

**COUNTY OF SANTA
CRUZ**

NON-FIRM ENERGY PURCHASE AGREEMENT

This NON-FIRM ENERGY PURCHASE AGREEMENT (the "Agreement") is made and entered into as of September 13, 2001, by and between the **California Department of Water Resources** acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80260 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System (the "Department"), an agency of the State of California, and the **County of Santa Cruz, California** (the "Seller").

WITNESSETH:

WHEREAS, the Department requires electric energy in connection with its responsibilities, as set forth in California Water Code Section 80000 et seq., with respect to the Department of Water Resources Electric Power Fund (the "Fund"), as established February 1, 2001, Assembly Bill 1, First Extraordinary Session (the "Act"); and

WHEREAS, the Department solicited bids for the purchase of energy; and

WHEREAS, the Department has determined to accept a bid of the Seller; and

WHEREAS, because of the administrative burden and delays associated with such requirements, Seller would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements would apply to or be required to be incorporated in this Agreement;

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. The following terms shall have the respective meanings in this Agreement:

"Annual Delivery Period" shall have the meaning set forth in Section 2.03.

"Authorized Representative" shall mean the person or persons designated in Appendix B as having full authority to act on behalf of a party for all purposes hereof.

“Availability” means the ratio of 1) MWh delivered in a month to 2) the difference between the product of Contract Capacity and total hours in the month, and the MWh not generated in the month due to planned outages.

"Billing Address" means the billing address specified in Appendix B or as otherwise specified by the Department.

"Business Day" means any day other than a Saturday or Sunday or a (United States or Canadian, whichever is applicable) holiday. United States holidays shall be holidays observed by Federal Reserve member banks in New York City. Where the Seller has its principal place of business in the United States, Canadian holidays shall not apply. In situations where the Seller has its principal place of business within Canada, both United States and Canadian holidays shall be observed.

“CAISO” shall mean the California Independent System Operator.

“Commercial Operation Date” shall be the date on which Seller confirms in writing to Buyer that the conditions set forth in Section 2.06 have been met. The expected Commercial Operation Date is set forth in Appendix A.

”Contract Capacity” shall mean the maximum net capacity of the Generating Plant, as stated in Appendix A.

"Costs" shall have the meaning set forth in Section 6.03 hereof.

"Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Delivery Point" means the point of interconnection of the Seller’s facilities with the CAISO-controlled transmission grid, as specified in Appendix A.

"Event of Default" shall have the meaning set forth in Section 6.01 hereof.

"Fund" means the Department of Water Resources Electric Power Fund as set forth in Water Code Section 80000 *et seq.* as established by February 1, 2001, Assembly Bill 1, First Extraordinary Session.

“Generating Plant” means the 3 MW (net) landfill gas fueled generating plant located at the Buena Vista Landfill, 1231 Buena Vista Drive, Watsonville, California.

“Invoice Month” means the calendar month after the delivery of Non-Firm Energy for which an invoice is being issued.

"Investment Grade" means with respect to the Seller a rating on the Seller’s senior long-term unsecured debt obligations of “Baa3” from Moody’s and “BBB-” from S&P.

“Letter of Credit” means an irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Department.

“Market Quotation Average Price” shall mean the average of the good faith quotations solicited from not less than five (5) Reference Market-makers disregarding the highest and lowest quotations. If quotations cannot be obtained from five Reference Market-makers, the Market Quotation Price shall be the average of all quotations received.

"Market Value" shall have the meaning set forth in Section 6.03 hereof.

"Moody's" means Moody's Investor's Services, Inc., or its successor.

“NERC” shall mean the North American Electric Reliability Council or any successor organization.

“Net Demonstrated Capacity” shall have the meaning set forth in Section 2.06.

"Non-Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Non-Firm Energy" means all Unit Contingent scheduled energy from the Generating Plant, to be delivered to the Department at the Delivery Point. Non-Firm Energy is estimated to be delivered approximately 8,000 hours per year.

“Per Unit Market Price” means the applicable price per MWh determined in accordance with Section 6.03.

"Present Value Discount Rate" shall have the meaning set forth in Section 6.03 hereof.

"Purchase Price" means the price set forth in Appendix A.

"Reference Market-maker" means any marketer, trader or seller of or dealer in Non-Firm Energy products whose long-term unsecured senior debt is rated Investment Grade.

“Replacement Contract” means a contract having a term, transaction quantity, availability rate, delivery rate, Delivery Point and product configuration substantially similar to the remaining Term, transaction quantity, delivery rate, Delivery Point and product configuration of this Agreement.

“Replacement Price” means the price at which Department, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Non-Firm Energy not delivered by Seller hereunder, plus (i) costs reasonably incurred by Department in purchasing such substitute Non-Firm Energy and (ii) additional transmission or other charges, if any, reasonably incurred by Department to the Delivery Point, or at Department's option, the market price at the Delivery Point for such Non-Firm Energy not delivered as determined by Department in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Department be required to utilize

or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For purposes of this definition, Department shall be considered to have purchased replacement Non-Firm Energy to the extent Department shall have entered into one or more arrangements in a commercially reasonable manner whereby Department repurchases Seller's unfulfilled obligation to sell and deliver the Non-Firm Energy from another party at the Delivery Point.

"Sale Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Non-Firm Energy not received by Department, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Non-Firm Energy and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Non-Firm Energy to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Non-Firm Energy not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Department's liability. For purposes of this definition, Seller shall be considered to have resold such Non-Firm Energy to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller makes an alternate sale of the Non-Firm Energy to a third party at the Delivery Point.

"Schedule Coordination Services" shall mean all services rendered by registered CAISO Schedule Coordinators that are necessary in order for electric power resources to be scheduled and delivered over the CAISO transmission grid in accordance with the CAISO Tariff.

"S&P" means Standard & Poor's Ratings Agencies (a division of McGraw-Hill, Inc.), or its successor.

"State" means the State of California.

"Term" shall have the meaning set forth in Section 2.04.

"Termination Payment" shall have the meaning set forth in Section 6.02 hereof.

"Uncontrollable Force" shall have the meaning set forth in Section 5.01 hereof.

"Unit Contingent" means that delivery of power is contingent upon the Generating Plant not being unavailable due to outage.

ARTICLE II PURCHASE AND SALE OF NON-FIRM ENERGY

Section 2.01. Purchase and Sale of Non-Firm Energy. Seller shall sell and deliver, or cause to be sold and delivered, and the Department shall purchase and receive, or cause to be

purchased and received, the Non-Firm Energy at the Delivery Point, beginning on the Commercial Operation Date and continuing for the Term set in Appendix A to this Agreement, and for which the Department shall pay the Seller the Purchase Price. Seller shall be obligated to schedule to the Department and to generate the Non-Firm Energy at the Generating Plant's maximum capability available in each hour, not to exceed 105% of Contract Capacity, and to operate the Generating Plant such that monthly actual generation is within plus or minus 10% of monthly scheduled generation. In no event may Seller curtail delivery for economic reasons. The Seller shall be responsible for any costs or charges imposed on or associated with the Non-Firm Energy up to the Delivery Point. The Department shall be responsible for any costs or charges imposed on or associated with the Non-Firm Energy or its receipt at and from the Delivery Point. In addition, Seller shall sell and deliver and Department shall purchase and receive any energy produced by the Generating Plant prior to the Commercial Operation Date, upon reasonable notice by Seller and according to the terms of this Agreement. In no event shall the Seller have the right to procure electric energy from sources other than the Generating Plant for sale and delivery pursuant to this Agreement.

Section 2.02. Transmission and Scheduling. The Seller shall arrange and be responsible for transmission service to the Delivery Point, and shall obtain, at Seller's expense, Schedule Coordination Services necessary to deliver the Non-Firm Energy to the Delivery Point. Seller shall be responsible for all CAISO costs and charges, including imbalance charges due to deviations from power schedules. The Department shall arrange and be responsible for transmission service at and from the Delivery Point and shall schedule with its transmission providers to receive the Non-Firm Energy at the Delivery Point. All deliveries shall be scheduled in accordance with CAISO requirements to fulfill contractual metering and interconnecting requirements set forth in the CAISO tariff and the implementing CAISO standards and requirements, including but not limited to, executing a standard form CAISO Participating Generator Agreement, so as to be able to deliver Non-Firm Energy to the Delivery Point, which is on the CAISO-controlled transmission grid. The Seller shall be responsible for ensuring that Non-Firm Energy deliveries are scheduled consistent with the most recent rules adopted by the applicable NERC regional reliability council, or its successor. Risks of transmission curtailment or interruptions shall be the responsibility of the Seller up to the Delivery Point.

No later than four (4) hours before Seller's Scheduling Coordinator is required to submit its preferred day-ahead energy schedule to CAISO, Seller shall deliver to the Department its preferred day-ahead schedule and, thereafter, Seller shall immediately deliver to the Department notice of any changes to such preferred day-ahead schedule and the reason(s) therefor. Notwithstanding anything to the contrary herein, in the event Seller makes a same-day change to its schedule for any reason (other than an adjustment imposed by CAISO) which results in an increase to its output (whether in part or in whole), the Department shall have the right, but not the obligation, to take delivery of such energy and to pay for such increase in output at the purchase price per MWh set forth above, which right must be exercised no later than one (1) hour prior to the deadline for the Department, in its capacity as a Scheduling Coordinator, to submit hour-ahead schedules to CAISO, otherwise such right shall be deemed not to have been exercised and the Department shall have neither the right nor the obligation to take delivery of such energy.

Section 2.03 Energy Production Forecasts. No later than the Commercial Operations Date, Seller shall deliver to the Department its forecast of the amount of MWh of energy it expects to deliver each day of the period commencing on the Commercial Operations Date and ending on the next succeeding April 30. No later than April 1 of each year during the term of this Agreement, Seller shall deliver to the Department its forecast of the amount of MWh of energy it expects to deliver each day of the twelve (12) month period (“Annual Delivery Period”) commencing on the next succeeding May 1 (adjusted for any remaining term of this Agreement of less than twelve (12) months). No later than the first day of each calendar month, Seller shall deliver to the Department its forecast of the amount of MWh of energy it expects to deliver each hour of each day of such calendar month. No later than noon on the Tuesday before each week consisting of the Sunday immediately succeeding such Tuesday at 12:00 P.M. midnight, Pacific time, to the following Saturday at 11:59 P.M., Pacific time, Seller shall deliver to the Department its update of the amount of MWh of energy it expects to deliver to DWR for each hour of each day of such week.

Section 2.04. Sources of Payment; No Debt of State. The Department’s obligation to make payments hereunder shall be limited solely to the Fund. Any liability of the Department arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against the Department hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.

Section 2.05. Term. The term of this Agreement (the “Term”) shall be set forth in Appendix A. This Agreement shall terminate upon expiration of the term specified in Appendix A.

Section 2.06 Commercial Operations. The Commercial Operation Date (“COD”) shall be the date upon which Seller first certifies in writing to the Department that all of the following conditions precedent to Commercial Operations have been satisfied:

- (a) Seller has completed a four-hour demonstration test, at its expense, of the Generating Plant that achieves a Net Demonstrated Capacity (“NDC”) of no less than 95% of the Contract Capacity. The Parties shall agree on the timing and procedures for such demonstration test, and Seller shall provide Department with access to the Generating Plant to monitor the test and with detailed written test results. Either Party may request a re-test, at its expense.
- (b) Seller has received all necessary approvals, licenses, permits and emission reduction credits (if applicable) for operating the Unit at its NDC for all hours in each Annual Delivery Period (prorated on a daily basis in the

event of a partial Annual Delivery Period) for the term of the Agreement, except for final permits which Seller reasonably expects to obtain in the normal course and which are not required for Seller to fulfill its obligations pursuant to the Agreement.

- (c) Seller has submitted to Buyer a copy of the Generating Plant's System Impact Study ("SIS") and, if performed, Detailed Facility Study ("DFS") or Expedited Facilities Study ("EFS") prepared by or on behalf of PG&E, and the SIS and DFS or EFS demonstrate that the ability of the Unit to operate during the contract hours will not be subject to extraordinary curtailment protocols utilized to manage flows over congested transmission lines or paths during normal system operating conditions (no lines, transformers, or critical generators out of service due to planned or forced outages) or critical system outage conditions (one critical generating unit out of service due to a planned or forced outage), or other transmission-related protocols, schema or procedures that otherwise will significantly restrict Seller's capability to perform its obligations under this Agreement.

Section 2.07 Maintenance. Seller may perform planned maintenance of the Generating Plant for up to 20 days per 12 month period. Seller shall coordinate scheduled maintenance outages of the Generating Plant with the Department, and shall use best efforts to allow 30 days notice of such outages. In no event may scheduled outages occur during the months of June through October, inclusive.

Section 2.08. Other Provisions. The additional terms contained in Appendix A are hereby incorporated by reference into this Agreement.

ARTICLE III REPRESENTATIONS AND WARRANTIES

Section 3.01. Representations and Warranties of the Department. The Department makes the following representations and warranties:

(a) Pursuant to Water Code Section 80000 *et seq.* the Department is authorized and empowered to enter into the transactions contemplated by this Agreement and has taken all requisite action to carry out its obligations hereunder. By proper action of its officers, the Department has duly authorized the execution and delivery of this Agreement.

(b) The execution, delivery and performance by the Department of this Agreement and the consummation by the Department of the transactions herein contemplated have been duly authorized and will not violate any provision of law in any material respect, or any order or judgment of any court or agency of government having jurisdiction thereover, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time)

a material default under any material indenture, material agreement or other material instrument to which the Department is a party or by which it or any of its property is subject to or bound.

(c) This Agreement constitutes the legal, valid and binding obligation of the Department enforceable against the Department in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

Section 3.02. Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller is a political subdivision of the State, duly organized, validly existing and in good standing under the laws of the State, has the power and authority to own its property and assets, to carry on the governmental functions now being conducted by it and to execute, deliver and perform this Agreement.

(b) The execution, delivery and performance of this Agreement and the consummation of the transactions by the Seller herein contemplated have been duly authorized by all material requisite action on the part of the Seller and will not violate any provision of law, any order or judgment of any court or agency of government, or any material indenture, agreement or other instrument to which the Seller is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a material default under any such indenture, agreement or other instrument.

(c) This Agreement constitutes the legal, valid and binding obligations of the Seller enforceable against the Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(d) There is no substantive action or proceeding pending or, to the best knowledge of the Seller, threatened by or against the Seller by or before any court or administrative agency that might adversely affect the ability of the Seller to perform its obligations under this Agreement and all material authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Seller as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the Seller hereunder have been obtained.

(e) The Seller is solvent. No action has been instituted, with respect to the Seller, by the Seller or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights nor has any petition been presented or instituted for its winding-up or liquidation.

ARTICLE IV PAYMENTS

Section 4.01. Billing Period; Billing Address. The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to the Department shall be sent to the Billing Address.

Section 4.02. Payments. Payments for amounts billed hereunder shall be made so that such payments are received by the Seller on or before the last Business Day of the Invoice Month or the 10th day after receipt of the bill, whichever is later. Payment shall be made at the location designated by the Seller to which payment is due. Payment shall be considered received when the Department mails payment. If the due date falls on a non-Business Day of either the Department or the Seller, then the payment shall be due on the next following Business Day.

Section 4.03 Late Payments. Amounts not paid on or before the due date shall be payable with interest accrued at the rate of one percent (1%) above the Pooled Money Investment Account rate accrued in accordance with Government Code Section 927.6(6) not to exceed 15%.

Section 4.04 Disputes. In case any portion of any bill is in dispute, the entire bill shall be paid when due. Any excess amount of bills which, through inadvertent errors or as a result of a dispute, have been overpaid shall be returned by the Seller upon determination of the correct amount, with interest accrued at the rate provided in Section 4.03 hereof, prorated by days from the date of overpayment to the date of refund. Neither the Department nor the Seller shall have rights to dispute the accuracy of any bill or payment after a period of two (2) years from the date on which the first bill was delivered.

Section 4.05. Records Retention and Audit.

(a) Records Retention. The Department and the Seller, or any third party representative thereof, shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of three (3) years after final payment under this Agreement. Within three (3) years from final payment under this Agreement, any party to any transaction may request in writing copies of the records of the other party to the extent reasonably necessary to verify the accuracy of any statement or charge. The party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

(b) Audit. Seller agrees that the Department, the Department of General Services, the Bureau of State Audits, or their designated representatives, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Seller agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Seller agrees to allow the auditor(s) access to such records during normal business hours and to allow

interviews of any employees who might reasonably have information related to such records. Further, Seller agrees to include similar right of the State to audit records and interview staff in any contractors or suppliers related to performance of this Agreement.

ARTICLE V UNCONTROLLABLE FORCES

Section 5.01. Uncontrollable Forces. No party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term " Uncontrollable Force " means any cause beyond the control of the party affected, including but not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority which by exercise of due diligence such party could not reasonably have been expected to avoid and to the extent which by exercise of due diligence it has been unable to overcome. No party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Any party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice. Notwithstanding the foregoing, an Uncontrollable Force shall not be based on (i) the loss of the Department's markets; (ii) the Department's inability economically to use or resell the Non-Firm Energy purchased hereunder; (iii) the loss or failure of Seller's supplies including, but not limited to, Seller's own generating assets or contracts for the purchase of power or energy; or (iv) Seller's ability to sell the Non-Firm Energy at a price greater than the Purchase Price.

The Department shall not be relieved by operation of this Section 5.01 of any liability to pay for power delivered to the Department by the Seller or to make payments then due or which the Department is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

Seller shall not be relieved by operation of this Section 5.01 of any of Seller's liabilities under this Agreement that may result from a failure of Seller to deliver power pursuant to a then-current schedule including, without limitation, CAISO imbalance energy costs.

ARTICLE VI EVENTS OF DEFAULT

Section 6.01. Events of Default. An "Event of Default" shall mean with respect to a party ("Defaulting Party"):

- (a) The failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Defaulting Party by the other party (the "Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the Authorized Representative specified in Appendix B for the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative; or
- (b) The failure by the Defaulting Party to provide clear and good title as required by Section 10.01, to have made accurate representations and warranties as required by Sections 3.01 or 3.02 or to perform any other material covenant or obligation hereunder and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party. The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative; or
- (c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity, of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights, or a petition is presented or instituted for its winding-up or liquidation; or
- (d) The Defaulting 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 Defaulting 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 Non-Defaulting Party.

Section 6.02. Remedies for Events of Default. (a) If an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate this Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be effective immediately upon receipt. The payment associated with termination ("Termination Payment") shall be the aggregate of the Market Value and Costs calculated in accordance with Section 6.03. Subject to the provisions of Section 6.02 (b) hereof, the Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for a termination hereunder. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

(b) Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting Party for any obligations incurred prior to termination under this Agreement until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party.

Section 6.03. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

(a) Market Value shall be (i) in the case the Department is the Non-Defaulting Party, the present value, calculated using a discounted cash flow model, of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case the Seller is the Non-Defaulting Party, the present value, calculated using a discounted cash flow model, of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract (if any) based on the Per Unit Market Price, in each case using the Present Value Discount Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Discount Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches, as closely as possible, the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

(b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, any or all of the settlement prices of the NYMEX power futures contracts, any or all of the settlement prices on other established power exchanges and other bona fide third party offers; provided, however, that if there is no actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (c).

(c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).

(d) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements pursuant to which the Non-Defaulting Party has hedged its obligations or entering into new arrangements which replace this Agreement, transmission and ancillary service costs caused by the termination of this Agreement incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the termination of this Agreement.

(e) In no event, however, shall a party's Market Value or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

(f) The Non-Defaulting Party shall use reasonable efforts to mitigate the amount of the Termination Payment, including, to the extent practicable, the mitigation or elimination of the Costs.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 8.01 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party within one hundred eighty (180) Business Days of receipt of written notice subject to the Non-Defaulting Party refunding, with interest, pursuant to Section 4.04, any amounts determined to have been overpaid.

Section 6.04 Early Termination. Early termination rights as contained in Appendix A may be exercised pursuant to this section. In the event of early termination under this Section 6.04, neither Party shall be liable to the other for the payment of any damages related to such early termination, including, but not limited to, the Termination Payment. In the event of such early termination, the Parties shall be mutually released from all rights and obligations, except for those rights and obligations that specifically survive such termination as set forth elsewhere herein.

ARTICLE VII RESERVED

ARTICLE VIII DISPUTE RESOLUTION

Section 8.01. Dispute Resolution. If the parties are unable to resolve a dispute with respect to this Agreement, either party may send a notice to the other requesting a meeting at which senior officers or officials of the parties will attempt to resolve the dispute. If the parties are unable to resolve the dispute within ten (10) days after the meeting notice is received by the party to whom it is directed, either party may demand that the matter be submitted to a single neutral arbitrator with substantial relevant experience in the power industry. If the parties are unable to agree upon an arbitrator within ten (10) days of the demand, the arbitrator shall be appointed pursuant to California Code of Civil Procedures and the party applying for the appointment of the arbitrator shall request that the appointment be made on an expedited basis. Within ten (10) days of the appointment of the arbitrator, the party demanding arbitration shall submit to the arbitrator a reasonably detailed description of its position together with supporting material. Within a further ten (10) days, the other party shall respond by submitting to the arbitrator a reasonably detailed statement of its position together with supporting material. Each party shall at the same time as such submission deliver copies of its submission to the other party

and shall promptly provide any additional explanation or information requested by the arbitrator. The arbitrator shall be instructed to use all reasonable efforts to render a written decision setting forth its findings and conclusions within thirty (30) days of the date on which the arbitration proceedings are concluded. The arbitrator's decision concerning the item or items in dispute shall be final and binding on the parties. The parties shall bear their own costs and share the arbitrator's expenses equally.

ARTICLE IX REMEDIES FOR FAILURE TO DELIVER/RECEIVE

Section 9.01. Department Failure. If Department fails to schedule receipt and /or receive all or part of the Non-Firm Energy and such failure is not excused under the terms of this Agreement or by Seller's failure to perform, then Department shall pay Seller, within ten (10) Business Days of invoice receipt, an amount for all such MWh of deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Purchase Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

Section 9.02. Seller Failure. If Seller fails to schedule delivery and /or deliver all or part of the Non-Firm Energy and such failure is not excused under the terms of this Agreement or by the Department's failure to perform, Department's remedy shall be through the calculation of monthly Availability and the use of early termination pursuant to Appendix A, as applicable.

ARTICLE X MISCELLANEOUS

Section 10.01. Title, Risk of Loss. The Seller warrants that it will transfer to the Department good title to the Non-Firm Energy sold under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Point and that Seller's sale is in compliance with all applicable laws and regulations. **THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Risk of loss of the Non-Firm Energy shall pass from the Seller to the Department at the Delivery Point(s).

Section 10.02. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State, without regard to the conflicts of laws rules thereof.

Section 10.03. Forum and Venue. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the County of Sacramento, State of California.

Section 10.04 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or

conditions of this Agreement or any matters whatsoever arising out of or in any way connected with this Agreement. The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 10.05. Amendment. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Department and the Seller.

Section 10.06. 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. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 10.07. Taxes. The Purchase Price shall include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Department for if the Department has paid, all taxes applicable to the Non-Firm Energy that arise prior to the Delivery Point. If the Department is required to remit such tax, the amount shall be deducted from any sums due to the Seller. The Purchase Price does not include reimbursement for, and the Department is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to the Non-Firm Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Department. Either Party, upon written request of the other party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority with respect to the Non-Firm Energy.

Section 10.08. Transfer of Interest in Agreement. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of the Generating Plant whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

Anything herein to the contrary notwithstanding, the Department may transfer and assign this Agreement to any entity created or designated by law for such purpose and the Department shall have no further obligations hereunder; provided, however, that all right, title and interest in the Fund shall be transferred to such entity without any encumbrance for the

benefit of all persons selling power or energy to the Department, including the Seller. The Department may also pledge and assign this Agreement to a bond trustee as collateral for bonds issued by the Department and may also transfer or assign this Agreement to any electrical corporation, as defined in the Act, whose long-term unsecured senior debt is rated Baa3 or better by Moody's and BBB- or better by S&P.

Section 10.09. Severability. In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement.

Section 10.10. Relationship of the Parties. (a) Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the parties. Each party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement. (b) All rights of the parties are several, not joint. No party shall be under the control of or shall be deemed to control another party. Except as expressly provided in this Agreement, no party shall have a right or power to bind another party without its express written consent.

Section 10.11. No Dedication of Facilities. The Seller's undertaking hereunder shall not constitute the dedication of the electric system or any portion thereof of the Seller to the public or to the other party and it is understood and agreed that any undertaking under this Agreement by the Seller shall cease upon the termination of the Seller's obligations under this Agreement.

Section 10.12. No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate the Seller to provide any services hereunder directly to or for retail customers of any person. (b) In performing their respective obligations hereunder, neither party is acting, or is authorized to act, as agent of the other party.

Section 10.13. Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 10.08.

Section 10.14. Liability and Damages. No party or its 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.

Section 10.15. Waivers. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

Section 10.16. Notices. Any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram or fax or other means agreed to by the parties to the addresses set forth in Appendix B.

Section 10.17. Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a party's own negligence) or otherwise, shall either party be liable to the other party or to any other person or party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise; provided, however, that this provision shall not limit in any way a party's right to payment of the Termination Payment pursuant to Section 6.02 hereof.

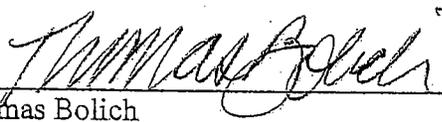
Section 10.18. No Cross Defaults. This Agreement shall be treated as a stand-alone transaction and shall not be cross defaulted to any other transaction between the Department and the Seller, and no default under any transaction of the Department relating to the Department's Water Resources Development System shall be a default under this Agreement, and no default by any party under this Agreement shall be a default under any transaction of the Department relating to the Department's Water Resources Development System.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the date first above written.

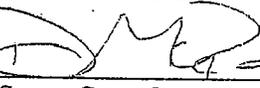
CALIFORNIA DEPARTMENT OF WATER RESOURCES, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System

By: 
Name:
Title: Acting Deputy Director

COUNTY OF SANTA CRUZ, CALIFORNIA

By: 
Thomas Bolich
Director of Public Works

Approved as to form

By:  9.8.01
Santa Cruz County Counsel

Appendix A

Supplemental Definitions and Terms of Agreement

Description of Generating Plant	Seller will install a 3 MW (net) generation plant at the Buena Vista Landfill in Watsonville, California. Seller shall obtain the necessary permits from the Monterey Bay Unified Pollution Control District, and the project will include the necessary SNCR emission controls.
Contract Capacity	3 MW
Expected Commercial Operations Date	April 30, 2002
Term	From the Commercial Operations Date through the earlier of: a) 5 years from the Commercial Operations Date, or b) June 30, 2007
Delivery Point	NP15, At the interconnection of Seller's facilities associated with the Generating Plant (on the high side of the Generating Plant's step-up transformer) with the CASIO-controlled transmission grid
Purchase Price	For each MWh of energy delivered to Department and produced by Seller, Department will pay Seller \$65/MWh.
Monthly Availability Guarantee Percentage	75% in June – October 70% in January – May and November – December Seller shall not provide replacement energy to avoid a reduction in Availability.
Emissions	Seller shall obtain all plant permits and emission offsets needed to operate the Generating Plant for up to 8760 hours per year at Contract Capacity, shall operate the Generating Plant pursuant to the permits, and shall maintain the validity of the permits.

Early Termination

Department shall have the option to terminate the Power Purchase Agreement if:

1. Seller has not been granted regulatory authority from all applicable permitting authorities by December 31, 2001;
2. Seller has not provided notice of achievement of Commercial Operations by May 31, 2002; or
3. The output from the Generating Plant yields an Availability that is less than the Monthly Availability Guarantee Percentage for three consecutive months; or
4. Seller has not provided evidence of a credit rating of unsecured long-term debt of Baa3 or better from Moody's, or BBB- or better from S&P, prior to the earlier of the actual or Expected Commercial Operations Date.

Major Milestone Activity	Expected Milestone Completion Date
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Acquisition of Land Use Permit	Completed
Acquisition of Air Permit	Completed
Approval of the Gas Interconnection	N/A
Approval of the Electrical Interconnection	Completed
Delivery of all Required Equipment	March 1, 2002
Start of Construction	December 1, 2001
Completion of Gas interconnection	N/A
Completion of Electric Interconnection	March 1, 2002
Facility ready for test	April 1, 2002
Commercial Operation Date	April 30, 2002

Reports

Upon execution of the PPA, Seller shall supply monthly progress reports to the Department describing progress towards completion of all Major Milestone Activities for the plant. Commencing within one week of the date upon which Seller fails to complete or first has reasonable cause to believe that it will be unable to complete one or more Major Milestone Activities by its respective Milestone Completion Date, Seller shall supply bi-weekly progress reports to the Department with its revised Milestone Completion Dates, the

reasons for the revision, and its plan for and its progress towards its revised schedule and mitigating any past, current, anticipated or future delays.

Prudent Utility Practices

Seller will utilize Prudent Utility Practices with respect to the Generating Plant. Prudent Utility Practice means those practices, methods and procedures as modified from time to time, that are currently and commonly used in electric utilities to design, engineer, select, construct, operate and maintain electric power facilities and equipment dependably, reliably, safely, efficiently, and economically, with due regard to the state-of-the-art in the electric power industry, as applied in the Western Systems Coordinating Council (WSCC) area.

Appendix B

Addresses

SELLER

Billing Address:
Santa Cruz County Department of Public Works
701 Ocean Street, Room 410
Santa Cruz, CA 95060
Attn: Patrick Mathews
Solid Waste and Recycling Services Manager

DEPARTMENT

Billing Address:
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814
Attn: Executive Manager Power Systems

Notice Address:
Santa Cruz County Department of Public Works
701 Ocean Street, Room 410
Santa Cruz, CA 95060
Attn: Patrick Mathews
Solid Waste and Recycling Services Manager

Notice Address:
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814
Attn: Executive Manager Power Systems

Authorized Representative:

Thomas L. Bolich, Director of Public Works

Authorized Representative:

Raymond D. Hart, Deputy Director