial Operation Date: The date upon which Commercial Operation first occurs, as notified to Buyer in the COD Certification in accordance with Section 4.3(h).

Commercially Reasonable Efforts Standard: Has the meaning set forth in Section 7.6.

Compliance Costs: All reasonable out-of-pocket costs and expenses necessary to incur by Seller and payable to third parties in order to maintain ERR status for the Plant arising out of any new or changed Requirements of Laws after the Effective Date.

Construction Start Date: The date on which Seller delivers to Buyer a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Plant.

Contract Year: Successive periods of twelve (12) consecutive months, with the first such period (i.e., the first Contract Year) beginning at 12:00 a.m. on the day immediately following the Commercial Operation Date and ending at 11:59:59 p.m. on the anniversary of the Commercial Operation Date, and each successive twelve (12) consecutive month period thereafter until the end of the Term.

Contractual Obligations: As to Seller, any material agreement, instrument or undertaking to which Seller is a party or by which it or any of its property is bound.

Costs: With respect to a non-defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement (including, in the case of Seller as the Non-Defaulting Party, tax recapture costs) and (b) all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with the termination of this Agreement.

CEQA Deadline: Has the meaning set forth in Section 10.19.

County: Has the meaning set forth in Section 10.19.

CPUC: Has the meaning set forth in the definition of EA Agency.

CUP or **Conditional Use Permit:** Has the meaning set forth in Section 10.19.

CUP Issuance Date: Has the meaning set forth in Section 10.19.

Daily LD Amount: For each day for which delay liquidated damages are payable under Section 9.3, an amount equal to the following: (i) for the first 182 days for which such damages are payable, $2,565 per day, (ii) for the next 182 days for which such damages are payable, $7,695 per day, and (iii) for the next 1 day for which such damages are payable, $7,680 per day.

Development Assurance: The amount to be posted or deposited by Seller in accordance with Article IX of this Agreement, which amount shall be equal to

$1,875,000.00 (determined by taking the product of $75.00 per kW AC and 25,000 kW, the expected Initial Capacity as of the Effective Date).

Discretionary Curtailment: Has the meaning set forth in Section 4.4(c).

Dispatch Down Period: The period of curtailment of delivery of Energy from the Plant resulting from (a) curtailment ordered by the CAISO (whether directly or through a Plant Scheduling Coordinator or the Participating Transmission Owner), for any reason, including, but not limited to, any system emergency as defined in the CAISO Tariff ("**System Emergency**"), any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO's or Participating Transmission Owner's electric system integrity or the integrity of other systems to which the CAISO or Participating Transmission Owner is connected; (b) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (c) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) as a result of scheduled or unscheduled maintenance or construction on the Participating Transmission Owner's transmission facilities or distribution operator's facilities (if interconnected to distribution or sub-transmission system) that prevents the delivery or receipt of Energy to or at the Point of Interconnection; or (d) curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator. Notwithstanding the foregoing, Dispatch Down Periods shall not include periods of curtailment of delivery of Energy from the Plant resulting from circumstances commonly referred to as economic curtailment ("**Economic Curtailment**"), where Buyer or its designee (as the Scheduling Coordinator) submits an economic or similar bid in the applicable CAISO market that results in otherwise available Energy not being scheduled or awarded in such CAISO market.

EA Agency: Any local, state or federal entity, or any other Person, that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including, without limitation, the Clean Air Markets Division of the United States Environmental Protection Agency (the "**EPA**"), the California Energy Resources Conservation and Development Commission (the "**CEC**"), the California Public Utilities Commission (the "**CPUC**"), the California Air Resources Board ("**CARB**"), and any successor commission or agency thereto.

Early Termination Date: Has the meaning set forth in Section 7.3.

Economic Curtailment: Has the meaning set forth at the end of the definition of Dispatch Down Period.

Effective Date: Has the meaning set forth in the preamble of this Agreement.

Eligible CEQA Delay: Has the meaning set forth in Section 10.19.

Eligible Renewable Energy Resource or **ERR**: Has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

Energy: The electricity generated by the Plant and delivered to Buyer by the Seller, pursuant to this Agreement, at the Point of Interconnection, as expressed in units of kilowatt-hours (kWh) or megawatt-hours (MWh), including Test Energy.

Environmental Attributes: Any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Plant or Expansion Plant(s), as the case may be, and its displacement of conventional energy generation. Environmental Attributes include, without limitation, Renewable Energy Credits, and all of the following: (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. "Green Tag Reporting Rights" are the right of a "Green Tag" purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of the Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Plant or Expansion Plant(s) or (ii) tax credits associated with the construction or operation of the Plant, Expansion Plant(s), or any other associated contract or right, and other financial incentives in the form of credits, rebates, reductions, or allowances associated with the Plant, Expansion Plant(s), or any other associated contract or right, that are applicable to a state or federal income taxation obligation.

Environmental Attributes Reporting Rights: All rights to report ownership of the Environmental Attributes to any person or entity, under Section 1605(b) of the Energy Policy Act of 1992 or otherwise.

Environmental Laws: Any and all federal, state and local laws, including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or hazardous substances, as amended from time to time.

EPA: Has the meaning set forth in the definition of EA Agency.

EPC Contract: The Seller's engineering, procurement and construction contract with the EPC Contractor.

EPC Contractor: An engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement, and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of utility-scale solar photovoltaic power plants.

Event of Default: Has the meaning set forth in Article VII.

Expansion Plant: Any expansion of the Plant from its Initial Capacity, or any other electricity generating facility owned or controlled by Seller or its affiliates, located at the Site. Each such expansion of the Plant or additional facility shall be deemed to be an "Expansion Plant."

Expansion Plant Output: All capacity, energy, associated Environmental Attributes, ancillary services, contributions towards resource adequacy or reserve requirements (if any) and any other reliability or power attributes produced by Seller at any Expansion Plant.

Expected Annual Net Energy Production: For each period of two successive Contract Years, it is the sum of the expected annual net energy production in AC Megawatt-hours for such two Contract Years, including the effects of first year 0.5% panel performance degradation and subsequent 0.5% panel annual performance degradation, as represented in Exhibit G.

Extension Term: Has the meaning set forth in Section 2.1.

Fair Market Value: Has the meaning set forth in Section 2.1.

FERC: The Federal Energy Regulatory Commission and its successor organization, if any.

Final CEQA Approval: Has the meaning set forth in Section 10.19.

First Extension Term: Has the meaning set forth in Section 2.1.

Force Majeure Event: Any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement to the extent that such act or event is reasonably unforeseeable and beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

Force Majeure Events typically include:

(i) acts of God or the elements, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event, acts of public enemy, war, blockade, civil insurrection, riot, civil disturbance or strike or other labor difficulty caused or suffered by a Party;

(ii) any restraint or restriction imposed by law or by rule, regulation or other acts or omissions of governmental authorities, whether federal, state or local which by exercise of due diligence and in compliance with applicable law a Party could not reasonably have been expected to avoid and to the extent which, by exercise of due diligence and in compliance with applicable law, has been unable to overcome (so long as the affected Party has not applied for or assisted such act by a governmental authority); and

(iii) electric transmission interruptions or curtailments (not including any such interruption or curtailment that results from the negligence or contractual breach of the Party affected);

provided that the term "Force Majeure Event" does not include: (a) economic conditions that render a Party's performance of this Agreement at the Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Energy or Environmental Attributes at a lower price, or Seller's ability to sell Energy or Environmental Attributes at a higher price, than the Price); (b) a governmental act by Buyer that delays or prevents Buyer from timely performing its obligations under this Agreement; (c) a Plant equipment failure, except any such failure caused by an event or circumstance that meets the requirements set forth in this "Force Majeure Event" definition; (d) failure or delay in grant of Permits, except, in any case, if caused by an event or circumstance that meets the requirements set forth in this "Force Majeure Event" definition; or (e) failures or delays by the Participating TO or the CAISO in entering into, or performing under, any agreements with Seller contemplated by this Agreement, except, in any case, if any such failure of performance is caused by an event or circumstance that meets the requirements set forth in this "Force Majeure Event" definition.

Forecasting Service: Has the meaning set forth in Section 4.4(d).

FPA: Has the meaning set forth in Section 8.1.

Full Capacity Deliverability Status: Has the meaning set forth in the CAISO Tariff.

GAAP: Generally Accepted Accounting Principles.

Gains: With respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Agreement for the remainder of the Term, determined in a commercially reasonable manner. Factors used in determining economic benefit may include reference to information supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Output. A Party shall use commercially reasonable efforts to obtain third party information in order to determine Gains and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third party information.

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

Incentives: Any and all tax credits, deductions, allowances, depreciation and exemptions applicable to federal, state and local taxes and any other payment, credit, deduction, benefit, grant or monetary incentive provided by any federal, state or local governmental authority or any Person, whether now in effect or arising in the future, in each case arising from the activities contemplated by this Agreement, including any "Renewable Energy Production Incentive Payments" from the U.S. Department of Energy and any "Energy Investment Tax Credit" described in Section 48 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time. Notwithstanding the foregoing, Incentives shall not include anything that qualifies as Output as defined herein (including any Environmental Attributes).

Indemnified Party: Has the meaning set forth in Section 7.5.

Indemnifying Party: Has the meaning set forth in Section 7.5.

Initial Capacity: The installed capacity of the Plant, determined as of the Commercial Operation Date, which shall not to be less than 24 MW AC or more than 27 MW AC, and shall be determined based upon the sum of the nameplate ratings (AC) of all Plant inverters.

Initial Term: Has the meaning set forth in Section 2.1.

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

Interconnection Agreement: The agreement to be entered into among Seller (and one or more of its affiliates), the Participating TO and CAISO pursuant to which Seller (and one or more of its affiliates), the Participating TO and CAISO set forth the terms and conditions for interconnection of the Plant to the Participating TO's system, as amended from time to time. The Parties acknowledge that the Interconnection Agreement capacity is for more MWs than the Plant will require, and may serve as an interconnection agreement for generating projects in addition to the Plant.

Interconnection Facilities: All of the facilities installed for the purpose of interconnecting the Plant to the Participating TO System, including, without limitation, transformers and associated equipment, relay and switching equipment and safety equipment.

Lender(s): Any Person(s) providing money or extending credit (including any capital lease) to Seller, including in the form of debt or tax equity, for (i) the construction of the Plant, (ii) the term or permanent financing of the Plant, or (iii) working capital or other ordinary business requirements for the Plant. "Lender(s)" shall not include any trade creditor(s) of Seller.

Losses: With respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remainder of the Term, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include reference to information supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Output. A Party shall use commercially reasonable efforts to obtain third party information in order to determine Losses and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third party information. If the non-defaulting Party is the Seller, then in addition to lost payments for Output pursuant to this Agreement, "Losses" shall also include any associated loss of investment tax credits and other lost tax benefits.

Milestones: Has the meaning set forth in Section 4.3.

MW: Megawatt (AC).

MWh: Megawatt-hour (AC).

NCPA: The Northern California Power Agency, a California joint powers agency.

Notice to Proceed: The notice provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC Contractor to begin construction of the Project without any delay or waiting periods.

Operations Assumption Notice: Has the meaning set forth in Section 7.6.

Option Exercise Notice: Has the meaning set forth in Section 2.1.

Outage: A physical state in which all or a portion of the Plant is unavailable to provide Energy to the Point of Interconnection, or in which any portion of the Participating TO System is unavailable to receive Energy, to the extent that the unavailability affects the Participating TO System's ability to accept delivery of Energy at the Point of Interconnection, whether planned or unplanned.

Output: All actual capacity of the Initial Capacity, and all associated Energy, as well as the following (as associated with the Initial Capacity and/or associated Energy): Environmental Attributes; ancillary services; contributions towards resource adequacy or reserve requirements (if any); and any other reliability or power attributes.

Participating TO or **Participating Transmission Owner**: Pacific Gas & Electric Company, a California corporation, or any successor thereto acting as transmission provider from the Site to the CAISO grid.

Participating TO System: The transmission system owned by the Participating TO.

Parties: Buyer and Seller, and their respective successors and permitted assignees.

Party: Buyer or Seller, and each such Party's respective successors and permitted assignees.

Performance Assurance: The amount to be posted or deposited by Seller in accordance with Article IX of this Agreement, which amount shall be equal to the product of $100.00 per kW AC and the expected Initial Capacity specified under Section 4.2(h).

Permits: All material federal, state or local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Plant, including any such permits or approvals required under CEQA.

Person: An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

PIRP: Has the meaning set forth in Section 4.4(a).

Plant: The power generation facilities described in the Recitals to be constructed and owned by Seller and located on the Site for the generation and delivery of electricity, including the step-up transformer, revenue quality meter and all other facilities up to the Point of Interconnection, but not including any Expansion Plant.

Point of Interconnection: The point on the electrical system where the Plant is physically interconnected with the Participating TO System, which is anticipated to be at PG&E's Lamont Switching Station.

Price: The price set forth in Section 2.3.

Prudent Utility Practice: Those practices, methods and equipment, as changed from time to time, that:

(i) when engaged in are commonly used in the United States of America in prudent electrical engineering and operations to operate solar photovoltaic plant generation electric equipment and related electrical equipment lawfully and with safety, reliability, efficiency and expedition; or

(ii) in the exercise of reasonable judgment considering the facts known, when engaged in could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency and expedition.

Prudent Utility Practices are not limited to an optimum practice, method, selection of equipment or act, but rather are a range of acceptable practices, methods, selections of equipment or acts.

QF: Has the meaning set forth in Section 8.1.

REC or Renewable Energy Credit: Has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by applicable law.

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

Residual Test: Has the meaning set forth in Section 2.1.

Saferay: Has the meaning set forth in the definition of Ultimate Parents.

SCADA: Has the meaning set forth in Section 3.1.

Scheduling Coordinator: NCPA or any agent or successor thereof, or such other scheduling coordinator as may be designated by Buyer in accordance with this Agreement.

Second Extension Term: Has the meaning set forth in Section 2.1.

Section 45 Credits: Those tax credits available under Section 45 of Subtitle A, Chap. 1A, Part IV of the Internal Revenue Code of 1986, as amended, or any other similar state, federal or local tax credits, deductions, payments or benefits arising from the generation and sale of electricity using qualifying renewable resources, not including any Environmental Attributes.

Section 48 Credits: Those tax credits available under Section 48(a)(3)(A)(i) and 48(a)(5) of the Internal Revenue Code of 1986, as amended, or any other similar state, federal or local tax credits, deductions, payments or benefits arising from the investment in qualifying energy properties, not including any Environmental Attributes.

Seller: 65HK 8me, LLC, a Delaware limited liability company, and any successor or permitted assignee.

Seller Excused Energy Amount: Means, for each Calculation Period, an amount expressed in MWh, equal to the aggregate amount of reduction(s) in delivered Energy during such Calculation Period as a result of Dispatch Down Periods, Discretionary Curtailments, Economic Curtailments, Force Majeure Events, Buyer's breach or default hereunder or failure to accept delivered Energy, or outages to the local transmission or distribution system. No less frequently than quarterly during each year, Seller shall calculate and provide notice to Buyer of the then cumulative amount of the Seller Excused Energy Amount for such year, along with an explanation in reasonable detail of the calculation thereof based on historical Plant data, meteorological data, output projections (including by the CAISO, if applicable) and other relevant data. The calculation shall be subject to review and approval by Buyer.

Shortfall: Has the meaning set forth in Section 9.4.

Site: The real property on which the Plant is to be built and located in/near Kern County as more particularly described in Exhibit A, or such other real property selected by Seller to which Buyer consents in writing which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Parties acknowledge and agree that the Site described on Exhibit A as of the Effective Date is only the approximate size required by the final Plant design and is in the vicinity of other lands under the control of Seller or its affiliates. At or prior to the financial closing of Seller's construction financing

for the Plant, Seller shall update Exhibit A (and rearrange the boundaries of the Site) by notice to Buyer providing an updated version of Exhibit A. Such final Site boundaries shall include sufficient real property for the Plant, plus sufficient additional real property (approximately one acre) in order to accommodate any potential future build out of storage facilities as may be mutually agreed by the Parties pursuant to Section 4.2(i).

Station Service Power: The energy used by Seller to operate the Plant.

System Emergency: Has the meaning set forth in the definition of Dispatch Down Period.

Term: Has the meaning set forth in Section 2.1.

Termination Payment means, with respect to the non-defaulting Party, the sum of (a) the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the termination of this Agreement pursuant to Section 7.3 plus (b) all amounts then owed to the non-defaulting Party by the defaulting Party. If the non-defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such termination of this Agreement, the amount for preceding clause (a) shall be zero.

Test Energy: Energy (to the extent available) generated by the Plant and delivered to the Point of Interconnection prior to the Commercial Operation Date.

Two Year Minimum Production Threshold: For each Calculation Period, an amount (in MWhs) equal to eighty percent (80%) of the Expected Annual Net Energy Production for such Calculation Period (i.e., for the avoidance of doubt, the sum of 80% of the Expected Annual Net Energy Production for the first Contract Year of such Calculation Period plus 80% of the Expected Annual Net Energy Production for the second Contract Year of such Calculation Period).

Ultimate Parents: means: (a) 8minutenergy Renewables, LLC, a Delaware limited liability company ("**8me**"), (b) Saferay Inc., a Delaware corporation ("**Saferay**") and (c) any successor entity to 8me or Saferay with which or into which 8me or Saferay (as applicable) is merged, consolidated or combined, or which acquires all or substantially all of the assets of 8me or Saferay (as applicable).

Ultimate Parents Ownership Percentage: means the percentage of the outstanding equity interests (inclusive of both voting and economic rights) in Seller that are owned individually or jointly by the Ultimate Parents (together, in the aggregate), directly or indirectly through one or more intermediate entities; provided that in calculating such percentage owned by the Ultimate Parents, for all purposes of the foregoing:

(i) any ownership interest in Seller held by one or both Ultimate Parents indirectly through one or more intermediate entities shall be counted towards such Ultimate Parents' ownership interest in Seller only if such Ultimate Parents (together, in the aggregate) directly or indirectly own fifty percent (50%) or more

of the outstanding equity voting and economic interests in each such intermediate entity; and

(ii) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

Valuation Consultant: Has the meaning set forth in Section 2.1.

Valuation Consultant Report: Has the meaning set forth in Section 2.1.

WECC: Has the meaning set forth in the definition of WREGIS.

WREGIS: The Western Renewable Energy Generation Information System, an independent, renewable energy tracking system for the region, administered by the Western Electricity Coordinating Council ("**WECC**"). WREGIS tracks renewable energy generation from units that register in the system using verifiable data and creates RECs for this generation. WREGIS was developed through a collaborative process between the Western Governors' Association, the Western Regional Air Partnership, and the CEC.

8me: Has the meaning set forth in the definition of Ultimate Parents.

ARTICLE II

TERM, PURCHASE AND SALE

2.1 Term

(a) This Agreement shall be effective upon its execution by authorized representatives of the Parties and, unless earlier terminated pursuant to an express provision of this Agreement, shall continue until the twenty-seventh (27th) anniversary of the Commercial Operation Date ("**Initial Term**"). Either Party shall have the option to extend the Initial Term for one additional three (3) year extension term following the Initial Term (a "**First Extension Term**"). Additionally, Buyer (but not Seller) shall have a second option to extend the First Extension Term for another four (4) year extension term following the First Extension Term (a "**Second Extension Term**"), provided that, subject to this Section 2.1, any exercise of an option for the First or Second Extension Term shall be effective only if (i) such extension would not cause the overall Term to exceed 80% of the Plant's "estimated useful life" from the beginning of the Initial Term and (ii) the estimated value of the Plant at the end of the First Extension Term (in the case of the exercise of an option for the First Extension Term), and at the end of the Second Extension Term (in the case of the exercise of an option for the Second Extension Term), after subtracting the estimated cost to Seller for

removal and delivery of the Plant to the Seller, is (in 2015 (or such other year as the Commercial Operation Date occurs) dollars) at least 20% of the original cost of the Plant (such requirements ((i) and (ii) together), the "**Residual Test**"). The Residual Test shall be performed in accordance with Section 2.1(c).

(b) Subject to this Section 2.1, a Party desiring to extend this Agreement into the First Extension Term or Second Extension Term, as the case may be, shall exercise such option by a written notice ("**Option Exercise Notice**") delivered to the other Party by not later than eighteen (18) months prior to the end of the Initial Term or the First Extension Term, as the case may be.

(c) If any extension option is exercised under Section 2.1(a) and (b), then promptly following the date of the Option Exercise Notice, Buyer shall designate a recognized appraisal and valuation consultant for approval by Seller (such approval not to be unreasonably withheld) (such approved consultant, the "**Valuation Consultant**") and such Valuation Consultant shall by the date that is one hundred twenty (120) days following the date of the Option Exercise Notice determine (1) whether such extension would violate the above Residual Test, and (2) the estimated fair market value of the Plant (including all tangible and intangible related assets) as at the end of the current Term (the "**Fair Market Value**"). The Valuation Consultant shall provide to both Parties a reasonably detailed written report summarizing the Valuation Consultant's assumptions and conclusions as to the Residual Test and Fair Market Value determinations (the "**Valuation Consultant Report**"). If the Residual Test is not satisfied, then the exercise of the option to extend this Agreement for the First Extension Term or Second Extension Term (as the case may be) shall be deemed ineffective and this Agreement shall expire at the end of the Initial Term or First Extension Term (as the case may be), and Section 2.1(d) below shall apply.

(d) If this Agreement expires under Section 2.1(c) as a result of a failure of the Residual Test (following the exercise of an extension option), then Buyer shall have a purchase option to purchase the Plant (including all tangible and intangible related assets) from Seller at the end of the then current Term for a purchase price equal to the Fair Market Value (as determined by the Valuation Consultant Report), which option shall be exercisable in Buyer's discretion by written notice delivered to Seller on or before the date that is 90 days following the date of the Valuation Consultant Report. If such purchase option is so exercised, then the Parties shall cooperate to cause the Plant (including all tangible and intangible related assets) to be sold from Seller to Buyer on the last day of the Term for the Fair Market Value purchase price and otherwise on customary terms and conditions.

(e) The Initial Term, together with any First Extension Term and Second Extension Term is referred to herein as the "**Term**." For the avoidance of doubt, the maximum Term shall not extend past the thirty-fourth (34th) anniversary of the Commercial Operation Date.

2.2 Purchase and Sale of the Output

(a) Commencing on the Commercial Operation Date and continuing during the Term, Seller shall sell and deliver at the Point of Interconnection, and Buyer shall purchase, accept from Seller at the Point of Interconnection and pay for, the entire Output produced during the Term pursuant to the terms of this Agreement. Prior to the Commercial Operation Date, Buyer shall purchase and accept from Seller at the Point of Interconnection and pay for, the Output relating to any Test Energy pursuant to the terms of this Agreement; provided that the decision to produce and deliver Test Energy hereunder shall be at the sole discretion of the Seller. All Test Energy shall be scheduled in accordance with the procedures set forth in Exhibit D. Seller shall not sell to any other party, and Buyer may claim credit for, the Output, as may be available to Buyer from time to time.

(b) During the Term, Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Environmental Attributes associated with the Output, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Output purchased by Buyer from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Environmental Attributes to any Person other than Buyer. Seller makes no written or oral representation or warranty, either express or implied, regarding the current or future existence of any Environmental Attributes.

(c) During the Term, Seller shall not report to any person or entity that the Environmental Attributes granted hereunder to Buyer belong to anyone other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

(d) Seller will document the production of Environmental Attributes under this Agreement by delivering with each invoice to Buyer such attestations or other documents as may be required by Exhibit B. Exhibit B shall be updated or changed by the Parties, as necessary, to ensure that Buyer receives full and complete title to, and the ability to record with any EA Agency as its own, all of the Environmental Attributes purchased hereunder. At Buyer's request, the Parties, each at their own expense, shall execute all such documents and instruments in order to transfer the Environmental Attributes, specified in this Agreement, to Buyer or its designees, as Buyer may reasonably request. In the event of the promulgation of a scheme involving Environmental Attributes administered by an EA Agency, 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.

(e) As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy prior to the Point of Interconnection, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy at and from the Point of Interconnection. Seller shall deliver all Energy and other Output free and clear of all liens created by any Person other than Buyer. Title to and risk of loss as to all Energy shall pass from Seller to Buyer at the Point of Interconnection.

2.3 Price

Subject to any performance related adjustments under the provisions of Section 9.4, during the period of delivery of any Test Energy and the entire Term, for Energy delivered or tendered to Buyer at the Point of Interconnection, Buyer shall pay Seller a price per MWh of Energy ("**Price**") equal to (i) for all Test Energy and during Contract Years 1-13, inclusive, Sixty-Eight and 72/100 Dollars ($68.72) per MWh, (ii) during Contract Years 14-27, inclusive, Sixty-Eight and 22/100 Dollars ($68.22) per MWh and (iii) during any applicable First Extension Term or Second Extension Term, Seventy and 33/100 Dollars ($70.33) per MWh. The Price shall be the total compensation owed by Buyer for the Output delivered or tendered to Buyer during the period of delivery of any Test Energy and during the Term.

2.4 Tax Credits and Incentives

Buyer agrees and acknowledges that all Incentives shall be owned by Seller. Buyer shall not claim Incentives. Buyer agrees to cooperate with Seller, as may be necessary to allow maximization of the value of, and realization of, and all Incentives; provided that Buyer shall not be required to incur additional costs or accept any diminution in value of its rights under this Agreement or of the Output purchased hereunder. In addition, Buyer shall not take any action (except as otherwise permitted under this Agreement), that would in any way reduce or eliminate the availability to Seller of any Incentives, including the Section 48 Credits, and Buyer shall forego any credits or benefits available to it (other than Environmental Attributes), including rights to purchase of Test Energy, to the extent necessary to allow Seller to obtain the full benefit of the Incentives, but in no event shall Buyer be required to forego receipt of Output after the Commercial Operation Date.

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

(a) During the Term, Seller may, in exercising its sole discretion, determine, from time to time, to develop, finance, construct and/or operate an Expansion

Plant. Each time such a determination is made, Seller shall notify Buyer of such determination and shall offer, in writing, to sell the Expansion Plant Output to Buyer. The offer shall include the price to be paid by Buyer for the Expansion Plant Output, the term of the proposed power purchase agreement, and the other principal terms and conditions of the proposed sale. If Buyer wishes to accept such offer to purchase all (but not less than all) of the Expansion Plant Output, Buyer shall so notify Seller within ninety (90) days of its receipt of such offer. Buyer and Seller shall promptly thereafter enter into good faith negotiation of a definitive power purchase agreement, incorporating the terms of such offer. Until a power purchase agreement for an Expansion Plant 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. Should any issue arise that is not covered by such documentation, the terms of this Agreement shall apply.

(b) If Buyer does not accept Seller's offer to purchase the Expansion Plant Output within ninety (90) days of receipt of Seller's offer, Seller shall be deemed authorized to offer to sell that portion of the Expansion Plant Output to one or more third parties at a price and on other terms and conditions which, taken as a whole, are at least as favorable to Seller as the price and other terms and conditions set forth in Seller's offer to Buyer. If Seller offers to disaggregate the Expansion Plant Output for the purpose of selling the same to multiple independent buyers, Seller shall notify Buyer, in writing, of the terms and conditions of such offers, and Buyer shall again have the right of first refusal consistent with the terms set forth above for each of the lesser amounts being offered to the third parties. If Buyer does not purchase the Expansion Plant Output and Seller sells such Expansion Plant Output to a third party, Seller 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, subject to any confidentiality restrictions, Seller shall provide the relevant final 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, in writing, of the Expansion Plant Output from one Expansion Plant shall not affect Buyer's right to purchase the Expansion Plant Output from a subsequently developed Expansion Plant under the terms of this Agreement. Seller shall not sell or provide the Expansion Plant Output to any third party, unless Seller 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, acting in its reasonable discretion.

2.6 Refurbishment of Plant

During the Term, Seller may refurbish the Plant, alter components of the Plant, replace components of the Plant, add additional solar modules or inverters, or replace solar modules or inverters with more powerful solar modules or inverters, etc. in order to increase the Plant estimated peak AC capability up to the lesser of the Initial Capacity or to the amount allowed by the Interconnection Agreement. However, Seller may not perform any refurbishment to increase capacity higher than the Initial Capacity without the prior consent of Buyer, and Buyer has the right, in its sole discretion, to accept or decline to permit any such refurbishment that may increase the Initial Capacity.

ARTICLE III

METERING AND BILLING

3.1 Metering Requirements

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

Buyer and Scheduling Coordinator shall be provided access to all monitored SCADA points to be used at their discretion in real time monitoring. Buyer, at its sole cost and expense, may 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 the referenced equipment does not interfere with Seller's metering equipment. Seller shall

permit Buyer or Scheduling Coordinator or its agent access to Seller's Plant for the purpose of installing and maintaining such check meters. Seller shall submit to the CAISO, or allow the CAISO to retrieve, any meter data required by the CAISO related to the Plant output in accordance with the CAISO's settlement and billing protocol and meter data tariffs. Buyer shall have reasonable access to relevant meters and associated facilities, as well as real time access to all meter data, as is necessary for Buyer or Scheduling Coordinator or its agent to perform its duties as scheduling coordinator and comply with the requirements of the CAISO Tariff.

3.2 Billing

Seller shall provide to Buyer on or before the tenth (10^{th}) day of each month an invoice for the prior month based upon meter data for Energy delivered in such calendar month (taking into account any line losses to the Point of Interconnection), enclosing reasonably appropriate supporting CAISO documentation and any corresponding attestation that may be required pursuant to Section 2.2(d). Such invoice may be transmitted by e-mail to *settlements@ncpa.com*, or to any other e-mail address designated, in writing, by Buyer, with a copy to be delivered in the mail of the United States Postal Service or other entity to the notice address designated below. Should either Seller or Buyer determine at a later date, but in no event later than two (2) years after the original invoice date, that the invoice amount was incorrect, that Party shall promptly notify, in writing, the other Party of the error. If the amount invoiced was lower than the amount that should have been invoiced, then Buyer shall, upon receiving verification of the error and supporting documentation from Seller, pay any undisputed portion of the difference within thirty (30) days of receipt of verification. If the amount invoiced was higher than the amount that should have been invoiced, then Seller shall, upon receiving verification of the error and supporting documentation from Buyer, pay any undisputed portion of the difference within thirty (30) days of receipt of verification. Any such adjusted amount owing by Seller or Buyer shall be subject to the interest rate as designated in Section 3.3, running from the original due date of payment.

3.3 Payment

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

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

ARTICLE IV

SELLER'S OBLIGATIONS

4.1 Development, Finance, Construction and Operation of the Plant

During the Term, Seller shall:

(a) Develop, finance and construct the Plant.

(b) Provide Buyer with access to a "real time" Plant monitoring system (which, at a minimum, shall provide "real time" information regarding the net output of the Plant) that is anticipated to be internet protocol-based and include any applicable alarms required by Prudent Utility Practice.

(c) Seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, all Permits, certificates or other authorizations, which are required by any Requirements of Laws or Governmental Authority as prerequisites to Seller's performance of this Agreement and to meeting Seller's obligation to operate the Plant consistently with the terms of the Agreement. Seller shall provide to Buyer reasonable assistance and shall cooperate with Buyer's compliance with CEQA, including the performance of the Buyer's review and other obligations under Section 10.19 of this Agreement.

(d) Operate, maintain, and repair the Plant in accordance with this Agreement, all Requirements of Laws applicable to Seller or the Plant, Permits and in accordance with Prudent Utility Practice, including with respect to efforts to maintain availability of the Initial Capacity subject to normal system wear-and-tear and panel degradation factor.

(e) Obtain and maintain the policies of insurance in amounts and with coverages as set forth in Exhibit C.

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

(g) By October 1st of each year of the Term, provide each of Buyer and Scheduling Coordinator with an annual projection of scheduled Outages for the following calendar year. Should Seller make any changes to such projection, it will notify Buyer and Scheduling Coordinator of such changes at least fourteen (14) days in advance of any newly scheduled or rescheduled Outage. If Buyer requests a change to the scheduled date of any Outage (including to a date set forth in a change notice from Seller), Seller shall consider such request in good faith and notify Buyer of its decision within seven (7) days of receipt of Buyer's request. In no instance other than Saturdays, Sundays and federal holidays during the period of reliability accounting (initially the period between June 1st and September 30th but subject to changes selected at Buyer's discretion for conforming to CAISO availability assessment) will Seller schedule Outages of more than twenty-four (24) hours during the Term. In connection with any Outage in excess of one (1) MW of Plant capacity, whether a scheduled or unscheduled Outage, Seller shall notify Buyer and Scheduling Coordinator, as soon as practicable, of the percentage of Plant (based on percentage of Energy loss) expected to be out of service and how long the Outage is expected to last. If the Outage is total and is due to failure of the Plant rather than the transmission and distribution system beyond the Point of Interconnection, Seller shall give Buyer and Scheduling Coordinator at least four (4) hours' prior notice before re-energizing the Plant. In addition, Seller will comply with Scheduling Coordinator's scheduling protocols, as may be changed from time to time. A copy of the current version of Scheduling Coordinator's scheduling protocols, which the Parties agree are reasonable, is attached as Exhibit D; provided, during the Term, Buyer shall provide Seller with any revised scheduling protocols to the extent Scheduling Coordinator provides the same to Buyer.

(h) Negotiate and enter into an Interconnection Agreement with the Participating TO to enable Seller to transmit Energy to the Point of Interconnection and into the CAISO-controlled grid. Seller shall be responsible for and pay all costs and charges arising under the Interconnection Agreement in compliance with the Interconnection Agreement and associated rules and requirements. As of the Effective Date, it is expected that the Plant will receive Full Capacity Deliverability Status on or around December, 2015. Seller shall ensure that the Interconnection Agreement provides that the Plant shall receive Full Capacity Deliverability Status, and shall take all commercially reasonable actions to cause such status to be obtained as soon as reasonably possible following the Commercial Operation Date.

(i) Negotiate and enter into a Participating Generator Agreement and a Meter Service Agreement for CAISO Metered Entities with the CAISO, the load control area operator for the Participating TO System, to which the Plant is interconnected. Buyer shall pay for or reimburse Seller for any such costs or charges associated with these agreements, except to the extent such cost or charge is required to be paid by Seller under this Agreement in Sections 3.1 and 4.1(h). Seller shall cooperate with Buyer to minimize any such costs as are to be reimbursed by Buyer.

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

(k) Fund and maintain the Development Assurance to assure Seller's timely development of the Plant, including the performance of all construction tasks, and fund and maintain the Performance Assurance to assure Seller's delivery of the Output to Buyer in accordance with Article IX.

(l) During the Term, Seller shall take all actions reasonably necessary to maintain the Plant's status as an Eligible Renewable Energy Resource, provided that Seller's obligation (including expenses incurred) to maintain such ERR status shall be subject to a cap on Seller's Compliance Costs (i) during each calendar year in an amount equal to $10,000 per MW multiplied by the Initial Capacity, and (ii) in the aggregate during the Term of the Agreement in an amount equal to $50,000 per MW multiplied by the Initial Capacity. Seller shall be obligated to take actions to maintain the Plant's ERR status (due to new or changes in Requirements of Laws) in excess of such amounts only to the extent Buyer elects to pay (and pays) such additional costs.

(m) For the avoidance of doubt, and notwithstanding the foregoing, if existing Requirements of Laws relating to ERR status (or relating to any applicable renewable portfolio standards) are repealed or cease to be effective or it becomes impossible to bring the Plant into compliance with any changes in Requirements of Laws relating to ERR status, Buyer shall remain obligated to purchase (and Seller shall remain obligated to sell) the Output (including all available Environmental Attributes) at the full Price in accordance with terms and conditions hereof, although the Parties shall meet and confer in good faith to consider amendments to this Agreement that may be acceptable to each Party (and to each Lender) in its sole good faith discretion.

4.2 General Obligations

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

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

(c) Seller shall continue to (i) preserve, renew and keep in full force and effect its organizational existence and good standing, and take all reasonable action to maintain all applicable Permits, rights, privileges, licenses and franchises necessary or desirable in the ordinary course of its business; (ii) comply with all Requirements of Laws applicable to Seller or the Plant; and (iii) comply with all Contractual Obligations related to the operation and maintenance of the Plant that are set forth in contracts or agreements related to the operation and maintenance of the Plant, it being acknowledged (for the avoidance of doubt) that this clause (iii) does not apply to contracts or agreements that are not primarily related to the operation and maintenance of the Plant, including for example Plant debt and tax equity financing contracts.

(e) Seller shall provide to Buyer such other information regarding the permitting, engineering, construction or operations of the Plant as Buyer may from time to time reasonably request, subject to licensing or other restrictions of Seller or a third party with respect to confidentiality, disclosure or use; provided, nothing herein will limit Buyer's right to agree to confidentiality or sign a confidentiality agreement in connection therewith before acquiring knowledge of such information.

(f) Seller shall enter into any agreements with the CAISO required by the CAISO for generators delivering power into the CAISO-controlled grid. Except for such costs and charges as are expressly identified in this Agreement as Seller's costs, Buyer shall reimburse Seller for all costs and charges under such agreements. Seller shall cooperate with Buyer to minimize any such costs as are to be reimbursed by Buyer.

(g) Within thirty (30) days after execution of this Agreement, Seller shall provide to Buyer a copy of Seller's ultimate corporate parent's most current annual audited financial statements, prepared in accordance with GAAP. Thereafter, from time to time at the request of Buyer (no more frequently than annually), Seller shall provide to Buyer a copy of Seller's ultimate corporate parent's most current annual audited financial statements, prepared in accordance with GAAP. Additionally, by no later than thirty (30) days after the end of each fiscal quarter, Seller shall also provide an unaudited quarterly financial statement of Seller prepared in accordance with GAAP consistently applied for Seller. Such quarterly financial statements shall be certified by an

officer of Seller as fairly presenting the financial condition of Seller subject only to what would typically be included in year-end audit adjustments and footnotes. If, from time to time, an audited year-end financial statement is prepared for Seller, Seller shall provide it to Buyer no later than four (4) months after the end of Seller's accounting year.

(h) Within fifteen (15) days of the later of (i) obtaining the authority to construct for the Plant from the applicable Governmental Authority or (ii) Seller's receipt of the system impact and facility cost studies from the Participating TO, Seller shall specify the then expected Initial Capacity of the Plant (which shall be subject to the limits set forth in the definition of Initial Capacity). At that time, Seller shall provide to Buyer a letter stating then expected Initial Capacity of the Plant in MW AC and specifying other material key Plant design details.

(i) At the request of Buyer at any time during the Term, Seller shall in good faith evaluate and consider proposals for adding a battery storage unit to the Plant, provided that Seller shall not be required to add any such storage unit to the Plant unless and until Seller, Buyer and any Lenders each (in their sole and absolute discretion) approves the technical details of such unit and appropriate amendments to this Agreement related to such unit, including additional compensation related to such unit.

4.3 Construction Milestones

(a) The Parties agree that time is of the essence in the performance of Seller's obligations under this Agreement, and certain milestones ("**Milestones**") for the development and construction of the Plant must be achieved in a timely fashion or Buyer shall suffer damages which are difficult to estimate with reasonable certainty. Seller shall provide Buyer with documentation satisfactory to Buyer, acting in the reasonable exercise of its discretion, to support the achievement of Milestones by the dates set forth below.

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

(i) By March 31, 2015 Seller shall have achieved the Construction Start Date.

(ii) By June 30, 2015, Seller shall achieve Commercial Operation.

(c) Starting on the Effective Date, Seller shall provide to Buyer written monthly progress reports concerning the progress towards completion of the Milestones which shall be in form and substance as required by Buyer in its sole discretion. 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 Seller's achievement or satisfaction of the Milestone. Seller shall provide to Buyer additional information concerning Seller's

progress towards, or confirmation of, achievement of the Milestones, as Buyer may reasonably request from time to time.

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

(e) In the event that:

(1) a Force Majeure Event causes any delay to the achievement of any Milestone;

(2) there is a delay in or failure of completion of Interconnection Facilities (through no fault of Seller, and provided that Seller has been working in good faith to meet its obligations under its Interconnection Agreement) beyond May 15, 2015; or

(3) there is an Eligible CEQA Delay;

then, and in any such case, each Milestone deadline shall be extended, in the case of (1) above by that number of days the applicable Force Majeure Event actually delays completion of such Milestone, in the case of (2) above by the number of days elapsed between May 15, 2015 and the date of completion of all applicable Interconnection Facilities, and in the case of (3) above by the number of days of Milestone extension provided for under Section 10.19(e). For the avoidance of doubt, any such extension of the deadline for the Construction Start Date Milestone for a specified number of days shall extend the deadline for the Commercial Operation Milestone for the same number of days. Notwithstanding the foregoing, (i) in no event shall the combined extensions under this Section 4.3(e) for any individual Milestone arising from any individual cause listed above (i.e., (1) Force Majeure Events, (2) a failure to complete Interconnection Facilities (through no fault of Seller) or (3) Eligible CEQA Delays) exceed eight (8) months in the aggregate, (ii) in no event shall the combined extensions under this Section 4.3(e) for any individual Milestone from all causes in the aggregate (i.e., (1) Force Majeure Events, (2) a failure to complete Interconnection Facilities (through no fault of Seller) and (3) Eligible CEQA Delays) exceed twelve (12) months in the aggregate and (iii) if on any given day two or more events cause delay to a Milestone at the same time (i.e., occur concurrently), Seller shall only be entitled to one day of delay for such day.

(f) For the avoidance of doubt, any reference herein to any Milestone date or Milestone deadline shall be interpreted to mean such Milestone date or Milestone deadline as may be extended under this Agreement, whether or not such extension is expressly referenced.

(g) Seller covenants that it will diligently pursue to completion all Milestones as set forth in Section 4.3(b).

(h) Seller shall provide written notice to Buyer thirty (30) days in advance of the anticipated Commercial Operation Date, and shall provide Buyer with reasonable written weekly updates thereafter on the status of Seller's progress in achieving Commercial Operation until the week preceding the Commercial Operation Date. On the Commercial Operation Date, Seller shall deliver to Buyer by facsimile, with originals to follow by hand-delivery, courier or mail service, the COD Certification signifying achievement of Commercial Operation.

4.4 Obligation to Schedule and Deliver

(a) Scheduling. During the Term, Buyer shall provide (or cause to be provided), at its own expense, all Scheduling Coordinator services necessary for both the delivery and receipt of Energy (from the Plant) at the Point of Interconnection in accordance with all applicable CAISO and related protocols. For the avoidance of doubt, during the Term (x) Buyer (and its Scheduling Coordinator) shall have the exclusive right to schedule the Plant into the CAISO grid in any manner reasonably determined from time to time by Buyer (and its Scheduling Coordinator) consistent with the terms of this Agreement, CASIO and related protocols, and the operational characteristics set forth in Exhibit D; provided that if the manner in which the Plant is scheduled results in otherwise available Plant Energy not being scheduled, awarded or delivered in such CAISO market, then the amount of such Energy shall be treated as Economic Curtailment for all purposes of this Agreement, and (y) subject only to Sections 3.1, 4.1(h), 4.1(i) and 4.4(d), Buyer shall be solely responsible for all CAISO and related costs and expenses associated with scheduling and the delivery of Energy to and from the Point of Interconnection. Seller shall sign and deliver documentation, if any, that are required to:

(i) designate and otherwise verify that Buyer or its designee is Scheduling Coordinator on behalf of Seller for the Plant; and

(ii) allow Buyer to perform its various Scheduling Coordinator duties, including, but not limited to, scheduling Plant output in accordance with CAISO's Participating Intermittent Resource Program ("**PIRP**") or successor programs.

Buyer shall appoint NCPA to act as Scheduling Coordinator for Buyer but reserves the right to substitute any other qualified entity as Scheduling Coordinator for the Plant upon reasonable advance notice to Seller.

(b) General Confirmations. The Parties acknowledge their general understanding and intent, subject to the terms and conditions of this Agreement, as follows:

(i) Seller shall use all reasonable efforts consistent with Prudent Utility Practice to maximize the output of Energy from the Plant;

(ii) Subject to Buyer's role as Seller's Scheduling Coordinator and the other provisions hereof, Seller shall be responsible to arrange for, and shall bear all risks associated with, delivery of all Plant Energy to the Point of Interconnection;

(iii) Buyer shall be obligated to pay for all Energy delivered to the Point of Interconnection; and

(iv) Buyer shall be responsible to arrange for, and shall bear all risks associated with, acceptance and transmission of Energy at and from the Point of Interconnection.

(c) Buyer Curtailment Rights.

(i) Mandatory Dispatch Down Periods. Seller shall reduce delivery amounts as directed by the CAISO, Participating TO, or any successor thereof during any Dispatch Down Period.

(ii) Discretionary Curtailments and Economic Curtailment.

(A) Buyer may require Seller to curtail deliveries of Energy from the Plant to the Point of Interconnection for any reason in Buyer's discretion (a "**Discretionary Curtailment**") by delivering a dispatch notice to Seller, provided that (1) such Discretionary Curtailments shall be limited to a quantity of not more than 10% of the Expected Annual Net Energy Production in each Contract Year; and (2) the dispatch notices shall be consistent with the operational characteristics set forth in Exhibit D. Seller shall reduce the Plant's delivered Energy by the amount and for the period set forth in each dispatch notice.

(B) In addition to paying Seller for all Energy actually delivered hereunder, Buyer shall pay Seller, on the date payment would otherwise be due in respect of each month in which any Discretionary Curtailment or Economic Curtailment occurred, an amount equal to the product of (1) the amount of Energy that Seller could reasonably have delivered to Buyer but for such Discretionary Curtailment and/or Economic Curtailment and (2) the Price.

(iii) Failure to Comply. If Seller fails to comply with a dispatch notice that meets the requirements for a Discretionary Curtailment, then,

for the amount of Energy (in MWhs) that the Plant delivered in contradiction to the dispatch notice, Seller shall pay Buyer the greater of: (A) 200% of the aggregate Price for such MWhs plus any penalties or other charges actually incurred resulting from Seller's failure to comply with the dispatch notice; and (B) the CAISO's Real-Time Market (as defined in the CAISO Tariff) price for the applicable PNode for such MWhs plus any penalties or other charges actually incurred resulting from Seller's failure to comply with the dispatch notice.

(d) Forecast Fee. The Parties acknowledge that PIRP or its successor program, by means of a contract with a forecasting service (the "**Forecasting Service**") develops high quality forecasts for day-ahead and/or hour ahead scheduling for CAISO operations. Buyer, or Scheduling Coordinator, shall bear forecast fees imposed by CAISO for use of the Forecasting Service, up to $0.10/MWh. If such fees exceed this amount, the Parties will each be responsible for 50% of such excess.

With respect to the Energy to be sold under this Agreement:

(i) If requested, Seller agrees to provide the Forecasting Service with sufficient data to support a reasonably accurate and unbiased forecast; and

(ii) Buyer, as part of its Scheduling Coordinator services, will use the forecasts developed by the Forecasting Service, which are most applicable to the Plant as the Plant's "Energy Schedule" for the CAISO Day-Ahead and/or Hour-Ahead markets.

ARTICLE V

BUYER'S OBLIGATIONS

5.1 Delivery and Transmission

Except for Seller's obligations pursuant to Sections 3.1, 4.1(h), 4.1(i) and 4.4(d), Buyer shall be solely responsible for paying costs and charges associated with the delivery and receipt of Energy under this Agreement at the Point of Interconnection and for the transmission and delivery of Energy from the Point of Interconnection to any other point downstream of the Point of Interconnection (including, without limitation, transmission costs and charges, competition transition charges, applicable control area service charges, transmission congestion charges, inadvertent energy flows, any other CAISO charges related to the transmission of such Energy by the CAISO and any charge assessed or collected in the future pursuant to any utility tariff or rate schedule, however

defined, for transmission or transmission-related service rendered by or for any transmission-owning or operating entity). Buyer shall be responsible for the Scheduling Coordinator function. The NCPA, acting on behalf of Buyer, shall be Scheduling Coordinator for the transmission of Energy from the Plant in accordance with applicable CAISO rules. Buyer's duties as Scheduling Coordinator shall be limited to those duties as are specifically required of scheduling coordinators in the CAISO Tariff and the CAISO protocols. Commercial arrangements for such transmission and delivery services will be coordinated and settled by the Scheduling Coordinator directly with the CAISO or other third parties. At the option of Buyer, the Plant may be included within NCPA's metered sub-system in connection with the scheduling of power over the CAISO grid and related functions; provided that such inclusion shall have no adverse effect on the Plant's operations or Seller (or any such effect shall be fully mitigated by Buyer). Seller will do all things reasonably needed to allow Buyer to comply with any obligations, and minimize any potential liability, under the CAISO Tariff; provided, that if such actions require any actions beyond the giving of notices, then Buyer shall reimburse Seller for all reasonably incurred out-of-pocket costs and charges of such actions. If and to the extent that Seller fails to comply with the notice provisions in Section 4.1(g) concerning Outages or with its obligations as outlined in the previous sentence, Seller shall be wholly responsible for all imbalances, deviations, or any other CAISO charges or penalties associated with such Outage or CAISO Tariff obligation (it being understood, however, that all such charges and penalties (if any) shall be borne by Buyer if Seller has not failed to comply with such provisions or obligations).

5.2 Taxes

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

5.3 Notification of Transmission Outages

Buyer will exercise reasonable efforts to provide Seller with as much advance notice as practicable of any Outage on the Participating TO System or other transmission or delivery facilities which might result in a Dispatch Down Period.

ARTICLE VI

FORCE MAJEURE

6.1 Force Majeure Events

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

6.2 Remedial Action

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

6.3 Notice

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

6.4 Termination Due To Force Majeure Event

Following the Commercial Operation Date, if a Party is prevented in a material respect from performing any material obligations under this Agreement due to a Force Majeure Event lasting for a period of twelve (12) consecutive months or longer, the unaffected Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) days' prior written notice at any time following expiration of such period of twelve (12) consecutive months.

ARTICLE VII

DEFAULT/REMEDIES/TERMINATION

7.1 Events of Default by Buyer

The following shall each constitute an "**Event of Default**" by Buyer:

(a) Buyer breaches any material obligation (other than one covered by Section 7.1(b) or (c) of this Agreement) and fails to cure such breach within thirty (30) days after written notification of breach by Seller or, if the breach cannot be cured within thirty (30) days, such longer period as may be necessary to cure such breach as long as Buyer is exercising diligent efforts to cure such breach.

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

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

7.2 Events of Default by Seller

The following shall each constitute an "**Event of Default**" by the Seller:

(a) Seller breaches any material obligation (other than ones covered by Sections 7.2(b), (c), (d), (e) or (f) of this Agreement or for which a remedy is specified) and fails to cure such breach within thirty (30) days after written notification of breach by Buyer or, if the breach cannot be cured within thirty (30) days, such longer period as may be necessary to cure such breach as long as Seller is exercising diligent efforts to cure such breach.

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

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

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

(e) Seller fails to comply with the terms of Buyer's right of first refusal as described in Section 2.5 of this Agreement.

(f) Subject to Section 7.4(c) and 9.3, Seller fails, for any reason other than an unauthorized act or omission by Buyer, to achieve the Commercial Operation Date by the applicable Milestone deadline as set forth in Section 4.3(b)(ii), as such deadline may be extended in accordance with Section 4.3(e).

7.3 Termination for Default, Etc.

(a) Declaration of Early Termination Date. If an Event of Default with respect to a defaulting Party shall have occurred and be continuing, the non-defaulting Party shall have the right (a) to send notice, designating a day, no earlier than ten (10) days after the day such notice is deemed to be received and no later than twenty (20) days after such notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**"), (b) to terminate this Agreement and end the Term effective as of the Early Termination Date and collect the Termination Payment, which shall be calculated in accordance with Section 7.3(b) below or as otherwise expressly provided in this Agreement; (c) withhold any payments due to the defaulting Party under this Agreement; (d) suspend performance; and (e) exercise any other right or remedy available at law or in equity to the extent otherwise permitted under this Agreement.

(b) Calculation of Termination Payment. The non-defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the non-defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount, (b) of the same Output, (c) at the same (or a reasonably equivalent) Pnode (as defined in the CAISO Tariff), and (d) for the remainder of the Term, or in any other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the economic value of the remainder of the Term of the Agreement and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant, as provided above, or which are reasonably expected to be available in the market for a replacement contract for the Agreement. The Termination Payment shall be the sole and exclusive remedy available to the non-defaulting Party in connection with its termination of

this Agreement and shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided that, if Seller is the defaulting Party, Buyer terminates this Agreement, and Buyer has paid for interconnection capital costs arising under the Interconnection Agreement pursuant to Section 4.1(h) for which Buyer has not received reimbursement under Section 4.1(h), then Seller shall also reimburse Buyer *pro rata* for any such costs paid for by Buyer (assuming twenty-five (25) years of Plant operations). The non-defaulting Party shall not have to enter into replacement transactions to establish a Termination Payment.

(c) Notice of Termination Payment. As soon as practicable after delivery of a notice of termination, notice shall be given by the non-defaulting Party to the defaulting Party of the amount of the Termination Payment due from the defaulting Party to the non-defaulting Party, if any. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the non-defaulting Party, as applicable, thirty (30) days after such notice is effective.

(d) Disputes Regarding Termination Payment. If the defaulting party disputes the non-defaulting Party's calculation of the Termination Payment, in whole or in part, the defaulting Party shall, within fifteen (15) days of receipt of the non-defaulting Party's calculation of the Termination Payment, provide to the non-defaulting Party a detailed written explanation of the basis for such dispute. Following delivery of such a notice, disputes regarding the Termination Payment shall be resolved in accordance with Section 10.9.

7.4 Damages

(a) Except as otherwise provided herein, the rights and remedies of a Party pursuant to this Article VII shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

(b) Except as otherwise specifically and expressly provided in the Agreement, neither Party shall be liable to the other Party under this Agreement for any indirect, special or consequential damages, including, without limitation, loss of use, loss of revenues, loss of profit, interest charges, cost of capital or claims of its customers or members to which service is made. Except as set forth in Article IX and except to the extent Seller violates its undertaking not to provide or sell rights to part or all of the Output to a party other than Buyer, Seller shall not be liable to Buyer for failure to provide any specific amount of Output hereunder.

(c) In the event that Seller fails to meet the Commercial Operation Date by the applicable Milestone deadline (as extended under Section 4.3), Seller shall pay Buyer liquidated damages as set forth in Article IX.

(d) The Parties agree that the Termination Payment above, and the liquidated damages set forth in Sections 9.3 and 9.4, are reasonable and represent a fair and genuine estimate of the damages that either Party will suffer upon the termination of this Agreement or Buyer will suffer upon the failure of Seller to achieve Commercial Operation by the agreed upon date(s). The Parties acknowledge that it would be impracticable or extremely difficult to fix actual damages in such circumstances, and therefore they have deemed the liquidated damages set forth above to be the amount of damage sustained by Buyer or Seller upon the occurrence of such circumstances. The Parties further agree that payment of such amounts shall be as and for liquidated damages and not as a penalty (and are a sole and exclusive remedy upon a termination hereof, and under Sections 9.3 and 9.4 hereof), and are therefore not subject to avoidance under California Civil Code section 1671.

7.5 Indemnification

(a) Up to and including the Commercial Operation Date, the Seller shall indemnify, defend, and hold harmless the Buyer, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, the negligence, willful misconduct or violation of applicable law by Seller and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence, willful misconduct or violation of applicable law of personnel employed by the Buyer to the extent caused by such negligence, willful misconduct or violation of applicable law of Buyer's employed personnel.

(b) After the Commercial Operation Date, each Party ("**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, agents, affiliates and representatives (each, an "**Indemnified Party**") from and against any and all losses, including but not limited to losses arising from personal injury or death, or damage to property, but only to the extent such losses result from or arise out of the negligence, willful misconduct or violation of applicable law by the Indemnifying Party, its employees, subcontractors or agents. If an Indemnified Party determines that it is entitled to defense and indemnification under this Article, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the losses, and provide all reasonably necessary or useful information, and authority to settle and/or defend the losses. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's prior written consent.

7.6 Buyer's Right to Operate

(a) Subject to Section 7.6(b), if, following the Commercial Operation Date, Seller (i) fails to maintain Seller's Two Year Minimum Production Threshold or (ii) fails to generate Energy for sixty (60) consecutive days, then Buyer or its designee may, but shall not be obligated to, assume operational control of the Plant from Seller; provided that Buyer shall not be permitted to take control so long as Seller or any of Seller's Lenders are using commercially reasonable efforts to remedy the failures described in (i) or (ii) above consistent with Prudent Utility Practice (the "**Commercially Reasonable Efforts Standard**"). Buyer, its officers, employees, agents, contractors and designees shall have the unrestricted right to enter the Plant to the extent necessary to operate the Plant in accordance with the foregoing. Upon the exercise of this right, Buyer or its designee shall at all times operate the Plant, using Prudent Utility Practice, and shall comply, to the extent commercially practicable, with the terms of this Agreement. Notwithstanding the foregoing, Seller shall not be excused from any obligation or remedy available to Buyer as a result of Buyer's operation of, or election not to operate, the Plant. Buyer shall pay Seller the applicable rate for Output provided hereunder, less any costs incurred by Buyer to operate the Plant. Buyer shall indemnify and hold Seller harmless from any liability to third parties arising out of Buyer's failure to operate the Plant using Prudent Utility Practice. Upon Buyer's reasonable satisfaction that Seller has the ability to operate the Plant in accordance with this Agreement, Seller shall resume operational control.

(b) Prior to exercising any rights under this Section 7.6 (including taking any action to assume operational control of the Plant), Buyer shall first provide at least twenty (20) days prior written notice to Seller (and Lenders) identifying in reasonable detail the reasons why Buyer believes that neither Seller (nor the Lenders) have satisfied the Commercially Reasonable Efforts Standard to remedy Plant failures (an "**Operations Assumption Notice**"). If, prior to the expiration of such twenty (20) day (or longer) period, either Seller or its Lenders responds to Buyer's Operations Assumptions Notice and states in reasonable detail reasons why Seller or it Lenders dispute Buyer's assertion that Seller and its Lenders have not satisfied the Commercially Reasonable Efforts Standard, then Buyer shall refrain from exercising any rights under this Section 7.6 until such dispute is resolved in writing by both Parties mutually, or Buyer has obtained a court confirmation of its position in the manner contemplated by Section 10.9.

(c) Should Seller's Lender(s) refuse to finance the Plant, or materially condition such financing, solely as a result of this Section 7.6, and Seller gives Buyer reasonable prior written notice of such refusal to finance, Buyer shall have the following options: (1) renegotiate this Section 7.6 with Seller and Lender(s) in a manner mutually acceptable; (2) arrange for financing for the Plant under materially equivalent terms and conditions as the Lender(s) were prepared to provide but for this Section 7.6; (3) delete this Section 7.6 in its entirety (which deletion will not require Seller's additional consent); or (4) terminate this

Agreement without liability of one Party to the other. If Buyer fails to elect and complete one of these options within sixty (60) days of written notice from Seller, Seller shall have the right to terminate this Agreement without liability of one party to the other. To the extent that Seller fails to accomplish financing, and such failure causes delays to the achievement of the Milestones set forth at Section 4.3(b), and such delays are attributable to the discussion and negotiation with Lender(s) of this Section 7.6, then Seller shall be entitled to such reasonable time to arrange for the financing of the Plant upon final resolution of matters related to this Section 7.6.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

8.1 Seller's Representations and Warranties

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

(i) Seller is duly organized and validly existing as a limited liability company under the laws of Delaware, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement, and Seller is duly qualified in California and 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 Effective Date, either: (1) (a) the Plant shall on the Commercial Operation Date be a "qualifying small power production facility" ("**QF**") as that term is defined in Section 3(17)(C) of the Federal Power Act ("**FPA**") and will be entitled to all of the exemptions from regulation provided in 18 CFR §§ 292.601(c) and 292.602 applicable to a QF with the capacity of the Plant; and (b) no approval (except with respect to "qualifying small power production facility" status and market-based rate authorization under Section 205 of the FPA) with respect to this Agreement is required from FERC; or (2) (a) Seller shall on the Commercial Operation Date be an "exempt wholesale generator" as that term is defined in Section 1262(6) of the Public Utility Holding Company Act of 2005, and (b) no approval (except with respect to "exempt wholesale generator" status and market based rate authorization under Section 205 of the FPA) with respect to this Agreement is required from FERC. In the event that the Plant is not a "qualifying small power production facility" that is exempt from Sections 205 and 206 of the FPA on the Commercial Operation Date or any date thereafter, Seller shall make appropriate filings under the Federal Power

Act within sixty (60) days so as to comply with applicable law, subject at all times to the provisions of Section 10.15 of this Agreement;

(iii) The execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any applicable laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected;

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

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

8.2 Buyer Representations and Warranties

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

(i) Buyer is a municipal corporation, duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement;

(ii) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;

(iii) The execution, delivery and performance of this Agreement by Buyer will not conflict with its governing documents, any applicable laws or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;

(iv) This Agreement has been duly and validly executed and delivered by Buyer and, as of the 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

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

ARTICLE IX

DEVELOPMENT AND PERFORMANCE ASSURANCE

9.1 Forms of Assurance

Seller shall maintain the Development Assurance and the Performance Assurance as follows:

(a) The Development Assurance shall be deposited by electronic transfer to Buyer's designated account with Wells Fargo NA or posted in the form of a letter of credit or escrow account (in substantially the form of agreements set forth on Exhibit F-1 and F-2 hereto) with Wells Fargo NA or such other banking institution reasonably acceptable to Buyer, as security for the timely development of the Plant. The transfer or posting shall occur within thirty (30) days after the Effective Date, and the Development Assurance will be maintained to and including the Commercial Operation Date.

(b) The Performance Assurance shall be deposited by electronic transfer to Buyer's designated account with Wells Fargo NA or otherwise posted in the form of a letter of credit or escrow account (in substantially the form of agreements set forth on Exhibit F-1 and F-2 hereto) with Wells Fargo NA or other banking institution reasonably acceptable to Buyer, as security for the performance of the Seller to meet its obligations during the period commencing one day after the Commercial Operation Date and ending at the expiration of the Term. The Performance Assurance shall be deposited or posted within thirty (30) days after the Commercial Operation Date and shall be maintained until the end of the Term.

9.2 Managing Assurances

Within ten (10) days after the occurrence of the Commercial Operation Date Buyer shall notify Seller's banking institution that the Development Assurance

(which shall be the full amount of the Development Assurance, plus interest under the applicable account, less any undisputed liquidated damages incurred under this Agreement) shall be returned to Seller. Buyer may either make, or request Seller's banking institution to make, withdrawals from the Development Assurance and Performance Assurances in accordance with this Agreement and, if applicable, the terms of the letter of credit or escrow agreement. Seller shall provide additional funds (or availability thereof) in order to maintain such assurance (at the amounts thereof set forth in the definitions of Development Assurance and Performance Assurance, as applicable) at all times during when Seller must maintain Development Assurance and Performance Assurance, as specified in Section 9.1. Such additional deposits or availability shall occur within fifteen (15) days of any withdrawals from such accounts causing the account balance to fall below said amounts. Within thirty (30) days after the expiration or earlier termination of this Agreement, Buyer will return to Seller any undisputed amount of the Development Assurance and/or Performance Assurance, as the case may be.

9.3 Development Liquidated Damages

In the event that Seller fails to meet the Construction Start Date or Commercial Operation Date by the applicable Milestone deadline, as set forth in Sections 4.3(b)(i) and (ii), as such deadlines may be extended in accordance with Section 4.3(e), Seller shall be liable for liquidated damages in the amount equal to the Daily LD Amount for each day that Seller is late in satisfying the Milestone. So long as Seller is paying such liquidated damages on a monthly basis after failing to meet the relevant Milestone deadline (as such Milestone deadline may have been extended per Section 4.3(e)), Buyer shall not be permitted to terminate this Agreement for up to twelve (12) months. If after twelve (12) months following the relevant Milestone deadline (as such Milestone may have been extended per Section 4.3(e)) Seller has failed to achieve the relevant Milestone, or if for any reason Seller fails to pay, or discontinues paying, the liquidated damages provided for above, Buyer may terminate this Agreement by written notice to Seller. This twelve (12) month period shall not be further extended as a result of a Force Majeure Event. Within thirty (30) days of the receipt of the termination notice, Seller shall pay Buyer a lump sum equal to the amount of the Development Assurance *minus* any Daily LD Amounts, if any, previously paid to Buyer. No other damages or remedy shall be available to Buyer on the basis of such failure to meet the Milestones set forth in Sections 4.3(b)(i) and (ii) or termination of this Agreement based on Seller's failure to achieve Commercial Operation within twelve (12) months of that Milestone deadline. If Seller achieves Commercial Operation on or before the Milestone deadline as set forth in Section 4.3(b)(ii), as such deadline may be extended in accordance with Section 4.3(e), Buyer shall promptly refund all Daily LD Amounts previously received as a result of Seller's failure to meet the Construction Start Date Milestone deadline as set forth in Section 4.3(b)(i).

9.4 Performance Liquidated Damages

Seller guarantees that the Calculation Period Deemed Delivered Energy Amount for each two-year Calculation Period shall be no less than the Two Year Minimum Production Threshold for such Calculation Period, all in accordance with this Section 9.4. If, for any Calculation Period, the Calculation Period Deemed Delivered Energy Amount is less than the Two Year Minimum Production Threshold (any such shortfall, in MWh, a "**Shortfall**"), then Seller may cure such Shortfall by paying or crediting Buyer liquidated damages based on the amount of such Shortfall in an amount equal to the product of (i) the amount of such Shortfall multiplied by (ii) the greater of (a) the per MWh Price in this Agreement and (b) the average CAISO Day-Ahead price for energy in the Existing Zone Generation Trading Hub which corresponds to the Existing Zone of SP15 (as such terms are defined in the CAISO Tariff) over the applicable Calculation Period multiplied by (iii) one-half (0.50). Except as otherwise expressly stated in Sections 6.4 and 7.6, the foregoing shall be Buyer's sole remedy for any Shortfall or failure to produce the Output or failure to maintain any specified Two Year Minimum Production Threshold. If for any two-year Calculation Period Seller is obligated to pay or credit any Shortfall damages hereunder, then, for purposes of calculating the Calculation Period Deemed Delivered Energy Amount for the immediately succeeding Calculation Period, the amount of the Calculation Period Deemed Delivered Energy Amount for the first year in such succeeding Calculation Period shall be deemed to be equal to the greater of (a) the actual Calculation Period Deemed Delivered Energy Amount for such first year and (b) eighty percent (80%) of the Expected Annual Net Energy Production for such first year.

ARTICLE X

MISCELLANEOUS

10.1 Assignment

The rights and obligations of this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may use subcontractors without Buyer's consent to comply with the terms of this Agreement, provided that notwithstanding the use of those subcontractors, Seller shall remain responsible for all of its obligations under this Agreement. Buyer may furthermore use any agent it so designates for scheduling and billing purposes, so long as Buyer remains responsible for all of its obligations under this Agreement. Any purported assignment of this Agreement in the absence of

the required consent, except as provided in 10.2, shall be void. In determining whether to provide its consent to any proposed assignment of this Agreement or Change of Control, Buyer may request Seller to provide financial statements of the proposed assignee or new controlling party, or other relevant information, as the case may be.

10.2 Financing

Notwithstanding Section 10.1, Seller may, without the consent of Buyer, collaterally assign its rights under this Agreement to Lender(s) as collateral security in connection with any financing of the construction, purchase or operation of the Plant, provided that such Lender(s) or its designee agree(s), in writing, that upon assuming any of Seller's prospective rights under this Agreement, such Lender(s) also shall be bound by all of Seller's prospective obligations under this Agreement. Notwithstanding any such assignment, Seller's obligations under this Agreement shall continue in their entirety in full force and effect and Seller shall remain fully liable for all of its obligations under or relating to this Agreement. Each such collateral assignment and any purchaser or transferee shall be subject to Buyer's rights and defenses hereunder and under applicable law. Seller shall provide prior written notice to Buyer at least ten (10) business days prior to any such collateral assignment.

In order to facilitate the obtaining of financing of the Plant, Buyer shall execute, upon request, a commercially reasonable consent to assignment, with respect to a collateral assignment hereof to Lenders in connection with the documentation of the financing or refinancing for the Plant. Any assignment in violation of this Agreement shall be void, *ab initio*. Buyer shall consider in good faith any amendments to this Agreement proposed by Seller which relate to financing of the Plant or other amendments requested by Seller in order to receive or maintain financing from Lenders. If Seller elects to enter into a sale lease-back financing of the Plant, Buyer shall reasonably cooperate to provide such consents and related documents as may be reasonably and customary to carry out such financing.

10.3 Notices

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

City of Palo Alto
250 Hamilton Avenue, 8th Floor
Palo Alto, CA 94301
Attention: Senior Deputy Assistant City Attorney / Utilities

Telecopier: (650) 329-2646

on behalf of Buyer;

with a copy to:

City of Palo Alto
250 Hamilton Avenue, 3rd Floor
Palo Alto, CA 94301
Attention: Director of Utilities

Telecopier: (650) 329-2946

and to:

Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678-6411
Attention: Power Contracts Administrator

Telecopier: (916) 783-7693

and to:

65HK 8me, LLC,
111 Woodmere Road, Suite 250
Folsom State: CA Zip: 95630
Attention: Kevin Butler

Email: PPA@8minutenergy.com
Telephone: 916-608-9060

with a copy to:

Orrick Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105
Attention: Leslie E.Sherman

Email: LSherman@Orrick.com
Telephone: 415-773-5570

on behalf of Seller.

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice delivered in the

manner set forth in this Section 10.3. Any such notice, demand, request, or communication shall be deemed received (i) if delivered by hand by a Party or sent by facsimile or email or (ii) upon receipt by the receiving Party if sent by courier or U.S. mail.

10.4 Captions

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

10.5 No Third Party Beneficiary

No provision of the Agreement is intended to, nor shall it in any way, inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third party beneficiary under the Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any Person not a Party hereto.

10.6 No Dedication

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

10.7 Entire Agreement; Integration

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

10.8 Applicable Law

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

10.9 Venue

The Parties hereby submit to the exclusive jurisdiction of the federal courts for the Northern District of the State of California; provided, however, that if such

federal courts sitting in the Northern District of the State of California refuse jurisdiction, the Parties agree to the exclusive jurisdiction of the state courts sitting in the County of Santa Clara, State of California.

10.10 Nature of Relationship

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

10.11 Good Faith and Fair Dealing; Reasonableness

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

10.12 Severability

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

10.13 Confidentiality

(a) The Buyer is a public agency subject to the disclosure requirements of the California Public Records Act ("**CPRA**"). If Seller's proprietary information is contained in documents or information submitted to Buyer, and Seller claims that such information falls within one or more CPRA exemptions, Seller must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. Buyer shall disclose such information to third parties only to the extent required by California law (including, without

limitation, the California Constitution, the California Public Records Act and the Brown Act).

(b) In the event of a request for such information, the Buyer will make best efforts to provide notice to Seller prior to such disclosure. If Seller contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the Buyer's deadline for responding to the CPRA request. If Seller fails to obtain such remedy within Buyer's deadline for responding to the CPRA request, Buyer may disclose the requested information. Seller further agrees that Buyer shall have no liability to Seller arising out of any disclosure by Buyer of any Seller information.

(c) Notwithstanding the foregoing, either Party may disclose this Agreement to its representatives (or any affiliate), the Northern California Power Agency or its representatives, or to any Lender(s) or potential Lender(s) or Plant investors or their representatives; provided that prior to such disclosure, the recipient shall agree, in writing, to keep the material confidential under terms no less stringent than as set forth in this Section 10.13. Buyer also shall be permitted to disclose this Agreement and related information to the City Council of Palo Alto for the express purpose of obtaining approval to execute this Agreement; provided that in connection with such disclosure Buyer shall only disclose such information to the extent required by California law (including, without limitation, the California Constitution, the California Public Records Act and the Brown Act). Each Party shall be bound by its obligations of confidentiality hereunder for a period of two (2) years from the expiration or earlier termination of this Agreement.

(d) Notwithstanding anything to the contrary in this Section 10.13, nothing shall restrict any Party from using or disclosing confidential information in any manner it chooses which (i) is or becomes generally available to the public other than as a result of a disclosure directly or indirectly by the disclosing Party or its representative; (ii) was within the using or disclosing Party's possession prior to it being furnished hereunder, provided that such information is not subject to another confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any other party with respect to such information; (iii) is rightfully obtained by a Party from third parties authorized to make such disclosure without restriction; or (iv) is legally required to be disclosed by judicial or other governmental action as determined by such Party's attorney acting in good faith (including, but not limited to, the California Constitution, the California Public Records Act and the Brown Act).

10.14 Cooperation

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

10.15 Mobile Sierra Doctrine

Notwithstanding any other provision of this Agreement, the Parties intend that the standard of review for changes to any rate, charge, classification, term or condition of this Agreement proposed by a Party shall be the "*Mobile-Sierra* public interest" standard of review, as stated by the United States Supreme Court in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 1164 (2008) and consistent with the order of the Supreme Court in *NRG Power Marketing LLC, et al. v. Maine Public Utilities Commission et al.,* No. 08-674, 130 S.Ct 693 (2010) ("NRG Order"). Any modifications proposed by a non-contracting third party or FERC acting *sua sponte* shall be the most stringent standard permissible under applicable law.

10.16 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.

10.17 Immunity Waiver

Each Party will comply with all applicable lawful federal, state and local laws, ordinances, resolutions, rate schedules, rules and regulations that may affect its rights and obligations under this Agreement. Buyer warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, or (b) jurisdiction of court (including a court located outside the jurisdiction of its organization).

10.18 Debt Liability Disclaimer

For the avoidance of doubt, the Buyer, including, but not limited to, any source of funding for Buyer, any General Fund or any special self insurance program, is not liable for any debts, liabilities, settlements, liens, or any other obligations of the Seller or its heirs, successors or assigns. The Buyer shall not be liable for and shall be held harmless and indemnified by Seller for (a) any claims or damages arising out of any other contract to which Seller is a party, and (b), subject to 7.5(b), any tortious action or inaction, negligent error in judgment, act of negligence, intentional tort, negligent mistakes or other acts taken or not taken by the Seller, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the Seller.

10.19 CEQA

(a) CEQA Condition. The Parties acknowledge that their respective obligations under this Agreement to proceed with the Plant remain subject to the completion of environmental review under CEQA, which review shall be conducted by Kern County ("**County**") as "Lead Agency" under CEQA and the Buyer as a "Responsible Agency" under CEQA. Such CEQA review shall be deemed complete ("**Final CEQA Approval**") when (i) the County has approved a conditional use permit (the "**CUP**" or "**Conditional Use Permit**") and filed a Notice of Determination (as defined under CEQA) with respect to the CUP under CEQA authorizing the construction and operation of the Plant, (ii) the period for judicial appeals of, and for the filing of a legal challenge to, the CUP and the EIR certification pursuant to CEQA have expired without any such appeals or legal challenges having been made or filed, (iii) the Buyer has filed a Notice of Determination with respect to its review of the Plant under CEQA and (iv) the judicial appeals period, and the period for the filing of a legal challenge, under CEQA with respect to the Buyer's Notice of Determination shall have expired, without any such appeals or legal challenges having been made or filed. If the Final CEQA Approval has not occurred by December 31, 2016 (the "**CEQA Deadline**"), then this Agreement may be terminated by either Party by delivery of written notice to the other Party stating that this Agreement is terminated for failure to satisfy the condition set forth in this Section 10.19.

(b) Buyer CEQA Review. Buyer retains full discretion as a responsible agency under CEQA to determining whether to approve the Plant or terminate this Agreement in accordance with Section 10.19(c) based on the final CEQA documentation prepared by the County and any additional CEQA environmental review conducted by Buyer. Buyer agrees to comply with the requirements of CEQA Guideline Section 15096 in connection with its review and approval of the Plant or termination of this Agreement. The Buyer shall review the CUP and related CEQA documentation (including an environmental impact report if applicable), and issue and file its Notice of Determination in the manner necessary to implement the shorter period of limitations set forth in Public Resource Code 21167(b) or (e) and Guideline Section 15112(c)(1), or shall issue a disapproval of the Plant under CEQA, within thirty-five (35) days after the CUP is issued by the County.

(c) Termination. Buyer may terminate this Agreement if Buyer determines, based on the CEQA review conducted by the County or by Buyer, that the Plant causes significant adverse environmental impacts that are not adequately mitigated or for which there are no overriding conditions favoring approval of the Plant (the "**CEQA Disapproval**"). If, as a result of CEQA review, the Buyer imposes conditions upon the construction or operation of the Plant that are materially different from those imposed under other Permits, or that require material modification of the design,

operation, location or other aspects of the Plant, then by notice to Buyer given within thirty (30) days after the Final CEQA Approval (but not later than the CEQA Deadline), Seller may terminate this Agreement. If Seller accepts the modifications to the Plant that are included in the Final CEQA Approval and the CUP, Seller may accept such changes by notice to Buyer.

(d) Effect of Termination. Any termination under this Section 10.19 shall be "no-fault", neither Party shall have any liability arising out of such termination, and Buyer shall promptly return to Seller all Development Assurance.

(e) Milestones. The Milestones shall be extended on a day-for-day basis for each day after July 1, 2014 that the County issues the CUP (the "**CUP Issuance Date**"), and each day after August 1, 2014 (the "**Buyer CEQA Approval Deadline**") that the Buyer issues its approval of the Plant under CEQA, in the form of a Notice of Determination (as defined under CEQA). The Buyer CEQA Approval Deadline shall also be extended on a day-for-day basis for each day after July 1, 2014 that the County issues the CUP. Seller shall provide Buyer with at least 14 days prior written notice of the anticipated CUP Issuance Date. If the Buyer does not file its Notice of Determination pursuant to California Public Resources Code §21152(a), and CEQA Guidelines (14 Cal CCR §15112(c)(1)), within five (5) days after approving the Plant under CEQA to achieve the thirty (30) day period of limitations set forth in Pub. Resources Code §21167, the Milestones shall be extended to a date that is one-hundred eighty (180) days after the date on which the Buyer approves the Plant under CEQA after issuance of the CUP by the County. Additionally, if, following the date of CUP approval and certification of the EIR by the County, any lawsuit or other action is filed that challenges the approval of the CUP or certification of the EIR, each Milestone shall be extended on a day-for-day basis from such approval date until the date on which such legal challenge is fully and finally resolved allowing the Plant to proceed. All Milestone extensions provided for under this Section 10.19(e) are herein collectively referred to as "**Eligible CEQA Delays.**"

[signature page follows]

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

SELLER **65HK 8me, LLC** By:_____ Name: Thomas Buttgenbach Title: Co-Manager Date:_____ By:_____ Name: Martin Hermann Title: Co-Manager Date:_____	**BUYER** **CITY OF PALO ALTO** APPROVAL AS TO FORM: By:_____ Name: Title: Senior Deputy City Attorney Date:_____
CITY OF PALO ALTO APPROVAL BY ADMINISTRATIVE SERVICES DIRECTOR By:_____ Name: Lalo Perez Title: Administrative Services Director Date:_____	**CITY OF PALO ALTO** APPROVAL BY UTILITIES DIRECTOR By:_____ Name: Valerie Fong Title: Utilities Director Date:_____
CITY OF PALO ALTO APPROVAL BY CITY MANAGER By:_____ Name: James Keene Title: City Manager Date:_____	**CITY OF PALO ALTO** APPROVAL BY MAYOR: By:_____ Name: Title: Mayor Date:_____

EXHIBIT A-1

PLANT SITE DESCRIPTION

The approximately two hundred twenty five (+/-225) acre site is located in Kern County, due east of the community of Bakersfield, CA. The southwest corner of the project site is located at Muller Rd. and Tejon Highway.

The site can be described by the Kern County APNs:

177-220-07, 177-220-08 and 179-020-24.

Please find the site map in Exhibit A-2. Acreage and APN are subject to change based on final assessment of project needs. The Parties acknowledge and agree that i) the Site described in this Exhibit A as of the Effective Date is only the approximate size required by the final Plant design and is in the vicinity of other lands under the control of Seller or its affiliates, ii) that the Site may be larger than required for the Plant, and at any time at or prior to the financial closing of Seller's construction financing for the Plant Seller may update this Exhibit A (reduce the size of the Site or rearrange the boundaries of the Site) by notice to Buyer providing an updated version of this Exhibit A. Such final Site boundaries shall include sufficient real property for the Plant, plus sufficient additional real property (approximately one acre) in order to accommodate any potential future build out of battery storage facilities as may be mutually agreed by the Parties pursuant to Section 4.2(i).

EXHIBIT A-2

SITE DRAWINGS

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

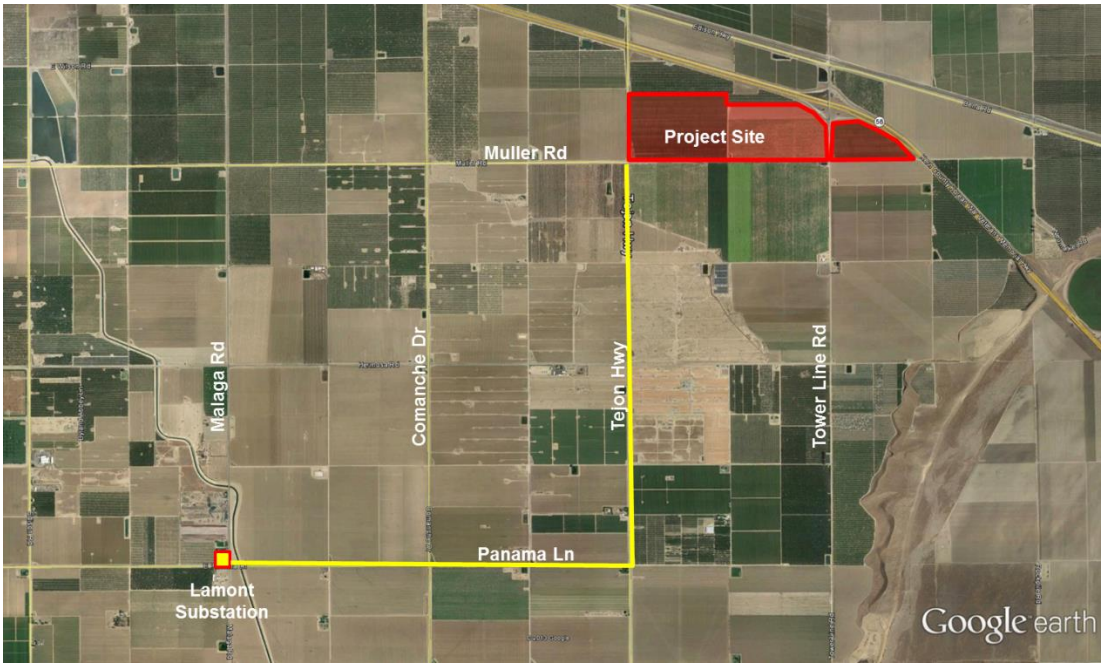


EXHIBIT B

Environmental Attribute Transfer from Seller to Buyer

Participation in the Western Renewable Energy Generation Information System. Seller shall, at its sole expense take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all delivered Energy are issued and tracked for purposes of satisfying the applicable requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall comply with all applicable laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in this EXHIBIT B, paragraph (viii) provided that Seller fulfills its obligations under this EXHIBIT B, paragraphs (i) through (vii) below. In addition:

(i) Prior to the initial Energy delivery date, Seller shall register the Plant with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Plant with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(iii) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the delivered Energy for such calendar month as evidenced by the Plant's metered data.

(iv) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Article 3, Buyer shall make an invoice payment for a given month in accordance Article 3 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this EXHIBIT B. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Article 3.

(v) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the delivered Energy for the same calendar month ("Deficient Month"), after taking into account applicable delays in the issuance of WREGIS Certificates referenced in the prior paragraph or otherwise arising under WREGIS Operating Rules. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then Seller shall take all actions reasonably necessary to remedy such circumstances and failure to do so shall be a breach hereunder by Seller.

(vi) Without limiting Seller's obligations under this EXHIBIT B, to the extent a WREGIS Certificate Deficit is caused by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(vii) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this EXHIBIT B after the Effective Date, the Parties promptly shall modify this EXHIBIT B as reasonably required (a) to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the delivered Energy in the same calendar month or (b) as may otherwise be reasonably appropriate to address such inconsistency.

(viii) Seller warrants that all necessary steps to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under this Agreement.

EXHIBIT C

INSURANCE COVERAGES

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

1. Workers' Compensation/Employer's Liability. Seller shall maintain Workers' Compensation Insurance and Employer's Liability Insurance which comply with Requirements of Laws applicable to Seller.

2. Automobile Liability. Seller shall maintain Automobile Liability Insurance in compliance with Requirements of Laws applicable to Seller, including coverage for owned, non-owned and hired automobiles for both bodily injury (including death) and property damage, including automobile liability contractual endorsement and uninsured/underinsured motorist protection endorsements.

2. Third Party Liability. Seller shall maintain third party liability insurance in compliance with Requirements of Laws applicable to Seller on a project-specific basis covering against legal responsibility to others as a result of bodily injury, property damage and personal injury arising from the operation and maintenance of the Plant. Such policy shall be written with a limit of liability not less than $10,000,000 and a deductible not to exceed $10,000. Such liability may be in any combination of primary and excess/umbrella. Coverage shall include, but not be limited to, premises/operations, explosion, collapse, underground hazards, broad form property damage and personal injury liability. To the extent available on commercially reasonably terms (as reasonably determined by Buyer), such coverage shall not contain exclusions for punitive or exemplary damages.

4. Property Insurance. Seller shall maintain third party property insurance on a project-specific basis covering cost of repairing Plant and or Interconnection equipment to operational condition. Such policy shall be written with coverage sufficient to replace and rebuild the Plant. Coverage shall include, but not be limited to, fire, storm damage, equipment failure, damage to equipment precluding operation under prudent utility practice, premises/operations, explosion, collapse, underground hazards, broad form property damage.

Upon the request from Buyer, Seller shall provide Buyer with applicable insurance certificates confirming the insurance coverages required above.

EXHIBIT D

SCHEDULING PROTOCOLS

Following the Effective Date, the Parties will agree on Exhibit D (Scheduling Protocols), which shall be consistent with the CAISO Tariff, any applicable PIRP rules and procedures, customary industry practice, and the Plant's operational parameters (including as to levels and timing of curtailments), such agreement not to be unreasonably withheld by either Party.

EXHIBIT E

COD CERTIFICATION

Commercial Operation Date: [_____]

This certification ("Certification") of Commercial Operation is delivered by _____ ("Seller") to The City of Palo Alto ("Buyer") in accordance with the terms of that certain Power Purchase Agreement dated as of the Execution Date ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

1. The Plant equipment representing _____ MW AC of Initial Capacity has been installed, tested and is capable of generating energy in accordance with the manufacturer's specifications.

2. The Plant is substantially complete and capable of delivering Energy as described in the Agreement.

3. The CAISO has provided notification of Commercial Operation in accordance with the CAISO Tariff, and documentation of such notification is attached hereto or shall be provided to Buyer promptly upon Seller's receipt thereof.

EXECUTED by SELLER this _____ day of _____, 20__.

By: _____

Name: _____

Title: _____

The undersigned, a licensed professional engineer, hereby certifies that, to its current knowledge, the foregoing is substantially true and correct.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Name: _____

Title: _____

EXHIBIT F-1

FORM OF LETTER OF CREDIT

If Seller elects to deliver Development Assurance or Performance Assurance in the form of a letter of credit pursuant to Section 9.1 of this Agreement, such letter of credit shall be a standby letter of credit in a form which is customary in the U.S. banking industry and reasonably acceptable to Buyer (such acceptance not to be unreasonably withheld).

EXHIBIT F-2

FORM OF ESCROW AGREEMENT

If Seller elects to deliver Development Assurance or Performance Assurance in the form of an escrow agreement pursuant to Section 9.1 of this Agreement, such escrow agreement shall be in a form which is customary in the U.S. banking industry and reasonably acceptable to both Parties (such acceptance not to be unreasonably withheld by either Party).

EXHIBIT G

EXPECTED ANNUAL NET ENERGY PRODUCTION

Contract Year	Expected Annual Net Energy Production (in MWh)
1	59,788
2	59,489
3	59,192
4	58,896
5	58,601
6	58,308
7	58,017
8	57,727
9	57,438
10	57,151
11	56,865
12	56,581
13	56,298
14	56,016
15	55,736
16	55,457
17	55,180
18	54,904
19	54,630
20	54,357
21	54,085
22	53,814
23	53,545
24	53,278
25	53,011
26	52,746
27	52,482
28	52,220
29	51,959
30	51,699
31	51,441
32	51,183
33	50,928
34	50,673

Note: The above amounts for Expected Annual Net Energy Production assume an Initial Capacity of 25 MW AC. If the Initial Capacity of the Plant as of the Commercial Operation Date is greater or less than 25 MW AC, then the amounts above shall be proportionally adjusted.

City of Palo Alto (ID # 4671)

Finance Committee Staff Report

Report Type: Action Items **Meeting Date: 5/6/2014**

Council Priority: Environmental Sustainability

Summary Title: Hayworth Solar Renewable Power Purchase Agreement

Title: Approval of a Power Purchase Agreement with 65HK 8me LLC for up to 60,000 Megawatt-hours Per Year of Energy Over 34 Years for a Total Not to Exceed Amount of $130 Million

From: City Manager

Lead Department: Utilities

Recommendation

Staff and the Utilities Advisory Commission (UAC) recommend that the Finance Committee recommend that the City Council adopt a Resolution (Attachment A) to take the following actions:

1. Approve a Power Purchase Agreement (PPA) with 65HK 8me LLC (Hayworth), a Delaware limited liability company, for the acquisition of up to 60,000 Megawatt-hours (MWh) per year of energy over a maximum of thirty-four years at a total cost not to exceed $130 million; and
2. Delegate to the City Manager or his designee, the authority to execute on behalf of the City the PPA with Hayworth, the two contract term extensions available to the City under the PPA, and any documents necessary to administer the agreements that are consistent with the Palo Alto Municipal Code and City Council approved policies.
3. Waive the application of the investment-grade credit rating requirement of Section 2.30.340(d) of the Palo Alto Municipal Code, which applies to energy companies that do business with the City, as Hayworth will provide a $1.875 million letter of credit as a development assurance deposit, and a subsequent $2.5 million letter of credit as a performance assurance deposit.
4. Waive the application of the anti-speculation requirement of Section D.1 of the City's Energy Risk Management Policy as it may apply to surplus electricity purchases resulting from the City's participation in the Hayworth PPA, including during the 2017-2020 time frame, due to the variability of the City's hydroelectric resources and the potential

uncertainties associated with the timeliness and viability of the renewable energy projects in the City's portfolio that are still under development.

Executive Summary

As part of ongoing efforts to meet the City's Renewable Portfolio Standard (RPS) of at least 33% of sales from qualifying renewable resources by 2015, staff issued a request for proposals (RFP) for renewable resources in the fall of 2013 and evaluated the proposals based on price, value, viability and compatibility with the City's needs. After thorough review, staff concluded that the Hayworth solar photovoltaic (PV) project proposal had the best total score.

When it begins operating in mid-2015, the 25-megawatt (MW) project[1] will provide about 6 percent of the City's annual energy needs, and will be sited on low productivity, water-constrained agricultural land in Kern County. The project was proposed by a team comprising 8minutenergy, a California-based solar PV project development company with a portfolio of more than 2,000 MW of solar PV projects, and Saferay Inc. (Saferay), a German independent solar power producer that was spun off from the panel manufacturer Q-Cells International in 2010.

The Hayworth PPA (Attachment B) is structured as a 27-year initial term, followed by a three-year extension term option that can be exercised by either party and a four-year extension term option that can only be exercised by Palo Alto. The project's pricing (which equates to a levelized price of $68.72 per MWh if both extension term options are exercised) is slightly lower than the prices of the three solar PV project PPAs that were approved by the Council last year. As with these three prior contracts, Palo Alto will make no upfront payments under the Hayworth PPA; energy will be paid for only after it is delivered.

In addition, the Hayworth project will be a "fully deliverable" project and is to be located in what is currently a local capacity requirements (LCR) area, as defined by the California Independent System Operator (CAISO). This means that the City will be able to count Hayworth's capacity towards its LCR, which provides significant value that many renewable energy projects are not able to provide, at no additional cost.

On March 26, 2014, the UAC reviewed the proposed PPA and unanimously approved staff's recommendation.

Background

Per the Council-approved Long-term Electric Acquisition Plan (LEAP) Objectives and Strategies, updated in April 2012 (Staff Report 2710), the City's RPS target is to procure at least 33% of its retail sales volume from qualifying renewable resources by 2015, and to continue procuring

[1] Under the terms of the PPA, the Hayworth project will be sized between 24 and 27 MW, with an expected size of 25 MW. All references to the Hayworth project's 25 MW size in this report should be understood to capture that range.

renewable resources as long as the cumulative rate impact of all of the City's renewable resources is not more than 0.5 cents per kilowatt-hour (¢/kWh).

In addition, California's Senate Bill (SB) X1-2, passed in 2012, requires all electric utilities in the state, including Palo Alto's municipal utility, to procure increasing amounts of renewable resources in order to serve their retail customers. Utilities must procure at least an average of 20% of their retail sales volume from renewable resources in calendar years (CY) 2011-2013, at least 25% by CY 2016, and at least 33% by CY 2020 (and each year thereafter).

Finally, in March 2013, Council approved the City's Carbon Neutral Plan for the electric supply portfolio, to be achieved starting in 2013 (Staff Report 3550). In the early years of the Carbon Neutral Plan, the City expects to achieve carbon neutrality primarily by purchasing renewable energy certificates (RECs) to offset the emissions associated with its wholesale market power purchases. Ultimately the City's goal is to achieve carbon neutrality entirely through the acquisition of additional "hard resources" that supply the City with both energy and environmental attributes so that REC purchases can be minimized.

Current Status of Renewable Resources in Palo Alto's Electric Portfolio

The City has executed six PPAs for new renewable resources that are currently delivering energy to Palo Alto. These resources include two wind projects and four landfill-gas-to-energy (LFGTE) projects. An additional five PPAs have been executed for projects that are still under development. These resources include one LFGTE project that is expected to begin operating within the next two months, and four solar PV projects that are expected online in 2015 or 2016. The City has also executed PPAs for three other resources but subsequently terminated those agreements after the suppliers ran into problems developing the projects and requested unacceptable contractual concessions. Summary information for all 11 currently contracted RPS resources is provided in Table 1 below.

Table 1 – Palo Alto's Existing Renewable Energy Contracts

Project	Supplier	Technology	Date Contract Executed	Actual or Estimated Online Date	Annual Energy (GWh)
High Winds	Iberdrola	Wind	Nov. 2004	Dec. 2004	48.9
Shiloh	Iberdrola	Wind	Oct. 2005	Jun. 2006	71.4
Santa Cruz	Ameresco	Landfill Gas	Nov. 2004	Feb. 2006	11.2
Half Moon Bay	Ameresco	Landfill Gas	Jan. 2005	Apr. 2009	40.7
Keller Canyon	Ameresco	Landfill Gas	Aug. 2005	Aug. 2009	11.8
Johnson Canyon	Ameresco	Landfill Gas	Aug. 2009	May 2013	10.4
Subtotal – Operating					**194.4**
San Joaquin	Ameresco	Landfill Gas	May 2010	Apr. 2014	30.3
Brannon Solar	Trina Solar	Solar PV	Nov. 2012	Aug. 2014	50.7
Elevation Solar C	sPower	Solar PV	July 2013	Dec. 2016	80.0
Western Antelope Blue Sky Ranch B	sPower	Solar PV	July 2013	Dec. 2016	50.0
Frontier Solar	Ridgeline Energy	Solar PV	July 2013	Dec. 2016	52.5
Subtotal – Under Development					**263.5**
Total – All Executed Contracts					**457.4**

In addition, through its contract with the Western Area Power Administration and through its ownership share of the Calaveras Hydroelectric Project, the City receives a small amount of energy from "small" hydroelectric projects that qualify under the state's RPS standard. These resources that can be counted towards the City's RPS requirements together account for about 1% of the City's sales in normal water years.

Lastly, Palo Alto Clean Local Energy Accessible Now (CLEAN), a local solar PV feed-in tariff program, was launched in April 2012 (Staff Report 2548). Under the revised program design approved in February 2014 (Staff Report 4378), the Palo Alto CLEAN program may provide up to 0.5% of Palo Alto's electric energy needs by 2015.

Together, when all of the renewable facilities under contract reach commercial operating status, and assuming Palo Alto CLEAN provides 0.5% of the City's total energy supply by 2015, the City's RPS is expected to be about 30.8% of total energy supply needs in 2015 as shown in Figure 1 below.

Figure 1 – Palo Alto's Committed Renewable Resources

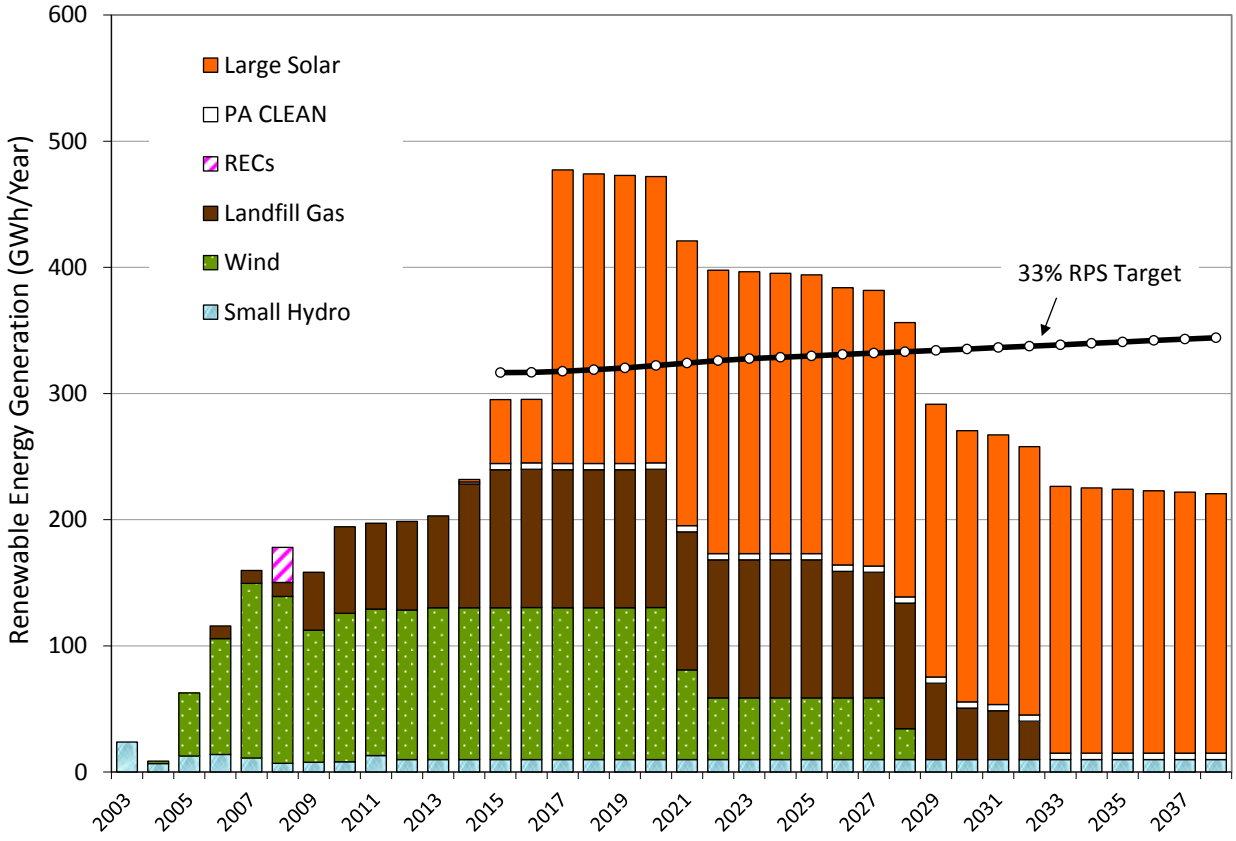


Figure 1 shows actual energy deliveries through 2013 and estimated deliveries after that date.

Discussion

This section of the report will cover the following topics:

A. The Market for Renewable Resources in California
B. Results of Palo Alto's Renewable Resource Request for Proposals (Fall 2013 RFP)
C. Hayworth Solar Farm Summary
D. Contract Mechanisms for Mitigating Project Risks
E. Energy Risk Manager's Assessment
F. Palo Alto's Renewable Resource Portfolio with Hayworth

A. <u>The Market for Renewable Resources in California</u>

California's aggressive RPS goals for electric utilities resulted in a supply-demand imbalance in the renewables market that drove prices up, particularly between 2007 and 2011. However, in the past three years renewable energy prices have plummeted – largely due to an influx of low-cost solar panels into the market. Prior to 2011, solar was generally the most expensive type of renewable energy technology; now it is generally the least expensive.

Furthermore, in the past three years supply and demand factors have shifted decidedly in favor of buyers like Palo Alto. This is due to the fact that a large number of renewable energy

developers have entered the market in recent years—reacting to the then-high renewable energy contract prices and the large appetites of the state's large investor-owned utilities (IOUs) seeking to meet their RPS procurement requirements. But as of now the IOUs have contracted for enough renewable energy to meet their mid-term needs and thus have dramatically slowed down their procurement efforts. This has left a large pool of project developers competing with each other to win contracts with a relatively small pool of buyers. As a result, renewables prices—particularly for solar—have been driven down recently to near parity with long-term brown market prices.

However, a number of factors appear poised to push renewable energy prices back up in the mid- to long-term. Among them are:

a) The scheduled expiration, at the end of 2016, of federal tax incentives for renewable energy projects—including the 30% Investment Tax Credit (ITC) and accelerated depreciation rules;
b) The state's three large IOUs are expected to re-start their large-scale RPS procurement efforts around 2017 or 2018 in order to meet the 33% RPS requirement for 2020 and beyond;
c) The possibility—suggested repeatedly by the Governor—that the state will raise its RPS requirement to 40% (or perhaps 50%); and
d) The possibility that other western states, or the federal government, will institute an RPS requirement or impose a cost on carbon-emitting resources.

All of the above factors suggest that now is a good time to lock in long-term commitments at historically low prices in order to help the City meet its carbon neutrality goals and its post-2020 RPS requirements.

B. Results of Palo Alto's Renewable Resource Request for Proposals (Fall 2013 RFP)

The City typically contracts for renewable power by independently issuing RFPs, the most recent of which was released in September 2013. In response to that RFP, the City received 92 project proposals, the same number of proposals received in response to the City's fall 2012 RFP. The 92 proposals represented a total capacity of 2,300 MW and 6,000 gigawatt-hours per year (GWh/year) of energy from a variety of technologies. The proposed projects included 65 solar PV projects, 16 wind projects, three small hydro projects, three biomass projects, three LFGTE projects, one geothermal project, and one municipal solid waste project.

The proposals were evaluated based on price and value, project/contract viability, and compatibility with Palo Alto's electric portfolio. The results of the evaluation process were extremely close, but ultimately the Hayworth proposal received the highest overall score.

In evaluating the price and value of different offers staff takes into account:

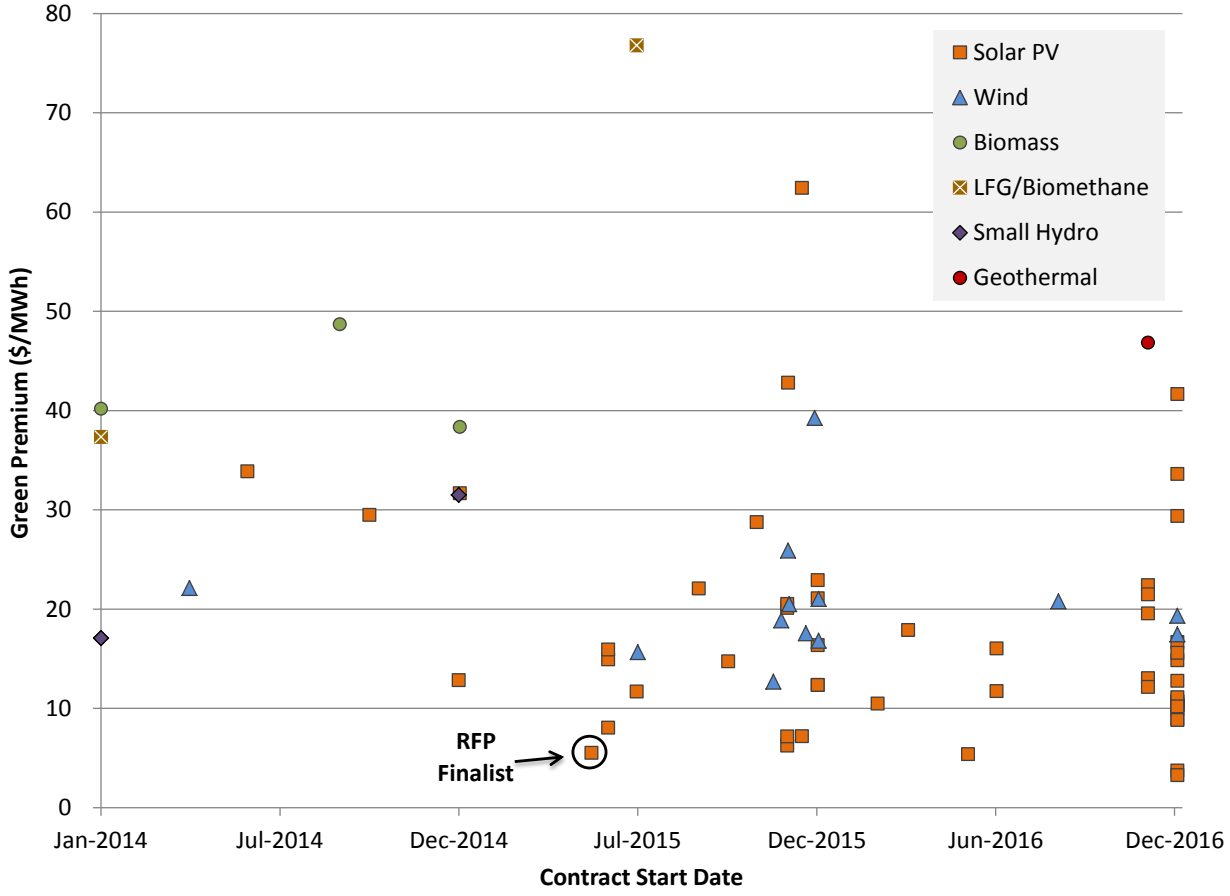
- The daily and seasonal shape of the energy output;
- The location of the output;

- The structure of the output in terms of meeting legislated criteria (i.e., satisfying limitations on the use of the three categories of renewable resources defined by the state's RPS law);
- The likely capacity value of the output;
- The likely interconnection cost to get the output onto the grid;
- The proposed start date; and
- The green premium, which is calculated for each proposal as the proposal cost minus the cost of buying the equivalent amount of non-renewable resource output. (See Attachment C for details on how the green premium is calculated for each proposal and Table 2 below showing the green premiums of the City's existing renewable energy contracts.)

Figure 2 is a scatter plot of green premiums versus project start dates for the proposals received from the fall 2013 RFP. The green premiums of these projects were generally fairly similar to those of the project proposals received through the fall 2012 RFP.

Further, the viability of each proposed project/contract was evaluated in terms of accomplished and remaining project development steps, along with the financial standing and development experience of the project developer.

Figure 2 – Green Premiums and Project Start Dates of RFP Proposals



C. Hayworth Solar Farm Summary

Hayworth Solar Farm – operating under the legal name 65HK 8me LLC – is a 25 MW project, with annual energy deliveries of 60,000 MWh (approximately 6% of the City's energy needs) in the first year of the contract term. As with any solar PV plant, the annual output is expected to decline at a rate of about 0.5% per year due to solar panel degradation effects. The project is expected to begin commercial operations by June 30, 2015, and will interconnect to the CAISO grid as a Full Capacity Deliverability Status (FCDS) resource, which means that the City will be able to claim capacity value from the project. The project will be sited on former agricultural land about 12 miles east of the City of Bakersfield in Kern County. The project will interconnect at the Lamont Substation, which is currently located in a CAISO-designated local capacity area, which means that the City will be able to claim valuable local capacity credit from the project. There is a risk, however, that the CAISO could redefine the boundaries of the local capacity area such that the project would no longer contribute to the City's LCR, which would likely result in the City having to purchase replacement local capacity from another resource. This risk applies to all projects located in local capacity areas, and is by no means particular to the Hayworth project.

The Hayworth PPA is structured as a 27-year base contract term, followed by a three-year extension term option (First Option) that can be exercised by either party and a four-year extension term option (Second Option) that can only be exercised by Palo Alto. The negotiated price for the PPA is $68.72 per MWh for the first 13 years, $68.22 per MWh for years 14 through 27, then $70.33 per MWh for the two extension terms (years 28 through 34). The project's pricing (which equates to a levelized price of $68.72 per MWh if both extension term options are exercised) is slightly lower than the prices of the three solar PV project PPAs that were approved by the Council last year.

The unusual stair-step pricing structure of this PPA is an arrangement that was negotiated when the supplier informed staff that in order for the contract to go to 30 or 34 years, they needed to include what's known in the industry as a "residual test." Essentially, in order for the supplier (rather than the City) to be considered the owner of the project for tax purposes (and thus be eligible for the federal investment tax credit, or ITC), the total term of the contract must be less than 80% of the "useful life" of the equipment, per IRS rules. Most estimates of the useful life of today's PV panels are about 35 years. As a result, the supplier claims that it cannot sign a contract that contains a base term longer than 27 years, because if it did, it would not be able to get the project financed because no investor would want to take the risk of not receiving the ITC. Over a full 34-year contract term, the levelized price of this stairstep pricing arrangement is the same price that the supplier proposed in the RFP. If the residual test is not passed, or if either of the extension term options is not exercised, the levelized price of the contract will be slightly lower than what the supplier proposed in the RFP.

As of today, the green premium for a 34-year contract term is significantly lower than that of a 27 or 30-year term. For this reason, and assuming the development of the project proceeds according to plan, it appears likely that the City will want to exercise both contract term extension options. Staff therefore seeks specific Council authorization to exercise the First Option and the Second Option, which would extend the 27-year base contract to a full 34-year contract term for the City. Staff also requests that Council delegate authority to the City Manager to exercise both of the extension term options, so that the City may act expeditiously if staff determines that it is in the City's best interest to exercise each option near the end of the then-current contract term. Delegation of such authority to the City Manager is permissible under section 2.30.290 of the Palo Alto Municipal Code.

The Hayworth PPA proposal was submitted by the joint partnership of 8minutenergy, a wholesale solar PV development company focusing on utility-scale projects in the U.S., and Saferay, an independent solar power producer based in Germany. Each company owns 50% of the project and they have been working together since 2011 to co-develop it. 8minutenergy is primarily responsible for site control, permitting, and utility interconnection and transmission with the support from Saferay. Saferay is primarily responsible for design of the generating facility, financing, and construction. This includes conceptual design of the PV system, PV module support structures, utility interconnections, and transmission, power purchase agreement and financing. In addition, Saferay is the lead partner for procurement of the large

system components including the PV modules, structural steel, inverters, etc. Saferay has already developed and financed 500 MW of solar PV around the world.

This project is also at an advanced stage of development and received one of the highest scores of all projects proposed in the RFP for overall viability and development progress. To date, the project is under full site control for the entire term of the proposed PPA, has executed a Large Generator Interconnection Agreement with PG&E and has completed its Phase I and Phase II Interconnection Study reports with the CAISO. It is currently expecting to receive its Conditional Use Permit from Kern County in Q2 2014.

D. Contract Mechanisms for Mitigating Project Risks

With any new electric generation resource there is a risk that the project will not be built, will come online later than scheduled, or will stop performing at some point after it comes online. To mitigate these risks, the City has negotiated the inclusion of a development and performance assurance deposit in this PPA. And given recent challenges the City has experienced with other PPAs coming to fruition, staff placed greater weight on project viability in this RFP process than it did in prior RFPs, and also negotiated higher development and performance assurance amounts.

For this project, a development assurance deposit of $1.875 million (in the form of a letter of credit), or $75/kW of installed capacity, would be available to the City, and withheld from the developer, if the project misses the commercial operation timing milestone. The development deposit provides an incentive to the developer to complete the project on time. It also provides compensation to the City should the project suffer unexcused delays or fail to materialize.

After the start of commercial operations, the developer would provide a $2.5 million performance assurance deposit (in the form of a letter of credit), or $100/kW of installed capacity, which will be available to the City, and withheld from the operator, if certain performance measures are not met. Like all of Palo Alto's other renewable PPAs, this agreement is structured so that the City pays only for metered output from the project after it has been delivered each month. This structure minimizes the City's exposure to operational, maintenance and counterparty default risks in the contract. The performance deposit provides an added incentive for the operator to maintain the project output and provides compensation to the City should performance be less than expected, which would require the City to secure replacement renewable energy.

In addition to risks related to project development, operations, and counterparty default, it should also be noted that there is a risk that in the future the CAISO could impose additional fees on the owners or off-takers of resources with highly intermittent output such as these three projects. As more solar and wind resources are added to the generation mix in the coming years to meet the state's 33% RPS mandate, the cost of managing the intermittency of these resources and ensuring the stability of the electric grid will likely increase, and it is

possible that this additional cost will be passed on to the owners of the resources that are driving the cost increases. However, it is also possible that these cost increases would be spread evenly across all CAISO load-serving entities, regardless of the level of intermittency of their generation portfolios. While it is important to acknowledge the potential for future cost increases as a result of executing these three agreements, it should also be noted that it is highly unlikely that these cost increases would be great enough to make the Hayworth project less attractive to the City than a non-intermittent alternative (i.e., a geothermal, biomass, or landfill gas project) based on the response to the City's recent renewable energy RFP.

E. Energy Risk Manager's Assessment

The Energy Risk Manager was involved in the RFP process that selected the Hayworth proposal as the finalist. Part of this involvement included performing a credit assessment of the company providing the financial support for this proposal (as well as the companies backing the other shortlisted proposals). The proposed PPA would be entered into with an individual project-level Limited Liability Company (LLC), which is being supported by Saferay Holding GmbH, a privately held, Berlin-based independent solar power producer.

The Energy Risk Manager assessed the expected default frequency (EDF) of Saferay using Moody's credit measure tool, which extracts credit signals by combining information from the equity markets with the company's debt structure as reported on its financial statements. This analysis yielded an EDF of 1.3 percent (meaning that there is an estimated one in 77 chance of default by the company within the next year).

The risks to the City of entering into the proposed PPA are that the supplier defaults or is unable to perform according to the terms of the contract. If this occurs, the City might need to buy renewable energy from another supplier in order to meet its RPS obligations under State law or to meet the City's RPS goals. These risks are minimized by the following terms of the proposed PPA:

- The City is not at risk for paying for output that is not delivered. The City will make no payments under the PPA unless and until energy from the project is delivered to the City;
- The supplier's development assurance deposit funds provide some degree of assurance that the project will be completed. If it is not, then the City would be able to access the development deposit funds of up to $1.875 million to help offset the cost of procuring replacement renewable energy.
- Once the project becomes operational, the balance of the development deposit funds will be returned to the project-level LLC. At the same time, a new performance assurance deposit will be posted by the LLC and can be used by the City to cover operational and performance risk. Staff believes this amount is sufficient to cover these risks given that the operating costs for solar plants are much lower than their operating revenues; thus project owners tend to keep their projects operating.

In general, businesses in the renewable industry lack extensive financial and operational track records, and because of the capital-intensive nature of these projects, they tend to be highly

leveraged as well. The company reviewed here is not investment grade and has a higher projected default rate than the City's regular electric and gas suppliers.

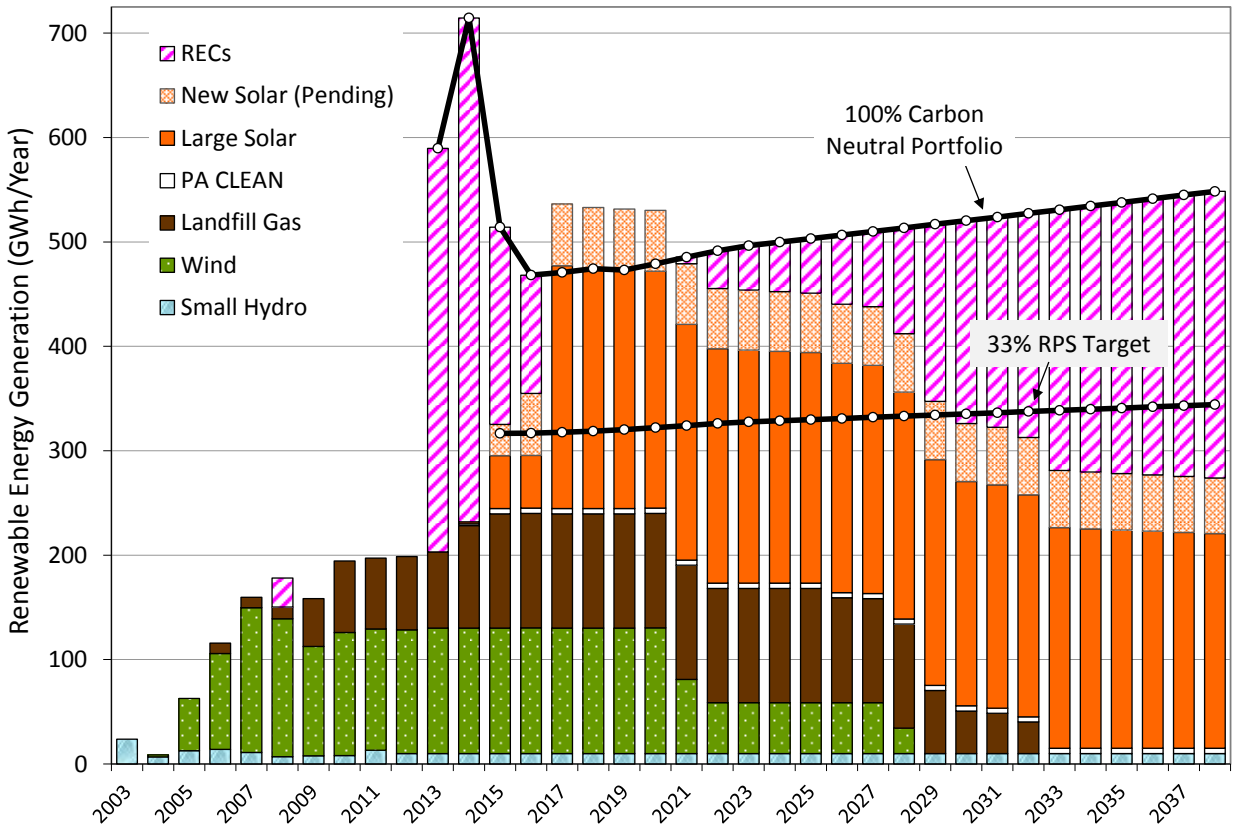
However, under the terms of the PPA, if the project does not come to fruition according to the construction start and commercial operation date milestones set forth in the PPA or if the supplier defaults at any time during the term of the agreement, the City can access the then-current development assurance funds provided by the letter of credit. For these reasons, staff recommends that the Council waive the investment-grade credit requirement for public agency contracts required under Section 2.20.340(d) of the Palo Alto Municipal Code. This conforms to Council action on prior renewable resource contracts with similar characteristics (CMR:461:04, CMR:100:05, CMR:350:05, CMR:343:09, CMR:226:10, Staff Report 3223, and Staff Report 3845).

F. Palo Alto's Renewable Resource Portfolio with Hayworth

The City has made commitments to renewable resources projected to provide 30.8% of its energy from qualified renewable resources by 2015. If the Hayworth Solar Farm is added to the City's renewables portfolio, Palo Alto's renewable resources would be expected to provide about 33.9% of total sales in 2015, and 55.7% in 2017. As the City's older PPAs begin to expire (beginning in 2021), the addition of this project to the City's portfolio would enable it to exceed the state's 33% RPS mandate until 2030.

Figure 3 illustrates the City's existing renewable resource commitments, with the Hayworth project included as a "pending" resource. Also shown is a reference line indicating the level of renewables that would produce a carbon neutral electric supply portfolio. (The volume of renewable energy certificates (RECs) that need to be procured each year in order for the City to achieve a 100% carbon neutral electric supply portfolio is shown as well. The large volume of RECs required in 2013 and 2014 is due to the impacts of the current drought on the output of the City's two hydroelectric resources.) This reference line indicates that the inclusion of Hayworth in the City's renewable resources portfolio would enable the City to achieve 100% carbon neutrality through long-term renewable and hydro resources from 2017 through 2020, even under moderately dry hydrological conditions.

Figure 3 – Palo Alto's Renewable Resources with Hayworth



As indicated in Figure 3, staff projects that adding the Hayworth PPA to the City's renewables portfolio would result in a surplus of carbon neutral electric supplies from 2017 through 2020. However, this will be true only if hydrologic conditions are close to (or greater than) the long-term average level and all five of the renewable resources that the City has contracted for that are still under development (plus the Hayworth project) are completed on-time and deliver the expected amount of energy to the City. As the year 2013 and 2014 data points on the carbon neutral reference line indicate, "dry hydro" years are not uncommon in northern California, and they can have a tremendous negative impact on the output of the City's hydroelectric resources. In such years, even the addition of the Hayworth PPA and all five of the other contracted resources that are still under development would not be sufficient to achieve a carbon neutral supply portfolio without the purchase of RECs. Also, it is the City's experience that some renewable energy projects that are contracted for experience significant development delays, or end up not being built at all. The City's experience in this regard is consistent with the broader renewables market. The California Energy Commission, for instance, has estimated the failure rate for renewables contracts to be between thirty and forty percent.[2]

[2] According to the CEC: "Data from the Energy Commission's [Investor Owned Utility] contract database indicates that since the start of the RPS Program, about 30 percent of long-term RPS contracts (10 years or more) approved by the California Public Utilities Commission (CPUC) have been cancelled. The contract failure rate increases to

If, however, the City's carbon neutral electric supply portfolio exceeds the amount of generation needed to achieve carbon neutrality in any given year, the City would have the ability to either "bank" the RECs associated with that generation for use in a later time period, or sell the surplus into the short-term markets. Prices for short-term REC sales are currently expected to be fairly advantageous for the City over the long-term, so these surplus positions would likely result in little if any financial loss for the City.

Section D.1 of the City's Energy Risk Management (ERM) Policy prohibits speculative buying and selling of energy products. Under the ERM Policy, "speculation" is defined as "buying energy not needed for meeting forecasted load or selling energy that is not owned." Because Hayworth has the potential to lead to surplus electric purchases, including during the 2017-2020 time period, staff and the UAC recommend that the Finance Committee recommend that Council waive application of the ERM Policy's anti-speculation requirement to the City's participation in the Hayworth PPA. Staff's recommendation is based on the information set forth above, including the variability of the City's hydroelectric resources and potential uncertainties associated with the viability and timeliness of renewable energy projects in the City's portfolio that are currently under development.

Table 2 provides a summary of renewable energy project volumes and the associated annual green premium amounts for the City's committed renewable energy supplies as well as the PPA under consideration. As shown in the table, the annual green premium for the Hayworth PPA is estimated at $330,000. If Council approves the PPA, there would still be approximately $2.9 million per year of green premium remaining—indicate that the City would still have the ability to pursue additional renewable resources within the 0.5¢/kWh rate impact limit.

about 40 percent when also considering contracts that have been delayed." California Energy Commission. 2011 Integrated Energy Policy Report. Publication Number: CEC-100-2011-001-LCF. 2011.

Table 2 – Summary of the City's Current Renewable Energy Supplies and Proposed Projects

	Delivery Begins	Annual Generation (GWh)	Levelized Price ($/MWh)	Adjusted Brown Market Price ($/MWh)	Green Premium ($/MWh)	Total Annual Green Premium ($1000)
Small Hydro	Before 2000	10.0	N/A	N/A	0	0
High Winds	Dec. 2004	48.9	57.6	55.0	2.6	125
Shiloh Wind	June 2006	71.4	63.0	69.5	(6.5)	(464)
Santa Cruz	Feb. 2006	9.9	62.3	59.3	3.0	29
Ox Mountain	April 2009	43.9	59.0	67.5	(8.5)	(375)
Keller Canyon	Aug. 2009	14.9	70.8	83.9	(13.0)	(194)
Johnson Canyon	March 2013	10.4	123.6	67.3	56.3	586
San Joaquin	June 2013	30.3	118.1	75.6	42.4	1,286
Brannon Solar	Dec. 2014	50.7	77.0	60.1	16.9	857
Elevation	Dec. 2016	80.0	68.8	72.7	(4.0)	(317)
W. Antelope	Dec. 2016	50.0	68.8	69.2	(0.4)	(22)
Frontier Solar	Dec. 2016	52.5	69.0	67.1	1.9	98
Total Committed Projects		**473**	**Total Committed Green Premium**			**1,610**
Hayworth	June 2015	**60**	**68.6**	**63.1**	**5.5**	**330**
Total with Hayworth		**533**	**Total Green Premium with Hayworth**			**1,940***

* The annual green premium associated with a rate impact of 0.5¢/kWh is equal to $4.9 million

Commission Review and Recommendation

On March 26, 2014, the UAC reviewed staff's recommendation that Council approve the proposed PPA with 65HK 8me LLC, delegate execution authority to the City Manager or his designee, and waive the City's investment-grade credit rating requirement and anti-speculation requirement as they may apply to this agreement.

The UAC discussed the risk that at some point the project's capacity may no longer count towards the City's LCR, and asked how staff would learn of such a change. The UAC also asked about the mechanics of the City's collection of development and performance assurance funds, and whether any of these funds have ever been retained by the City as a means of assessing liquidated damages. The UAC also asked about the time horizon for banking Renewable Energy Certificates (RECs) from the project, in the event that the City has a surplus of carbon neutral electric supply in a given year.

After discussion, the UAC unanimously (5-0) recommended that Council approve the PPA as presented by staff. The excerpted draft minutes from the UAC's discussion of the PPA at its March 26, 2014 meeting are presented as Attachment D.

Resource Impact
The cost of renewable energy supplies from Hayworth is expected to be up to $130 million over the 34-year term of the agreement. The annual expected cost is up to $4.2 million. Approval of the PPA would result in a retail rate impact from all renewable resources, including the three new projects, of up to 0.20¢/kWh, beginning in 2017. The expected future cost for procuring renewable resources to meet the City's RPS goal is already included in the current five-year financial forecast.

Policy Implications
Approval of the proposed PPA is in conformance with the City's Long-term Energy Acquisition Plan (LEAP), specifically the City's Renewable Portfolio Standard to meet at least 33% of the electric sales from renewable energy by 2015. Approval of the proposed PPA would also further the City's efforts to achieve a carbon neutral electric supply portfolio entirely through the acquisition of additional "hard resources" that supply the City with both energy and environmental attributes (Staff Report 3550).

Environmental Review
Approval of this agreement does not meet the definition of a project under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065. However, the City intends to receive output from a project that will constitute a project for the purposes of CEQA. The project developer will be responsible for acquiring necessary environmental reviews and permits on the project to be developed.

During the development phase of the project, the City will become a "responsible agency" under the CEQA proceedings. As such, the PPA allows for the City to review the project CEQA documents and issue a notice of determination with respect to its review of the projects. Staff anticipates working with the City Attorney's Office and the Planning Department to undertake this assessment.

Attachments:

- Attachment A: Resolution to Approve PPA with 65HK 8me LLC (PDF)
- Attachment B: Power Purchase Agreement with 65Hk 8me LLC (PDF)
- Attachment C: Green Premium Calculation (PDF)
- Attachment D: Excerpted Draft Minutes of the March 26, 2014 UAC Meeting (PDF)
- Attachment E: Contract Justification Form (PDF)

CITY OF PALO ALTO

EXCERPTED FINAL MINUTES OF THE MARCH 26, 2014 UTILITIES ADVISORY COMMISSION MEETING

ITEM 1: ACTION: Staff Recommendation that the Utilities Advisory Commission Recommend that the City Council Adopt a Resolution Approving a Power Purchase Agreement with 65HK 8me LLC for up to 60,000 Megawatt-hours Per Year of Energy Over 34 Years for a Total Not to Exceed Amount of $130 Million

Senior Resource Planner Jim Stack summarized the written report. He noted that the project will bring the City to 99% carbon neutral by 2017 through long-term hydro supplies and long-term renewable energy contracts. He said that 92 project proposals were received in the Fall 2013 request for proposals (RFP). Stack explained that the evaluation criteria included price and value as well as project viability and indicated a preference for earlier start dates.

Stack described the Hayworth Solar Farm Power Purchase Agreement (PPA) as having a capacity of 25 megawatts (MW), which would generate 6% of the City's annual electric supply and would have an online date of June 30, 2015. The levelized price is $68.72 per megawatt-hour (MWh) over the 34-year term of the PPA and the project is located in Kern County near Bakersfield. Stack discussed the risks of the proposed PPA and the risk mitigation measures that are part of the PPA, which include having the project developer post development and performance assurance deposits in amounts that are significantly greater than those that have been posted for all of the other renewable energy PPAs the City has executed.

Stack stated that the proposed PPA will deliver more energy than the City needs in 2017 through 2020 in the event that all the other solar projects that the City has contracted with are completed and the hydroelectric generation is average or better. He noted that in 2021, earlier renewable PPAs expire creating the need for more renewable energy.

Stack said that the electric portfolio is highly affected by hydro conditions and that, in wet hydro conditions, surplus renewable energy would be sold in the market, but that the RECs could be banked to meet Renewable Portfolio Standard (RPS) goals as well to maintain carbon neutrality.

Stack explained that the green premium for the Hayworth project is estimated at $330,000 per year, and that this commitment would bring the City's total committed green premium level for all renewable energy projects to $1.9 million, which is equal to a rate impact of about 0.2 cents/kWh.

Commissioner Hall asked why the green premium in the presentation is different from the number shown in the report. Stack indicated that he refreshed the numbers in the presentation with a new estimate of brown market prices, resulting in a slight increase in the estimated green premium relative to the number shown in the report. Hall stated that the Bakersfield area is currently deemed to be capacity deficient, which benefits Palo Alto in that the Hayworth project would count toward the City's local capacity requirements, but that this could change in the future. Stack indicated that the California Independent System Operator (CAISO) undertakes studies of the grid on an annual basis and that the boundary lines are changed periodically designating capacity constrained areas. He noted that staff monitors the situation every year already and the situation could change such that, if the project's classification as a local capacity resource changes, the City might need to purchase additional local capacity to replace it.

Commissioner Hall asked if a performance bond is posted up front, or at the time when the non-performance event occurs. Stack stated that in this PPA, as in the City's other solar PPAs, the developer posts the performance bond at the time the project begins operating – in advance of any performance related issues.

Chair Cook asked how long the City can bank RECs for RPS rules. Senior Resource Planner Jon Abendschein stated that the State's RPS rules allow RECs to be banked indefinitely at least through the end of the RPS compliance period (2020). Stack stated that in terms of banking RECs for meeting the City's Carbon Neutral electric portfolio goals, the City can set its own banking limits.

Chair Cook asked if we have collected any development or performance assurances for the current PPAs for not hitting milestones. Stack said that all of the developers of the City's solar PPAs have posted development assurances in the form of cash or letters of credit, but so far we have not had to draw on those funds because the developers have so far been meeting their development milestones. Director Fong noted that with one landfill gas to energy project that needed to extend its commercial operation date (COD), we negotiated liquidated damages in exchange for the extension of the COD.

ACTION:
Commissioner Eglash made a motion to approve the staff's recommendation. Commissioner Melton seconded the motion. The motion passed unanimously (4-0) with Commissioners Chang, Foster, and Waldfogel absent.

FINANCE COMMITTEE
DRAFT ACTION EXCERPT MINUTES

Special Meeting
Tuesday, May 6, 2014

Roll Call

Chairperson Berman called the meeting to order at 8:17 P.M. in the Council Chambers, 250 Hamilton Avenue, Palo Alto, California.

Present: Berman (Chair), Burt, Holman, Kniss

Absent:

Agenda Items

2. Approval of a Power Purchase Agreement with 65HK 8me LLC for up to 60,000 Megawatt-hours Per Year of Energy Over 34 Years for a Total Not to Exceed Amount of $130 Million.

MOTION: Council Member Burt moved, seconded by Vice Mayor Kniss that the Finance Committee recommend the City Council adopt a Resolution to take the following actions:

1. Approve a Power Purchase Agreement (PPA) with 65HK 8me LLC (Hayworth), a Delaware limited liability company, for the acquisition of up to 60,000 Megawatt-hours (MWh) per year of energy over a maximum of thirty-four years at a total cost not to exceed $130 million; and

2. Delegate to the City Manager or his designee, the authority to execute on behalf of the City the PPA with Hayworth, the two contract term extensions available to the City under the PPA, and any documents necessary to administer the agreements that are consistent with the Palo Alto Municipal Code and City Council approved policies.

3. Waive the application of the investment-grade credit rating requirement of Section 2.30.340(d) of the Palo Alto Municipal

Code, which applies to energy companies that do business with the City, as Hayworth will provide a $1.875 million letter of credit as a development assurance deposit, and a subsequent $2.5 million letter of credit as a performance assurance deposit.

4. Waive the application of the anti-speculation requirement of Section D.1 of the City's Energy Risk Management Policy as it may apply to surplus electricity purchases resulting from the City's participation in the Hayworth PPA, including during the 2017-2020 time frame, due to the variability of the City's hydroelectric resources and the potential uncertainties associated with the timeliness and viability of the renewable energy projects in the City's portfolio that are still under development.

MOTION PASSED: 4-0

ADJOURNMENT: Meeting adjourned at 10:28 P.M.