

* NOT YET APPROVED *

Resolution No. _____

Resolution of the Council of the City of Palo Alto Authorizing the City Manager or Their Designee to Execute a Third Phase Agreement with Northern California Power Agency for the Purchase of up to 2,800 Megawatt-Hours per Year of Biogas Energy from Zero Waste Energy Development Company, LLC over a Term of up to 10 Years for a Total Not to Exceed Amount of \$5.7 Million, and to Execute All Documents Necessary to Administer the Third Phase Agreement, and Approving the Allocation of the Contract's Cost between the Utilities Department and the Public Works Department

R E C I T A L S

A. In September 2016, Governor Brown signed SB 1383 into law, establishing methane emissions reduction targets for California in a statewide effort to reduce the emissions of short-lived climate pollutants.

B. SB 1383 established targets to achieve a 50 percent reduction in the level of statewide disposal of organic waste by 2020, a 75 percent reduction in the level of statewide disposal of organic waste by 2025, and a target of at least 20 percent of currently disposed edible food to be recovered for human consumption by 2025.

C. The SB 1383 regulations require that jurisdictions purchase 0.08 tons of recovered organic waste products per capita per year. Based on Palo Alto's population, this requirement translates to an annual purchase of the equivalent of 5,360 pounds of recovered organic waste products, in the form of mulch, compost, electricity derived from renewable gas, electricity derived from biomass conversion, or renewable gas in the form of transportation fuel.

D. City staff determined that procurement of electricity from renewable gas or biomass conversion are the most efficient and economical methods of compliance with the SB 1383 regulations, and decided to work with staff from the City of Santa Clara on a joint procurement effort.

E. The Cities of Palo Alto and Santa Clara are both members of the Northern California Power Agency (NCPA), which in April 2022 issued a Request for Proposals (RFP) on behalf of the two cities for electricity supply from a renewable energy generator that would satisfy the SB 1383 procurement requirements of the two cities. Through this RFP the cities selected a proposal from the Zero Waste Energy Development Company, LLC (ZWED) for the output of a 1.6 megawatt (MW) generator that uses renewable gas produced by a dry fermentation anaerobic digester facility located in San Jose.

F. To carry out this transaction, NCPA will enter into a Power Purchase Agreement (PPA) with ZWED on behalf of the two cities, while the cities must each execute a Third Phase

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Agreement with NCPA, which specifies the rights and obligations of NCPA and the cities regarding governance and administration of the PPA. The Third Phase Agreement also obligates the participating members to pay their assigned contract percentage share of all project costs, including but not limited to administrative services costs, scheduling coordination costs, and all other costs related to the PPA.

G. Attorneys from NCPA, Palo Alto, and Santa Clara have reviewed and approved the Power Purchase Agreement between NCPA and ZWED, as well as the Third Phase Agreement for the PPA with ZWED. The NCPA Commission approved both agreements at its November 30, 2023 meeting.

The Council of the City of Palo Alto does hereby RESOLVE as follows:

SECTION 1. The Council hereby authorizes the City Manager, or their designee, to execute a Third Phase Agreement (Exhibit A) with NCPA to purchase up to 2,800 MWh of renewable energy per year from an anaerobic digester biogas project owned by ZWED, over a period of 10 years, at a total cost not to exceed \$5.7 million.

SECTION 2. The Council hereby authorizes the City Manager or their designee to execute on behalf of the City all related documents or agreements necessary to administer the Third Phase Agreement that are consistent with the Palo Alto Municipal Code and City Council approved policies, including, but not limited to, collateral assignment agreements; and take any and all actions as are necessary or advisable to implement and administer the Third Phase Agreement.

SECTION 3. The Council hereby authorizes the City Manager or their designee to approve and execute amendments to the Third Phase Agreement, as may be required from time to time, so long as the contract price and length of the agreement remain unchanged.

SECTION 4. The Council hereby waives the application of the anti-speculation requirement of Section D.1 of the City's Energy Risk Management Policy as it may apply to surplus electricity purchases resulting from the City's participation in the ZWED contract, due to the small size of the ZWED contract and the City's need for the output to comply with its Senate Bill 1383 procurement requirement.

SECTION 5. The Council hereby approves the allocation of the ZWED contract's cost between the Utilities Department and the Public Works Department such that Utilities is responsible for the share of the cost representing the value of the generic renewable energy output of the project, while Public Works is responsible for the remaining cost, reflecting the project's value in satisfying the City's Senate Bill (SB) 1383 compliance requirements.

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SECTION 6. On December 22, 2011, the City of San Jose approved a special permit and a mitigated negative declaration for the ZWEDC power plant. The City Council's approval of this Third Phase Agreement does not require any change to the facility or its operations, and there are no substantial changes to the project or new information of substantial importance which will require subsequent or supplemental environmental review under the California Environmental Quality Act ("CEQA"). As such, the City Council's approval of this Third Phase Agreement does not meet the definition of a project under the CEQA, pursuant to Public Resources Code Section 21065 and CEQA Guidelines 15378(b)(5), because this activity would not result in a reasonably foreseeable direct or indirect change in the environment.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk_____
Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney_____
City Manager_____
Director of Utilities_____
Director of Administrative Services