ITEM NO. 22

STAFF REPORT

CITY OF OCEANSIDE

DATE: December 5, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **AWARD OF A CONTRACT FOR THE CONSTRUCTION OF THE SAN LUIS REY WASTEWATER TREATMENT PLANT COGENERATION FACILITY PROJECT**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council award a contract to California Power Partners, Inc., of San Diego, for construction of the San Luis Rey Wastewater Treatment Plant Cogeneration Facility project, and authorize the City Manager to execute the agreement.

BACKGROUND

The San Luis Rey Wastewater Treatment Plant (SLRWWTP), located at 3950 North River Road (Exhibit A), provides wastewater treatment and disposal for approximately 80 percent of the City.

During the design of the recently completed plant expansion, several design memorandums were prepared to evaluate cogeneration facilities for the SLRWWTP. Several options were investigated but the rates for electricity and natural gas made this type of facility cost prohibitive. Now that the costs have drastically changed, a cogeneration facility is more economically feasible.

ANALYSIS

The SLRWWTP currently has five anaerobic digesters each with a diameter of 60 feet. One digester is currently empty. All four digester's boilers are heated with digester gas. This project will consist of financing, construction, operation and maintenance of a cogeneration facility on-site at the SLRWWTP by California Power Partners, Inc. The cogeneration facility will be fueled by digester gas produced by the plant facility for use by the contractor. All power produced by the contractor will be sold to the City. The cogeneration facility shall include gas treatment, heat recovery, and connections to the digester gas, natural gas, hot water, and electrical systems. Repair and reconstruction of any existing facilities affected by the work including pavement will be made by California Power Partners, Inc. at no cost to the City.

In July 2007, requests for proposals were mailed to fifteen companies (Exhibit B) and three proposals were received. The three proposals were evaluated and California Power Partners, Inc. was selected as the best qualified for the project.

FISCAL IMPACT

The construction value of the project is $1,829,500. The contractor will be funding the construction, operation and maintenance of the cogeneration facility. Currently the City uses approximately 28,000 kilowatt hours of power per day. The contractor will be able to produce an average of 10,169 kilowatt hours per day. They will sell that electrical power to the SLRWWTP at a cost lower than the present cost of 12.5 cents per kilowatt hour by San Diego Gas & Electric, which will result in an average savings to the City of approximately $185,000 per year. The agreement with California Power Partners, Inc. is for 10 years with an additional 10-year option. At the end of 10 years the City has an option of ten more years or negotiating for the purchase of the cogeneration facility. If at the end of 10 years the City does not want to exercise the option or buy out the facility the contractor is responsible for removing the facility at their expense.

Year	Cost per Kilowatt	Year	Cost per Kilowatt
2008	.0724	2013	.09206
2009	.0759	2014	.09659
2010	.0797	2015	.10135
2011	.08362	2016	.10635
2012	.08773	2017	.11159

As part of the operation of the cogeneration facility heat will be produced, which will result in the cogeneration facility being able to heat the digesters part of the time. This will result in a cost savings on the purchase of natural gas. The savings in the summer will be larger than winter. The average savings to the City for natural gas is estimated to be approximately $150,000 per year.

With the cogeneration facility in operation the City will save approximately $335,000 per year in electrical and natural gas savings.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

The Utilities Commission approved staff's recommendation during its meeting on November 20, 2007.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATIONS

Staff and the Utilities Commission recommend that the City Council award a contract to California Power Partners, Inc., of San Diego, for construction of the San Luis Rey Wastewater Treatment Plant Cogeneration Facility project, and authorize the City Manager to execute the agreement.

PREPARED BY:

Greg Blakely
Administration Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

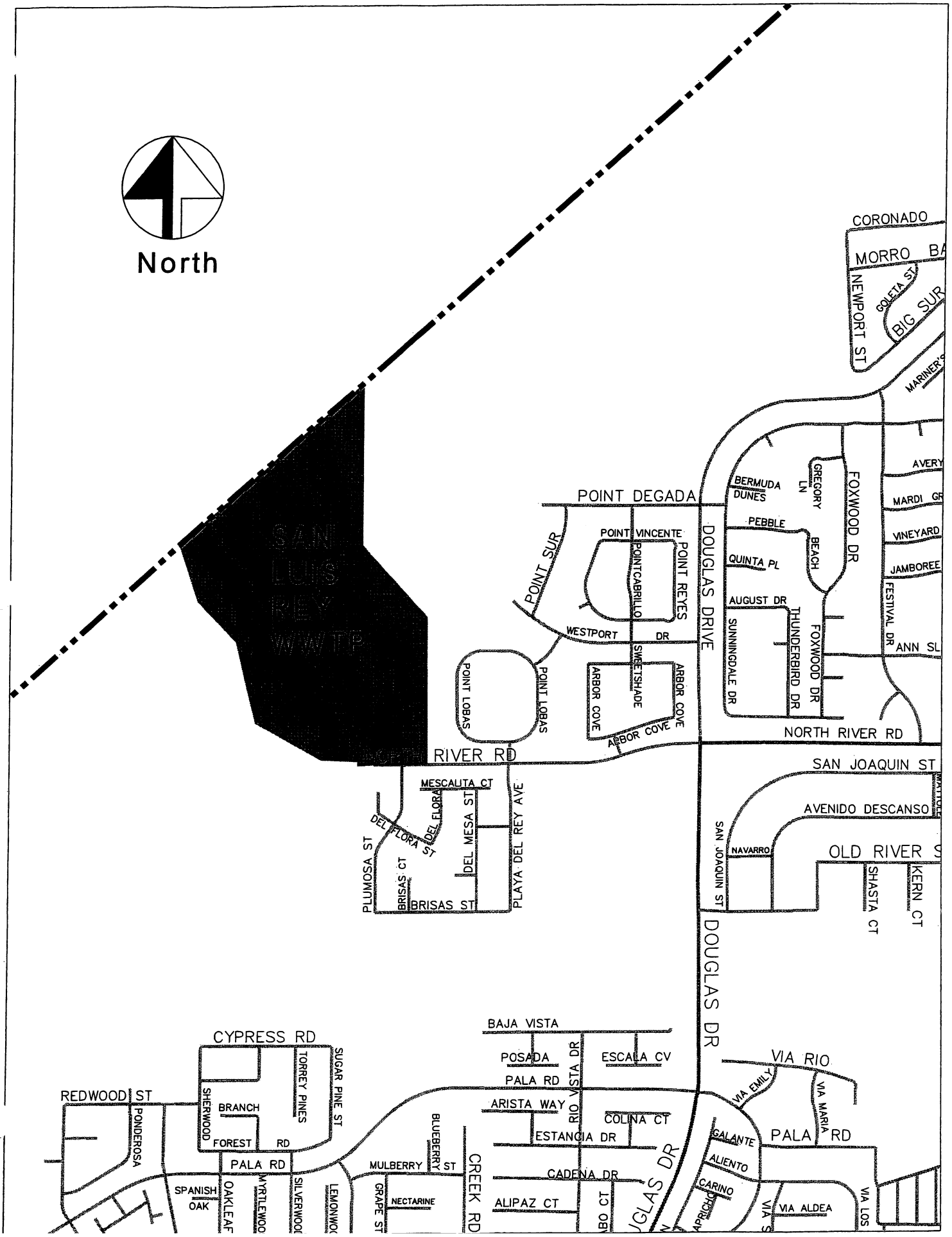
Michelle Skaggs Lawrence, Deputy City Manager

Lonnie Thibodeaux, Water Utilities Director

Teri Ferro, Financial Services Director

Exhibit A: Site Map
Exhibit B: Request for Proposal Mailing List

Exhibit A


North
SAN LUIS REY WWTP
CORONADO
MORRO BA
NEWPORT ST
GOLETA ST
BIG SUR
MARINER'S
POINT DEGADA
POINT SUR
POINT VINCENTE
POINT CABRILLO
POINT REYES
WESTPORT DR
SWEETSHADE
ARBOR COVE
POINT LOBAS
DOUGLAS DRIVE
BERMUDA DUNES
GREGORY LN
FOXWOOD DR
PEBBLE
BEACH
QUINTA PL
AUGUST DR
SUNNINGDALE DR
THUNDERBIRD DR
AVERY
MARDI GR
VINEYARD
JAMBOREE
FESTIVAL DR
ANN SL
NORTH RIVER RD
SAN JOAQUIN ST
AVENIDO DESCANSO
NAVARRO
OLD RIVER S
SHASTA CT
KERN CT
MESCALITA CT
DEL FLORA ST
DEL MESA ST
PLAYA DEL REY AVE
PLUMOSA ST
BRISAS CT
BRISAS ST
DOUGLAS DR
BAJA VISTA
POSADA
ESCALA CV
VIA RIO
VIA EMILIO
VIA MARIA
PALA RD
ARISTA WAY
RIO VISTA DR
COLINA CT
ESTANCIA DR
GALANTE
ALIENTO
CARINO
APRICOT
VIA ALDEA
VIA LOS
CADENA DR
ALIPAZ CT
CYPRESS RD
TORREY PINES
SUGAR PINE ST
REDWOOD ST
PONDEROSA
SHERWOOD
BRANCH
FOREST RD
PALA RD
SPANISH OAK
OAKLEAF
MYRTLEWOOD
SILVERWOOD
LEMONWOOD
MULBERRY ST
BLUEBERRY ST
GRAPE ST
NECTARINE
CREEK RD

San Luis Rey WRF Cogeneraton Facility RFP - Mailing List

Company	Address	City	State	Zip
LOGAN Engergy	3097 East Bardonner Road	Gibsonia	PA	15044
AMD Energy	7872 Via Adelfa	Carlsbad	CA	92009
Ingersoll Rand, Industrial Technologies	19809 Terri Drive	Canyon Country	CA	91351
Western Energy Systems	499 Nibus Street	Brea	CA	92821
Peterson Power Systems Inc.	2828 Teagarden St.	San Leandro	CA	94577
Alliance Power, Inc.	6 West Dry Creek Circle, Suite 150	Littleton	CO	80120
Valley Power Products	855 Stillwater Rd.	West Sacramento	CA	95691
RealEnergy, LLC	6712 Washington St.	Yountville	CA	94599
Chevron Energy Solutions Company	345 California Street, 32nd Floor	San Francisco	CA	94104-2624
Powerhouse Energy	7221 Linden Terrace	Carlsbad	CA	92011
California Power Partners, Inc.	650 Alpine Way	Escondido	CA	92029
Sempra Energy Services Company	101 Ash Street	San Diego	CA	92101
Paloma Energy	1020 San Antonio Avenue	Alameda	CA	94501
Electro-Thermal Equipment Corporation	11907 Gorham Ave., Suite 5	Los Angeles	CA	90049
US Energy Services, Inc.	23982 Ibis Ct.	Laguna Niguel	CA	92677

Exhibit B

POWER PURCHASE AGREEMENT

SAN LUIS REY WRF COGENERATION FACILITY
726-86-9515

OCEANSIDE, CALIFORNIA

Prepared by:

City of Oceanside
Water Utilities Department
300 North Coast Highway
Oceanside, CA 92054

CITY OF OCEANSIDE CONTRACT DOCUMENTS

SECTION 5: AWARD DOCUMENTS

5.1 POWER PURCHASE AGREEMENT

PROJECT: SAN LUIS REY WRF COGENERATION FACILITY
726-86-9515

THIS POWER PURCHASE AGREEMENT is made and entered into for the above referenced Project, this ____ day of _____, 2007, BY AND BETWEEN the City of Oceanside, as AGENCY, and California Power Partners, Inc., as CONTRACTOR.

WITNESSETH that AGENCY and CONTRACTOR have mutually agreed as follows:

5.1.1 Contents of Contract Documents. The Contract Documents for this project shall consist of the Notice Inviting Sealed Proposals, Instructions to Proposers, Proposal Documents, Notice of Award, Award Documents, Notice to Proceed, General Provisions, Special Provisions, Exhibit 1 through Exhibit 4 Technical Specifications and all permits from other agencies as may be required by law. All Contract Documents not attached hereto are incorporated herein by reference.

The Contract Documents may be amended in writing from time to time in accordance with Subsections 2.9, 5.1.34, and 7.21, to clarify or modify the work contemplated in order to ensure the completion of the work in an acceptable manner. These amendments shall be incorporated into the Contract Documents.

If there is a conflict between Contract Documents, the document highest in precedence shall control. The precedence shall be:

a. Requirements set by Local, State and Federal law, including permits required thereby.

b. Amendments approved pursuant to Subsections 2.9, 5.1.34, and 7.21.

c. Instructions to Proposers, Notice of Award, Award Documents and Notice to Proceed.

d. Technical Specifications

e. Special Provisions.

f. General Provisions.

g. Proposal Documents and Exhibits.

h. Notice Inviting Sealed Proposals, all other notices, reports, and documents to the extent specifically referred to in other Contract Documents.

5.1.2 Agency's Obligations. AGENCY hereby promises and agrees to pay CONTRACTOR for all power produced in accordance with these Contract Documents at the time, in the manner, and upon the conditions set forth in the Contract Documents.

The AGENCY shall make payment for power produced within thirty (30) days of receiving an invoice from the CONTRACTOR. The power production invoice shall be based on the month's electric usage readings from the interconnect meter multiplied by the Agreement rate per kilowatt hour.

The AGENCY shall make available all digester gas produced. No warranty, express or implied is made by the AGENCY as to the quality of the gas produced or its suitability for the production of power or heat.

The AGENCY shall accept gas treatment condensate for treatment. The CONTRACTOR shall be responsible for conveying the condensate to the point listed in the Technical Specifications.

The AGENCY shall pay the CONTRACTOR for supplemental natural gas if the digester production is below 225,000 cubic feet per day.

The AGENCY shall be responsible for and pay for all permits and all standby or other costs due to the San Diego Gas and Electric Company per Public Utility Commission Rule 21.

5.1.3 Authorized Agency Representatives. On behalf of the AGENCY, and through the authority of the City Manager, the City Engineer (hereinafter "Engineer" in this section) shall be the AGENCY's authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The Engineer may delegate authority in connection with this Agreement to the Engineer's designees. The Engineer is authorized to approve change orders which do not exceed ten thousand dollars ($10,000.00) and which do not exceed ten percent (10%) of the Contract price. Change orders in excess of these amounts shall be approved only by action of the City Council. The Project Manager shall be the Engineer's authorized representative for the purposes of administering this Contract, interpreting and enforcing the terms of the Contract Documents and approving contract change orders which do not result in a change in compensation or time for performance. The Project Manager shall be (Greg Blakely) unless otherwise amended in writing by the Engineer. The Project Manager and the Inspector, on behalf of the Engineer, shall be authorized to suspend the CONTRACTOR's performance, and shall have access at all times to the

Project Site and all Contract Documents in the CONTRACTOR's possession. The CONTRACTOR shall promptly comply with instructions from the Engineer or from any authorized representative. The decision to suspend work will be made by the AGENCY's project manager.

5.1.4 Contractor's Obligations. For and in consideration of the payments and agreements to be made and performed by AGENCY, CONTRACTOR agrees to perform or cause to be performed all work set forth in the Contract Documents which shall consist of furnishing all materials, equipment, tools, labor and incidentals required to construct the facility.

The CONTRACTOR shall determine the method, means, and details of developing the cogeneration facility as detailed in the Technical Specifications.

The CONTRACTOR shall provide all financing, labor, materials, and natural gas (except supplemental natural gas as specified in Section 5.1.2) to operate and maintain the cogeneration facility for a period of 10 years. The CONTRACTOR shall operate the cogeneration facility in a manner to maximize the production of electricity consistent with industry standards. The power shall be used exclusively by the AGENCY at the Water Reclamation Plant and not as a public utility.

The CONTRACTOR shall be responsible for disposal of all materials generated as part of the project with the exception of gas condensate.

The CONTRACTOR shall maintain all insurance, including but not limited to the insurance described in Section 5.1.18, for the duration of the Agreement.

The CONTRACTOR shall be responsible for the safety of its employees in the implementation and operation of the cogeneration facility, including necessary precautions in an operating wastewater treatment plant.

The CONTRACTOR shall perform diligently and continuously in order to complete construction of an operational facility within the Contract Time of (365) days after the Commencement Date set forth in the Notice to Proceed is sent by the AGENCY.

The CONTRACTOR shall remove the cogeneration facility equipment upon the termination of this Contract. In the event of a default by Contractor, the Agency will agree to negotiations with the lender to buy in the case negotiation fail the lender shall remove the facility at no cost to the AGENCY. CONTRACTOR's relationship to the AGENCY shall be that of an independent contractor. CONTRACTOR shall have no authority, express or implied, to act on behalf of the AGENCY as an agent, or to bind the AGENCY to any obligation whatsoever, unless specifically authorized in writing by the Engineer.

CONTRACTOR shall be solely responsible to AGENCY for the performance of the CONTRACTOR, and any of its employees, agents, subcontractors, or suppliers, under these Contract Documents. The CONTRACTOR agrees to bind every subcontractor by the terms of these Contract Documents as far as such terms are applicable to the subcontractor's work. Only competent workers shall be employed on the Work. Any person employed, who is found by AGENCY to be incompetent, intemperate, troublesome, disorderly or otherwise objectionable, or who fails or refuses to perform work properly and acceptably, shall be immediately removed from the Work by the CONTRACTOR and not be re-employed on the Work.

5.1.5 Time of the Essence. Time is of the essence in performance of work under these Contract Documents and all timing requirements shall be strictly adhered to unless otherwise modified by the AGENCY in accordance with the Contract Documents.

5.1.6 City Business License. Prior to the commencement of any work under this Agreement, the CONTRACTOR shall obtain and present a copy of an Oceanside City Business License to the City Engineer.

5.1.7 Term. The term of this Agreement (the "Term") shall commence on the date of construction completion and commercial operation, and shall continue until the tenth (10th) anniversary of the date commercial operation occurs, unless earlier terminated in accordance with the terms hereof. The termination of this Agreement shall be without prejudice to any rights or obligations of the Parties arising under this Agreement prior to such termination.

5.1.8 Contractor's Compensation.

(a) The CONTRACTOR agrees to receive and accept the payment for power produced pursuant to Items 2 through 14 of the following schedule as full compensation for furnishing all materials, performing all work, and fulfilling all obligations according to the terms and conditions of the Contract Documents. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of faithfully completing the work in the time and manner specified in the Contract Documents. No other compensation shall be made.

Item	Description		Unit	Extended Amount
1	Construction Value	1	Lump Sum	$1,829,500.00
2	Cogeneration Facility Capacity	N/A	kilowatts	530 gross kW
3	Guaranteed Plant Availability	N/A	Percent Time	90%
4	Guaranteed Heat Recovery	N/A	Percent	35%

5	Power Rate Year 2008	N/A	$/kwhr	.0724
6	Power Rate Year 2009	N/A	$/kwhr	.0760
7	Power Rate Year 2010	N/A	$/kwhr	.0797
8	Power Rate Year 2011	N/A	$/kwhr	.08362
9	Power Rate Year 2012	N/A	$/kwhr	.08773
10	Power Rate Year 2013	N/A	$/kwhr	.09206
11	Power Rate Year 2014	N/A	$/kwhr	.09659
12	Power Rate Year 2015	N/A	$/kwhr	.10135
13	Power Rate Year 2016	N/A	$/kwhr	.10635
14	Power Rate Year 2017	N/A	$/kwhr	.11159

(b) Minimum Consumption Payment. AGENCY agrees to pay CONTRACTOR for all power produced and delivered to the Point of Delivery, measured in kilowatt-hours (kWhr) at the then effective rate as defined in Section (a), provided however that the minimum daily consumption produced, delivered, billed and payable shall never be less than 10,169 kWhr per day or 3,711,685 kWhrs annually. Should CONTRACTOR fail to meet this minimum production requirement and such failure was not caused by AGENCY's gas production falling below the 225,000 scfd minimum, then CONTRACTOR shall credit AGENCY for all kWhrs not achieved under the annual production guarantee of 3,711,685 kWhrs p/yr. This would be adjusted annually on the first billing date after the twelve month anniversary date. Credit amount would be based on the price per kWhr of that given year.

5.1.9 Payment. If AGENCY disputes a portion of any bill, AGENCY shall render payment for the undisputed portion of such bill to CONTRACTOR, and shall deposit the disputed portion of such bill into an interest bearing escrow account with a bank reasonably acceptable to CONTRACTOR. Upon resolution of the dispute, any amount found to be due and payable to CONTRACTOR shall be distributed to CONTRACTOR, with accrued interest (calculated in accordance with Section 5.1.9 (a)) on the amount due and payable, and any remaining funds shall be returned to AGENCY.

(a) **Interest**

i. If AGENCY fails to pay all or a portion of the undisputed amounts billed on or before the Due Date, AGENCY shall owe interest at a monthly rate of 1.5% on the unpaid portion of the bill, which interest shall accrue from the Due Date until paid.

ii. If any portion of a disputed amount is ultimately determined to be due to CONTRACTOR, AGENCY shall owe interest on such potion of such disputed amount to the extent that such portion is determined to be due and owing to CONTRACTOR, which interest shall accrue at 1.5% per month from the date the bill is received by AGENCY until such amount is paid.

5.1.10 Billing. CONTRACTOR shall read its meters on the last day of each calendar month to determine the Delivered Energy for the Billing Period ending on such day. The amount of Delivered Energy delivered to the AGENCY during such Billing Period shall be determined from such readings. AGENCY shall have the right to have a representative present at any time that any meter is to be read; provided, however, that AGENCY's failure to have a representative present at such reading shall not affect the validity of such reading.

(a) The bills for each Billing Period shall be rendered by CONTRACTOR to AGENCY within ten (10) days from the last day of the calendar month in which the meter was read (or should have been read) and shall incorporate such information as may reasonably be necessary or desirable to determine the amount of the Energy Fee for such Billing Period, as well as any other amounts due hereunder.

5.1.11 Parasitic Loads. Notwithstanding the obligation of CONTRACTOR to sell electric power generated by the Facility to AGENCY, CONTRACTOR shall, without any payment to AGENCY or other penalty, have the right to use as much of the electric power produced by the Facility as may be reasonably required for the parasitic load of the Facility.

5.1.12 System Emergencies. Notwithstanding the obligation of AGENCY to accept the electric power produced by the Facility, AGENCY may, without penalty, temporarily curtail acceptance of electric power from the Facility whenever a System Emergency exists and the acceptance of such electricity at such time would contribute to the System Emergency. As promptly as possible following such a discontinuance of acceptance of electric power, AGENCY shall inform CONTRACTOR that such a System Emergency has occurred.

(a) Notwithstanding the obligation of CONTRACTOR to deliver electric power produced by the Facility, CONTRACTOR may, without penalty, temporarily curtail production or delivery of electric power from the Facility whenever a System Emergency exists and the continued production or delivery of electric power at such time would contribute to the System Emergency or would endanger the Facility or its operators, increase the likelihood of Forced Outages or other operational problems, or shorten the useful life of the Facility or any component thereof.

(b) In the event of a curtailment of acceptance or delivery of electric power pursuant to this Section, the Parties shall use their reasonable efforts to promptly correct the System Emergency, and to resume the delivery and acceptance of the electric power from the Facility.

5.1.13 Point of Delivery. The Point of Delivery shall mean the physical location where CONTRACTOR's Interconnection Facilities are connected to the AGENCY's Interconnection Facilities. Title to all electric energy delivered to AGENCY hereunder, and full responsibility therefor and risk of loss with respect thereto, shall pass to and vest in AGENCY at the Point of Delivery.

5.1.14 Metering. Electric energy delivered by CONTRACTOR to AGENCY hereunder shall be measured by a metering system (the "Metering System") to be located at the Point of Delivery. The Metering System shall include electric watt-hour meters, along with related ancillary instruments and devices.

(a) CONTRACTOR shall install, own, operate and maintain a Metering System that is sufficient to permit an accurate determination of the quantity and time of delivery of electric energy delivered to AGENCY. Except as provided in Section 5.1.14.(e), CONTRACTOR's Metering System shall be used for measurements under this Agreement. The Metering System used to determine the billing hereunder shall be sealed, and such seals shall be broken only by an independent party, unrelated, directly or indirectly to either Party and mutually agreeable to the Parties (the "Independent Party") and only when the Metering System is to be inspected, tested or adjusted as described in Section 5.1.14. (c). CONTRACTOR shall provide access for the Independent Party to the Metering System at all reasonable times for the purposes of inspecting, testing and adjusting the same, provided that such access shall not interfere with CONTRACTOR's normal business operation. In the event that CONTRACTOR's Metering System fails to register during any period of time, and except as provided in Section 5.1.14. (e), CONTRACTOR shall estimate the amount of electric energy delivered during such period based on AGENCY's historic usage while the Metering System was inoperable.

(b) The Independent Party shall notify each Party at least five (5) days prior to the date that the Independent Party intends to break the seal on the Metering System. Each Party shall have the right to have a representative present at any time the seals on the Metering System are to be broken (i.e., in respect of inspecting, testing or adjusting the Metering System); provided, however, that a Party's failure to have a representative present at the time the seal on the Metering System is broken shall not affect the validity of the breaking of the seal, provided that the notice required under the preceding sentence has been given.

(c) The accuracy of the Metering System and any metering equipment owned by AGENCY shall be tested and verified semiannually by the Independent Party, at the expense of the Party responsible for maintaining such Metering System and metering equipment.

(d) Upon ten (10) day's notice from AGENCY, the Independent Party shall make additional tests. However, if AGENCY requests a test to be made before a scheduled test, such test shall be at AGENCY's expense if the meter proves to be accurate within two percent (2%). If errors greater than two percent (2%) are discovered, the test shall be at CONTRACTOR's expense.

(e) If, upon testing, the Metering System or any metering equipment is found to be in error by not more than two percent (2%), previous recordings thereof shall be considered accurate, but such System or equipment, as applicable, shall be promptly adjusted by the Independent Party to record correctly. If, upon testing, such Metering System or metering equipment shall be found to be inaccurate by more than two percent (2%), there shall be a prompt adjustment thereto made by the Independent Party and retroactive billing adjustments for such errors shall be made for (a) the actual period during which inaccurate measurements were made, if that period can be reasonably determined, or (b) if the period cannot be reasonably determined, one-half of the period from the date of the last previous test, but not to exceed twelve (12) months.

5.1.15 FORCE MAJEURE.

(a) Definition of "Force Majeure". "Force Majeure" shall mean any event or circumstance or combination of events or circumstances beyond the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that (i) such circumstance, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such Party, (ii) such event materially and adversely affects (in cost and/or time) the ability of such Party to perform its obligations under or pursuant to this Agreement, and such Party has taken all reasonable precautions, due care and reasonable alternative measures in advance in order to avoid the effect of such event on such Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof, (iii) such event is not the direct or indirect result of the failure of such Party to perform any of its obligations under this Agreement, and (iv) such Party complies with the procedure set forth in Section 5.1.16.

(b) Subject to the provisions of this Section 5.1.15., and without limiting the generality of the foregoing, "Force Majeure" hereunder shall include, but not be limited to, each of the following events and circumstances:

(i) any act of war or the public enemy (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;

(ii) radioactive contamination or ionizing radiation; and

(iii) strikes or lockouts or other industrial action by workers of either Party or any contractor (or subcontractor) or agent of a Party;

(iv) any change in applicable law;

(v) with respect to CONTRACTOR only, any action or failure to act by any Governmental Authority (including any action or failure to act by any duly authorized agent of any such Governmental Authority), including the denial of or delay in the granting of any Authorization, the failure of any such Authorization once granted to remain in full force and effect or to be renewed on substantially similar terms;

(vi) uncontrollable events including, but not limited to: (A) lightning, fire, earthquake, flood, cyclone, typhoon, or tornado; (B) explosion or chemical contamination; and (C) epidemic or plague; and

(c) Notwithstanding the foregoing, Force Majeure shall expressly not include conditions caused by the negligence or wrongful acts of the Party claiming Force Majeure.

5.1.16 Procedure for Force Majeure

(a) If by reason of Force Majeure a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall give the other Party notice of such Force Majeure as soon as reasonably practicable, describing the Force Majeure in reasonable detail and, to the extent that can be reasonably determined at such time, providing an evaluation of the obligations affected (including the anticipated effect on critical activities (if the Force Majeure is ongoing) or actual effect (if the Force Majeure has ended)), a preliminary estimate of the period of time that the affected Party will be unable to perform its obligations, and other relevant matters. When appropriate or when reasonably requested to do so by the other Party, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimate, to the extent practicable, of the time that the affected Party reasonably expects it will be unable to carry out any of its affected obligations due to the Force Majeure. The affected Party shall also provide notice to the other Party of (i) the cessation of the Force Majeure, and (ii) the affected Party's ability to recommence performance of its obligations under this Agreement by reason of the cessation of the Force Majeure as soon as possible, but in no event later than seven (7) business days after the occurrence of each of (i) and (ii) above.

(b) The affected Party shall use all commercially reasonable efforts to mitigate the effects of Force Majeure; provided, however, neither Party shall be required to settle any labor dispute in order to mitigate the effects of a Force Majeure.

(c) Failure by the affected Party to give written notice of a Force Majeure to the other Party within the period required by Section (a) shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case the affected

Party shall not be excused pursuant to Section (d) for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If said notice is given within the period required by Section (a), the affected Party shall, subject to Section (b), be excused for such failure or delay pursuant to Section (d) from the date of commencement of the relevant Force Majeure.

(d) Excused Performance. So long as the affected Party has at all times since the occurrence of the Force Majeure complied with the obligations of Section (b) and continues to so comply, then the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment) under or pursuant to this Agreement, and any performance deadline that the affected Party is obligated to meet under this Agreement, shall be extended; provided that:

(i) the period of non-performance shall be of no greater scope and of no longer duration than is required due to the Force Majeure; and

(ii) It is the duty of the claiming Party to prove all the elements of Force Majeure including but not limited to (a) specific action taken to work around or mitigate the impact, (b) data in support of its claim, and (c) specific cause for the claim of Force Majeure and to provide written documentation of such proof to the other Party as soon as reasonably possible. A Party is not required to grant or deny a request for Force Majeure until such documentation has been supplied.

(e) Payment of Capacity Fee. CONTRACTOR acknowledges that AGENCY is not liable for Force Majeure. CONTRACTOR will obtain insurance for loss of revenue due to Force Majeure.

5.1.17 Workers' Compensation Certification. Pursuant to Labor Code Section 1861, the CONTRACTOR hereby certifies that the CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONTRACTOR will comply with such provisions, and provide certification of such compliance as a part of these Award Documents. The certification shall be in accordance Subsections 5.1.10(d) through 5.1.10(h) of this Agreement.

The portion of Section 3700 of the California Labor Code which is relevant to this project is as follows:

"Every employer except the State shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employee."

5.1.18 Liability Insurance.

(a) CONTRACTOR shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage, insurance, or commercial general liability insurance, covering all operations of CONTRACTOR, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

(b) CONTRACTOR shall maintain insurance in the following minimum amounts:

(1) AMOUNTS

(a) Comprehensive General Liability Insurance
(bodily injury and property damage)
Combined Single Limit Per Occurrence $1,000,000

Automobile Liability Insurance $1,000,000

or

(b) Comprehensive General Liability Insurance
(bodily injury, property damage, and marine)

General limit per occurrence $1,000,000
General limit project specific aggregate $2,000,000

Automobile Liability Insurance $1,000,000

(2) FOR ALL PROJECTS

If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the AGENCY may require additional coverage to be purchased by the CONTRACTOR to restore the required limits. The CONTACTOR shall also notify the AGENCY's Project Manager promptly of all losses or claims over $25,000 resulting from work performed under this contract, or any loss or claim against the CONTRACTOR resulting from any of the CONTRACTOR's work.

(c) All insurance companies affording coverage to the CONTRACTOR for the purposes of this Section shall add the City of Oceanside and Carollo Engineers

as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City and Carollo Engineers as an additional insured shall be primary insurance and other insurance maintained by the City of Oceanside and Carollo Engineers, its officers, agents, and employees shall be in excess only and not contributing with the insurance provided pursuant to this Section.

(d) All insurance companies providing coverage under this agreement shall satisfy the following:

A California admitted company; or
A company rated as A-X or higher by A.M. Best

(e) All insurance companies affording coverage shall provide thirty (30) day written notice to the City of Oceanside should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

(f) CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal if this Agreement.

(g) CONTRACTOR shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date shall be considered a default by CONTRACTOR and may subject the CONTRACTOR to a Stop Work Notice until the CONTRACTOR has cured the default.

(h) Maintenance of insurance by the CONTRACTOR as specified in this Agreement shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.

5.1.19 Contractor's Indemnification of Agency. CONTRACTOR shall indemnify and hold harmless the AGENCY and its officers, agents, Carollo Engineers, and employees against all claims for damages to persons or property arising out of the conduct of the CONTRACTOR or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except only for those claims arising from the established sole or active negligence or sole willful conduct of the AGENCY, its officers, agents, Carollo Engineers or employees. CONTRACTOR's indemnification shall include all claims for damages arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the work of any invention, design, process, product, or device not specified in the Contact Documents. CONTRACTOR's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the AGENCY, its officers, agents, Carollo Engineers, or employees in enforcing the

provisions of this subsection, and in defending against such claims, whether the same proceed to judgment or not. Further, CONTRACTOR at its own expense shall, upon written request by the AGENCY, defend any such suit or action brought against the AGENCY, its officers, agents, Carollo Engineers, or employees.

5.1.20 Contractor's Guarantee. The CONTRACTOR shall provide a separate PERFORMANCE BOND from an admitted surety insurer within 15 days of the notice of award for the period before the cogeneration facility becomes operational. The PERFORMANCE BOND shall name the AGENCY as obligee and shall be for the amount of $500,000 and will be released once the cogeneration facility becomes operational. Should the CONTRACTOR default on the PERFORMANCE BOND, the AGENCY shall have the option of purchasing the cogeneration facility from the lender at an agreed to value.

5.1.22 <u>EVENTS OF DEFAULT AND REMEDIES</u>

5.1.23 Events of Default by AGENCY

AGENCY shall be in default under this Agreement upon the happening or occurrence of any of the following events or conditions, each of which shall be an "Event of Default" for purposes of this Agreement:

(a) AGENCY fails to pay, when due, any amount due hereunder, and such failure continues for a period of five (5) days following the receipt by AGENCY of a notice of such failure.

(b) AGENCY breaches or fails to observe or perform any of AGENCY 's material obligations under this Agreement other than the payment of money, unless within thirty (30) days after written notice from CONTRACTOR specifying the nature of such breach or failure, AGENCY either cures such breach or failure or, if such cure reasonably cannot be completed within thirty (30) days, commences such cure within thirty (30) days and thereafter diligently pursues such cure.

(c) AGENCY (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of AGENCY or of all or a substantial part of its property, (ii) admits in writing its inability, or is generally unable to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under any Bankruptcy Law, (v) files a petition seeking to take advantage of any other Bankruptcy Law, (vi) fails to controvert in a timely or appropriate manner, or acquiesces in writing to, any petition filed against AGENCY in an involuntary case under any Bankruptcy Law, (vii) declares a payment moratorium or otherwise unilaterally modifies or abrogates its payment obligations, or (vii) takes any action for the purpose of effecting any of the foregoing.

(d) Any representation or warranty furnished by AGENCY in connection with this Agreement was false or misleading in any material respect when made, unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) days after CONTRACTOR has given notice thereof to AGENCY, provided, however, that if the fact, circumstance or condition that is the subject of such representation or warranty cannot be corrected within such thirty (30) day period and if AGENCY within such period of thirty (30) days commences, and thereafter proceeds with all due diligence, to correct such fact, circumstance or condition, such period shall be extended for such further period as shall be necessary for AGENCY to correct the same with all due diligence, and (ii) such cure removes any adverse effect on CONTRACTOR of such fact, circumstance or condition being otherwise than as first represented, or such fact, circumstance or condition being otherwise than as first represented does not materially adversely affect CONTRACTOR.

5.1.24 Events of Default by CONTRACTOR

CONTRACTOR shall be in default under this Agreement upon the happening or occurrence of any of the following events or conditions, each of which shall be an "Event of Default" for purposes of this Agreement:

(a) CONTRACTOR breaches or fails to observe or perform any of CONTRACTOR's material obligations under this Agreement, unless within thirty (30) days after written notice from AGENCY specifying the nature of such breach or failure, CONTRACTOR either cures such breach or failure or, if such cure cannot be completed within thirty (30) days, commences such cure within thirty (30) days and thereafter diligently pursues such cure.

(b) CONTRACTOR (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of CONTRACTOR or of all or a substantial part of its property, (ii) admits in writing its inability, or is generally unable to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under any Bankruptcy Law, (v) files a petition seeking to take advantage of any other Bankruptcy Law, (vi) fails to controvert in a timely or appropriate manner, or acquiesces in writing to, any petition filed against CONTRACTOR in an involuntary case under any Bankruptcy Law, or (vii) takes any action for the purpose of effecting any of the foregoing.

(c) Any representation or warranty furnished by CONTRACTOR in connection with this Agreement was false or misleading in any material respect when made, unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) days after AGENCY has given notice thereof to CONTRACTOR; provided, however, that if the fact, circumstance or condition that is the subject of such representation or warranty cannot be corrected within such thirty (30) day period and if CONTRACTOR within such period of thirty (30) days commences, and thereafter

proceeds with all due diligence, to correct the fact, circumstance or condition that is the subject of such representation or warranty, such period shall be extended for such further period as shall be necessary for CONTRACTOR to correct the same with all due diligence, and (ii) such cure removes any adverse effect on AGENCY of such fact, circumstance or condition being otherwise than as first represented, or such fact, circumstance or condition being otherwise than as first represented does not materially adversely affect AGENCY.

5.1.25 Remedies Upon Default by AGENCY

Upon the occurrence of an Event of Default by AGENCY, CONTRACTOR may exercise any one or more of the following remedies:

(a) Exercise all remedies available at law or equity or other appropriate proceedings, including bringing an action or actions from time to time for recovery of amounts due and unpaid by AGENCY, and/or for damages and expenses resulting from such Event of Default, which shall include all costs and expenses reasonably incurred in the exercise of any such remedy (including reasonable attorney's fees).

(b) Without recourse to legal process, terminate this Agreement by delivery of a written notice to AGENCY declaring termination, without liability to AGENCY or to its assigns, in which case CONTRACTOR shall have the right to (i) continue to own, operate and maintain the Facility and make sales of electric power to any other purchaser, in which case AGENCY shall provide transmission services to CONTRACTOR for such electric power at rates based on the cost of providing such transmission services, excluding any return on capital or other profit on such cost, or (ii) dismantle and remove the Facility.

5.1.26 Remedies Upon Default by CONTRACTOR

Upon the occurrence of an Event of Default by CONTRACTOR, AGENCY may exercise any one or more of the following remedies:

(a) Exercise all remedies available at law or at equity or other appropriate proceedings, including bringing an action or actions from time to time for damages and expenses resulting from the Event of Default, which shall include all costs and expenses reasonably incurred in the exercise of any such remedy (including reasonable attorney's fees).

(b) Without recourse to legal process, terminate this Agreement by delivery of a written notice to CONTRACTOR declaring termination.

5.1.27 Election of Remedies

(a) Except as specifically limited in this Agreement, each and every right, power and remedy of a Party, whether specifically stated in this Agreement, or otherwise existing, may be exercised concurrently or separately, from time to time, and so often and in such order as may be deemed expedient by the exercising Party, and the exercise or the beginning of the exercise of any such right, power or remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy. No delay or omission of a Party in the exercise of any right, power or remedy shall impair or operate as a waiver thereof or of any other right, power or remedy then or thereafter existing.

(b) Notwithstanding any other provision of this Article, neither Party shall terminate this Agreement following the occurrence of an Event of Default by the other Party if, prior to the defaulting Party's receipt of a notice of such termination, and notwithstanding the expiration or unavailability of any cure period provided under this Agreement, the defaulting Party shall have cured the Event of Default.

5.1.28 Assignment by CONTRACTOR. Subject to Section 5.1.30, this Contract and any portion thereof shall not be assigned or transferred, nor shall any of the CONTRACTOR's duties be delegated, without the express written consent of the AGENCY which shall not be unreasonably withheld, conditioned or delayed. Any attempt to assign or delegate this contract without the express written consent of the AGENCY shall be void and of no force or effect. A consent by the AGENCY to one assignment shall not be deemed to be a consent to any subsequent assignment

5.1.29 Assignment by Agency

CONTRACTOR agrees, upon AGENCY's request and on one or more occasions, to provide written consent to AGENCY 's assignment and delegation of its rights, duties, and interests under this Agreement to any Affiliate of AGENCY (an "Agency Assignment"). In connection with each such Agency Assignment, AGENCY shall assign its entire rights hereunder, conditionally or unconditionally, and the assignee shall assume all of AGENCY 's obligations hereunder occurring after the effective date of such Agency Assignment. AGENCY agrees to notify the CONTRACTOR at least thirty (30) days in advance of any such Agency Assignment. Such Agency Assignment shall not release AGENCY from its obligations hereunder. Except as provided in this Section 5.1.29, AGENCY shall not assign or delegate its rights, duties and interests under this Agreement without CONTRACTOR 's prior written consent, which consent CONTRACTOR shall not unreasonably withhold, condition or delay.

5.1.30 Further Assurances.

(a) AGENCY acknowledges that CONTRACTOR intends to finance the acquisition and construction of the Facility with funds to be provided, in whole or in part, by financing parties, some or all of which are yet to be identified. AGENCY agrees to execute, acknowledge and deliver any and all further documents and instruments, and to take any other actions, which may be necessary or desirable (i) to accommodate such financing, or any refinancing thereof (ii) to satisfy the requests of any financing party or prospective financing party in connection with such financing or refinancing, (iii) to obtain any authorization necessary or convenient in connection with the acquisition, construction, ownership, operation or maintenance of the Facility, or (iv) to otherwise effectuate the purpose and intent of this Agreement.

(b) AGENCY agrees to provide such information and documentation as may be reasonably requested to any financing party or prospective financing party, including (i) financial statements, evidence of corporate existence, and evidence of incumbency of persons executing this Agreement; (ii) an opinion of its counsel confirming the enforceability of this Agreement against AGENCY and the accuracy of the representations set forth in this Agreement, and addressing such other matters as may be requested by any such financing party or prospective financing party, (iii) a consent to the collateral assignment of this Agreement to any such financing party, and (iv) any other consents, estoppel certificates or other documents required in connection with the financing of the Facility.

(c) In the event that CONTRACTOR or any financing party or prospective financing party determines that any amendment or modification to this Agreement is required in connection with or as a condition to the financing or refinancing of the Facility, AGENCY and CONTRACTOR shall immediately negotiate in good faith, and in consultation with any such financing party or prospective financing party, the terms of, and shall execute, any and all such amendments or modifications.

5.1.31 Renewal Option. This Contract may be renewed for a second 10-year term upon the mutual agreement of both parties to the rates and terms.

5.1.32 Entire Agreement. The Contract Documents comprise the entire agreement between AGENCY and CONTRACTOR concerning the work to be performed for this project. The Contract Documents are complementary; what is called for in one is binding as if called for by all.

5.1.33 Interpretation of the Contract. The interpretation, validity and enforcement of this Contract shall be governed by and construed under the laws of the State of California. The Contract Documents do not limit any other rights or remedies available to AGENCY.

The Table of Contents and section and subsection headings contained in the Contract Documents are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

Should any provision herein be found or deemed to be invalid, these Contract Documents shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of these Contract Documents are severable.

The CONTRACTOR shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

This Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

5.1.34 Contract Modification. This Contract may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto, or in accordance with subsection 7.21

5.1.35 Waiver. No term or provision hereof shall be deemed waived and no default or breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented to such breach. The consent by any party to, or waiver of, a breach or default by the other, shall not constitute a consent to, waiver of, or excuse for, any other different or subsequent breach or default.

5.1.36 Signatures. The individuals executing this Public Works Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONTRACTOR and the AGENCY.

5.1.37 Notices. All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

TO AGENCY:	TO CONTRACTOR:
Lonnie Thibodeaux	Joe Silva / John Scalone
Water Utilities Department .	California Power Partners, Inc.
300 North Coast Highway	8525 Arjons Drive, Suite I
Oceanside, CA 92054	San Diego, CA 92126

Either party may change its address by notice to the other party as provided herein. Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three (3) working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Public Works Agreement to be executed by setting hereunto their names, titles, hands, and seals this _____ day of _____, 2007.

PROJECT: SAN LUIS REY WASTEWATER TREATMENT PLANT COGENERATION FACILITY
726-86-9515

California Power Partners, Inc.

By: _____ V.P.

By: _____ CFO

Date: 11/15/07

City Business License No.

33-0969829
Federal Employer I.D. No.

City of Oceanside

By: _____
Peter A. Weiss, City Manager

Date: _____

Attest: City Clerk

_____, ASST.
Approved as to Form:
City Attorney

NOTARY ACKNOWLEDGEMENTS OF CONTRACTOR MUST BE ATTACHED

ALL PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA }
COUNTY OF San Diego }

On November 15, 2007 before me, Trisha Sims notary public personally appeared Joseph A. Silva and John Scalone,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), an that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

TRISHA SIMS
Commission # 1650763
Notary Public - California
San Diego County
My Comm. Expires Mar 11, 2010

Signature _____

(NOTARY SEAL)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE **MUST** BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT.

Title of Document Type _____
Number of Pages _____ Date of Document _____
Signer(s) Other Than Named Above _____