

**SILICON VALLEY POWER  
City of Santa Clara**

**REQUEST FOR PROPOSAL  
May 11, 2015**

**GROUND LEASE AND POWER PURCHASE AND SALES AGREEMENT FOR  
WIND PARK FACILITY**

**CITY OF SANTA CLARA  
SILICON VALLEY POWER  
1601 CIVIC CENTER DRIVE, SUITE 102  
SANTA CLARA, CA 95050**

**REQUEST FOR PROPOSAL  
CITY OF SANTA CLARA**

**TITLE: GROUND LEASE AND POWER PURCHASE AND SALES  
AGREEMENT FOR WIND PARK FACILITY**

**1. INTRODUCTION**

The City of Santa Clara is seeking proposals for a long term Ground Lease and Power Purchase and Sales Agreement to repower a Wind Park Facility on real estate located in the County of Alameda, in the State of California. The real estate (hereafter referred to as the “Property”) is known as the Altamont Ranch and is situated approximately eight (8) miles from the City of Livermore, 1.5 miles north of Highway 580 in the south side of the old Altamont Pass Road.

The City of Santa Clara is requesting proposals from experienced wind project developers capable of repowering the site, including designing, constructing, financing, and operating a commercial-scale wind energy facility. The land lease will begin on September 1, 2016, with a duration of 10, 20 or 30 years. The City is also interested in a power purchase and sales agreement with the developer, starting at any point between the start of the lease but no later than September 1, 2026 and continuing until the termination of the lease.

**2. BACKGROUND**

The City of Santa Clara owns 691 acres of property in the Altamont Pass, shown in Attachment 1, the Property Site Map, and described in Attachment 2.

The City entered into a ground lease with Seawest Power Resources LLC on August 31, 2006 for an initial five (5) years, which was subsequently renewed for an additional five years to August 31, 2016. Concurrent with the lease, the City entered into a power purchase and sales agreement with Seawest for the purchase of the power from the existing wind facility during the same term which expires on August 31, 2016. The existing facility consists of 200 Vestas V-17 wind turbine electric generators, a substation and related power transfer facilities. The individual power lines from each of the turbines are fed into step-up transformers, which increase the voltage of the Facility’s power from 480 volts to 12.5 kilovolts. Additional 12.5 kV power transfer lines carry electricity to the substation, which steps up the power to 69 kV. The power generated by the Facility is delivered at this voltage to the interconnection point owned by PG&E and located adjacent to the Facility’s substation.

Under the terms of the current lease with Seawest, the City has the two options. The first option is to purchase the existing structures and improvements on the property, on August 31, 2016 for \$200,000, including the high voltage electric power interconnection lines and associated supporting facilities from the PG&E transmission system up to, and including, the power collection system main breaker, including the transmission lines and substation, currently being used by Seawest for delivery of electrical power generated by the Facility. The second option is to require the existing Lessor (Seawest) to restore the site to its original condition, at their own expense, by removing all buildings and

equipment on the premises by February 28, 2017, including placing 18” of earth on top of all cement platforms, foundations, anchors, and other improvements not removed by Seawest. The bidder should indicate which option they would prefer and take into account any expenses the City would incur with this choice.

The City possesses an allocation of transmission capacity necessary to accommodate the existing Facility, not exceeding a maximum of 19 megawatts on PG&E’s 60 kV Herdlyn-Livermore transmission line. The City is willing to assign the capacity rights to the Lessee during the term of the Lease. The maintenance of the rights for that capacity shall be an additional term of the Lease.

The City reserves the right to use or lease the property for other uses, such as farmland grazing, mineral extraction, etc. provided this use will not materially interfere with the operation of the wind facility.

The current Facility, as a project under the California Environmental Quality Act (“CEQA”) and the original ground lease executed by the prior lessee, were originally reviewed and approved under the provisions of CEQA by the City, as the lead administrative agency.

### **3. ATTACHMENTS**

The attachments below are included with this Request for Proposals (“RFP”). The items identified with an asterisk (\*) must be completed, signed by the appropriate representative of the company, and returned with the submittal.

- Attachment 1 – Property Site Map
- Attachment 2 – Description of Property
- Attachment 3 – Indicative Term Sheet\*
- Attachment 4 – Insurance Requirements
- Attachment 5 – Proposer’s Information Form\*
- Attachment 6 – Certification of Non-Discrimination\*
- Attachment 7 – Santa Clara Ethical Standards
- Attachment 8 – Affidavit of Compliance with Ethical Standards
- Attachment 9 – Power Purchase and Sales Agreement\*
- Attachment 10 – Ground Lease\*

### **4. INSTRUCTIONS TO PROPOSERS**

#### **4.1. Pre-proposal Conference.**

There is NO pre-proposal conference scheduled for this solicitation.

#### **4.2. Examination of Proposal Documents.**

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

- 4.2.1. Have carefully read and fully understand the information that was provided by the City to serve as the basis for submission of this proposal.
- 4.2.2. Have the capability to successfully undertake and complete the

- responsibilities and obligations of the proposal being submitted.
- 4.2.3. Represent that all information contained in the proposal is true and correct.
  - 4.2.4. Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms or conditions of this proposal.
  - 4.2.5. Acknowledge that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer, and Proposer hereby grants the City permission to make these inquiries, and to provide any and all related documentation in a timely manner.

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

#### 4.3. Questions.

Any questions by the Proposer regarding this RFP or the project must be put in writing and received by the City no later than 3:00 p.m. on June 5, 2015. Correspondence shall be addressed to:

Ms. Jan Pepper  
Silicon Valley Power  
1601 Civic Center Drive, Suite 102  
Santa Clara, CA 95050  
jpepper@svpower.com

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

Responses from the City to questions by any Proposer will be communicated in writing to all recipients of this RFP. Questions received after the date and time stated above will not be accepted, and will be returned to senders without response.

#### 4.4. Addenda.

Any addenda issued by City shall be in writing, shall become a part of this RFP, and shall be acknowledged and responded to by Proposer.

#### 4.5. Submission of Proposals.

All proposals shall be submitted to:

City of Santa Clara  
Silicon Valley Power  
Attn: Jan Pepper  
1601 Civic Center Drive, Suite 102  
Santa Clara, CA 95050

Proposals must be delivered no later than 3:00 p.m. PDT on Friday, June 26, 2015. All proposals received after that time will be returned to the Proposer unopened.

The Proposer shall submit three (3) copies of its proposal in a sealed envelope, including one (1) original, clearly marked “Original”, addressed as noted above, bearing the Proposer’s name and address clearly marked, “RFP FOR GROUND LEASE AND POWER PURCHASE AND SALES AGREEMENT FOR WIND PARK FACILITY.”.

4.6. Withdrawal of Proposals.

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

**5. RIGHTS OF THE CITY OF SANTA CLARA**

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

- Make the selection based on its sole discretion;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening proposals for its own convenience;
- Remedy errors in the Request for Proposals process;
- Negotiate with any, all or none of the Proposers;
- Accept other than the lowest offer;
- Waive informalities and irregularities in the Proposals; and/or
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the City.

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

**6. RFP TIMELINE**

The RFP Timeline is as follows:

|   |                            |
|---|----------------------------|
| RFP Issued  | May 11, 2015               |
| Intent to Bid Due   | May 22, 2015               |
| Deadline for questions, clarifications                          | June 5, 2015               |
| City responds to questions, clarifications                      | June 8 to June 19, 2015    |
| Proposals must be submitted by                                  | June 26, 2015, 3:00 pm PST |
| City evaluates proposals  | June 29 to July 10, 2015   |
| City interviews proposers                                       | Week of July 13, 2015      |
| City selects successful proposal                                | July 24, 2015              |
| City Council approves successful proposal and award of contract | September 2015             |

The City reserves the right to add, remove or combine steps in the timeline, and/or compress or extend the timeline as the City, in its sole discretion, sees fit.

## **7. INFORMATION TO BE SUBMITTED**

These guidelines govern the format and content of the proposal, and the approach to be used in its development and presentation. The intent of the RFP is to encourage responses that clearly communicate the Proposer's understanding of the City's requirements and its approach to successfully execute the project on time and within budget. Only that information which is essential to an understanding and evaluation of the proposal should be submitted. Items not related to the RFP and proposal, e.g., generalized brochures, marketing material, etc., will not be considered in the evaluation.

All proposals shall address the following items. The proposals must address the items in the order listed below, and shall be numbered 1 through 6 in the proposal document. Sections 2 through 6 of the proposal document should not exceed 20 pages.

### Section 1 - Letter of Transmittal

A letter of transmittal must be submitted with an offer. The letter should include:

- A statement of the bidder's understanding of the project required by the Solicitation. The bidder must explain how it would complete the project for the City.
- Firm name, address, phone number, email address and primary contact person, including name(s) of person authorized to make representations on behalf of the bidder (include their titles, street and email addresses, and telephone numbers).
- A statement that the individual who signs the transmittal letter is authorized to bind the bidder to contract with the City.

In addition to the Letter of Transmittal, Section 1 should include Attachment 5 (Proposer's Information Form), Attachment 6 (Certification of Non-Discrimination), and Attachment 8 (Affidavit of Compliance with Ethical Standards).

### Section 2 – Proposal Summary

This Chapter shall discuss the highlights, key features and distinguishing points of the Proposal, including the merits of the project, the benefits to the City, the project's financing plan, and the desired term of the lease and power purchase agreement.

### Section 3 – Qualifications of the Firm

This Section shall include:

- A description of the Proposer's qualifications and previous experience leasing property and developing wind projects to similar public agencies or electric utilities.
- A brief description of the Proposer's firm, including firm history, current permanent staff size as well as organization structure.
- A discussion of the firm's financial stability and strength.
- Development, construction and operating experience, including descriptions of prior projects.
  - Include project details, including project size, annual performance to date, capacity factors, dates for construction start and project completion. Give a

brief statement of the firm's adherence to the schedule and budget for each project.

- Proposed wind turbine generator technology, availability and warranties.
- Environmental and land use permitting experience.
- Three (3) references from clients with similar projects including the name, title, phone number and email address of contact persons.
- Additionally, this section shall include a listing of any claim, lawsuit or litigation and the result of that action resulting from (a) any public project undertaken by the Proposer either as a contractor or subcontractor or by its subcontractors where litigation is still pending or has occurred within the last five years, or (b) any type of project where claims or settlements were paid by the Proposer or its insurers within the last five (5) years.

#### Section 4 –Detailed Project Proposal

This Section shall provide the details of the proposed ground lease terms including:

- Initial pre-COD fees, such as initial fees upon lease execution, development fees, and/or payments prior to the Project's Commercial Operation Date (COD).
- Operating fees, such as percentage of gross revenues after the Project's COD and any escalation rates in proposed revenues, including minimum operating fees.

Developers are encouraged to propose innovative fee structures that will provide value to the City.

This Section shall provide the details of the proposed power purchase and sales agreement including:

- Start date for power purchases by the City.
- Term of Power Purchase and Sales Agreement.
- Price per MWh, including any escalation.
- Estimated quantity of MWh.
- Guaranteed energy production delivery.

Proposers should use the Indicative Term Sheet, found in Attachment 3, for providing the cost information.

#### Section 5 – Project Schedule

This Section shall include a projected development milestone timeline for completing the project including:

- Filing permit application.
- Filing interconnection request to the CAISO, if developer proposes a wind facility larger than 19 MW.
- Start of construction date.
- Commercial Operation Date.

The City shall have the option to terminate the Ground Lease and Power Purchase and Sales Agreement if any of the Milestones are not met, unless the Proposer can reasonably demonstrate a plan to achieve the COD milestone.

#### Section 6 – Ground Lease and Power Purchase Agreements

Upon selection of a developer, City and developer will enter into negotiations to finalize a Ground Lease Agreement and a Power Purchase and Sales Agreement.

## **8. CONTRACT TYPE AND METHOD OF PAYMENT**

It is anticipated that the agreements resulting from this RFP, if awarded, will be a Ground Lease Agreement between the City and the Lessee and a Power Purchase and Sales Agreement between the City and the Lessee, to be negotiated between the City and the successful bidder.

## **9. INSURANCE REQUIREMENTS**

The selected Proposer(s), at Proposer's sole cost and expense and for the full term of the agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Attachment 4.

All policies, endorsements, certificates and/or binders shall be subject to the approval of the City of Santa Clara as to form and content. These requirements are subject to amendment or waiver, if so approved in writing by the City of Santa Clara. The selected Proposer agrees to provide the City with a copy of said policies, certificates and/or endorsement upon award of contract.

## **10. REVIEW AND SELECTION PROCESS - EVALUATION CRITERIA**

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

- Quality and completeness of proposal.
- Project operational characteristics.
- Proposer's experience, including the experience and performance of projects of similar scope and complexity.
- Expected lease revenue to City.
- Projected PPA cost to the City.
- Proposer's financial stability and length of time in business.
- Proposer's ability to perform the work within the time specified.
- Proposer's prior record of performance with City or others.
- Proposer's compliance with applicable laws, regulations, policies (including city council policies), guidelines and orders governing prior or existing contracts performed by the Proposer.

## **11. PUBLIC NATURE OF PROPOSAL MATERIAL**

Responses to this RFP become the exclusive property of the City of Santa Clara. At such time as the City awards a contract, all proposals received in response to this RFP become a matter of public record and shall be regarded as public records, with the exception of the cost elements in each proposal which are defined by the Proposer as "Confidential." The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," or if disclosure, in the City's sole discretion, is required under the California Public Records Act as addressed below. Any proposal which contains language purporting to render all or significant portions of the proposal "Confidential" shall be regarded as non-responsive.



Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Santa Clara may determine, in its sole discretion that the information that a Proposer submits is not a trade secret. If a Public Records Act request is made for information marked "Confidential," the City shall provide the Proposer who submitted the information reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction, at the Proposer's sole expense.

## **12. COLLUSION**

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

## **13. DISQUALIFICATION**

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

- Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms or conditions of this proposal.
- Any attempt to improperly influence any member of the evaluation team.
- Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City.
- Evidence of incorrect information submitted as part of the proposal.
- Evidence of Proposer's inability to successfully complete the responsibilities and obligations of the proposal.
- Proposer's default under any previous agreement with the City.

## **14. NON-CONFORMING PROPOSAL**

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

## **15. GRATUITIES**

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

**ATTACHMENT 1  
Property Site Map**

Latitude: -121.65446666 Longitude: 37.740416666  
APN: 099B-6275-002-05, 099B-6500-001



**ATTACHMENT 2**  
**Description of Property**

PREMISES

1. The Premises are located on City of Santa Clara property, known as the Altamont Ranch, situated approximately eight (8) miles from the City of Livermore, 1.5 miles north of Highway 580, on the south side of the old Altamont Pass Road.
2. Access to the Premises is in the western half of section 21, R.3.E., T.2.S., Mt. Diablo Base Line and Meridian.

City owned real property, generally known as the Altamont Ranch, located in the County of Alameda, State of California, described as follows:

**PARCEL 1:**

The south one-half of section 21, township 2 south, range 3 east, Mount Diablo Base and Meridian, according to the official plat of said land filed in the District Land Office.

Excepting therefrom the past, present and future interest reserved by the Central Pacific Railroad Company in the grant deed recorded November 19, 1883 in Book 261 of Deeds, Page 184, Series No. 5-7019, Alameda County Records.

Also excepting therefrom that portion described in the deed to the Western Pacific Railway Company, a California corporation, recorded December 7, 1905, in Book 1076 of Deeds, Page 406, Series No. L-1500, Alameda County Records.

Also excepting therefrom that portion described in the deed to R. H. Sherman, recorded July 8, 1907, in Book 1390 of Deeds, Page 64, Series No. L-69077, Alameda County Records.

Also excepting therefrom that portion described in the deed to the County of Alameda, recorded January 4, 1915, in Book 2311 of Deeds, Page 109, Series No. P-83238, Alameda County Records.

**PARCEL 2:**

A non-exclusive easement and right of way on, over, under and across the following described real property for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipe lines, and for telephone, electric light and power lines, together with all necessary poles or conduits to carry said lines to wit:

A strip of land 30 feet wide, the center line of which is described as follows:

Beginning at a point on the westerly line of those lands conveyed to Roberta I. Haugh, by Decree of Partial Distribution, dated September 30, 1949, recorded in Book 5901 of official records of Alameda County at Page 37 thereof, Series No. AD/66898, said point being on the section line between Section 20 and 21, T.2.S., R.3 E., M.D.B.& M., south 456 feet from the apparent northwest corner of the southwest quarter of said section 21 as said corner is defined by the fence corner, thence north 41 degrees 26 minutes west 492.7 feet to the southeasterly right of way line of County Road No. 818, also known as

Altamont Pass Road, being a portion of the southeast quarter of Section 20, Township 2 south, Range 3 east, Mount Diablo Base and Meridian.

PARCEL 3:

The north one-half of Section 28, Township 2 south, Range 3 east, Mount Diablo Base and Meridian, according to the official plat of said land filed in the District Land Office.

Assessor's Parcel Nos. 099B-6275-002-01 (affects portion of parcel 1), 099B-6275-002-02 (affects portion of parcel 1), 099B-6275-002-03, (affects remainder of parcel 1), 099B-6500-001 (affects parcel 3).

**ATTACHMENT 3**  
**Indicative Term Sheet**

*This term sheet summarizes the principal terms of a proposed ground lease and power purchase and sales agreement between the City of Santa Clara (“Landowner”) and [to be inserted by Developer] (“Lessee”).*

*This term sheet is intended solely as a basis for further discussion and is not intended to be a legally binding obligation. The absence of any clause, heading or provision in this term sheet will not prevent either party from raising such points during negotiations. No legally binding obligations are created or implied until a document in final form is approved internally, signed and delivered by both parties.*

**Part 1: INDICATIVE LEASE TERMS**

|                      |  |
|----------------------|--|
| <b>Landowner</b>     | City of Santa Clara, a chartered California municipal corporation, d.b.a. Silicon Valley Power   |
| <b>Lessee</b>        | [To be inserted by Developer]  |
| <b>Property</b>      | Alameda County Assessor Parcel Numbers: <ul style="list-style-type: none"> <li>• 99B-6725-2-5</li> <li>• 99B-6500-1</li> </ul>   |
| <b>Lease Term</b>    | (Select one) <ul style="list-style-type: none"> <li><input type="checkbox"/> 10 years</li> <li><input type="checkbox"/> 20 years</li> <li><input type="checkbox"/> 30 years</li> <li><input type="checkbox"/> Other (please specify number of years: <input type="text"/>)</li> </ul> <p>from September 1, 2016</p> <ul style="list-style-type: none"> <li>• Subject to timely completion of Milestones by Lessee</li> </ul>   |
| <b>Permitted Use</b> | Lessee may use the Property for wind development purposes only, including the construction, ownership, and operation of the Project; provided, however, that Lessee agrees to not interfere with the operation of any existing wind turbines on the Property until their: <p>(Select one)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Purchase on August 31, 2016; or</li> <li><input type="checkbox"/> Removal by February 28, 2017.</li> </ul> <p>Lessee shall, at Landowner’s request, restore the Property at end of Term, including the removal of any foundations, concrete or metal structures, wind generating improvements, or other personal property of Lessee, to four (4) feet below the surface. Lessee shall remove at the end of the Term all hazardous materials and conduct any and all other site remediation required by regulators.</p> |

|                                   |  |
|-----------------------------------|--|
| <b>Project</b>                    | A wind energy farm, planned to include approximately _____ ( ) wind turbines (up to _____ ( ) MW) on the Property.   |
| <b>Interconnection Facilities</b> | Lessee shall own, operate, and maintain the Interconnection Facilities for the Facility to connect the Lessee’s power collection system to the local PG&E grid. Lessor possesses an allocation of transmission capacity of nineteen (19) megawatts (MW) on PG&E’s 60kV Herdlyn-Livermore transmission line. Lessee agrees that the maintenance of the rights for up to 19 MW of capacity on the Herdlyn-Livermore 60kV transmission line shall be an additional term of this Lease.  |
| <b>Milestones</b>                 | <p>Landowner shall have the option to terminate the wind lease agreement if any of the following Milestones are not met:</p> <ol style="list-style-type: none"> <li>1. Filing permit application by _____.</li> <li>2. Filing interconnection request to the CAISO by _____, if Lessee plans to build a wind facility larger than 19 MW.</li> <li>3. Start of construction by no later than October 1, 2019 or (insert other date) _____.</li> <li>4. Commercial Operation Date (“COD”) by no later than October 31, 2020 or (insert other date) _____.</li> <li>5. If the facility is materially damaged or destroyed during the Term, and the proceeds of any insurance policies covering the loss shall be insufficient to repair and replace the same, or construct an equivalent Facility, then Lessee shall have the option to terminate this Lease</li> <li>6. In the event of an early termination pursuant to missing milestones 3 or 4 above, City shall take possession of all fixtures on the Premises associated with the facility.</li> </ol> <p>Termination can be avoided if developer can reasonably demonstrate a plan to achieve the COD milestone.</p> |
| <b>Pre-COD Fees</b>               | <p>Lessee shall pay Landowner \$ _____ every three months before the Project’s COD; and/or<br/> Upon lease execution, Lessee shall pay an Initial Execution Fee of \$ _____; and/or<br/> Upon COD, Lessee shall make a capacity payment of \$ _____; and/or</p> <p>Other terms offered by Proposer:<br/> _____<br/> _____<br/> _____</p>   |
| <b>Operating Fees</b>             | <p>Lessee shall pay the Landowner the following fees after the Project’s COD:</p> <ul style="list-style-type: none"> <li>• _____% of Gross Revenue for years 1 through 10;</li> <li>• _____% of Gross Revenue for years 11 through 20; and</li> <li>• _____% of Gross Revenue for years 25 through 35.</li> </ul> <p>OR</p> <p>Lessee shall pay the City the following fees after the Project’s COD:</p> <ul style="list-style-type: none"> <li>• _____% of Gross Revenue</li> <li>• _____% Annual Escalation Rate</li> </ul> <p>Developers are encouraged to propose innovative fee structures that will</p>  |

|                                 |  |
|---------------------------------|--|
|                                 | provide value to the City.   |
| <b>Minimums</b>                 | Minimum installed capacity: <u>19 MW</u><br>Minimum Operating Fees: \$120,000 annually   |
| <b>Gross Revenue</b>            | (i) All revenue received by or on behalf of Lessee from any person or entity resulting from any contract, agreement, or transaction between or involving Lessee and such person or entity for the sale of electricity and associated environmental attributes generated by the Project and/or capacity attributes (if any) associated with the Project; and/or (ii) gross receipts received by Lessee from an insurer or liable party (including a defaulting counterparty) that are made or received in lieu of (i).<br><br>Gross Revenue shall exclude (x) any federal or state production tax credits or any similar future federal or state subsidy or incentive to encourage wind-powered electrical power generation; or (y) any sales, use, or other taxes paid by Lessee on such revenue described in the prior paragraph.<br><br>All Gross Revenue shall be calculated without offset for any cost of producing, gathering, storing, transporting, legal compliance, marketing, or otherwise making electricity, energy, environmental attributes, or capacity ready for sale or use and delivering it to a transmission circuit. |
| <b>Audit Rights</b>             | Landowner shall have audit rights to verify Lessee's Gross Revenue.  |
| <b>Taxes and Assessments</b>    | Lessee to pay any increase in property taxes attributable to Lessee's improvements to the Property from the Effective Date. Lessee to pay all taxes, assessments, franchises, excises, licenses, permit fees, and other governmental levies and charges during the term of the lease.  |
| <b>Insurance</b>                | See Attachment 6.  |
| <b>Credit</b>                   | In the event the Lessee does not have a credit rating that is at least investment grade (or does not have a credit rating), Lessee shall provide security in an amount equal to <span style="background-color: yellow;">                    </span> in the form of cash, letter of credit, or corporate guaranty.  |
| <b>Assignment</b>               | Landowner may assign the lease agreement without limitations.<br><br>Lessee may not assign the lease agreement without Landowner consent; provided that Lessee may assign to an affiliate if the affiliate assumes the obligations of the Lessee and has a credit rating that is above investment grade.   |
| <b>CEQA</b>                     | The existing Facility on the project, as a project under the California Environmental Quality Act ("CEQA") and the original ground lease executed by the prior lessee, were originally reviewed and approved under the provisions of CEQA by the Lessor, as the lead administrative agency. Lessor has also reviewed the transfer of interest in the Facility under CEQA and has determined that, so long as the use of the Facility is not changed or expanded, the prior environmental determination will apply to Lessee's operation of the Facility on the premises.   |
| <b>Lessor's Use of Premises</b> | Lessor reserves the right to use or lease or otherwise permit the use of the Premises by others for any purpose of use (e.g. farmland grazing, etc.) provided that no such use shall materially interfere with the operation of the wind facility or materially interfere with the speed or direction of the wind.   |
| <b>Other</b>                    | Please add other material provisions or deal structures.   |

**Part 2: INDICATIVE POWER PURCHASE TERMS**

|   |   |
|---|---|
| <b>Buyer</b>                              | City of Santa Clara, a chartered California municipal corporation, d.b.a. Silicon Valley Power  |
| <b>Seller</b>                             | [To be inserted by Developer]   |
| <b>PPA Term</b>                           | (Select one)<br><input type="checkbox"/> 10 years<br><input type="checkbox"/> 20 years<br><input type="checkbox"/> 30 years<br><input type="checkbox"/> Other (please specify number of years: <input type="text"/> ) |
| <b>Start Date</b>                         | [To be inserted by Developer]   |
| <b>Estimated Project Output</b>           | <input type="text"/> MWh per year   |
| <b>“All In” Wind Energy Price</b>         | \$ <input type="text"/> / MWh, including electricity, environmental, and capacity attributes<br><input type="text"/> % Annual Escalation Rate (if any)  |
| <b>Guaranteed Energy Production</b>       | Guaranteed energy delivery of at least <input type="text"/> % of the Quantity as measured over (insert number of years) <input type="text"/> year period.   |
| <b>Curtailement</b>                       | Project will provide ability to curtail as directed by CAISO or buyer.  |
| <b>Guaranteed Construction Start Date</b> | If the project does not start construction within <input type="text"/> years of the execution of the PPA, then the PPA will automatically terminate.  |
| <b>Option of Purchase</b>                 | Seller will provide option for City to purchase facility.   |
| <b>Other</b>                              | Please add other material provisions or deal structures.  |



**ATTACHMENT 4**  
**Insurance Requirements**

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

**B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes

and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

#### C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

#### D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
  - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. **ADDITIONAL INSURANCE RELATED PROVISIONS**

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.



**ATTACHMENT 5  
Proposer's Information Form**

PROPOSER (please print): \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

FAX: \_\_\_\_\_

Contact person, title, telephone number, email address and fax number: \_\_\_\_\_

\_\_\_\_\_

Proposer, if selected, intends to carry on the business as (check one)

Individual

Joint Venture

Partnership

Corporation

When incorporated? \_\_\_\_\_

In what state? \_\_\_\_\_

When authorized to do business in California? \_\_\_\_\_

Other (explain): \_\_\_\_\_

\_\_\_\_\_

**ADDENDA**

To assure that all Proposers have received each addendum, check the appropriate box(es) below. Failure to acknowledge receipt of an addendum/addenda may be considered an irregularity in the Proposal:

Addendum number(s) received:

1

2

3

4

5

6

Or,

\_\_\_\_\_ No Addendum/Addenda Were Received (check and initial).

**PROPOSER’S SIGNATURE**

No proposal shall be accepted which has not been signed in ink in the appropriate space below:

By signing below, the submission of a proposal shall be deemed a representation and certification by the Proposer that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and they have read and understand the RFP. No request for modification of the proposal shall be considered after its submission on the grounds that the Proposer was not fully informed as to any fact or condition.

Date: \_\_\_\_\_

\_\_\_\_\_  
Proposer’s Signature

\_\_\_\_\_  
Proposer’s typed name and title

**ATTACHMENT 6**  
**Certification of Nondiscrimination**

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Proposer's Signature

\_\_\_\_\_  
Proposer's typed name and title

**ATTACHMENT 7**  
**Santa Clara Ethical Standards**

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO  
AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**

**Termination of Agreement for Certain Acts.**

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor<sup>1</sup> does any of the following:
  - a. Is convicted<sup>2</sup> of operating a business in violation of any Federal, State or local law or regulation;
  - b. Is convicted of a crime punishable as a felony involving dishonesty<sup>3</sup>;
  - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
  - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
  - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.
2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct

---

<sup>1</sup> For purposes of this Agreement, the word “Consultant” (whether a person or a legal entity) also refers to “Contractor” and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

<sup>2</sup> For purposes of this Agreement, the words “convicted” or “conviction” mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

<sup>3</sup> As used herein, “dishonesty” includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.



occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

- I. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. The City determines that Contractor no longer has the financial capability<sup>4</sup> or business experience<sup>5</sup> to perform the terms of, or operate under, this Agreement; or,
  2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- J. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

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<sup>4</sup> Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

<sup>5</sup> Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

**ATTACHMENT 8**  
**Affidavit of Compliance with Ethical Standards**

I, \_\_\_\_\_, being first duly sworn, state that I am \_\_\_\_\_ (title or capacity) of \_\_\_\_\_ (entity name) and I hereby state that I have read and understand the language, entitled “Ethical Standards” set forth in Attachment G, and I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and made appropriate inquiry of those individuals potentially included within the definition of “Contractor” contained in Ethical Standards, footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said “Contractor” category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

[**INSERT NAME OF COMPANY**]  
a [**insert Corporation, Partnership, etc.**]

\_\_\_\_\_  
Signature of Authorized Person or Representative

\_\_\_\_\_  
Title

**NOTARY’S ACKNOWLEDGMENT TO BE ATTACHED**

Please execute the affidavit and attach a notary public’s acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity’s complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

S:\Attorney\REQUEST FOR PROPOSAL\Request for Proposal Feb 2012.doc

**POWER PURCHASE AND SALE AGREEMENT**

**FOR WIND ENERGY**

**BY AND BETWEEN**

**THE CITY OF SANTA CLARA**

**AND**

**[SELLER]**

Dated: **[Month] [Day], [year]**

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**POWER PURCHASE AND SALE AGREEMENT**  
**FOR WIND ENERGY**  
**BY AND BETWEEN**  
**THE CITY OF SANTA CLARA**  
**AND**  
**[SELLER]**

**PREAMBLE**

This Power Purchase and Sale Agreement for Wind Energy (the "Agreement") is made and entered into this **[Day]** day of **[Month] [Year]** (the "Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City" or "Buyer"), and **[Seller], a [include place of formation, business type and address]** ("Seller"). City and Seller may be referred to individually as a "Party," or collectively as the "Parties." Capitalized terms in this Agreement shall have the meanings set forth in Exhibit A.

**RECITALS**

WHEREAS,

- A. City owns that certain parcel of property located in the County of Alameda, State of California as more fully and more particularly described in Exhibit A to the Lease described below (the "Premises"), and Seller intends to lease the Premises from City pursuant to a separate stand-alone lease agreement (the "Lease"), a copy of which is attached hereto as Exhibit B;
- B. Seller intends to repower an existing wind farm, to own and operate a 20 megawatt net wind- powered generating facility (the "Facility"), as more particularly described in Exhibit C, on the Premises;
- C. Seller will meet the requirements for qualification as an eligible renewable energy resource ("ERR") under the State of California Renewable Portfolio Standard Program ("RPS"), as codified at California Public Utilities Code Section 399.11, et seq.; and
- D. City is interested in adding competitively priced renewable energy to its portfolio of power purchases;
- E. Seller desires to sell, and City desires to purchase, on the terms set forth in this Agreement, all or a designated portion of the output of energy from the Facility, and all of the

Environmental Attributes, capacity, and resource adequacy attributes (as each term is defined herein) related to the generation of such purchased energy; and

- F. City and Seller desire to enter into this Agreement to confirm the specific terms and conditions of the purchase and sale of energy from the Facility.

Now, therefore, the Parties agree as follows:



**ARTICLE I**  
**INCORPORATION OF PREAMBLE AND RECITALS**

**Section 1.01 INCORPORATION OF PREAMBLE AND RECITALS**

The Parties to this Agreement agree and attest to the truth and accuracy of the provisions contained in the Preamble and Recitals set forth above. The provisions of the Preamble and Recitals are hereby incorporated and made a part of this Agreement by this reference. The Parties agree that this Agreement has been entered into, at least in part, in consideration of the provisions contained in the Preamble and Recitals, as well as the provisions contained in the balance of this Agreement.

**ARTICLE II**  
**TERM; CONDITIONS PRECEDENT**

**Section 2.01 TERM**

The Term of this Agreement is set forth in Exhibit D.

**Section 2.01 CONDITIONS PRECEDENT**

City shall have no obligation whatsoever to purchase the Net Electrical Output from the Facility under this Agreement until Seller completes or otherwise satisfies each of the following conditions (the "Conditions Precedent"):

- (a) All Facility systems necessary for continuous operation and metering are tested and certified as required by CAISO, including the installation of a Data Processing Gateway;
- (b) All applicable agreements between Seller and CAISO are signed and delivered, including a Participating Generator Agreement, a Meter Service Agreement,;
- (c) All applicable agreements between Seller and PG&E are signed and delivered, including an interconnection facilities agreement between Seller and PG&E (and CAISO, if necessary) to allow interconnection of the Facility to the PG&E transmission system (the "Interconnection Facilities Agreement");
- (d) The electrical interconnection facilities of Seller have demonstrated the ability to accept the full-load output of the Facility; and
- (e) All applicable regulatory authorizations, approvals and permits for the continuous operation of the Facility ("Governmental Approvals") are obtained.

**ARTICLE III**  
**OPERATIONAL COVENANTS**

**Section 3.01 DEDICATION OF OUTPUT**

Throughout the Term of this Agreement, Seller agrees that the Net Electrical Output from the Facility shall be sold exclusively to City, together with all Environmental, Capacity, and Resource Adequacy Attributes associated therewith, except for any period in which the parties' obligations are suspended due to a Force Majeure.

**Section 3.02 INSURANCE**

Throughout the Term of this Agreement, Seller shall maintain insurance as specified in Exhibit G of this Agreement.

**Section 3.03 CITY ACCESS RIGHTS**

With reasonable prior notice, City shall have the right of access, at its expense, to visit the Facility at reasonable hours for any purpose reasonably connected with this Agreement; *provided* that such visits shall not materially interfere with the operations of the Facility.

**Section 3.04 OPERATING STANDARDS**

Throughout the Term of this Agreement, Seller shall operate the Facility in accordance with all applicable CAISO agreements, tariffs and standards, all applicable PG&E agreements and standards, and all Governmental Approvals. Further, Seller shall operate and maintain the Facility:

- (a) In accordance with generally accepted electrical practices;
- (b) Consistent with prevailing customs and procedures of similar facilities located in Alameda County; and
- (c) In accordance with all applicable laws.

**Section 3.05 AVAILABILITY**

Throughout the Term of this Agreement, Seller shall use commercially reasonable efforts to maintain the Facility in an "available" state such that the average availability of the Facility, calculated on an annual basis, is greater than or equal to ninety percent (90%). Within forty five (45) days of the end of each Contract Year, Buyer shall calculate Availability for that Contract Year. If the Availability for the Contract Year is at or above 90%, irrespective of any availability fluctuations from month to month, there will not be any Availability Shortfall Damages due from Seller to Buyer. In the event

the Availability is below 90% for the Contract Year, Seller shall pay Buyer liquidated damages calculated as follows (the “Availability Shortfall Damages”).

$[A - B] \times C \times \$5$

where:

“A” means 90%;

“B” means the Availability for the relevant Contract Year (as a percentage); and

“C” means the Expected Annual Contract Quantity of Energy (in MWh).

The total of the Available Shortfall Damages for the Contract Year will reflect the amount Seller will be obligated to pay to Buyer. Buyer shall send an invoice to Seller reflecting the amount due, and Seller shall make the payment to Buyer within 30 days of the invoice date.

Limitations. The Parties recognize and agree that (i) the actual damages to Buyer for a failure by Seller to meet the required Availability are difficult or inconvenient to determine, (ii) payment of amounts by Seller pursuant to this Section 3.05 is an appropriate remedy, and (iii) any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement.

Such an annual availability calculation shall exclude any period during the prior twelve (12) months in which:

- (a) Seller is unable to perform its obligations due to a Force Majeure Event;
- (b) A Planned Outage or Forced Outage occurs; or
- (c) A System Emergency occurs that requires Seller to reduce its generation level; or
- (d) Facility is prevented from operating, or its operations are diminished or curtailed due to acts of omissions of City, CAISO or PG&E; and/or
- (e) Seasonal or temporary turbine shutdowns occurred due to Avian Issues.

## ARTICLE IV

### PURCHASE AND SALE OF NET ELECTRICAL OUTPUT

#### Section 4.01 PURCHASE AND SALE OF NET ELECTRICAL OUTPUT; TRANSMISSION

Throughout the Term of this Agreement, Seller shall sell and deliver to City at the Delivery Point, and City shall purchase, receive at the Delivery Point, and pay for, the net electrical output including the Environmental, Capacity, and Resource Adequacy Attributes of the Facility, as measured by the meter at the Delivery Point (the "Net Electrical Output").

- (a) Seller shall arrange and be responsible for all costs, and all associated requirements of CAISO, PG&E and/or any other applicable transmission provider or control area operator to deliver the Net Electrical Output up to the Delivery Point, including all costs associated with metering and telemetry.
- (b) City shall arrange and be responsible for transmission service, transmission congestion costs, and all associated requirements of CAISO, PG&E and/or any other applicable transmission provider or control area operator to schedule and receive the Net Electrical Output at and from the Delivery Point, including any transmission losses from the Delivery Point and any CAISO imbalance charges (including, but not limited to, energy charges) assessed based on imbalances between scheduled output and actual output.

#### Section 4.02 ENVIRONMENTAL ATTRIBUTES AND CAPACITY ATTRIBUTES

Throughout the Term, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all rights, titles, and interest in and to the Environmental Attributes, Capacity and Resource Adequacy Attributes as a component of the Output purchased by Buyer from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes, Capacity and Resource Adequacy Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes, Capacity and Resource Adequacy Attributes. Seller agrees that the Contract Price is the full compensation for all Energy, Environmental Attributes, Capacity and Resource Adequacy Attributes. .

- (a) No Assignment. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any portion of the Environmental Attributes, Capacity and Resource Adequacy Attributes to any Person other than Buyer.
- (b) RPS Compliance. The Generating Facility has been pre-certified by the appropriate entity having jurisdiction as an ERR for purposes of the RPS legislation. Seller shall cause the Generating Facility to be fully certified by the appropriate entity having jurisdiction as an ERR for purposes of the RPS legislation such that all Output delivered to Buyer from the Generating Facility qualifies as output of an ERR for purposes of the RPS legislation and thereafter, Seller shall ensure that the Generating Facility maintains ERR status throughout the remainder of the Term of this Agreement. Seller shall cooperate reasonably with Buyer and provide such

certifications or attestations to Buyer as are reasonably necessary to verify that all Environmental Attributes attributable to the Energy have been transferred to Buyer.

- (c) Reporting Rights. During the Term, Seller shall not report to any Person that the Environmental Attributes, Capacity and Resource Adequacy Attributes granted hereunder to Buyer belong to anyone other than Buyer, and Buyer may report under any program that such attributes purchased hereunder belong to it.
- (d) Attestation. Seller shall be responsible for complying, at its own expense, with requests for information associated with the Western Renewable Energy Generation Information System (“WREGIS”) and/or another entity, if any, that Buyer uses to verify its renewable energy purchases and that requires registration, inspections, certification or other evidence of the capability of the Project to produce Environmental Attributes or evidence of the quality and/or quantity of such Environmental Attributes produced. Seller shall document the production of Environmental Attributes under this Agreement by delivering with each invoice to Buyer an attestation for Environmental Attributes produced by the Generating Facility and purchased by Buyer in the preceding calendar month, and transferring the Environmental Attributes from Seller’s WREGIS account to Buyer’s WREGIS account. On or before March 31st of each year following a Contract Year, Seller shall document the transfer of Environmental Attributes to Buyer under this Agreement by delivering to Buyer an attestation for Environmental Attributes transferred under this Agreement in the preceding Contract Year. The form of attestation is set forth as Exhibit H [Form of Attestation]. Exhibit H [Form of Attestation] shall be updated or changed by the Parties as necessary to ensure that Buyer receives full and complete title to, and the ability to record with any EA Agency as its own, all of the Environmental Attributes purchased hereunder.
- (e) Documentation. At Buyer’s request, the Parties, each at their own expense, shall execute all such documents and instruments in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer or its designees, as Buyer may reasonably request. Upon notification by an EA Agency that any transfers of Environmental Attributes contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to the EA Agency to effectuate any transfers.
- (f) Future Environmental Attributes.
  - (i) The Parties acknowledge and agree that additional environmental attributes of the type sold under this Agreement may be recognized by a Governmental Authority after the Delivery Date (“***Future Environmental Attributes***”). In such event, upon Buyer’s election, such Future Environmental Attributes shall be sold by Seller and purchased by Buyer pursuant to the terms and conditions set forth in this Agreement at no additional increase in the Contract price. Any additional costs associated with the sale, purchase, transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes shall be borne by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following

receipt of such estimate, Buyer shall notify Seller of its continued election to purchase the Future Environmental Attributes; *provided* that if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election not to purchase such Future Environmental Attributes, and Seller shall not be required to incur any new additional costs. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice of Buyer's election not to purchase such Future Environmental Attributes.

- (ii) The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the sale and purchase of such Future Environmental Attributes prior to any such sale or purchase, including agreement with respect to (i) appropriate sale, purchase, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided* that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

#### **Section 4.03 SCHEDULING COORDINATOR SERVICES**

Throughout the Term of this Agreement, City shall provide (or cause to be provided), at its own expense, Scheduling Coordinator services for the Facility. Seller agrees to sign and deliver any documentation necessary to:

- (a) Designate City or its designee as Scheduling Coordinator for the Facility; and;
- (b) Allow City OR City's designee to perform its various Scheduling Coordinator duties including, but not limited to, scheduling output from the Facility in accordance with CAISO's Tariff.

City reserves the right to substitute another entity as Scheduling Coordinator for the Facility upon reasonable advance notice to Seller.

#### **Section 4.04 PARTICIPATING INTERMITTENT RESOURCE PROGRAM**

- (a) Seller and Buyer acknowledge and agree that, following execution and delivery of all applicable CAISO documents referred to in Section 4.03(a) and this Section 4.03(b), and certification by CAISO (if necessary), the Facility will participate in CAISO's Participating Intermittent Resource Program (the "PIRP"), or its successor program. Seller agrees to sign and deliver any documentation necessary to allow the Facility to participate in the PIRP (or successor program) throughout the Term of this Agreement.
- (b) If the PIRP is modified or altered such that materially different costs or obligations are imposed on Seller or Buyer, as compared to those costs or obligations imposed as of the Effective Date, the Parties agree to meet and negotiate in good faith equitable changes to the

Agreement. In the event the Parties are unable to agree upon a mutually acceptable solution, either Party may, upon written notice to the other, request that the matter be referred to senior management officials with express authority to resolve the issue. Such officials shall meet or confer at least once to negotiate in good faith a mutually acceptable resolution within ten (10) business days of such written notice. If such officials cannot reach a mutually agreeable resolution, then the issue shall be submitted to non-binding mediation pursuant to Section 14.05 below within thirty (30) days of a written request of one Party being served on the other Party. The Parties acknowledge that the implementation of the CAISO's current draft proposals, as of the Delivery Date, for a successor program to the PIRP shall not constitute a modification or alteration to the PIRP that imposes materially different costs or obligations on Seller or Buyer for the purposes of this Section.

- (c) Forecast Fee. The PIRP, or its successor program, by means of a contract with a forecasting service (the "Forecasting Service") develops high quality forecasts for Day-Ahead Market and/or Real-Time Market scheduling for CAISO operations. Seller, shall bear forecast fees imposed by CAISO for use of the Forecasting Service.

With respect to the Net Electrical Output to be sold under this Agreement:

- (i) If requested, Seller agrees to provide the Forecasting Service with sufficient data to support a reasonably accurate and unbiased forecast; and
- (ii) Buyer, as part of its Scheduling Coordinator services, will use the forecasts developed by the Forecasting Service, which are relevant to the Facility as the Facility's "Energy Schedule" for the CAISO Day-Ahead and/or Real-Time markets.

#### **Section 4.05 BUYER CURTAILMENT REQUIREMENTS**

- (a) Buyer shall have the right to curtail deliveries of Buyer's Metered Output and associated Environmental Attributes at any time and for the duration specified by Buyer in accordance with this Section 4.05. Buyer shall provide notice to Seller of Buyer's request for curtailment under this Section 4.05 and Seller shall comply with such request within five (5) minutes of such notice, subject to Good Utility Practices. In its initial curtailment notice to Seller, Buyer shall provide to Seller the duration of the curtailment period, which shall be for a minimum of five (5) minutes, and the time when Buyer requests that Seller resume delivery of Buyer's Metered Output to Buyer. To the extent Buyer requests any change in the duration of the requested curtailment period, Seller shall have five (5) minutes to respond to such request. Seller will respond to Buyer's curtailment notices (including the end of such curtailment periods) in accordance with Good Utility Practices, *provided that* Buyer acknowledges that due to operational constraints, Seller does not have the ability to instantaneously respond to Buyer's curtailment notices (including the periods). For purposes of this Section 4.05, notice shall be provided by telephone to Seller, or by other means mutually agreed upon by the Parties.



- (b) During a curtailment pursuant to this Section 4.05(a), Buyer shall pay Seller the Contract Price multiplied by the Deemed Generated Energy for the curtailed energy.
- (c) Seller shall use commercially reasonable efforts to develop procedures to respond to CAISO curtailment instructions in response to decremental bids submitted pursuant to Section 4.05 (a) and shall, in accordance with CAISO protocols and Good Utility Practices, and subject to appropriate ramp rates, respond to any decremental instructions from the CAISO and reduce generation at the Project based on such instructions from the CAISO.
- (d) If at any time during the Term, the CAISO Tariffs is amended or modified in a way that impacts (1) Seller's ability to schedule the Project into CAISO, as described in this Article 4, (2) Buyer's curtailment rights pursuant to Section 4.05(a), (3) the PIRP program or protocol in a way that materially impacts the economics of this Agreement of the scheduling or settlements process for wind resources, or if Seller elects to opt out of PIRP pursuant to Section 4.04, then, if necessary, the Parties shall cooperate in good faith to amend this Agreement in a manner to maintain the economic bargain included herein.

#### **Section 4.06 OUTAGES**

- (a) Scheduled outages
  - a. Not later than September 1<sup>st</sup> each year prior to the commencement of any calendar year following COD, Seller shall submit to City its schedule of scheduled outages for the upcoming year ("Outage Schedule"). Within ten (10) business days after its receipt of the Outage Schedule, City shall notify Seller in writing of any reasonable request for changes to the Outage Schedule. If City fails to provide such notice within the prescribed period, City shall be deemed to have approved the Outage Schedule. If City requests changes to the Outage Schedule, it shall suggest alternative dates in writing to Seller. If Seller can accommodate such alternate dates within accepted electrical practices, such alternate dates shall be accepted. Seller may make reasonable requests to change the approved Outage Schedule. If City can accommodate such alternate dates, or if the alternate dates are imposed on Seller by CAISO and/or PG&E under any rights CAISO or PG&E may have, such dates shall be accepted.
  - b. On the first business day of each calendar quarter, Seller shall provide City updates to the Outage Schedule, including any outages planned for the following twelve (12) months.
  - c. No outages shall be scheduled during May, June, July, August and September, except as necessary to comply with manufacturer's recommendations for maintenance.
  - d. Seller shall notify City of any outage not previously scheduled as soon as practicable after the condition becomes known to Seller. Changes, additions or modifications will be processed as planned and/or forced outages pursuant to CAISO and/or PG&E protocols and timelines. At a minimum, Seller shall follow all CAISO and/or PG&E outage coordination protocols.

- (b) Forced Outages, means any unplanned reductions in the capability of the Generating Facility.
  - a. Forced Outages shall be reported by Seller to City within twenty (20) minutes of such outages.
  - b. Notice by Seller to City of a Forced Outage shall include the reason for the outage (if known), expected duration of the outage, and the capacity reduction.
- (c) Outage Notification. Seller shall notify Buyer of any outage not previously scheduled as soon as practicable after the condition becomes known to Seller. Changes, additions, or modifications will be processed as planned and/or forced outages pursuant to CAISO and/or PG&E protocols and timelines. At a minimum, Seller shall follow all CAISO and/or PG&E outage coordination protocols.
  - a. Commencement of an Outage – Seller shall not begin any planned Outage without prior approval of City and the CAISO provided that, if Seller notifies City and the CAISO that it intends to begin a planned Outage and does not receive notice from City or the CAISO objecting to the commencement of such planned Outage within twenty-four (24) hours of Seller’s notice becoming effective, the commencement of such planned Outage shall be deemed approved by City and the CAISO.
  - b. Return to Service – Seller shall notify City immediately whenever a generating unit is returned to service.
- (d) Notices. All Scheduling notices and Schedules are to be submitted to Buyer by phone, fax or email to the contacts listed in Exhibit J.

**ARTICLE V**  
**FORCE MAJEURE**

**Section 5.01 FORCE MAJEURE** To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement, and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party within two (2) Business Days, then unless as otherwise expressly provided herein, the Claiming Party shall be excused from the performance of its obligations (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable, dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

## **ARTICLE VI**

### **CONTRACT PRICE; GOVERNMENTAL CHARGES**

#### **Section 6.01 CONTRACT PRICE**

The contract price for Facility capacity and all Net Electrical Output metered and delivered under this Agreement is set forth in Exhibit F.

#### **Section 6.02 GOVERNMENTAL CHARGES**

Seller shall pay or cause to be paid all taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Net Electrical Output arising prior to the Delivery Point. City shall pay or cause to be paid all Governmental Charges on or with respect to the Net Electrical Output at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the electricity and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are City’s responsibility hereunder, City shall promptly reimburse Seller for such Governmental Charges. If City is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, City may deduct the amount of any such Governmental Charges from the sums due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

**ARTICLE VII**  
**METERING**

**Section 7.01 METERING REQUIREMENTS**

- (a) Meters. The transfer of all Net Electrical Output from Seller to Buyer shall be measured by CAISO certified revenue quality Meters at the Delivery Point or corrected to the Delivery Point. Such Meters shall be selected, provided, installed, owned, maintained and operated, at Seller's sole cost and expense, by Seller or Transmission Provider or its designee in accordance with the CAISO Tariff. Seller shall exercise reasonable care in the maintenance and operation of the Meters, and shall test and verify the accuracy of each Meter at least annually. Seller shall inform Buyer in advance of the time and date of these tests, and shall permit Buyer to be present at such tests and to receive the results of such tests.
- (b) SCADA. Seller shall install and maintain all equipment and data circuits necessary to determine and transmit real time supervisory control and data acquisition ("SCADA") system data and real time data from the Meters to the CAISO. Seller shall provide to Buyer a copy of each certificate of compliance issued by CAISO, if any.
- (c) Access by Buyer. Buyer, at its discretion, shall be provided access to all monitored SCADA points to be used for real time monitoring. Buyer may further, at its sole cost and expense, install and maintain meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Energy delivered under this Agreement, provided that such equipment does not interfere with Seller's Meters. Seller shall permit Buyer or Buyer's representative access to its Generating Facility for the purpose of installing and maintaining such check meters.
- (d) CAISO Requirements. Seller shall submit to the CAISO, or allow the CAISO to retrieve, any meter data required by the CAISO related to the Generating Facility and its Output in accordance with the CAISO's settlement and billing protocol and meter data tariffs. Seller shall authorize Buyer, as part of Buyer's Scheduling Coordinator services, to view the Facility's CAISO on-line meter data by identifying Buyer as an authorized user with "read only" privileges.

**Section 7.02 METER INNACCURACIES AND RETROACTIVE ADJUSTMENTS**

If a Meter fails to register, or if the measurement made by a Meter is found upon testing to be inaccurate by an amount exceeding plus or minus one percent (1%), an adjustment shall be made correcting all measurements made by the inaccurate or defective Meter during the Adjustment Period. If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (i) by

correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation, or (ii) if not so ascertainable, by estimating on the basis of the deliveries under similar conditions during periods when the Meter was registering accurately. Upon the determination of the amount of any adjustment and upon acceptance of such adjustment by the CAISO, if applicable, Buyer shall pay to Seller any additional amounts then due for deliveries of Output during the Adjustment Period at such time as other payments are due for the billing period in which the determination is made, or Buyer shall be entitled to a credit against the next subsequent payments due for the deliveries of Output, whichever case is applicable. The Parties agree to abide by protocols under the CAISO Tariff for handling Meter inaccuracies.

### **Section 7.03 RECORDS AND AUDITS**

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

**ARTICLE VIII**  
**BILLING AND PAYMENT**

**Section 8.01 BILLING**

- (a) The calendar month shall be the standard period for all payments under this Agreement. Seller shall provide to Buyer on or before the tenth (10th) day of each calendar month starting from the second (2nd) month of the first Contract Year or, if applicable, the calendar month following the first calendar month in which Test Energy is delivered by Seller to Buyer:
- (i) An invoice based upon the Energy produced and delivered to the Delivery Point in such previous calendar month.
  - (ii) The corresponding attestation pursuant to Exhibit H [Form of Attestation]. Such invoice shall be delivered as specified under Section 14.08.
- (b) Disputes over Invoice. Should either Seller or Buyer determine at a later date, but in no event later than six (6) months after the original invoice date, that the invoice amount was incorrect, that Party shall promptly notify the other Party of the error. In the event that an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment in reasonable detail. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within thirty (30) Business Days of such resolution along with interest accrued at the Interest Rate from, and including, the due date to, but excluding the date paid. Inadvertent and undisputed overpayments by Buyer shall be returned upon request or deducted by Seller from subsequent payments, with interest accrued at the Interest Rate from, and including, the date of such overpayment to, but excluding the date repaid or deducted by, Seller. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 8.01(b) within six (6) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within six (6) months after the close of the month during which performance occurred, the right to payment for such performance is waived. Failure of Buyer or its agent to withhold any payment amount is not a waiver of Buyer's right to challenge such amount.

**Section 8.02 PAYMENT**

- (a) Subject to Section 8.01(b), all invoices under this Agreement shall be due and payable on the twentieth (20th) day of the month in which the invoice was received or the tenth (10th) day after receipt of the invoice, whichever is later or, if such day is not a Business Day, then on the next Business Day. Each Party shall make payments by

electronic funds transfer as set forth in Exhibit I [Payment/Wire Instructions], or by other mutually agreeable method(s), to the account designated by the other Party.

- (b) Late Payments and Interest Rate. Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at an annual rate equal to two percent (2%) plus the Interest Rate. Interest shall be computed on the basis of a three hundred sixty five (365) -day year.

### **Section 8.03 NETTING OF PAYMENTS**

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



**ARTICLE IX**  
**EVENTS OF DEFAULT**

**Section 9.01 EVENTS OF DEFAULT**

An "Event of Default" shall mean, with respect to a Party (the "Defaulting Party"), the occurrence of any of the following:

- (a) A default by Seller under the Lease;
- (b) The failure to make, when due, any payment required pursuant to this Agreement or in the Lease, or to post and/or maintain the Letter of Credit, if such failure is not remedied within thirty (30) days after receipt of written notice from the other Party;
- (c) The failure to perform any other covenant or obligation set forth in this Agreement or in the Lease, if such failure is not remedied within thirty (30) days after receipt of written notice from City;
- (d) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (e) A Party becomes bankrupt, or an involuntary proceeding is initiated against the Party under bankruptcy or insolvency laws, which involuntary proceeding remains undismissed for sixty (60) consecutive days; or
- (f) Such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

**Section 9.02 ADDITIONAL EVENTS OF DEFAULT BY SELLER**

In addition to the Events of Default in Section 9.01 above, the following shall each constitute an "Event of Default" by Seller:

- (i) Seller Schedules and/or delivers to Buyer energy or other product from a resource other than the Generating Facility specified in this Agreement;
- (ii) During the Term, Seller sells or transfers Buyer's share of the Output (or any individual component thereof) to any Person other than Buyer.

### **Section 9.03 REMEDIES; TERMINATION FOR DEFAULT**

- (a) Termination for Default. In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 9.01 or 9.02, as applicable, the non-defaulting Party may terminate the Agreement by notifying the defaulting Party in writing of (i) the decision to terminate, and (ii) the effective date of the termination.
- (b) Remedies. Upon termination of the Agreement following an Event of Default, the non-defaulting Party shall calculate, in a commercially reasonable manner, the Termination Payment as of the effective date of termination. As soon as practicable thereafter, the non-defaulting Party shall give notice to the defaulting Party of the amount of the Termination Payment, together with a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the defaulting Party within five (5) Business Days after its receipt of such notice. If the defaulting Party disputes the non-defaulting Party's calculation of the Termination Payment, in whole or in part, the defaulting Party shall, within five (5) Business Days of receipt of the non-defaulting Party's calculation of the Termination Payment, provide to the non-defaulting Party a detailed written explanation of the basis for such dispute, and such dispute shall be resolved in accordance with Section 14.05. For the purposes of this Section 9.03:
- (i) "Termination Payment" means the sum of the Losses of Gains, and Costs, expressed in U.S. Dollars, which the non-Defaulting Party incurs as a result of the termination of this Agreement following an Event of Default;
  - (ii) "Losses" means an amount equal to the present value of the economic loss (if any) to the non-defaulting Party (exclusive of Costs) resulting from termination of this Agreement following an Event of Default, determined in a commercially reasonable manner;
  - (iii) "Gains" means an amount equal to the present value of the economic benefit (if any) to the non-defaulting Party (exclusive of Costs) resulting from termination of this Agreement following an Event of Default, determined in a commercially reasonable manner; and
  - (iv) "Costs" means brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by the non-defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement, and all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with the termination of this Agreement.
- (c) Suspension. Notwithstanding any other provision of this Agreement, if an Event of Default has occurred and is continuing, the non-defaulting Party, upon written notice to the defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless a notice of termination has been given pursuant to Section 9.01(a), and

(ii) to the extent an Event of Default has occurred and is continuing, to exercise any remedy available at law or in equity

- (d) Limitations. Except as otherwise specifically and expressly provided in this Agreement, neither Party shall be liable to the other under this Agreement for any indirect, special or consequential damages, including loss of use, loss of revenues, loss of profit, interest charges, cost of capital or claims of its customers or members to which service is made.

**ARTICLE X**  
**TERMINATION**

**Section 10.01 TERMINATION BY CITY**

If Seller fails to complete or otherwise satisfy the Conditions Precedent within one hundred and twenty (120) days of the Delivery Date set forth in Exhibit D for reasons not attributable to Force Majeure, then City shall have the right, in its sole discretion, to terminate this Agreement, and neither Party shall have any further liability hereunder.

If Seller fails to commence construction of the repower facility by October 1<sup>st</sup>, 2019 then the City shall have the right, in its sole discretion, to terminate this Agreement, and neither Party shall have any further liability hereunder.

If Seller fails to reach commercial operations of the repower facility by October 31<sup>st</sup>, 2020 then City shall have the right, in its sole discretion, to terminate this Agreement, and neither Party shall have any further liability hereunder.

**Section 10.02 NOTICE OF TERMINATION**

Any such termination hereunder shall be effected by delivery of a written "Notice of Termination" specifying the basis therefore and the date upon which termination becomes effective. The termination date shall occur no later than forty-five (45) days from the date of delivery of the Notice of Termination. Thereafter, each Party will render to the other Party a final invoice for the payment obligations, if any, incurred up to the termination date.

**Section 10.03 CLOSE-OUT**

After receipt of a Notice of Termination, the receiving Party shall, in good faith and to the best of its ability, do all things necessary and proper to ensure the efficient, proper close-out of the terminated Agreement.

**ARTICLE XI**  
**REPRESENTATIONS, WARRANTIES & COVENANTS**

**Section 11.01 SELLER'S REPRESENTATIONS AND WARRANTIES**

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

- (a) Seller is duly organized and validly existing as a corporation under the laws of the State of [\_\_\_\_\_], and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (b) Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder; all such actions have been duly authorized by all necessary proceedings on its part. As of the Delivery Date, (a) the Generating Facility is a “qualifying small power production facility” as that term is defined in Section 3(17)(C) of the Federal Power Act, and will possess all of the exemptions from regulation provided in 18 C.F.R. Sections 292.601(c) and 292.602; or (b) Seller has market-based rate authority, and has made all filings required in connection with this Agreement, under Federal Power Act;
- (c) The Generating Facility will meet the requirements for qualification and certification by the CEC as an ERR under the rules and requirements of the RPS in effect as of the Delivery Date; and (b) the Output delivered to Buyer will meet the requirements for qualification and certification as output from an ERR under the requirements of the RPS in effect as of the Delivery Date
- (d) This Agreement has been duly and validly executed and delivered by Seller and, as of the Effective Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller’s ability to perform its obligations under this Agreement;
- (f) Seller will deliver to Buyer at the Delivery Point the Output free and clear of all liens, security interests, claims and encumbrances or any interest therein, or thereto, by any Person;
- (g) Seller holds and will hold throughout the Term, the rights to all Environmental Attributes, Capacity, and Resource Adequacy Attributes, which it has conveyed and has committed to convey to Buyer hereunder; and

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

**Section 11.02 BUYER’S REPRESENTATIONS AND WARRANTIES**

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

- (a) Buyer is a chartered California municipal corporation established pursuant to the laws of the State of California, and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted;
- (b) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery and performance of this Agreement by Buyer will not conflict with its governing documents, any applicable laws or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;
- (d) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Effective Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; and
- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer’s ability to perform its obligations under this Agreement.

**ARTICLE XII**  
**INDEMNIFICATION**

**Section 12.01 GENERAL INDEMNITY**

Seller agrees to investigate, defend, indemnify and hold City harmless from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which City may incur, sustain or be subjected to on account of Seller's use of the Premises or the Facility, or on account of loss or damage to property or loss of use thereof, including damage caused by the discharge, release, disposal or dispersal of any hazardous material, pollutant, irritant, contaminant or hazardous substance, or for bodily injury to or death of any persons (including, but not limited to employees, subcontractors, agents and invitees of each Party hereto) arising out of or in any way connected with the work to be performed or occupancy, operation, maintenance, enjoyment or use of the Premises or Facility by Seller under this Agreement and arising from any cause whatsoever, to the extent that such is not in conflict with California Civil Code Section 2782.

**Section 12.02 VIOLATION OF GOVERNMENTAL APPROVALS**

In addition to the obligations set forth in Section 12.01 above, Seller also agrees to investigate, defend, indemnify and hold City harmless from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character, including response, remedial or inspection costs and expenses, made or brought against City by any federal, state or local agency, or federal or state court, with jurisdiction over the Premises, arising out of or based upon (a) Seller's violation of any Governmental Approvals, or (b) any activities by Seller which contribute to, cause or result in any avian collisions or avian deaths on or above the Premises of the Facility after the Effective Date, to the extent that such is not in conflict with California Civil Code Section 2782.

**ARTICLE XIII**  
**SELLER'S GUARANTY REQUIREMENTS**

**Section 13.01 SELLER'S GUARANTY**

Seller agrees to deliver to City a guaranty in favor of City under the terms of which Seller's guarantor unconditionally guarantees the full and prompt performance of Seller under this Agreement throughout the Term, including payment of any amount owed by Seller to City under this Agreement. Such guaranty from Seller's guarantor shall be in the form of a Letter of Credit reasonably approved by City, and shall be executed and be delivered to City by Seller's guarantor no later than ten (10) days after the Effective Date. The liability of Seller's guarantor under such guaranty shall not exceed One Million Dollars (\$1,000,000) in the aggregate with respect to all such guaranteed obligations. For the avoidance of doubt, the guaranty in favor of City required under this Section 14.01 is the identical guaranty required under Section 14.01 of the Lease.



**ARTICLE XIV**  
**MISCELLANEOUS**

**Section 14.01 CONFIDENTIALITY**

The Parties hereto acknowledge that City is a local agency and subject to provisions of the California Public Records Act (Cal. Government Codes section 6250 et seq.). In the event that Seller contends that any information disclosed or required to be disclosed by Seller pursuant to this Agreement constitutes a "trade secret" or is otherwise exempt from disclosure under said California Public Records Act, Seller shall clearly identify such documents before transmitting the same to City. City shall thereafter, to the extent permitted by law, exercise commercially reasonable efforts to prevent the disclosure of such documents to third persons without the prior written consent of Seller. In the event that any claim or action is filed against City pursuant to the Public Records Act seeking the disclosure of any records or documents provided by Seller hereunder, City shall notify Seller in writing of such fact and Seller shall thereupon defend, save harmless and indemnify City from all costs and expense in connection with said claim or litigation, including attorney's fees, and agrees to abide by the final decision of a court of competent jurisdiction in connection therewith.

**Section 14.02 EXCLUSIVITY**

At no time shall Seller sell or otherwise dispose of the electricity, including the associated Environmental Attributes, sold to the City pursuant to the terms of this Agreement to any third party.

**Section 14.03 OPTION TO PURCHASE**

If at any time during the term of this Agreement additional electricity from the Facility is available due to the installation of additional units or capacity upgrade of existing units, City shall, subject to the following sentence, have the exclusive right to purchase any such additional product at the Delivery Point from the Facility at the then existing price. Such right shall expire if City does not give Seller notice of its election to purchase said additional electricity within sixty (60) days after receipt of written notice from Seller regarding the additional electricity and the date the electricity will be available from the Facility. Seller may at any time upgrade the Facility's capacity to serve parasitic loads.

**Section 14.04 TITLE AND RISK OF LOSS**

Title to and risk of loss related to the electricity shall transfer from Seller to City at the Delivery Point. Seller warrants that any Net Electrical Output delivered to the City shall be free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

## **Section 14.05 DISPUTE RESOLUTION**

If any controversy shall arise between Seller and City with respect to any matters set forth in this Agreement, and which the Parties cannot then resolve, shall be subject to the following administrative remedy prior to any litigation occurring between the Parties:

- (a) Both Parties shall attempt to resolve any controversy, claim, problem or dispute arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. In the event that any problem or dispute is not resolved, either Party may upon written notice to the other request that the matter be referred to senior management officials within each respective organization with express authority to resolve the problem or issue. Such representatives shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within ten (10) business days of such written notice. If the Parties cannot reach a mutually agreeable resolution, then the dispute or issue shall be submitted to non-binding mediation within thirty (30) Days of the written request of one Party after the service of that request on the other Party ("Request for Mediation"), subject to the rights of any Leasehold Mortgagee contained in Article XII of the Lease.
- (b) Within twenty (20) Days or less of the written Request for Mediation, the Parties shall agree on one mediator. If they cannot agree on one mediator within such twenty-Day period, then within three (3) Days each Party shall list the names of three (3) potential mediators affiliated with the Judicial Arbitration and Mediation Service ("JAMS") and shall supply them to the other party. The party demanding the mediation shall merge the names of all the potential mediators into a single list, not indicating which party submitted the name. Within five (5) Days of the exchange of lists of names of three (3) potential mediators by each party, the Parties shall jointly sign a letter directed to office of JAMS which serves Santa Clara County, requesting that JAMS appoint a mediator from the enclosed list. If a party refuses or fails to submit three (3) names within the three-Day period to the party preparing the letter, then the letter shall be sent on the 5th Day without input from the Party failing to submit names. The mediation meeting shall not exceed one Day (8 hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- (c) The costs of mediation shall be borne by the Parties equally.
- (d) If, during any dispute between the Parties, a demand is made by Seller for documents under the Public Records Act, City shall have reciprocal rights to demand documents from Seller.
- (e) Mediation under this Section 14.05 is a condition precedent to a Party filing an action in any court, unless that party has made demand for mediation and the other Party has failed or refused to engage in mediation. In the event of litigation arising out of any dispute related to this Agreement, the prevailing party as determined by the court shall be entitled to an order for its reasonable attorneys' fees and costs, including reasonable expert witness costs and cost of suit against the non-prevailing party. Alternatively, the court in its sole discretion may also determine that neither Party is the prevailing party, and that each Party shall bear its own

attorneys' fees and costs or that the costs of the litigation shall in such case be borne equally by the Parties.

- (f) Unless otherwise agreed in writing, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of any proceeding by the parties in accordance with this Section 14.05. This Section 14.05 shall survive the termination of this Agreement.

#### **Section 14.06 ASSIGNMENT**

- (a) Except as otherwise expressly provided herein, this Agreement may not be otherwise assigned by Seller without prior written consent of City, which consent shall not be unreasonably withheld or delayed. City may consider, without limitation, the following matters: the net worth of the proposed assignee, its intended or proposed use of the Premises of the Facility, and such assignee's reputation and experience in the energy industry.
- (b) Seller may assign or otherwise transfer this Agreement, any or all right or interest in this Agreement, and any or all right or interest in any of the Facility, with the consent of City, whose consent shall not be unduly withheld:
- i) In connection with the financing of the Facility or the financing of any other activities permitted by City; or
  - ii) To a corporation now or hereafter organized in which Seller or any affiliated company owns at least fifty-one percent (51%) of all outstanding shares of stock; or
  - iii) To a partnership now or hereafter organized, a general partner of which is Seller or any affiliated company or a partnership or corporation in which Seller or any affiliated company owns at least fifty-one percent (51%) of all outstanding partnership interests or shares of stock; or
  - iv) To a corporation, partnership or other entity that acquires Seller by merger, consolidation or other means.
- (c) No assignment shall be valid unless there is delivered to City:
- i) A signed duplicate original of the documentation;
  - ii) A short form (or full original) signed and notarized for recording (or a recorder-stamped copy indicating recording); and
  - iii) A duplicate original of the instrument of assumption, in the case of a full assignment, showing full assumption by the transferee.

**Section 14.07 GOVERNING LAW; VENUE**

This Agreement shall be governed by, construed under and enforced in accordance with the laws of the State of California. The venue for any court action brought pursuant to this Agreement shall be Santa Clara County.

**Section 14.08 NOTICES**

All notices necessary to be given under the terms of this Agreement, except as herein otherwise provided, shall be in writing and shall be communicated by prepaid mail, telegram or facsimile addressed to the respective Party at the address below or to such other address as respectively designated hereafter in writing from time to time:

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

The Office of the Director of Electric Utility  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050  
or by facsimile at (408) 988-8021

And to Seller addressed as follows:

Seller's notice address: *[To be inserted by Seller]*  
Name: *[To be inserted by Seller]*  
Address: *[To be inserted by Seller]*

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

**Section 14.09 AUDIT**

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity of electricity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the

accuracy thereof was made prior to the lapse of six (6) months from the rendition thereof, and thereafter any objection shall be deemed waived.

#### **Section 14.10 JOINT EFFORT**

The Parties acknowledge and agree that each Party and its counsel have read this Agreement in its entirety, fully understand it, and accept its terms and conditions. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party is not applicable and therefore shall not be employed in the interpretation of this Agreement or any amendment of it.

#### **Section 14.11 COOPERATION**

The Parties agree to cooperate with each other and to do or cause all things necessary, proper or advisable to help consummate and make effective the transactions contemplated by this Agreement.

#### **Section 14.12 RELATIONSHIP OF THE PARTIES**

Nothing herein is intended to create or is to be construed as creating a joint venture, partnership, agency or other taxable entity between the Parties. The rights and obligations of the Parties shall be independent of one another and shall be limited to those expressly set forth herein.

#### **Section 14.13 NO THIRD PARTY BENEFICIARY**

The Parties mutually agree that this Agreement is for their sole benefit and is not intended by them to be, in part or in whole, for the benefit of any third party.

#### **Section 14.14 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and upon execution by the Parties, each executed counterpart shall have the same force and effect as an original instrument and as if the Parties had signed the same instrument.

#### **Section 14.15 REGULATORY COMPLIANCE**

Each Party shall at all times comply with all applicable laws, ordinances, rules and regulations applicable to it. As applicable, each Party shall give all required notices, shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith. In the event of any change to the CAISO Tariff that materially impacts either Party's obligations or ability to perform under this Agreement, either Party may request that the Parties engage in good faith negotiations to amend this Agreement such that an

equitable balance of benefits and burdens may be restored to the Parties. In the event that the Parties are unable to agree upon any amendments to this Agreement within sixty (60) days of the request for negotiations, either Party may invoke the dispute resolution provisions of Section 14.05. Pending any resolution under Section 14.05, the Parties shall continue to comply with the provisions of this Agreement.

#### **Section 14.16 NO DEDICATION OF FACILITIES**

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

#### **Section 14.17 WAIVER OF RIGHTS**

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

#### **Section 14.18 SECTION HEADINGS**

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

#### **Section 14.19 FORWARD CONTRACT**

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

#### **Section 14.20 GOOD FAITH AND FAIR DEALING; REASONABLENESS**

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

#### **Section 14.21 SEVERABILITY**

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

#### **Section 14.22 COUNTERPARTS**

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

#### **Section 14.23 COOPERATION**

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

#### **Section 14.24 LIMITATION OF LIABILITIES**

To the extent permitted by law, no Party's directors, members of its governing bodies, officers or employees shall be liable to any other party or parties for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder. Any liability or damages faced by an officer or employee of a federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with federal law. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN

EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 9.4, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

#### **Section 14.25 FURTHER ASSURANCES**

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

#### **Section 14.26 TIME IS OF THE ESSENCE**

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

(Section 14.27 and signatures continue on page below)



**Section 14.27 ENTIRE AGREEMENT**

This Agreement, when executed and delivered, shall constitute one, single integrated agreement and set forth the entire agreement by and between the Parties and supersedes any prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they have related in any way to the subject matter hereof and thereof. Notwithstanding anything to the contrary, in the event of a conflict or an inconsistency between this Agreement and any Exhibits hereto, the terms of this Agreement shall control.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

**CITY OF SANTA CLARA, CALIFORNIA,  
a chartered California municipal corporation**

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD E. NOSKY  
City Attorney

By: \_\_\_\_\_  
JULIO FUENTES  
City Manager

ATTEST:

City Clerk

1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Facsimile: (408)241-6771

“City”

**[SELLER]**

*[include place of formation and business type]*

\_\_\_\_\_  
Name:  
Title:  
Address:  
  
Telephone:  
Fax:

“Seller”

# POWER PURCHASE AND SALE AGREEMENT

## BY AND BETWEEN THE CITY OF SANTA CLARA

AND

[Seller]

### EXHIBIT A

### DEFINITIONS

The following terms shall have the following meaning for purposes of this Agreement.

1. "Affiliate" means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.  
  
For purposes of this Agreement, "control" means the direct or indirect ownership of fifty-one percent (51%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
2. "Agreement" has the meaning set forth in the Preamble.
3. "Avian Issues" means those issues arising from or relating to: (i) avian collisions or avian deaths which occur specifically at the Facility, (ii) prevailing customs or procedures regarding avian collisions or avian deaths which are applicable to similar facilities in Alameda County, or (iii) restrictions imposed by regulatory agencies which address avian collisions or avian deaths in Alameda County.
4. "Buyer's Metered Output" means the energy output of the Project, intermittent and variable within the hour, equal to (a) the actual energy output of the Project for such hour made available at the Delivery Point, as measured in MWh by Meter.
5. "CAISO" means the California Independent System Operator, or its successor.
6. "City" or "Buyer" has the meaning set forth in the Preamble.
7. "Claiming Party" has the meaning set forth in Section 5.01.
8. "Conditions Precedent" has the meaning set forth in Section 2.02.
9. "Contract Capacity" means twenty megawatts (20 MWac) net capacity.
10. "Contract Price" has the meaning set forth in Exhibit F.
11. "Data Processing Gateway" means a CAISO approved device that will allow the Facility to securely establish telemetry with CAISO's SCADA interface.

12. “Deemed Generated Energy” means: (i) if the Project is generating, the Net Electrical Output of the Project or (ii) if the Project generation is reduced or the Project does not generate, the quantity of electric energy, expressed in MWh, that Seller reasonably calculates would have been produced by Project and made available at the Delivery Point during a relevant measurement period. Calculation of the amount of Deemed Generated Energy in the circumstance described in (ii), where the Project generation is reduced or the Project is not generating, shall be determined in the following sequence:
- (i) For periods for which actual wind data is available, Deemed Generated Energy shall be calculated by determining the amount of generation that would be produced by each Turbine based on the power curve provided by the Turbine manufacturer (adjusted by historical data for the Project compiled by Seller) and the Project average wind speeds as measured by the permanent meteorological towers, adjusted to reflect for line losses to the Delivery Point and the availability factor of the Project using historical data compiled by Seller. If such historical data is unavailable, line losses and Project availability factors shall be calculated using data from comparable equipment deployed in conditions similar to those at the Project, based on Good Utility Practice.
  - (ii) For periods in which no actual wind data is available, the formula set forth above shall be used except that projected wind speeds shall be substituted for actual wind speeds, and such projected wind speeds shall be based upon wind speeds measured by wind monitoring equipment located on each Turbine that was available for operation immediately prior to the commencement of the period in question, or if such monitoring equipment is unavailable or inoperable during a relevant interval, then using other available data or interpolated data determined using Good Utility practice.
13. “Defaulting Party” has the meaning set forth in Section 9.01.
14. “Delivery Date” means the period beginning on the first date that Buyer accepts delivery of the Product from the Project in connection with this Agreement following Seller’s demonstration of satisfaction of the items listed in the Conditions Precedent.
15. “Delivery Point” means the interconnection point between the Facility and the PG&E transmission system.
16. “Effective Date” has the meaning set forth in the Preamble.
17. “Energy” means the electricity generated by the Generating Facility pursuant to this Agreement, as expressed in units of kWh or MWh as measured at the Meter(s).
18. “Energy Schedule” has the meaning set forth in Section 4.04(c)(ii).
19. “Environmental Attributes” means mean any and all current or future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributed to the generation from the Facility and its displacement of conventional energy generation. Environmental Attributes include but are not limited to:

- (a) Any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants;
- (b) Any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or any other governmental body, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and
- (c) The reporting rights to these avoided emissions such as Green Tag Reporting Rights.

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

Green Tags are accumulated on MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

Environmental Attributes shall also include any energy, capacity, reliability or other power attributes from the Facility; provided, however, that Environmental Attributes shall not include:

- (i) Production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation; or
- (ii) Emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

20. "Environmental Attributes (EA) Agency" means any local, state or federal entity, or any other Person, that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including, but not limited to, the Clean Air Markets Division of the United States Environmental Protection Agency, the CEC, the California Public Utilities Commission, The California Air Resources Board, and any successor agency thereto.
21. "Event of Default" has the meaning set forth in Section 9.01.
22. "ERR" has the meaning set forth in the recitals of this Agreement.

23. "Facility" has the meaning set forth in the Recitals.
24. "Forecasting Service" has the meaning set forth in Section 4.04(c).
25. "Force Majeure" means any cause or event beyond the reasonable control of the affected Party which was not foreseeable as of the date of this Agreement and not due to the fault or negligence of the Party affected, and which could not have been avoided by due diligence and use of reasonable efforts, including but not limited to: (a) actions of God, such as extreme weather conditions, droughts, floods, earthquakes; (b) fires, explosion, accidents that could not have been prevented by acting in accordance with generally accepted electrical practices; (c) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of vandalism, terrorism and/or sabotage, blockades, embargoes, industry-wide strikes; (d) changes in governmental approvals or the conditions imposed thereunder of the failure to renew such governmental approvals not due to the failure of the affected party to timely submit applications; and (e) failures in the CAISO Grid. Notwithstanding anything to the contrary in the foregoing, lack of finances, or mechanical breakdown, or electrical breakdown, or failure of any machinery or equipment of all or part of the Facility due to operation or maintenance of such machinery or equipment in a manner that is inconsistent with generally accepted electrical practices, or cessation of operation following an avian collision or avian death on or above the Premises of the Facility shall not constitute Force Majeure.
26. "Full Capacity Deliverability Status" has the meaning given to it in Appendix A of the CAISO Tariff.
27. "Future Environmental Attributes" has the meaning set forth in Section 4.02(f)
28. "Generating Facility" means Seller's electricity generating facility as more particularly described in Exhibit C [Description of Facility], together with all materials, equipment systems, structures, features and improvements necessary to produce electricity at such facility, excluding the Site, land rights and interests in land.
29. "Good Utility Practice" means any of the practices, methods, and acts engaged in or approve by a significant portion of the electric industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the industry.
30. "Governmental Approvals" has the meaning set forth in Section 2.02(e).
31. "Governmental Charges" has the meaning set forth in Section 6.02.
32. "Interconnection Facilities Agreement" means an agreement between Seller and PG&E (and

CAISO, if necessary) which allows the Facility to interconnect to the PG&E transmission system.

33. "Interest Rate" has the meaning set forth in Section 8.02.
34. "JAMS" has the meaning set forth in Section 14.05(b).
35. "Lease" has the meaning set forth in the Recitals.
36. "Meters" means the physical metering devices, data processing equipment and apparatus associated with the meters owned by Seller or Transmission Provider or its designee, and used to determine the quantities of Energy generated by the Generating Facility and to record other related parameters required for the reporting of data to Seller.
37. "Meter Service Agreement" means a contract between Seller and CAISO that delineates the terms and conditions for operations and the participation in CAISO's markets, including requirements for metering and telemetry.
38. "MW" means 1,000 Kilowatts of electric energy generating capacity.
39. "MWh" means 1,000 kWh of electric energy.
40. "Net Electrical Output" has the meaning set forth in Section 4.01.
41. "Non-Defaulting Party" has the meaning set forth in Section 9.03.
42. "Notice of Termination" has the meaning set forth in Section 10.02.
43. "Outage" means a physical state in which all or a portion of the Generating Facility is unavailable to provide Energy to the Delivery Point, including any derating or reduction in the capacity of the Generating Facility, whether planned or unplanned.
44. "Outage Schedule" has the meaning set forth in Section 4.06(a).
45. "Output" means (i) the Contract Capacity and associated Energy, and (ii) all Environmental Attributes, Capacity, and Resource Adequacy Attributes.
46. "Participating Generator Agreement" means a contract between Seller and CAISO that delineates the terms and conditions for operations and the participation in CAISO's markets, including requirements for scheduling and operations.
47. "Participating Transmission Owner" has the meaning set forth in the CAISO Tariff.
48. "Party" or "Parties" has the meaning set forth in the Preamble.
49. "Person" means an individual, partnership, corporation (including a business trust), Limited

Liability Company, Joint Stock Company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

50. "PIRP" has the meaning set forth in Section 4.04.
51. "PG&E" means Pacific Gas and Electric Company.
52. "Premises" has the meaning set forth in the Recitals.
53. "Product" means the Energy, capacity, Ancillary Services, and all products, services and/or attributes similar to the foregoing which are or can be produced by or associated with the Project, including renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.
54. "Request for Mediation" has the meaning set forth in Section 14.05(b).
55. "Resource Adequacy Benefits" means the rights and privileges attached to any generating resource that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Generating Facility.
56. "RPS" or "Renewable Portfolio Standard Program" has the meaning set forth in the recitals of this Agreement.
57. "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered on any given day or days hereunder during the Term at the Delivery Point.
58. "Scheduling Coordinator (SC)" means an entity certified by the CAISO for the purposes of undertaking the responsibilities specified by CAISO Tariff Section 2.2.6, as amended from time-to-time.
59. "Seller" has the meaning set forth in the Preamble.
60. "Site" means the real property on which the Generating Facility resides.
61. "SVP" means Silicon Valley Power, the City of Santa Clara's municipal electric utility.
62. "System Emergency" means conditions beyond the normal control of the CAISO, PG&E and/or SVP that affect the ability of transmission lines and associated facilities to function normally, including any abnormal system condition which requires immediate manual or automatic action to prevent loss of load, equipment damage, or tripping of system elements which might result in cascading outages or to restore system operation to meet the minimum operating reliability criteria.
63. "Taxes" means any federal, state, local or foreign income, gross receipts, license, payroll,

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

64. "Term" has the meaning set forth in Exhibit D.
65. "Transmission Provider" means any entity or entities responsible for the Interconnection of the Generating Facility with a Control Area or transmitting Energy on behalf of Seller from the Generating Facility to the Delivery Point, and on behalf of Buyer from the Delivery Point.
66. "Transmission System" means the facilities used for the transmission of electricity in interstate commerce, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider.
67. "WREGIS" means the Western Renewable Energy Generation Information System, or any successor renewable energy tracking system for implementing California's Renewables Portfolio Standard.



**POWER PURCHASE AND SALE AGREEMENT  
BY AND BETWEEN  
THE CITY OF SANTA CLARA  
AND  
[Seller]**

**EXHIBIT B  
LEASE**

The Ground Lease for Wind Park Facility on property located in the County of Alameda, State of California, by and between the City of Santa Clara, California, a municipal corporation and [SELLER], a [*include place of formation and business type*], is attached and incorporated herein by this reference.

# POWER PURCHASE AND SALE AGREEMENT

BY AND BETWEEN  
THE CITY OF SANTA CLARA  
AND  
[Seller]

## EXHIBIT C

### DESCRIPTION OF FACILITY

#### Description of Pre-Repower Facility:

The Facility consists of a system of 200 Vestas V-17 wind turbine electric generators, a substation and related power transfer facilities. Each turbine has a rated capacity of 90 kilowatts, and the turbines have an aggregate capacity of 18 megawatts. The turbines are interconnected by a system of transformers and power transfer lines to a substation owned by Seller.

The individual power lines from each of the turbines are fed into step-up transformers, which increase the voltage of the Facility's power from 480 volts to 12.5 kilovolts. Additional 12.5 kV power transfer lines carry electricity to the substation, which steps up the power to 69 kVs. The power generated by the Facility is delivered at this voltage to the interconnection point owned by PG&E and located adjacent to the Facility's substation.

#### Description of Post-Repower Facility:

*[Seller to add description of post repower facility.]*

# POWER PURCHASE AND SALE AGREEMENT

BY AND BETWEEN  
THE CITY OF SANTA CLARA

AND

[Seller]

## EXHIBIT D

### TERM

Term. Unless terminated earlier as provided herein, the term of this Agreement shall commence on the [insert MONTH, DAY, YEAR] ("Delivery Date") and shall terminate at 2400 hours PST on the date on [insert MONTH, DAY, YEAR] (the "Term").

Confidential Status. As noted in Section 15.01 above, City is a public agency subject to the requirements of the California Public Records Act (Cal. Government Code section 6250 et seq.). Notwithstanding the previous sentence, both Seller and the City consider the information contained in this Exhibit D to be confidential and/or proprietary and/or protected from disclosure pursuant to exemptions to the California Public Records Act (Cal. Government Code sections 6254 and 6255). Consequently, the Parties agree to treat the contents of this Exhibit D as confidential.

Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information contained in this Exhibit D, City as soon practical but within three (3) days of receipt of the request, shall notify Seller that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed in Section 15.08 of this Agreement. Seller shall be responsible for taking whatever legal steps are necessary to protect information contained in this Exhibit D and to prevent release of information to the Requestor. If Seller takes no such action, after receiving the foregoing notice from City, City shall be permitted to comply with the Requestor's demand and is not required to defend against it.

City agrees to cooperate with Seller in any efforts to prevent release of the information contained in this Exhibit D; however, City shall not be required to expend any monies in excess of the cost of notifying Seller by telephone, facsimile and/or mail of the pendency of a demand for the information contained in this Exhibit D. So long as City complies with the provisions of notification set forth in this Exhibit D, City shall not be liable for, and Seller and City hereby release each other from, any liability for any damages arising from any requirement under the law that City release the information contained in this Exhibit D to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, attorneys and directors, as those terms may apply to each Party, without limitation.

# **POWER PURCHASE AND SALE AGREEMENT**

## **BY AND BETWEEN THE CITY OF SANTA CLARA AND [Seller]**

### **EXHIBIT E**

#### **BUYOUT, EXTENSION, & FACILITY PURCHASE**

1. Buyout: The City at its discretion may buyout this Agreement from Seller at any point through the expiration of the Agreement Term. The buyout of the Agreement shall be a net present value calculation of the Agreement where the Parties have mutually agreed upon. Once notice of the buyout agreement is given, payment must be provided within ninety (90) days.
2. Extension: The City at its discretion may extend this agreement for up to 15 years but not less than five (5) years at the Contract price. The City must notify Seller at least two (2) years prior to the expiration of the Agreement to exercise this option. Up to ninety (90) days after the start of the Term the City, at its discretion, may elect to change the Term of the Agreement to any duration between five (5) and twenty (20) years. If the City specifies a Term that exceeds the term of the Lease then the City must extend the term of the Lease to coincide with the Term. If the City elects not to extend the Agreement then Seller is free to enter into agreements with other parties for energy generated off of the Property until the end of the Seller's Lease.
3. Facility Purchase: The City may purchase the Facility from Seller at any point after the start of the Term for the fair market value of the Facility and all associated contractual agreements including but not limited to the Lease.

**POWER PURCHASE AND SALE AGREEMENT**

**BY AND BETWEEN  
THE CITY OF SANTA CLARA  
AND  
[Seller]**

**EXHIBIT F**

**CONTRACT PRICE AND CONTRACT QUANTITY**

Contract Price. The contract price for wind energy under this Agreement shall be the following (the "Contract Price"): [ ]

Expected Annual Contract Quantity ("Contract Quantity"): [ ]

Confidential Status

As noted in Section 15.01 above, City is a public agency subject to the requirements of the California Public Records Act (Cal. Government Code section 6250 et seq.). Notwithstanding the previous sentence, both Seller and the City consider the information contained in this Article to be confidential and/or proprietary and/or protected from disclosure pursuant to exemptions to the California Public Records Act (Cal. Government Code sections 6254 and 6255). Consequently, the Parties agree to treat the contents of this Article as confidential.

Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information contained in this Article, City as soon practical but within three (3) days of receipt of the request, shall notify Seller that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed in Section 15.08 of this Agreement. Seller shall be responsible for taking whatever legal steps are necessary to protect information contained in this Article and to prevent release of information to the Requestor. If Seller takes no such action, after receiving the foregoing notice from City, City shall be permitted to comply with the Requestor's demand and is not required to defend against it.

City agrees to cooperate with Seller in any efforts to prevent release of the information contained in this Article; however, City shall not be required to expend any monies in excess of the cost of notifying Seller by telephone, facsimile and/or mail of the pendency of a demand for the information contained in this Article. So long as City complies with the provisions of notification set forth in this Article, City shall not be liable for, and Seller and City hereby release each other from, any liability for any damages arising from any requirement under the law that City release the information contained in this Article to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, attorneys and directors, as those terms may apply to each Party, without limitation.

# POWER PURCHASE AND SALE AGREEMENT

BY AND BETWEEN  
THE CITY OF SANTA CLARA  
AND  
[Seller]

## EXHIBIT G

### INSURANCE REQUIREMENTS

Without limiting the Seller's indemnification of the City and prior to commencing any of the services required under this Agreement, the Seller shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements or equivalent, in the discretion of City:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than the following:
  - \$1,000,000 Each occurrence
  - \$3,000,000 General aggregate
  - \$1,000,000 Products/Completed Operations aggregate
  - \$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Seller; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Seller to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

**B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Seller shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

**C. WORKERS' COMPENSATION**

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Seller included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Seller under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

**D. COMPLIANCE WITH REQUIREMENTS**

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect
2. to liability arising out of Seller's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
3. Primary and non-contributing. Each insurance policy provided by Seller shall contain language or be endorsed to contain wording making it primary insurance, except for

gross negligence or willful misconduct, as respects to, and not requiring contribution from, any other insurance which the City may possess, including any self-insurance or self-insured retention they may have. Any other insurance City may possess shall be considered excess insurance only and shall not be called upon to contribute with Seller's insurance, if such "primary and non-contributing" coverage is included in the text.

4. General Aggregate. The general aggregate limit shall apply separately to Seller's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
5. Cancellation.
  - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
  - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
6. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Seller and City agree as follows:

1. Seller agrees to be responsible for ensuring that no contract used by Seller reserves the right to charge City for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
2. The City reserves the right to withhold payment from the Seller in the event of material noncompliance with the insurance requirements set forth in this Agreement. Seller's inability to obtain the specific policy language required by this Exhibit C shall not be considered material noncompliance.



F. EVIDENCE OF COVERAGE

Prior to commencement of any services under this Agreement, Seller shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, or Joint Powers Authority agency to City and as described in this Agreement. Seller shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Seller or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Seller shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all insurance certificates, endorsements, coverage verifications and other insurance items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara Electric Department  
c/o Insurance Data Services - Insurance Compliance  
P.O. 12010-S2 or 151 North Lyon Avenue  
Hemet, CA 92546-8010 Hemet, CA 92543  
Telephone: (951) 766-2280; or  
Fax: (951) 766-2299

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Seller shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability or a Joint Powers Authority that is approved by the City or its insurance compliance representatives.

**POWER PURCHASE AND SALE AGREEMENT**

**BY AND BETWEEN  
THE CITY OF SANTA CLARA  
AND  
[Seller]**

**EXHIBIT H  
FORM OF ATTESTATION**

**Environmental Attribute Attestation and Bill of Sale**

[\_\_\_\_\_] (“Seller”) hereby sells, transfers and delivers to **the City of Santa Clara** (“Buyer”) the Environmental Attributes and Environmental Attributes Reporting Rights associated with the generation of the indicated Energy (as such terms are defined in the Renewable Energy Power Purchase Agreement (“Agreement”) dated [Date], between Buyer and Seller):

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

| <u>Dates</u> | <u>MWhrs generated</u> | <u>Dates</u> | <u>MWhrs generated</u> |
|--------------|------------------------|--------------|------------------------|
| _____        | _____                  | _____        | _____                  |
| _____        | _____                  | _____        | _____                  |
| _____        | _____                  | _____        | _____                  |
| _____        | _____                  | _____        | _____                  |
| _____        | _____                  | _____        | _____                  |
| _____        | _____                  | _____        | _____                  |

In the amount of one Environmental Attribute for each megaWatt hour generated; and Seller further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
  - ii) this transfer to Buyer is the one and only sale of the Environmental Attributes and associated Environmental Attributes Reporting Rights referenced herein;
  - iii) the Facility generated and delivered to the Seller the Energy in the amount indicated as undifferentiated energy; and
- (check one)
- iv) Seller owns the Generating Facility, or
- iv) to the best of Seller’s knowledge, each of the Environmental Attributes associated with the generation of the indicated Energy have been generated and sold by the Generating Facility.

This serves as a Bill of Sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the Environmental Attributes associated with the generation of the Energy for delivery to the grid.

Seller: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

**POWER PURCHASE AND SALE AGREEMENT**

**BY AND BETWEEN  
THE CITY OF SANTA CLARA  
AND  
[Seller]**

**EXHIBIT I  
PAYMENT / WIRE INSTRUCTIONS**

-----  
**THE CITY OF SANTA CLARA (Buyer)**

**WIRE INSTRUCTIONS**

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

For information purposes, please fax a copy of the wire instructions to Buyer at [ ], Attention [ ].

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

[ ] (Seller)

**WIRE INSTRUCTIONS**

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

[To Be Provided]

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

**POWER PURCHASE AND SALE AGREEMENT**

**BY AND BETWEEN  
THE CITY OF SANTA CLARA  
AND  
[Seller]**

**EXHIBIT J**

**CITY (BUYER) CONTACTS**

**1. Contract Management**

| Name | Phone | Email |
|------|-------|-------|
|------|-------|-------|

**2. Billing/Invoice Issues**

| Name | Phone | Email |
|------|-------|-------|
|------|-------|-------|

**3. City Pre-Scheduling**

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

| Name | Phone | Email |
|------|-------|-------|
|------|-------|-------|

**4. City Schedule Coordination**

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

| Name | Phone | Email |
|------|-------|-------|
|------|-------|-------|

**5. City Dispatch/Outage Coordination**

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

| Name | Phone | Email |
|------|-------|-------|
|------|-------|-------|

**POWER PURCHASE AND SALE AGREEMENT**

**BY AND BETWEEN  
THE CITY OF SANTA CLARA  
AND  
[Seller]**

**EXHIBIT K  
(SELLER) CONTACTS**

**1. Contract Management**

| Name | Phone | Email |
|------|-------|-------|
|------|-------|-------|

**2. Billing/Invoice Issues**

| Name | Phone | Email |
|------|-------|-------|
|------|-------|-------|

**3. Pre-Scheduling and Dispatch/Outage Coordination**

Annual, Quarterly, Weekly and Daily generation schedules:

| Name | Phone | Email |
|------|-------|-------|
|------|-------|-------|

Pre-Scheduling (FAX) (to come)

**4. Operator and Real Time Issues**

All Planned and/or Forced Outages of generation facilities are to be provided to CITY Dispatch/Outage Coordination.

| Name | Phone | Email |
|------|-------|-------|
|------|-------|-------|

**Attachment 10**

**GROUND LEASE FOR WIND PARK FACILITY**

**ON PROPERTY LOCATED IN**

**THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA**

**BY AND BETWEEN**

**THE CITY OF SANTA CLARA, CALIFORNIA**

**AND**

**[REDACTED]**

Dated **[REDACTED]**, 2015

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**GROUND LEASE FOR WIND PARK FACILITY  
ON PROPERTY LOCATED IN  
THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA**

This Ground Lease Agreement (this “Lease”) is made and entered into this 1st day of September, 2016 (the “Effective Date”), by and between the City of Santa Clara, California, a municipal corporation (“City” or “Lessor”), and [company name], a [include place of formation and business type] (“Lessee”). City and Lessee may be referred to individually as a “Party,” or collectively as the “Parties.”

**RECITALS**

- A. City owns that certain parcel of property located at in the County of Alameda, State of California, commonly referred to as the Altamont Ranch and more particularly described in Exhibit A (the “Premises”), and Lessee desires to lease the Premises from City; and
- B. Lessee intends to repower, own and operate an existing wind turbine electrical generation facility (the “Facility”) located on the Premises, and sell energy generated at the Facility to City under a separate stand-alone purchase and sale agreement for wind energy (“Purchase and Sale Agreement”); and
- C. City and Lessee desire to enter into this agreement to confine the specific terms and conditions of the Lease.

Now, therefore, the Parties agree as follows:

**ARTICLE I  
INCORPORATION OF PREAMBLE; RECITALS**

**Section 1.01 INCORPORATION OF PREAMBLE AND RECITALS**

The Parties to this Lease agree and attest to the truth and accuracy of the provisions contained in the Preamble and Recitals set forth above. The provisions of the Preamble and Recitals are hereby incorporated and made a part of this Lease by this reference. The Parties agree that this Lease has been entered into, at least in part, in consideration of the provisions contained in the Preamble and Recitals, as well as the provisions contained in the balance of this Lease.

## **ARTICLE II LEASE OF PREMISES; TERM**

### **Section 2.01 LEASE OF PREMISES**

Lessor, for and in consideration of the rents, covenants and conditions in this Lease to be kept, performed, and observed by Lessee, does hereby lease to Lessee and Lessee does hereby rent and accept from Lessor, the Premises.

### **Section 2.02 COMMENCEMENT AND EXPIRATION DATES**

The term of this Lease is set forth in Exhibit B.

### **Section 2.03 HOLDOVER**

This Lease shall terminate upon the expiration of the Term (including any extension thereof), and any holding over by Lessee after the expiration date shall not constitute a renewal of this Lease or give Lessee any rights hereunder or in or to the Premises.

### **Section 2.04 EARLY TERMINATION**

- (a) If Seller fails to commence construction of the repower facility by October 1, 2019 then City shall have the right, in its sole discretion, to terminate this Agreement, and neither Party shall have any further liability hereunder.
- (b) If Seller fails to reach commercial operations of the repower facility by October 31st, 2020 then City shall have the right, in its sole discretion, to terminate this Agreement, and neither Party shall have any further liability hereunder.
- (c) If the Facility is materially damaged or destroyed during the Term, and the proceeds of any insurance policies covering the loss shall be insufficient to repair and replace the same, or construct an equivalent Facility, then Lessee shall have the option to terminate this Lease.
- (d) In the event of an early termination pursuant to Section 2.04 (a) or 2.04 (b) then City shall take possession of all fixtures on the Premises associated with the Facility or pursuant to Section 5.04 (b) may request Lessee to remove any and all buildings, improvements, fixtures, machinery and equipment of whatsoever nature at any time constructed, placed or maintained upon any part of the Premises, and other personal property belonging to Lessee, and restore said Premises to the original state which existed prior to any such improvements being placed on the Premises.

## **ARTICLE III RENT**

### **Section 3.01 ANNUAL RENT**

The annual rent under this Lease is set forth in Exhibit C.

### **Section 3.02 ADDITIONAL CONSIDERATION**

As additional consideration for leasing the Premises during the Term, Lessee agrees to sell wind energy to Lessor under the terms and conditions of the Purchase and Sale Agreement.

### **Section 3.03 DELINQUENCY OF RENTAL PAYMENT**

The failure of Lessee to pay the Rent by the due date shall constitute a default. In the event that Lessee fails to pay the Rent on or before the due date, in addition to any other remedy provided by this Lease, Lessee shall pay Lessor the delinquent rent and interest on the total delinquent Rent at the annual rate of two percent (2%) over the Bank of America prime rate existing on the due date, from the date of first delinquency to the date the Rent is received by Lessor. It is the intent of this provision that Lessor shall be compensated by such additional sums for loss resulting from rental delinquency including costs incurred by Lessor for servicing the delinquent account.

## **ARTICLE IV USE OF PREMISES**

### **Section 4.01 PRIMARY USE**

- (a) Lessee shall have the right to use the Premises only for the purpose of operating and maintaining the Facility (including any additional wind energy developments related to the Facility), and shall carry on no other activities other than those which are reasonably necessary for operation, maintenance, repair, restoration, and removal of the Facility (including any additional wind energy developments related to the Facility). Lessee shall take full responsibility for compliance with all applicable laws and Governmental Approvals (as defined below).
- (b) Lessee has the right to use the Premises for the purpose of operating and maintaining the Facility. Both the Facility, as a project under the California Environmental Quality Act (“CEQA”), and the original ground lease executed by the prior lessee, were originally reviewed and approved under the provisions of CEQA by Lessor, as the lead administrative agency. Lessor has also reviewed the transfer of interest in the Facility under CEQA and has determined that, so long as the use of the Facility is not changed or expanded, the prior environmental determination will apply to Lessee’s operation of the Facility on the Premises.

### **Section 4.02 SIGNS**

Lessee shall have the right to erect and maintain upon the Facility and the Premises only such signs as relate to the Facility and any improvements constructed hereunder, and only in accordance with applicable zoning and building codes. No other signs, billboards, or other advertising may be erected

upon the Premises without the prior written consent of Lessor.

#### **Section 4.03 LESSOR'S USE OF PREMISES**

Lessor specifically reserves the right to use or to lease or otherwise permit the use of the Premises by others for any purpose or use (e.g., farmland grazing, mineral extraction, etc.); *provided* that no such use shall materially interfere with the operation of the Facility (including any additional wind energy developments related to the Facility) by Lessee, or materially interfere with the speed or direction of the wind. Lessor agrees to defend, indemnify and hold Lessee harmless from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including attorney's fees) which Lessee may incur, sustain or be subjected to on account of Lessor leasing or otherwise expressly permitting (e.g., by license or similar agreement) the use of the Premises by others. Further, Lessor agrees to obtain a non-disturbance agreement, in a form reasonably acceptable to Lessee, from each future lessee or licensee of the Premises whereby each future lessee or licensee agrees not to materially interfere with the operation of the Facility by Lessee.

#### **Section 4.04 LESSEE'S USE OF ROADS**

While using Lessor's roads on the Premises, Lessee shall close, latch and lock all gates which are necessary to open in order to reach the Premises. Lessee shall promptly repair any damage to the roads caused by Lessee's use thereof.

### **ARTICLE V IMPROVEMENTS**

#### **Section 5.01 LESSEE'S RIGHT TO ALTER FACILITY; GENERAL CONDITIONS**

- (a) During the Term of this Lease, Lessee shall have the right to maintain, alter, remodel, reconstruct, rebuild, replace, and renew the Facility (including any additional wind energy developments related to the Facility) on the Premises; *provided* that Lessee shall first approach Lessor, as lead administrative agency, to discuss the permitting process for any such improvement work; and *provided further* that such improvements shall be built in accordance with all applicable federal and state laws and regulations, and local zoning, building and electrical codes, and shall be constructed in workmanlike manner in accordance with the requirements of all permits, licenses, entitlements to construct or use, variances and approvals as may be required by federal, state or local agencies having jurisdiction thereof (including Lessor, as lead administrative agency, and Lessor shall act reasonably and make determinations consistent with law to the extent Lessor functions as lead administrative agency for any such improvement work by Lessee), which includes the satisfactory compliance with the Subdivision Map Act and any local ordinance or regulation adopted pursuant thereto (collectively, "Governmental Approvals"). All necessary Governmental Approvals shall be applied for and obtained by Lessee at Lessee's sole expense.
- (b) To the best of Lessor's knowledge, the Premises complies with the Subdivision Map Act, and other applicable local ordinances and regulations, to allow the operation of the Facility by Lessee under the terms and conditions of this Lease.

#### **Section 5.02 PREREQUISITES TO THE START OF ALTERATION WORK**

No construction or alteration work on or to the Premises shall be commenced unless the following shall have first occurred:

- (a) Lessee, at Lessee's expense, shall have obtained all necessary Governmental Approvals or other permits necessary for the start of construction and satisfactory evidence of such has been received by the Lessor.
- (b) Lessee shall have furnished to Lessor a copy of all documentation, drawings and specifications submitted in connection with all Government Approvals, and furnished by equipment manufacturers, contractors or subcontractors of the Facility. Any material modification to the foregoing shall promptly be submitted to Lessor. Lessor's City Manager or his/her designee will issue a letter of acceptance notifying Lessee of acceptance of the required documentation by Lessor.
- (c) Lessee shall have furnished to Lessor all of the general liability, business automobile, and property damage insurance policies, with contractual liability endorsement which include the minimum coverage limits, endorsements, compliance documentation and notice obligations as set forth in Exhibit E, attached and incorporated by reference. Any policy of liability insurance furnished herein must insure Lessor against any liability it may incur to the public and/or its employees as result of the use of the Premises by Lessee, as well as for the operations thereon of any contractor or subcontractor working for Lessee.
- (d) Lessee shall have delivered to Lessor satisfactory proof that worker's compensation insurance as set forth in Exhibit E to cover all persons employed in connection with the construction or alteration work at the Facility.

### **Section 5.03 AS-BUILT DRAWINGS**

Upon completion of any construction or alteration work on or to the Premises, Lessee agrees to furnish to Lessor a complete set of "as-built drawings" for all improvements constructed by, or for, Lessee on or to the Premises at no expense to Lessor.

### **Section 5.04 LESSEE'S OWNERSHIP OF IMPROVEMENTS AND FIXTURES**

- (a) Except as herein otherwise provided, and subject to Lessor's option to purchase the Facility pursuant to Article X, it is expressly understood and agreed that any and all buildings, improvements, fixtures, machinery and equipment of whatsoever nature at any time constructed, placed or maintained upon any part of the Premises shall be and remain the property of Lessee or its sub-lessees, assignees, grantees or successors in interest as their interests may appear.
- (b) Subject to Section 5.04(c) and assuming Lessor has not exercised its option to purchase pursuant to Article X, Lessee shall, upon the expiration or termination of this Lease, without further notice, deliver up to Lessor the possession of the Premises and shall, within a reasonable time thereafter, not exceeding six (6) months, remove any and all buildings, improvements, fixtures, machinery and equipment of whatsoever nature at any time constructed, placed or maintained upon any part of the Premises, and other personal property belonging to Lessee, and restore said Premises to the original state which existed prior to any such improvements being placed on the Premises; *provided* that Lessee shall not be

required to remove concrete foundations and other ground level or below ground improvements, although Lessee shall cause at least 18" of earth to be placed on top of all cement platforms, foundations, anchors and other similar improvements not removed by Lessee. Upon the failure or refusal of Lessee to remove from the Premises any and all buildings, improvements, fixtures, machinery and equipment of whatsoever nature at any time constructed, placed or maintained upon any part of the Premises, and other personal property belonging to Lessee, Lessor may remove said items from the Premises, together with any buildings, structures and other personal property owned by Lessee, and Lessor may also restore the Premises to the original state which existed prior to any such improvements being placed on the Premises, all at the expense of Lessee, which expense Lessee agrees to pay Lessor upon demand.

- (c) As an alternative to Section 5.04(b), Lessee may, with the written consent of Lessor, leave all structures and improvements on the Premises and shall also deliver to Lessor or turn over to Lessor, all spare parts designated for the Facility on the Premises, instruction manuals, and other personal property of Lessee which is used in the operation of the Facility and located on or about the Premises. Lessee shall also turn over to Lessor nonexclusive use rights, and access as necessary, to use the high voltage electric power interconnection line and its associated supporting facilities from the PG&E transmission system up to, and including, the power collection system main breaker (the "Interconnection Facilities"), including the transmission lines and substation, being used by Lessee for delivery of electrical power generated by the Facility. Lessee shall also assign and deliver to Lessor, to the extent permitted by their terms and the governing agencies or contracting parties, all permits, licenses, Governmental Approvals and other interests, real or personal, necessary to operate the Facility, together with a nonexclusive royalty-free license under any applicable patents held by Lessee, to the extent necessary to permit Lessor to own and operate the Facility.

#### **Section 5.05 DOCUMENTATION**

Lessee shall maintain on site and provide access to Lessor a complete copy of all Facility documentation, including as-built drawings and Facility revisions.

#### **Section 5.06 LESSOR'S RIGHT TO MONITOR FACILITY**

Lessor or its agent may, with reasonable advance notice to Lessee, monitor various Facility system performance factors, such as meteorological and power output, at its cost during the Term of this Lease. Lessor shall conduct its monitoring so as not to materially affect Lessee's operations of the Facility.

#### **Section 5.07 CONFIDENTIALITY**

The Parties hereto acknowledge that Lessor is a local agency and subject to provisions of the California Public Records Act (Government Codes Sections 6250 et seq.). In the event that Lessee contends that any information disclosed or required to be disclosed by Lessee pursuant to this Lease constitutes a "trade secret" or is otherwise exempt from disclosure under said California Public Records Act, Lessee shall clearly identify such documents before transmitting the same to Lessor. Lessor shall thereafter, to the extent permitted by law, exercise commercially reasonable efforts to prevent the disclosure of such documents to third persons without the prior written consent of Lessee. In the event that any claim or action is filed against Lessor pursuant to the Public Records Act seeking

the disclosure of any records or documents provided by Lessee hereunder, Lessor shall notify Lessee in writing of such fact and Lessee shall thereupon defend, save harmless and indemnify Lessor from all costs and expense in connection with said claim or litigation, including attorney's fees, and agrees to abide by the final decision of a court of competent jurisdiction in connection therewith.

## **ARTICLE VI TAXES, ASSESSMENTS AND OTHER CHARGES**

### **Section 6.01 UTILITIES**

Lessee agrees to pay, or cause to be paid, as and when they become due and payable, all charges for water, gas, light, heat, telephone, electricity and other utility and communication services rendered or used on or about the Premises by Lessee or its assigns at all times during the Term of this Lease.

### **Section 6.02 IMPOSITIONS (INCLUDING TAXES AND ASSESSMENTS); PAYMENT GENERALLY**

Lessee agrees to pay, or cause to be paid, as and when they become due and payable, and before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all taxes, assessments, franchises, excises, license and permit fees, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever which at any time during the Term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on:

- (a) the Premises;
- (b) the rent and income received by Lessee from subtenants, guests or others, if any, for the use or occupation of the Premises and the improvements thereon; or
- (c) this transaction or any document to which Lessee is a party, creating or transferring an interest or estate in the Premises.

All such taxes, franchises, excises, license and permit fees, and other governmental levies and charges shall hereinafter be referred to as "Impositions", and any of the same shall hereinafter be referred to as an "Imposition". Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the Term of this Lease and a part of which is included in a period of time before commencement or after the expiration of the Term of this Lease, shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon, become a lien upon the Premises, or shall become payable, during the term of this Lease) be adjusted between Lessor and Lessee as of the commencement or expiration of the Term of this Lease so that Lessee shall pay that portion of such Imposition which that part of such fiscal period included in the period of time within of the Term of this Lease bears to such fiscal period, and Lessor shall pay the remainder thereof; *provided* Lessee shall not be entitled to receive any apportionment, if Lessee shall be in default in the performance of any of Lessee's covenants and agreements as provided in this Lease.

### **Section 6.03 PAYMENT OF IMPOSITIONS IN INSTALLMENTS**

If, by law, any Imposition may at the option of the payer be paid in installments (whether or not



interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, shall pay such installments as may become due during the Term of this Lease as the same respectively become due and before any fine, penalty, further interest or cost may be added thereto; *provided* that the amount of all installments of any such Imposition which will be the responsibility of Lessee pursuant to Section 6.02 above, and which are to become due and payable after the expiration of the Term of this Lease, shall be deposited with Lessor for such payment on the date which shall be one (1) year immediately prior to the date of such expiration.

#### **Section 6.04 LESSOR'S RIGHT TO CURE**

If Lessee, in violation of the provisions of this Lease, shall fail to pay and to discharge any Imposition, Lessor may (but shall not be obligated to) pay or discharge it, and the amount paid by Lessor and the amount of all costs, expenses, interest and penalties connected therewith, including attorney fees, together with interest at the rate of two percent (2%) over the Bank of America prime rate on the date payment is made by Lessor, shall be deemed to be and shall be payable by Lessee as additional rent and shall be reimbursed to Lessor by Lessee on demand; *provided* that Lessee shall have failed to pay such Imposition within five (5) days after written notice from Lessor of its intention to pay.

#### **Section 6.05 TAX RECEIPTS**

Lessee shall furnish to Lessor, within forty-five (45) days after the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority or other evidence satisfactory to Lessor evidencing payment thereof.

#### **Section 6.06 LIMITS OF TAX LIABILITY**

The provisions of this Lease shall not be deemed to require Lessee to pay municipal, county, state or federal income or gross receipts or excess profits taxes assessed against Lessor, or municipal, county, state or federal capital levy, estate, succession, inheritance, gift, or transfer taxes of Lessor, or corporation franchise taxes imposed upon any corporate owner of the fee of the Premises; except, however, that Lessee shall pay all taxes assessed by any governmental authority by virtue of any operation by Lessee conducted on or out of the Premises. It is agreed that in the event the State of California or any taxing authority thereunder changes or modifies the system of taxing real estate so as to tax the rental income from real estate in lieu of or in substitution (in whole or in part) for the real estate and so as to impose a liability upon Lessor for the amount of such tax, then Lessee shall be liable under this Lease for the payment of the taxes so imposed during the Term of this Lease, or any renewal thereof, to the same extent as though the alternative tax was a tax upon the value of the Premises.

#### **Section 6.07 PERMITTED CONTESTS**

Lessee shall have the right to contest the validity or the amount in part or in full, of any Imposition, which it is obligated to pay under the provisions of this Lease. Lessee agrees that all such proceedings shall be without undue delay after any contested item is imposed and shall be prosecuted to final adjudication with reasonable dispatch. Lessee shall give Lessor prompt notice in writing of any such contest at least ten (10) days before any delinquency occurs. Lessee may only exercise its right to contest an Imposition hereunder if the subject legal proceedings shall operate to prevent the collection of the Imposition so contested, or the sale of the Premises, or any part thereof, to satisfy the same, and only if Lessee shall, prior to the date such Imposition is due and payable, have given such

reasonable security as may be required by Lessor from time to time in order to insure the payment of such Imposition to prevent any sale, foreclosure or forfeiture of the Premises or any part thereof, by reason of such nonpayment. In the event of any such contest and the final determination thereof adversely to Lessee, Lessee shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Lessee and, after such payment and discharge by Lessee, Lessor will promptly return to Lessee such security as Lessor shall have received in connection with such contest. Lessor shall cooperate reasonably in any such contest permitted by this Section 6.07, and shall execute any documents or pleadings reasonably required for such purpose. Any such proceedings to contest the validity or amount of Imposition or to recover back any Imposition paid by Lessee shall be prosecuted by Lessee at Lessee's sole cost and expense; and Lessee shall indemnify and save harmless Lessor against any and all loss, cost or expense of any kind, including, but not limited to, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by Lessor in connection therewith.

**Section 6.08 NOTICE OF POSSESSORY INTEREST; PAYMENT OF TAXES ON VALUE OF ENTIRE PREMISES**

In accordance with California Revenue and Taxation Code Section 107.6 (a), Lessor states that by entering into this Lease, a possessory interest subject to property taxes may be created. Lessee, or any other party in whom the possessory interest is vested, shall pay all property taxes levied on such interest.

**Section 6.09 OTHER LIENS**

Lessee shall not, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any such lien, encumbrance or charge on the Premises or the Facility, or any part thereof arising out of Lessee's activities on the Premises, or Lessee's interest therein, or the Rent, or other sums payable by Lessee under this Lease. Lessee shall notify Lessor promptly of any lien or encumbrance which has been created on or attached to the Premises or the Facility, or to Lessee's leasehold estate therein, whether by act of Lessee or otherwise. The existence of any mechanic's, laborer's, materialmen's, supplier's or vendor's lien, or any right in respect thereof, shall not constitute a violation of this Section 6.09 if payment is not yet due upon the contract or for the goods or services in respect of which any such lien has arisen.

**ARTICLE VII  
INSURANCE**

**Section 7.01 INSURANCE REQUIREMENTS**

At all times for the term of this Lease or any authorized extension thereof, Lessee agrees to purchase, and maintain in full force and effect, at Lessee's sole cost and expense, the following insurance policies:

- a) Commercial general liability policy (bodily injury and property damage);
- b) Comprehensive automobile liability policy;
- c) Pollution Liability Policy;
- d) Workers' compensation and employer's liability policy; and

- e) Commercial all risk fire and extended property insurance.

Said policies shall provide coverage amounts and endorsements as indicated and set forth in Exhibit E, entitled "INSURANCE REQUIREMENTS", attached and incorporated herein by reference. All required insurance policies shall include policy coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit E. Upon execution of this Lease, and before commencing any work under the Lease or activities on the Premises, Lessee shall file the required insurance certificates and endorsements. Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Lease.

### **Section 7.02 SYSTEMS PERFORMANCE INSURANCE**

Lessee shall also obtain and maintain a blanket performance and resource policy or such other insurance substantially similar thereto, for the term of the lease for the wind turbine generators installed and/or operated by Lessee on the Premises.

### **Section 7.03 INCLUSION OF MORTGAGEE AS INSURED**

The following provisions shall apply to the insurance policies described in Section 7.01:

- (a) Subject to the provisions hereinafter set forth in this section, the Commercial Fire and Property Insurance policy shall also provide, if required by either Party hereto, for any loss to be payable to any Leasehold Mortgagee as the respective interest of such Party may appear, pursuant to standard mortgagee clause or endorsement; *provided* that such Leasehold Mortgagee must agree that any insurance proceeds received by such Party shall be made available for restoration of the improvements, or equivalent improvements, to at least the condition of said improvements prior to the casualty giving rise to the payment of such proceeds to said lender. The loss shall be adjusted with the insurance companies by Lessee, except that in case of any particular casualty resulting in damage or destruction exceeding One Hundred Thousand Dollars (\$100,000) in the aggregate, no adjustment shall be made with the insurance companies without prior approval of Lessor, which approval shall not be unreasonably withheld, unless the Leasehold Mortgagee shall have approved the amount of the adjustment, in which event Lessor's prior approval shall not be required.
- (b) The loss shall be payable (i) in the case of any particular casualty resulting in a loss payment not exceeding One Hundred Thousand Dollars (\$100,000) to Lessee, or (ii) in the case of any particular casualty resulting in a loss payment in excess of One Hundred Thousand Dollars (\$100,000) to the Leasehold Mortgagee, or if there be none, to bank or trust company or title insurance company providing construction/alteration disbursement services, as insurance trustee designated by Lessee, but subject to the approval of Lessor, which approval shall not be unreasonably withheld, in a notice given to the insurance companies and to Lessor promptly following the occurrence of the casualty, which bank or trust company or title insurance company shall be licensed to do business as an escrow holder in the State of California. All policies of the kind aforesaid shall expressly provide that loss thereunder shall be adjusted and paid as required by the terms hereof.
- (c) Insurance proceeds on hazard insurance deposited with such trustee shall be used solely for the purposes set forth in Article XI hereof.

## **ARTICLE VIII INDEMNIFICATION**

### **Section 8.01 GENERAL INDEMNITY**

Lessee agrees to investigate, defend, indemnify and hold Lessor harmless from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including attorney's fees) and causes of action of whatsoever character which Lessor may incur, sustain or be subjected to on account of Lessee's use of the Premises or on account of Lessee having entered into any contract, sublease, Leasehold Mortgage or other agreement of whatsoever character having to do with or involving the Premises, or on account of loss or damage to property or loss of use thereof, including damage caused by the discharge, release, disposal or dispersal of any hazardous material, pollutant, irritant, contaminant or hazardous substance, or for bodily injury to or death of any persons (including, but not limited to employees, subcontractors, agents and invitees of each Party hereto) arising out of or in any way connected with the work to be performed or occupancy, operation, maintenance, enjoyment or use of the Premises by Lessee under this Lease and arising from any cause whatsoever, to the extent that such is not in conflict with California Civil Code Section 2782.

### **Section 8.02 VIOLATION OF GOVERNMENTAL APPROVALS**

In addition to the obligations set forth in Section 8.01 above, Lessee also agrees to investigate, defend, indemnify and hold Lessor harmless from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character, including response, remedial or inspection costs and expenses, made or brought against Lessor by any federal, state or local agency, or federal or state court, with jurisdiction over the Premises, arising out of or based upon (a) Lessee's violation of any Governmental Approvals, or (ii) any activities by Lessee which contribute to, cause or result in any avian collisions or avian deaths on or above the Premises after the Effective Date, to the extent that such is not in conflict with California Civil Code Section 2782.

## **ARTICLE IX LESSOR'S SUPPORT OF FACILITY**

### **Section 9.01 INTERCONNECTION FACILITIES; TRANSMISSION CAPACITY**

- (a) Unless otherwise agreed by the Parties in writing, Lessee, its grantees, assignees or transferees shall own, operate and maintain the Interconnection Facilities for the Facility. These Interconnection Facilities shall include the following: poles, guys, anchors, cables, electrical conductors, conduits, markers, protection and relay equipment, step-up transformer, breakers, and any other appurtenances thereof required to maintain a transmission line from a nearby PG&E connection point through a site step-up transformer and substation including, and electric power revenue metering equipment which must be maintained by Lessee in accordance with PG&E specifications. The purpose of the Interconnection Facilities is to connect the Lessee's power collection system to the local PG&E grid.
- (b) Lessor currently possesses an allocation of transmission capacity necessary to accommodate the Facility, not exceeding a maximum of nineteen (19) megawatts (MW), on PG&E's 60kv Herdlyn-Livermore transmission line. If necessary, Lessor agrees to assign such capacity rights to Lessee during the Term of this Lease and to execute such documents as may be necessary to effectuate said assignment.

- (c) Lessee agrees that the maintenance of the rights for up to 19 MW of capacity on the Herdlyn-Livermore 60kV Transmission Line shall be an additional term of this Lease.

## **ARTICLE X LESSOR'S OPTION TO PURCHASE FACILITY**

### **Section 10.01 LESSOR'S OPTION TO PURCHASE FACILITY**

On the last day of the Term of this Lease, including any extension thereof (the "Purchase Date"), Lessor shall have the option, in its sole discretion, to purchase the Facility from Lessee on the terms contained in the "Buy-out Terms" set forth in Exhibit D attached hereto and made a part hereof by reference, and on all other terms and conditions contained herein.

### **Section 10.02 MANNER OF EXERCISE OF LESSOR'S OPTION TO PURCHASE**

If Lessor decides to purchase the Facility as provided herein, Lessor shall exercise the option described in Section 10.01 above by delivering written notice to Lessee of its intent at least one hundred eighty (180) days prior to said Purchase Date. Lessee shall transfer title to the Facility, in an "as is where is" condition, to Lessor on the Purchase Date free and clear of all liens and encumbrances, together with all rights under this Lease, and shall contemporaneously cause the transfer of all permits, licenses, Governmental Approvals or other interests whether real or personal, necessary to operate the Facility, and shall transfer to Lessor a nonexclusive royalty-free license under any applicable patent to the extent necessary to permit Lessor to own and operate the Facility. In the event of the exercise of said option by Lessor, the leasehold obligations of Lessee not relating to Lessor's option to purchase hereunder shall terminate as of the Purchase Date and thereafter this Lease shall be of no further force or effect. Nothing herein shall be construed to be a waiver of any liability Lessee may incur to Lessor for damage to the Premises or the Facility caused in whole or in part by the negligence or willful conduct of Lessee, its agents, employees, subcontractors, or sub-lessees. Any action arising out of a claim for negligence or willful conduct must be commenced within one year of the date of transfer of title.

## **ARTICLE XI DAMAGE OR DESTRUCTION OF IMPROVEMENTS**

### **Section 11.01 LESSEE'S DUTY TO REPAIR**

If the Facility, or any portion thereof, or any building or improvement at any time on the Premises shall be damaged or destroyed by any cause for which insurance is required under Article VII above, during the Lease Term, Lessee shall either, (a) with reasonable promptness repair and replace the same, or construct an equivalent Facility, together with any building or buildings, at its expense, to at least the condition existing immediately prior to such damage or destruction, and shall do so, even though the proceeds of any insurance policies covering the loss shall be insufficient to reimburse Lessee therefore; *provided* that if such proceeds of insurance are more than sufficient to pay the cost of any such rebuilding, Lessee shall be entitled to receive any surplus; or (b) exercise its option to terminate this Lease pursuant to Section 2.04 above.

## **Section 11.02 NO ABATEMENT OF RENT**

Lessee shall not be entitled to any abatement of Rent, nor shall its obligations under this Lease be suspended or terminated during the Term hereof, notwithstanding any destruction or damage to the Facility or any improvements on the Premises by any cause for which insurance is required under Article VII above, excepting the active negligence or intentional misconduct of Lessor.

## **ARTICLE XII ASSIGNMENT, SUBLETTING AND MORTGAGING**

### **Section 12.01 ASSIGNMENT BY LESSEE**

- (a) Except as otherwise expressly provided herein, this Lease may not be otherwise assigned by Lessee nor any sublease hereunder be granted without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. While an increase in market value of the Premises or the Facility, or a desire to use the Premises for other purposes or a desire to increase the Rent shall not be grounds for withholding consent, Lessor may consider, without limitation, the following matters: the net worth of the proposed assignee or sublessee, its intended or proposed use of the Premises, and such assignee's or sub-lessee's reputation and experience in the energy industry.
- (b) Lessee may assign, sublet or otherwise transfer (including by the grant of easements or licenses) this Lease, any or all right or interest in this lease, and any or all right or interest in the Premises or any of the Facility, with the written consent of Lessor, which consent shall not be unreasonable withheld or delayed: (i) in connection with the financing of the Facility or the financing of any other activities permitted by Lessor; or (ii) to a corporation now or hereafter organized in which Lessor or any affiliated company owns at least fifty-one percent (51%) of all outstanding shares of stock; or (iii) to a partnership now or hereafter organized, a general partner of which is Lessee or any affiliated company or a partnership or corporation in which Lessee or any affiliated company owns at least fifty-one percent (51%) of all outstanding partnership interests or shares of stock; or (iv) to a corporation, partnership or other entity that acquires Lessee by merger, consolidation or other means.
- (c) Notwithstanding any other provision of this Lease, Lessee, in its sole discretion, shall have, during the Term hereof, the right to grant, in connection with the exercise of Lessee's other rights under this Lease, an easement to any utility ("Utility") granting to such Utility rights to construct, operate and maintain electric transmission facilities, pursuant to a standard form of easement required by the Utility, *provided* that Lessor agrees to become a party to such form of easement required by the Utility; and *provided further* that any monetary compensation or the equivalent to be paid by Utility thereunder shall be paid to Lessor; and *provided further* that any such rights shall terminate upon the termination of this Lease.
- (d) This Lease shall run with the Premises; and this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their respective permitted transferees, successors and assigns, and all persons claiming under them.
- (e) No assignment or sublease shall be valid unless there is delivered to Lessor: (i) a signed duplicate original of the documentation; (ii) a short form (or full original) signed and notarized for recording (or a recorder-stamped copy indicating recording); and (iii) a duplicate original of

the instrument of assumption, in the case of a full assignment, showing full assumption by the transferee.

## **Section 12.02 MORTGAGE OF LEASEHOLD INTEREST**

- (a) Lessee or its assignees, sub-lessees, grantees or transferees shall have the right, at any time and from time to time during the Term of this Lease, to encumber the leasehold estate created by this Lease by a Leasehold Mortgage.
- (b) If Lessee shall have granted any Leasehold Mortgage and if a Leasehold Mortgagee shall have given to Lessor a notice (“Leasehold Mortgagee's Notice”) specifying the name and address of the Leasehold Mortgagee, Lessor shall give to the Leasehold Mortgagee a copy of any and all notices from time to time given to Lessee by Lessor (including, without limitation, any notice of default) at the same time as and whenever any such notice shall thereafter be given by Lessor to Lessee, addressed to such Leasehold Mortgagee at the address last furnished to Lessor. No such notice of any kind by Lessor shall be deemed to have been given to Lessee unless and until a copy thereof shall have been so given to the Leasehold Mortgagee.
- (c) In the case of any notice of default given by Lessor to Lessee, the Leasehold Mortgagee shall thereupon have the same concurrent grace periods as are given Lessee for remedying a default or causing it to be remedied, plus, in each case, an additional period of fifteen (15) days after the expiration thereof or after Lessor has served such notice of default upon Leasehold Mortgagee, whichever is later. Provided that all monetary obligations of Lessee under this lease shall be duly performed, these grace periods shall be extended as set forth in the respective circumstances below.
  - (i) In those instances which reasonably require the Leasehold Mortgagee to be in possession of the Premises to cure any default by Lessee, the time therein allowed Leasehold Mortgagee to cure any default by Lessee shall be deemed extended to include the period of time required by said Leasehold Mortgagee to obtain such possession with due diligence; and
  - (ii) In those instances in which Leasehold Mortgagee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the time herein allowed Leasehold Mortgagee to prosecute such foreclosure or other proceeding shall be extended for the period of such prohibition.
- (d) Leasehold Mortgagee shall, without prejudice to its rights against Lessee, without payment of any penalty to Lessor and within the period and as otherwise provided herein, have the right, but not the obligation, to pay all of the Rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Lessee hereunder or which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof, to remedy any default of Lessee or cause the same to be remedied, to acquire Lessee’s leasehold estate or to commence foreclosure or other appropriate proceedings. For such purposes Lessor and Lessee hereby authorize Leasehold Mortgagee to enter upon the Premises and to exercise any of Lessee’s rights and powers under this lease, and, subject to the provisions of this lease, under

the Leasehold Mortgage. Lessor will accept performance by the Leasehold Mortgagee of any covenant, condition or agreement on Lessee's part to be performed hereunder with the same force and effect as though performed by Lessee. Nothing contained in Section 12.02(c) to the contrary, provided that all monetary obligations of Lessee shall be duly performed, no default by Lessee shall be deemed to exist and this Lease shall not be terminated by Lessor so long as the Leasehold Mortgagee shall, in good faith, have commenced to rectify any claimed default or to exercise its rights to acquire the leasehold interest of Lessee or commence foreclosure or other appropriate proceedings, and to prosecute the same to completion with diligence and continuity; *provided* that the Leasehold Mortgagee shall not be required to continue such foreclosure proceedings if such default is cured.

- (e) From and after receiving the Leasehold Mortgagee's Notice, neither Lessor nor Lessee shall cancel, terminate, surrender, modify or amend this Lease in any respect without the prior written consent of the Leasehold Mortgagee. No Leasehold Mortgagee shall become liable under the provisions of this Lease, unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate, and such liability shall be limited to the insurance required to be carried hereunder and to its interest in the Premises.
- (f) Foreclosure of a Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Lessee to Leasehold Mortgagee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Lessor nor shall it constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Lessor shall recognize Leasehold Mortgagee, or any other foreclosure sale purchaser, as Lessee hereunder.
- (g) If a Leasehold Mortgagee shall acquire Lessee's interest in this Lease as a result of a sale under said Leasehold Mortgage pursuant to a power of sale contained therein, pursuant to a judgment of foreclosure, through any transfer in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, or in the event Leasehold Mortgagee becomes Lessee under this Lease or any new lease obtained pursuant to Section 12.02(h) below, such Leasehold Mortgagee's right thereafter to assign or transfer this Lease or such new lease shall not be subject to any restriction. In the event Leasehold Mortgagee subsequently assigns or transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new lease obtained pursuant to Section 12.02(h) below, and in connection with any such assignment or transfer Leasehold Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Leasehold Mortgagee for such assignment or transfer, then such mortgage or deed of trust shall be considered a Leasehold Mortgage as contemplated under this Section 12.2 and Leasehold Mortgagee shall be entitled to receive the benefit of the holder of a Leasehold Mortgage. Any purchaser at a foreclosure sale, other than a Leasehold Mortgagee, must assume this Lease and it shall have no right in respect to the Premises unless it so assumes and delivers original of the assumption agreement (to be executed in form for recording) within ten (10) days after such purchaser acquires title to the Lessee's interest in this Lease.
- (h) In the event that this lease is terminated by Lessor on account of a default (and provided that an unsatisfied Leasehold Mortgage stands of record) or in the event Lessee's interest under this Lease shall be sold, assigned or transferred pursuant to the exercise of any remedy of the



Leasehold Mortgagee, or pursuant to judicial or other proceedings, Lessor shall, upon written request by Leasehold Mortgagee given within forty-five (45) days after such termination, immediately execute and deliver a new lease of the Premises to Leasehold Mortgagee or its nominee, purchase, assignee or transferee, upon written request by such person or entity given within forty-five (45) days after such termination, sale, assignment, or transfer for the remainder of the Lease Term with the same agreements, covenants and conditions (except for any requirements which have been fulfilled by Lessee prior to termination) as are contained herein and with priority equal to that hereof; *provided* that Leasehold Mortgagee shall promptly cure any default of Lessee susceptible to cure by Leasehold Mortgagee, and provided further that if more than one Leasehold Mortgagee requests such new lease, the Leasehold Mortgagee holding the most senior Leasehold Mortgage shall prevail. Upon execution and delivery of such new lease, Lessor shall cooperate with the new Lessee, at the expense of the said new Lessee, in taking such action as shall be necessary to cancel and discharge this Lease and remove Lessee named herein from the Premises. In such event the ownership of the improvements shall be deemed to have been transferred directly to such transferee of Lessee's interest in this Lease and the provisions hereof causing such improvements to become the property of Lessor in the event of termination of this Lease shall be ineffective as applied to any such termination. Lessor shall, at no expense to Lessor, execute such deed or other instrument of conveyance as may be necessary for fee simple title to the improvements, but not the Premises, to be insured in such transferee of Lessee's interest.

### **Section 12.03 LEASEHOLD MORTGAGEE PROTECTION**

Lessor shall cooperate with Lessee, and any assignee or sublessee of Lessee in including in this Lease by suitable amendment from time to time any provisions which may reasonably be requested by any proposed Leasehold Mortgagee for the purpose of allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of the Leasehold Mortgagee and to substitute Leasehold Mortgagee for Lessee on the occurrence of a default under the terms of this Lease. Lessor and Lessee each agree to execute and deliver and to acknowledge, if necessary, for recording purposes any agreement necessary to effect any such amendment; *provided* that any such amendment shall not in any way affect the Term or Rent under this Lease nor otherwise in any material respect adversely affect any rights of Lessee or Lessor under this Lease.

### **Section 12.04 NOTICE OF MEDIATION; RIGHT TO PARTICIPATE**

In any circumstance where mediation is provided under this Lease, Lessor agrees that Lessor will give a Leasehold Mortgagee, who shall have given Lessor a Leasehold Mortgagee's Notice, notice of demand by Lessor for any mediation, and Lessor will recognize any such Leasehold Mortgagee, in the order of their priority if there is more than one, as a proper party to participate in the mediation if Lessee fails to do so, whether such failure is in the matter of designating mediators or otherwise.

### **Section 12.05 NON-DISTURBANCE OF PARTIAL ASSIGNEE**

In the event that this Lease is terminated by the Lessor on account of a default, and all or a portion of the Premises have been previously sold, assigned, transferred by easement or otherwise or sublet pursuant to Section 12.01, Lessor shall, upon written request by such purchaser, assignee, transferee or grantee or sublessee, given within forty-five (45) days after such termination, immediately execute and deliver a new lease of the portion of the Premises purchased, assigned or sublet, for the remainder of the Lease Term, with the same agreements, covenants and conditions (except for any requirements that

have been fulfilled by Lessee prior to termination) as are contained herein, and with priority equal to that hereof as to the portion purchased, assigned or sublet by said purchaser, assignee, transferee or grantee or sublessee; *provided* that purchaser, assignee, transferee or grantee or sublessee shall promptly cure any default of Lessee susceptible to cure by such purchaser, assignee, transferee or grantee or sublessee as to that portion of the Premises under said purchasers, assignees or sub-lessee's control. Upon execution and delivery of such new lease, Lessor shall cooperate with the new lessee at the expense of said new lessee in taking such action as may be necessary to cancel and discharge this Lease and remove Lessee's name herein from the portion of the Premises purchased, assigned or sublet.

### **ARTICLE XIII DEFAULT AND REMEDIES**

#### **Section 13.01 EVENTS OF DEFAULT**

Each of the following events shall be a default by Lessee and a breach of this Lease:

- (a) Default by Lessee under the Purchase and Sale Agreement;
- (b) The failure to pay when due any Rent, taxes or any other sum required by this Lease to be paid by Lessee, or to post and/or maintain the Letter of Credit;
- (c) The failure to perform any other covenant or obligation under this Lease;
- (d) Abandonment or surrender of the Premises or of the leasehold estate;
- (e) The subjection of any right or interest of Lessee to attachment, execution, or other levy, or to seizure under legal process, if not released within thirty (30) days; *provided* that the foreclosure of any Leasehold Mortgage permitted by provisions of this Lease shall not be construed as a default within the meaning of this Article XIII;
- (f) The appointment of a receiver to take possession of the Premises or Facility improvements, or of Lessee's interest in the leasehold estate or of Lessee's operations on the Premises for any reason, including but not limited to assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership (i) pursuant to administration of the estate of any deceased or incompetent Lessee or of any deceased or incompetent individual member of any Lessee, or (ii) pursuant to any Leasehold Mortgage permitted by provisions of this Lease relating to purchase or construction of improvements;
- (g) An assignment by Lessee for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee a bankrupt; or for extending time for payment, adjustment or satisfaction of Lessee's liability; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies and supervisions are dismissed, vacated or otherwise permanently stayed or terminated within ninety (90) days after the assignment, filing or other initial event;
- (h) Failure to post any mechanics or material men's lien release bond or policy of insurance when required; or

- (i) Failure of Lessee or its agents, assigns, or sub-lessees to operate the Facility in accordance with generally accepted electrical practices.

**Section 13.02 NOTICE AS PRECONDITION TO LESSOR'S REMEDIES**

As a precondition to pursuing any remedy for an alleged default by Lessee, Lessor shall, before pursuing any remedy, give notice of default to Lessee and to all of Lessee's assignees, purchasers, transferees, sub-lessees, grantees and Leasehold Mortgagees whose names and addresses were previously given to Lessor in a notice or notices from Lessee or any Leasehold Mortgagees stating that the notice was for the purpose of notice under this provision. Each notice of default shall specify in detail the alleged event of default and the intended remedy.

**Section 13.03 LESSEE'S RIGHT TO CURE DEFAULTS**

If the alleged default is nonpayment of Rent, taxes, or other sums to be paid by Lessee under this Lease, then Lessee shall have thirty (30) days after notice is given by Lessor to cure any such non-payment default. With respect to any other type of alleged default hereunder, Lessee shall promptly commence curing and diligently pursue the cure to completion; *provided* that such completion shall occur no later than one hundred and twenty (120) days after the notice is given by Lessor.

**Section 13.04 RIGHTS OF SUBTENANTS; NONDISTURBANCE CLAUSE**

Any assignee, purchaser, transferee or grantee or sublessee of all or a portion of the Premises shall have the right, at its election, to cure a curable default of this Lease or under any leasehold mortgage then existing under the provisions of this Lease relating to the purchase, alteration, operation and maintenance of improvements. If any such assignee, purchaser, transferee, grantee or sublessee cures all defaults that are existing on said assignee's, purchaser's, transferee's, grantee's or sub-lessee's, portion of the Premises, or if all then existing defaults are non-curable, on that assignee's, purchaser's, transferee's, grantee's or sub-lessee's portion of the Premises, their possession shall not be disturbed by Lessor or by any Leasehold Mortgagee as long as:

- (a) the assignee, purchaser, transferee, grantee or sublessee performs according to his assignment or sublease provisions;
- (b) the assignee, purchaser, transferee, grantee or sublessee attorns to Lessor and leasehold mortgagee according to their respective interests; and
- (c) subsequent defaults are cured as in the above provisions or are not curable as to that portion of the Premises under such assignees, purchasers, transferee, grantee of sub-lessees possession and control.

**Section 13.05 LESSOR'S REMEDIES**

If any default by Lessee shall continue uncured, following notice of default as required by the Lease, for the period applicable to the default under the lease, Lessor shall have the following remedies in addition to all other rights and remedies provided by law or equity, to which Lessor may resort cumulatively or in the alternative; all subject to the limitation, however, that no person or entity granted interests in the Facility or Premises by Lessee in accordance with the provisions of this Lease shall be disturbed or their rights to any part of the Facility or the Premises in any way affected.

- (a) Lessor may, at Lessor's election, terminate this Lease by giving Lessee notice of termination. On the giving of the notice, all Lessee's rights in the Premises and in the Facility shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all improvements in good condition, and Lessor may reenter and take possession of the Premises and all remaining improvements and eject all parties in possession or eject some and not others or eject none. Termination under this Section 13.05(a) shall not relieve Lessee from the payment of any sums then due to Lessor from any claim or damages previously accrued or then accruing against Lessee.
- (b) Lessor may, at Lessor's election, reenter the Premises and, without terminating this Lease, and at any time and from time to time re-let the Premises or improvements or any part or parts of them for the account and in the name of Lessee or otherwise. Lessor may at Lessor's election reject all persons or eject some and not others or eject none provided that no subtenant qualifying under non disturbance provisions of this Lease shall be ejected. Lessor shall apply all rents from re-letting as in the provision on assignment of sub rents hereinafter set forth. Any re-letting may be for the remainder of the Lease Term or for a longer or shorter period. Lessor may execute any leases made under this provision either in Lessor's name or in Lessee's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises or improvements or both. Lessee shall nevertheless pay to Lessor on the due date specified in this Lease the equivalent of all sums required of Lessee under this Lease, plus Lessor's expenses, less the avails of any re-letting or attornment. No act by or on behalf of Lessor under this provision shall constitute a termination of this Lease unless Lessor gives Lessee notice of termination.
- (c) Lessor may, at Lessor's election, use Lessee's personal property and trade fixtures or any of such property and fixtures located on the Premises without compensation and without liability for use or damage, or store them for the account and at the cost of Lessee. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.
- (d) Lessor may, at Lessor's sole election, require Lessee to demolish and remove any and all buildings, improvements, fixtures, machinery and equipment of whatsoever nature at any time constructed, placed or maintained upon any part of the Premises, and other personal property belonging to Lessee, all at Lessee's sole expense. Should Lessee fail or refuse to so remove any improvements constructed upon the Premises, Lessor may arrange for such demolition and removal at the expense of Lessee. Lessee covenants and agrees to pay any amount incurred by Lessor for such demolition and removal within ten (10) days of receipt of written demand therefore from Lessor. Such removal shall include, but is not limited to, removal of all wind turbines, guy wires, guy wire anchors, tower foundations, transmission collection system, control panel cabinets, and control cabinet foundations, fencing and structures. Additionally, Lessee shall restore the site to the original state which existed prior to any such improvements being placed on the Premises. Lessee may leave in place all foundations, roads, rights of way, trails, pads, guy wire anchors, and any underground improvements with no obligation to Lessor, *provided* that any such foundations, pads or guy wire anchors are backfilled to a depth of 18 inches. In removing improvements, Lessee shall comply with Lessor's reasonable requirements regarding the resultant appearance.

- (e) Lessor, which is hereby granted the right provided by Civil Code section 1951.4, shall be entitled at Lessor's election to each installment of Rent or to any combination of any installments for any period before termination, plus interest at the rate of ten percent (10%) per year from the due date of each installment. Lessor shall make reasonable efforts to mitigate Lessee's liability under this provision.
- (f) In the event that Lessor terminates Lessee's right to possession because of a breach of this Lease, this Lease shall thereupon terminate and upon such termination, Lessor may recover from Lessee:
  - (i) the worth at the time of award of the unpaid Rent (including charges equivalent to Rent) which had been earned at the time of termination;
  - (ii) the worth at the time of award of the amount by which the unpaid Rent (including charges equivalent to Rent) which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;
  - (iii) the worth at the time of the award of the amount by which the unpaid Rent (including charges equivalent to Rent) for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided;
  - (iv) any other amount necessary to compensate Lessor, for all the detriment proximately caused by Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including reasonable attorney's fees, broker's commissions and consultant fees.

The "worth at the time of award" of the amounts referred to in (i) and (ii) above shall include interest at the maximum legal rate. The "worth at the time of award" of the amount referred to in (iii) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Nothing in this paragraph shall affect the right of Lessor to indemnification for liability arising prior to the termination of the Lease for personal injuries or property damage or violation of Governmental Approvals as provided in Article VII hereof. Nothing herein provided shall affect Lessor's rights under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure relating to actions for unlawful detainer, forcible entry and forcible detainer.

- (g) Lessee assigns to Lessor all sub-rents and other sums falling due from subtenants, licensees, and concessionaires (herein called subtenants) during any period in which Lessor has the right under this Lease, whether exercised or not, to reenter the Premises for Lessee's default, and Lessee shall not have any rights to such sums during that period. This assignment is subject and subordinate to any and all assignments of the same sub-rents and any other sums made, before the default in question, to a Leasehold Mortgagee under any Leasehold Mortgage permitted by provisions of this Lease relating to purchase or construction of improvements. Lessor may at Lessor's election reenter the Premises and improvements with or without process of law, without terminating this Lease and either or both collect these sums or bring action for the recovery of the sums directly from such obligors. Lessor shall receive and collect all sub-rents and avails from re-letting, applying them:

- (i) First, to the payment of reasonable expenses (including attorney's fees or broker's commissions or both) paid or incurred by or on behalf of Lessor in recovering possession, placing the Premises and improvements in good condition, and repairing or altering the Premises or improvements for re-letting;
- (ii) Second, to the reasonable expense of securing new lessees;
- (iii) Third, to the fulfillment of Lessee's covenants to the end of the Term; and
- (iv) Fourth, to Lessor's uses and purposes.

Lessee shall nevertheless pay to Lessor, on the due dates specified in this Lease, the equivalent of all sums required of Lessee under this Lease, plus Lessor's expenses, less the avails of the sums assigned and actually collected under this provision. Lessor may proceed to collect either the assigned sums or Lessee's balances or both, and any installment or installments of them, either before or after expiration of the Lease Term, but the period of limitation shall not begin to run on Lessee's payments until the due date of the final installment to which Lessor is entitled, nor shall it begin to run on payments of the assigned sums until the due date of the final installment due from the respective obligors.

**Section 13.06 NOTICE OF LESSOR'S DEFAULT; LESSEE'S WAIVER**

Lessor shall not be considered to be in default under this Lease unless:

- (a) Lessee has given written notice specifying the default; and
- (b) Lessor has failed for thirty (30) days to cure the default, if it is curable, or to institute and diligently pursue reasonable corrective or ameliorative acts for non-curable defaults.

Lessee shall have the right of termination for Lessor's default only after notice to and consent by all Leasehold Mortgagees under Leasehold Mortgages then existing under provisions of this lease relating to purchase or construction of improvements.

**Section 13.07 LESSEE'S QUITCLAIM**

Upon the expiration of the Lease Term or any sooner termination of this Lease or upon the purchase of the Facility by Lessor, Lessee agrees to execute, acknowledge and deliver to Lessor a proper instrument in recordable form, releasing and quitclaiming to Lessor all right, title and interest of Lessee in and to the Premises, the Facility, and all improvements constructed thereon which are not removed by Lessee in accordance with provisions of this Lease.

**ARTICLE XIV  
LESSOR'S GENERAL PROTECTIVE PROVISIONS**

**Section 14.01 LESSOR'S RIGHT OF ENTRY AND INSPECTION**

Lessee shall permit Lessor or Lessor's agents, representatives or employees to enter upon the Premises for the purposes of inspecting, posting of notices of nonresponsibility, determining whether agreements

in this Lease are being complied with, maintaining, repairing or altering the land, for showing the Premises to prospective lessees, purchasers, mortgagees or beneficiaries under deeds of trust, extraction of minerals, road building necessary to support the above activities, and for all other uses to which the Premises may reasonably be put; *provided* that no such use shall materially interfere with Lessee's activities carried out pursuant to this Lease.

#### **Section 14.02 LESSOR'S RIGHT TO CURE DEFAULT**

In the event Lessee shall fail to pay and discharge or cause to be paid and discharged, when due and payable, any tax, assessment, or other charge upon or in connection with the Premise, or any lien or claim for labor or material employed or used in, or any claim for damage arising out of, the repair, restoration, replacement, maintenance and use of the Premises and the improvements thereon, or any judgment on any contested lien or claim thereof, or any insurance premium or expense in connection with the Premises and improvements thereon, or any claim, charge or demand which Lessee has agreed to pay or cause to be paid under the covenants and conditions of this Lease, and if Lessee, after ten (10) days written notice from Lessor so to do, shall fail to pay and discharge the same, then Lessor may, at its option, pay any such tax, assessment, insurance expense, lien, claim, charge, or demand or settle or discharge any action therefore, or judgment thereon, and all costs, expenses and other sums incurred or paid by Lessor in connection with any of the foregoing shall be paid by Lessee to Lessor as additional Rent and upon demand, together with interest thereon at the rate of ten percent (10%) per annum from the date incurred or paid, and any default in such payment shall constitute a breach of the covenants and conditions of this Lease.

#### **Section 14.03 ACCORD AND SATISFACTION**

No payment by Lessee or receipt by Lessor of a lesser amount than the Rent shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or statement as Rent be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of the Rent or pursue any other remedy provided for in this Lease.

#### **Section 14.04 TRANSFER BY LESSOR; RELEASE FROM LIABILITY**

In the event Lessor shall sell or transfer the Premises or any part thereof, and as a part of such transaction shall assign its interest as Lessor in and to this Lease, then from and after the effective date of such sale, assignment, or transfer, Lessor shall have no further liability under this Lease to Lessee except as to matters of liability which shall have accrued and are unsatisfied as of such date, it being intended that the covenants and obligations contained in this Lease on the part of Lessor shall be binding upon Lessor and its successors and assigns only during and in respect to their respective successive periods of ownership of the fee. Lessee shall, immediately upon written request from Lessor or any such assignee, execute and deliver to such assignee an instrument in proper form by which Lessee attorns to said assignee.

#### **Section 14.05 RESERVATION OF MINERAL RIGHTS**

There is reserved to Lessor the title and exclusive right to all of the minerals and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying said Premises, or that may be produced therefrom, including, without limiting the generality of the

foregoing, all petroleum, oil, natural gas and other hydrocarbon substances and products derived therefrom, and all geothermal steam or brines which may be produced or derived therefrom, together with the exclusive and perpetual right to use the surface to extract the same so long as such use does not materially interfere with Lessee's or its assignee's, transferee's, grantee's, or subtenants use of the Premises. Lessor agrees to defend, indemnify and hold Lessee harmless from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including attorney's fees) which Lessee may incur, sustain or be subjected to on account of Lessor leasing or otherwise expressly permitting (e.g., by license or similar agreement) the use of the Premises by others. Further, Lessor agrees to obtain a non-disturbance agreement, in a form reasonably acceptable to Lessee, from each future lessee or licensee of the Premises whereby each future lessee or licensee agrees not to materially interfere with the operation of the Facility by Lessee.

## **ARTICLE XV LESSEE'S GUARANTY REQUIREMENTS**

### **Section 15.01 LESSEE'S GUARANTY**

Lessee agrees to deliver to Lessor a guaranty in favor of Lessor under the terms of which Lessee's guarantor unconditionally guarantees the full and prompt performance of Lessee under this Lease, including the payment of any amount owed by Lessee to Lessor under this Lease, and the performance of Lessee's restoration obligations as set forth in Section 5.04. Such guaranty from Lessee's guarantor shall be in the form of a Letter of Credit reasonably approved by Lessor, and shall be executed and be delivered to Lessor by Lessee's guarantor no later than ten (10) days after the Effective Date. The liability of Lessee's guarantor under such guaranty shall not exceed One Million Dollars (\$1,000,000) in the aggregate with respect to all such guaranteed obligations. For the avoidance of doubt, the guaranty in favor of Lessor required under this Section 15.01 is the identical guaranty required under Section 14.01 of the Purchase and Sale Agreement.

## **ARTICLE XVI GENERAL PROVISIONS**

### **Section 16.01 CONDITIONS AND COVENANTS**

All of the provisions of this Lease shall be deemed as running with the land, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

### **Section 16.02 WAIVER OF BREACH**

No failure by either Lessor or Lessee to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement, and term of this Lease shall continue in full force and effect with respect to other then existing or subsequent breach.

### **Section 16.03 TIME IS OF THE ESSENCE**

Time is of the essence of this Lease, and of each provision thereof.



#### **Section 16.04 COMPUTATION OF TIME**

The time in which any act provided by this Lease is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or holiday, and then it is also excluded.

#### **Section 16.05 FORCE MAJEURE**

If either Party shall be delayed or prevented from the performance of any act required by this Lease by reason of acts of God, strikes, lockouts, labor troubles, inability to secure materials, actions or inactions of any governmental agency, delays in obtaining Governmental Approvals, or other cause, without fault and beyond the reasonable control of the Party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; *provided* that nothing in this section shall excuse Lessee from the prompt payment of any Rent or other charge required of Lessee, except as may be expressly provided elsewhere in this Lease.

#### **Section 16.06 SUCCESSORS IN INTEREST**

Each and all of the covenants, conditions and restrictions in this Lease contained shall inure to the benefit of and shall be binding upon the successors in interest of Lessor and the authorized encumbrances, assigns, transferees, subtenants, licensees and other successors in interest of Lessee.

#### **Section 16.07 ENTIRE AGREEMENT**

This Lease contains the entire agreement of the Parties with respect to the matters covered by this Lease, and no other agreements, statement or promise made by any Party, to any employee, officer, or agent of any Party, which is not contained in this Lease shall be binding or valid.

#### **Section 16.08 PARTIAL INVALIDITY**

If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

#### **Section 16.09 RELATIONSHIP OF PARTIES**

Nothing contained in this Lease shall be deemed or construed by the Parties or by any third person or court to create the relationship of principal and agent or of partnership or of joint venture or of any association between Lessor and Lessee, and neither the method of computation of Rent nor any other provisions contained in this Lease nor any acts of the Parties shall be deemed to create any relationship between Lessor and Lessee, other than the relationship of landlord and tenant.

#### **Section 16.10 INTERPRETATION AND DEFINITION**

The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not strictly for or against Lessor or Lessee. Unless otherwise provided in this Lease, or unless the context otherwise requires, the following definitions and rules of construction shall apply to

this Lease:

- (a) Number and Gender: In this Lease the neuter gender includes the feminine and masculine, and the singular number includes plural and the word “person” includes corporation, partnership, firm or association wherever the context so requires.
- (b) Mandatory and Permissive: “Shall,” “will,” and “agree” are mandatory; “may” is permissive.
- (c) Captions: Captions of the articles, sections and paragraphs of this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Lease.
- (d) Term Includes Extensions: All references to the Term of this Lease or the “Lease Term” shall include any extension of such Term.
- (e) Land and Premises: Premises shall exclude the Facility and other improvements to the land, unless the context requires otherwise.
- (f) Undertaking: Wherever reference is made in this Lease to an engagement by Lessee to perform a certain undertaking it shall mean that as to that undertaking or engagement, that Lessee has covenanted for its performance, and the expression "Undertaking," "Undertakes," "Engages," or "Engagement" shall be so construed in each instance.
- (g) Assignment: In any circumstance when an assignment of this Lease is restricted by the Terms of this Lease, an assignment of this Lease includes, but is not limited to, a transfer of fifty-one percent (51%) or more of the stock of the Lessee corporation, if the holder of the Lessee's interest in this Lease be a corporation, or a transfer of fifty-one percent (51%) or more of the interest in the Lessee partnership if the holder of the Lessee's interest in this Lease be a partnership, but any such transfer consequent upon the death of a stockholder or partner or resulting from a gift by a stockholder or partner to the immediate members of his family shall not be deemed a transfer within the meaning of the foregoing, Lessee shall notify Lessor in writing of such fact.

### **Section 16.11 ATTORNEY’S FEES**

In the event either Lessor or Lessee shall bring any action, or proceeding against the other for damages for an alleged breach of any provision of this Lease, to recover Rents, or to enforce, protect, or establish any right or remedy of either Party, the prevailing Party shall be entitled to recover as a part of such action or proceeding reasonable attorney's fees and court costs.

### **Section 16.12 INTEREST**

Unless otherwise specified, any sum accruing to Lessor to Lessee under the provisions of this Lease which shall not be paid when due shall bear interest at the rate of ten percent (10%) per annum from the date of written notice specifying such nonpayment is served on the defaulting party, until paid.

### **Section 16.13 MODIFICATION**

This Lease is not subject to modification except in writing signed by both Parties hereto.

**Section 16.14 NOTICES**

- (a) Notice to Lessor: All notices, demands or requests from Lessee to Lessor shall be given to Lessor at:

1500 Warburton Avenue  
Santa Clara, CA 95050  
Attention: City Clerk

- (b) Notice to Lessee: All notices, demands or requests from Lessor to Lessee shall be given to Lessee at:

Name: [To be inserted by Developer]

Address: [To be inserted by Developer]

- (c) Change of Address: Each party shall have the right, from time to time, to designate a different address by notice given in conformity with this section.
- (d) Multiple Parties: If more than one Lessor or Lessee is named in this Lease, service of any notice on any of the Lessees or Lessors shall be deemed service on all the Lessees or Lessors, respectively.

**Section 16.15 USE OF DISCRETION**

Whenever in this Lease, unless otherwise expressly stated, Lessor or Lessee are to exercise discretion under the terms of this Lease or to grant approvals, discretion shall be exercised reasonably and, at the Party's approval, shall not be unreasonably withheld, conditioned or delayed.

**Section 16.16 GOVERNING LAW**

This Lease shall be governed by the laws of the State of California, without regard to conflict of laws principles.

**ARTICLE XVII  
DISPUTE RESOLUTION**

**Section 17.01 DISPUTE RESOLUTION**

If any controversy shall arise between Lessor and Lessee with respect to any matters set forth in this Lease, and which the Parties cannot then resolve, shall be subject to the following administrative remedy prior to any litigation occurring between the Parties:

- (a) Both Parties shall attempt to resolve any controversy, claim, problem or dispute arising out of, or related to, this Lease through good faith consultation in the ordinary course of business. In the event that any problem or dispute is not resolved, either Party may upon written notice to

the other request that the matter be referred to senior management officials within each respective organization with express authority to resolve the problem or issue. Such representatives shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within ten (10) business days of such written notice. If the Parties cannot reach a mutually agreeable resolution, then the dispute or issue shall be submitted to non-binding mediation within thirty (30) Days of the written request of one Party after the service of that request on the other Party ("Request for Mediation"), subject to the rights of any Leasehold Mortgagee contained in Article XII.

- (b) Within twenty (20) Days or less of the written Request for Mediation, the Parties shall agree on one mediator. If they cannot agree on one mediator within such twenty-Day period, then within three (3) Days each Party shall list the names of three (3) potential mediators affiliated with the Judicial Arbitration and Mediation Service ("JAMS") and shall supply them to the other party. The party demanding the mediation shall merge the names of all the potential mediators into a single list, not indicating which party submitted the name. Within five (5) Days of the exchange of lists of names of three (3) potential mediators by each party, the Parties shall jointly sign a letter directed to office of JAMS which serves Santa Clara County, requesting that JAMS appoint a mediator from the enclosed list. If a party refuses or fails to submit three (3) names within the three-Day period to the party preparing the letter, then the letter shall be sent on the 5<sup>th</sup> Day without input from the Party failing to submit names. The mediation meeting shall not exceed one Day (8 hours). The Parties may agree to extend the time allowed for mediation under this Lease.
- (c) The costs of mediation shall be borne by the Parties equally.
- (d) If, during any dispute between the Parties, a demand is made by Lessee for documents under the Public Records Act, Lessor shall have reciprocal rights to demand documents from Lessee.
- (e) Mediation under this Section 17.01 is a condition precedent to a Party filing an action in any court, unless that party has made demand for mediation and the other Party has failed or refused to engage in mediation. In the event of litigation arising out of any dispute related to this Lease, the prevailing party as determined by the court shall be entitled to an order for its reasonable attorneys' fees and costs, including reasonable expert witness costs and cost of suit against the non-prevailing party. Alternatively, the court in its sole discretion may also determine that neither Party is the prevailing party, and that each Party shall bear its own attorneys' fees and costs or that the costs of the litigation shall in such case be borne equally by the Parties.
- (f) Unless otherwise agreed in writing, the Parties shall continue to perform their respective obligations under this Lease during the pendency of any proceeding by the parties in accordance with this Section 17.01. This Section 17.01 shall survive the termination of this Lease.

## **ARTICLE XVIII**

### **EXECUTION, RECORDING AND INCORPORATION BY REFERENCE**

#### **Section 18.01 RECORDING**

Neither Party shall record this Lease without the written consent of the other Party; however, upon the request of either Party, the other Party shall join in the execution of a memorandum or "short form" of

this Lease for the purpose of recordation. The memorandum of short form shall describe the Parties, the Premises and the Term of this Lease, and shall incorporate this Lease by reference.

(Continued on page 28)

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**Section 18.02 COUNTERPARTS**

This Lease, consisting of twenty eight (28) pages, plus Exhibits A through E, has been executed by the parties in separate counterparts, each of which shall be deemed to be an original copy.

The Parties to this Lease hereby indicate their acknowledgment and acceptance of the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives. It is the intent of the parties that this Lease shall become effective as of the Effective Date indicated above.

**CITY OF SANTA CLARA, CALIFORNIA,  
a chartered California municipal corporation**

APPROVED AS TO FORM:

\_\_\_\_\_  
[Name]  
City Attorney

By: \_\_\_\_\_  
JULIO FUENTES  
City Manager

ATTEST:

\_\_\_\_\_  
[Name]  
City Clerk

1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Facsimile: (408) 241-6771

“City”

**[NAME OF LESSEE],  
[Include business type]**

\_\_\_\_\_  
Name:  
Title:  
Address:  
Telephone:  
Fax:

“Lessee”

**GROUND LEASE FOR WIND PARK FACILITY  
ON PROPERTY LOCATED IN  
THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA**

**EXHIBIT A**

**PREMISES**

1. The Premises are located on City of Santa Clara property, known as the Altamont Ranch, situated approximately eight (8) miles from the City of Livermore, 1.5 miles north of Highway 580, on the south side of the old Altamont Pass Road.
2. Access to the Premises is in the western half of section 21, R.3.E, T.2.S., Mt. Diablo Base Line and Meridian.

The Premises referred in this Lease is more fully described as follows:

City owned real property, generally known as the Altamont Ranch, located in the County of Alameda, State of California, described as follows:

**PARCEL 1:**

The south one-half of section 21, township 2 south, range 3 east, Mount Diablo Base and Meridian, according to the official plat of said land filed in the District Land Office.

Excepting therefrom the past, present and future interest reserved by the Central Pacific Railroad Company in the grant deed recorded November 19, 1883 in Book 261 of Deeds, Page 184, Series No. 5-7019, Alameda County Records.

Also excepting therefrom that portion described in the deed to the Western Pacific Railway Company, a California corporation, recorded December 7, 1905, in Book 1076 of Deeds, Page 406, Series No. L-1500, Alameda County Records.

Also excepting therefrom that portion described in the deed to R. H. Sherman, recorded July 8, 1907, in Book 1390 of Deeds, Page 64, Series No. L-69077, Alameda County Records.

Also excepting therefrom that portion described in the deed to the County of Alameda, recorded January 4, 1915, in Book 2311 of Deeds, Page 109, Series No. P-83238, Alameda County Records.

**PARCEL 2:**

A non-exclusive easement and right of way on, over, under and across the following described real property for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipe lines, and for telephone, electric light and power lines, together with all necessary poles or conduits to carry said lines, to wit:

A strip of land 30 feet wide, the center line of which is described as follows:

Beginning at a point on the westerly line of those lands conveyed to Roberta I. Haugh, by Decree of Partial Distribution, dated September 30, 1949, recorded in Book 5901 of official

records of Alameda County at Page 37 thereof, Series No. AD/66898, said point being on the section line between Section 20 and 21, T.28., R.3 E., M.D.B.6M., south 456 feet from the apparent northwest corner of the southwest quarter of said section 21 as said corner is defined by the fence corner, thence north 41 degrees 26 minutes west 492.7 feet to the southeasterly right of way line of County Road No. 818, also known as Altamont Pass Road, being a portion of the southeast quarter of Section 20, Township 2 south, Range 3 east, Mount Diablo Base and Meridian.

**PARCEL 3:**

The north one-half of Section 28, Township 2 south, Range 3 east, Mount Diablo Base and Meridian, according to the official plat of said land filed in the District Land Office.

Assessor's Parcel Nos. 099B-6275-002-01 (affects portion of parcel 1), 099B-6275-002-02 (affects portion of parcel 1), 099B-6275-002-03, (affects remainder of parcel 1), 099B-6500-001 (affects parcel 3).



**GROUND LEASE FOR WIND PARK FACILITY  
ON PROPERTY LOCATED IN  
THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA**

**EXHIBIT B**

**TERM**

1. The "Term" of this Lease shall commence on [insert MONTH, DAY, and YEAR] and shall terminate at 2400 hours PST on the date on [insert MONTH, DAY, and YEAR] and, unless sooner terminated as provided herein, shall extend for a period of five (5) years.
2. This Lease may be renewed by mutual written consent of Lessee and Lessor; *provided* that renewal of this Lease shall not extend beyond the term prescribed by law. Lessor may, in its sole discretion, grant Lessee the right to operate the Facility at the expiration of the Term for an additional five (5) years subject to, and in accordance with, the terms and conditions of this Lease. If Lessor decides to offer an extension to this Lease, Lessee shall be under no obligation to accept Lessor's offer to extend the Term of this Lease.
3. Confidential Status. As noted in Section 5.07 above, City is a public agency subject to the requirements of the California Public Records Act (Cal. Government Code section 6250 et seq). Notwithstanding the previous sentence, both Lessor and Lessee consider the information contained in this Exhibit B to be confidential and/or proprietary and/or protected from disclosure pursuant to exemptions to the California Public Records Act (Cal. Government Code sections 6254 and 6255). Consequently, the Parties agree to treat the contents of this Exhibit B as confidential.

Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information contained in this Exhibit B, Lessor as soon practical but within three (3) days of receipt of the request, shall notify Lessee that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed in Section 16.14 of this Lease. Lessee shall be responsible for taking whatever legal steps are necessary to protect information contained in this Exhibit B and to prevent release of information to the Requestor. If Lessee takes no such action, after receiving the foregoing notice from Lessor, Lessor shall be permitted to comply with the Requestor's demand and is not required to defend against it.

Lessor agrees to cooperate with Lessee in any efforts to prevent release of the information contained in this Exhibit B; however, Lessor shall not be required to expend any monies in excess of the cost of notifying Lessee by telephone, facsimile and/or mail of the pendency of a demand for the information contained in this Exhibit B. So long as Lessor complies with the provisions of notification set forth in this Exhibit B, Lessor shall not be liable for, and Lessee and Lessor hereby release each other from, any liability for any damages arising from any requirement under the law that Lessor release the information contained in this Exhibit B to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, attorneys and directors, as those terms may apply to each Party, without limitation.

**GROUND LEASE FOR WIND PARK FACILITY  
ON PROPERTY LOCATED IN  
THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA**

**EXHIBIT C**

**RENT**

1. The Lessee shall pay the Lessor an initial fee of [insert amount (\$)] upon execution of this Lease.
2. When the Facility is selling zero (0) or less than five percent (5%) of the output to the City, within thirty (30) days of the Effective Date, Lessee shall pay Lessor an annual Rent, without setoff, counterclaim, abatement, deferment, suspension, deduction or defense except as otherwise expressly provided by the terms of this Lease, and without prior notice or demand. The "Rent" shall be greater of [insert amount (\$)] per annum, pro-rated as appropriate, in equal monthly payments or a [insert number] percent (X%) royalty of the annual gross revenues to a third party in years one (1) through ten (10); [insert number] percent (Y%) royalty of the annual gross revenues to a third party in years eleven (11) through twenty (20); and [insert number] percent (Z%) royalty of the annual gross revenues to a third party in years twenty-one (21) through [insert number] (ZZ). The royalty percentage shall be calculated in the first thirty (30) days of the anniversary of the Effective Date and a true up payment shall be made to the city within sixty (60) days of the anniversary of the Effective Date. Rent for each year thereafter shall be due no later than thirty (30) days after the anniversary of the Effective Date for that year.
3. When the Facility is selling the full output of the Facility to the City, Lessee shall pay City as annual "Rent", without setoff, counterclaim, abatement, deferment, suspension, deduction or defense except as otherwise expressly provided by the terms of this lease, and without prior notice or demand, the sum of [insert amount (\$)] per annum. Rent for each year thereafter shall be due no later than thirty (30) days after the anniversary of the Effective Date for that year.
4. Confidential Status. As noted in Section 5.07 above, City is a public agency subject to the requirements of the California Public Records Act (Cal. Government Code section 6250 et seq). Notwithstanding the previous sentence, both Lessor and Lessee consider the information contained in this Exhibit C to be confidential and/or proprietary and/or protected from disclosure pursuant to exemptions to the California Public Records Act (Cal. Government Code sections 6254 and 6255). Consequently, the Parties agree to treat the contents of this Exhibit C as confidential.

Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information contained in this Exhibit C, Lessor as soon practical but within three (3) days of receipt of the request, shall notify Lessee that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed in Section 16.14 of this Lease. Lessee shall be responsible for taking whatever legal steps are necessary to protect information contained in this Exhibit C and to prevent release of information to the Requestor. If Lessee takes no such action, after receiving the foregoing notice from Lessor, Lessor shall be permitted

to comply with the Requestor's demand and is not required to defend against it.

Lessor agrees to cooperate with Lessee in any efforts to prevent release of the information contained in this Exhibit C; however, Lessor shall not be required to expend any monies in excess of the cost of notifying Lessee by telephone, facsimile and/or mail of the pendency of a demand for the information contained in this Exhibit C. So long as Lessor complies with the provisions of notification set forth in this Exhibit C, Lessor shall not be liable for, and Lessee and Lessor hereby release each other from, any liability for any damages arising from any requirement under the law that Lessor release the information contained in this Exhibit C to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, attorneys and directors, as those terms may apply to each Party, without limitation.

**GROUND LEASE FOR WIND PARK FACILITY  
ON PROPERTY LOCATED IN  
THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA**

**EXHIBIT D**

**BUY-OUT TERMS**

1. Buy-Out Amount:
  - (a) If Lessor exercises its option under Section 10.01 at the end of the initial Term, then the Buy-Out Amount shall be: [insert amount (\$) ].
  - (b) If the Term is extended for an additional five (5) year period pursuant to Exhibit B, and if Lessor exercises its option under Section 10.01 at the end of the extended Term, then the Buy-Out Amount shall be: [insert amount (\$) ].
2. Lessor and Lessee shall endeavor to complete the purchase and transfer of the Facility no later than thirty (30) days after the Purchase Date.
3. The purchase documents shall be reasonably acceptable to both parties, and shall contain terms and conditions typically found in agreements for the “as is where is” sale of major equipment and for the transfer of all related permits, licenses, Government Approvals or other interests necessary to operate the Facility.
4. Confidential Status. As noted in Section 5.07 above, City is a public agency subject to the requirements of the California Public Records Act (Cal. Government Code section 6250 et seq). Notwithstanding the previous sentence, both Lessor and Lessee consider the information contained in this Exhibit D to be confidential and/or proprietary and/or protected from disclosure pursuant to exemptions to the California Public Records Act (Cal. Government Code sections 6254 and 6255). Consequently, the Parties agree to treat the contents of this Exhibit D as confidential.

Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information contained in this Exhibit D, Lessor as soon practical but within three (3) days of receipt of the request, shall notify Lessee that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed in Section 16.14 of this Lease. Lessee shall be responsible for taking whatever legal steps are necessary to protect information contained in this Exhibit D and to prevent release of information to the Requestor. If Lessee takes no such action, after receiving the foregoing notice from Lessor, Lessor shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

Lessor agrees to cooperate with Lessee in any efforts to prevent release of the information contained in this Exhibit D; however, Lessor shall not be required to expend any monies in excess of the cost of notifying Lessee by telephone, facsimile and/or mail of the pendency of a demand for the information contained in this Exhibit D. So long as Lessor

complies with the provisions of notification set forth in this Exhibit D, Lessor shall not be liable for, and Lessee and Lessor hereby release each other from, any liability for any damages arising from any requirement under the law that Lessor release the information contained in this Exhibit D to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, attorneys and directors, as those terms may apply to each Party, without limitation.

**GROUND LEASE FOR WIND PARK FACILITY  
ON PROPERTY LOCATED IN  
THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA**

**EXHIBIT E**

**INSURANCE REQUIREMENTS**

Without limiting the Lessee's indemnification of Lessor as set forth in this Lease, and prior to entry onto the Premises which is the subject of this Lease and for the entire term of this Lease, Lessee shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the identified coverages, provisions and endorsements:

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. A Commercial General Liability Insurance policy, which provides coverage at least as broad as Insurance Services Office ("ISO") "occurrence" form CG 00 01. (ed. 10/93) covering commercial general liability or its equivalent. Policy limits are subject to review, but shall in no event be less than, the following:

\$5,000,000 combined single limit per occurrence for bodily injury, personal and property damage; and

\$5,000,000 minimum general aggregate which shall apply separately to the Premises which is the subject of this Lease.

2. Exact structure and layering of this coverage shall be left to the discretion of Lessee; however, any excess or umbrella policies used to meet the required limits shall provide coverage at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella or excess liability policy maintained by the Lessee to comply with the insurance requirements of this Lease:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits.
  - b. There shall be no cross liability exclusion, which precludes coverage for claims or suits by one insured against another.
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.
  - d. The policy must include a Waiver of Subrogation in favor of Lessor, as well as the City of Santa Clara, its City Council, Commissions, officers, employees, volunteers and agents.
  - e. The policy shall include broad form contractual liability and indemnity

coverage, which shall insure performance by Lessee of the indemnity and defense provisions set forth in this Lease. The limits of said insurance shall not, however, be construed to limit the liability of Lessee under this Lease.

**B. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01, with minimum policy limits of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

**C. POLLUTION LIABILITY**

In the event that this contract involves hazardous or regulated wastes and/or hazardous or regulated materials on the Premises, Lessee and/or its subcontractors shall provide a pollution liability coverage with coverage limits not less than one million dollars (\$1,000,000) each claim in connection with the operation of the Facility under this Lease. Lessor has determined that the following policies, which Lessee has purchased and is currently maintaining, meet the pollution liability insurance requirements included in this Lease:

Lessee's Pollution Liability Coverage is provided through either:

- 1) General Liability Policy (currently underwritten by Zurich, which provides coverage for sudden and accidental (unexpected and unintentional) events causing liabilities, fines assessments, penalties arising related to pollutants); and/or
- 2) Excess Liability Policy (currently underwritten by Aegis, which provides discharge, dispersal, seepage migration, release, or escape of pollutants coverage) will meet the City's pollution liability coverage requirements during normal operation and maintenance of the Facility.

Lessee agrees to continue to maintain said policies, or policies providing at least as much or more coverage, during the entire time this Lease remains in effect.

However, in the event that Lessee, either using its own employees and equipment or through a licensed, bonded, and insured subcontractor, elects to demolish or remove ten (10) of the wind turbines and/or the turbine support structures currently in existence on the Premises within any consecutive thirty (30) day period during the time this Lease remains in effect, the Parties agree that such activities would qualify as involving "hazardous or regulated wastes and/or hazardous or regulated materials on the Premises."

Before commencement of such demolition and/or removal work, Lessee and Lessor agree to meet and discuss in good faith the level of potential pollution risk involved in such work, and agree on the type of additional pollution liability insurance coverage (if any) that may be required and the portion of the cost of the such policy(ies) Lessor is willing pay.

If additional insurance policy(ies) are purchased, Lessee shall provide Lessor with the relevant certificate(s) of insurance showing the policy amounts and coverages for Lessor's review and approval.

All such turbine demolition and/or removal activities contemplated in this Lease shall be specifically scheduled on the pollution liability Policy as “covered operations.” Any deductible must be declared to and approved by Lessor. Such policy shall cover, at a minimum, liability for bodily injury, damage to and loss of use of property, and clean-up costs arising from sudden, accidental and gradual pollution and remediation in connection with the operation of the Facility under this Lease. Lessee will use its best efforts to have the City of Santa Clara, its City Council, officers, employees and volunteers added as additional insureds under this policy. The following provisions shall apply:

1. The policy shall provide coverage for cost of removal and the hauling of waste from the Premises to the final disposal location, including non-owned disposal sites.
2. Completed operations coverage shall extend a minimum of three (3) years after termination of this Lease.
3. Coverage shall be included on behalf of the Lessee for covered claims arising out of the actions of independent contractors.
4. If the Lessee is using subcontractors, the Policy must include work performed “by or on behalf” of the insured.
5. Policy shall contain no language that would invalidate or remove the Lessee’s duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the Lessee.

**D. WORKERS’ COMPENSATION**

1. A Workers’ Compensation Insurance Policy, as required by statute, and Employer’s Liability, which provides the following limits: at least one million dollars (\$1,000,000) policy limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.
2. The indemnification and hold harmless obligations of Lessee included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Lessee or any subtenant under any Workers’ Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. The policy must include a Waiver of Subrogation in favor of Lessor, as well as the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.
4. The workers’ compensation insurance and the employer’s liability coverage shall cover any person or entity employed directly or indirectly by Lessee, anyone whose acts Lessee may be liable for and/or any agent acting on behalf of Lessee.

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**E. COMMERCIAL ALL RISK FIRE AND EXTENDED PROPERTY INSURANCE**

A Commercial “all risk” fire and extended property policy, which is applicable to all perils and all risk of physical loss, including loss due to flood or water damage and including damage due to earthquake, covering the Premises, in an amount equal to one hundred percent (100%) of the full replacement cost of the Premises (i.e., replacement cost new, using materials of a like quality and kind as existed immediately prior to the damage or destruction and applying all currently applicable building codes and regulations). The insurance policy shall be primary and include endorsements for inflation, debris removal and demolition, building code and ordinance modification protection, and plate glass coverage with respect to the Premises. Lessor shall be shown as the “loss payee” on the insurance policy.

**F. COMPLIANCE WITH REQUIREMENTS**

All of the following clauses and/or endorsements, or similar provisions, are required to be part of the required commercial general liability policy, and any umbrella or excess policy(ies) which are intended to cover those risks:

1. **Additional Insureds.** The City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents as well as the Redevelopment Agency of the City of Santa Clara, where appropriate, are hereby added as additional insureds in respect to liability arising out of Lessee’s maintenance and/or use of the Property using Insurance Services Office (ISO) Endorsement CG 20 26 11 85, CG 20 11 01 96 or an equivalent endorsement acceptable to Lessor.
2. **Primary and non-contributing.** Each insurance policy provided by Lessee in compliance with the requirements included in this Exhibit, shall either contain specific primary and non contributing language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Lessee’s insurance.

**G. CANCELLATION**

Each insurance policy required under this Lease shall contain language or be endorsed to reflect that no cancellation, non renewal or modification of the coverage provided shall be effective until written notice has been given to Lessor’s insurance compliance representative by Lessee or its insurer at least thirty (30) days prior to the effective date of such non-renewal, modification or cancellation. Lessee shall, within thirty (30) days prior to the expiration of any policy, furnish Lessor’s insurance compliance representative with renewals or binders for such policy. Lessee’s failure to do so will give Lessor the right to secure such insurance policy and charge the cost to Lessee, which amount shall be payable by Lessee upon demand.

**H. POLICY APPLICATION**

As applicable, the insurance required pursuant to this Lease shall provide that the interests and protections of the additional insureds shall not be affected by any misrepresentation, act or

omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage. All insurance proceeds payable from any policy of insurance (other than commercial general liability insurance) required by this Lease shall be paid to Lessor.

**I. LESSOR'S RIGHT IN THE EVENT LESSEE FAILS TO COMPLY WITH THESE INSURANCE REQUIREMENTS**

The purchase and maintenance of the required insurance policies and endorsements described in this Lease are of critical importance to Lessor as security for the protection of its assets. Therefore, if at any time during the term of this Lease, Lessee fails to purchase or maintain in good standing, all of the required insurance policies, purchases a policy from an insurance company which fails to maintain the required A.M. Best rating, or if Lessee fails to provide any of the required policy endorsements set forth in this Lease, Lessee shall be deemed to be in breach of this Lease and Lessor shall have the right to immediately pursue all of its available rights and remedies under the law, including but not limited to, the right to either: 1) terminate this Lease for cause; or 2) secure the required insurance policies itself at Lessee's expense.

In the event Lessee fails to comply with the insurance requirements of this Lease, Lessor shall provide notice to Lessee describing the material noncompliance with the insurance requirements set forth in this Lease. Lessee shall then have five (5) business days after the date of such notice to cure the identified non-compliance by providing Lessor with adequate assurance that the insurance requirements have been fully met. If Lessee fails to provide Lessor with such assurance within the specified cure period, Lessor will have the immediate the right to pursue any of the above referenced remedies.

**J. ADDITIONAL INSURANCE RELATED PROVISIONS**

1. Lessee warrants that any subtenants, contractors, or any other party involved with the Lease who is brought onto the Premises, or who is otherwise involved in the Lease by Lessee, shall provide the same minimum commercial general liability insurance coverage and the related endorsements, which are required of Lessee. Lessee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Lease. Lessee agrees that it shall provide Lessor with written copies of all agreements with, and insurance compliance documents provided by, such subtenants, contractors and others involved in this Lease before such subtenants, contractor or other person is allowed to enter onto the Premises.
2. Lessee agrees to be responsible for ensuring that no contract used by any subtenant, contractor or party involved in any way with this Lease reserves the right to charge Lessor for the cost of additional insurance coverage required by this Lease. Any such provisions are to be deleted with reference to Lessor. It is not the intent of Lessor to reimburse any third party for the cost of complying with these insurance requirements. There shall be no recourse against Lessor for payment of premiums or other amounts with respect thereto.

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**N. QUALIFYING INSURERS**

In addition to the compliance documentation required under this Lease, Lessee shall provide written evidence that all of the insurance companies providing insurance for Lessee, its subtenants or contractor(s), have an A. M. Best rating of at least B+ or shall be an insurance company of equal financial stability. Failure of any insurance carrier to maintain this minimum rating shall provide the Lessor the rights set forth in Section I above.