

ATTACHMENT B

MASTER RENEWABLE ENERGY CERTIFICATE PURCHASE AND SALE AGREEMENT

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

RECITALS:

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

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

AGREEMENT:

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

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

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

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

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

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

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

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

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

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

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

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

“Confidential Information” is defined in Section 12

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

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

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

“Defaulting Party” is defined in Section 6.

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

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

“Event of Default” is defined in Section 6.

“Force Majeure” is defined in Section 22.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Terminated Transaction” is defined in Section 7.

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

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

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

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

3. **REC Transactions.**

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

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

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

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

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

4. Financial and Performance Assurances.

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

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

5. Billing and Terms of Payment.

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

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

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

Buyer agrees to send its payment to:

Address: _____

Attention: _____

Wiring instructions:

6. Events of Default.

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

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

7. Remedies for Default.

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

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

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

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

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

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

8. Indemnification.

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

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

9. Relationship of the Parties.

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

10. Taxes and Costs.

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

11. Notices.

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

If to Buyer:

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

If to Seller:

Address:
Attention:
Phone:
Fax:

With a copy to:

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

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

12. Confidential Information.

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

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

13. Publicity and Disclosure.

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

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

14. Nondiscrimination.

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

15. Miscellaneous Representations and Warranties.

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

16. Choice of Law.

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

17. Entire Agreement.

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

18. Amendments.

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

19. Assignment.

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

20 Non-Waiver; No Third Party Beneficiaries.

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

21. Severability.

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

22. Force Majeure.

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

23. Exhibits and Insurance.

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

24. Compliance with Law.

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

25. Fiscal Provisions.

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

[SIGNATURES ON NEXT PAGE]

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

CITY OF PALO ALTO
(“BUYER”)

XXXX
(“SELLER”)

City Manager

APPROVED AS TO FORM:

Senior Deputy City Attorney

APPROVED:

Director of Administrative
Services

Director of Utilities

By: _____

Name:

Title:

Taxpayer Identification No.

Exhibit A

Confirmation Letter #1

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

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

Basic Commercial Terms:

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

Product Specific Terms:

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

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

The Parties agree to the REC Transaction set forth herein.

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



Exhibit B

Attestation Form

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

I. Wholesale Provider Information

Name of Provider: _____

Address of Provider: _____

Contact Person: _____ Title: _____

Telephone: _____ Fax: _____ Email _____

Address: _____

II. Declaration

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

On behalf of the Provider, I further declare that:

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

¹ Use separate forms to report electricity and REC sales.

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

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

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

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

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

Signature

Date

Place of Execution

III. Additional Statement required of Provider selling electricity to Purchaser

(Check box if not applicable: [])

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

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

(Check box if not applicable: [])

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

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

Signature

Date

Place of Execution

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

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

Exhibit C
Certification of Nondiscrimination

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

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

Authorized Signature: _____

Date: _____

EXHIBIT D

INSURANCE REQUIREMENTS

Seller shall maintain the level of insurance set forth below: