



City of Palo Alto

City Council Staff Report

(ID # 7428)

Report Type: Consent Calendar

Meeting Date: 12/12/2016

Summary Title: Resolution Approving Standard Form REC and Electric Master Agreements

Title: Adoption of a Resolution Approving the Standard Form Edison Electric Institute Master Power Purchase and Sale Agreement, with Special Terms and Conditions ("Standard Form Electric Master Agreement"), and the Standard Form Master Renewable Energy Certificate Purchase and Sale Agreement ("Standard Form Master REC Agreement")

From: City Manager

Lead Department: Utilities

Recommendation

Staff recommends that Council adopt the attached resolution (Attachment A) approving:

1. The standard form Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement, with special terms and conditions ("Standard Form Electric Master Agreement"), and
2. The standard form Master Renewable Energy Certificate (REC) Purchase and Sale Agreement ("Standard Form Master REC Agreement").

Executive Summary

An active set of counterparties is essential to ensure that the City of Palo Alto meets its electric supply portfolio objectives, load obligations, and various program needs in a competitive and efficient manner. To those ends, the Council has in the past authorized the City to enter into electric and renewable energy credit (REC) master agreements (individually, Electric Master Agreements and REC Master Agreements, respectively, and collectively, Master Agreements) with a number of counterparties to enable the City to purchase and sell electricity, RECs and related products, subject to specific delegated authorities, limits and internal risk management and purchasing controls. However, the historic process to seek and negotiate Master Agreements through formal requests for proposal has been lengthy and cumbersome.

To streamline the process of establishing Master Agreements with potential suppliers, Council recently approved an ordinance modifying the Municipal Code (Ordinance No 5387). The change allows for Council to pre-approve a standard form master agreement, such as the

proposed Standard Form Electric Master Agreement and Standard Form Master REC Agreement (collectively, Standard Form Master Agreements). These agreements will be publicly available to electric and REC suppliers for execution meeting the City’s credit and financial requirements with non-substantive changes. Each Standard Form Electric Master Agreement and Standard Form Master REC Agreement that is negotiated with a specific electric and REC supplier, respectively, including maximum expenditure and transaction term limits, will be presented to Council for approval before any transactions may be completed.

Background

Palo Alto Municipal Code Section 2.30.340 (Contracts for Wholesale Utility Commodities) allows for the use of Master Agreements to buy and/or sell electricity, gas and related services through various preapproved (“enabled”) suppliers. Contracts or transactions executed under the Council-approved Master Agreements must be done in accordance with the City’s Energy Risk Management Policy, Guidelines and Procedures. Historically, the process for contracting with wholesale utility suppliers has been to: issue a request for proposals (RFP); select multiple suppliers; negotiate terms and conditions with the set of potential suppliers; and seek Council approval and authority to transact under the Master Agreements. This process took upwards of one year.

The current set of Council-approved Electric Master Agreements ([Resolution 9324](#)) approved for use between 2013 and 2027 includes:

1. BP Energy Company
2. Cargill Power Markets, LLC
3. Exelon Generation Company, Inc.
4. Iberdrola Renewables, LLC
5. NextEra Energy Power Marketing, LLC
6. PacifiCorp
7. Powerex Corp.
8. Shell Energy North America (US), L.P.
9. Turlock Irrigation District

The current set of Council-approved REC Master Agreements ([Resolution 9379](#)) approved for use between 2013 and 2018 includes:

1. 3 Degrees Group, Inc.
2. Bonneville Environmental Foundation
3. Constellation Energy Commodities Group
4. EDF Trading North America, LLC
5. Element Markets, LLC
6. Idaho Wind Partners 1, LLC
7. Lakeview Green Energy, Inc.
8. Nexant, Inc.
9. NextEra Energy Power Marketing, LLC
10. PacifiCorp

11. Powerex Corp.
12. Shell Energy North America (US), L.P.
13. Sterling Planet Holdings, Inc.

Council recently approved Ordinance 5387 modifying the Municipal Code to streamline the purchase and sale of wholesale utility commodities and services and to explicitly allow for Council-approved standard form agreements. The ordinance modified Section 2.30.140 clarifying the process to enable suppliers by specifically allowing the use of a standard form agreement that contains the City's minimum contract terms and conditions. Negotiations will be carried out with qualified suppliers on an ongoing basis without the need to issue successive formal requests for proposals or invitations for bids. Execution of, and delegation of authority to transact under, Standard Form Master Agreements with specific suppliers will remain subject to Council approval before any transactions may be completed.

Discussion

For suppliers wishing to be enabled for wholesale electric commodity transactions and related products, the proposed Standard Form Electric Master Agreement is based on the 2000 Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement. For suppliers transacting only in RECs, the Standard Form REC Master Agreement is proposed. Both Standard Form Master Agreements are based on previously executed Master Agreements approved as to form by the City Attorney's Office and incorporate the contract terms and conditions required in City of Palo Alto Municipal Code Section 2.30.340 (c): (1) governing law shall be the laws of the state of California; (2) choice of venue shall be the county of Santa Clara; and (3) a counterparty shall obtain and maintain during the term of the contract the minimum credit rating established as of the date of award of contract of not less than a BBB- credit rating established by Standard & Poor's and a Baa3 credit rating established by Moody's Investors Services.

If the proposed resolution is adopted, both Standard Form Master Agreements will be available on the City's website for all potential electric and REC suppliers to consider. If the counterparty meets the City's requirements and agrees to either Standard Form Master Agreement with only non-substantive changes, staff will seek Council approval and execution for the applicable Standard Form Master Agreement. Such a request will be accompanied by a delegation of authority to the City Manager, or his/her designee, to transact under the Master Agreement subject to certain limits including maximum expenditure level and transaction term limits.

Resource Impact

While the current set of Master Agreements for electricity and RECs are sufficient to competitively and efficiently meet the City's electric supply portfolio objectives, the wholesale market is ever changing with new suppliers entering and exiting the wholesale commodity market. Approval of the Standard Form Master Agreements will help ensure that the City continues to have an active set of suppliers in the future while reducing the amount of staff resources expended to enable suppliers. Further, any future transactions carried out under the

Standard Form Master Agreements will be subject to Council-approved electric supply budget. For Fiscal Year 2017 no budget impacts are anticipated.

Policy Implications

Adoption of the proposed resolution conforms to the Council-approved Energy Risk Management Policy and the Palo Alto Municipal Code. Further, the recommendation is consistent with the Council-approved Long-term Electric Acquisition Plan (LEAP) objective to manage supply cost and wholesale energy price risk by diversifying supply purchases across commitment date, start date, duration, suppliers and pricing terms in alignment with rate stability objectives and reserve guidelines and the Utilities Strategic Plan objectives to a) negotiate supply contracts to minimize financial risk; and b) reduce cost of delivering service through best management practices.

Environmental Review

Council's adoption of the proposed Resolution approving a Standard Form Electric Master Agreement with special terms and conditions and a Standard Form REC Master Agreement does not meet the definition of a project for the purposes of the California Environmental Quality Act, under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), because it is an administrative governmental activity which will not cause a direct or indirect change in the environment.

Attachments:

- Attachment A: Resolution Approving Standard Form Agreements for Electric and Renewable Energy Credits (PDF)
- Attachment B: Standard Form Master REC Agreement (PDF)
- Attachment C: Standard Form Electric Master Agreement (PDF)

NOT YET APPROVED

Resolution No.

Resolution of the Council of the City of Palo Alto Approving the Standard Form Edison Electric Institute Master Power Purchase and Sale Agreement and the Standard Form Master Renewable Energy Certificate Purchase and Sale Agreement

R E C I T A L S

A. On March 7, 2011, the Council adopted Resolution 9152 approving the Long-term Electric Acquisition Plan Objectives, Strategies, and Implementation Plan, as subsequently modified by Council on March 19, 2012 and April 16, 2012 (LEAP).

B. In accordance with LEAP, the City must actively monitor and manage operational, counterparty and wholesale energy price risk by maintaining an adequate pool of creditworthy suppliers and diversifying supply purchases across commitment date, start date, duration, suppliers and pricing terms in alignment with rate stability objectives and reserve guidelines.

C. The City's Energy Risk Management Policy provides for an anti-speculation policy limiting purchases of electricity and related products to meet the City's projected load.

D. The Utilities Strategic Plan's strategic objectives are, among other things, to a) negotiate supply contracts to minimize financial risk; and b) reduce cost of delivering service through best management practices.

E. Through Resolution No. 9379, the Council authorized the City Manager, or his designee, to execute purchases (and incidental sales) of renewable energy credits (RECs) to meet the needs of the City's PaloAltoGreen (PAG) Program, Renewable Portfolio Standard (RPS) and Carbon Neutral Plan by negotiating and executing REC Master Agreements with thirteen pre-qualified suppliers subject to transaction term and expenditure limits enumerated in that resolution.

F. By Ordinance No. 5387, Council approved changes to the Municipal Code specifically streamlining the purchase and sale of wholesale utility commodities and services and explicitly allowing for standard form Master Agreements.

G. The standard form electric master agreement is based on the year 2000 version of the Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement, and includes special provisions in the form of a Cover Sheet (Standard Form Electric Master Agreement), which is based on previously Cover Sheets approved as to form by the City Attorney's Office.

H. The standard form REC master agreement is based on the form of REC Master Agreement previously approved by Council in Resolution No. 9379 (Standard Form REC Master Agreement), and will be for suppliers transacting only in RECs.

I. Both the Standard Form Electric Master Agreement and the Standard Form Master REC Agreement incorporates the contract terms and conditions required in City of Palo Alto Municipal Code Section 2.30.340(c).

J. Each of the Standard Form Electric Master Agreement and Standard Form REC Master Agreement negotiated with a specific electric and REC supplier, respectively, will be recommended to Council for approval with maximum expenditure limits and transaction terms.

NOW, THEREFORE, the Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. The Council hereby approves the attached Standard Form Electric Master Agreement.

SECTION 2. The Council hereby approves the attached Standard Form REC Master Agreement.

SECTION 3. The Council hereby finds and determines that the adoption of this Resolution does not meet the definition of a project for the purposes of the California Environmental Quality Act, under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), because it is an administrative governmental activity, which will not cause a direct or indirect physical change in the environment.

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

MASTER RENEWABLE ENERGY CERTIFICATE PURCHASE AND SALE AGREEMENT

This Master Renewable Energy Certificate Purchase and Sale Agreement (the “Master Agreement”) is made as of this ____ day of _____, 2016 (“Effective Date”), by and between the City of Palo Alto, California, a chartered California municipal corporation with its primary business address at 250 Hamilton Avenue, Palo Alto California 94301 (“City” or “Buyer”) and _____ with its primary business address at _____ (“Seller”). Seller and Buyer may be referred to in the Master Agreement individually, as a “Party” and/or collectively, as “the Parties”. This Master Agreement, together with Confirmation Letters, Attestation Form, and other exhibits related to REC Transaction(s) shall be referred to as “Agreement(s).”

RECITALS:

- A. The Parties wish to buy and sell RECs (as defined herein) on the terms set forth in this Master Agreement;
- B. Buyer wishes to enter into this Master Agreement with Seller to facilitate future Renewable Energy Certificate (REC) purchases to manage various customer programs administered by the Buyer;
- C. Seller has access to RECs from Renewable Energy Facilities and wishes to enter into this Master Agreement with Buyer to participate in the future REC Transactions that the City may undertake from time to time; and
- D. This Master Agreement facilitates, but does not guarantee, Seller’s qualifications to competitively participate with other sellers in future REC Transactions, and it does not guarantee that the City will enter into any future REC Transactions with the Seller.

NOW, THEREFORE, in consideration of the recitals and the covenants, terms and conditions of this Master Agreement, the Parties agree:

AGREEMENT:

1. **Term and Termination.** The term of this Master Agreement shall commence on the Effective Date, as set forth above, and shall remain in effect until terminated. This Master Agreement may be terminated by either Party upon thirty (30) days’ written notice, except that any such termination shall not be effective until all payments, deliveries and other obligations of the Parties under this Master Agreement, and any Confirmation Letters executed thereunder, have been completed.

2. **Definitions.** As used in this Master Agreement, the following terms have the respective meanings set forth below, unless the context otherwise clearly indicates. Other capitalized terms are defined elsewhere in this Master Agreement.

“**Administrator**” means a state or federal administrator, such as the Clean Air Markets Division of the Environmental Protection Agency, Applicable Tracking System, Certification Authority, if applicable, and any Governmental Authority or other body with jurisdiction over Certification under, or the transfer or transferability of Environmental Attributes in, any particular Applicable Standard.

“**Applicable Law**” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to the Applicable Standard or any one or both of the Parties or the terms hereof.

“**Applicable Standard**” means a domestic, international or foreign Renewable Portfolio Standard, including a California or Federal Renewable Portfolio Standard, renewable energy, emissions reduction, or Product Reporting Rights program, scheme or organization, adopted by a Governmental Authority or otherwise, other mandatory or voluntary standard or set of rules, or other similar program with respect to which exists a market, registry or reporting for particular Environmental Attributes, as specified in the Confirmation Letter. An Applicable Standard may include any legislation or regulation concerned with renewable energy, oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by an Administrator, or under any present or future domestic, international or foreign RECs, Products, Environmental Attributes or emissions trading program. Applicable Standards do not include legislation providing for production tax credits or other direct third-party subsidies for generation by a Renewable Energy Source.

“**Applicable Tracking System**” means the generation information system, generation attribute tracking system, or other system specified in the Confirmation Letter that records generation from the Renewable Energy Facility in a particular geographic region, such as WREGIS.

“**Attestation Form**” means the Green-e Energy Renewable Attestation From Wholesale Provider of Electricity Or RECs specified in the form set forth in Exhibit B to this Master Agreement, or such other form required under the Applicable Standard, which includes a binding declaration by the Seller, which substantiates the accuracy of the RECs and will provide all information required under the Applicable Standard.

“**Bankrupt**” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“**Business Day**” means any day, except a Saturday, Sunday, or any day observed as a legal holiday by the City.

“Certification” means, if applicable, the certification by the Certification Authority of the Applicable Standard of (i) the creation and characteristics of a REC, (ii) the qualification of a Renewable Energy Facility or a Renewable Energy Source under an Applicable Standard, (iii) delivery of a REC, or (iv) other compliance with the requirements of an Applicable Standard.

“Certification Authority” means an entity that certifies the generation, characteristics or delivery of a REC, or the qualification of a Renewable Energy Facility or Renewable Energy Source under an Applicable Standard, may include, as applicable, the Administrator, Applicable Tracking System, a Governmental Authority, the Verification Provider, one or both of the Parties, an independent auditor, or other third party, and should include (i) if no Applicable Standard is specified, the Seller, or the generator of the RECs if the Seller is not the generator, (ii) if the RECs are to be delivered pursuant to an Applicable Standard, the Administrator of the Applicable Standard, or such other person or entity specified by the Applicable Standard to perform Certification, or (iii) such other person or entity specified by the Parties.

“Certified Renewable Energy Source” means any Renewable Energy Source that is recognized under an Applicable Standard as specified by the Parties.

“Confidential Information” is defined in Section 12

“Confirmation Letter” or **“Confirm”** means the form used by the Parties to effect a REC Transaction in the form of Exhibit A, attached and incorporated by this reference, specifying the terms of such REC Transaction, including the following: (1) any Environmental Attributes not included with Product or Retained by Seller, (2) the quantity to be purchased and sold; (3) the purchase price; (4) the Delivery Deadline; (5) the Applicable Standard; and, (6) if necessary in accordance with the terms of the REC Transaction, (a) the Vintage(s); (b) the Renewable Energy Facility or Facilities from which the Product is to be generated; (c) the Renewable Energy Source and (d) the geography of the Product. The Confirmation Letter constitutes part of, and is subject to, the terms and provisions of this Master Agreement.

“Costs” means, with respect to the Non-Defaulting Party, the present value of brokerage fees, commissions, attorneys’ fees, and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating or replacing any arrangement pursuant to this Master Agreement; and any charges, penalties, fines or fees imposed or assessed against the Non-Defaulting Party by an Administrator or Governmental Authority on account of delivery not occurring on the Delivery Deadline, as determined by the Non-Defaulting Party in a commercially reasonable manner.

“Credit Rating” means with respect to a Party, on any date of determination, the lower of its long-term senior unsecured debt rating (not supported by third party credit enhancement) or its issuer rating by the specified rating agency.

“Defaulting Party” is defined in Section 6.

“Delivery Deadline” means date specified in the Confirmation Letter by which the Seller shall deliver and Buyer shall receive RECs in accordance with an Applicable Standard.

“Environmental Attribute” means an aspect, claim, characteristic, or benefit associated with the generation of a quantity of electricity by a Renewable Energy Facility, other than the Energy produced, and that is capable of being measured, verified or calculated. An Environmental Attribute may include one or more of the following identified with a particular megawatt hour of generation by a Renewable Energy Facility designated prior to Delivery: the Renewable Energy Facility’s use of a particular Renewable Energy Source, avoided Nox, Sox, CO2 or greenhouse gas emissions, avoided water use (but not water rights or other rights or credits obtained pursuant to requirements of Applicable Law in order to site and develop the Renewable Energy Facility itself) or as otherwise defined under an Applicable Standard, or as agreed by the Parties. Environmental Attributes do not include production tax credits or other direct third-party subsidies for generation of electricity by any specified Renewable Energy Facility.

“Event of Default” is defined in Section 6.

“Force Majeure” is defined in Section 22.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined by it in a commercially reasonable manner.

“Governmental Authority” means any national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Green-e” means an independent renewable energy certification and verification program, administered by the Center for Resource Solutions, a Section 501(c)3 nonprofit organization based in San Francisco, California.

“Interest Rate” means the prime lending rate published under the heading “Money Rates” in the Wall Street Journal.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined by it in a commercially reasonable manner.

“Party” or “Parties” means Buyer and Seller, individually or collectively, as applicable.

“Product” means the RECs to be delivered in a particular Transaction, which may include Environmental Attributes, Verifications, Certifications and other characteristics as specified in a Confirmation Letter.

“Product Reporting Rights” means the exclusive right to report sole ownership of the Product to any Certification Authority, Applicable Tracking System, Administrator, Governmental Authority or other party, including under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future Applicable Standard.

“REC Transaction” means a particular, specific transaction to purchase RECs agreed upon between the Parties as specified in a Confirmation Letter.

“REC Transaction Date” means the date specified on the Confirmation Letter.

“Renewable Energy Certificates” (“REC” or “Credits”) means a certificate, credit, allowance, green tag, Tradable Renewable Certificate (“TRC”) or other transferable document, which is created by an Applicable Standard or a Certification Authority and is associated with the generation of one (1) megawatt hour (“MWh”) of electricity from one or more Renewable Energy Sources by a Renewable Energy Facility. A REC shall include all Environmental Attributes associated with the generation of such electricity, unless specified otherwise in a Confirmation Letter and in accordance with the Applicable Standard, as well as all related Product Reporting Rights, and shall be verified or certified by a Verification Provider or Certification Authority, in accordance with the Applicable Standard. Such Environmental Attributes may be disaggregated and retained, or sold separately, as the Parties agree. A REC is separate from the energy produced and may be separately transferred or conveyed.

“Renewable Energy Facility” means an electric generation unit or other facility or installation that produces electric energy using a Renewable Energy Source.

“Renewable Energy Source” means an energy source that is not fossil carbon-based, non-renewable or radioactive, and may include solar, wind, biomass, geothermal, landfill, gas, or wave, tidal and thermal ocean technologies.

“Renewable Portfolio Standard” or “RPS” means a state or federal law, rule or regulation that requires a stated amount or minimum proportion or quantity of electricity that is sold or used by specified persons to be generated from Renewable Energy Sources.

“Settlement Amount” means the Losses or Gains, and Costs which the Non-Defaulting Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 7.

“Terminated Transaction” is defined in Section 7.

“Verification Provider” means an entity that could be an entity other than the Certification Authority, but could also be the Certification Authority, that verifies or audits specified aspects of Products, RECs, or one or more specified Environmental Attributes.

“Vintage” means the calendar year, quarter, or other specified period of time in which the energy associated with the REC was generated.

“WECC” means Western Electricity Coordinating Council, the western regional council of the North American Electric Reliability Corporation (NERC).

“WREGIS” means the Western Renewable Energy Generation Information System, an independent, renewable energy tracking system for the region covered by the Western Electricity Coordinating Council (WECC).

3. **REC Transactions.**

- (a) **Purchase and Sale:** On the terms and subject to the conditions set forth in this Master Agreement, Seller agrees to sell, and Buyer agrees to purchase, all of Seller's rights, title and interest in and to the RECs to be provided on the dates and otherwise as set forth on any Confirmation Letter(s) now, or hereafter, entered into between the Parties (Exhibit A, attached and incorporated by this reference).
- (b) **Delivery Obligations:** As specified in the applicable Confirmation Letter, one of the following delivery obligations (“Delivery Obligation”) shall apply to each Product quantity to be delivered under each REC Transaction:

If the Confirmation Letter provides that the RECs delivery obligation is:

- (i) “Firm” Seller shall deliver the RECs by the Delivery Deadline, and no ground for excuse other than Force Majeure shall apply;
 - (ii) “Unit Contingent” Seller’s obligation to deliver the RECs will be excused to the extent the Renewable Energy Facility is not able to generate Environmental Attributes in the Vintage or other agreed-to time period as specified in the Confirmation Letter, (due to the performance of the Renewable Energy Facility); or
 - (iii) “Project Contingent” Seller’s obligation to deliver the RECs will be excused to the extent the Renewable Energy Facility is not able to generate Environmental Attributes in the Vintage or other agreed-to time period as specified in the Confirmation Letter, due to a delay or failure in constructing or obtaining necessary approvals to construct or modify and operate the new or modified Renewable Energy Facility, or due to reasons as specified in the Confirmation Letter.
- (c) **Right to Sell and Associated Declarations.** With respect to each REC Transaction, Seller hereby represents and warrants to Buyer, upon Delivery for each Product, the following:

- (i) Seller has exclusive rights to, good and marketable title to, and unencumbered interest in, the Product described in each REC Transaction under Applicable Law; and
 - (ii) Seller transfers and sells to Buyer all present and future rights, title, and unencumbered interest of Seller in and to the Environmental Attributes (as discussed in the Confirmation Letter) to the extent Seller will have such rights, title, and interest in and to such RECs under Applicable Law and such transfer and sale to Buyer is not in violation of any Applicable Law at the time of execution of the Confirmation Letter.
- (d) Notwithstanding whether such RECs are transferable to Seller under any Applicable Law, with respect to each REC Transaction upon Delivery for each Product, Seller covenants to Buyer that:
- (i) Seller has not transferred, and will not transfer, any portion of the rights, title and interest in and to the Product to a third party;
 - (ii) Product will not be sold, marketed, or otherwise claimed by Seller;
 - (iii) Product delivered to Buyer shall be sold by Seller once and only once;
 - (iv) The Environmental Attributes or the electricity that was generated with the attributes were not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, Renewable Portfolio Standard, or other renewable energy mandate; and
 - (v) The electricity that was generated with the attributes was not separately sold, separately marketed or otherwise separately represented as renewable energy by Seller. Seller shall take such action as may be necessary to transfer and evidence the transfer of RECs to Buyer.
- (e) Confirmation. Unless otherwise agreed in writing, Seller will send Buyer a Confirmation Letter, which may be in substantially the form attached hereto as Exhibit A, or as modified, to describe the specific RECs to be purchased in the REC Transaction. Upon receipt of such Confirmation Letter, the other Party shall promptly return, in the manner described in Section 11, "Notices", a written acceptance thereof, which shall be a signed copy of the Confirmation Letter.
- (f) REC Contract Price. Buyer agrees to buy and Seller agrees to sell each REC at a price in dollars per MWh as set forth in the Confirmation Letter.

- (g) REC Product Quantity. Seller will provide to Buyer RECs in the quantity as set forth in the Confirmation Letter in accordance with the specified Delivery Obligation.
- (h) Monetary Value of REC Transactions. The monetary value of each REC Transaction, which is the REC Contract Price times the REC Product Quantity, shall be set forth in the Confirmation Letter associated with that Transaction.
- (i) Certification. Seller represents and warrants that it will provide to Buyer RECs that meet or exceed the Applicable Standard as set forth in the Confirmation Letter such as, for example, the requirements of the Center for Resource Solutions' Green-e certification program, as amended from time to time and referenced in Exhibit B.
- (j) Reporting.
 - (i) If required under the Applicable Standard, Seller shall be obligated to complete and provide to Buyer a signed copy of the Attestation Form, or suitable equivalent substitute no later than the Delivery Deadline, as specified in the Confirmation Letter.
 - (ii) Buyer is not obligated to pay Seller for any RECs which have not been delivered.
- (k) Applicable Tracking System. If specified in the Confirmation Letter, Seller shall deliver to Buyer, and Buyer shall receive, the RECs by the Delivery Deadline via the Applicable Tracking System (or other mechanism provided for in the Confirmation Letter), such as WREGIS, such that all rights, title to and interest in the RECs shall transfer from Seller to Buyer upon such delivery and in accordance with the rules of the Applicable Tracking System.

4. Financial and Performance Assurances.

- (a) Material Adverse Change. A "Material Adverse Change" occurs with respect to either Party if: reasonable grounds exist to cause a Party to believe that the creditworthiness of the other Party has become unsatisfactory or that a Party's ability to perform under this Master Agreement has been materially impaired.
- (b) Adequate Assurances. If a Party believes that a Material Adverse Change has occurred, the dissatisfied Party (the "First Party") may make a written request for the other Party (the "Second Party") to provide adequate assurance in an amount determined in a commercially reasonable manner,

and in a form acceptable to the First Party. Acceptable Performance Assurance includes (i) cash; (ii) an irrevocable, non-transferable standby letter of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch acceptable to the First Party in its sole discretion with such bank having a credit rating of at least A- from Standard & Poor's Rating Group (a division of McGraw-Hill, Inc) (or its successor) or A3 from Inc. (or its successor), in a form acceptable to the First Party with costs of a letter of credit borne by the applicant of such letter of credit; (iii) a prepayment; or (iv) such other acceptable security acceptable to the First Party; each of (i) through (iv) in the First Party's sole discretion. Upon receipt of the request to provide adequate assurance, the Second Party shall have two (2) Business Days to provide such assurance before an Event of Default under Section 6 of this Master Agreement will be deemed to have occurred and the First Party will be entitled to the remedies set forth in Section 7. If the Second Party provides such adequate assurance to the First Party within two (2) Business Days, it is understood that the Second Party shall not in fact have defaulted under this Master Agreement by incurring a Material Adverse Change.

5. Billing and Terms of Payment.

- (a) Billing. Upon each delivery of RECs, Seller shall provide an invoice to Buyer in the amount applicable to each REC Transaction executed under the Confirmation Letter.

- (b) Terms of Payment. The terms of payment shall be net thirty (30) days after the date Buyer receives a properly prepared and accurate invoice sent to the Buyer's address, which shall include at a minimum:
 - (1) Seller's complete name and address where payment is to be remitted;
 - (2) Buyer's complete name and address where bill is to be sent;
 - (3) Price and billing units consistent with the Confirmation Letter(s) executed by the Parties;
 - (4) quantity;
 - (5) Attestation, if required, will be delivered with invoice;
 - (6) invoice date;
 - (7) total monetary amount;
 - (8) terms of payment, including any applicable discount calculations;
 - (9) tax amount/rate information, if applicable.

- (c) Payment may be made by check or wire transfer. Payment by check shall be considered made when received by Seller.

Buyer agrees to send its payment to:

Address: _____

Attention: _____

Wiring instructions:

6. Events of Default.

A Party is in default (“**Default**”) hereunder if that Party (the “**Defaulting Party**”) does any of the following (each an “**Event of Default**”):

- (a) the failure of the Buyer to make any payment required pursuant to this Master Agreement, if such failure is not remedied within fifteen (15) Business Days after written notice, provided that if the Buyer, in good faith, disputes all or any portion of the payment, the Buyer shall pay only that portion of the payment that it does not dispute;
- (b) the failure of the Seller to deliver RECs when due pursuant to this Master Agreement, if such failure is not remedied within five (5) Business Days after written notice to the affected Party;
- (c) any representation or warranty provided by either Party herein that shall prove to have been false or misleading in any material respect when made or repeated;
- (d) the failure by a Party to perform any covenant or agreement set forth in this Master Agreement and applicable Confirmation Letters and incorporated exhibits (other than its obligations to make any payment or obligations which are otherwise specifically covered as a separate Event of Default), and such failure is not cured within fifteen (15) Business Days after written notice thereof to the affected Party;
- (e) the Party becomes Bankrupt; or
- (f) the failure by a Party to provide timely and satisfactory financial and/or performance assurance when requested to do so under the terms of this Master Agreement, and such failure is not cured within five (5) Business Days after written notice thereof to the affected Party.

7. Remedies for Default.

- (a) Declaration of Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party occurs and is continuing, the other Party (the “Non-Defaulting Party”) will have the right to do any or all of the following:

- (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, REC Transactions (each referred to as a “Terminated Transaction”) between the Parties;
 - (ii) withhold any payments due to the Defaulting Party under this Master Agreement; and
 - (iii) suspend performance.
- (b) Calculation of Settlement Amounts. The Non-Defaulting Party will calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date by aggregating its Gains, Losses and Costs with respect to each such Terminated Transaction (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under Applicable Law on the Early Termination Date, as soon thereafter as is reasonably practicable). If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Master Agreement, the settlement amount shall be zero, notwithstanding any provision of this Master Agreement to the contrary.
- (c) Net Out of Settlement Amounts. The Non-Defaulting Party will aggregate all Settlement Amounts into a single amount by netting out the following:
- (i) all amounts that are due to the Defaulting Party, if the Defaulting Party is Seller, for RECs that have been delivered and not yet paid for, plus, at the option of the Non-Defaulting Party, any or all other amounts due to the Defaulting Party under this Master Agreement; against
 - (ii) all Settlement Amounts that are due to the Non-Defaulting Party under this Master Agreement, so that all such amounts will be netted out to a single liquidated amount (the “Termination Payment”) payable by the Non-Defaulting Party.

The Termination Payment, if any, is due from the Defaulting Party to the Non-Defaulting Party within five (5) Business Days following notice.

- (d) Calculation Disputes. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Settlement Amount or Termination Payment, in whole or in part, the Defaulting Party will, within five (5) Business Days

of receipt of the Non-Defaulting Party's calculation, provide the Non-Defaulting Party a detailed written explanation of the basis for such dispute.

- (e) Limitation on Damages. The Defaulting Party's liability will be limited to direct, actual damages, and Costs only, and such direct, actual damages, and Costs will be the sole and exclusive remedy hereunder. In no event will either Party be liable to the other under this Master Agreement for any consequential, incidental, punitive, exemplary, or indirect damages in tort, contract, or otherwise pursuant to this Section 7, except for any claims indemnified pursuant to Section 8.
- (f) Exclusive Remedy. THE REMEDIES SET FORTH IN THIS SECTION ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO THE NONDEFAULTING PARTY IN THE EVENT OF A PARTY'S DEFAULT WITH RESPECT TO ITS OBLIGATIONS TO SELL OR PURCHASE RECS, AND A PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN THIS SECTION. ALL OTHER REMEDIES OR DAMAGES FOR FAILURE TO SELL OR PURCHASE RECS AT LAW ARE HEREBY WAIVED.

8. Indemnification.

- (a) Indemnification of Buyer: To the fullest extent permitted by Applicable Law, Seller agrees to protect, defend, hold harmless and indemnify Buyer, its City Council, commissioners, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which Buyer shall become liable arising from Seller's acts, errors, or omissions with respect to or in any way connected with the maintenance, assistance and services performed by Seller pursuant to this Master Agreement and subsequent REC Transactions and related Confirmation Letters, except for claims, liabilities and damages caused by the Buyer's sole negligence or willful misconduct.
- (b) Indemnification of Seller: To the fullest extent permitted by Applicable Law, Buyer agrees to protect, defend, hold harmless and indemnify Seller, its board of directors, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which Seller shall become liable arising from Buyer's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the maintenance, assistance and services performed by Buyer pursuant to this Master Agreement and subsequent and related Confirmation Letters, except for claims, liabilities

and damages caused by the Seller's comparative negligence or willful misconduct.

9. Relationship of the Parties.

The relationship of the Parties under this Master Agreement is that of independent contractors. The Parties specifically state their intention that this Master Agreement is not intended to create a partnership or any other co-owned enterprise unless specifically agreed to by the Parties in a separate written instrument. Except as specifically provided herein, each Party shall continue to have the right to contract independent of the other Party with individuals and entities. Each Party shall be responsible for its own operating expenses and personnel expenses.

10. Taxes and Costs.

Unless otherwise specified in the applicable Confirmation Letter (and to the extent not included in the purchase price), each Party shall bear the cost of any taxes imposed on such Party in relation to or arising out of such REC Transaction. Each Party shall be liable for all costs, fees, commissions or other payments due to brokers, agents or other intermediaries incurred by such Party (and shall indemnify and hold the other Party harmless from and against all such amounts) in connection with the drafting, consummation or performance of this Master Agreement or any REC Transaction hereunder.

11. Notices.

All notices required or permitted to be given hereunder in writing shall, unless expressly provided otherwise, be in writing, properly addressed, postage pre-paid and delivered by hand, facsimile, certified or registered mail, courier or electronic messaging system to the appropriate address as either Party may designate from time to time by providing notice thereof to the other Party.

If to Buyer:

Address: 250 Hamilton Ave.
Palo Alto, CA 94301
Attention: City Clerk
Phone: 650-329-2119
Fax: 650-617-3140

If to Seller:

Address:
Attention:
Phone:
Fax:

With a copy to:

Address: 250 Hamilton Ave.
Palo Alto, CA 94301
Attention: Director of Utilities
Phone: 650-329-2119
Fax: 650-617-3140

Notices delivered by facsimile or by an electronic messaging system shall require confirmation through a reply facsimile or electronic message.

12. Confidential Information.

- (a) “Confidential Information” shall mean and include information consisting of documents and materials of a disclosing Party and/or any other technical, financial or business information of or about a disclosing Party which is not available to the general public, as well as all information derived from such information, which is furnished or made available to the other Party and is clearly labeled, marked or otherwise identified as “confidential” or “proprietary information.”
- (b) The disclosing Party is the Party to whom the Confidential Information originally belongs and who shall, after appropriate notice from the receiving Party, bear the burden of pursuing any legal remedies to retain the confidential status of the Confidential Information, as set forth in Section 12(e), below.
- (c) Confidential Information disclosed by either Party to the other shall be held by the receiving Party in confidence, and shall not be:
 - (i) used by the recipient to the detriment of the disclosing Party; or
 - (ii) made available for third parties to use.
- (d) Each Party shall direct its employees, contractors, consultants and representatives who have access to any Confidential Information to comply with all the terms of this Section. Information received by the receiving Party shall not be Confidential Information if:

- (i) it is or becomes available to the public through no wrongful act of the receiving Party;
 - (ii) it is already in the possession of the receiving Party and not subject to any confidentially agreement between the Parties;
 - (iii) it is received from a third party without restriction for the benefit of the disclosing Party and without breach of this Master Agreement;
 - (iv) it is independently developed by the receiving Party; or
 - (v) it is disclosed pursuant to a requirement of law or a duly empowered government agency or a court of competent jurisdiction after due notice and an adequate opportunity to intervene is given to the disclosing Party, unless such notice is prohibited.
- (e) Seller acknowledges that City is a public agency and is subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Seller may submit Confidential Information to City pursuant to Section 12(a), above and City will maintain such identified documents as confidential to the fullest extent allowed by law. However, upon request or demand from any third person or entity not a party to this Master Agreement (“Requestor”) for production, inspection and/or copying of information designated by a disclosing Party as Confidential Information, the receiving Party shall notify the disclosing Party that such request has been made in accordance with Section 11 of this Master Agreement. Upon receipt of this notice, the disclosing Party shall be solely responsible for taking whatever legal steps may be necessary to protect the information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the receiving Party. If within ten (10) days after receiving the foregoing notice from the receiving Party, the disclosing Party takes no such action, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.
- (f) Upon termination or expiration of this Master Agreement, the receiving Party shall, at the disclosing Party’s direction, either return or destroy all of the disclosing Party’s Confidential Information and so certify in writing. The obligations of this provision will survive for one (1) year after any termination or expiration of this Master Agreement.

13. Publicity and Disclosure.

Seller shall not use the name, trade name, trademarks, service marks of or owned by Buyer, or logos of Buyer, or share Confidential Information in any publicity releases, news releases, annual reports, product packaging, signage, stationery, print literature, advertising, websites or other media without securing the prior written approval of Buyer. Seller shall not, without prior written consent of Buyer, represent, directly or indirectly, that any product or service offered by Seller has been approved or endorsed by Buyer. Seller agrees that Buyer may make oral and written reports and other communications regarding this Master Agreement and subsequent REC Transactions to the Palo Alto City Manager, City Council and other

public officials as required by law, which reports and communications will be public reports and communications.

14. Nondiscrimination.

As set forth in Palo Alto Municipal Code section 2.30.510, Seller agrees that in the performance of this Master Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person. Seller acknowledges that it has read and understands the provisions of Chapter 2.30 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Chapter 2.30 pertaining to nondiscrimination in employment, including completing the form furnished by Buyer and set forth in Exhibit C.

15. Miscellaneous Representations and Warranties.

- (a) Each Party represents and warrants that the execution and performance of this Master Agreement and subsequent REC Transactions will not conflict with or result in a breach of any other agreement to which it is a party.
- (b) Each Party represents and warrants that it is duly organized, validly existing and in good standing under the laws of a state of the United States of America.
- (c) Each Party represents and warrants that it has full power and authority to make, execute, deliver and perform this Master Agreement and subsequent REC Transactions.
- (d) Each Party represents and warrants that it will abide by the Applicable Program as specified in each Confirmation Letter.
- (e) Each Party represents and warrants that it will abide by the Green-e Standard v. 1.5 or as amended when applicable.

16. Choice of Law.

The laws of the State of California shall be applied and be controlling for all purposes and all matters relating to the Master Agreement. In the event that an action is brought, the Parties agree that trial of such action will be vested exclusively in the United States District Court for the Northern District of California in the County of Santa Clara, State of California.

17. Entire Agreement.

This Master Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, whether oral or written, of the Parties.

18. Amendments.

Except to the extent herein provided, no amendment, supplement, modification, termination or waiver of this Master Agreement shall be enforceable unless executed in writing by the Party to be bound thereby.

19. Assignment.

This Master Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Master Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld. Notwithstanding any provision to the contrary in this Agreement, any direct or indirect change of control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of Buyer, which consent shall not be unreasonably withheld.

20 Non-Waiver; No Third Party Beneficiaries.

No waiver by any Party of any of its rights with respect to the other Party or with respect to this Master Agreement or any matter or default arising in connection with this Master Agreement, shall be construed as a waiver of any other right, matter or default. Any waiver shall be in writing signed by the waiving Party. No payment, partial payment, acceptance or partial acceptance by Buyer will operate as a waiver on the part of the Buyer of any of its rights under the Master Agreement. This Master Agreement and subsequent Confirmation Letters related to REC Transaction are made and entered into for the sole benefit of the Parties, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, have any rights under, or have any direct or indirect cause of action or claim in connection with this Master Agreement.

21. Severability.

In the event that any provision of the Master Agreement is found to be void or unenforceable, such findings shall not be construed to render any other provision of the Master Agreement either void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are void or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either Party.

22. Force Majeure.

Neither Party shall be liable in any respect for failure or delay in the fulfillment or performance of REC Transactions under this Master Agreement, if performance is hindered or prevented, directly or indirectly by an event beyond the reasonable control of either Party, including, without limitation, war, public emergency or calamity, fire, earthquake, Acts of God, strikes, labor disturbance or actions, civil disturbances or riots, litigation brought by third parties against the Parties, or any act of a superior governmental authority or court order. Force Majeure may not be based on (i) Seller's ability to sell RECs to another at a price greater than the purchase price specified in the Confirmation Letter, (ii) Buyer's inability economically to use or resell the RECs, or (iii) Buyer's ability to purchase RECs at a price less than the purchase price specified in the Confirmation Letter.

23. Exhibits and Insurance.

The exhibits attached hereto are incorporated into this Master Agreement by reference. The exhibits may only be revised upon mutual agreement between the Parties unless otherwise specified in the exhibits. In the event of a conflict between this Master Agreement and the Confirmation Letter, the terms of the Confirmation Letter shall prevail. During the term of this Master Agreement, Seller shall maintain the insurance levels set forth on Exhibit D.

24. Compliance with Law.

Each Party will comply with all lawful federal, state and local law, ordinances, resolutions, rate schedules, rules and regulations that may affect its rights and obligations under the Master Agreement.

25. Fiscal Provisions.

The REC Transactions under this Master Agreement are subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. The Master Agreement and all related Confirmation Letters and Agreements will terminate without penalty (i) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (ii) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal years and funds for the City's obligations are no longer made available. This provision will take precedence in the event of a conflict with any other term or condition of the Master Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, each of the Parties hereto acknowledge that they have read the terms and conditions contained herein, understand and agree to the same and agree to be bound thereby and have caused this Master Agreement to be executed in duplicate originals by its duly authorized representative on the respective dates entered below.

CITY OF PALO ALTO
(“BUYER”)

XXXX
(“SELLER”)

City Manager

APPROVED AS TO FORM:

Senior Deputy City Attorney

APPROVED:

Director of Administrative
Services

Director of Utilities

By: _____

Name:

Title:

Taxpayer Identification No.

Exhibit A

Confirmation Letter #1

The following describes a REC Transaction between Buyer and Seller for the sale, purchase and delivery of Renewable Energy Certificates (“**RECs**”) pursuant to the terms of the Master Agreement between the City of Palo Alto and _____ dated _____, 2016.

Initially capitalized terms used and not otherwise defined herein are defined in the Master Agreement.

Basic Commercial Terms:

REC Transaction Date:	
REC Transaction Reference:	
Seller:	
Buyer:	
Renewable Resource Facility:	
Renewable Energy Source:	
Geography:	
Vintage(s):	
REC Product Quantity (MWh):	
REC Contract Price (\$/MWh):	
Monetary Value of REC Transaction (\$):	
Delivery Deadline:	

Product Specific Terms:

Applicable Standard:	
Environmental Attributes retained by Seller, if any:	
Applicable Tracking System:	
Attestation Form [yes, no]	
Delivery Obligation [Firm, Unit Contingent, Project Contingent]:	

This Confirmation Letter is executed pursuant to and in accordance with the Master Agreement, and constitutes part of and is subject to the terms and provisions of the Master Agreement.

The Parties agree to the REC Transaction set forth herein.

City of Palo Alto (“Buyer”)	XXXX (“Seller”)
Signature	Signature
Name	Name
Title	Title
Date	Date



Exhibit B

Attestation Form

**Green-E Renewable Attestation from
Wholesale Provider of Electricity or Recs**

I. Wholesale Provider Information

Name of Provider: _____

Address of Provider:

Contact Person: _____ Title: _____

Telephone: _____ Fax: _____ Email _____

Address: _____

II. Declaration

I, (print name and title) _____ declare(s) that the (indicate with "X")¹ _____ electricity bundled with renewable attributes / _____ renewable attributes only ² listed below were sold exclusively from: (name of Provider) _____ ("Provider") to: (name of REC provider, utility, or electric service provider) _____ ("Purchaser").

On behalf of the Provider, I further declare that:

- 1) all the renewable attributes (including CO₂ benefits), including any emissions offsets, reductions or claims, represented by the renewable electricity generation listed below were transferred to Purchaser;
- 2) to the best of my knowledge, the renewable attributes were not sold, marketed or otherwise claimed by a third party;
- 3) Provider sold the renewable attributes only once;
- 4) the renewable attributes or the electricity that was generated with the attributes was not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by Provider, nor, to the best of my knowledge, by any other entity;
- 5) the electrical energy that was generated with the attributes was not separately sold, separately marketed or otherwise separately represented as renewable energy by Provider, or, to the best of my knowledge, by any other entity; and

¹ Use separate forms to report electricity and REC sales.

² If Seller purchased electricity bundled with renewable attributes and has stripped off those attributes to sell in this transaction, and is selling the undifferentiated electricity to a utility or load-serving entity, see section III also.

6) the facilities that generated all of the renewable electricity / renewable attributes (as indicated above) sold to Purchaser are listed below by fuel type.

List the renewable MWs sold or transferred to Purchaser identified below by quarter of generation as a separate line item.

Generator Name	Generator ID Number (EIA or QF)	Nameplate Capacity (MW)	Fuel Type	# MWs RECs / Elec. Sold	First Date of Generator Operation (mm/yy) ³	Period of Generation (quarter#/yy or mm/yy)

As an authorized agent of Provider, I attest that the above statements are true and correct.

Signature

Date

Place of Execution

III. Additional Statement required of Provider selling electricity to Purchaser

(Check box if not applicable: [])

I declare that the electricity listed above was delivered into the following NERC region or ISO:

IV. Additional Statement required if Provider is selling only RECs to Purchaser and selling the associated electricity to a utility or load-serving entity

(Check box if not applicable: [])

Please write the name of the utility or load-serving entity here:

By signing below, I attest to the accuracy of all Additional Statements above (III through IV):

Signature

Date

Place of Execution

³ For facilities that have added new renewable capacity, please indicate the amount and operational date of the new capacity and the existing capacity.

This Form is used by the Center for Resource Solutions to verify the accuracy of claims made by retail marketers. The information on this form is held strictly confidential and will not be shared

Exhibit C
Certification of Nondiscrimination

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

THE INFORMATION HEREIN IS CERTIFIED CORRECT BY SIGNATURE(S) BELOW.

Authorized Signature: _____

Date: _____

EXHIBIT D

INSURANCE REQUIREMENTS

Seller shall maintain the level of insurance set forth below:

ATTACHMENT C

MASTER POWER PURCHASE AND SALE AGREEMENT (EEI Version 2.1, modified 4/25/00)

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: ____ __, 2016 (“*Effective Date*”). The *Master Agreement*, together with the exhibits, schedules, annexes and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “*Agreement*.” The Parties to this *Master Agreement* are the following:

Name: _____ (“Counterparty ” or “Party A”)	Name: City of Palo Alto (“Counterparty” or “Party B”)
All Notices: Attn: _____ Phone: _____ Facsimile: _____ E-mail: _____ Duns _____ Federal Tax ID Number: _____	All Notices: Attn: Assistant Director, Resource Management Department of Utilities City of Palo Alto 250 Hamilton Avenue, 3 rd Floor Palo Alto, CA 94301 Phone: 650-329-2119 Facsimile: 650-617-3140 Duns: 17-892-8479 Federal Tax ID Number: 94-6000389
With additional Notices of an Event of Default or Potential Event of Default to: Attn: _____ Phone: _____ Facsimile: _____	With additional Notices of an Event of Default or Potential Event of Default to: Attn: Senior Assistant City, Attorney/Utilities City of Palo Alto Phone: 650-329-2171 Facsimile: 650-329-2646
Invoices: Attn: _____ Phone: _____ Facsimile: _____ E-mail: _____ Duns _____ Federal Tax ID Number: _____	Invoices: Attn: Power Accounts Administrator Northern California Power Agency 651 Commerce Drive Roseville, CA 95678-6420 Phone: (916) 781-4224/3636 Facsimile: (916) 781-4225
Day Ahead Pre-Scheduling: Attn: _____ Phone: _____ Facsimile: _____ E-mail: _____	Day Ahead Pre-Scheduling: Confirmations: Attn: Pre-Scheduler Desk Northern California Power Agency 651 Commerce Drive Roseville, CA 95678 Phone: 916-781-4240/4227/4228 Facsimile: 916-781-4239

Real Time Scheduling: Attn: _____ Phone: _____ Facsimile: _____ E-mail: _____	Real Time Scheduling: Attn: Chief Dispatcher/Scheduler Northern California Power Agency 651 Commerce Drive Roseville, CA 95678 Phone: 916-781-4237/3636 Facsimile: 916-781-4226
Payments: Attn: _____ Phone: _____ Facsimile: _____ E-mail: _____	Payments: Attn: Accounts Payable Northern California Power Agency 651 Commerce Drive Roseville, CA 95678 Phone: 916-781-4237/3636 Facsimile: 916-781-4226
Wire Transfer: BNK _____ ABA: _____ ACCT: _____ Confirmation _____	Wire Transfer: Deposit to Northern California Power Agency, "to the benefit of City of Palo Alto" BNK U.S. Bank ABA: 121122676 ACCT: 1-534-0216-2744 Attn: Cyndy Husebye U.S. Bank 555 SW Oak Street, Suite 400 Portland, OR. 97204 Phone: 877-295-2509 Facsimile: 877-324-1680
Credit and Collections: Attn: _____ Phone: _____ Facsimile: _____	Credit and Collections: Attn: Power Accounts Analyst Northern California Power Agency 651 Commerce Drive Roseville, CA 95678 Phone: 916-781-4221/4224 Facsimile: 916-781-4255

The Parties hereby agree that the General Terms and Conditions are incorporated herein, as selected, modified and amended by the following specific provisions, as provided for in such General Terms and Conditions:

Party A Tariff: FERC Electric Rate Schedule ____, dated _____, Docket Number: ER__-__-____
 Party B Tariff: N/A

Article One	
General Definitions	Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: "Business Day" means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Bank Holiday.
	Section 1.10 is amended by adding after "the price" in line 1 the words ", including any and all AB 32 fees" and substituting "U.S. \$" for "\$U.S." in line 1.
	Section 1.11 is amended by adding the following after "Party" in the third line: "after using commercially reasonable efforts to mitigate costs".

	Section 1.12 is amended by deleting in the fourth line the word “issues” and replacing it with the word “issuer”.
	Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.
	Section 1.27 is amended by inserting the phrase “and in an amount” in the third line after the word “form” and before the word “acceptable”.
	Section 1.28 is amended by adding before the period at end thereof the following: “in accordance with Section 5.2”.
	Section 1.45 is amended by adding the following sentence at the end of that provision: “Party B shall be deemed to have complied with any request from Party A for the provision of Performance Assurance by furnishing a copy of a resolution adopted by Party B’s City Council within a reasonable period of time after receipt of such request, determining that Party B’s retail rates are set at levels sufficiently high to recover all costs of providing electric service to Party B’s retail electric customers, including the costs incurred by Party B under all Transactions executed under this Agreement.”
	Section 1.46 is amended by adding before the period at the end thereof the following: “; provided that the failure to comply with any requirement of this Master Agreement or a Transaction, including the requirements of Article 8, before the expiration of the time period expressly specified for such compliance in this Master Agreement or the Transaction, if any, shall not be considered a Potential Event of Default unless and until the applicable time period has expired without compliance”.
	Section 1.50 is amended by deleting the reference to “Section 2.4” and replacing it with “Section 2.5”.
	Section 1.51 is amended by (a) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point”, and (b) deleting the phrase “at Buyer’s option” in the fifth line and inserting in their place the following: “absent a purchase” and (c) inserting in the seventh line after the words, “any penalties” and before “, ratched demand”, the following: “(other than penalties imposed on Buyer under the CAISO Tariff, the NCPA Metered Subsystem Agreement, or an open access transmission tariff as a result of the non-delivery)”.
	Section 1.53 is amended by (a) deleting the phrase “at the Delivery Point” in the second line, and (b) deleting the phrase “at Seller’s option” in the fifth line and inserting in their place the following: “absent a sale, assuming a sale could not have been made in a commercially reasonable manner.”
	Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”
	Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”.
<u>Article Two</u>	
Transaction Terms and Conditions	Section 2.1 shall be amended by deleting the second sentence thereof.

	For purposes of Section 2.3, Party B requires that all Transactions be confirmed in writing. Accordingly, the provision is amended by striking the word “may” from the first line thereof and replacing it with the word “shall.”
	For purposes of Section 2.3, all references to Seller shall be instead to Party A.
	<input checked="" type="checkbox"/> Optional provision in Section 2.4. If not checked, inapplicable.
	A new Section 2.6 is added to Article Two, worded as follows: “2.6 <u>No Oral Agreements or Modifications</u> . Notwithstanding anything to the contrary in this Master Agreement, including in this Article Two, no Transaction between the Parties shall become binding unless and until a Confirmation for such Transaction is signed by both Parties, and this Master Agreement and any and all Transactions may not be orally amended or modified, including by Recording pursuant to Section 2.5.”
<u>Article Four</u>	
Remedies for Failure to Deliver or Receive	<input checked="" type="checkbox"/> Accelerated Payment of Damages. If not checked, inapplicable.
	A new Section 4.3 is added to Article Four, worded as follows: “4.3 <u>Suspension of Performance</u> . In addition to the remedies provided pursuant to Sections 4.1, 4.2 and 5.7, if Seller or Buyer fails to schedule, deliver or receive all or part of the Product pursuant to a Transaction for a period of three (3) or more consecutive days, and such failure is not excused under the terms of the Product, by Force Majeure, by the other Party’s failure to perform or by agreement of the Parties, then upon one (1) Business Day’s prior written notice, and for so long as the non-performing Party fails to perform, the performing Party shall have the right to suspend its performance under such Transaction. In the event the performing Party suspends performance pursuant to this Section 4.3, it shall not be obligated to resume performance until it has received notice from the non-performing Party at least one (1) Business Day prior to the date upon which the non-performing Party intends to resume its performance; provided that, if the performing Party has entered into a replacement contract with a term of 31 days or less, the performing Party may resume performance at the end of the term of such replacement contract. Remedies available under this provision to the performing Party are in addition to, not in replacement of, other remedies specified in this Agreement.”
<u>Article Five</u>	
Events of Default; Remedies	<input checked="" type="checkbox"/> Cross Default provision of Section 5.1(g) shall apply for both Party A and Party B. Cross Default amount for each shall be \$20,000,000.
	Section 5.1(g) is amended by inserting, “or any Affiliate of such Party” after the first appearance of the word “Party” in subsections (i) and (ii).

	<p>Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semi-colon, and adding new subsections “(i),” “(j)”, “(k)” and “(l)”, which read as follows:</p> <p>“(i) during any consecutive ninety (90) day period, there have occurred five (5) or more “Seller Failures” as that term is used in Section 4.1, under any or all Transactions, regarding which the Seller shall be deemed to be the Defaulting Party, and Buyer shall also be entitled to its remedies under Section 4.1;</p> <p>(j) during any consecutive ninety (90) day period, there have occurred five (5) or more “Buyer Failures” as that term is used in Section 4.2 under any or all Transactions, regarding which the Buyer shall be deemed to be the Defaulting Party, and Seller shall also be entitled to its remedies under Section 4.2;</p> <p>(k) a representation or warranty with respect to the Defaulting Party's financial statement or position that is false or materially misleading; or</p> <p>(l) revocation by the Federal Energy Regulatory Commission of Party A’s authorization to make sales and market-based rates.”</p>
	<p>Section 5.2 is amended in line 3 by changing “right (i) to” to “right to (i)” and by adding the following sentence to the end of that provision:</p> <p>“If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Settlement Amount shall be zero, notwithstanding any provision of this Agreement to the contrary.”</p>
	<p>Section 5.3 is amended by inserting the phrase “plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party pursuant to Article Eight”, between the words “that are due to the Non-Defaulting Party,” and “plus any and all other amounts” in the sixth line thereof</p>
	<p>Section 5.6 Closeout Setoff</p> <p>___ Option A (Applicable if no other selection is made.)</p> <p><u>X</u> Option B - Affiliates shall have the meaning set forth in the Master Agreement unless otherwise specified as follows: Option B is amended as set forth in Article 10 below.</p> <p>___ Option C (No Setoff)</p>
	<p>Section 5.6 is further amended by inserting before the last sentence in Option B:</p> <p>“At the election of the Non-Defaulting Party, all obligations owing by or to an Affiliate of a Party shall be treated as if they were owing by or to the Party itself for purposes of set-off.”</p>
<u>Article Six</u>	<p>Section 6.4 is amended by deleting “and owing to each other on the same date”.</p>
	<p>Section 6.8 is amended by deleting the words, “may by agreement of the Parties,” in line 3 and inserting in their place the word “shall”.</p>

Article Seven	Section 7.1 is amended by (i) deleting in the fifteenth line the words, “UNLESS EXPRESSLY HEREIN PROVIDED,”; (ii) adding in the nineteenth line the words, “; PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF SECTIONS 4.1 AND 4.2 OF THIS AGREEMENT RELATING TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE AND OF SECTIONS 5.2 AND 5.3 OF THIS AGREEMENT RELATING TO THE CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT” immediately after the words “ANY INDEMNITY PROVISION OR OTHERWISE”, and (iii) adding at the end of the last sentence the words, “AND ARE NOT PENALTIES”.
Article Eight	8.1 Party A Credit Protection
Credit and Collateral Requirements	Financial Information from Party B, Section 8.1(a) <input type="checkbox"/> Option A <input checked="" type="checkbox"/> Option B Specify: Audited financial statements for City of Palo Alto and for City of Palo Alto Enterprise Fund <input type="checkbox"/> Option C
	Credit Assurances from Party B, Section 8.1(b) <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Applicable
	Collateral Threshold for Party B, Section 8.1(c) <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Applicable
	Party B Independent Amount: N/A Party B Rounding Amount: N/A Party B Minimum Transfer Amount: N/A
	Downgrade Event, Section 8.1(d): <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Applicable If applicable, complete the following: <input checked="" type="checkbox"/> It shall be a Downgrade Event for Party B <i>only</i> if (a) Party B’s underlying rating, determined without reference to third party credit enhancement, on its utility revenue bond ("Debt") by S&P or Moody's is respectively below BBB- or Baa3, (b) (ii) both S&P and Moody's refuse to rate Party B's Debt, or and (c) Party B’s City Council no longer has the legal authority under the Act, as defined by Schedule M, to adjust electric rates as necessary to recover Party B’s costs of providing retail electric service to its customers.
	Guarantor for Party B, Section 8.1(e): <u>N/A</u> Guarantee Amount: <u>N/A</u>
	8.2 Party B Credit Protection:

	<p>Financial Information from Party A, Section 8.2(a):</p> <p><input type="checkbox"/> Option A <input checked="" type="checkbox"/> Option B Specify: Audited financial statements to be provided by Party A as described in Section 8.2(a) shall be for Party A or parent entity, if any, providing credit support. <input type="checkbox"/> Option C</p>																		
	<p>Credit Assurances from Party A, Section 8.2(b):</p> <p><input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Applicable</p>																		
	<p>Collateral Threshold for Party A, Section 8.2(c):</p> <p><input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Applicable</p> <p>If applicable, complete the following:</p> <p>Party A Collateral Threshold: means with respect to Party A, at any time the amount specified in the table below under the relevant heading opposite the lower of the ratings at that time assigned by Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc. (“S&P”) or Moody’s Investors Service, Inc., a subsidiary of Moody’s Corporation (“Moody’s”) to the long term, senior, unenhanced, unsecured debt securities or obligations of Party A’s Guarantor; provided, that (a) if the long term, senior, unenhanced, unsecured debt securities of Party A’s Guarantor is no longer rated by one of S&P or Moody’s, the Threshold with respect to Party A will be zero dollars and (b) if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing, the Threshold with respect to such party shall be zero dollars.</p> <table border="0"> <thead> <tr> <th>S&P Rating</th> <th>Moody’s Rating</th> <th>Threshold</th> </tr> </thead> <tbody> <tr> <td>A- or above</td> <td>A3 or above</td> <td>\$25,000,000</td> </tr> <tr> <td>BBB+</td> <td>Baa1</td> <td>\$15,000,000</td> </tr> <tr> <td>BBB</td> <td>Baa2</td> <td>\$10,000,000</td> </tr> <tr> <td>BBB-</td> <td>Baa3</td> <td>\$ 5,000,000</td> </tr> <tr> <td>Below BBB- (or rating suspended or withdrawn by both S&P and Moody’s)</td> <td>Below Baa3 (or rating suspended or withdrawn by both S&P and Moody’s)</td> <td>\$ 0 (zero)</td> </tr> </tbody> </table>	S&P Rating	Moody’s Rating	Threshold	A- or above	A3 or above	\$25,000,000	BBB+	Baa1	\$15,000,000	BBB	Baa2	\$10,000,000	BBB-	Baa3	\$ 5,000,000	Below BBB- (or rating suspended or withdrawn by both S&P and Moody’s)	Below Baa3 (or rating suspended or withdrawn by both S&P and Moody’s)	\$ 0 (zero)
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	<p>Party A Independent Amount: \$<u>0</u></p> <p>Party A Rounding Amount: \$<u>100,000</u></p> <p>Party A Minimum Transfer Amount: \$<u>250,000</u></p>																		

	<p>Downgrade Event, Section 8.2(d):</p> <p><input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Applicable</p> <p>If applicable, complete the following:</p> <p><input checked="" type="checkbox"/> It shall be a Downgrade Event for Party A <u>only</u> if the Credit Rating of Party A or Party A’s Guarantor falls below BBB- from S&P or Baa3 from Moody's or if the unenhanced, unsecured senior long-term debt securities or obligations of Party A or Party A’s Guarantor ceases to be rated by either S&P or Moody's.</p>
	<p>Guarantor for Party A, Section 8.2(e):</p> <p><input checked="" type="checkbox"/> Guarantor for Party A: _____</p> <p><i>[Name of investment grade parent guarantor]</i></p> <p>Guarantee Amount: _____</p> <p><i>[Unlimited Guarantee amount preferred]</i></p>
<p>Article Ten</p>	
	<p>Section 10.1 is amended by replacing “upon (thirty) 30 days’ prior written notice” in lines 2 and 3, with “, which termination shall be effective immediately upon receipt of written notice thereof”.</p>
	<p>Section 10.2 (ix) is amended to read in its entirety as follows: “(ix) (1) it is an “eligible contract participant” as such term is defined in the Commodity Exchange Act, as amended 7 U.S.C. § 1 (a) (12); and (2) it is an “eligible commercial entity” as such term is defined in the Commodity Exchange Act, as amended 7 U.S.C. § 1 (a) (11).</p>
	<p>Section 10.2 shall be amended by deleting the “and” at the end of sub-section 10.2(xi), replacing the period at the end of subsection 10.2(xii) with a semi-colon, and adding a new sub-section (xiii) as follows:</p> <p>“Notwithstanding any provision in this Agreement to the contrary, all information, statements, reports and similar materials, conveyed by Party A orally or in writing to Party B to demonstrate Party A’s financial condition, are true and accurate in all material respects. Any representation made by Party A regarding its financial performance or condition or that of its corporate parent (“Financial Representation”) as an inducement to Party B during the solicitation, bidding or negotiation of any Transaction entered into under this Master Agreement shall be deemed to be repeated and reaffirmed as of the date of the applicable Transaction and incorporated as a representation of Party A or a related party, if any, who makes the Financial Representation in that Transaction, without the need for any further action by either Party; and”</p>
	<p>Section 10.4 shall be amended by inserting the phrase "To the extent permitted by law," at the beginning of each of the first two sentences, and substituting the word, “each” for “Each” after the insertion of each such phrase.</p>

	<p>Section 10.5 shall be amended by deleting clause (ii) and the portion of clause (iii) prior to the words “provided, however”, and replacing them with the following: “(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor as of the Effective Date and the date of entering into each Transaction under this Agreement, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any, as of the Effective Date and the effective date of any such transfer or assignment.</p>	
	<p>Section 10.6 is amended by deleting the words “New York” from the fourth line thereof and replacing it with the word “California.”</p> <p>Further, Section 10.6 is amended by deleting the last sentence thereof and replacing it with the following sentence:</p> <p style="padding-left: 40px;">“With respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Agreement, the parties hereby consent to the exclusive jurisdiction of the federal courts sitting in the Northern District of the State of California; provided, however, that if the 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.”</p>	
	<p>Section 10.8 is modified by adding before the word “constitute” in line four of Section 10.8, “, and all financial and other information, explanations, statements, reports provided by one party to the other in connection therewith”.</p> <p>Section 10.8 shall be amended by deleting its penultimate sentence in its entirety and replacing it with the following sentences: “The indemnity provisions of this Agreement shall survive the termination of this Agreement for the period of the applicable statute of limitations. The audit provisions of this Agreement shall survive the termination of this Agreement for a period of twelve (12) months.”</p>	
	<p>Section 10.10 is deleted in its entirety and replaced with the following new section:</p> <p>“<u>Bankruptcy</u>. The Parties acknowledge and agree that (i) any Transaction with a maturity date more than two days after the date the Transaction is entered into constitutes a "forward contract" within the meaning of the United States Bankruptcy Code“, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and from time to time (the “Bankruptcy Code”); (ii) each believes that it is or intends that it shall be deemed for all purposes to be a “forward contract merchant” within the meaning of the Bankruptcy Code; (iii) all payments made or to be made by one Party to the other Party pursuant to this Agreement are "settlement payments" within the meaning of the Bankruptcy Code; and (iv) all transfers of Performance Assurance by one Party to the other Party under this Agreement are "margin payments" within the meaning of the Bankruptcy Code. Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each Party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further agrees to waive the right to assert that the other Party is a provider of last resort.”</p>	
Confidentiality	<input checked="" type="checkbox"/> Confidentiality Applicable, subject to Section 10.11 as amended.	If not checked, inapplicable.

	<p>Section 10.11 shall be replaced in its entirety with the following:</p> <p>“Party A acknowledges that Party B is subject to California Constitution Article 1, Section 3, and the California Public Records Act, <i>Cal. Gov. Code § 6250 et seq.</i> (“Public Records Act”) in regard to the documents comprising this Master Agreement and the Transactions, which items may constitute public records subject to inspection and copying by the public under the authority of the California Constitution and the Public Records Act. Party B shall, consistent with those laws, use reasonable efforts to provide Party A with notice of any third party request to inspect and copy any of the documents that comprise this Master Agreement and the Transactions, which Party A might deem confidential and exempt from disclosure, in order that Party A may timely seek to protect those documents from disclosure to the third party. Party A acknowledges and agrees that Party B shall not be liable to Party A if Party B makes disclosure in accordance with the California Constitution and/or the Public Records Act before Party A has timely obtained an order to prevent Party B from making the requested disclosure to the third party.”</p>
	<p>A new Section 10.12 shall be added to Article 10 as follows:</p> <p>"10.12. <u>No Agency</u>. In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as the agent of the other Party."</p>
	<p>A new Section 10.13 shall be added to Article 10 as follows:</p> <p>10.13 <u>Dispute Resolution</u>. In the event of any controversy or claim, whether based in contract, tort, or otherwise, arising out of or based upon, or relating to this Agreement or the scope, breach, termination or validity of each of them (a “Dispute”), the Parties will resolve such Dispute in the following manner:</p> <p>10.13.1 <u>Negotiation</u>. The Parties will attempt in good faith to resolve the Dispute promptly by negotiations between duly authorized representatives of the Parties who have authority to settle the Dispute. When a Party believes there is a Dispute, that Party will give the other Party written notice describing the Dispute with reasonable particularity. Within thirty (30) days after receipt of such notice, the receiving Party will submit a written response to the other Party.</p> <p>10.13.2 <u>Mediation</u>. If the Dispute is not resolved within forty-five (45) days of the date of the response given pursuant to Section 10.13.1, or such additional time, if any, that the Parties mutually agree to in writing, the Parties shall try in good faith to settle the Dispute by mediation. The form of mediation and the mediator(s) selected to resolve the Dispute shall be acceptable to both Parties.</p> <p>10.13.3 <u>Additional Rights</u>. If the Dispute is not resolved through mediation within ninety (90) days after the first meeting of the Parties and mediator(s), or such additional time, if any, that the Parties mutually agree to in writing, either Party shall be free to pursue any and all legal actions and remedies as it may deem necessary.</p>

	<p>A new Section 10.14 shall be added to Article 10 as follows:</p> <p>10.14: “The Parties acknowledge and agree that any purchase of power made under this Agreement and any Transaction shall be executed and delivered in compliance with applicable laws and regulations in effect at the time this Agreement is signed by the Parties and at the time of entering into any particular Transaction, including, but not limited to, Senate Bill 1368 (California Public Utilities Code section 8340 et seq.) and related regulations (Title 20, Sections 2900 – 2930 of the California Code of Regulations), as amended, to the extent such laws and regulations, including SB 1368 and related regulations, apply or are deemed to apply to this Agreement and any Transaction. To the extent SB 1368 and related regulations require Party B as a local publicly owned electric utility to submit a compliance filing in accordance with such laws, Party A, upon the request of Party B, shall in good faith provide promptly to Party B (to the extent Party B lacks such information) the information to the extent Party A has knowledge of or access to such information, and shall work cooperatively with and provide commercially reasonable assistance to Party B in Party B’s compliance with such laws. A failure by Party A to provide such information which is within its possession or knowledge shall constitute a default under this Agreement.”</p>
	<p>A new Section 10.15 shall be added to Article 10 as follows:</p> <p>10.15: “The Parties intend that the standard of review for changes to any rate, charge, classification, term or condition of this Agreement at FERC shall be the most stringent standard permissible under applicable law. As to the Parties, it is understood and agreed that the standard shall solely be the “public interest” application of the “just and reasonable” standard of review, as stated by the United States Supreme Court in <i>Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County</i>, Nos. 06-1457, 128 S.Ct. 2733 (2008), and consistent with the order of the Supreme Court in <i>NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al.</i>, No. 08-674, 130 S.Ct. 693 (2010) (“NRG Order”). As to all other persons, the Parties intend and agree that the same standard, to the maximum degree as may be made applicable to other than the Parties, apply, to the maximum degree permitted under the NRG Order.”</p>
	<p>A new Section 10.16 shall be added to Article 10 as follows:</p> <p>10.16 ““AB 32 fees” means the regulatory assessments, charges, fees imposts and/or taxes imposed upon and required to be paid by suppliers of energy in accordance with the Global Warming Solutions Act of 2006, Chapter 488, Statutes 2006, including, without limitation, the Compliance Offset Protocols, which shall be included (or be deemed included to the extent they are not expressly included) in the Contract Price, defined in Section 1.10 of the General Terms and Conditions, and that are in effect as of the Effective Date of this Agreement and/or the date the Parties enter into each Transaction hereunder.”</p>
	<p>A new Section 10.17 shall be added to Article 10 as follows:</p> <p>10.17 “The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”</p>

	<p>A new Section 10.18 shall be added to Article 10 as follows:</p> <p>10.18 <u>“Nondiscrimination.</u> As set forth in Palo Alto Municipal Code section 2.30.510, Party A agrees that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person. Party A acknowledges that it has read and understands the provisions of Chapter 2.30 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Chapter 2.30 pertaining to nondiscrimination in employment, including completing the form furnished by Party B and set forth in Exhibit D.”</p>
	<p>A new Section 10.19 shall be added to Article 10 as follows:</p> <p>10.19 <u>“Imaged Agreement.</u> Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidence on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence.”</p>

A new Section 10.19 shall be added to Article 10 as follows:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then:

- a) **Market Disruption Event.** If a Market Disruption Event occurs on any one or more days during a Determination Period (each day, a “Disrupted Day”), then:
 - i) The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.
 - ii) If the Parties have not specified a fallback Floating Price, then the Parties will endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute Floating Price, taking into consideration, without limitation, guidance, protocols or other recommendations or conventions issued or employed by trade organizations or industry groups in response to the Market Disruption Event and other prices published by the Price Source or alternative price sources with respect to the Delivery Point or comparable Delivery Points that may permit the Parties to derive the Floating Price based on historical differentials.
 - iii) If the Price Source retrospectively issues a Floating Price in respect of a Disrupted Day (a “Delayed Floating Price”) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Disrupted Day. If a Delayed Price is issued by the Price Source in respect of a Disrupted Day after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment unless the Parties expressly agree otherwise.
 - iv) If the Parties cannot agree on a substitute Floating Price and the Price Source does not retrospectively publish or announce a Floating Price, in each case, on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event first occurred or existed, then the Floating Price for each Disrupted Day shall be determined by taking the arithmetic mean of quotations requested from four leading dealers in the relevant market that are unaffiliated with either Party and mutually agreed upon by the Parties (“Specified Dealers”), without regard to the quotations with the highest and lowest values, subject to the following qualifications:
 1. If exactly three quotations are obtained, the Floating Price for each such Disrupted Day will be the quotation that remains after disregarding the quotations having the highest and lowest values.
 2. If fewer than three quotations are obtained, the Floating Price for each such Disrupted Day will be the average of the quotations obtained.
 3. If the Parties cannot agree upon four Specified Dealers, then each of the Parties will, acting in good faith and in a commercially reasonable manner, select up to two Specified Dealers separately, and those selected dealers shall be the Specified Dealers.

v) Unless otherwise agreed, if at any time the Parties agree on a substitute Floating Price for any Disrupted Day, then such substitute Floating Price shall be the Floating Price for such Disrupted Day, notwithstanding the subsequent publication or announcement of a Delayed Floating Price by the relevant Price Source or any quotations obtained from Specified Dealers.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.

"Floating Price" means a Contract Price specified in a Transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events:

- (a) the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the Floating Price for a particular day;
- (b) the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO or in the market specified for determining a Floating Price;
- (c) the temporary or permanent discontinuance or unavailability of the Price Source;
- (d) the temporary or permanent closing of any Exchange or RTO specified for determining a Floating Price; or
- (e) a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.

"Price Source" means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO, containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or information from which a price is determined, as specified in the relevant Transaction.

"RTO" means any regional transmission operator or independent system operator.

	<p><u>"Trading Day"</u> means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.</p> <p>(b) <u>Corrections to Published Prices.</u> If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within 30 days of the original publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO's procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise.</p> <p>(c) <u>Rounding.</u> When calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.</p>
<u>Schedule M</u>	<p><u> </u> Party A is a Governmental Entity or Public Power System</p>
	<p><u> X</u> Party B is a Governmental Entity, Schedule M Applicable</p>
Part A	<p>Part A of Schedule M is amended by including the following definition for the term "Act":</p> <p> "Act" means the Constitution of the State of California, the California statute(s), charter and municipal ordinances under which Party B was created, organized and authorized to enter into this Master Agreement and each Transaction thereunder</p> <p>Part A is further amended by adding the following sentence at the end of the definition of the term "Special Fund":</p> <p> "Party A has conducted such investigation as it deems necessary of the City of Palo Alto Enterprise Fund and the Act under which such Fund was established to determine, for its purposes under this Agreement, that such Fund meets this definition of Special Fund."</p>
Part C	<p>Part C of Schedule M is amended by adding the phrase in line 7 "and to the extent applicable," immediately following the word "limitation" in clause (i).</p>
Part D	<p>Section 3.4 is modified by inserting a period after "Master Agreement" in line 7 and deleting the rest of the sentence.</p>

Part E	<input checked="" type="checkbox"/> Section 3.6 under Part E of Schedule M applies; however, the portion of that provision following the semicolon on the eighth line thereof is replaced in its entirety with the following: “any breach of clause (ii) of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which such budgetary approval or certification of its obligations under this Master Agreement is required to be in effect and an Event of Default shall be deemed to have occurred for purposes of Section 5.1 under which Governmental Entity or Public Power System shall be treated as the Defaulting Party.”
Part F	<input type="checkbox"/> Add Section 8.4. If not checked, inapplicable.
Part G	Part G does not apply.

Schedule P

The following defined terms are added to Schedule P:

“CAISO” means the California Independent System Operator Corporation, or its successor.

“CAISO Tariff” means the Federal Energy Regulatory Commission approved tariff of CAISO, including all CAISO protocols, as the same may be amended from time to time.

“CAISO Energy” means a Transaction in which the Seller shall sell and the Buyer shall purchase a quantity of Energy equal to the hourly quantity without Ancillary Services (as defined in the CAISO Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the CAISO Tariff as amended from time to time for which the only excuse for failure to deliver or receive is an “Uncontrollable Force” (as defined in the CAISO Tariff) called by the CAISO in accordance with the CAISO Tariff.

“HLH (Heavy Load Hour)” is defined as energy delivered from hours ending (HE) 0700-2200 Monday-Saturday, excluding NERC holidays, PPT.

“IST” means Inter-Scheduling Coordinator Trade shall mean a trade between Scheduling Coordinators of Energy or Ancillary Services in accordance with the CAISO Tariff.

“LLH (Light Load Hour)” is defined as energy delivered from hours ending (HE) 0100-0600 and 2300-2400 Monday-Saturday, all day Sunday and NERC holidays, PPT.

“NP15 Zone Delivery Point” means the NP15 Zone; provided, however, if CAISO implements trading hubs under a locational marginal pricing design during the Delivery Period, the Delivery Point shall be the Existing Zone Generation NP15 Trading Hub (“NP15 EZ Gen Hub”), as such trading hub is contemplated by the CAISO in its filing made to the FERC dated March 15, 2005 (“Comprehensive Design Proposal for Inter-Scheduling Coordinator Trades Under the California Independent System Operator Corporation’s Market Redesign and Technology Upgrade, Docket No. ER02-1656-025”); provided further, if the NP15 EZ Gen Hub (under any name) is not established as part of a market redesign that is implemented during the Delivery Period, the parties agree to promptly work together in good faith to designate an alternate Delivery Point to reasonably approximate the characteristics of the NP-15 Zone.

"West Firm", or “WSPP Schedule C” or “Schedule C” or “WSPPC-Firm” or any similar description means with respect to a Transaction, a Product that is or will be scheduled as firm energy consistent with the most recent rules adopted by the WECC for which the only excuses for failure to deliver or receive are if an interruption is (i) due to an Uncontrollable Force as provided in Section 10 of the WSPP Agreement; or (ii) where applicable, to meet Seller's public utility or statutory obligations to its customers. Notwithstanding any other provision in this Agreement, if Seller exercises its right to interrupt to meet its public utility or statutory obligations, Seller shall be responsible for payment of damages for failure to deliver firm energy as provided in Article 4 of this Agreement.

"WECC" means the Western Electricity Coordinating Council.

"WSPP Agreement" means the Western Systems Power Pool Agreement as amended from time to time.

EXHIBIT A	MASTER POWER PURCHASE AND SALE AGREEMENT CONFIRMATION LETTER
EXHIBIT B	RESOURCE ADEQUACY (“RA”) CAPACITY
	The Parties acknowledge and agree that after the execution of this Master Agreement, they may enter into one or more contracts or confirmations concerning Resource Adequacy, which products, terms, conditions and definitions shall be documented in an Resource Adequacy Confirmation (“RA Confirm”), the terms and conditions of which the Parties agree to negotiate in good faith at the time such Transactions are contemplated.
EXHIBIT C	RENEWABLE ENERGY CREDIT (“REC”)
	The Parties acknowledge and agree that after the execution of this Master Agreement, they may enter into one or more contracts or confirmations concerning RECs, which terms and conditions shall be documented in a REC Confirmation and which the Parties agree to negotiate in good faith at the time such Transactions are contemplated.
EXHIBIT D	CERTIFICATION OF NONDISCRIMINATION

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

<p>Party B: City of Palo Alto Approval as to Form:</p> <p>By:</p> <p>Name: _____</p> <p>Title: Sr. Asst. City Attorney</p> <p>Date: _____, 20</p>	<p>Party A:</p> <p>By:</p> <p>Name:</p> <p>Title:</p> <p>Date: _____, 20</p>
<p>Party B: City of Palo Alto Approval by City Manager's Office:</p> <p>By:</p> <p>Name: _____</p> <p>Title: City Manager</p> <p>Date: _____, 20</p>	
<p>Party B: City of Palo Alto Approval by Administrative Services Department:</p> <p>By:</p> <p>Name: _____</p> <p>Title: Administrative Services Director</p> <p>Date: _____, 20</p>	
<p>Party B: City of Palo Alto Approval by Utilities Department:</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____, 20</p>	

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

Exhibit D
Certification of Nondiscrimination

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

THE INFORMATION HEREIN IS CERTIFIED CORRECT BY SIGNATURE(S) BELOW.

Authorized Signature: _____

Date: _____