

13011702.00

Execution Copy

ANTELOPE BIG SKY RANCH SOLAR PROJECT

POWER SALES AGREEMENT

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

THE CITY OF RIVERSIDE, CALIFORNIA

Dated as of November 15, 2012

**ANTELOPE BIG SKY RANCH SOLAR PROJECT
POWER SALES AGREEMENT**

- 1. PARTIES.** This Antelope Big Sky Ranch Solar Project Power Sales Agreement, made and entered into as of this 15th day of November, 2012, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as “SCPPA,” created under the provisions of the Act, and the CITY OF RIVERSIDE, California, a municipal corporation organized and existing under the laws of the State of California, hereinafter designated as “Riverside,” or, depending upon context, as “Participant.” SCPPA and Riverside are each sometimes hereinafter referred to individually as “Party” and together as “Parties.”
- 2. RECITALS.** This Agreement is made with reference to the following facts among others:

 - 2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the “Act”), by its members, which are municipalities and an irrigation district that supply or will supply electricity in the State of California, for the purpose of jointly and cooperatively undertaking planning, financing, development, acquisition, construction, operation and maintenance of projects for the generation or transmission of electric energy in accordance with the Act.
 - 2.2 To facilitate the appropriate review and due diligence studies necessary to carry forth an effective program for the development of renewable resources SCPPA created the “Renewable Electric Energy Resource Project” to be carried forth between SCPPA and those SCPPA members desiring to participate in this renewable energy oriented project under SCPPA’s Joint Powers Agreement. Thereafter on March 17, 2006, the SCPPA Board of Directors by way of Resolution 2006-13 found and declared the proposed Renewable Electric Energy Resource Project to be an official SCPPA Study Project pursuant to the SCPPA Joint Powers Agreement and authorized the execution of a development agreement for the Renewable Electric Energy Resource Project among SCPPA and the SCPPA members participating in this Study Project.
 - 2.3 In pursuit of the goals of the Renewable Electric Energy Resource Project SCPPA has issued Requests for Proposals (“RFP”) for potential renewable electric resources to address SCPPA member renewable energy needs, and as a result of responses to that RFP SCPPA and three of its members, the Cities of Azusa, Pasadena and Riverside (the “Project Participants”), have investigated the feasibility of a photovoltaic solar electric generating facility (the “Facility”) to be designed, constructed, maintained and operated by Antelope Big Sky Ranch LLC, a Delaware

limited liability company (the “Power Purchase Provider”), an affiliate of Silverado Power LLC, a Delaware limited liability company. The Facility will be located in the City of Lancaster, Los Angeles County, California, on a site leased or owned by the Power Purchase Provider.

2.4 SCPPA desires to enter into a Power Purchase Agreement with the Power Purchase Provider for the purchase of Energy and the associated Environmental Attributes from the Facility for the purpose of selling all said purchased Facility Output to Riverside and the other Project Participants pursuant to this Agreement and Power Sales Agreements with such other Project Participants.

2.5 Riverside has a need for an economical, reliable source of Energy and Environmental Attributes to meet the requirements of new environmental and energy procurement laws, as well as the demands of its current and/or future customers in an environmentally responsible manner and, as such, has determined that it is desirable to enter into this Agreement to purchase a Contract Share of the Energy and Environmental Attributes of the Facility from SCPPA.

3. **AGREEMENT.** For and in consideration of the promises and the mutual covenants and agreements hereinafter set forth, it is agreed by and between the Parties hereto as follows.

4. **DEFINITIONS.** The meaning of capitalized terms in this Agreement not otherwise defined in context shall be as defined in Section 1.1 of the Power Purchase Agreement, which is incorporated herein by this reference, or by the definitions set forth in the attached Appendix A

5. **TERM, PURCHASE AND SALE.**

5.1 Term. This Agreement shall be effective upon execution by both Parties and, unless earlier terminated pursuant to an express provision of this Agreement, shall be coterminous with the Power Purchase Agreement.

5.2 Purchase and Sale of Contract Share. In accordance with the terms and conditions hereof, commencing on the first date that Test Energy is available and continuing throughout the Term, SCPPA shall sell, schedule, and deliver to the Point of Delivery, and Riverside shall purchase and accept from SCPPA at the Point of Delivery, Test Energy, Energy, and Environmental Attributes associated with Riverside’s Contract Share.

6. **OBLIGATIONS OF SCPPA AND THE PROJECT PARTICIPANTS.**

6.1 Establishment and Authorization of the Coordinating Committee. The Coordinating Committee is hereby established and duly authorized to act on behalf of the Project Participants as provided in this Section 6 for the purpose of (i) providing coordination among, and information to, the Project Participants and SCPPA, (ii) the administration of the Power Purchase Agreement, (iii) the administration of the Project Agreements, (iv) the administration, as applicable, of any operating agreement or any maintenance agreement, (v) otherwise making any

recommendations to the Board of Directors regarding the administration of the Project and any acquisitions related thereto, (vi) exercising any cure rights with respect to any default by the Power Purchase Provider under any agreements, deeds of trust, leases or other instruments and (vii) execution of the Coordinating Committee responsibilities set forth in Section 6.2 hereof, including the various financial, administrative, and technical matters which may arise from time to time in connection with the Project or the administration and operation thereof, and such further developments as may need to be addressed. The Coordinating Committee shall consist of one representative from each Project Participant (“Authorized Representative”). Each Project Participant shall be entitled to cast a vote equal to its Contract Share as set forth in Appendix B hereof. SCPPA shall be entitled to one non-voting representative. SCPPA and Participant shall, within 30 days after SCPPA has entered into the Power Sales Agreement between SCPPA and Participant, give notice to SCPPA and any other Project Participant, of its representative on the Coordinating Committee. Alternate representatives may be appointed by similar written notice to act on the Coordinating Committee, or on any subcommittee established by the Coordinating Committee or by the Board of Directors, in the absence of the regular representative or to act on specified occasions with respect to specified matters. An alternate representative may attend all meetings of the Coordinating Committee but may vote only if the representative for whom she/he serves as alternate is absent. No Project Participant’s representative shall exercise any greater authority than permitted by the Project Participant or Project Participants, which she/he represents. The chairperson of the Coordinating Committee (“Chairperson”) shall be a representative of the Project Manager. The Chairperson shall be responsible for calling and presiding over meetings of the Coordinating Committee. The Chairperson or SCPPA shall promptly call a meeting of the Coordinating Committee at the request of any representative in a manner and to the extent permitted by law. For the purpose of conducting meetings, a quorum shall exist so long as SCPPA’s representative and the representative of at least a majority of the Project Participants shall be present. Except as may otherwise be provided in an agreement to which all of the Project Participants agree, all actions taken by the Coordinating Committee shall require an affirmative vote by all Project Participants. Notwithstanding the forgoing, however, if a proposed action before the Coordinating Committee or the Board of Directors relates solely to the interests of a single Project Participant and such Project Participant determines, in good faith, that such proposed action will not adversely affect, economically or otherwise, such Project Participant, such Project Participant agrees that it shall not unreasonably withhold its affirmative vote with respect to such proposed action. Unless the Board of Directors shall otherwise determine to require a majority vote pursuant to the terms of the Joint Powers Agreement, all actions with respect to the Project taken by the SCPPA Board of Directors shall require an affirmative vote of all Project Votes (as defined in SCPPA’s Joint Powers Agreement, dated as of November 1, 1980, as amended from time to time) cast thereon. Participant acknowledges and agrees that SCPPA, through the Coordinating Committee or the Board of Directors, as applicable, may from time to time enter into applicable Project Agreements or amendments of and supplements to the applicable Project Agreements (in accordance with their respective terms) and that, except as provided herein or as otherwise provided by resolution of the Board of

Directors, SCPPA will not be required to obtain the consent or approval of Participant in connection with any such Project Agreement or supplement or amendment, provided that any such amendment shall be approved by the Coordinating Committee or the Board of Directors in the manner provided by this Agreement.

- 6.2 Coordinating Committee Responsibilities. In addition to those responsibilities enumerated in Section 6.1 the Coordinating Committee shall have the following responsibilities:
- 6.2.1 Provide liaison between SCPPA and the Project Participants at the management or other levels with respect to the operation and ongoing administration of the Project, and maintain a liaison between the Project Participants and all other SCPPA members with respect to the Project, and where the Coordinating Committee deems it appropriate, maintain a liaison with the counterparties to any Project Agreements and with any other entities or utilities engaged in or in connection with other renewable energy projects.
 - 6.2.2 If any desired Project design, feasibility or planning studies or activities which are to be completed by SCPPA have not been completed by the Effective Date of this Agreement, oversee, as appropriate, the continuation and completion of such Project design, feasibility or planning studies or activities.
 - 6.2.3 Exercise general supervision over any subcommittee established pursuant to Section 6.3.5.
 - 6.2.4 Review, develop, discuss, and, if appropriate, recommend, modify or approve all budgets and revisions thereof prepared and submitted by SCPPA or the Project Manager pursuant to any applicable agreement.
 - 6.2.5 Review, develop, discuss, and, if appropriate, modify, approve or otherwise act upon any systems or procedures for adjustment of the Annual Budget or any alternative methodologies for budgeting or billing as set forth in Section 7 of this Agreement.
 - 6.2.6 Carry out all other actions reposed in the Coordinating Committee with respect to budgeting and billing as set forth in Section 7 of this Agreement.
 - 6.2.7 Make recommendations to the Project Manager, the Board of Directors or to the counterparties to any of the Project Agreements, as appropriate, with respect to the development, operation and ongoing administration of the Project.
 - 6.2.8 Review, develop, and if appropriate, modify and approve rules, procedures and protocols for the administration of the Project or Project Agreements, including rules, procedures and protocols for the management of the costs of

the Facility or an ownership interest therein and the scheduling, handling, tagging, dispatching and crediting of Facility Output and the handling and crediting of Environmental Attributes associated with the Facility.

- 6.2.9 Review, and, if appropriate, modify, approve or otherwise act upon, the form or content of any written statistical, administrative, or operational reports, solar energy related data, electric generation information, solar energy production data, diurnal, barometric and meteorological information, solar photovoltaic metallurgic chemical and technical information, facility reliability data, transmission information, forecasting scheduling, dispatching, tagging, parking, firming, shaping, exchanging, balancing, movement, or other delivery information, climate and weather related matters, cloud conditions, regulatory matters or requirements, and other information and other similar records or matters pertaining to the Project which are furnished to the Coordinating Committee by the Project Manager, the counterparties to Project Agreements, experts, consultants or others.
- 6.2.10 Review, and, if appropriate, modify, approve or otherwise act upon, practices and procedures as formulated by the Project Manager or, if applicable, the counterparty to any Project Agreement, to be followed by the Project Participants for, among other things, the production, scheduling, tagging, transmission, delivery, firming, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale or disposition of Facility Output.
- 6.2.11 Review, modify and approve, if necessary, the schedule of planned activities formulated by the Project Manager or the counterparty with respect to the performance of any Project Agreement, including the policies for selection and utilization of contractors and consultants included in the budgets with respect to the Project. In formulating and approving such schedules, consideration may be given, if possible, to each Project Participant's electric system conditions, which may prevail during such planned activities
- 6.2.12 Review, and, if appropriate, recommend, modify, approve or otherwise act with respect to the exercise of SCPPA's rights under the Power Purchase Agreement or review, recommend, approve or otherwise act with respect to the procurement of resources in connection with the Power Purchase Agreement.
- 6.2.13 Review, modify, approve or otherwise act upon any proposed change to the milestone schedule or to any Milestone under the Power Purchase Agreement as the Coordinating Committee shall deem to be desirable, appropriate or otherwise in SCPPA's interest. The Coordinating Committee may impose such other terms, conditions or qualifications upon any such action as the Coordinating Committee shall deem appropriate.
- 6.2.14 Review, approve or otherwise act upon any proposed extension or modification of any date set forth in Appendix I of the Power Purchase

Agreement or of any Milestone under the Power Purchase Agreement which, in the discretion of the Coordinating Committee, may be appropriate, desirable or otherwise in SCPPA's interest. The Coordinating Committee may impose other conditions or qualifications upon the grant of any such extension as the Coordinating Committee shall deem appropriate.

- 6.2.15 Review and act upon any present, potential or possible future anticipated failure to deliver Guaranteed Generation under the Power Purchase Agreement in such manner as the Coordinating Committee shall deem appropriate.
- 6.2.16 Act upon such recommended changes, as the Coordinating Committee shall deem appropriate. Such changes as may occur in such manner with respect to Appendices A, B and C herein shall be considered an element of the administration of this Agreement and shall not be deemed an amendment of this Agreement and shall not require the consent of the Parties hereto.
- 6.2.17 Review, and if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or by any counterparty to any Project Agreements giving due recognition to the needs of all Project Participants.
- 6.2.18 Review, and, if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or any counterparty with respect to any Project Agreement, and when requested by a Project Participant review, and, if appropriate, recommend, modify or approve those matters associated with any Point of Delivery or any other point or points designated for delivery of energy, delivery arrangements, transmission contracts, or other Project Agreements.
- 6.2.19 Review, and, if appropriate, recommend, modify or approve policies or programs formulated by the Project Manager, any counterparty under any Project Agreement or any other Person for the exchange of energy from the Facility.
- 6.2.20 Review, and, if appropriate, recommend, modify, or approve policies or programs formulated by the Project Manager or any counterparty under any Project Agreement for determining or estimating the solar energy resources or the values, quantities, volumes or costs of renewable energy from the Facility.
- 6.2.21 Review, modify or approve recommendations of the Project Manager or counterparties made pursuant to the provisions of any Project Agreement.
- 6.2.22 Review, modify and approve SCPPA's insurance program with respect to the Project (as applicable) including, without limitation, the establishment of any self-insurance program and the maximum amount or amounts of any

uninsured claim that the Project Manager may settle without prior approval of the Coordinating Committee.

- 6.2.23 Review, modify and where appropriate, recommend or approve the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of Facility Output to the respective Points of Delivery or from any of the Points of Delivery to other points or destinations, as applicable.
- 6.2.24 Review, examine modify and where appropriate, recommend or approve the implementation of methods for addressing curtailments or other interruptions contemplated in the Power Purchase Agreement.
- 6.2.25 Review, and to the extent permitted by this Agreement or any other relevant agreement relating to the Project, modify and approve or disapprove the specifications, vendors' proposals, bid evaluations, form of final agreement, or any other matters.
- 6.2.26 Perform such other functions and duties as may be provided for under this Agreement, the Power Purchase Agreement, the Ancillary Documents, or as may otherwise be appropriate or beneficial to the Project.

6.3 Management Decisions and the Role of Board of Directors. The rights and obligations of SCPPA under the Project Agreements shall be subject to the ultimate control at all times of the Board of Directors. Project Participants shall be entitled to participate in the decisions of the Board of Directors with respect to SCPPA's rights and interests in the Facility and the Project as provided in Section 6.1 herein. SCPPA through the Board of Directors shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:

- 6.3.1 Future Developments. The Board of Directors shall provide liaison among the Project Participants at the management level with respect to the direction of the Project and future developments arising out of the Power Purchase Agreement, including any purchase or acquisition of the Facility or any portion thereof and shall carry out those measures necessary to address such developments, including any purchase or acquisition of the Facility or any portion thereof.
- 6.3.2 Dispute Resolution. The Board of Directors shall endeavor to review, discuss and attempt to resolve any disputes among SCPPA, the Project Participants and the counterparties under the Project Agreements relating to the Project, the operation and management of the Facility and SCPPA rights and interests in the Facility.
- 6.3.3 Scheduling procedures. When recommended by the Coordinating Committee, or when otherwise appropriate, the Board of Directors shall act upon and approve or modify the practices and procedures to be followed by

- the Project Participants for the scheduling, delivering, controlling and allocating Facility Output associated with the Project.
- 6.3.4 Project Agreements. The Board of Directors shall have the authority to approve the Project Agreements and to review modify and approve, as appropriate, all amendments, modifications and supplements to the Project Agreements.
- 6.3.5 Committees. The Board of Directors shall exercise such review, direction or oversight as may be appropriate with respect to the Coordinating Committee and any other committees established pursuant to the Project Agreements.
- 6.3.6 Budgeting. The Board of Directors shall review, modify and approve each Annual Budget and the revisions thereto in accordance with Section 6.7 of this Agreement.
- 6.3.7 Revision of Appendices A, B and C. In coordination with the Coordinating Committee adopt a resolution approving the revisions of Appendices A, B and C, as applicable, of this Agreement as provided in and subject to the provisions of Sections 6.2.16 and 16.
- 6.3.8 Supervening Authority of the Board. The Board of Directors is reposed with complete and plenary supervening power and authority to act upon any matter which is capable of being acted upon by the Coordinating Committee or which is specified as being within the authority of the Coordinating Committee pursuant to the provisions of this Agreement, including those matters enumerated in Section 6.1 and 6.2 of this Agreement.
- 6.3.9 Other Matters. The Board of Directors is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Coordinating Committee, as may be provided for under this Power Sales Agreement and under the other Project Agreements, or as may otherwise be appropriate.
- 6.4 Project Manager. SCPPA shall designate one of the Project Participants to act as Project Manager to develop, operate, maintain and administer the Project, or cause the Project to be developed, operated, maintained and administered, through any development, operating, project management or agency agreement or, as applicable, through the Power Purchase Agreement. In the absence of such designation, the Project Participant with the largest Contract Share shall act as Project Manager.
- 6.5 Scheduling Coordinator. SCPPA, or upon SCPPA's designation one of the Project Participants as the Project Participants may approve,, shall act as Scheduling Coordinator on behalf of all of the Project Participants with respect to the Energy and Test Energy from the Facility to the Point of Delivery on the CAISO grid as provided in the Power Purchase Agreement.

- 6.6 Contract Administration. SCPPA shall use best efforts, on behalf of the Participants, to maximize the value of, and all products, rights, and benefits pursuant to, the Power Purchase Agreement and Scheduling Coordinator Agreement.
- 6.7 Adoption of Annual Budget. At least sixty (60) days prior to the beginning of each Fiscal Year, SCPPA will prepare, or cause to be prepared, and submit to the Participants, a proposed Annual Budget for such Fiscal Year. Such Annual Budget shall reflect the most recent Contract Costs estimates and other information provided to SCPPA. SCPPA may include in the Annual Budget reasonable amounts in excess of the estimated Contract Costs to be collected as an operating reserve to ensure that SCPPA may timely pay all Contract Costs. The Project Participants may submit to SCPPA, at any time until the Annual Budget is adopted, any matters or suggestions relating to the proposed Annual Budget. The SCPPA Board of Directors shall adopt the Annual Budget not less than ten (10) days or more than sixty (60) days prior to the beginning of such Fiscal Year and shall cause a copy of such adopted Annual Budget to be delivered to the Participants. During any Fiscal Year, upon 10 calendar days' notice to the Participants, the SCPPA Board of Directors may adopt an amended Annual Budget for and applicable to the remainder of such Fiscal Year. The Annual Budget, and not actual Contract Costs, shall establish the basis for Billing Statements to the Project Participants pursuant to Section 7 of this Agreement.
- 6.8 Records and Accounts. SCPPA will keep, or cause to be kept, accurate records and accounts associated with this Agreement, including but not limited to Energy, Test Energy, Contract Costs, billings and collections under this Agreement.
- 6.9 Adjustment of Billing. On or before 150 days after the end of each Fiscal Year, the Authority shall submit to the Project Participants a detailed statement of (i) the actual Contract Costs, including credits and adjustments thereto, if any, for all of the months of such previous Fiscal Year, and (ii) the maintenance of an operating reserve as permitted in Section 6.7 hereof. If, on the basis of the statement submitted pursuant to this Section 6.9, the Riverside's Contract Share of actual Contract Costs (and amounts, if any, with respect to an operating reserve) for such Fiscal Year exceeds the amounts of the applicable Billing Statements billed to Riverside hereunder, then the difference will be billed to Riverside and Riverside shall promptly pay SCPPA for such adjustment billing. If, on the basis of the statement submitted pursuant to this Section 6.9, the Riverside's Contract Share of actual Contract Costs (and amounts, if any, with respect to an operating reserve) for such Fiscal Year is less than the amounts of the applicable Billing Statements billed to Riverside hereunder, then SCPPA shall credit Riverside the difference on Riverside's next Billing Statement.
- 6.10 Provide Information. SCPPA agrees to supply Riverside, upon request, with information and documentation associated with Contract Costs. Riverside agrees to supply SCPPA with scheduling and settlement information and documentation, if any, requisite and necessary to reconcile and allocate Contract Costs.

7. CHARGES AND BILLINGS.

- 7.1 Billing Statement. By the fifth (5th) calendar day of each Month during the Term, SCPPA shall prepare and deliver a Billing Statement to Riverside for its Contract Share of projected Contract Costs, based on the Annual Budget. Riverside shall pay SCPPA amounts due under said Billing Statement on or before the twenty-fifth (25th) day of said Month.
- 7.2 Adoption of Alternative Billing Statement Procedures. The Coordinating Committee may recommend the adoption of an alternative Billing Statement billing methodology in connection with each Project Participant's Billing Statement with respect to the Total Monthly Costs and the costs associated with any Project Agreement. Such alternative Billing Statement procedures may be placed into effect with the approval of the same by resolution of the Board of Directors. Any such alternative Billing Statement billing methodology shall satisfy all requirements of the Indenture and shall be fiscally prudent, financially sound and shall assure coverage of all potential and actual costs and obligations of SCPPA.
- 7.3 Disputed Monthly Billing Statement. In case any portion of any Billing Statement received by Riverside from SCPPA shall be in bona fide dispute, Riverside shall pay SCPPA the full amount of such Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, will be credited to Riverside by SCPPA after such determination. In the event such Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise Riverside with regard to SCPPA's position relative thereto within 30 days following receipt of written notification by Riverside of such dispute.
- 7.4 Interest on Late Payments. If Riverside fails to pay any Billing Statement when due, interest shall accrue, to the extent permitted by law, and shall bear interest on the unpaid balance at an annual rate equal to two (2%) percent plus the average daily prime rate as determined from the "Money Rates" section of the West Coast Edition of the Wall Street Journal for the days of the late payment period multiplied by the number of days elapsed from and including the day after the due date, to and including the payment date. Interest shall be computed on the basis of a 365-day year. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.
- 7.1 Reconciliation of Monthly Costs. As soon as practicable after the end of each Power Supply Year, SCPPA will submit to Project Participants a detailed statement of the actual aggregate Monthly Costs and other amounts payable hereunder, including any credits thereto, for all of the Months of such Power Supply Year, and the adjustments of the aggregate Monthly Costs and other amounts payable hereunder, if any, for any prior Power Supply Year, based on the annual audit of accounts provided for in Section 6.4. If, on the basis of the statement submitted as provided in this Section 7.1, the actual aggregate Monthly Costs and other amounts payable by the Project Participants for any Power Supply Year exceed the amount thereof which Project Participants have been billed, Project Participants shall pay SCPPA, within 20 days of receipt of SCPPA's invoice, the amount to which SCPPA is entitled. If, on

the basis of the statement submitted pursuant to this Section 7.1, the actual aggregate Monthly Costs or other amounts payable by the Project Participants for any Power Supply Year are less than the amount therefor which Project Participants have been billed, SCPPA shall, unless otherwise directed by Participant or the other Project Participants with respect to moneys owed to each, credit such excess against Participant's and the other Project Participants' next monthly Billing Statement.

- 7.2 Other or Additional Cost Reconciliation Mechanisms. The Board of Directors may, by resolution, authorize or prescribe other billing, payment, costing and cost reconciliation mechanisms to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project.
- 7.3 Interest on Late Payments. If Participant fails to pay any Billing Statement when due, interest shall accrue, to the extent permitted by law, at a rate equal to the lesser of (i) one percent per Month (12% per annum) on the unpaid amount of the bill or (ii) the monthly equivalent of the "prime" rate of interest as noticed in the Federal Reserve's HR 15 weekly bulletin (or the subsequent equivalent thereof) as of the date of nonpayment on the unpaid amount of the bill, until such Billing Statement is paid.
- 7.4 Prepayment of Monthly Costs. Participant may, at any time, pay moneys to SCPPA or utilize any credits due or amounts owed by SCPPA to Participant with respect to the Project for the purpose of prepaying its monthly Billing Statement. Such moneys and amounts owed by SCPPA under any Project Agreement shall be deposited into an account established by, or at the direction of, SCPPA. Consistent with SCPPA's investment policy, moneys in such account shall be invested pursuant to instructions provided to SCPPA by Participant and all investment income shall be credited to such account. Payment of the amount of any monthly Billing Statement or Default Invoice shall be made from moneys available in such account to the extent set forth in written directions from Participant to SCPPA received at least five business days prior to the due date of such payment. Any credit or prepayment with respect to its monthly Billing Statement shall not relieve or reduce Participant's other obligations under this Agreement.
- 7.5 Costs or Expenses Incurred for Sole Benefit of Participant. Notwithstanding anything to the contrary in this Agreement, if a particular cost or expense is incurred by SCPPA for the sole benefit of Participant, unless otherwise determined by the Coordinating Committee, then such cost or expense shall be allocated only to Participant, in which event only Participant (and no other Project Participant) shall be responsible for the payment thereof under this Agreement. Any such cost or expense incurred by SCPPA for the sole benefit of Participant shall be deemed to be paid last from amounts paid by Participant for the payment of its Billing Statements.
- 7.6 Credit or Other Payment Attributable to a Specific Project Participant. Should any Project Participant make or provide, through any type of payment mechanism, for a separate payment or prepayment for Facility Output or other Project purpose which results in a credit or reduction in SCPPA's obligation being credited to the purchase of Facility Output, or a reduced cost of power or otherwise credited under the Power Purchase Agreement or other Project Agreement, then, to the extent that such credit is

credited to an obligation of SCPPA under the Power Purchase Agreement or such other Project Agreement, such credit shall be passed through or credited to the applicable Project Participant under such Project Participant's Power Sales Agreement. Such a credit may at the request of the applicable Project Participant be credited on the Project Participants subsequent Billing Statements or handled pursuant to a Billing Statement methodology which bills for and places an amount which is the equivalent of the credit into the Project Participants project stabilization account or such a credit may be otherwise handled in such manner as the applicable Project Participant may reasonably request. The provisions of this Section 7.6 shall be in addition to the terms and provisions of Section 10 and shall not be applicable to any circumstances, conditions or matters that are within the scope of Section 10.

8. UNCONDITIONAL PAYMENT OBLIGATIONS; RATE COVENANT; AUTHORIZATIONS; CONFLICTS; LITIGATION.

- 8.1 Unconditional Payment Obligation. Beginning with the earliest of (i) the date SCPPA incurs or becomes obligated to pay any portion of the costs of the Project, (ii) the effective date of any Project Agreement, (iii) the effective date of the Power Purchase Agreement (iv) the date upon which SCPPA first incurs or accrues costs associated with the issuance of the Bonds, or (v) the date of the first delivery of Facility Output to Participant and continuing through the Term of this Agreement, Participant shall pay SCPPA the amounts of Monthly Costs set forth in the Billing Statements submitted by or on behalf of SCPPA to Participant in accordance with the provisions of Section 7 hereof and, without duplication, any amount set forth in any Step-Up Invoices or Default Invoices received by Participant as a result of the operation of Section 9 hereof, whether or not the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.
- 8.2 Source of Payments. The Participant hereby represents, warrants and agrees that the obligations of Participant to make the payments to SCPPA under this Agreement shall constitute a cost of purchased power and an operating expense of Participant payable solely from its electric power revenue fund, including any and all legally available electric system reserves. Participant will annually in each and every fiscal year of Participant during the Term of this Agreement include in its power system budget, whether or not any other items are included, an appropriation from the revenues of its electric system (including moneys derived from sales to third parties) sufficient to satisfy all the payments required to be made in such year under this Agreement until all payments required under this Agreement have been paid in full.
- 8.3 Rate Covenant. Participant will establish, maintain and collect rates and charges for the electric service of its electric system each year so as to provide revenues sufficient, together with any legally available electric system reserves, to enable Participant to pay to SCPPA all amounts payable when due under this Agreement and

to pay all other amounts payable from, and all lawful charges against or liens on, the revenues of its electric system.

- 8.4 Authorizations. The Participant hereby represents and warrants that no order, approval, consent or authorization of any governmental or public agency, authority or Person, is required on the part of the Participant for the execution and delivery by the Participant of this Agreement, or the performance by the Participant of its obligations under this Agreement except for such as have been obtained.
- 8.5 Conflicts. Participant represents and warrants to SCPPA as of the Effective Date that, to Participant's knowledge, the execution and delivery of this Agreement by Participant, and Participant's performance thereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on Participant, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of Participant's power revenue fund.
- 8.6 Litigation. Participant represents and warrants to SCPPA as of the Effective Date that, to Participant's knowledge, except as disclosed, there are no actions, suits or proceedings pending against Participant (service of process on Participant having been made) in any court that questions the validity of the authorization, execution or delivery by Participant of this Agreement, or the enforceability on Participant of this Agreement.

9. NONPERFORMANCE AND PAYMENT DEFAULT.

- 9.1 Nonperformance by Participant. Subject to the provisions in this Section 9 regarding a Payment Default, if a Participant shall fail to perform any covenant, agreement or obligation under its Power Sales Agreement, SCPPA may, in the event the performance of any such obligation under this Agreement remains unsatisfied after 30 days' prior written notice thereof to such Participant and a demand to so perform, take any action permitted by law to enforce its rights under its Power Sales Agreement and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against such Participant with regard to its failure to so perform.
- 9.2 Notice of Payment Default. Promptly following a Payment Default by a Participant, SCPPA shall provide written notice to such Participant that as a result of a Payment Default it is a defaulting Participant whose rights, including its Contract Shares, under its Power Sales Agreement are subject to discontinuance, termination and disposal within 30 days of the date of such notice. Notice of such Payment Default shall be provided promptly by SCPPA to all other Participants.
- 9.3 Retention of Rights During Payment Default Period. During a Payment Default Period with respect to a defaulting Participant, its rights, including its Contract Shares, under its Power Sales Agreement shall not be discontinued, terminated or disposed of as provided for in Section 9.4 of its Power Sales Agreement as a result of

a Payment Default. During such Payment Default Period, SCPPA shall send to the defaulting Participant a separate default invoice (which shall include all unpaid amounts plus interest due for late payment pursuant to Section 7.4 hereof). If the defaulting Participant pays in full such default invoice within the Payment Default Period, the defaulting Participant shall no longer be deemed a defaulting Participant and its rights, including its Contract Shares, under its Power Sales Agreement shall not be subject to discontinuance, termination or disposal as provided for in Section 9.4 of its Power Sales Agreement. The defaulting Participant shall make separate payments to SCPPA with respect to its Billing Statement and a default invoice.

- 9.4 Rights Under Power Sales Agreement Terminated. If a defaulting Participant fails to pay its default invoice within the Payment Default Period, its rights, including its Contract Shares, under its Power Sales Agreement shall immediately and permanently be discontinued and terminated; provided, however, the defaulting Participant's obligation to make payment of its default invoice shall not be eliminated or reduced and the defaulting Participant's other obligations to make payments under its Power Sales Agreement shall not be eliminated or reduced except to the extent of moneys received by SCPPA as a result of the conveyance, transfer and assignment of its rights and obligations, less SCPPA's related costs and expenses. SCPPA shall immediately notify each of the other Participants of such discontinuance and termination. The defaulting Participant's rights, including its Contract Shares, and obligations under its Power Sales Agreement shall be conveyed, transferred and assigned, on a pro rata basis, among the other Project Participants and SCPPA shall modify Appendix B to reflect the elimination of the defaulting Participant's Contract Shares and the pro rata allocation of such Contract Shares among the other Participants.
- 9.5 Use of Operating Reserve. With respect to a Payment Default by a Participant, funds in any operating reserve for the Project shall be used, to the extent necessary and to the extent available, to pay amounts due under the Power Purchase Agreement. To the extent deemed necessary by SCPPA, a pro-rated amount of the default invoice (excluding any amounts due to late payment) may be added to the next Billing Statement for each non-defaulting Participant in order to replenish the operating reserve.

10. CHARACTER, CONTINUITY OF SERVICE.

- 10.1 Outages, Interruptions and Curtailment of Energy Deliveries. Under certain conditions set forth in the Power Purchase Agreement or in the case of emergencies or abnormal conditions with respect to the Facility or in order to take the Facility out of service for repairs, maintenance work, replacements, equipment installation or inspections, or in the event of a failure by a Project Participant to receive or accept Facility Output or Replacement Energy delivered to SCPPA at a Point of Delivery, the Power Purchase Provider or, if SCPPA shall acquire the Facility or an ownership interest therein, SCPPA, its agent or the Project Manager, as the case may be, may temporarily interrupt or curtail deliveries of Facility Output (or in the case of the Power Purchase Provider, the Replacement Energy) to Project Participants. In the event of the occurrence of any such interruption or curtailment, including any

associated Facility outage, which shall cause a reduction in deliveries of Facility Output, any incurrence by SCPPA of additional costs, or a receipt by SCPPA of payments or credits under any Project Agreement, certain of the rights, entitlements and obligations of the affected Project Participants under their respective Power Sales Agreements shall be subject to adjustment as follows:

- 10.1.1 In the case of such an interruption, curtailment or outage affecting the deliveries of Facility Output at the Point of Delivery, (i) the resulting reduction in Facility Output at the Point of Delivery shall be shared by the Project Participants pro rata in accordance with their respective Contract Shares, and (ii) any resulting costs incurred by SCPPA or payments or credits received by SCPPA shall be allocated among the Project Participants in accordance with their respective Contract Shares.
- 10.1.2 No such interruption or curtailment of deliveries of Facility Output, including any interruption or curtailment due to a Facility outage, shall relieve any of the Project Participants of their obligations to make payments under their respective Power Sales Agreements.
- 10.1.3 SCPPA or the Project Manager (if other than SCPPA) or SCPPA's agent will use its best efforts to apprise the affected Project Participants of potential outages, interruptions or curtailments, the reason therefor and the probable duration thereof, when such outages, interruptions or curtailments can be deemed likely to occur.
- 10.1.4 After informing the affected Project Participants regarding any such planned interruption or curtailment, giving the reason therefor, and stating the probable duration thereof, SCPPA, its agent or the Project Manager, as applicable, will to the best of its ability schedule such interruption or curtailment at a time which will cause the least interference with the system operations of the Project Participants.

11. SEVERAL OBLIGATION; LIABILITY.

- 11.1 Participants' Obligations Several. Riverside and each of the other Project Participants shall be solely responsible and liable for performance under its respective Power Sales Agreement. The obligation of Riverside to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants under the other Power Sales Agreements to which such Project Participants are parties.
- 11.2 No Liability of SCPPA, Directors, Officers, Etc. Riverside agrees that neither SCPPA nor any of its directors, officers, employees and agents shall be liable to Riverside for loss of profits or direct or consequential loss or damage suffered by Riverside as a result of the performance or non-performance (whether negligent or otherwise) of SCPPA or any of its directors, officers, employees or agents under this Agreement. Riverside releases SCPPA and its directors, officers, employees and agents from any claim or liability (whether negligent or otherwise) as a result of any

actions or inactions of SCPPA under this Agreement. No such performance or non-performance by SCPPA shall relieve Riverside from its obligations under this Agreement, including its obligation to make payments required under this Agreement, and such payments shall not be subject to any reduction, whether by offset, counterclaim or otherwise. The provisions of this Section 11.2 shall not be construed so as to relieve SCPPA from any obligation under this Agreement.

- 11.3 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 9.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, Riverside may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of SCPPA and Riverside shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment by Riverside in accordance with Section 7.3 hereof.
- 11.4 Indemnification for Claims of Retail Customers. Each of the Project Participants shall assume all liability for any claim, action or judgment, whether or not caused by negligence, arising out of or in connection with electric service to any of its retail customers caused by the operation or failure of operation of the Facility or any portion thereof, and shall indemnify and hold harmless each of the other Project Participants and SCPPA from any such claim, action or judgment (including reasonable attorneys' fees and other costs of defense).
- 11.5 Determination or Enforcement of Rights. Notwithstanding the provisions of Sections 11.2, 11.3 and 11.4 hereof, Riverside or SCPPA may determine, protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of, or declaratory action with respect to, any obligation or duty hereunder or thereunder.
- 11.6 No Relief From Insurer's Obligations. Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in this Section 11, the provisions of this Section 11 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy.
- 11.7 SCPPA Directors, Officers, Employees, Agents Not Individually Liable; No General Liability of SCPPA. It is hereby recognized and agreed that no member of SCPPA's Board of Directors, officer, employee or agent of SCPPA or member of SCPPA in its capacity as a member of SCPPA shall be individually liable in respect of any undertakings by SCPPA under this Agreement. The undertakings by SCPPA under the Power Sales Agreements shall never constitute a debt or indebtedness of SCPPA within the meaning of any provision or limitation of the Constitution or statutes of the State of California and shall not constitute or give rise to a charge against its general credit.

12. **SEVERABILITY.** In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the parties hereto that such illegality or invalidity shall not affect any

other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein unless a court holds that the provisions are not separable from all other provisions of this Agreement.

13. CONDITIONS TO TERMINATION OR AMENDMENT.

Rights Among Participants. None of the Power Sales Agreements may be terminated as to any one or more of the Project Participants or be amended as to any one or more of the Project Participants so as to provide terms and conditions materially different from those contained therein except upon written notice to and written consent or waiver by each of the other Project Participants and upon similar amendment being made to the Power Sales Agreement of any other Participant requesting such amendment after receipt by such Participant of notice of such amendment.

14. GOVERNING LAW. This Agreement shall be interpreted, governed by and construed under the laws of the State of California.

15. ARBITRATION. If a dispute arises between the Parties which the Authorized Representatives are unable to resolve, the Parties may submit the dispute to arbitration.

16. ASSIGNMENT. Unless otherwise mutually agreed to by the Parties, a Participant may assign some or all of its rights and obligations under its Power Sales Agreement, including its Contract Share, only to other SCPPA members under the same terms and conditions of its Power Sales Agreement. In the event of such an assignment, Appendix B shall be revised by SCPPA to reflect the new Contract Share allocation and such revision to Appendix B shall not be considered an amendment to any Power Sales Agreement.

17. NOTICES. Any 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 registered or certified mail, postage prepaid, to the persons specified below:

Southern California Public Power Authority
Attn: Bill D. Carnahan, Executive Director
1160 Nicole Court
Glendora, California 91740

City of Riverside
Riverside Public Utilities Dept.
Attention: David H. Wright , General Manager
3750 University Ave. 5th Floor
Riverside, California 92501

Either Party may give notice of a change of address or other information set forth above by giving notice as provided in this section.

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed on their respective behalf by their duly authorized representatives.

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By: 
RONALD E. DAVIS
President

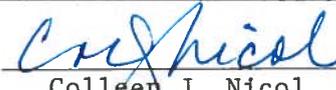
Attest: 
BILL D. CARNAHAN
Assistant Secretary

CITY OF RIVERSIDE, CALIFORNIA

By: 
Belinda J. Graham

Title: Assistant City Manager

Date: January 17, 2013

Attest: 
Colleen J. Nicol

Title: City Clerk

APPROVED AS TO FORM



DEPUTY CITY ATTORNEY

APPENDIX A

DEFINITIONS

1. **Annual Budget.** The budget adopted by SCPPA pursuant to Section 6.7, including any amendments thereto, which shall show a detailed estimate of the Contract Costs and all revenues, income, or other funds to be applied to such Contract Costs, if any, for and applicable to a Fiscal Year.
2. **Billing Statement:** The written statement prepared or caused to be prepared each Month by, or on behalf of SCPPA, which shall show for such Month the amount to be paid to SCPPA by a Participant in accordance with the provisions of Section 7.
3. **Board of Directors.** The Board of Directors of the Southern California Public Power Authority.
4. **Capacity.** The ability or potential to generate, produce or transfer electricity, expressed in kilowatts ("kW") or megawatts ("MW"), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
5. **Contract Costs:** All costs incurred by SCPPA pursuant to the Power Purchase Agreement, the Power Sales Agreements, and the Scheduling Coordinator Agreement, including but not limited to, direct charges and associated administrative and general expenses.
6. **Contract Share:** A percentage of all products, rights, benefits, obligations, and liabilities, without limitation, pursuant to the Power Purchase Agreement, including but not limited to Facility Output (or Replacement Energy, when applicable), Capacity and Environmental Attributes. A schedule of Contract Shares for the Projects Participants is included as Appendix B, which may be adjusted in connection with a revision of Appendix B as provided in and subject to the provisions of Section 16.
7. **Cured Payment Default.** A Payment Default which has been cured in accordance with Section 9.3 of this Agreement. If at any time during the Cure Period the Defaulting Project Participant is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPPA and the Cure Period shall expire.
8. **Default Invoice.** An invoice during the Payment Default Period and the Cure Period issued to a Defaulting Project Participant pursuant to Section 9 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Cure Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
9. **Defaulting Project Participant.** A Project Participant that causes a Payment Default which has not been remedied and where the Defaulting Project Participant has not affected a Cured Payment Default.
10. **Facility Output.** All output, rights, and other tangible or intangible benefits, whatsoever, derived from the Facility and received by SCPPA, including without limitation, all Energy

(including Facility Energy, Delivered Energy and Excess Energy as defined in the Power Purchase Agreement), Capacity Rights and Environmental Attributes, whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement or derived from the Facility by SCPPA as owner following SCPPA's purchase of the Facility.

11. **Fiscal Year.** The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:01 a.m. on the following July 1, or such other period as determined by SCPPA.
12. **Month:** A calendar month.
13. **Payment Default:** A failure by a Participant to pay when due all of its Billing Statement for any Month.
14. **Payment Default Period:** That period of time beginning on the initial date of a Payment Default and ending [30] days following a notice of default as provided in accordance with Section 9.2 hereof.
15. **Person:** An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, or other entity.
16. **Power Purchase Agreement:** The agreement between SCPPA and the Power Purchase Provider for the purchase of the Energy from the Facility, including the associated Environmental Attributes, as amended from time to time. A copy of the Power Purchase Agreement is included as Appendix C.
17. **Term:** The period of time during which the Agreement is in effect as defined in Section 5.1.
18. **Test Energy:** Energy generated by the Facility and delivered to the Point of Interconnection prior to the Commercial Operation Date.

APPENDIX B

SCHEDULE CONTRACT SHARES

<u>Participants</u>	<u>Contract Share</u>
City of Azusa	17.50%
City of Pasadena	32.50%
City of Riverside	<u>50.00%</u> 100.0000%

APPENDIX C

POWER PURCHASE AGREEMENT

POWER PURCHASE AGREEMENT

BETWEEN

ANTELOPE BIG SKY RANCH, LLC

AND

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

DATED FOR CONVENIENCE AS OF NOVEMBER 15, 2012

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	DEFINITIONS AND INTERPRETATION..... 1
Section 1.1	Definitions..... 1
Section 1.2	Interpretation..... 17
ARTICLE II	EFFECTIVE DATE, TERM, AND EARLY TERMINATION..... 18
Section 2.1	Effective Date 18
Section 2.2	Agreement Term and Delivery Term..... 18
Section 2.3	Survivability..... 19
Section 2.4	Early Termination 19
ARTICLE III	DEVELOPMENT OF THE FACILITY 20
Section 3.1	Permitting and CEQA Determinations 20
Section 3.2	Project Design..... 21
Section 3.3	Site Confirmation..... 21
Section 3.4	Certification of Commercial Operation Date..... 21
Section 3.5	Milestone Schedule..... 22
Section 3.6	Delay Liquidated Damages..... 22
Section 3.7	Decommissioning and Other Costs..... 23
ARTICLE IV	OPERATION AND MAINTENANCE OF THE FACILITY..... 23
Section 4.1	General Operational Requirements..... 23
Section 4.2	Operation and Maintenance Plan 24
Section 4.3	Environmental Credits 24
Section 4.4	Scheduled Outage 24
ARTICLE V	COMPLIANCE DURING CONSTRUCTION AND OPERATION PERIOD; GUARANTEES 25
Section 5.1	Guarantees..... 25
Section 5.2	Buyer’s Right To Monitor In General 26
Section 5.3	Effect of Review by Buyer 26
Section 5.4	Reporting and Information..... 26
Section 5.5	Startup and Testing 26
Section 5.6	Contract Provisions..... 27
Section 5.7	Quality Assurance Program 27
Section 5.8	Ownership and Operation 27
Section 5.9	Seller Performance Security 27
ARTICLE VI	PURCHASE AND SALE OF POWER..... 30
Section 6.1	Purchases by Buyer..... 30
Section 6.2	Seller’s Delivery Obligation 30
Section 6.3	Buyer’s and Seller’s Intent..... 31
ARTICLE VII	TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS..... 31
Section 7.1	In General..... 31
Section 7.2	Forecasting and Scheduling of Energy 31

TABLE OF CONTENTS

(continued)

	<u>Page</u>
Section 7.3	Costs..... 33
Section 7.4	CAISO Facility Scheduling Costs 34
Section 7.5	End of Term Deliveries..... 34
Section 7.6	PIRP 34
Section 7.7	Curtailement 35
Section 7.8	Title; Risk of Loss..... 35
ARTICLE VIII ENVIRONMENTAL ATTRIBUTES; EPS AND RPS COMPLIANCE.....	36
Section 8.1	Transfer of Environmental Attributes..... 36
Section 8.2	Reporting of Ownership of Environmental Attributes..... 36
Section 8.3	Environmental Attributes..... 36
Section 8.4	Use of Accounting System to Transfer Environmental Attributes..... 36
Section 8.5	Further Assurances..... 37
Section 8.6	RPS and EPS Compliance 37
Section 8.7	Change in Law 37
ARTICLE IX GUARANTEED GENERATION AND MAKEUP OF SHORTFALL ENERGY	38
Section 9.1	Guaranteed Generation and Makeup of Shortfall 38
Section 9.2	Replacement Energy 39
Section 9.3	Shortfall Liquidated Damages 39
ARTICLE X CAPACITY RIGHTS.....	40
Section 10.1	Purchase and Sale of Capacity Rights 40
Section 10.2	Representation Regarding Ownership of Capacity Rights 40
Section 10.3	Further Assurances..... 40
ARTICLE XI BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES.....	40
Section 11.1	Billing and Payment..... 40
Section 11.2	Calculation of Energy Delivered; Invoices and Payment..... 40
Section 11.3	Disputed Invoices..... 41
Section 11.4	Buyer's Right of Setoff..... 42
Section 11.5	Records and Audits..... 42
Section 11.6	Electric Metering Devices..... 42
Section 11.7	Taxes 43
ARTICLE XII REPRESENTATIONS AND WARRANTIES; COVENANTS OF SELLER.....	43
Section 12.1	Representations and Warranties of Buyer..... 43
Section 12.2	Representations and Warranties of Seller 44
Section 12.3	Covenant of Seller Related to Investments..... 46
Section 12.4	Covenants of Seller Related to Site Control 46

TABLE OF CONTENTS
(continued)

	<u>Page</u>
ARTICLE XIII DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE	
DAMAGE	46
Section 13.1 Default	46
Section 13.2 Default Remedy	47
Section 13.3 Termination for Default	48
ARTICLE XIV MISCELLANEOUS	50
Section 14.1 Authorized Representative	50
Section 14.2 Notices	50
Section 14.3 Dispute Resolution	50
Section 14.4 Further Assurances	51
Section 14.5 No Dedication of Facilities	51
Section 14.6 Force Majeure	51
Section 14.7 Assignment of Agreement	53
Section 14.8 Ambiguity	54
Section 14.9 Attorney Fees & Costs	54
Section 14.10 Voluntary Execution	54
Section 14.11 Entire Agreement	54
Section 14.12 Governing Law	55
Section 14.13 Venue	55
Section 14.14 Execution in Counterparts	55
Section 14.15 Effect of Section Headings	55
Section 14.16 Waiver	55
Section 14.17 Relationship of the Parties	55
Section 14.18 Third Party Beneficiaries	56
Section 14.19 Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability	56
Section 14.20 Severability	57
Section 14.21 Confidentiality	57
Section 14.22 Mobile-Sierra	58
Section 14.23 Taxpayer Identification Number (TIN)	59
Section 14.24 Service Contract	59
Section 14.25 Right of First Offer	59
Section 14.26 Government Contracts and No Immunity	59

Appendices

APPENDIX A - CONTRACT PRICE DETAILS

APPENDIX B - FACILITY, PERMITS, AND OPERATOR

APPENDIX C - BUYER AND SELLER BILLING, NOTIFICATION AND SCHEDULING
CONTACT INFORMATION

APPENDIX D - FORM OF ATTESTATION

APPENDIX E - FORM OF LETTER OF CREDIT

APPENDIX F - INSURANCE

APPENDIX G - FORM OF GUARANTEE

APPENDIX H - QUALITY ASSURANCE PROGRAM

APPENDIX I - MILESTONE SCHEDULE

APPENDIX J – ANNUAL CONTRACT QUANTITY

APPENDIX K - SCHEDULING PROCEDURE

POWER PURCHASE AGREEMENT

PARTIES

THIS POWER PURCHASE AGREEMENT (this "*Agreement*"), which is dated for convenience as of this 15th day of November, 2012, (the "*Execution Date*"), is being entered into by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the Act and the Joint Powers Agreement, hereinafter designated as "SCPPA" or "*Buyer*", and ANTELOPE BIG SKY RANCH, LLC, a limited liability company organized and existing under the laws of the State of Delaware, hereinafter designated as "*Seller*". Each of Buyer and Seller is referred to individually in this Agreement as a "*Party*" and together they are referred to as the "*Parties*".

RECITALS

WHEREAS, Buyer's members have adopted or are adopting policies to comply with the California Renewable Energy Resources Act that are designed to increase the amount of energy that they provide to their retail customers from eligible renewable energy resources; and

WHEREAS, in September 2010, Buyer issued a request for proposals to acquire renewable energy resources; and

WHEREAS, Seller's parent on behalf of Seller responded on January 31, 2011 to the request for proposals and following negotiation Seller has agreed to sell to Buyer, and Buyer has agreed to purchase, certain renewable energy and associated environmental attributes; and

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which such sales and purchases shall be made.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and the mutual covenants and agreements herein set forth, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. The following terms in this Agreement and the appendices hereto shall have the following meanings when used with initial capitalized letters:

"**Act**" means all of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500 et seq.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of any such other Person. As used in this Agreement, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the preamble of this Agreement.

“Agreement Term” has the meaning set forth in Section 2.2.

“Ancillary Documents” means all agreements and other documents included in the Performance Security, and all other instruments, agreements, certificates and documents executed or delivered by or on behalf of Buyer or any Seller Party pursuant to or in connection with any thereof or this Agreement.

“Annual Contract Quantity” means, for each Contract Year, the number of MWh set forth on Appendix J.

“ASME” means American Society of Mechanical Engineers.

“Assumed Daily Deliveries” has the meaning set forth in Section 13.3(c).

“Assurances” has the meaning set forth in Section 5.1(a).

“ASTM” means American Society for Testing and Materials.

“Authorized Auditors” means representatives of Buyer or Buyer’s Agents who are authorized to conduct audits on behalf of Buyer.

“Authorized Representative” means, with respect to each Party, the Person designated as such Party’s authorized representative pursuant to Section 14.1.

“AWS” means American Welding Society.

“Bankruptcy” means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case or proceeding shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain undismissed for sixty (60) days.

“Between Initial Synchronization and Final COD Security” has the meaning set forth in Section 5.9(b).

“Board” has the meaning set forth in Section 14.19.

“Brown Act” has the meaning set forth in Section 14.21(d).

“Business Day” means any day that is not a Saturday, a Sunday, or a day on which commercial banks are authorized or required to be closed in Los Angeles, California or New York, New York.

“Buyer” has the meaning set forth in the preamble of this Agreement.

“Buyer’s Agent” means any Person authorized or designated by Buyer to make any determination or perform, carry out or provide any function on behalf of Buyer under this Agreement.

“Buyer’s Member” means any member of Buyer that has entered into the Joint Powers Agreement.

“CAISO” means the California Independent System Operator.

“CAISO Costs” has the meaning set forth in Section 7.4(a).

“CAISO Cost Protocol” has the meaning set forth in Section 7.4(b).

“Cal-OSHA” means California Occupational Safety & Health Administration.

“CAMD” means the Clean Air Markets Division of the United States Environmental Protection Agency and any other state, regional or federal or intergovernmental entity or Person that is given authorization or jurisdiction or both over a program involving the registration, validation, certification or transferability of Environmental Attributes.

“Capacity Factor” means 28%.

“Capacity Rights” means the rights, whether in existence as of the Effective Date or arising hereafter during the Agreement Term, to capacity, resource adequacy, associated attributes or reserves or any of the foregoing associated with the electric generating capability of the Facility, including the right to resell such rights.

“CEC” means California’s State Energy Resources Conservation and Development Commission, also known as the California Energy Commission, and any successor agency thereto.

“CEC Certified” means that the CEC has certified that the Facility is an eligible renewable energy resource in accordance with Public Utilities Code Section 399.12(e) and the guidelines adopted by the CEC, as amended from time to time, and any successor statute.

“CEC Performance Standard” means, at any time, the applicable greenhouse gas emissions performance standard in effect at such time for baseload electric generation facilities that are owned or operated (or both) by local publicly owned electric utilities, or for which a local publicly owned electric utility has entered into a contractual agreement for the purchase of power from such facilities, as established by the CEC or other Governmental Authority having jurisdiction over Buyer.

“CEQA” means the California Environmental Quality Act, Public Resources Code §§ 21000, et seq., as amended from time to time, and any successor statute.

“CEQA Acceptability Notice” has the meaning set forth in Section 3.1.

“CEQA Determinations” means that:

(a) The lead agency conducting the review of the Facility as required under CEQA shall have delivered to Seller the CEQA Documents, and filed any applicable Notice of Determination in compliance with CEQA;

(b) Buyer, acting as a responsible agency under CEQA, shall have provided to Seller the CEQA Acceptability Notice; and

(c) The applicable period for any legal challenges to any action by either the lead agency or any responsible agency under CEQA (including Buyer) shall have expired without any such challenge having been filed or, in the event of any such challenge, the challenge shall have been determined adversely to the challenger by final judgment or settlement.

“CEQA Document” means an initial study, a final environmental impact report or equivalent document upon which the lead agency issued a final approval for the Facility.

“CEQA Unacceptability Notice” has the meaning set forth in Section 3.1.

“Change in Law” means a change in any federal, state, local or other law (including any environmental laws), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority (other than Buyer).

“Commercial Operation” means Seller has demonstrated to the reasonable satisfaction of Buyer that all of the following have occurred:

(a) Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement in all material respects, and the Facility possesses all the characteristics, and satisfies all of the requirements, set forth for the Facility in this Agreement in all material respects;

(b) The Facility has in all material respects successfully completed all testing required by Prudent Utility Practices or any Requirement of Law (including any applicable CAISO rules or protocols) to be completed prior to full commercial operations;

(c) Seller has obtained all Permits required for the operation and maintenance of the Facility in accordance with this Agreement (including the CEQA Determinations and the Permits identified in Appendix B), and all such Permits are final and non-appealable;

(d) The Facility is both authorized and able to operate and deliver Energy at full capacity in accordance with Prudent Utility Practices, the requirements of this Agreement and all Requirements of Law;

(e) Seller has obtained the Insurance; and

(f) Buyer shall have received the Delivery Term Security in a form reasonably acceptable to Buyer.

“Commercial Operation Date” or **“COD”** means the date on which Commercial Operation occurs, as determined pursuant to Section 3.4.

“Confidential Information” has the meaning set forth in Section 14.21(a).

“Contract Capacity” means twenty (20) MW. It is agreed that twenty (20) MWh is the maximum amount of Delivered Energy in any one hour that the Buyer is obligated to purchase under this Agreement.

“Contract Price” means, for any period of time, the applicable Contract Price set forth in Appendix A.

“Contract Year” means (i) the twelve (12) month period beginning on January 1 of the calendar year immediately following COD, and (ii) each succeeding period of twelve (12) consecutive months following the initial Contract Year described in the preceding clause (i); provided, the Stub Year shall not be part of a Contract Year.

“Contract Year Deemed Delivered Energy Amount” means for each Contract Year, an amount expressed in MWh equal to the sum of (i) the total Delivered Energy in such Contract Year plus (ii) the Seller Excused Energy Amount for such Contract Year.

“Costs” has the meaning set forth in Section 13.3(f).

“CPRA” has the meaning set forth in Section 14.21(d).

“Curtailment Period” means a period of time during the Delivery Term during which the generation of Facility Energy is required to be curtailed or reduced (in whole or part) as a result of an order, direction, alert, request, or notice from Seller’s Transmission Provider or the CAISO due to (a) a System Emergency, (b) system improvements, curtailments, or scheduled and unscheduled repairs or maintenance at or downstream from the Point of Delivery, (c) an event of Force Majeure at or downstream from the Point of Delivery or (d) any other reason as may from time to time be identified by the CAISO or Seller’s Transmission Provider.

“Default” has the meaning set forth in Section 13.1.

“Defaulting Party” has the meaning set forth in Section 13.1.

“Delivered Energy” means the MWh of Facility Energy delivered by Seller to the Point of Delivery, as measured by the CAISO approved Electric Metering Devices.

“Deliverability Upgrades” has the meaning set forth in Appendix A

“Delivery Term” has the meaning set forth in Section 2.2.

“Delivery Term Security” has the meaning set forth in Section 5.9(c).

“Dispute” has the meaning set forth in Section 14.3.

“Dispute Notice” has the meaning set forth in Section 14.3.

“DNP” has the meaning set forth in Section 7.2(i).

“Downgrade Event” shall mean any event that results in a Person failing to meet the credit requirements of a Qualified Issuer or the commencement of involuntary or voluntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation) with respect to such Person.

“Early Termination Date” has the meaning set forth in Section 13.3(a).

“EEI” means Edison Electric Institute.

“Effective Date” has the meaning set forth in Section 2.1.

“Electric Metering Devices” means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to Facility Energy. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

“Energy” means electrical energy (AC).

“Environmental Attributes” means RECS, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated (A) that are at any time recognized or deemed of value (or both) by Buyer, applicable law, or any voluntary or mandatory program of any Governmental Authority or other Person and (B) that are attributable to (i) generation by the Facility during the Agreement Term or Replacement Energy required to be delivered by Seller to Buyer during the Agreement Term and (ii) the emissions or other environmental characteristics of such generation or such Replacement Energy or its displacement of conventional or other types of Energy generation. Environmental Attributes include any of the aforementioned arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the “UNFCCC”), the Kyoto Protocol to the UNFCCC, California’s greenhouse gas legislation (including California Assembly Bill 32 (Global Warming Solutions Act of 2006)) or any similar international, federal, state or local program or crediting “early action” with a view thereto, or laws or regulations involving or administered by the CAMD, and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as renewable energy certificates of any kind.

Environmental Attributes for purposes of this definition are separate from the Facility Energy. Environmental Attributes exclude (a) investment tax credits, any local, state or federal production tax credits, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on ownership or a security interest in the Facility or Energy production from any portion of the Facility, including any investment or production tax credit expected to be available to Seller with respect to the Facility, (b) any other depreciation deductions and benefits, and other tax benefits arising from ownership or operation of the Facility, and (c) cash grants or other financial incentives from any local, state or federal government available to Seller with respect to the Facility.

“Environmental Attribute Reporting Rights” means all rights to report ownership of the Environmental Attributes to any Person under Section 1605(b) of the Energy Policy Act of 1992, as amended from time to time or any successor statute or any other current or future international, federal, state or local law, regulation or bill, or otherwise.

“Environmental Documents” has the meaning set forth in Section 3.1.

“EPA” means the Environmental Protection Agency and any successor agency.

“EPS Compliant” when used with respect to the Facility or any other facility at any time, means that the facility satisfies both the PUC Performance Standard and the CEC Performance Standard (in each case, to the extent applicable) in effect at the time; *provided*, if it is impossible for the facility to satisfy applicable requirements of both the PUC Performance Standard and the CEC Performance Standard in effect at any time, the facility shall be deemed EPS Compliant if it satisfies the applicable requirements of the CEC Performance Standard in effect at the time and those portions of the applicable requirements of PUC Performance Standard in effect at the time that it is possible for the facility to satisfy while at the same time satisfying the applicable requirements of the CEC Performance Standard in effect at the time.

“EPS Law” means Sections 8340 and 8341 of the California Public Utilities Code as amended from time to time or any successor statute.

“Excess CAISO Costs” has the meaning set forth in Section 7.4(b).

“Facility” means the Antelope Big Sky Ranch solar powered electric generating facility, including all property interests and related transmission and other facilities described in Appendix B.

“Facility Energy” means Energy generated by the Facility, less station load and transmission losses to the Point of Delivery.

“Facility Lender” means any lender or investor providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, including any equity and tax investor providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

“**FERC**” means the Federal Energy Regulatory Commission.

“**Force Majeure**” has the meaning set forth in Section 14.6(b).

“**Force Majeure Notice**” has the meaning set forth in Section 14.6(a).

“**Forced Outage**” means the removal of service availability of the Facility, or any portion of the Facility, for emergency reasons or conditions in which the Facility, or any portion thereof, is unavailable due to unanticipated failure, including as a result of Force Majeure.

“**GAAP**” means generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, in each case as the same are applicable to the circumstances as of the date of determination.

“**Gains**” has the meaning set forth in Section 13.3(f).

“**Governmental Authority**” means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority, or any Person acting as a delegate or agent of any Governmental Authority. The term “Governmental Authority” shall not include Buyer.

“**Guaranteed Generation**” means, for each Contract Year, eighty percent (80%) of the Annual Contract Quantity to be delivered from the Facility for such Contract Year.

“**IEEE**” means the Institute of Electrical and Electronics Engineers.

“**Initial Synchronization**” means the initial synchronization of the Facility to the Transmission System.

“**Insurance**” means the policies of insurance as set forth in Appendix F.

“**Interest Rate**” has the meaning set forth in Section 11.3.

“**ISA**” means Instrument Society of America.

“**Joint Powers Agreement**” means the “Southern California Public Power Authority Joint Powers Agreement” entered into pursuant to the provisions of the Act among Buyer and Buyer’s Members, dated as of November 1, 1980, as amended or modified from time to time.

“**Key Milestone(s)**” has the meaning set forth in Appendix I.

“**Lease(s)**” means any land lease agreement(s) between Seller and a Lessor.

“**Lessor**” means a lessor of property for the Facility under a Lease.

“**Lien**” means any mortgage, deed of trust, lien, security interest, retention of title or lease for security purposes, pledge, charge, encumbrance, equity, attachment, claim, easement, right of way, covenant, condition or restriction, leasehold interest, purchase right or other right of any kind, including an option, of any other Person in or with respect to any real or personal property.

“**Local Capacity Requirement**” or “**LCR**” means the minimum generation capacity required in a certain area to avoid reliability violation of the grid. The LCR is determined by increasing the import into the defined area and reducing generation inside the area until a violation occurs. The amount of generation inside the area when the violation appears is the LCR requirement.

“**Losses**” has the meaning set forth in Section 13.3(f).

“**Major Maintenance Blockout**” has the meaning set forth in Section 4.4.

“**Milestone**” has the meaning set forth in Section 3.5.

“**Milestone Date**” has the meaning set forth in Section 3.5.

“**MW**” means megawatt (AC).

“**MWh**” means megawatt-hour (AC).

“**NERC**” means the North American Electric Reliability Corporation.

“**Non-Defaulting Party**” has the meaning set forth in Section 13.3(a).

“**Notifying Party**” has the meaning set forth in Section 14.3(a).

“**OSHA**” means Occupational Safety & Health Administration.

“**Outside COD Date**” has the meaning set forth in Section 2.4(c).

“**Pacific Prevailing Time**” means the local time in Los Angeles, California.

“**Party**” or “**Parties**” has the meaning set forth in the preamble of this Agreement.

“**Performance Security**” means the Project Development Security, the Between Initial Synchronization and Final COD Security, or the Delivery Term Security, as applicable, that is required to be provided by Seller to Buyer to secure Seller’s performance under this Agreement.

“**Permits**” means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described that are required to be obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Facility, the production and delivery of Facility Energy, Capacity Rights and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and

occupational safety and health requirements), including the CEQA Determinations and the Permits described in Appendix B.

“**Person**” means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, government or other political subdivision, or other entity.

“**Participating Intermittent Resource Program**” or “**PIRP**” means the rules, protocols, procedures and standards for Participating Intermittent Resources under the CAISO’s Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

“**Point of Delivery**” means the first point of interconnection of the Facility to the CAISO controlled grid, at or near the Antelope Substation in Lancaster, California, or such other point as mutually agreed in writing by the Parties, provided that the Point of Delivery shall always be in the CAISO controlled grid unless otherwise approved by Buyer. Seller shall give notice in writing to Buyer as to the specific location of the Point of Delivery as soon as Seller obtains necessary information from the CAISO.

“**Pre-Certification Period**” has the meaning set forth in Section 6.1(c).

“**Present Value Rate**” means, at any date, 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 most nearly matches the Remaining Term at that date.

“**Products**” means any and all energy, including Facility Energy, capacity, ancillary products, services or attributes which are or can be produced by or are associated with the Facility at its full Contract Capacity, whether now attainable or established in the future, including, without limitation, delivered energy, renewable attributes, renewable energy credits, Resource Adequacy (RA) capacity attributes (including Local Capacity Right (LCR)) and all other environmental attributes.

“**Project Development Security**” has the meaning set forth in Section 5.9(a).

“**Proposed Sale Notice**” has the meaning set forth in Section 14.25.

“**Prudent Utility Practices**” means those practices, methods, and acts, that are commonly used by a significant portion of the solar powered electric generation industry in prudent engineering and operations to design and operate electric equipment (including solar powered facilities) lawfully and with safety, dependability, reliability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of FERC, NERC, WECC, each as may be amended from time to time, and all applicable Requirements of Law. Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the region and industry.

“Public Utilities Code” means the Public Utilities Code of the State of California, as may be amended from time to time.

“PUC” means the California Public Utilities Commission and any successor thereto.

“PUC Performance Standard” means, at any time, the greenhouse gas emission performance standard in effect at such time for baseload electric generation facilities owned or operated (or both) by load-serving entities and not local publicly-owned electric utilities, as established by the PUC or other Governmental Authority under the EPS Law.

“Qualified Guarantor” means a guarantor with a rating of AA- or higher by Moody’s Investors Services, Inc., unless agreed otherwise by the Parties.

“Qualified Issuer” means a Person that has a current long-term credit rating (corporate or long-term senior unsecured debt) of (1) “A2” or higher by Moody’s Investors Service, Inc.; or (2) “A” or higher by Standard & Poor’s.

“Quality Assurance Program” has the meaning set forth in Section 5.7.

“RA/LCR Attributes” has the meaning set forth in Appendix A.

“REC” or **“Renewable Energy Credit”** means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, which certificate is issued through the accounting system established by the CEC pursuant to PUC 399.25, evidencing that one (1) MWh of energy was generated and delivered from such eligible renewable energy resource. Such certificate is a tradable environmental commodity (also known as a “green tag”) for which the owner of the REC can prove that it has purchased renewable energy.

“Recipient Party” has the meaning set forth in Section 14.3(a).

“Remaining Term” means, at any date, the remaining portion of the Agreement Term at that date without regard to any early termination of this Agreement.

“Replacement Energy” has the meaning set forth in Section 9.2.

“Requirements” means, collectively, any applicable standards, Prudent Utility Practices, all applicable Requirements of Law, Seller’s Quality Assurance Program, the Milestones and all other requirements of this Agreement.

“Requirement of Law” means federal, state, local, or, as applicable, tribal laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

“Resource Adequacy” or **“RA”** means the mandatory planning and procurement process to ensure adequate resources to serve all customers in real time. The program requires that Load Serving Entities (LSEs) meet a Planning Reserve Margin for their obligations. The program provides deliverability criteria that each LSE must meet, as well as system and local capacity

requirements. Rules are provided for "counting" resources towards meeting resource adequacy obligations. The resources that are counted for RA purposes must make themselves available to the CAISO for the capacity for which they were counted. The CAISO's Reliability Requirements Program under MRTU tariff provisions are intended to complement the State of California's efforts to implement resource adequacy programs.

"Right of First Offer" and **"ROFO"** have the meaning set forth in Section 14.25.

"RPS Compliant" means, when used with respect to the Facility or any other facility at any time, that all Energy generated by such facility at all times shall, together with all of the associated Environmental Attributes, qualify as an "portfolio content category 1" eligible renewable resource under the RPS Law and meet the requirements of PUC Section 399.16(b)(1), as amended from time to time and any successor statute.

"RPS Guidebook" means the guidebook issued by the CEC that describes the eligibility requirements and process for certifying a renewable energy resource under RPS Law, as well as the CEC's accounting system for verification that a resource is RPS Compliant, as may be amended from time to time and any successor regulation.

"RPS Law" means the California Renewable Energy Resources Act, including the California Renewables Portfolio Standard Program, Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code.

"SCADA" has the meaning set forth in Section 7.2(h).

"Schedule" or **"Scheduling"** means the actions of Seller and Buyer, their Authorized Representatives, and their Transmission Providers (if applicable), of notifying, requesting and confirming to the CAISO the amounts of Delivered Energy to be delivered hourly at the Point of Delivery on any given date during the Agreement Term, all in the manner contemplated by the CAISO Tariff.

"Scheduled Outage" means any outage with respect to the Facility other than a Forced Outage.

"Scheduled Outage Projection" has the meaning set forth in Section 4.4.

"Scheduler" means the Person acting as Scheduling Coordinator for each Party. The contact information for Buyer's Scheduling Coordinator and Seller's Scheduling Coordinator as of the Effective Date is set forth in item 4, Appendix C.

"Scheduling Coordinator" has the meaning set forth in the CAISO Tariff.

"Seller" has the meaning set forth in the preamble of this Agreement.

"Seller Excused Energy Amount" means, for each Contract Year, an amount expressed in MWh, equal to the aggregate amount of reduction(s) in Delivered Energy during such Contract Year as a result of Curtailment Periods, Transmission Provider outages or curtailments, Buyer's breach or default hereunder or failure to accept Delivered Energy or events of Force

Majeure. No less frequently than quarterly during each Contract Year, Seller shall calculate and provide notice to Buyer of the then cumulative amount of the Seller Excused Energy Amount for such Contract Year, along with an explanation in reasonable detail of the calculation thereof based on historical Facility data, meteorological data, output projections (including by the CAISO, if applicable) and other relevant data. The calculation shall be subject to review and approval by Buyer.

“**Seller Parties**” means Seller and all Affiliates of Seller executing any Ancillary Document, including any such Affiliate providing Performance Security, now or hereafter in effect.

“**Shortfall Energy**” has the meaning set forth in Section 9.1.

“**Shortfall Liquidated Damages**” has the meaning set forth in Section 9.3(a).

“**Shortfall Makeup Period**” has the meaning given in Section 9.1.

“**Site**” means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B as owned or leased by Seller where the Facility is located or will be located, and including any easements, rights-of-way or contractual rights held or to be held by Seller for transmission lines or roadways servicing such Site or the Facility located (or to be located) thereon.

“**Site Control**” has the meaning set forth in Section 9.11.

“**Special Purpose Entity**” means a limited liability company that at all times on and after the Effective Date:

(a) shall not (without the prior written consent of Buyer) (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) acquire by purchase or otherwise all or substantially all of the business or assets of or beneficial interest in any other entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its properties or assets except to the extent permitted herein, (iv) modify, amend or waive in any material respect any provisions of its organizational documents related to its status as a Special Purpose Entity, or (v) terminate its organizational documents or its qualifications and good standing in California or Delaware;

(b) its organizational documents do and will limit its activities to acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Facility, and transacting lawful business that is appropriate to accomplish the foregoing;

(c) has not been, is not, and will not be engaged in any business unrelated to acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Facility, and transacting lawful business that is appropriate to accomplish the foregoing;

(d) has not had, does not have and will not have, any assets other than those related to the Facility and assets incidental thereto;

(e) has held itself out and will hold itself out to the public as a legal entity separate and distinct from any other entity and has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity, provided that (for the avoidance of doubt) the foregoing shall not restrict Seller's parent or any other Seller Affiliate from identifying its indirect relationship to the Facility through Seller;

(f) will maintain its financial statements, bank accounts, accounts, books, resolutions, agreements and records separate from any other Person and has filed and will file its own tax returns (except to the extent treated as a "disregarded entity" for tax purposes or is otherwise not required to file separate tax returns under applicable law);

(g) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and (and except for tax purposes) not as a division, department or part of any other Person;

(h) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(i) has not made and will not make loans or advances to any Affiliate or hold evidence of indebtedness issued by any Affiliate or made any fraudulent conveyances to any Person;

(j) except for tax purposes, has not identified and will not identify its members, or any Affiliate, as a division or department or part of it, and has not identified itself and shall not identify itself as a division or department of any other Person;

(k) has not entered into or been a party to any material transaction with its members or Affiliates, and will not enter into or become a party to any transaction with its members or Affiliates, in either case except in the ordinary course of its business and on terms which are commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party (it being acknowledged that Seller has entered into existing Site lease arrangements with a Seller Affiliate);

(l) except as permitted pursuant to this Agreement, does not and will not have any of its obligations guaranteed by any Affiliate and will not hold itself out as being responsible for the debts or obligations of any other Person;

(m) will comply in all material respects with all of the terms and provisions contained in its organizational documents and has done or caused to be done and will do all things necessary to preserve its existence;

(n) will not commingle its funds or assets with those of any Person and will not participate in any cash management system with any other Person;

(o) has held all of its material assets in its own name and will hold its assets in its own name, and has conducted all material business in its own name and will conduct all business in its own name;

(p) will maintain its financial statements, accounting records and other entity documents separate from any other Person and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; *provided, however*, that, to the extent permitted by GAAP, any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(q) will pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations (it being acknowledged that Seller may have no employees to the extent it contracts out its requirements for all necessary managerial, operational and other services);

(r) will observe in all material respects all limited liability company formalities;

(s) has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for the debts of any other Person and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person, except as permitted pursuant to this Agreement;

(t) has not acquired and will not acquire obligations or securities of its members or any Affiliate;

(u) will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared space and services performed by any employee of an Affiliate;

(v) now maintains and uses, and will maintain and use, separate stationery, invoice and checks bearing its name; such stationery, invoices and checks utilized by it or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being its agent;

(w) has not pledged and will not pledge its assets to secure the obligations of any other Person;

(x) now has, and will have, an operating agreement that provides that it will not: (A) dissolve or liquidate; (B) sell, transfer, lease or otherwise convey all or substantially all of its assets; or (C) engage in any business activity other than as described above;

(y) has been, is and intends to remain solvent and has paid and intends to continue to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall have or become due, and has maintained, is maintaining and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; *provided, however*, that this clause (y) shall not require anyone to make any contribution of capital to the Special Purpose Entity and shall not require the Special Purpose Entity to make any capital call on its members or to otherwise raise capital; and

(z) has and will have no indebtedness other than (i) loans by or other indebtedness to Facility Lenders providing construction, term and other financing for or in connection with the Facility and any loan or other indebtedness in replacement or substitution thereof, (ii) liabilities incurred in the ordinary course of business described herein or otherwise relating to its ownership, management, leasing, and operation of the Facility, and the administration of the Facility and Facility related contracts, and (iii) such other liabilities that are related to the foregoing or otherwise permitted pursuant to this Agreement;

except that, until the execution of the principal documents for the Facility's construction financing, such limited liability company may (i) satisfy the insurance requirements of this Agreement by or through Seller's parent entities or investors provided that the policies or endorsements extending insurance coverage to Seller shall reference Seller as an independent legal entity and (ii) satisfy any required security/performance assurance, whether due to be provided to Buyer under this Agreement or the CAISO, by or through Seller's parent entities or investors so long as each letter of credit, guaranty or other instrument of such security/performance assurance references Seller as an independent legal entity.

"Stub Year" means the period between COD and the end of the calendar year, i.e. December 31, of the year during which COD is achieved. The Stub Year shall not be considered part of the 25-year term provided for in Section 2.2 of this Agreement.

"Successor Entity" has the meaning set forth in Section 13.1(j).

"System Emergency" has the meaning set forth in the CAISO Tariff.

"Tax" or **"Taxes"** means each federal, state, county, local and other (a) net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property or leasehold tax and (b) customs, duty or other fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.

"Termination Notice" has the meaning set forth in Section 13.3(a).

"Termination Payment" means a payment in an amount equal to the Non-Defaulting Party's (a) Losses, plus (b) Costs, minus (c) Gains; provided, however that if such amount is a negative number, the Termination Payment shall be equal to zero.

"Transmission Providers" means the Persons operating the Transmission Systems providing Transmission Services to or from the Point of Delivery.

"Transmission Services" means the transmission and other services required to transmit Facility Energy to or from the Point of Delivery.

"Transmission System" means the facilities utilized to provide Transmission Services.

"Uncured Shortfall Energy" has the meaning set forth in Section 9.1(a).

"Unexcused Cause" has the meaning set forth in Section 14.6(b).

“WECC” means the Western Electricity Coordinating Council.

“WREGIS” means Western Renewable Energy Generation Information System.

“WREGIS Certificates” has the meaning set forth in Section 8.4.

“WREGIS Operating Rules” means the rules describing the operations of the Western Renewable Energy Generation Information System, as published by WREGIS.

Other terms defined herein have the meanings so given when used in this Agreement with initial-capitalized letters.

Section 1.2 Interpretation. In this Agreement, unless a clear contrary intention appears:

- (a) Time is of the essence;
- (b) the singular number includes the plural number and vice versa;
- (c) reference to any Person includes such Person’s successors and assigns but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement;
- (d) reference to any gender includes the other;
- (e) reference to any agreement (including this Agreement), document, instrument, tariff or Requirement means such agreement, document, instrument, or tariff, or Requirement, as amended, modified, replaced or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
- (f) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;
- (g) “hereunder”, “hereof”, “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;
- (h) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;
- (i) relative to the determination of any period of time, “from” means “from and including”, “to” means “to but excluding” and “through” means “through and including”;
- (j) reference to time shall always refer to Pacific Prevailing Time; and reference to any “day” or “month” shall mean a calendar day or calendar month, as applicable, unless otherwise indicated; and
- (k) the term “or” is not exclusive.

ARTICLE II

EFFECTIVE DATE, TERM, AND EARLY TERMINATION

Section 2.1 Effective Date. This Agreement shall become effective on the later of (a) the date that both Parties have executed this Agreement, and (b) the date that all of the conditions listed below have been satisfied (the “*Effective Date*”). The Parties shall reasonably cooperate to cause the conditions below to be satisfied and, if requested by either Party, shall jointly execute a certificate that confirms the Effective Date on the date of occurrence thereof and that ratifies the existence and effectiveness of this Agreement.

(a) Buyer shall have received a CEC pre-certification form duly filed by Seller with respect to the Facility’s pre-CEC Certification;

(b) Seller shall have obtained Site Control;

(c) Buyer shall have received copies of all requisite resolutions and incumbency certificates of each Seller Party and any other documents evidencing all actions taken by each Seller Party to authorize the execution and delivery of this Agreement and all Ancillary Documents requiring execution by such Seller Party, such resolutions to be certified as of the Effective Date by an authorized representative of the Seller Party;

(d) Buyer shall have received an executed original of a written legal opinion of Orrick Herrington & Sutcliffe LLP, counsel for Seller, or other counsel reasonably acceptable to Buyer, concerning the enforceability and due authorization of this Agreement, the Ancillary Documents and related matters in form and substance reasonably satisfactory to Buyer dated as of the Effective Date and addressed to Buyer;

(e) The Project Development Security shall have been delivered to Buyer;

(f) Buyer shall have received all certificates and other documents required to establish that the Insurance is in full force and effect upon the Effective Date;

(g) Buyer shall have received satisfactory evidence that Seller has obtained all Permits described in Appendix B, except for any such Permits not yet required to be obtained but which can reasonably be expected to be obtained when needed, and each such Permit shall be final and non-appealable; and

(h) Buyer shall have received true, correct and complete copies of all documents relating to the environmental condition of the Site in form, scope and substance reasonably satisfactory to Buyer, including any Phase I Environmental Site Assessment prepared relative to the Site and the CEQA Determination.

Section 2.2 Agreement Term and Delivery Term.

(a) **Agreement Term.** The term of this Agreement (the “*Agreement Term*”) shall commence on the Effective Date and shall end on the last day of the Delivery Term or upon the expiration or earlier termination of this Agreement in accordance with the terms hereof.

(b) **Delivery Term.** This Agreement shall have a delivery term (the “*Delivery Term*”) commencing on COD and consisting of the Stub Year plus twenty five (25) consecutive Contract Years thereafter, unless sooner terminated in accordance with the terms of this Agreement, or unless extended pursuant to clauses (i) or (ii) of this Section 2.2(b).

(i) If Section 3.2(b) of Appendix A becomes applicable, then at the option of Buyer the Delivery Term may be extended by one-half of the difference (measured in months) between the date of completion of the Deliverability Upgrades and COD, less 24 months; for example, if the Deliverability Upgrades completion is thirty six (36) months from COD, then the Delivery Term shall be extended by six (6) months $[(36-24)/2=6]$. Buyer shall pay the Contract Price specified in Appendix A of this Agreement for Products delivered during the extended Delivery Term;

(ii) If Section 3.2(c) of Appendix A becomes applicable, then at the option of Buyer the Delivery Term may be extended by the difference (measured in months) between the date of completion of the Deliverability Upgrades and COD, less twenty four (24); for example, if the Deliverability Upgrade completion is seventy two (72) months from COD, then the Delivery Term shall be extended by forty eight (48) months $[72-24=48]$. Buyer shall pay the Contract Price specified in Appendix A of this Agreement for Products delivered during the extended Delivery Term; and

(iii) Buyer shall notify Seller at least thirty six (36) months before the expiration of the initial twenty-five (25) year Delivery Term, whether Buyer will elect to extend the Delivery Term as part of its right to exercise its option under Section 2(b)(i) or (ii).

Section 2.3 Survivability. The provisions of this Article II, Article XII, Article XIII, and Article XIV shall survive for a period of one year following the termination of this Agreement (to the extent applicable). The provisions of Article XI shall (to the extent applicable) survive for a period of four (4) years following final payment made by the Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, Article VIII, and Article IX shall continue in effect after termination to the extent necessary to provide for final billing, adjustments, and deliveries related to the period prior to termination of this Agreement.

Section 2.4 Early Termination.

(a) **Early Termination by Mutual Agreement.** This Agreement may be terminated by mutual written agreement of the Parties.

(b) **Early Termination for Default.** Upon the occurrence of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 13.3.

(c) **Early Termination for Failure to Achieve Commercial Operation Date.** Buyer, in its sole discretion, may terminate this Agreement effective upon notice to Seller if Seller fails to achieve the Commercial Operation Date on or before December 31, 2015 (the “**Outside COD Date**”). The Outside COD Date may not be extended (without the written approval of Buyer) for any reason, whether due to the occurrence of Force Majeure or otherwise.

(d) **Termination for Failure to Obtain CEC Certification.** Buyer may terminate this Agreement effective upon notice to Seller pursuant to Section 13.1(b) if the Facility is not CEC Certified by the date that is six (6) months following the Commercial Operation Date (subject to an extension of such six (6) month period if a longer period is required due to any Change in Law), provided that Seller does not cure the same within the cure period set forth in Section 13.1(b).

(e) **Early Termination for Force Majeure.** This Agreement may be terminated pursuant to Section 14.6.

(f) **Exercise of First Right of Offer.** If Buyer accepts the Right of First Offer for any proposed sale of the Facility, this Agreement shall terminate effective upon the consummation of any sale of the Facility to Buyer pursuant to such Right of First Offer.

(g) **Termination by Buyer Re CEQA.** This Agreement may be terminated when and as provided in Section 3.1.

(h) **Effect of Termination.** Any termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of either Party for Defaults occurring prior to such termination.

ARTICLE III

DEVELOPMENT OF THE FACILITY

Section 3.1 Permitting and CEQA Determinations. Seller, at its expense, shall timely take all steps necessary to obtain all Permits required to construct, maintain and operate the Facility in accordance with the Requirements, including representing the Facility as necessary at all meetings and proceedings before all Governmental Authorities and timely preparing all environmental documents requested by the CEQA lead agency in connection with the review of the Facility under CEQA (the “*Environmental Documents*”). Buyer shall have all rights, powers and responsibilities of a responsible agency under CEQA to participate in the CEQA review of the Facility, including commenting on the lead agency’s notice of preparation, consulting with the lead agency during preparation of the CEQA Documents, and commenting on the draft CEQA Documents. Buyer shall have the full discretion to consider the CEQA Documents in order to reach its own CEQA decision about the Facility and retains its full authority under CEQA to: (i) adopt feasible mitigation measures or alternatives to avoid or lessen significant environmental impacts resulting from the Facility; (ii) determine that any significant impacts that cannot be mitigated are acceptable due to overriding concerns; or (iii) decide to terminate this Agreement due to the Facility’s significant adverse environmental impacts. On or before the fortieth (40th) day after the lead agency’s filing of a notice of determination under CEQA, Buyer shall issue one of the following: (i) a notice confirming it has complied with CEQA Guidelines sections 15096(a), (f), (g) and (h) by considering the CEQA Documents, adopting applicable alternatives or mitigation measures, making findings, and filing a Notice of Determination for its approval of the purchase of Facility Energy (the “*CEQA Acceptability Notice*”), or (ii) a notice that Buyer, based upon its independent review of the CEQA Documents, has decided not to approve the purchase of Facility Energy and to terminate this Agreement, due

to the significant adverse environmental effects from the Facility (the “*CEQA Unacceptability Notice*”). In connection with the issuance of a CEQA Acceptability Notice, Buyer shall file, post and deliver such notices as may be required to limit judicial review of the Buyer’s approval of this Agreement to a 30-day period. The Parties shall work together in good faith to make any necessary amendments to this Agreement required in connection with the CEQA review process. If Buyer provides to Seller the CEQA Unacceptability Notice, this Agreement shall terminate.

Section 3.2 Project Design. Seller shall determine the proposed location, design, and configuration of the Facility as it deems appropriate, subject to the Requirements, including the characteristics and other requirements for the Facility set forth in Appendix B, and also subject to any conditions imposed by the lead agency or any responsible agency (including Buyer) as part of the CEQA review of the Facility.

Section 3.3 Site Confirmation. Seller represents and warrants that (a) Seller’s agents and representatives have visited, inspected and become familiar with the Site and its surface physical condition relevant to the obligations of Seller pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, and topographical, solar radiation, air and water quality conditions, (b) Seller is familiar with all local and other conditions that may be material to Seller’s performance of its obligations under this Agreement (including, transportation, seasons and climate, access, weather, handling and storage of materials and equipment, and availability and quality of labor and utilities), and (c) Seller has determined that the Site constitutes an acceptable and suitable site for the construction and operation of the Facility in accordance herewith. Any failure by Seller to take the actions described in this Section shall not relieve Seller from any responsibility for estimating properly the difficulty and cost of successfully constructing, maintaining or operating the Facility in accordance with this Agreement or from proceeding to construct, maintain and operate the Facility successfully without any additional expense to Buyer. The foregoing shall not restrict Seller’s right to claim Force Majeure hereunder to the extent the requirements therefor hereunder are satisfied.

Section 3.4 Certification of Commercial Operation Date. Seller shall provide Buyer with notice when Seller believes that all conditions precedent to achieving Commercial Operation of the Facility as specified in the definition of “*Commercial Operation*” in Section 1.1 have been satisfied. Buyer shall either accept the notice, or reject the notice if reasonable cause exists, provided that Buyer shall not unreasonably withhold, delay or condition any acceptance of such notice, and in any event shall provide in reasonable detail a written description of the reasons for any rejection. Buyer shall in all cases respond to any such notice within thirty (30) days and shall be deemed to have accepted such notice if Buyer fails to respond in such time. If Buyer rejects the notice, Seller shall promptly correct any defects or deficiencies and resubmit the notice. The Commercial Operation Date shall be deemed to relate back to the date of any Seller notice of Commercial Operation that is accepted (or deemed accepted) by Buyer. The Milestone Date for the Commercial Operation Date shall be extended automatically during the period starting five (5) Business Days following the date of Seller’s delivery of any notice of COD under this Section 3.4 until the date on which Buyer responds to such notice under this Section 3.4. Any delay liquidated damages otherwise payable under Section 3.6 shall be excused for each day following the date of Seller’s delivery of any notice of COD under this Section 3.4 until the date on which Buyer responds to such notice under this Section 3.4.

Section 3.5 Milestone Schedule. Attached as Appendix I is a milestone schedule with deadlines for the development of the Facility through the Commercial Operation Date (each, a “*Milestone*”). Until the Commercial Operation Date, Seller shall provide Buyer a quarterly report (monthly starting six months before COD) setting forth the status of each Milestone and all relevant progressions, including any slippage in any deadline. Seller shall achieve each Milestone by the guaranteed date specified therefor in Appendix I, subject to extension of Key Milestones for Force Majeure delays and other items listed in Section 3.5(a) below (each such guaranteed date, including any extensions thereto under this Agreement, a “*Milestone Date*”). Seller’s failure to achieve any two consecutive Milestones by its Milestone Date shall require Seller to prepare and provide to Buyer a remedial action plan. Except as expressly set forth in Section 2.4 and Section 3.6, the preparation and delivery of such remedial action plan shall be Seller’s sole liability and obligation, and Buyer’s sole right and remedy, for Seller’s failure to achieve any Milestone by its Milestone Date.

(a) Without prejudice to Buyer’s rights to terminate this Agreement under Section 2.4, each of the Key Milestones shall be extended as follows:

(i) If all of the Permits necessary to begin construction are not received by the expected date for such Milestone on Appendix I, then the Milestone Date for such Milestone (and other Milestone Dates) may be extended by Buyer’s written consent to allow additional time for this purpose;

(ii) If all of the interconnection facilities, transmission upgrades and new transmission facilities, if any, described in Seller’s interconnection agreement with the CAISO required to interconnect to the Facility to the CAISO’s controlled grid, as applicable, have not been completed and/or placed into operation, as appropriate by the CAISO or the Transmission Provider on or before September 1, 2014, then each of the Milestone Dates for the Key Milestones shall be automatically extended for up to six (6) months on a day-for-day basis until the date of such completion and placement into operation; Seller shall provide Buyer with documentation as may be reasonably available to document any such delays;

(iii) Each of the Milestone Dates for the Key Milestones shall be automatically extended for up to twelve (12) months on a day-for-day basis for delays caused by Force Majeure.

(b) In no event shall any Milestone Date for any Key Milestone be extended beyond the Outside COD Date for any reason, including Force Majeure, without Buyer’s prior written consent.

Section 3.6 Delay Liquidated Damages.

(a) If Seller fails to achieve a Milestone set forth in Appendix I (other than the Commercial Operation Date) by its respective Milestone Date, Seller shall pay liquidated damages to Buyer in an amount equal to Four Thousand Dollars (\$4,000) per day, for each day intervening between such Milestone Date and the earlier of (x) the date such Milestone is achieved, and (y) the date, if any, on which this Agreement is terminated pursuant to Section 2.4.

(b) If Seller fails to achieve the Commercial Operation Date on or before the Milestone Date therefor, Seller shall pay liquidated damages to Buyer in an amount equal to Ten Thousand Dollars (\$10,000) per day for each day intervening between such Milestone Date and the earlier of (x) the Commercial Operation Date, and (y) the date, if any, on which this Agreement is terminated pursuant to Section 2.4.

(c) Damages that Buyer would incur due to Seller's failure to timely achieve a Milestone would be difficult or impossible to predict with certainty, and it is impractical or difficult to assess actual damages in those circumstances, but the liquidated damages set forth in this Section 3.6 are fair and reasonable calculations of such damages, and shall be Seller's sole liability and obligation, and Buyer's sole right and remedy, for Seller's failure to achieve any Key Milestone by its Milestone Date.

(d) If during any period Seller has failed to achieve two or more Milestones by their respective Milestone Dates, Seller shall only be obligated to pay liquidated damages for the first of such Milestones, and shall not pay liquidated damages concurrently for more than one missed Milestone Date.

(e) If Seller pays any delay liquidated damages under this Section 3.6, and thereafter achieves the Commercial Operation Date on or before the original Milestone Date therefor as set forth on Appendix I (without taking into account any extensions to such Milestone Date), then Buyer shall reasonably promptly refund to Seller all such delay liquidated damages previously paid.

Section 3.7 Decommissioning and Other Costs. Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition without regard to the timing or cause of the decommissioning or demolition.

ARTICLE IV

OPERATION AND MAINTENANCE OF THE FACILITY

Section 4.1 General Operational Requirements. Seller shall, at all times:

(a) At its sole expense, operate and maintain the Facility (i) in accordance with the Requirements, and (ii) consistent with Prudent Utility Practices, in a manner that is reasonably likely to maximize the output of Energy from the Facility and result in a useful life for the Facility of not less than 25 years;

(b) Employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer and Buyer's Agent, and ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term;

(c) Operate and maintain the Facility with due regard for the safety, security and reliability of the interconnected facilities and Transmission System; and

(d) Comply with operating and maintenance standards recommended or required by the Facility's equipment suppliers.

Section 4.2 Operation and Maintenance Plan. Seller shall devise and implement a plan of inspection, maintenance, and repair for the Facility and the components thereof in order to maintain such equipment in accordance with Prudent Utility Practices, and shall keep records with respect to inspections, maintenance, and repairs thereto. The aforementioned plan and all records of such activities shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice.

Section 4.3 Environmental Credits. Seller shall, if applicable, obtain in its own name and at its own expense all pollution or environmental credits or offsets necessary to operate the Facility in compliance with the Requirements of Law.

Section 4.4 Scheduled Outage.

(a) Buyer and Seller shall cooperate to minimize Scheduled Outages during certain consecutive or nonconsecutive weeks of each Contract Year (not to exceed twelve (12) weeks per Contract Year) (the "**Major Maintenance Blockout**"), but in accordance with Prudent Utility Practices. No later than one hundred twenty (120) days prior to the anticipated Commercial Operation Date and the commencement of each Contract Year thereafter, Buyer shall provide Seller with its specified Major Maintenance Blockout. In the absence of such updated notification, the most recent previous Major Maintenance Blockout notification shall apply. Seller shall attempt to minimize its Scheduled Outages during the Major Maintenance Blockout consistent with Prudent Utility Practices. No later than sixty (60) days prior to the anticipated Commercial Operation Date and the commencement of each Contract Year thereafter, Seller shall provide Buyer or Buyer's Agent with its non-binding written projection of all Scheduled Outages for the succeeding three (3) years (the "**Scheduled Outage Projection**") reflecting a minimized schedule of scheduled maintenance during the Major Maintenance Blockout. In addition, Seller shall cooperate in good faith with Buyer's maintenance scheduling requests consistent with Prudent Utility Practices. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (i) the anticipated start and end dates of each Scheduled Outage; (ii) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (iii) the anticipated MW capacity, if any, during the Scheduled Outage. Seller shall notify Buyer or Buyer's Agent of any change in the Scheduled Outage Projection as soon as practicable, but in no event later than thirty (30) days prior to the originally-scheduled date of the Scheduled Outage. Seller will use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to the timing of Scheduled Outages and Seller will, to the extent consistent with Prudent Utility Practices, coordinate Scheduled Outages to coincide with planned transmission outages. In the event of a System Emergency, Seller shall make all reasonable efforts to reschedule any Scheduled Outage previously scheduled to occur during the System Emergency.

(b) In the event of a Forced Outage affecting at least ten percent (10%) of the installed capacity of the Facility, to the extent practicable, Seller shall notify Buyer or Buyer's Agent within two (2) hours after the commencement of the Forced Outage and, within seven (7)

days thereafter, provide detailed information concerning the Forced Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the maintenance or repair work to be performed during the Forced Outage; and (iv) the anticipated MW capacity, if any, during the Forced Outage. Seller shall take all reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such outages

ARTICLE V

COMPLIANCE DURING CONSTRUCTION AND OPERATION PERIOD; GUARANTEES

Section 5.1 Guarantees.

(a) Subject to Section 5.1(b) and the other provisions of this Agreement, Seller shall use all reasonable efforts to assure that (i) it will perform, or cause to be performed, all engineering, design, development, construction, operation, and maintenance of the Facility in a good and workmanlike manner and in accordance with the Requirements; and (ii) throughout the Agreement Term (a) the Facility, its engineering, design and construction, its components, and related work, will be free from material defects caused by errors or omissions in design, engineering and construction, and (b) the Facility and all parts thereof will be designed, constructed, tested, operated, and maintained in compliance with the Requirements, all applicable requirements of the latest revision of the ASTM, ASME, AWS, EPA, EEI, IEEE, ISA, National Electrical Code, National Electric Safety Code, OSHA, Cal-OSHA, as applicable, Uniform Building Code, Uniform Plumbing Code, and the applicable local County Fire Department Standards of the applicable county, and other codes and standards and operations and maintenance requirements applicable to the services, equipment, and work by Seller or its contractors performed under this Agreement (preceding clauses (i) and (ii) are herein referred to as the “*Assurances*”).

(b) If it is ever determined that any Assurance has not been, or ceases to be, fulfilled, then Seller shall take such actions to address the situation (consistent with Prudent Utility Practices) as Seller determines in its reasonable discretion, including, potentially, by the prompt repair or replacement of any component of the Facility that does not comply with the foregoing Assurances. For the avoidance of doubt, (i) Seller shall not be in breach or default of Section 5.1 as a result of any Assurance not being (or ceasing to be) fulfilled as long as Seller complies with the immediately preceding sentence, and (ii) if any Assurance ceases to be fulfilled as a result of any change in any Requirement (or other standard referenced in the Assurances) following the date hereof, then Seller shall only be required to comply with such change to the extent required by Prudent Utility Practices or the express requirements of this Agreement.

(c) To the extent required by Prudent Utility Practices, Seller shall at all times exercise commercially reasonable efforts to undertake all recommended or required updates or modifications to the Facility, and its equipment and materials, including procedures, programming and software in a timely manner. Seller shall, at its expense, maintain throughout

the Agreement Term an inventory of spare parts for the Facility in a quantity that is consistent with Prudent Utility Practice.

Section 5.2 Buyer's Right To Monitor In General. Subject to compliance with Seller's reasonable Site safety and access rules, Buyer shall have the right, and Seller shall permit Buyer and its representatives, advisors, engineers and consultants, to observe, inspect and monitor all operations and activities at the Site, including the performance of the contractors under the construction contracts pertaining to the Facility, the design, engineering, procurement and installation of the equipment, start up and testing, and the achievement of Commercial Operation.

Section 5.3 Effect of Review by Buyer. Any review by Buyer of the design, construction, engineering, operation or maintenance of the Facility is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review with Seller, nor shall any such review or the results thereof (whether or not the results are shared with Seller) nor any failure to conduct any such review relieve Seller from any of its obligations under this Agreement. By making any such review, Buyer makes no representation as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller shall in no way represent to any third party that any such review by Buyer of the Facility, including, but not limited to, any review of the design, construction, operation or maintenance of the Facility by Buyer, is a representation by Buyer as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability thereof.

Section 5.4 Reporting and Information. Subject to Seller's right to reasonably redact confidential or proprietary information, Seller shall provide to Buyer such other information (as is reasonably available to Seller) regarding the permitting, engineering, construction or operations, of Seller, its subcontractors or the Facility, financial or otherwise, and other data concerning Seller, its subcontractors or the Facility as Buyer may, from time to time, reasonably request. Until the Commercial Operation Date, Seller shall provide to Buyer quarterly written reports describing permitting and development activities in the previous quarter and anticipated progress and activities for the upcoming quarter.

Section 5.5 Startup and Testing. Prior to the Commercial Operation Date, Buyer shall have the right to:

(a) review and monitor (at the Site) the contractors' performance and achievement of all initial performance tests during Facility start-up, and all other material tests required under the Facility construction contracts performed to achieve any Milestone, and Seller shall, or shall cause its contractor to provide at least ten (10) Business Days to Buyer before any such test begins;

(b) be present to witness such initial performance tests and review the results thereof; and

(c) perform such detailed examinations, inspections, quality surveillance and tests as, in the judgment of Buyer, are appropriate and advisable to determine that the Facility

equipment and all ancillary components of the Facility have been installed in accordance with the Facility construction contracts and the Requirements, provided that Buyer may not unreasonably interfere with any Site activities of Seller or Seller's contractors, or Seller's timely achievement of COD.

Section 5.6 Contract Provisions. Seller shall cause to be included in the Facility construction contracts provisions whereby the contractors and Seller reasonably enable the following:

(a) grant to Buyer rights of access to the Facility at all reasonable times (but subject to reasonable safety precautions) and the right to inspect, make notes about, and copy all documents, drawings, plans, specifications, permits, test results and information as Buyer may reasonably request, subject to redaction of confidential or proprietary information;

(b) make the personnel of, and consultants to, the contractors and Seller available to Buyer and its agents, representatives and consultants at reasonable times and with prior notice for purpose of discussing any aspect of the Facility or the development, engineering, construction, installation, testing or performance thereof; and

(c) otherwise cooperate in all reasonable respects with Buyer and its Authorized Representatives, advisors, engineers and consultants in order to allow Buyer to exercise its rights under this Section 5.6.

Section 5.7 Quality Assurance Program. Seller shall develop (or be responsible to cause its primary EPC contractor to develop) a written quality assurance policy ("*Quality Assurance Program*") in accordance with the requirements of Appendix H within sixty (60) days from the date Seller executes its primary EPC contract, and it shall be deemed to be an Assurance under Section 5.1 that Seller cause all work performed on or in connection with the Facility to comply with said Quality Assurance Program.

Section 5.8 Ownership and Operation. The Facility shall be owned or controlled by Seller during the Agreement Term, subject to Seller's rights to carry out a sale-leaseback or similar financing; provided that if Seller desires to carry out a sale-leaseback financing it shall accommodate Buyer's reasonable requests as to the identity and status of the lessor/owner of the Facility. Seller shall not sell or otherwise dispose of any material portion of the Facility or any material property or assets that are related to the operation, maintenance and use of the Facility other than in the ordinary course of Seller's business and in a manner that would not materially impair Seller's ability to perform its obligations hereunder. The Facility shall be operated during the Delivery Term by a Person approved by Buyer, such approval to any Person(s) when identified and requested by Seller from time to time not to be unreasonably delayed, withheld or conditioned by Buyer.

Section 5.9 Seller Performance Security.

(a) As a condition to the occurrence of the Effective Date, Seller shall have furnished to Buyer one or more letters of credit issued by Qualified Issuers, cash, or guarantees from Qualified Guarantors, or a combination of the three, in the form attached hereto as Appendices E or G, as applicable, and in the aggregate amount of \$500,000, which shall

guarantee Seller's obligations under this Agreement ("**Project Development Security**"). From and after the Effective Date, Seller shall maintain such Project Development Security until Seller posts the Between Initial Synchronization and Final COD Security pursuant to Section 5.9(b) below, or until Buyer is required to return the Project Development Security under Section 5.9(d) below.

(b) As a condition to the period between Initial Synchronization and COD, Seller shall have furnished to Buyer one or more letters of credit issued by Qualified Issuers, cash, or guarantees from Qualified Guarantors, or a combination of the three, in the form attached hereto as Appendices E or G, as applicable, and in the aggregate amount of \$1,000,000, which shall guarantee Seller's obligations under this Agreement ("**Between Initial Synchronization and Final COD Security**"); provided that Seller may elect to apply the Project Development Security toward the Between Initial Synchronization and Final COD Security. From and after the period between Initial Synchronization and COD, Seller shall maintain such Between Initial Synchronization and Final COD Security until Seller posts the Delivery Term Security pursuant to Section 5.9(c) below, or until Buyer is required to return the Between Initial Synchronization and Final COD Security under Section 5.9(d) below.

(c) As a condition to the achievement of the Commercial Operation Date, Seller shall have furnished to Buyer one or more letters of credit issued by Qualified Issuers, cash, or guarantees from a Qualified Guarantor, or a combination of the three, in the form attached hereto as Appendices E or G, as applicable, and in the aggregate amount of \$1,500,000, which shall guarantee Seller's obligations under this Agreement ("**Delivery Term Security**"); provided that Seller may elect to apply the Project Development Security or the Between Initial Synchronization and Final COD Security toward the Delivery Term Security. From and after the Commercial Operation Date, Seller shall maintain such Delivery Term Security until the end of the Agreement Term or until Buyer is required to return the Delivery Term Security to Seller as set forth in Section 5.9(f) below.

(d) If upon the Commercial Operation Date no damages or other amounts are due and owing to Buyer under this Agreement, or if this Agreement terminates prior to the occurrence of the Commercial Operation Date while the Project Development Security or Between Initial Synchronization and Final COD Security is outstanding, then Seller shall no longer be required to maintain the Project Development Security and Between Initial Synchronization and Final COD Security, and Buyer shall return to Seller the Project Development Security and Between Initial Synchronization and Final COD Security, less any amounts drawn by Buyer as permitted under the terms of this Agreement. The Project Development Security and Between Initial Synchronization and Final COD Security (or portions thereof) due to Seller shall be returned to Seller within ten (10) Business Days after (i) Seller's provision of the Delivery Term Security, unless Seller elects to apply the Project Development Security or Between Initial Synchronization and Final COD Security toward the Delivery Term Security, or (ii) the effective date of such earlier termination when damages are no longer due and owing to Buyer.

(e) If Seller fails to pay any amounts due to Buyer hereunder, Buyer may draw on the Performance Security in an amount equal to the amount unpaid; *provided*, that any

such amount shall have been invoiced to Seller, be past due, and not be the subject of a good faith dispute.

(f) Buyer shall return the unused portion of Delivery Term Security, if any, to Seller promptly after the following have occurred: (i) the Agreement Term has ended, and (ii) all obligations of Seller arising under this Agreement are paid (whether directly or indirectly such as through set-off or netting) or performed in full.

(g) Seller shall notify Buyer of the occurrence of a Downgrade Event within five (5) Business Days after obtaining knowledge of the occurrence of such event. If at any time there shall occur a Downgrade Event, then Buyer may require that Seller replace the Performance Security from the Person that has suffered the Downgrade Event within ten (10) Business Days after notice from Buyer to Seller requesting such replacement Performance Security.

(h) If any Performance Security is in the form of a letter of credit, then Seller shall either provide, or cause to be provided, a replacement letter of credit or guarantee (from a Qualified Issuer or Qualified Guarantor, as applicable) or cash in the required amount set forth in this Section 5.9 within ten (10) Business Days after the earlier of the date that Seller becomes aware, or Buyer notifies Seller of the occurrence of any one of the following events:

(i) the failure of the issuer of the letter of credit to renew such letter of credit thirty (30) Business Days prior to the expiration of such letter of credit;

(ii) the failure of the issuer of the letter of credit to immediately honor Buyer's properly documented request to draw on such letter of credit; or

(iii) the issuer of the letter of credit becomes Bankrupt.

(i) If any Performance Security is in the form of a guarantee, then Seller shall either provide, or cause to be provided, a replacement letter of credit or guarantee (from a Qualified Issuer or Qualified Guarantor, as applicable) or cash in the required amount set forth in this Section 5.9 within ten (10) Business Days after the earlier of the date that Seller becomes aware, or Buyer notifies Seller, of the occurrence of any one of the following events:

(i) the failure of the guarantor to make a payment thereunder immediately following Buyer's properly documented claim made pursuant to the guarantee in accordance with its terms;

(ii) any representation or warranty made by the guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(iii) the guarantor becomes Bankrupt;

(iv) the guarantee fails to be in full force and effect in accordance with the terms of this Agreement prior to the satisfaction of all obligations of Seller under this Agreement; or

(v) the guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its guarantee.

(j) Seller shall, from time to time as requested by Buyer, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all Requirements of Law the Performance Security and the rights of Buyer with respect to such Performance Security.

(k) Notwithstanding the other provisions of this Agreement, the Performance Security: (i) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (ii) shall not be Buyer's exclusive remedy against Seller for Seller's failure to perform in accordance with this Agreement.

ARTICLE VI

PURCHASE AND SALE OF POWER

Section 6.1 Purchases by Buyer.

(a) Prior to the Commercial Operation Date, Seller shall sell and deliver, and Buyer shall receive and purchase all Delivered Energy for the Contract Price set forth in paragraph 1 of Appendix A.

(b) On and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, all Delivered Energy for the applicable Contract Price set forth in paragraph 2 and paragraph 3 of Appendix A.

(c) Notwithstanding Section 6.1(b), during the period of time between the Commercial Operation Date and the day that is one (1) day following the date upon which Buyer receives evidence that the Facility is CEC Certified (the "*Pre-Certification Period*"), Buyer may retain a portion of the payment to be made to Seller hereunder for Delivered Energy in any billing/payment period equal to the amount by which (1) the aggregate amount payable for such billing/payment period based on the Contract Price of the Delivered Energy pursuant to Section 6.1(a) and (b) exceeds (2) the aggregate amount that would be payable for such billing/payment period if the Contract Price were based on the average Energy price during such billing/payment period for Energy that is not from an eligible renewable energy resource under the RPS Law, as listed in the Dow Jones Palo Verde Electricity Price Index. Buyer shall release such retained amount, which shall be calculated without interest of any kind, within forty five (45) days following the receipt of evidence reasonably satisfactory to Buyer from Seller that the Facility is CEC Certified. If requested by Seller, in lieu of the foregoing retention, Buyer shall reasonably cooperate with Seller to allow Seller to post a letter of credit to Buyer in a form, from an issuer, and otherwise in accordance with such procedures, all as reasonably acceptable to Buyer, in the amount(s) of the foregoing retention.

Section 6.2 Seller's Delivery Obligation. Except as provided in Article IX, or in cases of Energy imbalances, in no event shall Seller have the right to procure energy from

sources other than the Facility for sale and delivery pursuant to this Agreement. Unless excused by Buyer's failure to perform, Seller shall not sell any Energy or Environmental Attributes from the Facility to anyone other than Buyer.

Section 6.3 Buyer's and Seller's Intent. The Parties acknowledge their general understanding and intent that, subject to the terms and conditions of this Agreement, (i) Seller shall use all reasonable efforts consistent with Prudent Utility Practices to maximize the output of Delivered Energy from the Facility, (ii) subject to Buyer's role as Seller's Scheduling Coordinator for the Facility, Seller shall be responsible to arrange for, and shall bear all risks associated with, delivery of all Facility Energy to the Point of Delivery, (iii) Buyer shall be obligated to pay for all Facility Energy delivered to the Point of Delivery and (iv) Buyer shall be responsible to arrange for, and shall bear all risks associated with, acceptance and transmission of Facility Energy at and from the Point of Delivery.

ARTICLE VII

TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

Section 7.1 In General. Seller shall arrange, pay for and be responsible for the interconnection of the Facility to the CAISO grid and any Transmission Services required to deliver Facility Energy to the Point of Delivery at the CAISO grid. Buyer shall arrange and be responsible for Transmission Services at and from the Point of Delivery at the CAISO grid, and shall Schedule or arrange for Scheduling and transmission services with its Transmission Providers to deliver Facility Energy to Buyer's destination. Seller hereby designates Buyer to act as Seller's Facility Scheduler to effect the Scheduling of Facility Energy to the Point of Delivery.

Section 7.2 Forecasting and Scheduling of Energy. The Authorized Representatives of the Buyer and Seller shall, as soon as reasonably practicable following the Effective Date, mutually develop forecasting and Scheduling procedures which may be modified, from time to time, by written agreement of both Authorized Representatives in order to comply with all applicable requirements, including those of the Transmission Provider, CAISO, WECC, and any balancing authority involved in the Scheduling of Energy under this Agreement. The Authorized Representatives shall promptly cooperate with respect to any reasonably necessary and appropriate modifications to such forecasting or Scheduling procedures.

(a) Buyer, as Seller's Scheduler, shall be responsible for Scheduling the forecast of Delivered Energy to the Point of Delivery during the Agreement Term in accordance with the CAISO and Buyer's Scheduling and forecasting procedures, based on the then-most-current forecast of energy, as written in the Scheduling and forecasting procedures attached as Appendix K, which may be updated with reasonable changes from time to time by Buyer or Buyer's Agent upon reasonable prior notice to Seller. Seller shall submit non-binding forecasts, and any updates to such forecasts, to Buyer or Buyer's Agent based on the most current forecast of Delivered Energy. All Scheduling shall be performed in accordance with the applicable CAISO, NERC and WECC operating policies, criteria, and any other applicable guidelines. Seller shall also fulfill the contractual, metering and interconnection requirements in Seller's

contracts with the CAISO and the Transmission Provider so as to be able to deliver Delivered Energy to the Point of Delivery.

(b) Buyer (for itself or its designee) hereby accepts the position of Scheduling Coordinator for the Facility and shall have the full right and obligation to Schedule all Energy from the Facility in a reasonable and prudent manner in accordance with all CAISO and other applicable requirements. In consideration thereof, Seller agrees to provide SCPPA a bill credit equal to one dollar thirty cents (\$1.30) per MWh for each MWh of Delivered Energy, with such credit escalating at one and one-half percent (1.5%) on the first day of the second Contract Year and each subsequent Contract Year. Buyer or its qualified agent shall act as Scheduling Coordinator for Buyer, and shall be responsible for and pay all fees, charges and other costs necessary to Schedule the receipt of Facility Energy at and from the Point of Delivery.

(c) At least forty-five (45) days before the anticipated Initial Synchronization date, and no later than forty-five (45) days before the beginning of each calendar year during the Delivery Term, Seller or Seller's designee shall provide Buyer, or cause to be provided, a non-binding forecast of each month's average-day deliveries of Delivered Energy, by hour, for the following eighteen (18) months.

(d) At least ten (10) days before the anticipated Initial Synchronization date and no later than ten (10) Business Days before the beginning of each month thereafter, Seller or Seller's designee shall provide, or cause to be provided, a non-binding forecast of each day's average deliveries of Delivered Energy, by hour, for the following month.

(e) By 5:30 a.m. on the Business Day immediately preceding each day of delivery of Delivered Energy following Initial Synchronization, Seller or Seller's designee shall provide Buyer or Buyer's Agent with a copy of a non-binding hourly forecast of deliveries of Delivered Energy for each hour of the immediately succeeding day. A forecast provided a day prior to any non-Business Day shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller shall provide Buyer or Buyer's Agent with a copy of any updates to such forecast indicating a change in forecasted Delivered Energy from the then current forecast.

(f) Prior to 12:00 p.m. Pacific Prevailing Time of the Business Day immediately preceding each WECC Prescheduling Day (as defined by WECC) for each hour of the Delivery Day (as defined by WECC) in MW or MWh units (as applicable), in the format reasonably designated by the Buyer or Buyer's Agents, Seller shall provide or cause to be provided to Buyer and Buyer's Agents a non-binding preschedule forecast of generation via email. The pre-scheduled amounts of Energy shall be the good faith estimate of Seller or Seller's designee of the anticipated output of Energy at the time. A forecast provided a day prior to any non-Business Day(s) shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller or Seller's designee shall provide Buyer and Buyer's Agents with a copy of any and all updates to such forecast indicating a change in forecasted Energy from the then current forecast. Except for Forced Outages, Seller shall operate the Facility with the objective that, for each hour scheduled, the actual Energy shall be produced in accordance with the preschedule plan submitted to Buyer and Buyer's Agents for use by Buyer and Buyer's Agents to Schedule the Facility Energy for delivery at or from Point of

Delivery, and Seller shall be responsible for any CAISO imbalance charges for imbalances between the Facility's scheduled/forecasted and delivered energy at the Point of Delivery, except where such charges result from Buyer's or its designee's failure properly to carry out its responsibilities hereunder as Facility Scheduling Coordinator.

(g) In order to allow Buyer to make Schedule changes in conformity with the CAISO Scheduling deadline, Seller shall notify Buyer or Buyer's Agent via telephone of any hourly changes due to a change in Facility availability or an outage no later than one-hundred five (105) minutes prior to the start of such Scheduling hour. Other unanticipated changes in availability shall also be notified by telephone as promptly as reasonably possible.

(h) Throughout the Delivery Term, Seller shall provide to Buyer the following data on a real-time basis:

(i) Read-only access to meteorological and related solar measurements, megawatt capacity and any other facility availability information;

(ii) Read-only access to energy output information collected by the supervisory control and data acquisition ("*SCADA*") system for the Facility; provided that if Buyer is unable to access the Facility's SCADA system, then upon written request from Buyer, Seller shall provide energy output information and meteorological measurements to Buyer in four (4)-second intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back-up for each flat file submittal; and

(iii) Read-only access to all Electric Metering Devices.

(i) Buyer is authorized to prepare and provide Buyer's Agent, Buyer's real time operators, and Buyer's Scheduler with continuously updated non-binding hourly forecasts of deliveries of Delivered Energy for each hour of the succeeding twenty four (24)-hour period, in either electronic format, via an internet website accessible to Buyer, Buyer's Agent, Buyer's real time operators, and Buyer's Scheduler, or via email in the form of an excel spreadsheet (or any combination thereof), transmitted on an hourly basis. Seller shall reasonably cooperate with Buyer to attempt to optimize the estimates for such time period two (2) hours prior to such forecasts. Seller shall reasonably cooperate with Buyer to enable such forecasts to be prepared in accordance with the following protocols: (1) Distributed Network Protocol ("*DNP*") 3.0 TCP/IP for primary communications between Buyer and any of Buyer's Members receiving Facility Energy, (2) DNP 3.0 Serial for backup communication between Buyer and any of Buyer's Members receiving Facility Energy, and (3) DNP 3.0 for communication between the DCS and IEDs (SEL Relays, ION Meters, Areva Relays, etc.)

Section 7.3 Costs. Seller shall be responsible for any costs or charges imposed on or associated with the delivery of Facility Energy up to the Point of Delivery, including (as applicable): interconnection costs, charges related to control area services, inadvertent energy flows, transmission losses, and the transmission of Facility Energy. Buyer shall be responsible for any costs or charges imposed on or associated with the delivery of Facility Energy at and

from the Point of Delivery, including (as applicable): charges related to control area services, inadvertent energy flows, transmission losses, and the transmission of Facility Energy.

Section 7.4 CAISO Facility Scheduling Costs.

(a) For purposes of this Section 7.4, “*CAISO Costs*” means (i) all costs, expenses, fees, charges and other amounts assessed by the CAISO to Seller, or to Buyer in its role as Seller’s Scheduling Coordinator for the Facility, to the extent arising out or in connection with the Scheduling and delivery of Facility Energy to the Point of Delivery and (ii) all costs, expenses and other amounts (if any) which may, following the Execution Date, be charged by the CAISO or any Transmission Provider to the Facility, Seller or Buyer (in its role as Seller’s Scheduling Coordinator for the Facility) in connection with the integration of the Facility (by virtue of its being an intermittent solar resource) into the CAISO grid. For the avoidance of doubt, CAISO Costs do not include (i) the MWh financial credit provided by Seller to Buyer under Section 7.2(b) in consideration of Buyer’s acting as Seller’s Scheduling Coordinator or (ii) any CAISO or other costs or charges associated with Buyer’s receipt of the Delivered Energy at the Point of Delivery or the Scheduling or transmission of Energy from and away from the Point of Delivery, all of which shall be the sole responsibility of Buyer.

(b) The Parties agree as follows, and after the Effective Date the Parties shall cooperate to prepare and mutually agree upon a written protocol (the “*CAISO Cost Protocol*”) to set forth appropriate administrative details to carry out the Parties agreement as follows: (a) the Parties shall coordinate to maintain detailed records all CAISO Costs, (b) for each calendar year, Seller shall be responsible for and shall pay directly (or promptly reimburse Buyer) for the first \$150,000 of all CAISO Costs allocable to such year, and (c) subject to the provisions of Section 7.5, for each calendar year, Buyer shall be responsible for and shall pay directly (or reimburse Seller) for the all CAISO Costs allocable to such year in excess of \$150,000 (any such excess amounts, in the aggregate on a cumulative basis for all calendar years, is herein referred to as the “*Excess CAISO Costs*”).

Section 7.5 End of Term Deliveries. If there are any Excess CAISO Costs at the end of the Agreement Term, then, at Seller’s election, Seller shall either: (i) pay to Buyer an amount equal to the total Excess CAISO Costs; or (ii) extend the Agreement Term for so long as necessary to provide Buyer with additional Delivered Energy having a total value equal to twice the amount of the Excess CAISO Costs, based on the Contract Price applicable under Appendix A as if the extended Agreement Term became a new Contract Year(s), and during any such extended Agreement Term Buyer shall pay Seller for Delivered Energy at a price equal to 50% of such applicable Contract Price under Appendix A.

Section 7.6 PIRP. The intent of this Agreement is that the Facility shall be a certified Participating Intermittent Resource. Seller shall cause the Facility to become certified as a Participating Intermittent Resource as soon as reasonably practicable, either concurrently with, or after, the Commercial Operation Date, including negotiating and executing all necessary documents to become a Participating Intermittent Resource. Seller shall provide Buyer with a copy of the notice from CAISO certifying the Facility as a Participating Intermittent Resource as soon as practicable after Seller’s receipt of such notice of certification. Following certification and whenever applicable, Seller and Buyer shall comply with PIRP, and all additional protocols

issued by the CAISO relating to Participating Intermittent Resources during the Delivery Term. Additionally, all of the provisions in this Agreement relating to Scheduling of the Facility and other matters covered by PIRP shall be interpreted and applied (and to the extent necessary, deemed modified) as be may be reasonably necessary to comply with PIRP. In the event that PIRP or the CAISO Tariff and/or any protocols relating thereto are changed, amended, modified, replaced or terminated, Seller and Buyer agree to comply with such revisions and, to the extent practical, to implement such revisions in a manner that maintains the relative economic positions of the parties as of the date of this Agreement.

Section 7.7 Curtailment.

(a) Seller shall reduce deliveries of Energy to the Point of Delivery during Curtailment Periods as required by the CAISO or Seller's Transmission Provider. Seller shall provide, to the extent commercially reasonably practicable, the capability to implement curtailments and adjust ramp rates, megawatt output, and (if applicable) megavar output in real-time by means of setpoints received from the SCADA system of Buyer or Buyer's Agent.

(b) Seller will not be paid by Buyer for the amount of reduced Delivered Energy during Curtailment Periods unless and to the extent any curtailment results from a failure of Buyer to properly perform its obligations hereunder as the Facility Scheduling Coordinator or results from the manner in which Buyer Schedules the Facility's Energy output (including if Buyer submits any economic bids to the CAISO in the Scheduling of the Facility), in which cases Buyer shall pay Seller for all reductions in Delivered Energy at the full applicable Contract Price. Additionally, Buyer may at its election in its sole discretion from time to time notify Seller to reduce or curtail Delivered Energy so long as consistent with Prudent Utility Practices (including the Facility's operating characteristics), but in such cases will be required to pay for all reductions in Delivered Energy at the full applicable Contract Price.

(c) During the Agreement Term, the Parties shall develop procedures to calculate the estimated amount of curtailed Energy during each curtailment event based on historical Facility data, meteorological data, output projections (including by the CAISO, if applicable) and other relevant data. The calculation shall be subject to review and approval by Buyer.

(d) The Parties acknowledge that Buyer shall not be obligated to pay Seller for any Facility Energy that is not or cannot be delivered to the Delivery Point for any reason (including Force Majeure), except in the cases expressly referenced in Sections 7.7(b) above, or to the extent caused by Buyer's breach of this Agreement.

Section 7.8 Title; Risk of Loss. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Facility Energy prior to the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Facility Energy at and from the Point of Delivery. Seller shall deliver all Facility Energy, Capacity Rights, and Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to and risk of loss as to all Facility Energy, Capacity Rights, and Environmental Attributes shall pass from Seller to Buyer at the Point of Delivery.

ARTICLE VIII

ENVIRONMENTAL ATTRIBUTES; EPS AND RPS COMPLIANCE

Section 8.1 Transfer of Environmental Attributes. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Facility Energy on the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Environmental Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term, for all Facility Energy and Replacement Energy. Seller agrees to transfer and make such Environmental Attributes available to Buyer as promptly as reasonably possible and to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Environmental Attributes. The consideration for the transfer of Environmental Attributes is contained within the applicable Contract Price for Delivered Energy under Articles VI and IX and Appendix A.

Section 8.2 Reporting of Ownership of Environmental Attributes. During the Agreement Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to Buyer belong to any Person other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

Section 8.3 Environmental Attributes. Upon Buyer's request, Seller shall take all actions and execute all documents or instruments reasonably necessary under applicable law or other voluntary Environmental Attribute programs of any kind, as applicable, to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term.

Section 8.4 Use of Accounting System to Transfer Environmental Attributes. In furtherance and not in limitation of Section 8.3, Seller shall use WREGIS or any successor system to evidence the transfer of any Environmental Attributes considered RECs under applicable law or any voluntary program ("*WREGIS Certificates*") associated with Facility Energy or Replacement Energy in accordance with WREGIS reporting protocols and shall register the Facility with WREGIS. After the Facility is registered with WREGIS, at Buyer's option, Seller shall to the extent permissible under WREGIS rules (i) transfer WREGIS Certificates using the Forward Certificate Transfer method, as described in WREGIS Operating Rules, from Seller's WREGIS account to up to three WREGIS accounts, as designated by Buyer, or (ii) retire said WREGIS Certificates into Seller's WREGIS Retirement sub-account on behalf of Seller's requirements (if any); *provided, however*, that Buyer shall initially select to use either option (i) or (ii) thirty (30) days prior to Seller's delivery of any Facility Energy to the Point of Delivery, and, *provided further*, if option (i) is selected, Buyer may change to option (ii) at the beginning of any calendar year during the Agreement Term upon thirty (30) days advance written notice. If option (ii) is selected, then Buyer shall provide Seller the number and vintage of MWh of WREGIS Certificates to be retired by providing written notice to Seller not later than thirty (30) days prior to the desired retirement date. Seller shall be responsible for the WREGIS

expenses associated with registering the Facility, maintaining its account, WREGIS Certificate issuance fees, and transferring WREGIS Certificates to Buyer or Buyer's Agent, or any other designees, and Buyer shall be responsible for the WREGIS expenses associated with maintaining its account, or the accounts of its designees, if any, and subsequent transferring or retiring of WREGIS Certificates, or Seller's fees for the retirement of WREGIS Certificates on behalf of Buyer. Forward Certificate Transfers shall occur monthly based on the certificate creation timeline established by the WREGIS Operating Rules. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each month. In the event that WREGIS is not in operation, or WREGIS does not track Seller's transfer of WREGIS Certificates to Buyer, Buyer's Agent, or its designees for purposes of any RECs attributed, accrued, realized, generated, produced, recognized or validated relative to the Facility Energy or Replacement Energy, or Buyer chooses not to use WREGIS for any reason, Seller shall document the production and transfer of RECs under this Agreement by delivering to Buyer an attestation for the RECs produced by the Facility, or Replacement Energy, measured in whole MWh, or by such other method as Buyer shall designate. If any of the foregoing is or becomes inconsistent with the WREGIS rules, the Parties shall reasonably cooperate to amend the foregoing procedures in a manner reasonably requested by Buyer consistent with the then effective WREGIS rules.

Section 8.5 Further Assurances. Regardless of whether Seller and Buyer use WREGIS or any successor system, Seller shall document the production of Environmental Attributes by delivering with each invoice to Buyer an attestation for Environmental Attributes (i) produced by the Facility or (ii) included with Replacement Energy for the preceding month. The form of attestation is set forth as Appendix D. At Buyer's request, the Parties shall execute all such documents and instruments and take such other action in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer (or such Buyer Member(s) designated by Buyer) and to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term as Buyer may reasonably request. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement shall not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

Section 8.6 RPS and EPS Compliance. Subject to Section 8.7, (a) Seller warrants that the facility will be RPS Compliant (CPUC Section 399.16(b)(1), i.e. portfolio content category 1 energy and associated RECs) and EPS Compliant upon COD and throughout the Agreement Term, (b) Seller assumes the risk of bringing the facility into compliance should there be a Change in Law that would render the facility not RPS Compliant (CPUC Section 399.16 (b)(1), i.e. portfolio content category 1 energy and associated RECs) or EPS Compliant.

Section 8.7 Change in Law. In the event of Change in Law after the Effective Date that impacts the Facility being RPS Compliant or EPS Compliant, then Seller will take all commercially reasonable actions to cause the Facility to remain compliant or brought into compliance, as appropriate, provided that:

(i) subject to the following clause (ii), Seller shall not be obligated to expend in excess of \$200,000 in any calendar year in order to remain RPS Compliant or EPS compliant or to bring the Facility into such compliance, as appropriate (to the extent of costs arising out of a Change in Law);

(ii) if in any calendar year the cost to maintain RPS Compliance and EPS Compliance or the cost to bring the Facility back into such compliance (to the extent of costs arising out of a Change in Law), exceeds \$200,000, Buyer may elect, at its sole discretion to share further costs with Seller where each Party shares 50% of such additional costs up to a maximum of \$200,000 per calendar year total between the Parties in aggregate (i.e., up to \$100,000 per Party), provided that Seller shall only be obligated to expend such additional sums under this clause (ii) to the extent Buyer agrees to so share such costs;

(iii) over the entire Agreement Term Seller shall not be obligated to expend any amounts in excess of one million dollars (\$1,000,000) in order to remain RPS Compliant or EPS Compliant or to bring the Facility into such compliance, as appropriate (to the extent of costs arising out of a Change in Law);

(iv) if at any time in any calendar year the cost to maintain RPS Compliance and EPS Compliance or the cost to bring the Facility back into such compliance (to the extent of costs arising out of a Change in Law), exceeds the total amounts referenced in preceding clauses (i) and (ii), or such costs to Seller at any such time would exceed the amount referenced in preceding clause (iii), Buyer may elect in its sole discretion to pay the additional costs to maintain RPS Compliance and/or EPS Compliance or the cost to bring the Facility back into such compliance, as the case may be;

(v) if the laws or regulatory requirements relating to RPS Compliance or EPS Compliance cease to be effective, or it is impossible to bring the Facility into such compliance due to a Change in Law, or Buyer elects not to pay any amounts as may be required under preceding clause (ii), (iii) or (iv) in order to maintain such compliance, then Seller shall be excused from its obligation to maintain RPS Compliance or EPS Compliance, as the case may be, and Buyer shall remain obligated to purchase all Facility Energy (together with any associated Products) at the full Contract Price set forth in Appendix A.

ARTICLE IX

GUARANTEED GENERATION AND MAKEUP OF SHORTFALL ENERGY

Section 9.1 Guaranteed Generation and Seller Makeup of Shortfall.

(a) Seller guarantees that the Contract Year Deemed Delivered Energy Amount for each Contract Year shall be no less than the Guaranteed Generation amount for such Contract Year. If Seller fails during any Contract Year to meet such guarantee, the difference between the Contract Year Deemed Delivered Energy Amount for such Contract Year and the

Guaranteed Generation amount for such Contract Year is herein referred to as “**Shortfall Energy**”, and shall be expressed in MWhs. In the event of any Shortfall Energy for any Contract Year, then during the next Contract Year (the “**Shortfall Makeup Period**”), Seller shall be deemed to have cured such Shortfall, in whole or part, by (1) the amount by which the actual Delivered Energy in the Shortfall Makeup Period exceeds the Guaranteed Generation amount for the Shortfall Makeup Period and/or (2) Seller provides any Replacement Energy to Buyer during the Shortfall Makeup Period in accordance with Section 9.2. To the extent that the amount of Shortfall Energy for any Contract Year is not fully cured in accordance with the preceding sentence during the Shortfall Makeup Period (either by delivering Delivered Energy in the Shortfall Makeup Period in excess of the Guaranteed Generation in the Shortfall Makeup Period, or by supplying Replacement Energy, or any combination of the two), then the amount of Shortfall Energy remaining uncured is herein referred to as “**Uncured Shortfall Energy**” (and shall be expressed in MWhs), and Seller shall be obligated to cure the Uncured Shortfall Energy by paying the Shortfall Liquidated Damages in accordance with Section 9.3.

Section 9.2 Replacement Energy. If Seller elects to provide Replacement Energy for any Shortfall Energy, then Seller may, at any time during the applicable Shortfall Makeup Period provide Buyer with (i) that quantity of Replacement Energy that is equal to all or any portion of the Shortfall Energy. Buyer shall pay Seller for Replacement Energy at the Contract Price applicable to the Shortfall Energy. The Replacement Energy shall be delivered to Buyer at the Point of Delivery (or another point of delivery reasonably acceptable to Buyer) on a delivery schedule consistent with the Facility’s historic percentage of on-peak and off-peak Delivered Energy or as otherwise agreed by Seller and Buyer. As employed in this Agreement, “**Replacement Energy**” means Energy produced by a facility (or facilities) other than the Facility that, at the time delivered to Buyer, (A) is both RPS Compliant and EPS Compliant, (B) qualifies under California Public Utilities Code Section 399.16(b)(1) as amended from time to time and any successor law or regulation of similar applicability and effect, provided that any Replacement Energy is eligible to be counted within the same RPS Law compliance period as the compliance period during which the initial applicable Shortfall Energy occurred, (C) includes Environmental Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Environmental Attributes, if any, as the Environmental Attributes that would have been generated by the Facility during the period for which the Replacement Energy is being provided, and (D) provides the equivalent RA/LCR Attributes.

Section 9.3 Shortfall Liquidated Damages.

(a) If at the end of any Shortfall Makeup Period applicable to any Contract Year there exists any Uncured Shortfall Energy, Seller shall pay Buyer as liquidated damages an amount (“**Shortfall Liquidated Damages**”) equal to the number of MWh of Uncured Shortfall Energy multiplied by the amount (if any) by which (A) exceeds (B), where (A) equals the sum of (i) the average CAISO Day-Ahead price for Energy in the SP-15 Existing Zone Trading Hub during each hour of such Contract Year plus (ii) the applicable Green Value per REC (defined below) in such Contract Year; and (B) equals the Contract Price during such Contract Year. The Green Value shall equal the average cost over the applicable Contract Year per REC associated with Energy meeting Portfolio Content Category 1 pursuant to CPUC §399.16 (b)(1), but not more than \$50 (per REC); provided that if for any Contract Year there does not exist a liquid

trading market to determine such average REC cost, the Parties agree that the Green Value will be \$50 (per REC).

(b) The provision of Shortfall Liquidated Damages shall be in lieu of actual damages for the occurrence of any Uncured Shortfall Energy hereunder, and notwithstanding any other provision of this Agreement other than Buyer's remedies for a Default of Seller under Section 13.1(g), the Shortfall Liquidated Damages shall be Buyer's sole remedy, and Seller's sole liability, for Seller's failure to meet the Guaranteed Generation or deliver Facility Energy (and the associated Environmental Attributes). The Parties acknowledge and agree that (i) the damages that Buyer would incur due to shortfalls in Delivered Energy would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in those circumstances and, therefore, the payment of Shortfall Liquidated Damages is a fair and reasonable remedy for such damages.

ARTICLE X

CAPACITY RIGHTS

Section 10.1 Purchase and Sale of Capacity Rights. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Facility Energy and Environmental Attributes on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of the Capacity Rights. The consideration for the transfer of Capacity Rights is contained within the Contract Price for Facility Energy. In no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of Buyer's ownership of the Capacity Rights or otherwise.

Section 10.2 Representation Regarding Ownership of Capacity Rights. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any of the Capacity Rights to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Capacity Rights. Seller shall not report to any Person that any of the Capacity Rights belong to any Person other than Buyer. Buyer may, at its own risk and expense, report to any Person that the Capacity Rights belong to it.

Section 10.3 Further Assurances. Seller shall execute and deliver such documents and instruments and take such other administrative action as Buyer may request to effect recognition and transfer of the Capacity Rights to Buyer. Seller shall bear the costs associated therewith.

ARTICLE XI

BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES

Section 11.1 Billing and Payment. Billing and payment for all Delivered Energy (including all Energy delivered prior to COD) shall be as set forth in this Article XI.

Section 11.2 Calculation of Energy Delivered; Invoices and Payment.

(a) **Delivered Quantity.** For each month during the Agreement Term, commencing with the first month in which Energy is delivered by Seller to and received by Buyer under this Agreement, Seller shall calculate the amount of Energy so delivered and received during such month as determined (i) in the case of Delivered Energy, from recordings produced by the Electric Metering Devices maintained pursuant to Section 11.6, at or near midnight on the last day of the month in question, and (ii) in the case of Replacement Energy, the amount in MWh actually supplied by Seller pursuant to Section 9.2, as measured by metering equipment approved by Buyer in its sole discretion.

(b) **Invoice.** Not later than the tenth (10th) day of each month, commencing with the month next following the month in which Energy is first delivered by Seller and received by Buyer under this Agreement, Seller shall deliver to Buyer a proper invoice showing the amount of Energy delivered by Seller and received by Buyer during the preceding month (with a separate allocation for any Replacement Energy) and Seller's computation of the amount due Seller in respect thereof. Monthly invoices shall be sent to the address set forth in Appendix C or such other address as Buyer may provide to Seller.

(i) Monthly invoices shall contain a statement certifying that the information in such invoice is accurate.

(ii) Seller shall deliver to Buyer attestations of Environmental Attribute pursuant to Section 8.5 to Buyer concurrently with the monthly invoices.

(iii) Buyer shall not be required to make invoice payments if the invoice is received more than six (6) months after the billing period. Each invoice shall show the title of the Agreement and, if applicable, the Agreement number and the name, address and identifying information of Seller.

(c) **Payment.** Not later than the thirtieth (30th) day after receipt by Buyer of Seller's monthly invoice (or the next succeeding Business Day, if such thirtieth (30th) day is not a Business Day), Buyer shall pay to Seller, by wire transfer of immediately available funds to an account specified by Seller or by any other means agreed to by the Parties from time to time, the amount set forth as due in such monthly invoice, subject to Section 11.3.

Section 11.3 Disputed Invoices. In the event any portion of any invoice is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the dispute, setting forth the details of such dispute in reasonable specificity. Disputes shall be discussed by the Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve the disputes, and any failure to agree shall be subject to resolution in accordance with Section 14.3. Upon resolution of any dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 11.3, "**Interest Rate**" shall mean the lesser of (i) two hundred (200) basis points above the per annum prime rate reported daily in The Wall Street Journal, or (ii) the maximum rate permitted by applicable Requirements of Law.

Section 11.4 Buyer's Right of Setoff. In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, Buyer shall have the right at any time or from time to time upon notice to Seller to set off against any amount due Seller from Buyer under this Agreement or otherwise any amount due Buyer from Seller or any Seller Party under this Agreement or otherwise, including any amounts due because of breach of this Agreement or any other obligation and any costs payable by Seller under Section 7.3 if and to the extent paid in the first instance by Buyer.

Section 11.5 Records and Audits. Seller shall maintain or shall cause to be maintained all records pertaining to the provision of Energy and other Products pursuant to this Agreement (including all billings, metering, and Environmental Attributes), and in particular all records to properly reflect all amounts billed to Buyer pursuant to this Agreement. Buyer and the Authorized Auditors may discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings), all at such times and as often as may be reasonably requested. All such records shall be retained, and shall be subject to examination and audit by the Authorized Auditors (redacted as may be appropriate with respect to confidential or proprietary information), for a period of not less than four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. Seller shall make said records (redacted as may be appropriate with respect to confidential or proprietary information) or to the extent accepted by the Authorized Auditors, photographs, micro-photographs, or other authentic reproductions thereof, available to the Authorized Auditors at the Seller's offices located at all reasonable times and without charge. The Authorized Auditors may reproduce, photocopy, download, transcribe, and the like any such records (redacted as may be appropriate with respect to confidential or proprietary information). To the extent any records entitled to be audited by Buyer are maintained by Seller in electronic format, then, at the request of Buyer, Seller shall provide the same in electronic format. Seller shall cause any Facility operators to comply with the provisions of this Section 11.5, as applicable. If the Authorized Auditor's examination or audit indicates Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by Seller to Buyer within fifteen (15) days of notice to Seller of the identified overpayment. Notwithstanding the foregoing, if the audit reveals that Buyer's overpayment to Seller is more than the greater of \$100,000 or five percent (5.0%) of the billings reviewed, Seller shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit. Such examination or audit expenses and costs shall be paid by Seller to Buyer within fifteen (15) days of notice to the Seller of such costs and expenses.

Section 11.6 Electric Metering Devices.

(a) Delivered Energy shall be measured using Electric Metering Devices installed, owned and maintained by the Seller. If the Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings shall be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery. All Electric Metering Devices used to provide data for the computation of payments shall be sealed and Seller or its designee shall only break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Section 11.6. Seller or its designee shall specify the number, type, and location of such Electric Metering Devices.

(b) Seller or its designee, at no expense to Buyer, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections and tests. Upon the reasonable request by Buyer, Seller or its designee shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of Buyer to inspect or witness the testing of any Electric Metering Device. The actual expense of any such requested additional inspection or testing shall be borne by Seller. Seller shall provide copies of any inspection or testing reports to Buyer.

(c) If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined by reference to Seller's check-meters, if any, or as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-third of the time elapsed since the preceding test of the Electric Metering Devices. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Section 11.6 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due to Seller from Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

Section 11.7 Taxes. Seller shall be responsible for and shall pay before the due dates therefor, any and all federal, state and local Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to the Facility, the Facility site, any other assets of Seller, and all Taxes related to Seller's net income. Seller shall pay all Taxes assessed on the Delivered Energy, Environmental Attributes and other Products (or the sale or use thereof) arising up to the Point of Delivery, and Buyer shall pay all Taxes assessed on the Delivered Energy, Environmental Attributes and other Products (or the sale or use thereof) arising at and from the Point of Delivery.

ARTICLE XII

REPRESENTATIONS AND WARRANTIES; COVENANTS OF SELLER

Section 12.1 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller as of the Effective Date:

(a) Buyer is a validly existing California joint powers authority and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and each Ancillary Document to which Buyer is a party and

carry out the transactions contemplated hereby and thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and all such Ancillary Documents.

(b) The execution, delivery and performance by Buyer of this Agreement and each Ancillary Document to which Buyer is a party have been duly authorized by all necessary action, and do not and will not require any consent or approval of Buyer's regulatory or governing bodies, other than that which has been obtained.

(c) This Agreement and each of the Ancillary Documents to which the Buyer is a party constitute the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(d) The terms of the Government Code and the Public Contracts Code of the State of California and all similar laws relating to public contracts and bidding either are not applicable to this Agreement or have been fully complied with by Buyer.

Section 12.2 Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer as of the Effective Date:

(a) Each of the Seller Parties is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of its respective state of incorporation or organization, is qualified to do business in the State of California, and has the legal power and authority to own and lease its properties, to carry on its business as now being conducted and (in the case of Seller) to enter into this Agreement and (in the case of each Seller Party) each Ancillary Document to which it may be party and, carry out the transactions contemplated hereby and thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and all Ancillary Documents.

(b) The execution, delivery and performance by the Seller Parties of this Agreement and all Ancillary Documents to which they are parties have been duly authorized by all necessary action, and do not and will not require any consent or approval other than those which have already been obtained, excluding any of the same in the nature of construction or similar Permits that are expected to be obtained in the ordinary course following the date hereof.

(c) The execution and delivery of this Agreement and all Ancillary Documents to which any Seller Party is a party, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and the Ancillary Documents to which any Seller Party is a party, do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which any Seller Party is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or

imposition of any Lien upon any of the properties or assets of any Seller Party (except as contemplated hereby), and each Seller Party has obtained or reasonably expects to timely obtain all Permits required for the performance of its obligations hereunder and thereunder and operation of the Facility in accordance with Prudent Utility Practices, the requirements of this Agreement, the Ancillary Documents and all applicable Requirements of Law.

(d) Each of this Agreement and the Ancillary Documents to which any Seller Party is a party constitutes the legal, valid and binding obligation of such Seller Party, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) There is no pending, or to the knowledge of the Seller, threatened action or proceeding affecting any Seller Party before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement or any of the Ancillary Documents.

(f) None of the Seller Parties is in violation of any Requirement of Law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of any Seller Party, or the ability of any Seller Party to perform any of its obligations under this Agreement or any Ancillary Document to which it is a party.

(g) Seller is a Special Purpose Entity.

(h) The Seller Parties have (i) not entered into this Agreement or any Ancillary Document with the actual intent to hinder, delay or defraud any creditor, and (ii) received reasonably equivalent value in exchange for their respective obligations under this Agreement and the Ancillary Documents to which they are a party. No petition in bankruptcy has been filed against any of the Seller Parties, and none of the Seller Parties nor any of their respective constituent Persons have ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(i) All of the requirements for Seller to be a Special Purpose Entity are satisfied in all material respects.

(j) None of the Seller Parties has any reason to believe that any of the CEQA authorizations or other Permits required to construct, maintain or operate the Facility in accordance with the Requirements will not be timely obtained in the ordinary course of business.

(k) All Tax returns and reports of each Seller Party required to be filed by it have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all assessments, fees and other governmental charges upon the Seller Parties and upon their properties, assets, income, business and franchises that are due and payable have been paid when due and payable. None of the Seller Parties knows of any newly proposed Taxes that would be assessed against any of the Seller Parties and that would reasonably be expected to have a material adverse effect on the Seller Parties.

(l) Seller owns or possesses, or will own or possess in a timely manner, all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by the Seller of this Agreement and the Ancillary Documents to which it is a party and the transactions contemplated thereby, without any conflict with the rights of others.

(m) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of any Facility Energy, Environmental Attributes, or Capacity Rights except as provided herein.

Section 12.3 Covenant of Seller Related to Investments. Seller shall inform all investors in the Seller of the existence of this Agreement and all Ancillary Documents on or before the date of such investment in the Seller.

Section 12.4 Covenants of Seller Related to Site Control. At all times after the Effective Date, Seller shall have “*Site Control*” which means that Seller shall: (i) own the Site; or (ii) be the lessee of the Site under the Lease which permits Seller to perform its obligations under this Agreement and the Ancillary Documents or (iii) have a valid and effective option to acquire the rights described under preceding clauses (i) or (ii). Seller shall provide Buyer with prompt notice of any change in the status of Seller’s Site Control. Seller shall provide written notice to Buyer of any default of Seller under any Lease that might reasonably be expected to have a material adverse effect on Seller’s Site Control or ability to perform under this Agreement, and upon the written request of Buyer, shall reasonably cooperate with Buyer to allow Buyer (in its sole discretion) to attempt to cure any such default that Seller has failed to cure, and shall reimburse Buyer for any reasonable costs incurred by Buyer in any such cure.

ARTICLE XIII

DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

Section 13.1 Default. Each of the following events or circumstances shall constitute a “*Default*” by the responsible Party (the “*Defaulting Party*”):

(a) *Buyer Payment or Performance Default.* Failure by Buyer to make any payment or perform any of its other duties or obligations under this Agreement or any of the Ancillary Documents when and as due that is not cured within five (5) days after receipt of notice thereof from Seller; *provided* that if such failure cannot be cured within such five (5) day period, despite reasonable commercial efforts and such failure is not a failure to make a payment when due, Buyer shall have up to ninety (90) days to cure.

(b) *Seller Payment or Performance Default.* Failure by any Seller Party to make any payment or perform any of its other duties or obligations under this Agreement or any of the Ancillary Documents when and as due which is not cured within five (5) days after receipt of notice thereof from the Buyer; *provided* that if such failure cannot be cured within such five (5) day period, despite reasonable commercial efforts and such failure is not a failure to make a payment when due, Seller shall have up to ninety (90) days to cure.

(c) *Buyer Breach of Representation and Warranty.* Inaccuracy in any material respect as of the Effective Date of any representation, warranty, certification or other statement made by Buyer in Section 12.1 of this Agreement or in any Ancillary Document, if the consequences thereof are not cured or remedied within fifteen (15) days after receipt of notice thereof from the Seller;

(d) *Seller Breach of Representation and Warranty.* Inaccuracy in any material respect as of the Effective Date of any representation, warranty, certification or other statement made by any Seller Party in Section 12.2 of this Agreement or in any Ancillary Document, if the consequences thereof are not cured or remedied within fifteen (15) days after receipt of notice thereof from the Buyer;

(e) *Buyer Bankruptcy.* Bankruptcy of Buyer.

(f) *Seller Bankruptcy.* Bankruptcy of Seller.

(g) *Shortfall Energy Default.* If: (1) for any Contract Year the Contract Year Deemed Delivered Energy Amount is less than fifty percent (50%) of the Guaranteed Generation, and Seller has failed to diligently take actions as may be reasonably necessary to address Facility problem(s) causing such shortfall to the reasonable satisfaction of Buyer; or (2) for any two consecutive Contract Years the Contract Year Deemed Delivered Energy Amount is less than fifty percent (50%) of the Guaranteed Generation.

(h) *Performance Security Failure.* The failure of Seller to maintain the Performance Security in compliance with Section 5.9, if such failure is not cured within five (5) Business Days after receipt of notice thereof from Buyer.

(i) *Insurance Default.* The failure of Seller to maintain and provide acceptable evidence of Insurance, if such failure is not cured within five (5) Business Days after receipt of notice thereof from Buyer.

(j) *Fundamental Change.* Any Seller Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person (the "*Successor Entity*") fails to assume all the obligations of such Seller-Party under this Agreement and the Ancillary Documents to which it or its predecessor was a party by operation of law or pursuant to an agreement satisfactory to Buyer; or such Successor Entity has a long-term unsubordinated debt rating that is lower than the rating of such Seller-Party immediately prior to such consolidation, amalgamation, merger or transfer.

Section 13.2 Default Remedy.

(a) If Buyer is in Default for nonpayment, Seller may (in its sole discretion) continue to provide Delivered Energy pursuant to this Agreement; *provided* that nothing in this Section 13.2(a) shall be deemed to waive or otherwise affect Seller's rights and remedies set forth in this Section 13.2. Seller's continued service to Buyer shall not act to relieve Buyer of any of its duties or obligations under this Agreement.

(b) Notwithstanding any other provision herein, if any Default has occurred and is continuing, the affected Party may, whether or not the dispute resolution procedure set forth in Section 14.3 has been invoked or completed, bring an action in any court of competent jurisdiction as set forth in Section 14.13 seeking injunctive relief in accordance with applicable rules of civil procedure.

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and the Buyer is the Defaulting Party, Seller may without further notice exercise any rights and remedies provided herein or otherwise available at law or in equity, including the right to terminate this Agreement pursuant to Section 13.3. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and the Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Performance Security against any amounts then payable by Seller to Buyer under this Agreement and (ii) termination of this Agreement pursuant to Section 13.3. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

Section 13.3 Termination for Default.

(a) If Default occurs, the Party that is not the Defaulting Party (the “*Non Defaulting Party*”) may, for so long as the Default is continuing and without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice (“*Termination Notice*”) to the Defaulting Party (i) establish a date (which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such notice) (“*Early Termination Date*”) on which this Agreement shall terminate, and (ii) withhold any payments due in respect of this Agreement.

(b) If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate in a commercially reasonable manner its Gains, Losses and Costs resulting from the termination of this Agreement and the resulting Termination Payment. The Gains, Losses and Costs relating to the Facility Energy and Environmental Attributes that would have been required to be delivered under this Agreement had it not been terminated shall be determined by comparing the amounts Buyer would have paid therefor under this Agreement to the equivalent quantities and relevant market prices either quoted by a bona fide third party offer or which are reasonably expected by the Non-Defaulting Party to be available in the market under a replacement contract for this Agreement covering the same products and having a term equal to the Remaining Term at the date of the Termination Notice adjusted to account for differences in transmission, if any. The Non-Defaulting Party shall not be required to enter into any such replacement agreement in order to determine its Gains, Losses and Costs or the Termination Payment. To ascertain the market prices of a replacement contract, the Non

Defaulting Party may consider, among other valuations, quotations from dealers in energy contracts and bona fide third party offers.

(c) For purposes of the Non-Defaulting Party's determination of its Gains, Losses and Costs and the Termination Payment, it shall be assumed, regardless of the facts, that Seller would have sold, and Buyer would have purchased, each day during the Remaining Term (i) Facility Energy in an amount equal the Assumed Daily Deliveries, and (ii) the Environmental Attributes associated therewith. The "*Assumed Daily Deliveries*" is an amount equal to the greater of: (x) the quotient of the Guaranteed Generation divided by 365; and (y) if the date of the Agreement termination is after the last day of the second Contract Year, the average daily Delivered Energy during the period from the Commercial Operation Date until the date of the Agreement termination (which average amount of daily Delivered Energy shall be increased to account for Facility Energy that was not delivered but for which Buyer was obligated to pay Seller pursuant to Section 7.7(b)), and if the date of the Agreement termination is on or prior to last day of the second Contract Year, the projected average daily Delivered Energy for the remaining life of the Agreement as determined by a qualified independent engineer mutually agreed by the Parties.

(d) The Non-Defaulting Party shall notify the Defaulting Party of the Termination Payment, which notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Defaulting Party shall, within ten (10) Business Days after receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, together with interest accrued at the Interest Rate from the Early Termination Date until paid.

(e) 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 informal non-binding dispute resolution as provided in Section 14.3(a). Following resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment (if any) determined by such resolution as and when required, but no later than thirty (30) days following the date of such resolution, together with all interest, at the Interest Rate, that accrued from the Early Termination Date until the date the Termination Payment is paid.

(f) For purposes of this Agreement:

(i) "*Gains*" means, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(ii) "*Losses*" means, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(iii) "*Costs*" means, with respect to a Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any arrangement pursuant to which it has hedged its obligations or entering

into new arrangements which replace this Agreement, excluding attorneys' fees, if any, incurred in connection with enforcing its rights under this Agreement. Each Party shall use reasonable efforts to mitigate or eliminate its Costs.

(iv) In no event shall a Party's Gains, Losses or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

(v) The Present Value Rate shall be used as the discount rate in all present value calculations required to determine Gains, Losses and Costs.

(g) At the time for payment of any amount due under this Section, each Party shall pay to the other Party all additional amounts, if any, payable by it under this Agreement (including any amounts withheld pursuant to Section 13.3(a)(ii) above).

ARTICLE XIV

MISCELLANEOUS

Section 14.1 Authorized Representative. Each Party shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an "**Authorized Representative**"), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternate if designated, and shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement.

Section 14.2 Notices. With the exception of billing invoices pursuant to Section 11.2(b) hereof, all notices, requests, demands, consents, waivers and other communications which are required under this Agreement shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing), (b) deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Appendix C, and (c) deemed delivered, given and received on the date of delivery, in the case of facsimile transmission, or on the date of receipt in the case of registered or certified mail. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests, demands, consents, waivers and other communications through alternate methods, such as electronic mail. A Party may change any address for notice hereunder by notice of such change to the other Party.

Section 14.3 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 14.3) (a "**Dispute**"), either Party (the "**Notifying Party**") may deliver to the other Party (the "**Recipient Party**") notice of the Dispute with a detailed description of the underlying circumstances of such

Dispute (a “*Dispute Notice*”). The Dispute Notice shall include a schedule of the availability of the Notifying Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a parallel schedule of availability of the Recipient Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers’ schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Section 14.3(a) and Section 14.3(b) by the expiration of the thirty (30) day period set forth in Section 14.3(a), then either Party may pursue any legal remedy available to it in accordance with the provisions of this Agreement.

(d) As stated in Section 14.12, this Agreement shall be governed by, interpreted and enforced in accordance with laws of the State of California, without regard to the conflict of laws principles thereof. In addition to the Dispute Resolution process set forth in this section, but subject to Section 14.26, the Parties to this Agreement must comply with California law governing claims against public entities and presentment of such claims.

Section 14.4 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take all further action not inconsistent with the provisions of this Agreement that may be reasonably necessary to effectuate the purposes and intent of this Agreement.

Section 14.5 No Dedication of Facilities. Any undertaking by one Party hereto to the other Party under any provisions of this Agreement shall not constitute the dedication of the system or any portion thereof of either Party to the public or to the other Party or any other Person, and it is understood and agreed that any such undertaking by either Party shall cease upon the termination of such Party’s obligations under this Agreement.

Section 14.6 Force Majeure.

(a) A Party shall not be considered to be in default in the performance of any of its obligations under this Agreement when and to the extent such Party’s performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate, provided the Party has given a written detailed description of the full particulars of the Force Majeure to the other Party reasonably promptly after becoming aware thereof (and in any event within fourteen (14) days after the initial occurrence of the claimed Force Majeure) (the “*Force Majeure Notice*”), which notice shall include information with respect to the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay. The Party providing such notice shall be excused from fulfilling its obligations under this Agreement until such time as the Force Majeure has

ceased to prevent performance or other remedial action is taken, at which time the Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. If Seller is unable to deliver, or Buyer is unable to receive, Energy at the Point of Delivery due to a Force Majeure, Buyer shall have no obligation to pay Seller for the Energy not delivered or received by reason thereof. It is understood by the Parties that the foregoing provisions shall not excuse any obligations of Seller with respect to the curing of any Shortfall Energy following the Contract Year in which such Shortfall Energy arose, whether or not such cure is hindered by Force Majeure. In no event shall Buyer be obligated to compensate Seller or any other Person for any losses, expenses or liabilities that Seller or such other Person may sustain as a consequence of any Force Majeure.

(b) The term “*Force Majeure*” means any event or circumstance that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the date of this Agreement, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; *provided*, nothing herein shall be construed so as to require either Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Force Majeure shall include but not be limited to any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, Curtailment Period, or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each an “*Unexcused Cause*”): (1) any change in any requirement to meet an RPS Law or any change (whether voluntary or mandatory) in any RPS Law that may affect the value of the Energy purchased hereunder; (2) the failure by Seller to construct, operate or maintain the Facility in accordance with this Agreement, except to the extent caused by a separate Force Majeure event; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller’s ability to sell any Energy at a price in excess of those provided in this Agreement; (6) failure of third parties to provide goods or services essential to a Party’s performance, except to the extent caused by a separate Force Majeure event; (7) Facility or equipment failure of any kind, except to the extent caused by a separate Force Majeure event; or (8) any changes in the financial condition of the Buyer, any Seller Party, the Facility Lender or any subcontractor or supplier affecting the affected Party’s ability to perform its obligations under this Agreement.

(c) Buyer may terminate the Agreement if a Force Majeure event disturbs the production of the Facility by more than 50% of the Contract Capacity for 18 consecutive months.

(d) Any termination of this Agreement under Section 14.6(c) shall be “no-fault”, neither Party shall have an liability or obligation to the other Party arising out of such

termination, and upon any such termination each Party shall pay to the other all amounts hereunder as may be owing to each other, and Buyer shall return to Seller all Performance Security.

Section 14.7 Assignment of Agreement.

(a) Buyer may at any time assign all of its rights, and delegate all of its obligations, under this Agreement upon notice to (but without the consent of) Seller to one of Buyer's Members, provided that as a condition to such assignment, such Buyer's Member has an investment grade credit rating and executes an assignment and assumption agreement (and related documents) in a form as reasonably requested by Seller. Buyer may also assign and delegate portions of Buyer's rights and obligations hereunder to multiple of Buyer's Members with Seller's prior written consent, and subject to such conditions as may be imposed by Seller. Upon any such assignment and delegation of obligations, Buyer shall be relieved of and fully discharged from all its obligations hereunder, whether such obligations arose before or after the date of such assignment and delegation.

(b) Except as set forth in this Section 14.7, Seller shall not assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of Buyer. Additionally, Seller shall not sell or transfer the Facility to any Person other than a Person to whom Seller assigns this Agreement, in any event subject to obtaining Buyer's prior written consent to any such assignment and subject to compliance with the Right of First Offer set forth in Section 14.25. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect.

(c) There are no third party beneficiaries of this Agreement, and, except as provided in this Section 14.7, this Agreement shall not grant any rights enforceable by any Person not a party to this Agreement. The Parties acknowledge that Seller expects to be required to collaterally assign this Agreement to Facility Lenders in connection with Facility financing. Although Buyer's consent shall be required for any such collateral assignment, Buyer shall reasonably cooperate with Seller to provide such consent, *provided however* that the terms of such consent documentation comply with the applicable terms and conditions of this Agreement. Seller shall provide Buyer with reasonable prior notice (not less than 45 days) of any such assignment to any Facility Lender. To facilitate Seller's obtaining of financing to construct and operate the Facility, Buyer shall cooperate with Seller to provide the aforementioned consent to collateral assignment (in form and substance satisfactory to Buyer) as may be reasonably requested by Seller or any Facility Lender in connection with the financing of the Facility, including the acquisition of equity for the development, construction and operation of the Facility; *provided however* that the terms of such financing and the documentation relating thereto shall comply with the applicable terms and conditions of this Agreement. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the incremental direct expenses incurred by Buyer in the preparation, negotiation, execution or delivery of any documents requested by Seller or the Facility Lender, and provided by Buyer, pursuant to this Section 14.7(c).

(d) In no event shall Buyer be liable to Facility Lender for any claims, losses, expenses or damages whatsoever other than liability Buyer may have to Seller under this

Agreement, and other than liability Buyer may have for a specific default or breach by Buyer under any agreement executed between Buyer and any Facility Lender. In the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, Facility Lender or other transferee, and their successors in interest and assigns, shall be bound by the covenants and agreements of Seller in this Agreement; *provided, however*, that until the Person who acquires title to the Facility executes and delivers to Buyer a written assumption of Seller's obligations under this Agreement in form and substance acceptable to Buyer, such Person shall not be entitled to any of the benefits of this Agreement. Any sale or transfer of the Facility by Facility Lender must be made only to an entity that is reasonably acceptable to Buyer and has financial qualifications and operating experience equivalent to Seller.

(e) The consent to collateral assignment or other document executed between Buyer and any Facility Lender shall provide, among other things, as follows: (i) if a Facility Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of a Facility Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Facility Lender must itself assume or cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement as a condition of the sale or transfer; (ii) if this Agreement is rejected in any Seller bankruptcy or otherwise terminated in connection therewith and if a Facility Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), SCPPA and the Facility Lender (or the party taking possession of the Facility) shall promptly re-enter into this Agreement or enter into a new agreement having substantially the same terms as this Agreement for a time period equal to any remaining Agreement Term of the Agreement and (iii) mutually agreed provisions that define acceptable transferees and operators of the Facility.

Section 14.8 Ambiguity. The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

Section 14.9 Attorney Fees & Costs. Both Parties hereto agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorney fees and costs. Each of the Parties to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement.

Section 14.10 Voluntary Execution. Both Parties hereto acknowledge that they have read and fully understand the content and effect of this Agreement that the provisions of this Agreement have been reviewed and approved by their respective counsel. The Parties to this Agreement further acknowledge that they have executed this Agreement voluntarily, subject only to the advice of their own counsel, and do not rely on any promise, inducement, representation or warranty that is not expressly stated herein.

Section 14.11 Entire Agreement. This Agreement (including all Appendices and Exhibits) contains the entire understanding concerning the subject matter herein and supersedes

and replaces any prior negotiations, discussions or agreements between the Parties, or any of them, concerning that subject matter, whether written or oral, except as expressly provided for herein. This is a fully integrated document. Each Party acknowledges that no other party, representative or agent, has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement that induced the other Party to sign this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party.

Section 14.12 Governing Law. This Agreement was made and entered into in the County of Los Angeles and shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

Section 14.13 Venue. All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

Section 14.14 Execution in Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories 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 signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

Section 14.15 Effect of Section Headings. Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

Section 14.16 Waiver. The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Notwithstanding anything expressed or implied herein to the contrary, nothing contained herein shall preclude either Party from pursuing any available remedies for breaches not rising to the level of a Default, including recovery of damages caused by the breach of this Agreement and specific performance or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Each Party acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that the other Party may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Each Party hereby waives any objection to specific performance or injunctive relief. The rights granted herein are cumulative, except as expressly stated herein.

Section 14.17 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either such Party. Neither Party shall have any right,

power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party, except that Buyer shall act as Seller's Facility Scheduling Coordinator in the manner set forth herein. .

Section 14.18 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 any duty, obligation or undertaking established herein.

Section 14.19 Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability.

(a) **Indemnification.** Seller undertakes and agrees to indemnify and hold harmless Buyer, its Board of Directors ("**Board**"), and all of the officers and employees of each, and, at the option of Buyer, defend Buyer, and any and all of its Board, officers, agents, employees, advisors, assigns and successors in interest from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including Seller's employees and agents, or damage or destruction to any property of either Party or third persons, in any manner arising by reason of any breach of this Agreement by Seller, or by any failure of a representation of Seller to be true in all material respects or by the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of Seller, or any of Seller's officers, agents, employees, or subcontractors of any tier, except to the extent caused by the gross negligence or willful misconduct of Buyer, its Board, officers, agents, or employees.

(b) **Damage or Destruction.** In the event of any damage or destruction of the Facility or any part thereof, the Facility or such part thereof shall be diligently repaired, replaced or reconstructed by Seller so that the Facility or such part thereof shall be restored to substantially the same general condition and use as existed prior to such damage or destruction, unless a different condition or use is approved by the Buyer. Proceeds of Insurance with respect to such damage or destruction maintained as provided in this Agreement shall be applied to the payment for such repair, replacement or reconstruction of the damage or destruction.

(c) **Condemnation Or Other Taking.** For the Agreement Term, Seller shall immediately notify Buyer of the institution of any proceeding for the condemnation or other taking of the Facility or any portion thereof. Buyer may participate in any such proceeding and Seller shall deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Without Buyer's prior written consent (not to be unreasonably withheld, delayed or conditioned), Seller (i) shall not agree to any compensation or award, and (ii) shall not take any action or fail to take any action which would cause the compensation to be determined. To the extent reasonably practical, and approved by Facility Lenders, all awards and compensation for the taking or purchase in lieu of condemnation of the Facility, or any portion thereof shall be applied toward the repair, restoration, reconstruction or replacement of the Facility.

(d) **Limitation of Liability.** Except to the extent included in the liquidated damages, indemnification obligations related to third party claims or other specific charges expressly provided for herein, neither Party hereunder shall be liable for special, incidental,

exemplary, indirect, punitive or consequential damages arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under contract, tort (including such Party's own negligence) or any other theory at law or in equity.

Section 14.20 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

Section 14.21 Confidentiality.

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, to keep confidential, except as required by law, all documents, data, drawings, studies, projections, plans and other written information that relate to economic benefits to or amounts payable by either Party under this Agreement, and, with respect to documents, that are clearly marked "Confidential" at the time a Party shares such information with the other Party or, if orally disclosed, clearly identified as "Confidential" at the time a Party shares such information with the other Party ("**Confidential Information**"). The provisions of this Section 14.21 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Either Party may, without violating this Section 14.21, disclose matters that are made confidential by this Agreement:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective co-owners, investors, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries, affiliates, or parent;

(ii) to governmental officials and parties involved in any proceeding in which either Party is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other Requirement of Law, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and

laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.

(c) If a Party is requested or required, pursuant to any applicable law, regulation, order, rule, order, ruling or other Requirement of Law, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(d) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer, as a California joint powers agency, is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250 et. seq. ("*CPRA*") and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 et. seq. ("*Brown Act*"). Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer's copying or releasing to a third party any of the Confidential Information of Seller pursuant to the CPRA or Brown Act. Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all applicable law the credit support contemplated by this Agreement and the Ancillary Documents and the rights of Buyer with respect to such credit support.

(e) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information, is subject to disclosure under the CPRA, then Buyer shall notify Seller of the request and its intent to disclose the documents. Buyer, as required by the CPRA, shall release such documents unless the Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer from and against all suits, claims, and causes of action brought against Buyer for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against Buyer, through and including any appellate proceedings. Seller's obligations to Buyer under this indemnification provision shall be due and payable on a monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer, as well as all damages or liability of any nature.

Section 14.22 Mobile-Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written

agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of this Agreement proposed by a Party, a non-Party or the FERC acting sua sponte shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956).

Section 14.23 Taxpayer Identification Number (TIN). Seller declares that its authorized TIN is 45-2380976. No payment will be made under this Agreement without a valid TIN number.

Section 14.24 Service Contract. The Parties intend that this Agreement will qualify as a “service contract” as such term is used in Section 7701(e) of the United States Internal Revenue Code of 1986.

Section 14.25 Right of First Offer. SCPPA has the “*Right of First Offer*” (or “*ROFO*”) for any proposed sale of the Facility by Seller, all in accordance with the provisions of this Section 14.25. Prior to Seller consummating a sale of the Facility, Seller shall provide notice to Buyer of Seller’s proposed sale (a “*Proposed Sale Notice*”). Upon receipt of such notice, Buyer shall have forty-five (45) days in which to provide notice to Seller indicating whether Buyer is interested in negotiating with Seller to purchase the Facility from Seller. If Buyer does not provide such a notice, then, subject to the requirements of Section 14.7, Seller shall be free to sell the Facility to any third party, provided that if a sale is not consummated within eighteen (18) months following the date of the Proposed Sale Notice, then Seller must provide another Proposed Sale Notice hereunder (and go through the ROFO process hereunder) before consummating any such sale. If Buyer does provide a notice in response to Seller’s Proposed Sale Notice, indicating that Buyer is interested in purchasing the Facility, then the Parties shall undertake for a period up to thirty (30) from the date of Buyer’s response notice to determine if they are able to reach mutual agreement on the terms and conditions of a sale of the Facility to Buyer. Failing such mutual agreement, then, subject to the requirements of Section 14.7, Seller shall be free to sell the Facility to any third party, provided that if a sale is not consummated within eighteen (18) months following the date of the expiration of such thirty (30) day period, Seller must provide another Proposed Sale Notice hereunder (and go through the ROFO process hereunder) before consummating any such sale, and provided further that any such sale shall not be for an aggregate purchase price less than the aggregate purchase price last offered by Seller to Buyer in writing during such thirty (30) day negotiation period. The ROFO shall not apply to any sale-leaseback or similar Facility financing by Seller or to any sale by any Facility Lender in connection with the exercise of Facility Lender remedies under financing security documents.

Section 14.26 Government Contracts and No Immunity. Buyer covenants that throughout the Agreement Term that with respect to Buyer’s contractual obligations hereunder and the performance thereof, Buyer shall not claim any immunity, including on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets, including in connection with suit, jurisdiction of any court, relief by way of injunction, order for specific performance or recovery of property, or enforcement of any judgment.

Each Party was represented by legal counsel during the negotiation and execution of this Agreement and the Parties have executed this Agreement as of the dates set forth below, effective as of the Effective Date.

SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY

Date: _____

By: _____

Attest: _____

ANTELOPE BIG SKY RANCH, LLC

Date: Dec 10, 2012

By: John C. Cunniff

Its: Managing Member, CEO

Attest: Margie Spangh

APPENDIX A
TO POWER PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 15, 2012
BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND ANTELOPE BIG SKY RANCH, LLC
CONTRACT PRICE DETAILS

1. **Contract Price Prior to COD.** Prior to COD, the Contract Price for Delivered Energy is \$46.40 per MWh.
2. **Contract Price on and After COD.** On and after the COD, the Contract Price for Delivered Energy is \$77.34 per MWh, with an annual escalation of 1.5% per Contract Year starting on the first day of the second Contract Year, and such Contract Price shall be increased by Section 3 of this Appendix A below.
3. **Contract Price Adjustments.** RA/LCR Attributes are expected to be available when Southern California Edison Company (SCE) completes the Deliverability Upgrades to make the Facility fully deliverable. Since timing of completion of the Deliverability Upgrades build-out is uncertain, the Contract Price shall be modified by one of the following, as applicable:
 - 3.1 Seller may elect (by written notice to Buyer) to provide the RA/LCR Attributes associated with the Facility to Buyer from COD for the full Delivery Term, regardless of whether the Deliverability Upgrades are completed. Seller shall notify Buyer of any such election to make RA/LCR Attributes available to Buyer at COD at least 12 months prior to COD. RA/LCR Attributes provided pursuant to Seller's election under this Section 3.1 of this Appendix A shall increase the Contract Price by \$5.10/MWh for the Stub Year and the first Contract Year, with 1.5% annual escalation starting in the second Contract Year; or
 - 3.2 If Seller does not make the election provided for in Section 3.1 of this Appendix A, then the Contract Price provided in Section 2 of this Appendix A shall be increased on the date when the Deliverability Upgrades are completed, as follows:
 - a) If the Deliverability Upgrades are completed on or before 24 months after COD, then the Contract Price in Section 2 of this Appendix A shall be increased by \$5.10/MWh on the date of such completion, and (notwithstanding the escalation provisions in Section 2 above) the portion of the Contract Price attributable to such increase shall be subject to 1.5% annual escalation each Contract Year starting on the first day of second full Contract Year that begins following the date of such completion;
 - b) If the Deliverability Upgrades are completed after 24 months, but on or before 60 months, after COD, then the Contract Price in Section 2 of this Appendix A shall be increased by \$6.28/MWh on the date of such completion, and

(notwithstanding the escalation provisions in Section 2 above) the portion of the Contract Price attributable to such increase shall be subject to 1.5% annual escalation each Contract Year starting on the first day of second full Contract Year that begins following the date of such completion; or

- c) If the Deliverability Upgrades are completed more than 60 months after COD, the Contract Price in Section 2 of this Appendix A shall be increased by \$7.46/MWh on the date of such completion, and (notwithstanding the escalation provisions in Section 2 above) the portion of the Contract Price attributable to such increase shall be subject to 1.5% annual escalation each Contract Year starting on the first day of second full Contract Year that begins following the date of such completion.

4. Certain Defined Terms. For purposes hereof:

“Deliverability Upgrades” means those Transmission System network upgrades necessary for the Facility to receive Full Capacity Deliverability Status within the meaning of the CAISO Tariff.

“RA/LCR Attributes” means any and all Capacity Rights that are at any time available from the Facility to satisfy any Resource Adequacy requirements of Buyer or any Buyer’s Member relating to Local Capacity Requirements.

5. Acknowledgments. For the avoidance of doubt, the Parties acknowledge and agree that (a) Seller is selling to Buyer, and Buyer is purchasing from Seller, all Products produced by the Facility, (b) the Products include, but are not limited to, all Delivered Energy, and all Environmental Attributes and Capacity Rights (including RA/LCR Attributes) that may at any time exist and be associated with such Delivered Energy, (c) although monthly payments hereunder from Buyer to Seller determined under Agreement Article XI are based on the quantity of Facility Energy delivered to the Point of Delivery and the Contract Price (as adjusted under this Appendix A), such payments are full compensation for such Facility Energy all other Products associated with such Facility Energy, and (d) the actual amounts payable each month from Buyer to Seller under Agreement Article XI are subject to certain adjustments expressly provided for in the Agreement, including Section 6.1(c), Section 7.5, Section 7.7(b), and this Appendix A.

**APPENDIX B
TO POWER PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 15, 2012
BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND ANTELOPE BIG SKY RANCH, LLC
FACILITY, PERMITS, AND OPERATOR**

1. Name of Facility: Antelope Big Sky Ranch Solar Facility

Location: City of Lancaster, Los Angeles County, California
2. Owner: Antelope Big Sky Ranch, LLC
3. Operator: To be designated after Effective Date
4. Equipment:
 - (a) Type of Facility: Solar Photovoltaic
 - (b) Capacity: 20 MW
 - (c) Capacity Factor: 28%*

Total nominal gross nameplate capacity: 20 MW

Total nominal net capacity under expected average Site conditions: 20 MW
5. Expected Commercial Operation Date (from Appendix I): December 1, 2014
6. Permits:
 - (a) CEQA Determination
 - (b) Conditional Use Permit
 - (c) Building Permit
 - (d) Grading Permit

* The actual Capacity Factor may vary depending on weather and other meteorological conditions, final Facility design and other factors, although the Annual Contract Quantities in Appendix J and the Guaranteed Generation levels are fixed for all purposes of the Agreement.

**APPENDIX C
TO POWER PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 15, 2012
BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND ANTELOPE BIG SKY RANCH, LLC
BUYER AND SELLER BILLING, NOTIFICATION AND SCHEDULING CONTACT
INFORMATION**

1. **Authorized Representative.** The initial Authorized Representatives of Buyer and Seller pursuant to Section 14.1 are as follows:

1.1 Buyer's Authorized Representative:

Bill D. Carnahan
Southern California Public Power Authority
1160 Nichole Court
Glendora, CA 91740
Telephone: 626-793-9364
Facsimile: 626-704-9461
Email: bcarnahan@scppa.org

1.2 Seller's Authorized Representative

Hans Isern
Antelope Big Sky Ranch, LLC
c/o Silverado Power
44 Montgomery Street, Suite 3065
San Francisco CA 94104
Telephone: 415-692-7575
E-mail: hans@silveradopower.com

2. **Billings and Payments.** Billings and payments pursuant to Article XI and Appendix A shall be transmitted to the following addresses:

2.1 If Billing to Buyer:

Southern California Public Power Authority
1160 Nichole Court
Glendora, CA 91740
Attention: Accounts Payable
Email: voates@scppa.org

2.2 If Payment to Buyer:

Southern California Public Power Authority
1160 Nichole Court
Glendora, CA 91740
Attention: Accounts Receivable
Email: voates@scppa.org

2.3 If Billing to Seller:

Antelope Big Sky Ranch, LLC
c/o Silverado Power
44 Montgomery Street, Suite 3065
San Francisco CA 94104
Attention: Accounts Payable

2.4 If Payment to Seller:

Antelope Big Sky Ranch, LLC
c/o Silverado Power
44 Montgomery Street, Suite 3065
San Francisco CA 94104
Attention: Accounts Receivable

3. **General Notices.** Unless otherwise specified by Buyer all notices (other than Facility forecasting and scheduling notices) required under the Agreement shall be sent by facsimile transmission, reliable overnight courier, and registered or certified mail, postage prepaid, to the address specified below.

If to Buyer:

Southern California Public Power Authority
1160 Nichole Court
Glendora, CA 91740
Attention: Kelly Nguyen, Director of Energy Systems

Telephone: 626-793-9364
Facsimile: 626-793-9461
Email: knguyen@scppa.org

If to Seller:

Antelope Big Sky Ranch, LLC
c/o Silverado Power
44 Montgomery Street, Suite 3065
San Francisco CA 94104
Attention: Hans Isern
Telephone: 415-692-7575

E-mail: hans@silveradopower.com

4. **Notices for Facility Forecasting and Scheduling.** Unless otherwise specified by Buyer all notices related to forecasting and scheduling of the Facility shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority
c/o Executive Director
1160 Nichole Court
Glendora, CA 91740
Attention: Kelly Nguyen, Director of Energy Systems

Phone: 626-793-9364
Facsimile: 626-793-9461
Email: knguyen@scppa.org

If to Seller:

[to be designated]

**APPENDIX D
TO POWER PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 15, 2012
BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND ANTELOPE BIG SKY RANCH, LLC
FORM OF ATTESTATION**

_____ **(Seller)** _____ **Environmental Attribute Attestation and Bill of Sale**

Pursuant to that certain Power Purchase Agreement ("Agreement") dated as of _____, between _____ ("Seller") and Southern California Public Power Authority ("Buyer"), Seller hereby sells, transfers and delivers to Buyer the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below. Capitalized terms used and not defined herein have the meaning in the Agreement, unless the context requires otherwise.

Facility name and location:

Fuel Type:

Capacity (MW): _____ Operational Date:

As applicable: CEC Reg. no. _____ Energy Admin. ID no. _____ Q.F. ID no. _____

<u>Dates</u>	<u>MWhs generated</u>
_____ 20__	_____
_____ 20__	_____
_____ 20__	_____

in the amount of one Environmental Attribute or its equivalent for each megawatt hour generated.

Seller further attests, warrants and represents as follows:

- i) the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;
- iii) the Facility generated and delivered to the Point of Delivery the Energy in the amount indicated above; and
- iv) Seller owns the Facility and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Energy, and the same have been sold to Buyer.

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the Energy delivered to the Point of Delivery.

Contact Person: _____ tel:

**APPENDIX E
TO POWER PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 15, 2012
BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND ANTELOPE BIG SKY RANCH, LLC
FORM OF LETTER OF CREDIT**

**IRREVOCABLE AND UNCONDITIONAL DOCUMENTARY
LETTER OF CREDIT NO. _____**

Applicant:

Beneficiary:

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
1160 Nichole Court
Glendora, CA 91740
Telephone: (626) 793-9364
Facsimile: (626) 793-9461

Amount:

Expiry Date:

Expiration Place:

Ladies and Gentlemen:

We hereby issue our Irrevocable Unconditional Documentary Letter of Credit in favor of the beneficiary by order and for the account of the applicant which is available at sight for USD \$XX,XXX,XXX by sight payment

- (a) upon presentation to us at our office at [*bank's address*],¹ of: (i) your written demand for payment containing the text of Exhibit I and (ii) your signed statement containing the text of Exhibit II; or
- (b) upon both your telephone or fax advice of demand to the attention of _____ at telephone and/or fax number _____ and presentation to us by fax of: (i) your written demand for payment containing the text of Exhibit I and (ii) your statement containing the text of Exhibit II.² Funds may be drawn

¹ Note to Issuer: The Letter of Credit must be payable in U.S. dollars within the continental U.S.

² Note to Issuer: If the office specified for presentation is outside of Los Angeles, California, alternative (b) must appear in the Letter of Credit when issued. If the office is in Los Angeles, California, alternative (b) may be included only if the bank establishes and maintains with Southern California Public Power Authority the necessary electronic arrangements.

under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the amount specified above.

Upon presentation to us in conformity with the foregoing, we will, within one business day after such presentation, but without any other delay whatsoever, irrevocably and without reserve or condition: (a) if the office set forth above for presentation is in Los Angeles, California, pay to your order in the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you, or (b) if the office set forth above for presentation is not in Los Angeles, California, issue payment instructions to the Federal Reserve wire transfer system in proper form to transfer to the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you in Los Angeles, California. We agree that if, on the expiration date of this Letter of Credit, the office specified above is not open for business, this Letter of Credit will be duly honored if the specified statements are presented by you within three (3) full banking days after such office is reopened for business.

Payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from the Applicant or any other person except you, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the documents presented by you, but excluding solely an effective written order issued otherwise than at our instance by a court of competent jurisdiction, which order is legally binding upon us and specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment. We agree that we will not take any action to cause the issuance of an order described in clause (a) of the preceding sentence. We agree that the time set forth herein for payment of any demand(s) for payment is sufficient to enable us to examine such demand(s) and the related documents(s) referred to above with care so as to ascertain that on their face they appear to comply with the terms of this credit and that if such demand(s) and document(s) on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s) and this credit.

The stated amount of this Letter of Credit may be increased or decreased, and the expiration date of this Letter of Credit may be extended, by an amendment to this Letter of Credit in the form of Exhibit III. Any such amendment shall become effective only upon acceptance by your signature on a hard copy amendment.

You shall not be bound by any written or oral agreement of any type between us and the Applicant or any other person relating to this credit, whether now or hereafter existing.

We hereby engage with you that your demand(s) for payment in conformity with the terms of this credit will be duly honored as set forth above. All fees and other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of the Applicant. All of the rights of the Southern California Public Power Authority ("**SCPPA**") set forth above shall inure to the benefit of your successors. In this connection, in the event of a

drawing made by a party other than SCPPA, such drawing must be accompanied by the following signed certification:

“The undersigned does hereby certify that _____ [drawer] _____ is the successor by operation of law to SCPPA, a beneficiary named in [name of Bank] Letter of Credit no. _____.

[name and title]

Except so far as otherwise expressly stated herein, this documentary credit is subject to the “Uniform Customs and Practices for Documentary Credits,” International Chamber of Commerce, in effect on the date of issuance of this credit.

Yours faithfully,
(name of issuing bank)

By _____
Title _____

EXHIBIT I
Demand for Payment

Re: Irrevocable and Unconditional Documentary Letter of Credit
No. _____ Dated _____, 20__

To Whom It May Concern:

Demand is hereby made upon you for payment to us of \$_____ by deposit to our account no. _____ at [insert name of bank]. This demand is made under, and is subject to and governed by, your Irrevocable and Unconditional Documentary Letter of Credit no. _____ dated _____, 20__ in the amount of \$_____ established by you in our favor for the account of _____ as the Applicant.

DATED: _____, 20__.

SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY

By _____
Title _____

EXHIBIT II
Statement

Re: Your Irrevocable and Unconditional Documentary Letter of Credit
No. _____ Dated _____, 20_____

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Documentary Letter of Credit
no. _____, dated _____, 20__ in the amount of \$ _____
established by you in our favor for the account of _____.

We hereby certify to you that \$ _____ is payable to us as provided in our
agreement with the Applicant.

DATED: _____, 20__.

SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY

By _____
Title _____

EXHIBIT III
Amendment

Re: Irrevocable and Unconditional Documentary Letter of Credit
No. _____ Dated _____, 20__

Beneficiary:

Applicant:

Southern California Public Power Authority
1160 Nichole Court
Glendora, CA 91740

To Whom It May Concern:

The above referenced Irrevocable and Unconditional Documentary Letter of Credit is hereby amended as follows: by increasing / decreasing / leaving unchanged (*strike two*) the stated amount by \$ _____ to a new stated amount of \$ _____ or by extending the expiration date to _____ from _____. All other terms and conditions of the Letter of Credit remain unchanged.

This amendment is effective only when accepted by Southern California Public Power Authority, which acceptance may only be valid by a signature of an authorized representative.

Dated: _____

Yours faithfully,

(name of issuing bank)

By _____

Title _____

ACCEPTED

Southern California Public Power Authority

By _____

Title _____

Date _____

APPENDIX F
TO POWER PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 15, 2012
BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND ANTELOPE BIG SKY RANCH, LLC
INSURANCE

I. GENERAL REQUIREMENTS

Prior to the start of work, but not later than thirty (30) days after the Agreement execution date (or such later date as may be expressly stated in paragraphs II(E), (F) and (G) below), Seller shall furnish Buyer evidence of coverage from insurers reasonably acceptable to the Buyer and in a form reasonably acceptable to the risk management section of the project manager for Buyer or to Buyer's agent for this purpose. Such insurance shall be maintained by Seller at Seller's sole cost and expense.

Such insurance shall not limit or qualify the liabilities and obligations of Seller assumed under this Agreement. Buyer shall not by reason of its inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies.

Any insurance carried by Buyer which may be applicable shall be deemed to be excess insurance and Seller's insurance is primary for all purposes despite any conflicting provision in Seller's policies to the contrary.

Said evidence of insurance shall contain a provision that the policy cannot be canceled or reduced in coverage or amount without first giving thirty (30) days prior notice thereof (ten (10) days for non-payment of premium) by registered mail to Executive Director, Southern California Public Power Authority, 1160 Nichole Court, Glendora, CA 91740.

Should any portion of the required insurance be on a "Claims Made" policy, Seller shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended discovery period has been purchased on the expiring policy at least for the contract under which the work was performed.

Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which Buyer may immediately provide a default notice to Seller under Agreement Section 13.1(i).

Seller shall be responsible for all subcontractors' compliance with the applicable insurance requirements.

II. SPECIFIC COVERAGES REQUIRED

A. Commercial Automobile Liability

Seller shall provide Commercial Automobile Liability insurance which shall include coverages for liability arising out of the use of owned, non-owned, and hired vehicles for performance of the work as required to be licensed under the California or any other applicable state vehicle code. The Commercial Automobile Liability insurance shall have not less than \$1,000,000.00 combined single limit per occurrence and shall apply to all operations of Seller.

The Commercial Automobile Liability policy shall include Buyer, its Board of Directors, its members, and their officers, agents, and employees while acting within the scope of their employment, as additional insureds with Seller, and shall insure against liability for death, bodily injury, or property damage resulting from the performance of this Agreement. The form of evidence of insurance shall be a Buyer Additional Insured Endorsement or an endorsement to the policy reasonably acceptable to Buyer's risk management agent.

B. Commercial General Liability

Seller shall provide Commercial General Liability insurance with Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, Premises and Operations, Products and Completed Operations, fire Legal Liability and Personal Injury coverages included. Such insurance shall provide coverage for total limits actually arranged by Seller, but not less than \$10,000,000.00 combined single limit per occurrence. Should the policy have an aggregate limit, such aggregate limits should not be less than double the Combined Single Limit and be specific for this Agreement. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be on Buyer's Additional Insured Endorsement form or on an endorsement to the policy reasonably acceptable to the Buyer's risk management agent, and shall provide for the following:

1. Include Buyer and its officers, agents, and employees as additional insureds with the Named Insured for the activities and operations under this Agreement.
2. Severability-of-Interest or Cross-Liability Clause such as: "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company's liability."
3. A description of the coverages included under the policy.

C. Excess Liability

Seller may use an Umbrella or Excess Liability Coverage to meet coverage limits specified in this Agreement. Seller shall require the carrier for Excess Liability to properly schedule and to identify the underlying policies as provided for Buyer on the Buyer Additional Insured Endorsement Form, or on an endorsement to the policy reasonably acceptable to Buyer's risk management agent. Such policy shall include, as

appropriate, coverage for Commercial General Liability, Commercial Automobile Liability, Employer's Liability, or other applicable insurance coverages.

D. Workers' Compensation/Employer's Liability Insurance

Seller shall provide Workers' Compensation insurance covering all of Seller's employees in accordance with the laws of any state in which the work is to be performed and including Employer's Liability insurance and a Waiver of Subrogation in favor of Buyer. The limit for Employer's Liability coverage shall be not less than \$1,000,000.00 each accident and shall be a separate policy if not included with Workers' Compensation coverage. Evidence of such insurance shall be in the form of a Buyer Special Endorsement of insurance or on an endorsement to the policy reasonably acceptable to Buyer's risk management agent. Workers' Compensation/Employer's Liability exposure may be self-insured *provided* that Buyer is furnished with a copy of the certificate issued by the state authorizing Seller to self-insure. Seller shall notify Buyer's Risk Management Section by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

E. Builders' Risk

Prior to commencing site construction activities, Builder's Risk insurance, which shall be of the "all risk" type, shall be written in completed value form, and shall protect Seller, the Southern California Public Power Authority, the Board of Directors, and Buyer's members against risks of damage to buildings, structures, and materials and equipment whether on site or in transit from any location worldwide. Outside of the United States, this transit insurance requirement may be satisfied by the purchase of a global marine specific policy, if applicable. The amount of such insurance shall be not less than the insurable value of the work at completion. Buyer shall be a named additional insured on the policy. The Builder's Risk insurance shall provide for losses to be payable to Seller and the aforementioned additional insured, as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against Seller and the aforementioned named additional insured. The Builders' Risk policy shall insure against all risks of direct physical loss or damage to property from any cause including testing, ensuing loss, commissioning, and, to the extent available in the insurance market on generally commercially reasonable terms, earthquake and flood, provided, that should Seller determine that either earthquake or flood coverage is not available on generally commercially reasonable terms as aforesaid, Seller shall notify Buyer not less than thirty (30) days in advance of the date when such coverage will not, or will no longer, be available together with a description of Seller's efforts to obtain such coverage and an explanation of the basis for Seller's determination in reasonable detail. The policy shall be in full force and effect until the earlier of: (1) the Commercial Operation Date or the substantial completion of the Facility, whichever date is the later, or (2) the effective date of the Property All Risk Insurance referenced below.

F. Property All Risk Insurance

Seller shall procure and maintain an All Risk Physical Damage policy to insure the full replacement value of the property located at Facility as described in this Agreement. The policy shall include coverage for expediting expense, extra expense, Business Interruption, ensuing loss from faulty workmanship, faulty materials, or faulty design. This policy shall be obtained and placed in full force and effect prior to the expiration of the Builder's Risk Policy. This policy shall have the same insureds, and all losses shall be payable in the same manner, as provided for the Builders' Risk Policy in Paragraph II.E.

G. Professional Liability

Prior to the commencement of work by Seller's EPC Contractor under Seller's EPC Contract for the Facility, and subject to the following paragraph, Seller shall provide (or cause its EPC contractor to provide) Professional Liability insurance with contractual liability coverage included covering Seller's (or such EPC Contractor's, as applicable) liability arising from errors and omissions made directly or indirectly during the execution of this Agreement (or the EPC Contract, as applicable) and shall provide coverage for the total limits actually arranged by Seller, but not less than \$1,000,000.00, combined single limit. Such policy shall be maintained for not less than three (3) years after the Commercial Operation Date under this Agreement. Evidence of such insurance shall be in the form of a special endorsement of insurance and shall include a Waiver of Subrogation in favor of Buyer, its officers, agents and employees.

The Parties agree to confer in good faith prior to the hiring of Seller's EPC Contractor (i) to determine whether the preceding requirement for Professional Liability insurance is reasonably necessary to be included in this Agreement to protect SCPPA or the Buyer's Members consistent with Prudent Utility Practices and (ii) to modify (or eliminate) such requirement as mutually agreed to be appropriate based on the foregoing standard in clause (i).

APPENDIX G
TO POWER PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 15, 2012
BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND ANTELOPE BIG SKY RANCH, LLC
FORM OF GUARANTEE

This Guarantee dated as of [] is made by [] (the "*Guarantor*") in favor of SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers authority created under the laws of the State of California (the "*Beneficiary*").

ARTICLE ONE

Section 1.01 Guarantee.

(a) For valuable consideration in connection with [identify PPA, Option Agreement and other Ancillary Documents as appropriate, as each may hereafter be amended, supplemented or otherwise modified from time to time, collectively, the "*Guaranteed Contract*"] with (Counterparty/Seller name and description to the underlying Guaranteed Contract, the "*Counterparty*") subject to the terms and conditions set forth herein and effective from the date herein, the Guarantor irrevocably and unconditionally guarantees to the Beneficiary, its successors and permitted assigns, the prompt payment on demand, in lawful money of the United States, of any amount due and payable to the Beneficiary arising out of or under the Guaranteed Contract, when the same shall become due, whether at stated maturity, by acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code) subject to any applicable grace period thereunder and the prompt and proper performance by the Counterparty of all of its other obligations to the Beneficiary pursuant to the Guaranteed Contract (collectively, the "*Guaranteed Obligations*"). This is a guarantee of payment and not merely a guarantee of collection, and the Guarantor is liable as a primary obligor for the amounts due hereunder. The Beneficiary shall make demands for payment hereunder by providing the Guarantor with written notice as provided below, and the Guarantor shall make payments within five (5) business days after receipt of any such notice. The Guarantor shall make each payment to the Beneficiary in U.S. Dollars in immediately available funds as directed by the Beneficiary. Notwithstanding any other provision of this Agreement, the Guarantor's aggregate liability under this Guarantee is limited to _____ U.S. Dollars (US\$ _____).

(b) The obligations of Guarantor hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full in cash and performance of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees that: (a) Beneficiary may enforce this Guarantee upon the occurrence and during the continuance of a default or early termination event under the Guaranteed Contracts notwithstanding the existence of any dispute between Counterparty and Beneficiary with respect to the existence of such event; (b) the obligations of Guarantor hereunder are independent of the obligations of Counterparty under the Guaranteed Contracts

and the obligations of any other guarantor of obligations of Counterparty and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Counterparty or any of such other guarantors and whether or not Counterparty is joined in any such action or actions; and (c) Guarantor's payment or performance of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion of the Guaranteed Obligations that has not been paid or performed. This Guarantee is a continuing guaranty and shall be binding upon Guarantor and its successors and assigns, and Guarantor irrevocably waives any right (including any such right arising under California Civil Code Section 2815) to revoke this Guarantee as to future transactions giving rise to any Guaranteed Obligations.

(c) Any interest on any portion of the Guaranteed Obligations that accrues after the commencement of any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Counterparty (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantor and Beneficiary that the Guaranteed Obligations should be determined without regard to any rule of law or order that may relieve Counterparty of any portion of such Guaranteed Obligations.

(d) Upon the failure of Counterparty to pay or perform any of the Guaranteed Obligations when and as the same shall become due, Guarantor will upon demand pay, or cause to be paid, in cash, to Beneficiary an amount equal to the aggregate of the unpaid Guaranteed Obligations .

(e) This Guarantee shall terminate only upon the full satisfaction of the Guaranteed Obligations. If, notwithstanding the foregoing, Guarantor shall have any non-waivable right under applicable law or otherwise to terminate or revoke this Guarantee, Guarantor agrees that the termination or revocation shall not be effective until a written notice of the termination or revocation is received by Beneficiary and shall not affect the rights and powers of Beneficiary to enforce rights arising prior to receipt of the notice. Any rights arising out of advances or actions by Beneficiary after Guarantor's termination or revocation but prior to receipt of the requisite notice shall be the same as if the termination or revocation had not occurred.

Section 1.02 Guarantee Absolute.

(a) To the extent required hereunder, the Guaranteed Obligations will be paid strictly in accordance with the terms of the Guaranteed Contract, regardless of any bankruptcy or other law affecting any of such terms or the rights of the Beneficiary with respect thereto. The Guarantor's obligations under this Guarantee shall not be impaired by any increase, reduction, extension, rearrangement or subordination of the Guaranteed Obligations, any amendment, supplement, or other modification of the Guaranteed Contracts, any grant or impairment of any security or support for the Guaranteed Obligations, the failure to give notice of any default or event of default, however denominated, under the Guaranteed Contracts or of the bringing of action to enforce the payment or performance of the Guaranteed Obligations or any other notice

of any kind relating to the Guaranteed Obligations, or any other action which affects the Guaranteed Obligations.

(b) Guarantor further agrees that, to the extent that the Counterparty or the Guarantor makes a payment or payments to the Beneficiary which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to the Counterparty or the Guarantor or their respective estate, trustee, receiver, or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then to the extent of such payment or repayment, this Guarantee and the advances or part thereof which have been paid, reduced, or satisfied by such amount shall be reinstated and continued in full force and effect as of the date such initial payment, reduction, or satisfaction occurred.

ARTICLE TWO

Section 2.01. Severability.

(a) In case any one or more of the provisions of this Guarantee shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the parties to this Guarantee that such illegality or invalidity shall not affect any other provision hereof, but this Guarantee shall be construed or enforced as if such illegal or invalid provision had not been contained herein unless such a court holds that such provisions are not separable from other provisions of this Guarantee.

(b) The obligations hereunder are joint and several, and independent of the obligations of Counterparty, and a separate action or actions may be brought and prosecuted against Guarantor, whether or not action is brought against Counterparty or whether or not Counterparty is joined in any such action or actions.

ARTICLE THREE

Section 3.01. Guarantor's Warranties.

Guarantor makes the following representations and warranties to Beneficiary:

(a) (i) this Guarantee is executed at Beneficiary's request; (ii) Guarantor has not and will not without prior written consent of Beneficiary, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; and (iii) Guarantor has adequate means of obtaining from Counterparty on a continuing basis financial and other information pertaining to Counterparty's financial condition without relying on Beneficiary therefor;

(b) Guarantor agrees to keep adequately informed from such means of any facts, events or circumstances which Guarantor consider material or which might in any way affect Guarantor's risks hereunder. With respect to information or material acquired in the normal course of Beneficiary's relationship with Counterparty, Guarantor agrees that Beneficiary shall have no obligation to disclose such information or material to Guarantor;

(c) Guarantor is a [_____] , duly organized, validly existing and in good standing under the laws of the State of [_____] , and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Guarantee and effect the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Guarantee;

(d) the execution, delivery and performance by Guarantor of this Guarantee and has been duly authorized by all necessary action, and do not and will not require any consent or approval of Guarantor's managing member or equity holders or other Person other than that which has been obtained;

(e) the execution and delivery of this Guarantee and the fulfillment of and compliance with the provisions of this Guarantee do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any federal, state and local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any federal, state, local or other governmental authority, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Guarantor is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any lien or encumbrance upon any of the properties or assets of Guarantor; and

(f) this Guarantee constitutes the legal, valid and binding obligation of Guarantor enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

ARTICLE FOUR

Section 4.01. Waivers.

(a) It shall not be necessary for the Beneficiary, in order to enforce this Guarantee, to exhaust the Beneficiary's remedies against the Counterparty, to enforce any security or support for the payment or performance of the Guaranteed Obligations, or to enforce any other means of obtaining payment or performance of the Guaranteed Obligations. The Guarantor waives any rights under applicable state law related to the foregoing. Until irrevocable payment in full and performance of the Guaranteed Obligations, the Guarantor will not exercise any right of subrogation (including any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509, or under applicable state law) or any right to participate in any claim or remedy of the Beneficiary against the Counterparty, but this standstill is not intended as a permanent waiver of the subrogation rights of the Guarantor. To the extent permitted by law, Guarantor waives the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof, and agrees that any payment of any obligation or other act which shall toll any statute of limitations applicable to the obligation shall also operate to toll such statute of limitations applicable to Guarantor's liability hereunder. The liability of Guarantor hereunder shall be reinstated and revived and the rights of Beneficiary shall continue with respect to any amount paid by Counterparty on account of the obligations guaranteed

hereby, which shall thereafter be required to be restored or returned by Beneficiary upon the bankruptcy, insolvency or reorganization of Counterparty or for any other reason, all as though such amount had not been paid. The Guarantor hereby waives notice of acceptance of this Guarantee and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment or performance, protest, notice of dishonor or non-payment or non-performance of any such obligation or liability, suit or the taking of other action by Beneficiary against, and any other notice to, the Counterparty, the Guarantor or others. Any other suretyship defenses are hereby waived by the Guarantor. This Guarantee and the obligations of Guarantor hereunder shall be valid and enforceable and shall not be subject to any limitation, impairment or discharge for any reason (other than payment in full in cash and performance of the Guaranteed Obligations). The Beneficiary shall not be required to inquire into the capacity or powers of Guarantor or Counterparty or the officers, directors or any agents acting or purporting to act on behalf of any of them.

(b) In addition to the foregoing, Guarantor specifically waives:

(i) any right to require Beneficiary to (A) proceed against any person, including Counterparty; (B) proceed against or exhaust any collateral held from Counterparty, and other endorser or guarantor or any other person; (C) give notice of terms, time and place of any public or private sale of personal property or real property security held from Counterparty or comply with any other provisions of Section 9504 of the California Uniform Commercial Code or sections 2924 through 2924k of the California Civil Code, to the extent allowed by law; (D) pursue any other remedy in Beneficiary's power; or (E) make any presentments, demands for performance, or give any notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any obligations or evidences of indebtedness held by Beneficiary as security, in connection with any obligations or evidences of indebtedness which constitute in whole or in part the obligations guaranteed hereunder, or in connection with the creation of new or additional obligations;

(ii) in accordance with Section 2856 of the California Civil Code, any and all rights and defenses available to it by reason of Sections 2787 to 2855, inclusive, of the California Civil Code;

(iii) any defense arising by reason of (A) the incapacity, lack of authority or any disability or other defense of Counterparty, any other endorser or guarantor or any other person, including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Counterparty from any cause other than payment in full in cash and performance of the Guaranteed Obligations; (B) the cessation from any cause whatsoever, other than payment and performance in full of the obligations of Counterparty, of the liability of Counterparty, any endorser or guarantor or any other person; (C) the application by Counterparty of the proceeds of any obligations for purposes other than the purpose represented by Counterparty to Beneficiary or intended or understood by Beneficiary or Guarantor; (D) any act or omission by Beneficiary which directly or indirectly results in or aids the discharge of Counterparty or any obligations by operation of law or otherwise; (E) any

modification of the obligations, in any form whatsoever, including any modification made after revocation hereof to any obligations incurred prior to such revocation, and including the renewal, extension, acceleration or other change in time for payment of the obligations, or other change in the terms of the obligations or any part thereof, including increase or decrease of the rate of interest thereon; (F) any defense based upon (i) any principles or provisions of law, statutory or otherwise which provide that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal or that are or might be in conflict with the terms of this Guarantee and any legal or equitable discharge of Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that Beneficiary protect, secure, perfect or insure any Lien or any property subject thereto; (G) any defense based upon Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior that amounts to bad faith; (H) any defense based upon notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance of this Guarantee, notices of default or early termination under the Guaranteed Contracts or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto and notices of any extension of credit to Counterparty; and (I) to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Guarantee;

(iv) any right to enforce any remedy which Beneficiary now has or may hereafter have against Counterparty, any other endorser or guarantor or any other person, and waives any benefit of, or any right to participate in any security whatsoever now or hereafter held by Beneficiary, and waives any rights or benefits which Guarantor might have under California Code of Civil Procedure Sections 580a and 726 (limiting the amount of any deficiency judgment to the difference between the amount of any indebtedness owed and the greater of the fair value of the security or the amount for which the security was actually sold), 580b (barring deficiencies with respect to real property purchase money obligations), and 580d (barring recovery of a deficiency judgment after real property security is sold under a power of private sale) as from time to time amended and Guarantor shall have no right of subrogation;

(v) all rights and defenses arising out of an election of remedies by the Beneficiary, even though that election of remedies, such as a non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Guarantor's rights of subrogation and reimbursement against the Counterparty by operation of Section 580d of the California Code of Civil Procedure or otherwise;

(vi) waives all rights and defenses that the Guarantor may have because the Counterparty's debt may be secured by real property, which would allow the Beneficiary to collect from the Guarantor without first foreclosing on any real or personal property collateral pledged by the Counterparty and, if the Beneficiary forecloses on any

real property collateral pledged by the Counterparty (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) the Beneficiary may collect from the Guarantor even if the Beneficiary, by foreclosing on the real property collateral, has destroyed any right the Guarantor may have to collect from the Counterparty. The waiver contained in this Section 4.01(b)(vi) is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the Counterparty's debt may be secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

Section 4.02. Guarantor's Understandings With Respect To Waivers.

(a) Guarantor warrants and agrees that Guarantor has had all necessary opportunity to secure any advice which Guarantor desires with respect to each of the waivers set forth above, that such waivers are made with Guarantor's full knowledge of its significance and consequences, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law.

(b) Guarantor acknowledges that Guarantor would or might have a defense to enforcement of this Guarantee if, in the absence of an effective waiver or authorization by Guarantor, Beneficiary were to take any of the actions or exercise any of the remedies (i) that are otherwise authorized by Guarantor herein or (ii) that are described in Sections 4.01 and 4.02 and as to which Guarantor waives any defenses. Without limiting the foregoing, in the absence of an effective waiver, Beneficiary's foreclosure against real property security by power of sale under Section 580d of the California Code of Civil Procedure would destroy Guarantor's subrogation and reimbursement rights against Counterparty and would thus provide Guarantor with a defense to Beneficiary's enforcement of this Guarantee. It is Guarantor's intention in executing this Guarantee to waive all such defenses, including the defense described in the preceding sentence, in advance.

(c) Until the Guaranteed Obligations are satisfied in full, Guarantor shall withhold exercise of (a) any claim, right or remedy, direct or indirect, that Guarantor now has or may hereafter have against Counterparty or any of its assets in connection with this Guarantee or the performance by Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute (including under California Civil Code Section 2847, 2848 or 2849), under common law or otherwise and including (i) any right of subrogation, reimbursement or indemnification that Guarantor now has or may hereafter have against Counterparty, (ii) any right to enforce, or to participate in, any claim, right or remedy that Beneficiary now has or may hereafter have against Counterparty, and (iii) any benefit of, and any right to participate in, any collateral or security now or hereafter held by Beneficiary and (b) any right of contribution Guarantor now has or may hereafter have against any other guarantor of any of the Guaranteed Obligations. Guarantor further agrees that, to the extent the agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification Guarantor may have against Counterparty or against any collateral or security, and any rights of

contribution Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights Beneficiary may have against Counterparty, to all right, title and interest Beneficiary may have in any such collateral or security, and to any right Beneficiary may have against such other guarantor.

(d) Notwithstanding the foregoing, all waivers in this Guarantee shall be effective only to the extent permitted by law.

Section 4.03. Beneficiary's Rights With Respect To Guarantor's Property. In addition to all liens upon, and rights of setoff against the moneys, securities or other property of Guarantor given to Beneficiary by law, Beneficiary shall have a lien upon and a right of setoff against all moneys, securities or other property of Guarantor now or hereafter in possession of or on deposit with Beneficiary, whether held in a general or special account or deposit, or for safekeeping or otherwise, and every such lien and right of setoff may be exercised without demand upon or notice to Guarantor. No lien or right of setoff shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise such right to setoff or to enforce such lien, or by any delay in so doing, and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by any instrument in writing executed by Beneficiary.

Section 4.04. Subordination of Counterparty's Debts to Guarantor. Any obligation of Counterparty now or hereafter held by Guarantor is hereby subordinated in right of payment to the Guaranteed Obligations, and any such obligation of Counterparty to Guarantor collected or received by Guarantor after a default or early termination event has occurred and is continuing, and any amount paid to Guarantor on account of any subrogation, reimbursement, indemnification or contribution rights referred to in the preceding paragraph when all Guaranteed Obligations have not been paid in full, shall be held in trust for Beneficiary and shall forthwith be paid over to Beneficiary to be credited and applied against the Guaranteed Obligations. Such obligation of Counterparty to Guarantor is assigned to Beneficiary as security for this Guarantee and the obligation and, if Beneficiary requests, shall be collected and received by Guarantor, as trustee for Beneficiary and paid over to Beneficiary on account of the obligation of Counterparty to Beneficiary but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guarantee. Any such notes now or hereafter evidencing such obligation of Counterparty to Guarantor shall be marked with a legend that the same are subject to this Guarantee, and, if Beneficiary so requests, shall be delivered to Beneficiary. Guarantor will, and Beneficiary is hereby authorized, in the name of Guarantor from time to time to execute and file financing statements and continuation statements and execute such other documents and take such other action as Beneficiary deems necessary or appropriate to perfect, preserve and enforce its rights hereunder.

Section 4.05 Waiver of Authentication of Validity of Certain Acts. Where any one or more of Counterparties are corporations, partnerships, or limited liability companies it is not necessary for Beneficiary to inquire into the power of Counterparties or the officers, directors, partners, managers, members or agents acting or purporting to act in their behalf, and any obligations made or created in reliance upon the professed exercise of such power shall be guaranteed hereunder.

Section 4.06. Authorizations To Beneficiary. Guarantor authorizes Beneficiary, without notice or demand and without affecting its liability hereunder, from time to time to (a) renew, extend, accelerate or otherwise change the time for payment or performance of, or otherwise change the terms of the obligations or any part thereof, including increase or decrease of the rate of interest thereon; (b) take and hold security for the payment or performance of this Guarantee or the obligations guaranteed, and exchange, enforce, waive and release any such security; (c) apply such security and direct the order or manner of sale thereof, including a non-judicial sale permitted by the terms of the controlling security agreement or deed of trust, as Beneficiary in its discretion may determine; and (d) release or substitute any one or more of the endorsers or guarantors of any obligations. Beneficiary may, upon notice, assign this Guarantee to any permitted successor of Beneficiary under the Guaranteed Contract.

ARTICLE FIVE

5.01. Miscellaneous.

(a) All notices and other communications between the Guarantor and the Beneficiary provided for in this Guarantee shall be in writing, including facsimile, and delivered or transmitted to the addresses set forth below, or to such other address as shall be designated by the Guarantor in written notice to the other party.

If to the Guarantor:

[Guarantor Name]

[Guarantor Address]

Attn: Chief Financial Officer

Telephone: []

Facsimile: []

If to the Beneficiary:

Southern California Public Power Authority

1160 Nichole Court

Glendora, CA 91740

Attn: Executive Director

Telephone: 626 793-9364

Facsimile: 626 793-9461

(b) This Guarantee was made and entered into in the County of Los Angeles, California and shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles. All litigation arising out of, or relating to this Guarantee, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Guarantor hereby irrevocably agrees to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

(c) The provisions of this Guarantor may be waived or amended only in writing signed by both the Guarantor and Beneficiary. This Guarantee shall bind and inure to the benefit

of the Guarantor and the Beneficiary and their respective successors and permitted assigns, including without limitation, the trustee, but neither party may assign its rights under this Guarantee without the prior written consent of the other party. The Guarantor may not assign its rights nor delegate its obligations under this Guarantee, in whole or in part, without prior written consent of the Beneficiary, and any purported assignment or delegation absent such consent is void.

(d) The rights, powers and remedies given to Beneficiary by this Guarantee are cumulative and shall be in addition to and independent of all rights, powers and remedies given to Beneficiary by virtue of any statute or rule of law or in the Guaranteed Contracts or any agreement between Guarantor and Beneficiary or between Counterparty and Beneficiary. Any forbearance or failure to exercise, and any delay by Beneficiary in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

(e) Guarantor hereby agrees that in any dispute relating to this Guarantee, each party shall be responsible for its own attorneys' fees and costs. Each of Guarantor and Beneficiary was represented by its respective legal counsel during the negotiation and execution of this Guarantee.

Executed as of the date first above written.

[GUARANTOR]

By: _____

Name: _____

Title: _____

APPENDIX H
TO POWER PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 15, 2012
BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND ANTELOPE BIG SKY RANCH, LLC
QUALITY ASSURANCE PROGRAM

Seller shall implement a Quality Assurance (“Q/A”) Program to ensure that the performance of the development, design and construction of the Facility fulfills the requirements of this Agreement. The Q/A Program shall provide assurance that design, purchasing, manufacturing, shipping, storage, construction, testing and examination of all equipment, materials, services and maintenance of the Facility will comply with the requirements of this Agreement, all applicable Requirements of Law and the manufacturers or suppliers requirements for successful operation of the Facility.

Quality at Seller

Seller believes that quality is the unit of measure for assessing fulfillment of project goals. A quality project meets or exceeds the contract requirements and accepted standards of professional and industry practice. Furthermore, high quality projects are those that address client and societal needs more successfully than “low” quality projects. While this may seem like a straightforward definition, the process to ensure quality is much more involved and includes quality management, quality planning, quality control, quality assurance, a quality system, and total quality management.

“Quality assurance” refers to a process that reduces the potential for error throughout the phases of a project. On projects with a Q/A Program, the chances of producing a poor quality deliverable are substantially reduced. Quality control procedures are an integral part of quality assurance. Historically, industry has used the term “quality control” to indicate a checking procedure for verifying the quality of deliverables. This checking commonly occurs at the end of the process, long after an error may have been made and compounded by subsequent work. While quality control checks at the end of a project are an essential exercise, scheduled periodic reviews at each phase of project conceptual and final design are integral to Seller’s Q/A Program. In addition, quality maintenance which meet or exceed manufacturers’ or suppliers’ requirements and best industry practices must be an integral part of Seller’s Q/A Program.

The Quality Management Process

The surest way to achieve satisfactory quality is to adhere to a proven quality process. The term “quality” most accurately refers to a project’s ability to satisfy needs when considered as a whole and each part of the process meets or exceeds the standards of Prudent Utility Practices.

Seller project management team is responsible for proactively planning and directing the quality of the work process, services, and deliverables. Seller’s project management team targets six areas to monitor quality:

- 1) A written work plan with accompanying Q/A Manual.
- 2) Detailed review of the project design at the planning and conceptual design phase
- 3) Detailed review of project final design prior to construction.
- 4) A quality control program during construction to verify implementation is in compliance with design documents and document any changes.
- 5) Independent engineering review of the entire project process, from design review through commercial operation.
- 6) A written maintenance manual for the Facility for the duration of the commercial operation that complies with the maintenance manuals of the manufacturers and suppliers from whom the Seller has purchased equipment or material and best industry practices.

Written Work Plan and Q/A Manual

The idea of a written work plan and Q/A manual is to incorporate quality assurance in all areas of project execution. Seller has found that quality needs to be institutionalized into the project process, not only in the budgeting process, but everywhere. For example, specific tasks and duties need to be allocated to specific individuals; roles and interface points need to be clearly defined; individual assignments need to be realistic; special attention needs to be paid to complex areas within projects; schedules need to be realistic and achievable; and lastly the work culture needs to be enjoyable and open so that employees are empowered to react quickly to symptoms of quality problems before they actually manifest.

Seller's quality program shall be documented in a written work plan and Quality Assurance manual (the "Q/A Manual"). The form and the format of the Q/A Manual shall be developed by Seller, but must comply with Prudent Utility Practices and follow manufacturers and suppliers recommendations without deviation. The content of the Q/A Manual shall provide written descriptions of policies, procedures and methodology to accomplish a quality project. Seller shall submit three (3) copies of the Q/A Manual when required under the Agreement to Buyer or Buyer's Agent. The Q/A Manual shall be kept current by Seller throughout the term of this Agreement through the submittal of revisions, as appropriate, by Seller to Buyer or Buyer's Agent.

The Q/A Manual shall describe the authority and the responsibility of the Persons in charge of the Q/A Program and inspection activities. It shall also provide the plan for detailed review of project conceptual design and final design, hold points, and methodology for document control and comment. Furthermore, it shall provide the plan and strategy for quality control and review during the construction project and for maintenance and operations during commercial operation. The Q/A Manual shall strive; at a minimum, to define control procedures or methods to assure the following:

- (a) The design documents, drawings, specifications, Q/A procedures, records, inspection procedures and purchase documents are maintained to be current, accurate and in compliance with all applicable law.
- (b) The purchased materials, equipment and services comply with the requirements of this Agreement and all applicable Requirements of Law.

- (c) The materials received at the site are inspected for compliance with specifications.
- (d) The subcontracted work is adequately inspected by third parties.
- (e) Proper methods are employed for the qualification of personnel who are performing work for the development, design and construction of the Facility.
- (f) Proper documentation, control and disposition of nonconforming equipment and materials is maintained.
- (g) Proper records are kept and available following project completion to ensure accurate documentation of as-built conditions.
- (h) Detailed and complete plan for maintenance and operation during commercial operations consistent with manufacturers and suppliers recommendations and best industry practices.

Conceptual Design Review

Seller has a team of professionals who develop and review the project layout and project conceptual design. The team consists of specialists in land-use and planning, permitting, meteorology, engineering, construction, project management, and finance. A preliminary site plan is developed and meetings are held to assess optimization of solar resource, constructability, minimization of cultural and biological impacts, land use restrictions, and landowner requirements. Preliminary road design will also be started and access to the site will be reviewed in detail. When this plan is ready for review, a formal plan and map is created and a final internal review is conducted. Following that is detailed studies for biological, cultural and other types of impacts by third parties. The site plan is then reviewed, modified as necessary, and then used to begin the permitting and public review process. The site plan is further modified based on comments in that process. At that point, the site plan can be issued for construction, and final engineering can commence.

In parallel with this process, preliminary conceptual design is started for the major areas of the project, including the substation, transmission line, foundations, underground collection system, communications system, and road and grading is done to develop construction estimates as well as materials specifications. All of these areas of conceptual designs are used to check and verify the assumptions used for development of the site plan.

Final Engineering Design

Following finalization of the site plan, the detailed design is done for the collection system, fiber-optic network, foundations, roads & grading, transmission line, and substation by third party engineering firms licensed to practice in the state in which the project is to be constructed. Each firm has their own quality assurance and checking procedures, however Seller reviews the final work products in detail to check with conformance with this Agreement and provides

comments as a second round of quality assurance. When Seller's comments have been incorporated, the design of each area is considered final, that design is then submitted to an independent engineer for review and comment. This ensures that another entity, in addition to Seller has done a comprehensive review of all project areas and details to ensure conformance with this Agreement.

In parallel with final design and checking activities, final geotechnical studies will be conducted at the site, and a final solar resource assessment will be performed with the issued-for-construction project layout. If existing subsurface conditions are different from what is expected, the foundation locations could be slightly modified or the foundation design on a specific turbine could be modified. Any changes of this nature would be documented in as-built design drawings and approved in advance by Seller.

Quality Assurance at the Construction Site

Seller will hire a third party general contractor to construct the project. This contractor will be required to have its own quality assurance program in place using its own staff, as well as third party inspectors. The two primary areas of focus at the site are assuring conformance of construction to design drawings, and conformance of materials to specifications. The general contractor will be required to provide third party inspectors and testing for materials including concrete slump testing; rebar and concrete placement; cable trenching, soil compaction testing, etc. The general contractor will also be required to maintain a set of red-line drawings during the course of construction to document any changes to the design documents. Proposed project changes would be reviewed and approved in the field by Seller construction management team prior to implementation.

Quality assurance is achieved through a combination of procedures and processes. The general contractor will provide rigorous inspection of its installation crew. Key vendors will have technical advisors on site to inspect and sign off on turbine components received, oversee and monitor turbine erection, and approve mechanical completion. In addition, Seller may have its own construction management team on site consisting of a construction manager and quality inspectors who will observe performance of all areas of the work and ensure compliance with design documents. This punch list is maintained by the contractor, and is signed off by Seller upon completion of the punch list items. Lastly, the independent engineer performs periodic audits during construction to oversee critical items, spot checks construction, confirms construction progress, reports on any perceived issues, and provides independent reporting and assessments to the project stakeholders.

Following completion of the project, the general contractor will be required to provide as-built all design drawings and records of all materials testing conducted at the site. This documentation will be maintained at the project site during operations of the Facility.

Quality Assurance During Commercial Operations

[To Be Supplied by Seller]

**APPENDIX I
TO POWER PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 15, 2012
BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND ANTELOPE BIG SKY RANCH, LLC
MILESTONE SCHEDULE**

No.	Expected Date	Guaranteed Date	Milestone Description	Daily Liquidated Damages per Day of Delay (not to run concurrently)	Performance Security deposit at milestone achievement
1	N/A	N/A	PPA Effective Date		Project Development Security
2	complete	3/31/2013	Submits interconnection application.	\$4,000	
3	complete	3/31/2013	Files a CEC Pre-Certification application.	\$4,000	
4	complete	9/1/2013	Files CUP application.	\$4,000	
5	complete	9/1/2013	Receives a completed System Impact Study or Phase I Interconnection Study.	\$4,000	
6	complete	1/15/2014	Obtains Site Control.	\$4,000	
7	complete	3/1/2014	Receives a completed interconnection Facility Study or Phase II Interconnection Study.	\$4,000	
8	1/31/13	6/15/2014	Receives Conditional Use Permit or equivalent	\$4,000	
9	3/31/13	6/15/2014	Files interconnection agreement with FERC or other jurisdictional entity as applicable.	\$4,000	
10	complete	8/1/2014	Receives CEC Pre-Certification.	\$4,000	
11*	3/15/2014	9/1/2014	Executes an Engineering, Procurement and Construction ("EPC") contract.	\$4,000	
12*	3/15/2014	9/1/2014	Executes financing documents	\$4,000	
13*	4/15/2014	9/15/2014	Receive final Construction Permit(s).	\$4,000	
14*	5/1/2014	10/1/2014	Begins construction of the Facility.	\$4,000	
15*	9/15/2014	12/15/2014	Initial Synchronization Date.	\$4,000	Between Initial Synchronization and Final COD Security, posted upon Initial Synchronization
16*	12/1/2014	12/31/2014	Commercial Operation Date	\$10,000	Delivery Term Security Upon COD

* Note: Milestones with asterisks (*) above numbered 11 through 16, inclusive, are herein referred to as the "**Key Milestones**"

**APPENDIX J
TO POWER PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 15, 2012
BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND ANTELOPE BIG SKY RANCH, LLC**

ANNUAL CONTRACT QUANTITY

Contract Year	MWhs
Year 1	49,060
Year 2	48,815
Year 3	48,571
Year 4	48,328
Year 5	48,086
Year 6	47,846
Year 7	47,606
Year 8	47,368
Year 9	47,132
Year 10	46,896
Year 11	46,661
Year 12	46,428
Year 13	46,196
Year 14	45,965
Year 15	45,735
Year 16	45,507
Year 17	45,279
Year 18	45,053
Year 19	44,827
Year 20	44,603
Year 21	44,380
Year 22	44,158
Year 23	43,937
Year 24	43,718
Year 25	43,499

**APPENDIX K
TO POWER PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 15, 2012
BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND ANTELOPE BIG SKY RANCH, LLC**

SCHEDULING PROCEDURE

Seller will forecast Delivered Energy to the Point of Delivery in accordance with the Agreement and Buyer's reasonable procedures from time to time, based on the then-most-current forecast of energy.

No later than 45 days before the beginning of the calendar year, Seller will provide Buyer with a non-binding forecast of each month's average-day deliveries of energy, by hour, for the following 18 months.

10 Business Days before the beginning of each calendar month, Seller will provide Buyer with a non-binding forecast of each day's average deliveries of energy, by hour, for the following calendar month.

By 5:30 AM Pacific Prevailing Time on the business day immediately preceding the date of delivery of Energy, Seller will provide Buyer with a non-binding hourly forecast of deliveries of energy for each hour of the immediately succeeding day.

Hour-ahead changes in schedules shall be provided sufficiently ahead of time.

Prior to 12:00 p.m. Pacific Prevailing Time of the Business Day immediately preceding each WECC Prescheduling Day (as defined by WECC) for each hour of the Delivery Day (as defined by WECC) in MW units, in the format shown in (to be provided later by the Buyer) or another format acceptable to Buyer or Buyer's Agents, provide a preschedule plan of generation via email. The pre-scheduled amounts of Energy shall be the good faith estimate of Seller or Seller's designee of the anticipated output of Energy at the time. A forecast provided a day prior to any non-Business Day(s) shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller or Seller's designee shall provide Buyer and Buyer's Agents with a copy of any and all updates to such forecast indicating a change in forecasted Energy from the then current forecast. Except for Forced Outages, Seller shall operate the Facility with the objective that, for each hour scheduled, the actual Energy shall be produced in accordance with the preschedule plan submitted to Buyer and Buyer's Agents for use by Buyer and Buyer's Agents to Schedule the Facility Energy for delivery to the Point of Delivery; and

Seller shall be responsible for any CAISO imbalance charges for imbalances between the Facility's scheduled/forecasted and delivered energy at the Point of Delivery, except where such charges result from Buyer's or its designee's failure properly to carry out its responsibilities hereunder as Facility Scheduling Coordinator

**FIRST AMENDMENT
TO THE SUMMER SOLAR PROJECT
POWER SALES AGREEMENT**

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

THE CITY OF RIVERSIDE, CALIFORNIA

Dated as of MARCH 10, 2014

**FIRST AMENDMENT TO THE
SUMMER SOLAR PROJECT
POWER SALES AGREEMENT**

This First Amendment to the Summer Solar Project Power Sales Agreement (“Amendment”), is made and entered into as of this __ day of _____, 2014, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY (“SCPPA”), a joint powers agency and a public entity organized under the laws of the State of California, and the CITY OF RIVERSIDE (“Riverside”), California, a municipal corporation organized and existing under the laws of the State of California.

WHEREAS, SCPPA and Summer Solar LLC (“Summer Solar”) entered into that certain Power Purchase Agreement dated as of November 15, 2012 (“PPA”), pursuant to which SCPPA agreed to purchase and Summer Solar agreed to sell the entire facility output of a 20 MW solar electric generating station to be developed by Summer Solar in or near Lancaster, California (“the Project”); and

WHEREAS, SCPPA entered into the PPA on behalf of Riverside and the Cities of Azusa and Pasadena (collectively “the Project Participants”) pursuant to SCPPA’s ongoing commitment to assist its Members in acquiring renewable resources; and

WHEREAS, SCPPA and Riverside, in turn, entered into a Power Sales Agreement dated as of November 15, 2012 (the “Power Sales Agreement”), by which SCPPA agreed to sell and Riverside agreed to purchase a portion of the facility output of the Project, with the remainder going to the other Project Participants; and

WHEREAS, Summer Solar has proposed certain changes to the Project that involve its possible relocation to another site, a delay of the commercial operation date and the possible designation of a new point of interconnection in exchange for a significant reduction in the price of energy; and

WHEREAS, in order to implement these changes to the Project, SCPPA and Summer Solar have agreed to amend the PPA, and it is necessary and desirable to make corresponding amendments to the Power Sales Agreement as set forth herein; and

WHEREAS, SCPPA and Riverside also desire to make an additional change to the Power Sales Agreement to simplify the administration of the Project by providing that SCPPA shall act in the role of Project Manager unless and until one of the Project Participants is designated to be the Project Manager and an appropriate agency agreement has been entered into between SCPPA and the Project Participant so designated.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements hereinafter set forth, it is agreed by and between SCPPA and Riverside as follows:

SECTION 1: The Power Sales Agreement is hereby amended by adding thereto Appendix C-1 (attached hereto and marked accordingly), which is a copy of Amendment No. 1

to the Power Purchase Agreement between the Southern California Public Power Authority and Summer Solar LLC. Any reference in the Power Sales Agreement to the PPA shall be deemed to refer to the PPA as so amended.

SECTION 2: Section 6.4 of the Power Sales Agreement is hereby amended in its entirety to read as follows:

Project Manager. SCPPA or its designee or designees shall act as Project Manager to develop, operate, maintain and administer the Project, or cause the Project to be developed, operated, maintained and administered, through an appropriate development, operating, project management or agency agreement or, as applicable, through the Power Purchase Agreement.

SECTION 3: Except as provided in this Amendment, the Power Sales Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed on their respective behalf by their duly authorized representatives.

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

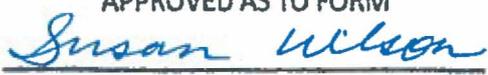
By: 
RONALD E. DAVIS
President

Attest: 
BILL D. CARNAHAN
Assistant Secretary

CITY OF RIVERSIDE, CALIFORNIA

By: 
Title: Assistant City Manager

Attest: 
Title: City Clerk

APPROVED AS TO FORM

DEPUTY CITY ATTORNEY

APPENDIX C-1

**AMENDMENT NO. 1 TO
POWER PURCHASE AGREEMENT**

**AMENDMENT NO. 1
TO
POWER PURCHASE AGREEMENT
BETWEEN THE
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
SUMMER SOLAR, LLC**

This Amendment No. 1 (“First Amendment”) to the Power Purchase Agreement dated November 15, 2012 (“Agreement”) is entered into as of March 10, 2014, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the Act and the Joint Powers Agreement (“SCPPA” or “BUYER”) and SUMMER SOLAR, LLC located at 2 Embarcadero Center, Suite 410, San Francisco, California 94111 (“SELLER”). Unless specifically defined herein, all capitalized terms used in this First Amendment shall have the meaning established/defined in the Agreement.

RECITALS

1. The Agreement was entered into between the parties for the sale of energy to Buyer from Seller’s 20 MW(ac) photovoltaic solar electric generating facility (the “Facility” or “Project”);
2. Seller is pursuing a new location for the Facility (an “Alternate Site”) and a different Point of Delivery where it can more efficiently build and interconnect the Facility; and
3. Buyer and Seller wish to amend the Agreement to accommodate a potential change in the location of the Facility and Point of Delivery, to reduce the Contract Price, and make other related changes.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this First Amendment, the parties agree to amend the Agreement as hereinafter set forth.

SECTION 1. The definition of “Point of Delivery” is deleted and replaced with the following:

“Point of Delivery” means the point on the CAISO controlled grid at or near the Antelope Substation in Lancaster, California, or such other point as mutually agreed in writing by the Parties where Energy and Ancillary Services, as available to be delivered, are made available from the Facility to SCPPA under the CAISO Tariff, provided that the Point of Delivery shall always be in the CAISO controlled grid unless otherwise explicitly approved by Buyer. Seller shall give

notice in writing to Buyer as to the specific location of the Point of Delivery as soon as Seller obtains necessary information from the CAISO.

SECTION 2. The definition of "Site Control" is amended deleting the reference to "Section 9.11" and replacing it with "Section 12.4."

SECTION 3. In Section 2.4(c) the date "December 31, 2015" is deleted and replaced with "December 31, 2016." In Section 3.5(a)(ii) the date "September 1, 2014" is deleted and replaced with "May 15, 2016"

SECTION 4. A new Section 3.8 is hereby added as follows:

Section 3.8 Confirmation of Project Site; Selection of Alternate Site.

(a) Concurrently with and as a condition to the execution and delivery of this First Amendment by Buyer, Seller shall provide to Buyer with respect to the original Site of the Facility and the properties identified as the "Potential Site for Summer and Antelope" on the map contained in the attached Exhibit B, to the extent not previously provided or made available to Buyer: (i) a detailed property description of the Site; (ii) a preliminary design layout of the Facility and any other engineering drawings in Seller's possession as reasonably requested by Buyer; and (iii) all CEQA Documents.

(b) By written notice given to Buyer no later than March 1, 2015, Seller shall either (A) confirm that it will develop the Facility on the Site identified as the "Original Site" for the Project on the map contain in the attached Exhibit B, or (B) inform Buyer that Seller will relocate the Facility to an Alternate Site within Assemblages A, B or C as depicted in said Exhibit B, provided that in the case of notice of such relocation (i) Seller must demonstrate that it has Site Control of the Alternate Site as of the date of such notice, (ii) the Point of Delivery shall remain the Antelope Substation as provided in the Agreement and (iii) Seller shall resubmit documents as specified in (i), (ii) and (iii) of subsection (a) of this Section 3.8 as the same may be pertinent to the Alternate Site no later than sixty (60) days from the date of its notice. If Seller desires to move the Facility to an Alternate Site not located within Assemblages A, B or C, or if Seller proposes to change the Point of Delivery, Seller shall first obtain written consent of Buyer, which consent shall be given or withheld in Buyer's sole discretion. Seller's request for such consent by Buyer shall be made by written notice to Buyer no later than February 1, 2015.

(c) Buyer may terminate this Agreement without further obligation to Seller if Seller fails to give notice as provided in subsection (b)(A) or (b)(B) of this Section 3.8.

SECTION 5. Section 7.2(b) is deleted in its entirety and replaced with the following:

“(b) Buyer (for itself or its designee) hereby accepts the function of Scheduling Coordinator for the Facility and shall have the full right and obligation to Schedule all Energy from the Facility in a reasonable and prudent manner in accordance with all CAISO and other applicable requirements. Buyer or its qualified agent shall act as Scheduling Coordinator for Buyer, and shall be responsible for and pay all fees, charges and other costs necessary to Schedule the receipt of Facility Energy at and from the Point of Delivery.”

SECTION 6. The following sentence is added to the end of Section 7.2(f) and Appendix

K:

“Notwithstanding anything else herein to the contrary, payments made by Seller for CAISO imbalance shall be treated as “CAISO Costs” as used in Section 7.4(b) and shall be subject to the same cap of \$125,000 per year and \$500,000 over the Term as described in Section 7.4(b).”

SECTION 7. The last sentence of Section 7.4(a), which begins “For the avoidance of doubt...” is hereby deleted in its entirety.

SECTION 8. Section 7.4(b) is deleted in its entirety and replaced with the following:

Following the Effective Date the Parties shall cooperate to prepare and mutually agree upon a written protocol (the “*CAISO Cost Protocol*”) to set forth appropriate administrative details to carry out the Parties’ obligations and responsibilities under the agreement as follows: (a) the Parties shall coordinate to maintain detailed records all CAISO Costs; (b) for the Stub Year and each Contract Year, Seller shall be responsible for and shall pay directly (or promptly reimburse Buyer) for the first \$125,000 of all CAISO Costs allocable to such year, *provided* that Seller’s payment and/or reimbursement obligation under this clause (b) shall not exceed five hundred thousand dollars (\$500,000) in the aggregate over the Agreement Term; and (c) subject to the provisions of Section 7.5, for the Stub Year and each Contract Year, Buyer shall be responsible for and shall pay directly (or reimburse Seller) for the all CAISO Costs allocable to such year in excess of \$125,000 and in excess of the first cumulative five hundred thousand dollars (\$500,000) of CAISO Costs paid in the aggregate by Seller over the Agreement Term (any such excess amounts, in the aggregate on a cumulative basis for all calendar years, is herein referred to as the “*Excess CAISO Costs*”), *provided* that Buyer shall not be responsible for (and Seller shall pay for) any Excess CAISO Costs to the extent such arise as a result of any material deviation by Seller from the CAISO Cost Protocol.

SECTION 9. Appendix A, Appendix B, and Appendix I are deleted in their entirety and replaced with the corresponding exhibits and appendices attached hereto.

SECTION 10. Except as modified by this First Amendment, all other provisions of the Agreement, including any exhibits and subsequent amendments, shall remain in full force and effect.

Each Party was represented by legal counsel during the negotiation and execution of this First Amendment and the Parties have executed this First Amendment as of the dates set forth below.

SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY

Date: _____

By: _____
Its: _____

Attest: _____

SUMMER SOLAR, LLC

Date: March 10, 2014


By: _____
Its: Ryan Creamer
CEO

**APPENDIX A
TO POWER PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 15, 2012
BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND SUMMER SOLAR, LLC**

CONTRACT PRICE DETAILS

1. **Contract Price Prior to COD.** Prior to COD, the Contract Price for Delivered Energy shall be \$46.40 per MWh.

2. **Contract Price on and After COD.** On and after the COD, the Contract Price for Delivered Energy shall be \$66.15 per MWh.

3. **Contract Price Adjustments.** RA/LCR Attributes are expected to be available for Buyer when Southern California Edison Company (SCE) completes the Deliverability Upgrades. If Seller is able to deliver RA/LCR Attributes, the Buyer shall pay an additional \$5.10 /MWh as a RA/LCR Attributes payment, which payment shall be designated on any invoice from Seller to Buyer as a separate charge from the charge for Delivered Energy. Prior to delivering and charging for the RA/LCR Attributes, Seller shall deliver to Buyer evidence that the Facility qualifies for said RA/LCR Attributes.

4. **Certain Defined Terms.** For purposes hereof:

“Deliverability Upgrades” means those Transmission System network upgrades necessary for the Facility to receive Full Capacity Deliverability Status within the meaning of the CAISO Tariff.

“RA/LCR Attributes” means any and all Capacity Rights that are at any time available from the Facility to satisfy any Resource Adequacy requirements of Buyer or any Buyer’s Member relating to RA requirements.

5. **Acknowledgments.** For the avoidance of doubt, the Parties acknowledge and agree that (a) Seller is selling to Buyer, and Buyer is purchasing from Seller, all Products produced by the Facility, (b) the Products include, but are not limited to, all Delivered Energy, and all Environmental Attributes and Capacity Rights (including RA/LCR Attributes) that may at any time exist and be associated with such Delivered Energy or Facility, (c) although monthly payments hereunder from Buyer to Seller determined under Agreement Article XI are based on the quantity of Facility Energy delivered to the Point of Delivery and the Contract Price (as adjusted under this Appendix A), such payments are full compensation for such Facility Energy all other Products associated with such Facility Energy, and (d) the actual amounts payable each month from Buyer to Seller under Agreement Article XI are subject to certain adjustments expressly provided for in the Agreement, including Section 6.1(c), Section 7.5, Section 7.7(b), and this Appendix A.

**APPENDIX B
TO POWER PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 15, 2012,
BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND SUMMER SOLAR, LLC**

FACILITY, PERMITS, AND OPERATOR

1. Name of Facility: Summer Solar Solar Facility
Location: City of Lancaster, Los Angeles County, California**
2. Owner: Summer Solar, LLC
3. Operator: To be designated after Effective Date
4. Equipment:
 - (a) Type of Facility: Solar Photovoltaic
 - (b) Capacity: 20 MW
 - (c) Capacity Factor: 28%*Total nominal gross nameplate capacity: 20 MW

Total nominal net capacity under expected average Site conditions: 20 MW
5. Guaranteed Commercial Operation Date (from Appendix I): June 30, 2016
6. Permits:
 - (a) CEQA Determination
 - (b) Conditional Use Permit
 - (c) Building Permit
 - (d) Grading Permit

* The actual Capacity Factor may vary depending on weather and other meteorological conditions, final Facility design and other factors, although the Annual Contract Quantities in Appendix J and the Guaranteed Generation levels are fixed for all purposes of the Agreement.

** Final Facility Location to be updated and provided to Buyer in accordance with Section 3 of this First Amendment, which final location shall be ; inside the Big Creek/Ventura Local Capacity Requirement (LCR) zone and inside Collection A, B or C as indicated in the map below. Any other changes will require SCPPA consent as described in Section 5 of this First Amendment.