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MEMORANDUM OF UNDERSTANDING FOR COOPERATIVE PURCHASING OF POWER

This Memorandum of Understanding ("MOU") is entered into as of _____ __, 2010 (the "Effective Date") _____ by and among the following California jurisdictions: County of Santa Clara ("Santa Clara County"), _____, _____, _____, _____, _____, and _____. Signatories to this MOU other than Santa Clara County, are referred to herein as "Non-County Parties."

Recitals

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

WHEREAS, the parties wish to take advantage of potential discounts when such purchases are made at large volumes;

WHEREAS, large volume purchases of renewable energy will result from a regional, multi-jurisdiction purchasing arrangement where project sites are aggregated into groups on the basis of various risk and other financing related factors;

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

WHEREAS, the parties agree that Santa Clara County shall be the lead agency for issuing a solicitation to purchase renewable energy (the "Solicitation");

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

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WHEREAS, at the completion of the Solicitation process, subject to their respective Board's, Council's or applicable governing body's approval, the parties may enter into power purchase, financing, real estate and/or other required agreements with selected vendors ("Vendors") substantially in the forms prepared by Santa Clara County.

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 SANTA CLARA COUNTY

A. Santa Clara County shall (i) perform the "lead" role in preparing and issuing the Solicitation, (ii) create templates of transaction documents, which may include, without limitation, a form of power purchase agreement and a form of lease (the "Template Documents"), and (iii) coordinate with the Non-County Parties, as necessary.

B. Santa Clara County will consult with Non-County 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 Santa Clara County within the allotted timeframe provided by Santa Clara County.

C. The Non-County Parties agree that Santa Clara County shall be the single point of contact for Vendors and necessary third parties throughout the Solicitation process.

SECTION 2. ROLES AND RESPONSIBILITIES OF THE NON-COUNTY PARTIES

A. Each Non-County Party has undertaken their own due diligence prior to entering into this MOU to determine feasibility of solar, fuel cell or other feasible technology to be located at project sites.

B. Each Non-County Party is responsible for meeting its individual legal, procedural and other requirements.

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C. Non-County Parties are responsible for promptly providing site surveys, if available, of their proposed real property sites that may accommodate renewable energy installations (individually, a "Site Survey", and collectively the "Site Surveys") 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 by Vendors or (ii) Vendors may aggregate such sites into a higher risk group and pricing for such group may be less favorable.

D. Upon conclusion of the Solicitation process, Non-County Parties may, subject to their respective Board's, Council's or applicable governing entity's approval, enter into binding agreements, substantially in the form of the Template Documents, with the selected parties, provided the Non-County Parties determine, to their satisfaction, that the Vendors are responsible, and comply with the Non-County Parties' terms, conditions and requirements. Santa Clara County shall not be responsible for reference checks, performance, or for compliance with any agreement, regulations, laws or policies (by either the Vendor(s) or Non-County Parties).

E. Non-County Parties agree to participate in the Solicitation under the lead role of Santa Clara County and agree to work cooperatively and promptly with Santa Clara County throughout the Solicitation process. The parties agree that time is of the essence; and failure of a Non-County Party to provide the required information in the requested format and within the deadlines established by Santa Clara 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, 2011.

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 contract, the parties agree that venue shall be exclusively vested in the

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State's courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 5. WARRANTY DISCLAIMER; LIABILITY; WAIVER.

A. No warranty, express or implied, is provided by Santa Clara County as to results or success of the Solicitation, this MOU, or any agreements ultimately entered into by the Non-County Parties. Each Non-County Party acknowledges that Santa Clara County has not made, and is 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 Santa Clara County, 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 Non-County 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.

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Notices shall be deemed effective on the date delivered if by personal service or 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 Santa Clara:	_____ _____	To City of _____:	_____ _____
To City of _____:	_____ _____	To City of _____:	_____ _____
To City of _____:	_____ _____	To City of _____:	_____ _____

SECTION 7. MISCELLANEOUS PROVISIONS.

A. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement 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 approved 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. TERMINATION.

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A. Santa Clara County may, upon thirty (30) days' written notice, terminate this MOU without penalty or liability.

B. Non-County Parties may terminate this agreement at any time up to two (2) weeks prior to the issuance of the Solicitation pursuant to the schedule developed by the County.

SECTION 9. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between 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 imposed for injury (as defined in Government Code Section 810.8) 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

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

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apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall parties discriminate in provision of services provided under this contract 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:

_____	_____
By: _____	By: _____
_____	_____
Name and Title	Name and Title
_____	_____
By: _____	By: _____
_____	_____
Name and Title	Name and Title
_____	_____
By: _____	By: _____
_____	_____
Name and Title	Name and Title

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