



MEMORANDUM OF UNDERSTANDING FOR REGIONAL RENEWABLE ENERGY PROCUREMENT

This Memorandum of Understanding (“MOU”) is entered into as of _____, 2013 (the
“Effective Date”) by and among the following California jurisdictions: County of Alameda
 (“Alameda County”), County of San Mateo (“San Mateo County”), _____,

_____, _____, _____,
_____, _____, _____,
_____, _____, _____,
_____, _____, _____,
_____, _____, _____,

_____, and _____. Signatories to this MOU are referred
to herein as “the “Parties” and individually as a “Party”.

Recitals

WHEREAS, the Parties desire to purchase renewable energy for their operations;

WHEREAS, the Parties wish to take advantage of potential efficiencies when such purchases are
made in large volumes;

WHEREAS, large volume purchases of renewable energy or renewable energy generation
equipment will be made through a regional, multi-jurisdiction purchasing arrangement whereby
project sites are aggregated into groups on the basis of the type of technology and geographic
location, various risk and other financing related factors;

WHEREAS, large volume purchases likely result in more efficient procurement than would
otherwise be available if individual jurisdictions independently purchased renewable energy;

WHEREAS, the Parties desire that Alameda County, by and through its General Services Agency, shall be the lead Party for issuing a solicitation to purchase renewable energy (the “Solicitation”);

WHEREAS, the Parties acknowledge that the transaction costs associated with purchasing renewable energy can be reduced when the Parties agree to the same terms and conditions incorporated within standardized template documents; and

WHEREAS, at the completion of the Solicitation process, subject to the approval of their respective Board, Council or applicable governing body, the Parties may enter into power purchase, financing, real estate and/or other agreements with selected vendors (“Vendors”) substantially in the forms of the Template Documents to be prepared pursuant to Sections 1.A and 1.B of this MOU.

NOW THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the Parties agree as follows:

SECTION 1. ROLE AND RESPONSIBILITIES OF ALAMEDA COUNTY

- A. Alameda County shall (i) prepare and issue the Solicitation, and be the lead jurisdiction and point of contact for the bidders, (ii) create templates of transaction documents, which may include, without limitation, a direct acquisition agreement, Qualified Energy Conservation Bond documentation, a form of power purchase agreement and a form of lease (the “Template Documents”), and (iii) timely coordinate and communicate with Parties, as necessary throughout the procurement process through recommendation for award and negotiations with the bidders.
- B. Alameda County will consult with the Parties with respect to the content of the Solicitation and the terms and conditions contained within Template Documents, provided, however, that any comments or concerns must be communicated to Alameda County within the allotted timeframe as provided by Alameda County, with such timeframe to afford a reasonable opportunity to respond.

- C. The Parties agree that Alameda County shall be the single point of contact for Vendors and necessary third parties throughout the Solicitation process, in order to avoid the potential for confusion. Alameda County agrees to provide the Parties with all relevant information in a timely manner.
- D. In addition to participating as the lead jurisdiction under this MOU, Alameda County is also a participant in the R-REP and has identified locations for renewable energy in Alameda County. As such, Alameda County is conducting site surveys and will list potential sites within the R-REP solicitation document.
- E. Any Party may separately pursue its own solicitation of renewable energy and/or related facilities.

SECTION 2. ROLES AND RESPONSIBILITIES OF THE PARTICIPATING JURISDICTIONS

- A. Each Party has undertaken its own due diligence prior to entering into this MOU to determine the feasibility of solar, fuel cell or other feasible technology to be located at project sites.
- B. Each Party is responsible for meeting its individual legal, procedural and other requirements for the procurement of renewable energy.
- C. Parties are responsible for promptly providing site surveys, if available, of their proposed real property sites that may accommodate renewable energy installations, and each such site survey shall be prepared by a licensed engineer in a uniform, industry standard format. Each Party acknowledges that to the extent it does not undertake a site survey for a particular site, such site (i) may not be considered for inclusion in the R-REP solicitation, or (ii) may be aggregated by Alameda County with other such sites into a higher risk group, and that pricing for such a group may be less favorable.

- D. Upon conclusion of the Solicitation process, the Parties may, subject to the approval of their respective Board, Council or applicable governing entity, enter into binding agreements, substantially in the form of the Template Documents, with the selected Vendors, provided that each Party determines, to its satisfaction, that the Vendors are responsible, and comply with the Party's terms, conditions and requirements. The Parties may also negotiate with Vendors in order to conform the Template Documents with requirements of law, regulation and policy. Alameda County shall not be responsible for reference checks, performance, or for compliance with any agreement, regulations, laws or policies, except as to this MOU and any contracts between Alameda County and Vendor(s). Parties are not required to contract with any Vendor.
- E. Parties agree to participate in the Solicitation under the lead role of Alameda County and agree to work cooperatively and promptly with Alameda County throughout the Solicitation process. The Parties agree that time is of the essence; and failure of a Party to provide the required information in the requested format and within the reasonable deadlines established by Alameda County may result in termination of that Party's participation in the Solicitation.

SECTION 3. TERM OF MOU.

The term of this MOU shall commence on the Effective Date and shall expire on June 30, 2015.

SECTION 4. GOVERNING LAW AND VENUE.

The law governing this MOU shall be that of the State of California. In the event that suit shall be brought by any Party to this MOU, the Parties agree that venue shall be exclusively vested in the State's courts of the County of Alameda or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, Oakland, California.

SECTION 5. WARRANTY DISCLAIMER; LIABILITY; WAIVER.

- A. No warranty, express or implied, is provided by any Party as to results or success of the Solicitation, this MOU, or any agreements ultimately entered into by the Parties. Each

Party acknowledges that the others have not made, and are not making, any assurances, guaranties or promises with respect to the subject matter of this MOU and that each Party is ultimately responsible for conducting its own due diligence with respect to feasibility, pricing, technology, third parties and all other matters in any way related to the subject matter of this MOU.

- B. In no event shall any Party, nor its officers, agents, employers, or representatives be liable for any direct, indirect, incidental, special, exemplary, or consequential damages (including, but not limited to, procurement of substitute goods or services, loss of use, data, or profits, or business interruption) however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise) arising in any way, directly or indirectly, from this MOU, participation in the Solicitation, or any agreement(s) between a Party and any third party, even if advised of the possibility of such damage.
- C. Each Party is responsible for negotiation, execution, administration and enforcement of any contract with a Vendor or third party related to the subject matter of this MOU, and the agreements ultimately entered into by each Party shall not be cross-defaulted or cross-collateralized in any respect with the agreements entered into by any other Party to this MOU.
- D. No waiver by any Party to this MOU of any breach or violation of any term or condition of this MOU shall be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

SECTION 6. NOTICES.

Notices shall be deemed effective on the date delivered if delivered by personal service or nationally recognized overnight delivery service, or, if mailed, three (3) days after deposit in the U.S. Postal Service mail. All notices and other communications required or permitted to be given under this MOU shall be in writing and shall be personally served, delivered by overnight service, or by mail, first class, certified or registered postage prepaid and return receipt requested, addressed to the respective Parties as follows:

To: County of Alameda, GSA
1401 Lakeside Drive, 10th Floor
Oakland, CA 94612
Attn: Caroline Judy

To: Castro Valley Sanitary District
21040 Marshall Street
Castro Valley, CA 94546-6021
Attn: William Parker

To: California Department of Transportation
1120 N St. MS-57
Sacramento, CA 95814
Attn: Jeanne Scherer

To: Central Contra Costa Sanitary District
5019 Imhoff Place
Martinez, CA 94553
Attn: Melody LaBella

To: California Highway Patrol
601 North 7th Street
P.O. Box 942898
Sacramento, CA 95811
Attn: Alyson Cooney

To: City of Berkeley
2180 Milvia Street, 2nd Floor
Berkeley, CA 94704
Attn: Billi Romain

To: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attn: Peter Schultze-Allen

To: City of Fremont
39550 Liberty St.
P.O. Box 5006
Fremont, CA 94538
Attn: Amy Rakley

To: City of Martinez
525 Henrietta Street
Martinez, CA 94553
Attn: Mike Chandler

To: City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attn: Rebecca Fotu

To: City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540
Attn: Steve Attinger

To: City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, CA 94612
Attn: Scott Wentworth

To: City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063
Attn: Vicki Sherman

To: City of Richmond
450 Civic Center Plaza
Richmond, CA 94804
Attn: Adam Lenz

To: City of Walnut Creek
1666 North Main Street
Walnut Creek, CA 94596
Attn: Gwen Ho-Sing-Loy

To: Contra Costa County
Public Works Department
2467 Waterbird Way
Martinez, CA 94553
Attn: Andy Green

To: County of San Mateo
555 County Center, 5th Floor
Redwood City, CA 94063
Attn: Andy Jain

To: County of Santa Clara
2310 N. First Street, 2nd Floor, Suite 200
San Jose, CA 9513
Attn: Lin Ortega

To: Delta Diablo Sanitation Dist.
2500 Pittsburg-Antioch Highway
Antioch, CA 94509
Attn: Dean Eckerson

To: Hayward Area Recreation and Park District
1099 E Street
Hayward, CA 94541
Attn: Larry Lepore

SECTION 7. MISCELLANEOUS PROVISIONS.

- A. If any term, condition or covenant of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this MOU shall be valid and binding on the Parties.
- B. This MOU may be executed in counterparts and will be binding as executed.
- C. All changes or extensions to this MOU shall be in writing in the form of an amendment executed by all Parties.
- D. This MOU is entered into only for the benefit of the Parties executing this MOU and not for the benefit of any other individual, entity, or person.

SECTION 8. WITHDRAWAL.

- A. No Party may withdraw from this MOU during the period from 30 days before the issuance of the Solicitation and the date that Vendor(s) have been selected. The date of the Solicitation will be pursuant to the schedule developed by Alameda County in collaboration with the Parties for such Solicitation.

B. Withdrawal by any Party from this MOU shall not preclude the remaining Parties from continuing the Solicitation contemplated under this MOU and from using the Template Documents created by any Party to this MOU, unless otherwise prohibited by law.

C. Notice of withdrawal must be provided in writing to Alameda County GSA.

SECTION 9. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed on the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party that are in any way related to this MOU shall not be shared pro rata but, instead, the Parties agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such Party under this MOU. No Party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of another Party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Party under this MOU.

SECTION 10. NON-DISCRIMINATION

The Parties shall comply with all applicable Federal, State, and local laws, regulations and policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Parties shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the

recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Parties discriminate in performing its obligations under this MOU because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the Effective Date

County of Alameda

AYES:

NOES:

EXCUSED:

PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

APPROVED AS TO FORM:

By _____

By _____

CASTRO VALLEY SANITARY DISTRICT

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CENTRAL CONTRA COSTA SANITARY DISTRICT

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY OF BERKELEY

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY OF EMERYVILLE

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY OF FREMONT

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY OF MARTINEZ

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY OF MENLO PARK

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY OF MOUNTAIN VIEW

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY OF OAKLAND

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY OF REDWOOD CITY

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY OF RICHMOND

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CITY OF WALNUT CREEK

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CONTRA COSTA COUNTY

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____

COUNTY OF SANTA CLARA

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

DELTA DIABLO SANITATION DISTRICT

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

HAYWARD AREA RECREATION AND PARK DISTRICT

By: _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____