DRAFT

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

**Seller:** The Metropolitan Water District of Southern California

**Buyer:** To be determined

**Description of Facilities:** Corona, Diamond Valley Lake, Red Mountain, Temescal and Venice Hydroelectric Plants (HEP)

**Commercial Operation Dates of Facilities:** See Request for Offers

**Delivery Term:** 3, 5 or 10 Years – Buyer may provide a price for any or all delivery terms

**Contract Price:** Buyer to provide fixed nominal prices for each year of delivery term

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Scheduling Coordinator: Seller

Notice Addresses:

Seller:

The Metropolitan Water District of Southern California
700 North Alameda St
Los Angeles, CA 90012
Attention: Manager of Power Operations and Planning
Phone No.: (213) 217-7381
E-mail: SBailey@mwdh2o.com

With a copy to:

The Metropolitan Water District of Southern California
700 North Alameda St
Los Angeles, CA 90012
Attention: MWD Legal Department
Phone No.: (213) 217-6317
E-mail: MParsons@mwdh2o.com

Scheduling:

________________
c/o _____________
________________
________________

Buyer:

________________
c/o _____________
________________
With a copy to (which shall not be required for Notice purposes):

c/o _____________

_______________

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Exhibits:

- Exhibit A: Description of the Facilities
- Exhibit B: Contract Price and CAISO Delivery Points
- Exhibit C: CAISO Net Qualifying Capacity Report for Compliance Year 2020
- Exhibit D: Authorized Representatives and Notices Contact Information
- Exhibit E: Form of Letter of Credit
- Exhibit F: Form of Guaranty
POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement ("Agreement") is entered into as of [_______] (the "Effective Date"), between The Metropolitan Water District of Southern California ("Seller"), a political subdivision of the State of California organized and operating pursuant to the Metropolitan Water District Act of the State of California (Stats. 1969, Chapter 209 as amended) and Buyer (each also referred to as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, Seller owns and operates five (5) hydroelectric power plants commonly known as the Corona, Diamond Valley Lake, Red Mountain, Temescal and Venice Hydroelectric Plants (HEP), located in the Counties of Los Angeles, Riverside and San Diego, State of California as identified in Exhibit A (the "Facilities"); and

WHEREAS, on July 16, 2020, Seller issued a Request for Offers ("RFO") to sell renewable resources; and

WHEREAS, Buyer responded to the RFO and Seller has agreed to sell to Buyer, and Buyer has agreed to purchase certain renewable energy, including the associated capacity rights and renewable attributes from three of Seller’s hydroelectric power plants, which in aggregate have a total nameplate capacity of 51 MW; and

WHEREAS, the Seller has executed Interconnection Agreements with Southern California Edison Company ("SCE"), entitled, “District-Edison Interconnection and Hydroelectric Energy Sale Contract”; and

WHEREAS, the Seller’s obligation to use its water distribution system to deliver water to its member public agencies has and will continue to have priority over any entitlement granted herein for sale and delivery of the Products; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 Contract Definitions. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:
“Agreement” has the meaning set forth in the Preamble and includes any exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“Annual Net Qualifying Capacity” means the annual publication as posted by CAISO that shows the Resource Adequacy Net Qualifying Capacity data for requesting resources.

“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

“Assumed Daily Deliveries” means an amount equal to the average of daily deliveries of Facility Energy to date during the Delivery Term.

“Authorized Representative” means, with respect to each Party, the Person designated as such Party's authorized representative pursuant to Section 13.1.

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“Brown Act” has the meaning set forth in Section 17.1(b).

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Default” means a failure of Buyer to perform its material obligations hereunder.

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Approved Meter” means a CAISO-approved revenue quality meter or meters, CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment, and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facilities.

“CAISO Costs” means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Resource ID for Facilities for, or attributable to, Scheduling or deliveries from the Facilities under this Agreement in each applicable Settlement Interval.

“CAISO Delivery Point” means, when used with respect to any Energy sold and purchased under this Agreement, the point where that Energy is delivered to the CAISO, on behalf of Buyer.
“CAISO Grid” has the same meaning as “CA ISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Participating Generator Agreement” means the agreement between Seller and CAISO to be a Generator Owner as set forth in the CAISO Tariff.

“CAISO Resource ID” has the meaning set forth in the CAISO Tariff.

“CAISO Revenues” means the credits and other payments incurred or received by Seller, as the Facilities’ Scheduling Coordinator, as a result of Scheduling or Metered Energy from the Facilities delivered by Seller to any CAISO administered market, including costs and revenues associated with CAISO dispatches, for each applicable Settlement Interval.

“CAISO Tariff” means the CAISO Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), and X-12 (2011), codified in, inter alia, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facilities can generate and deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Facility has commenced commercial operation, as such term is defined by and according to the CEC, that the CEC has pre-certified) that the Facilities is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy generated by the Facilities qualifies as generation from an Eligible Renewable Energy Resource.

“Confidential Information” has the meaning set forth in Section 17.1.

“Contract Price” has the meaning set forth in Exhibit B.

“Contract Year” means a period of twelve (12) consecutive months means beginning on January 1, 2021 and ending on December 31, 2021, and (ii) each succeeding period of twelve consecutive months during the Delivery Term pursuant to Article 2, Subsection 2.2.

“Cover Sheet” means the cover sheet to this Agreement, completed by Seller and incorporated into this Agreement.
“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 incurred in connection with enforcing its rights under this Agreement. Each Party shall use reasonable efforts to mitigate or eliminate its Costs.

“CPUC” means the California Public Utilities Commission, or successor entity.

“California Public Records Act” or “CPRA” has the meaning set forth in Section 17.1(b).

“Defaulting Party” has the meaning set forth in Section 11.1.

“Delivery Point” has the meaning set forth in Exhibit B.

“Delivery Term” shall mean the period three (3), five (5), or 10 Contract Years beginning on January 1, 2021 and ending on December 31, _____, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Dispute” has the meaning set forth in Section 14.1(a).

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point.

“Electric Metering Device(s)” means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Energy output from the Facilities. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy, measured in MWh.

“Facilities” means the Facilities described more fully in Exhibit A attached hereto.

“Facility Energy” means all Energy generated by a Facility as measured by Electric Metering Device.

“Facility Products” means the Facility Energy, Renewable Attributes, and Capacity Attributes.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Force Majeure” has the meaning set forth in Section 15.1(a).
“Forced Outage” means an unexpected failure of one or more components of the Facilities or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure.

“Forward Certificate Transfers” has the meaning set forth in WREGIS Operating Rules. WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amount will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

“Future Environmental Attributes” shall mean any and all emissions, air quality or other environmental attributes (other than Renewable Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facilities. Future Environmental Attributes do not include (i) any Facility Products, (ii) Production Tax Credits associated with the construction or operation of the Facilities and other financial incentives in the form of credits, reductions, or allowances associated with the Facilities that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facilities for compliance with local, state, or federal operating and/or air quality permits.

“Gains” means an amount equal to the present value of the economic benefit (exclusive of Costs), if any, resulting from the termination of a Party’s obligations under this Agreement, determined in a commercially reasonable manner.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO.

“Guarantor” means, with respect to Buyer, (a) Ultimate Parent or (b) any Person that (i) Buyer does not already have any material credit exposure to under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (ii) is an Affiliate of Buyer, or other third party reasonably acceptable to Seller, (iii) has at least one credit rating of at least: BBB+ with an outlook designation of “stable” from S&P, BBB+ with an outlook designation of “stable” from Fitch, or Baa1 with an outlook designation of “stable” from Moody’s, (v) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (vi) executes and delivers a Guaranty for the benefit of Seller.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Seller in a form reasonably acceptable to the Seller and substantially in the form attached as Exhibit F.
“**Imbalance Energy**” means all CAISO energy types define in the CAISO Tariff, including but not limited to, Five Minute Market Instructed Imbalance Energy, Real-Time Dispatch Instructed Imbalance Energy, Uninstructed Imbalance Energy, and Unaccounted For Imbalance Energy.

“**Indemnified Party**” has the meaning set forth in Section 18.1.

“**Indemnifying Party**” has the meaning set forth in Section 18.1.

“**Interconnection Agreement**” means the interconnection agreement entered into by Seller pursuant to which the Facilities will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facilities with the Transmission System in accordance with the Interconnection Agreement.

“**Interest Rate**” means the “Prime Rate,” as published in the most current edition of the Wall Street Journal, or successor publication.

“**Investment Grade Credit Rating**” means at least one credit rating with an outlook designation of “stable” of BBB or higher by S&P, or BBB or higher from Fitch, or Baa2 or higher by Moody’s.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a least one credit rating of at least: BBB+ with an outlook designation of “stable” from S&P, BBB+ with an outlook designation of “stable” from Fitch, or Baa1 with an outlook designation of “stable” from Moody’s, and being reasonably acceptable to Seller, in a form substantially similar to the letter of credit set forth in Exhibit E.

“**Liens**” 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.

“**Losses**” means an amount equal to the present value of economic benefit, exclusive of Costs, if any, resulting from the termination of its obligation under this Agreement, determined in a commercially reasonable manner.

“**Meter Service Agreement**” means the agreement between Seller and CAISO to establish meter services for the collection and transfer of Meter Data by CAISO.
“Metered Energy” means the Energy generated by the Facilities expressed in MWh, as recorded by the CAISO approved meter(s) and net of all Electrical Losses and Station Use.

“MW” means megawatts measured in alternating current.

“MWh” means megawatt-hour measured in alternating current.

“NERC” means the North American Electric Reliability Council or its successor organization, if any.

“Net Qualifying Capacity” or “NQC” has the meaning set forth in the CAISO Tariff.

“Non-Availability Charges” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 11.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“Party” has the meaning set forth in the Preamble.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity with the exception of a Party.

“Plant” means one of four hydro powered electric generating facilities included in the Facilities, which are separately metered and deliver Facility Energy to different CAISO Delivery Points.

“Point of Delivery” means, when used with respect to any Energy sold and purchased under this Agreement, the metered CAISO Grid point where that Energy is required to be delivered by Seller to Buyer under this Agreement as set forth in Exhibit B.

“PNode” has the meaning set forth in the CAISO Tariff.

“Present Value Rate” means, at any date, the sum of 0.50% plus the end of day yield as listed in the Wall Street Journal or Bloomberg, for the United States government securities having a maturity that most nearly matches the Remaining Term at that date.

“Product” means (i) Energy generated by the Facilities, (ii) Renewable Attributes and (iii) Capacity Attributes.

“Production Tax Credit” means the production tax credit for wind-powered electric generating facilities described in Section 45 of the Internal Revenue code of 1986, as it may be amended or supplemented from time to time.
“Prudent Operating Practice” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Deficiency Amount” means the liquidated damages payment that is applicable during RA Shortfall months in accordance with Section 5.7(a).

“RA Requirements” has the meaning set forth in the CAISO Tariff.

“RA Shortfall” means, for purposes of calculating an RA Deficiency Amount under Section 5.7(a), any month during which the Net Qualifying Capacity of the Facilities for such month was less than the Qualifying Capacity of the Facilities for such month.

“Renewable Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facilities, and its displacement of conventional energy generation. Renewable Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other Renewable house gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Renewable Tag Reporting Rights. Renewable Tags are accumulated on a MWh basis and one Renewable Tag represents the Renewable Attributes associated with one (1) MWh of Energy generated by the Facilities. Renewable Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facilities, (ii) Production Tax Credits associated with the construction or operation of the Facilities and other financial incentives in the form of credits, reductions, or allowances associated with the Facilities that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facilities for compliance with local, state, or federal operating and/or air quality permits. If the Facilities is a biomass or landfill gas Facilities and Seller receives any tradable Renewable Attributes based on the Renewable house gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Renewable Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facilities.

“RECs” or “Renewable Energy Certificates” means tradable environmental
commodities that represent proof that 1 (one) megawatt-hour (MWh) of electricity was generated from an eligible renewable energy resource. These certificates can be sold and traded, and the owner of the REC can claim to have purchased renewable energy. RECs are also commonly known as Renewable Energy Credits and green tags.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facilities (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facilities, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facilities that are not a Renewable Attribute or a Future Renewable Attribute.

“Renewable Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “Renewable tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Replacement RA” means Resource Adequacy benefits, if any, equivalent to those that would have been provided by the Facilities with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within the East Central Area TAC Area (as described in the CAISO Tariff) and, to the extent that the Facilities would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“Requirement of Law” means 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 (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

“Request for Offers” has the meaning set forth in the Recitals.

“Resource Adequacy” means the CPUC requirement under the Resource Adequacy program for load-serving entities, as amended or revised, to demonstrate in both monthly and annual filings that they have secure sufficient commitments of no less than 115% of their peak loads, from actual, physical resources to ensure system reliability.

“RPS Compliant” when used with respect to an Energy generating facility means that all Energy generated by that facility at that time would, if purchased by a retail seller together with the associated Renewable Attributes: (i) be eligible to be credited against the RPS of Buyer, its member agencies, or any Retail Seller, as in effect on the Effective Date, and (ii) comply with
RPS Law.

“**RPS Law**” means Section 399.11 to 399.20 of the Public Utilities Codes, as implemented through regulation or other means, and as amended from time to time, and any successor law.

“Schedule” means the actions of Seller, or Scheduling Coordinators, including each Seller’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified Delivery Point.

“Scheduled Energy” means the Energy scheduled by Seller that clears the applicable CAISO market.

“Scheduled Outage” means any outage with respect to the Facility or water conveyance facilities supporting the Facility’s operation other than a Forced Outage.

“Scheduled Outage Projection” has the meaning set forth in Section 4.4(b).

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller’s WREGIS Account” has the meaning set forth in Section 7.2.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

“Station Use” means:

(a) The Energy produced by the Facilities that is used within the Facilities to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facilities; and

(b) The Energy produced by the Facilities that is consumed within the Facilities’ electric energy distribution system as losses.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facilities, or (iii) to preserve Transmission System reliability.

“Tax” or “Taxes” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a
Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Termination Notice” means the notice given to the Defaulting Party by the Non-Defaulting Party establishing the date of Default.

“Termination Payment” means the payment for the Non-Defaulting Party receives for the aggregate of any Gains, Losses, and Costs as calculated as a single net amount.

“Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

“Transmission Services” means the transmission, interconnection, and/or other services required to transmit Facility Energy to or from the Point of Delivery or the CAISO Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Use-Limited Sources” means a resource that is unable to operate continuously on a daily basis, due to design considerations, restrictions on operations, cyclical requirements, or other non-economic reason, but is able to operate for a minimum set of consecutive hour during each day, as defined in the CAISO Use-Limited Resource Guide Book Version #8 dated 2/2/2017, as amended from time to time.

“WECC” means the Western Electricity Coordinating Council or its successor.

“Wholesale Distribution Access Tariff” or “WDAT” means a tariff filed at the Federal Energy Regulatory Commission by a jurisdictional utility that provides distribution service over facilities not under CAISO control. The tariff is applicable to for the transportation of capacity and energy from the Facility to the ISO Controlled Grid. As used herein, distribution service provided from the Facility to the CAISO Delivery Point shall be under SCE’s WDAT.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Account” has the meaning set forth in Section 7.2.

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.
1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) reference to a Person includes that Person’s successors and permitted assigns;

(d) the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(e) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(f) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(g) references to any amount of money shall mean a reference to the amount in United States Dollars; and

(h) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings.

**ARTICLE 2**

**TERM; CONDITIONS PRECEDENT**

2.1 **Effective Date.** This Agreement is effective on the date set forth on the Preamble.

2.2 **Delivery Term.** This Agreement shall have a Delivery Term of ____ years, as determined by the Parties, commencing on January 1, 2021 and ending on December 31, ____ , unless sooner terminated in accordance with the terms of this Agreement and subject to any early termination provisions set forth herein.

2.3 **Early Termination.** This Agreement may be terminated by mutual written agreement of the Parties, or under the following conditions:
(a) **Interconnection or WDAT Agreement Termination.** This Agreement may be terminated pursuant to Section 5.3.

(b) **Early Termination for Default.** This Agreement may be terminated pursuant to Section 11.3 herein.

(c) **Seller Termination for Change in Water Operations.** In the event the Facilities are no longer delivering Energy for a continuous period of 12 months, either Party can terminate this Agreement.

**ARTICLE 3**

**PURCHASE AND SALE**

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller at the applicable prices identified in Section 3.4, all of the Product produced by the Facilities. Seller has no obligation to sell and Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facilities or a Force Majeure Event.

3.2 **Sale of Renewable Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all of the Renewable Attributes, attributable to the Metered Energy produced by the Facilities.

3.3 **No Sale to Third Parties.** Buyer shall not sell or otherwise transfer any Facilities Products to any Person during the Delivery Term without the other Party’s written consent which may not be unreasonably withheld. Any purported sale or transfer in violation of this provision shall be null at inception and of no force or effect.

3.4 **Compensation.** During the Delivery Term, Buyer shall pay Seller a Contract Price as shown in Exhibit B for each MWh of Metered Energy during the Contract Term. The Contract Price shall be the total consideration provided hereunder for such Facilities Project.

**ARTICLE 4**

**OWNERSHIP, OPERATION AND MAINTENANCE OF THE FACILITY**

4.1 **Facility Ownership.** The Facilities shall be owned by Seller during the Delivery Term. Seller shall operate and maintain the Facilities, at its sole risk and expense, and in compliance with the requirements of this Agreement, all applicable Requirements of Law, Prudent Operating Practices, and applicable manufacturer’s and operator’s specifications and recommended procedures provided.

4.2 **Seller Water Obligations; Maximize Facility.** Seller’s obligation to use its water distribution system to deliver water to its member agencies shall have priority over Facility Products, and Seller’s water needs shall be the determining factor with regard to the amount of Energy generated from the Facilities. Seller shall, at its sole expense, operate and maintain the Facilities in a manner that is reasonably likely to maximize the production of Facility Energy and results in a useful life for the Facilities of not less than the Delivery Term.
4.3 **General Operational Requirements.** In addition to the requirements set forth in Section 4.1 and elsewhere in this Agreement, Seller shall, at all times:

(a) Employ qualified and trained personnel for managing, operating and maintaining the Facilities and for coordinating with Buyer. Seller shall ensure that necessary personnel are available during the Delivery Term.

(b) Operate and maintain the Facilities with due regard for the safety, security and reliability of the interconnected facilities and Transmission System, all in accordance with Prudent Operating Practices.

(c) Devise and implement a plan of inspection, maintenance, and repair for the Facilities and the components thereof in order to maintain such equipment in accordance with Prudent Operating Practices, and shall keep records with respect to inspection, maintenance, and repairs thereto.

4.4 **Scheduling of Energy and Scheduled Outages.**

(a) Seller shall provide Buyer with a non-binding day ahead schedule of deliveries of energy in accordance with such dispatch and scheduling procedures as mutually agreed upon by Seller’s and Buyer’s Authorized Representatives. All generation, scheduling, and Transmission Services shall be performed in accordance with the applicable CAISO, NERC and WECC operating policies, criteria, and any other applicable guidelines and Requirements of Law. Seller shall also fulfill the contractual, metering and interconnection requirements of the Transmission Provider so as to be able to deliver Energy to the Point of Delivery.

(b) Seller will work to minimize Scheduled Outages during each Contract Year. Seller shall provide Buyer with a Scheduled Outage Projection that includes 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 and/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 of any change to the Scheduled Outage Projection as soon as practicable prior to the originally scheduled date of the Scheduled Outage. 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.

(c) In the event of a Forced Outage of the Facilities, as soon as practicable, Seller shall notify Buyer of the Forced Outage and 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 and/or repairs work to be performed during the Forced Outage; and (iv) the anticipated MW capacity; if any, during the Forced Outage. To the extent required by CAISO reporting protocols for Forced Outages, Seller shall in accordance with Prudent Operating Practice, take all reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such outages.

(d) Seller will deliver Project Capacity and Energy at the Point of Delivery in amounts matching Seller’s schedule as close as possible, subject to Seller’s water delivery
ARTICLE 5
TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

5.1 **Delivery.**

(a) **Transmission Services.** Seller shall arrange and be responsible for any Transmission Services required to deliver Facility Energy to the CAISO Delivery Point. Buyer shall arrange and be responsible for Transmission Services at and from the CAISO Delivery Point. The CAISO Delivery Points for each Plant is shown in Exhibit B for reference.

(b) **Transmission Costs and Loss.** Seller shall be responsible for any cost or charges imposed on or associated with the transmission of Facility Energy to the CAISO Delivery Points, including without limitation cost or charges associated with the Interconnection Agreements, WDAT transmission agreements and CAISO Participating Generator and Meter Services Agreements, as those terms are defined in the CAISO Tariff. Buyer shall be responsible for all costs and charges associated with the transmission and scheduling of Facility Energy at and from the CAISO Delivery Points to CAISO load sinks, including without limitation transmission access charges, positive or negative transmission Electrical Losses, Imbalance Energy, and control area ancillary services. To facilitate such scheduling of Facility Energy, Seller or Seller’s designee shall be the Scheduling Coordinator for the Facilities during the Delivery Term.

5.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Metered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

(b) **Renewable Attributes.** Title to and risk of loss related to the Renewable Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Renewable Attributes in accordance with WREGIS.

5.3 **Change in Interconnection.** In the event that an Interconnection Agreement or an agreement for WDAT service terminates, for any reason, prior to the termination of this Agreement, then the Seller shall use good faith efforts to renew or to replace such Interconnection Agreement or the WDAT service agreement; provided, however, that (i) Seller shall notify Buyer, in writing, as soon as practicable upon receiving notice of the termination of one or more Interconnection Agreements or agreements for WDAT service and (ii) if the Seller is unable to renew or to replace the above-referenced agreements, then Seller and Buyer shall use good faith efforts to develop an alternate arrangement. In the event that Seller’s and Buyer's efforts to replace such agreement(s) are not successful prior to the termination of such agreements, then any Plant affected by such termination shall be excluded from the definition of Facilities and Exhibit A hereunder for a period starting with the termination of such agreement(s) and ending on the effective date of replacement Interconnection Agreement(s) or agreement(s) for WDAt service, if any. In the event that all Plants are without valid Interconnection Agreements or agreements for WDAT service for a period of 12 consecutive months during the Delivery Term, then this Agreement may be terminated by either Party upon 30 days advanced written notice to the other Party.
5.4 **Scheduling Coordinator Responsibilities.**

(a) **Seller to be Scheduling Coordinator.** During the Delivery Term, Seller shall act as Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO to schedule and deliver the Product to the Delivery Point on behalf of Buyer. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement.

(b) **CAISO Costs and CAISO Revenues.** Buyer shall be responsible for all CAISO Costs and shall be entitled to all CAISO Revenues. As of the date of this Agreement, any additional charges associated with RA will be the responsibility of the Buyer. In addition, if during the Delivery Term the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facilities shall be the Buyer’s responsibility.

5.5 **Forecasting.** Seller shall provide the forecast of Metered Energy and Scheduled Outages as described below. Seller shall issue a forecast of Metered Energy and Schedule Outages of the Facilities and transmit such information to Buyer.

(a) **Annual Forecast.** By August 1st of each year, Seller shall provide a nonbinding forecast for the subsequent calendar year during the Delivery Term. The annual forecast will show the estimated total monthly megawatt hour to be generated by the Facilities, and planned Scheduled Outages.

(b) **Monthly Forecast.** By the 10th of each month, Seller shall provide to Buyer a non-binding forecast of the Metered Energy covering a 50-day period beginning with the first of the next month. This forecast will show the estimated daily schedules at the Point of Delivery and planned Scheduled Outages.

5.6 **Reduction in Delivery Obligation.**

(a) **Facility Maintenance.** Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facilities.

(b) **Forced Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Outage. Seller shall provide Buyer with a timely Notice and expected duration (if known) of any Forced Outage.

(c) **Water Operations.** Seller shall be permitted to reduce deliveries of Product based on water system needs.

(d) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or pursuant to the terms of this Agreement, the Interconnection Agreement or applicable Tariff.
(e) **Force Majeure Event.** Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(f) **Buyer Default.** Seller shall be permitted to stop deliveries of Product during any period in which there is a Buyer Default.

(g) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety.

5.7 **Resource Adequacy Capacity.** Seller will cooperate with Buyer, as necessary, in the administration of Buyer’s Resource Adequacy (“RA”) activities including coordination with any regulatory authorities. Seller will submit the monthly RA supply plan to CAISO based on the lower of (i) the Annual Net Qualify Capacity (NQC) report published by CAISO, or (ii) the expected generation as determined by Seller. Buyer acknowledges that the NQC report is published at the end of each calendar year by the CAISO for the following calendar year. As of the date of this Agreement, the most recently published NQC report for Compliance Year 2020 is shown in Exhibit C for reference purposes only.

(a) **RA Deficiency Determination.** Notwithstanding Seller’s obligations set forth in Section 5.7 or anything to the contrary herein, the Parties acknowledge and agree that each Party shall be responsible for its own RA Requirements. Seller shall not be responsible for the RA Deficiency Amount or provide Replacement RA as the remedy for the RA Shortfall.

**ARTICLE 6**

**CAPACITY RIGHTS**

6.1 **Capacity 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 hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of the Capacity Attributes of the Facilities. Buyer and Seller acknowledge and agree that the consideration for the transfer of Capacity Attributes is contained within the relevant price for Facility Products under Section 3.4. In no event shall Buyer have any Facility ownership right or obligation whatsoever for any debt pertaining to the Facilities by virtue of Buyer’s ownership of the Capacity Attributes or otherwise.

6.2 **Representation Regarding Ownership of Capacity Attributes.** Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold, or otherwise disposed of, and will not in the future assign, transfer, convey, encumber, sell or otherwise dispose of, any of the Capacity Attributes to any Person other than Buyer, or attempt to do any of the foregoing with respect to any of the Capacity Attributes. Seller shall not report to any Person that any of the Capacity Attributes belong to any Person other than Buyer. Buyer may, at its own risk and expense, report to any Person that the Capacity Attributes belong to it.

6.3 **Qualification of Capacity Resources.** At Buyer’s request, the Parties shall cooperate with the qualification of the Facilities as a capacity resource in a capacity market, or with the applicable system balancing authority, WECC, or NERC, and as a resource adequacy resource to comply with any resource adequacy requirements and the associated rules.
or regulations enacted or adopted by applicable Governmental Authority and, if necessary, execute and deliver such documents and instruments as may be reasonably required, subject to Section 4.2, to effect recognition and transfer of the Capacity Attributes to Buyer. Each Party shall bear their own cost of such certification and the preparation and execution of any such documents and instruments.

ARTICLE 7
RENEWABLE ATTRIBUTES

7.1 Transfer of Renewable 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 hereby transfers to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Renewable Attributes, whether now existing or that hereafter come into existence or are acquired by Seller during the Delivery Term, for all Facility Energy. Seller shall transfer and make such Renewable Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller’s production or acquisition of the Renewable Attributes. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and will not within the Delivery Term assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Renewable Attributes to any Person other than Buyer. Buyer and Seller acknowledge and agree that the consideration for the transfer of Renewable Attributes is contained within the relevance prices for Facility Energy under Section 3.4.

7.2 Use of WREGIS Accounting System to Transfer Renewable Attributes. Seller shall use commercially reasonable efforts to use its WREGIS or any successor system (“Seller’s WREGIS Account”) to evidence the transfer of any RECs under applicable law or any voluntary program (“WREGIS Certificates”), associated with Facility Energy in accordance with WREGIS reporting protocols. Prior to the commencement of the Delivery Term, Seller has registered the Facilities with the CEC and WREGIS as a conduit hydroelectric generating Facilities as currently defined by applicable California law or regulations, or as may be agreed upon by the Authorized Representatives as a small hydroelectric Facilities as may be defined by other programs, laws or regulations. During the Delivery Term, any optional actions regarding WREGIS or WREGIS Certificates shall be made by mutual agreement between the Authorized Representatives and Seller shall comply as may be reasonably request.

(a) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 7.2 after the Effective Date, the Authorized Representatives shall modify this Section 7.2 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Metered Energy in the same calendar month.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate. Seller shall ensure that the WREGIS
Certificates for a given calendar month correspond with the Metered Energy for such calendar month as evidenced by the Facilities’ metered data.

7.3 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller’s sole expense, in Seller’s efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

7.4 **CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to maintain CEC Certification and Verification for the Facilities throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the *RPS Eligibility Guidebook, Ninth Edition* (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facilities.

7.5 **RPS Compliance.** Seller warrants and guarantees that the Facilities are RPS Compliant; provided, however, in the event that a change in RPS Law causes the Facilities to not be RPS Compliant, then such event shall not be a Default.

7.6 **Future Renewable Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Renewable Attributes; however, Future Renewable Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Renewable Attributes, but there shall be no reduction in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Renewable Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Renewable Attributes. Seller shall have no obligation to alter the Facilities or the operation of the Facilities unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Renewable Attributes pursuant Section 7.6 (a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Renewable Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.
ARTICLE 8
METERING

8.1 Electric Metering Devices. The Facility Energy made available to Buyer by Seller under this Agreement shall be measured using a revenue quality Electric Metering Device for each Plant installed, owned and maintained by the Seller or the Transmission Provider pursuant to an Interconnection Agreement, Transmission Services Agreement, or CAISO Meter Service Agreement, as applicable. All Electric Metering Devices used to provide data for the computation of payments shall be sealed, and the 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 8.1. Seller, its designee, the Transmission Provider, or the CAISO, as applicable, shall specify the number, and location of such Electric Metering Devices. The Electric Metering Devices measure Energy at the CAISO Delivery Point, and the Parties agree that, for purposes of settlements hereunder, hourly quantities of Facility Energy shall be measured at the CAISO Delivery Point.

8.2 Meter Verification. Seller, its designee, the Transmission Provider or the CAISO, as applicable, at no expense to Buyer, shall inspect and test all Electric Metering Devices in accordance with the CAISO Tariff. 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 two percent (2%), 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 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, Seller and Buyer shall agree on the use of the corrected measurements as determined in accordance with this Section 8.2 to recompute the amount due for the period of the inaccuracy and Seller 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. 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. Upon request by Buyer, Seller or its designee shall perform additional inspection or witness the testing of any Electric Metering Device. The actual expenses of any such requested additional inspection or testing shall be borne by Buyer. Seller shall provide copies of any inspection or testing reports to Buyer.

8.3 Taxes. Seller shall be responsible for and shall pay, before the due dates therefore, 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 Facilities, the Facilities site, any other assets of Seller related to the Facilities, the sale or use of Facility Products, or Seller’s income.
ARTICLE 9
REPRESENTATIONS AND WARRANTIES

9.1 **Representations and Warranties by Buyer.** Buyer makes the following representations and warranties to Seller as of the Effective Date:

(a) Buyer is a validly existing business entity established pursuant to 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 Agreement and carry out the transactions contemplated hereby and thereby perform and carry out all obligations on its part to be performed under and pursuant to this Agreement.

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

(c) This Agreement constitutes a 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.

9.2 **Representations and Warranties by Seller.** Seller makes the following representations and warranties to Buyer as of the Effective Date:

(a) Seller is a political subdivision of the State of California duly organized, validly existing and in good standing under the Metropolitan Water District Act of 1969, as amended, is qualified to do business in the State of California 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 carry out the transactions contemplated hereby and thereby perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by the Seller of this Agreement 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.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement, 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 Seller 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 Seller (except as contemplated hereby), and Seller has obtained or shall timely obtain all permits, licenses, approvals and consents of Governmental Authorities required for the performance of its obligations hereunder and operation of the Facilities in accordance with Prudent Operating Practices, the requirements of this
Agreement and all applicable Requirements of Law.

ARTICLE 10
INVOICING AND PAYMENT

10.1 Calculation of Energy Delivered. For each calendar month during the Delivery Term, commencing with the first calendar month in which Energy is delivered by Seller to and received by Buyer under this Agreement, Seller shall calculate the amount of Facility Energy so delivered and received during such calendar month as determined from recordings produced by the Electric Metering Devices for each Plant pursuant to Section 8.1, after the last day of the calendar month in question.

10.2 Invoicing. Not later than the tenth (10th) day of each calendar month, commencing with the calendar month next following the calendar month in which Energy is first delivered by Seller and received by Buyer under this Agreement, Seller shall deliver to Buyer an invoice showing (i) the amount of Facility Energy delivered by Seller and received by Buyer at the Point of Delivery during the preceding calendar month and (ii) Seller’s computation of the amount due Seller pursuant to Section 3.4. Monthly invoices shall be sent to the address set forth in Exhibit D or such other address as Buyer may provide to Seller.

10.3 Payment. Not later than the fifteenth (15th) day after receipt by Buyer of Seller’s monthly invoice (or the next succeeding Business Day, if such 15th 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 Authorized Representatives from time to time, the amount set forth as due in such monthly invoice, subject to Section 10.4.

10.4 Disputed Invoices. In the event any portion of any invoice is in dispute, the full amount shall be paid when due without prejudice. The Party disputing a payment shall promptly notify the other Party of the basis for the dispute. 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 14.1. Upon resolution of any dispute, if all or part of the disputed amount is later determined to have been billed in error, 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 billed in error plus interest thereon at the Interest Rate from the due date until the date of payment.

ARTICLE 11
DEFAULT AND REMEDIES; PERFORMANCE DAMAGE

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

(a) Payment or Performance Default. Failure by the Buyer or Seller to make any payment or perform any of its duties or obligations under this Agreement when and as due;
(b) **Breach of Representation and Warranty.** Inaccuracy in any material respect of any representation, warranty, certification, or other statement, including representations or warranties made pursuant to Article 9, at the time made or deemed to be made;

(c) **Buyer Bankruptcy.** Bankruptcy of the Buyer.

(d) **Seller Bankruptcy.** Bankruptcy of the Seller.

(e) **Creditworthiness.** Failure by Buyer to satisfy the creditworthiness requirements agreed to pursuant to Section 12.1 of this Agreement.

11.2 **Default Remedies.** Notwithstanding any other provision herein, if any Default has occurred and has not been cured by the Defaulting Party within thirty (30) calendar days after receipt of notice of the Default by the Party that is not the Defaulting Party (the "**Non Defaulting Party**"), the Non Defaulting Party may pursue any or all of the following course of action:

(a) The Non Defaulting Party may, by notice to the Defaulting Party ("**Termination Notice**") (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 or performance due under Agreement; provided, upon the occurrence of any Default of the type described in Section 11.1 (c) or 11.1 (d), this Agreement shall automatically terminate, without notice or other action by either Party as if an Early Termination Date had been declared immediately prior to such event.

(b) The Non Defaulting Party may bring an action in any court of competent jurisdiction for any appropriate relief, whether or not the dispute resolution process set forth in Section 14.1 has been invoked or completed.

(c) If Buyer is in Default for nonpayment, subject to any duty or obligation under this Agreement, Seller may continue to provide services pursuant to its obligations under this Agreement; provided that Seller’s actions or failure to act shall not affect Seller's rights and remedies set forth in this Agreement or constitute a waiver of such rights and remedies. Seller's continued service to Buyer shall not act to relieve Buyer of any of its duties or obligations under this Agreement.

11.3 **Performance Damages.**

(a) If an Early Termination Date has been designated, the Non-Defaulting Party shall in good faith calculate its Gains, Losses and Costs resulting from the termination of this Agreement. The Gains, Losses and Costs relating to the Facility Products which would have been required to be delivered under this Agreement had it not been terminated shall be determined by comparing the amounts Non-Defaulting Party would have paid therefor under this Agreement to the published California Public Utilities Commission Market Price Referent ("MPR") plus $1/MWh at the time of Default, or if not available, some other equivalent and verifiable reference price for the Facility Products. The prices shall cover the same products and have a term equal to the Remaining Term at the date of the Termination Notice adjusted
to account for differences in transmission, if any. If pricing information is not available for the Remaining Term, the price shall be interpolated or extrapolated from available pricing information. It is expressly agreed that 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.

(b) 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 Renewable Attributes and Capacity Rights associated therewith.

(c) The Non-Defaulting Party shall aggregate its Gains, Losses and Costs as so determined into a single net amount (the “Termination Payment”) and notify the Defaulting Party thereof. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party will, within ten (10) Business Days of receipt of such notice pay the net amount to the Non-Defaulting Party, which amount shall bear interest at the Interest Rate from the Early Termination date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the amount of the Termination Payment shall be zero.

(d) When the Parties cannot otherwise resolve their differences regarding the calculation of the Termination Payment., the calculation issue shall be submitted to informal non-binding dispute resolution as provided in Section 14.1 (a) pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party as and when required by this Agreement, subject to the Non-Defaulting Party refunding, with interest, at the Interest Rate, any amounts determined to have been overpaid.

(e) For purposes of this Agreement:

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

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

(f) 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.
ARTICLE 12
CREDIT REQUIREMENTS

12.1 Credit Worthiness. At all times during the term of this Agreement, Buyer shall meet and maintain an Investment Grade Credit Rating. If Buyer is not rated, or Buyer’s credit is lower than the Investment Grade Credit Rating, then Buyer must provide a Letter of Credit or Guaranty by a Guarantor company with a credit rating as defined in “Letter of Credit” and “Guarantor” “Definitions” section above. If Buyer fails to maintain the minimum credit requirements or provide a Letter of Credit or Guaranty by a Guarantor company, then Buyer is deemed in default pursuant to Section 11 of this Agreement.

12.2 Letter of Credit. If Buyer provides a Letter of Credit, the Letter of Credit shall be equal to the Contract Price multiplied by the average of monthly generation over the prior three (3) calendar years multiplied by nine (9) months. If the issuer of such Letter of Credit (i) fails to maintain the credit rating specified in the definition of a Letter of Credit, (ii) fails to maintain the minimum amounts set forth in the Letter of Credit, (iii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iv) fails to honor Seller’s properly documented request to draw on such Letter of Credit by such issuer, Buyer shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Letter of Credit. Buyer may at its option exchange one permitted form of (a) cash, (b) a Letter of Credit, or (c) a Guaranty, for another form. Such Letter of Credit shall be substantially in the form set forth in Exhibit E.

12.3 Guaranty. If Buyer provides a Guaranty by a Guarantor company, the Guaranty amount shall be equal to the Contract Price multiplied by the average of monthly generation over the prior three (3) calendar years multiplied by nine (9) months. Such Guaranty shall be substantially in the form set forth in Exhibit F. Buyer shall (i) post cash, or (ii) provide a substitute Guaranty from another qualified company with a credit rating(s), as defined in “Guarantor” in the “Definitions” section above, in an amount equal to the original Guaranty, within three (3) Business Days after the occurrence of any one of the following events:

(a) The credit rating of the issuer of the Guaranty, or substitute Guaranty, falls below the credit rating as defined in “Guarantor” in the “Definitions” section above.

(b) The issuer of the Guaranty, or substitute Guaranty, is no longer incorporated or organized in a jurisdiction of the United States.

(c) The issuer of the Guaranty fails to pay Seller’s properly documented claim made pursuant to the Guaranty in accordance with the terms set forth in the Guaranty.

(d) Any representation or warranty made by Guarantor in connection with this Agreement or its Guaranty is false or misleading in any material respect when made or when deemed made or repeated.

(e) A Guarantor becomes bankrupt which means for the Guarantor any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Buyer or any of its assets, including but not limited to any rejection or
other discharge of Buyer’s obligations under the Agreement imposed by any court, trustee or
custodian or any similar official or imposed by any law, statute or regulation, in each such event in
any such proceeding.

(f) The Guarantor’s Guaranty fails to be in full force and effect prior to the
satisfaction of all Buyer’s obligations under the Agreement without the written consent of Seller.

(g) A Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in
part, or challenge the validity of its Guaranty.

If Buyer fails to make such replacement when required pursuant to this Section 12.2 or 12.3, then
Buyer shall have failed to meet the creditworthiness requirements of Section 12.

12.4 Financial Statements. In the event a Letter of Credit or Guaranty is
provided in lieu of cash, Seller has the option to request from Buyer and Buyer shall provide to
Seller, or cause the issuer of the Letter of Credit or Guarantor to provide to Seller, unaudited
quarterly and annual audited financial statements of the issuer of the Letter of Credit or Guarantor
(including a balance sheet and statements of income and cash flows), all prepared in accordance
with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 13
NOTICES

13.1 Authorized Representatives. Each Party hereto 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 as shown in Exhibit D. Each Party may
also designate an alternate who may act for the Authorized Representative within thirty (30)
calendar days after execution of this Agreement. Each Party 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, except as
otherwise provided herein.

13.2 Addresses for the Delivery of Notices. Any Notice required,
permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be
notified at the address set forth on the Exhibit D or at such other address or addresses as a Party
may designate for itself from time to time by Notice hereunder.

13.3 Acceptable Means of Delivering Notice. With the exception of
billing invoices pursuant to Section 10.2 hereof, all notices, requests, demands, consents, waivers
and other communications which are required under this Agreement shall be in writing and
shall be deemed properly sent if delivered in person, reliable overnight courier, or sent by
registered or certified mail, postage prepaid to the persons specified in Exhibit D. 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.
ARTICLE 14
DISPUTES

14.1 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 Article 14 (a “Dispute”) but excluding any dispute relating to Default under Article 11, 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, assistant general manager 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, assistant general manager 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 Subsections 14.1 (a) and 14.1 (b) by the expiration of the thirty (30) day period set forth in Subsection 14.1 (a), then either Party may pursue any legal remedy available to it in accordance with the provisions of this Agreement.

ARTICLE 15
FORCE MAJEURE

15.1 Force Majeure.

(a) The term "Force Majeure" means an event or circumstance, other than an Unexcused Cause, (i) which prevents one Party from performing any of its obligations under this Agreement, (ii) which could not reasonably be anticipated as of the date of this Agreement, (iii) which 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, and (iv) which by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; provided, nothing in this clause (iv) shall be construed so as to require either Party to settle a strike or labor dispute in which it may be involved. A Force Majeure does not include any of the following (each an "Unexcused Cause"): (i) any RPS or any change (whether voluntary or mandatory) in any RPS that may affect the value of the Energy purchased hereunder; (ii) events arising from the failure by Seller to construct, operate or maintain the Facilities in accordance with this Agreement; (iii) any increase of any kind in any cost; (iv) failure of third parties to provide goods or services essential
to a Party's performance, unless such failure is caused by a Force Majeure; (v) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (vi) Seller's ability to sell Facility Energy, Renewable Attributes, or Capacity Rights at prices in excess of those provided in this Agreement; or (vii) other interruption of any Transmission Service except as otherwise expressly provided in Section 15.1 (c).

(b) **Effect of Force Majeure.** 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 commercially reasonable efforts, such Party is unable to prevent or mitigate, provided the Party has given a written detailed description 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), which notice shall include information with respect to the nature, cause and date 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 due to a Force Majeure, Buyer shall have no obligation to pay Seller for the Energy not delivered or received by reason thereof. In no event shall either Party be obligated to compensate the other Party for any losses, expenses or liabilities that a Party may sustain as a consequence of any Force Majeure.

(c) Neither Party may raise a claim of Force Majeure based in whole or in part on other interruption of Transmission Service for Facility Energy at any time unless such interruption or curtailment is caused by physical damage or destruction to transmission infrastructure caused by an act of God or the elements, explosion, fire, epidemic, mudslides, sabotage, terrorism, lightning, earthquake, flood, or similar cataclysmic event.

**ARTICLE 16**

**ASSIGNMENT OF AGREEMENT**

16.1 **Assignment of Agreement.**

(a) Except for Scheduling of Facility Energy and Capacity Rights, Buyer shall not assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect. Unless otherwise mutually agreed to by the Parties, no assignment or delegation shall relieve Buyer from any of its obligations under this Agreement.

(b) Seller shall not assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of Buyer, which consent shall not be unreasonably withheld. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect. Unless otherwise mutually agreed to by the Parties, no such assignment or delegation shall relieve Seller from any of its obligations under this Agreement.
ARTICLE 17
CONFIDENTIALITY

17.1 Confidentiality.

(a) Except as otherwise required by law, neither Party shall disclose in any manner 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 ("Confidential Information") that is provided to it by the other Party, provided that such Confidential Information is clearly marked "Confidential" at the time it is received. As a condition to receiving confidential information hereunder, the Parties shall use reasonable efforts to cause their parent and subsidiary companies, affiliates, directors, officers, employees, and representatives, to maintain Confidential Information in confidence. The provisions of this Section 17.1 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 which (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) Notwithstanding the foregoing or any other provision of this Agreement, Parties acknowledge that Seller is a public entity which 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 provided pursuant to this Agreement will become the property of the Party receiving the Confidential Information ("Receiving Party"), and the Parties acknowledge that the Receiving Party 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 the Receiving Party's copying or releasing to a third party any of Confidential Information pursuant to the CPRA or Brown Act.

ARTICLE 18
INDEMNIFICATION

18.1 Indemnification.

(a) Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "Indemnified Party") from and against all claims, demands, losses, liabilities, suits, penalties, expenses (including reasonable attorneys’ fees), recoveries, and all other obligations arising from third party claims arising out of, resulting from, or caused by the negligence or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.
(b) Nothing in this Section 18.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

ARTICLE 19
MISCELLANEOUS

19.1 Ambiguity. The Parties acknowledge that this Agreement was reviewed by 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 contract.

19.2 Attorney Fees and Cost. 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.

19.3 No Dedication of Facilities. No undertaking by either Party under any provisions of this Agreement shall constitute the dedication of the Facilities or any portion thereof to the other Party, the public, or any other Person.

19.4 Entire Agreement. This Agreement, including all Exhibits, contains the entire understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, discussions or agreement between the Parties concerning that subject matter, whether written or oral, except as expressly provided for herein. 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. Except as provided herein, this Agreement may be amended or modified only by an instrument in writing signed by each Party.

19.5 Governing Law. This Agreement was made and entered into in the City 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.

19.6 Venue. All litigation arising out of, or relating to this Agreement, shall be brought in 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 lack of personal jurisdiction or forum non conveniens.

19.7 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.

19.8 Effect of Section Headings. Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of the text.
19.9 *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.

19.10 *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.

19.11 *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, provide that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

19.12 *Limitation of Liability.* Except to the extent provided 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.

19.13 *Relationship of the Parties.* This Agreement shall not be interpreted or construed 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.

19.14 *Amendments.* This Agreement may be amended from time to time by mutual agreement of the Parties in writing.

19.15 *Electronic Delivery.* This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party. If delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party.

19.16 *Binding Effect.* This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.17 *Further Assurances.* Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page.]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: ___________________________  By: ___________________________
Name: __________________________ Name: ___________________________
Title: __________________________  Title: ___________________________

Approved as to Form:

General Counsel

By: ___________________________
Name: __________________________
Title: __________________________
## EXHIBIT A

### DESCRIPTION OF THE FACILITIES

<table>
<thead>
<tr>
<th>Hydroelectric Plant</th>
<th>Nameplate Capacity (MW)</th>
<th>Average Annual Historical Facility Energy (MWh)*</th>
<th>California City Location</th>
<th>Energy Available for Buyer</th>
<th>Capacity Available for Buyer</th>
<th>Renewable Attributes Available for Buyer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corona</td>
<td>2.85</td>
<td>10,486</td>
<td>Corona</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Diamond Valley Lake</td>
<td>29.70</td>
<td>12,667</td>
<td>Hemet</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Red Mountain</td>
<td>5.90</td>
<td>17,906</td>
<td>Fallbrook</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Temescal</td>
<td>2.85</td>
<td>10,206</td>
<td>Corona</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Venice</td>
<td>10.12</td>
<td>370</td>
<td>Culver City</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>51.4</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Average Annual Historical Facility Energy is the average of annual energy production during the period 2014 through 2019. Future energy production is dependent on water operating conditions.
EXHIBIT B

CONTRACT PRICE AND CAISO DELIVERY POINTS

The Contract Price of the Product shall be:

<table>
<thead>
<tr>
<th>Year</th>
<th>Fixed Price ($/MWh)</th>
<th>Year</th>
<th>Fixed Price ($/MWh)</th>
<th>Year</th>
<th>Fixed Price ($/MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td></td>
<td>2021</td>
<td></td>
<td>2021</td>
<td></td>
</tr>
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</tr>
<tr>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>2030</td>
<td></td>
</tr>
</tbody>
</table>
# CAISO DELIVERY POINTS AND PRICING NODES WITH CAISO

<table>
<thead>
<tr>
<th>Hydroelectric Plant</th>
<th>SCE WDAT ID</th>
<th>Pt of Delivery with CAISO (POD)</th>
<th>Pricing Node with CAISO (Pnode)</th>
<th>Local Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corona</td>
<td>WDT133</td>
<td>Mira Loma 230 kV Bus</td>
<td>MIRALOMA_6_n009</td>
<td>LA Basin</td>
</tr>
<tr>
<td>Diamond Valley Lake</td>
<td>WDT075 (#34)</td>
<td>Valley 500 kV Bus</td>
<td>DMDVL Y 1 Units-APND</td>
<td>LA Basin</td>
</tr>
<tr>
<td>Red Mountain</td>
<td>WDT133</td>
<td>Valley 500 kV Bus</td>
<td>VALLEYSC_1_n102</td>
<td>LA Basin</td>
</tr>
<tr>
<td>Temescal</td>
<td>WDT133</td>
<td>Mira Loma 230 kV Bus</td>
<td>MIRALOMA_6_n010</td>
<td>LA Basin</td>
</tr>
<tr>
<td>Venice</td>
<td>WDT133</td>
<td>La Cienega 230 kV Bus</td>
<td>LCIENEGA_6_n005</td>
<td>LA Basin</td>
</tr>
</tbody>
</table>
### EXHIBIT C

**CAISO NET QUALIFYING CAPACITY REPORT FOR COMPLIANCE YEAR 2020***

*For Reference Only. Information was obtained from the CAISO website and can change from year to year.

<table>
<thead>
<tr>
<th>Resource ID</th>
<th>Local Area</th>
<th>Generator Name</th>
<th>JAN</th>
<th>FEB</th>
<th>MAR</th>
<th>APR</th>
<th>MAY</th>
<th>JUN</th>
<th>JUL</th>
<th>AUG</th>
<th>SEP</th>
<th>OCT</th>
<th>NOV</th>
<th>DEC</th>
<th>Dispatchable</th>
<th>Path Designation</th>
<th>Deliverability Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>DMDVL_1_UNITS</td>
<td>LA Basin</td>
<td>DIAMOND VALLEY LAKE PUMP-GEN PLANT</td>
<td>0.38</td>
<td>1.33</td>
<td>1.4</td>
<td>3.5</td>
<td>3.6</td>
<td>1.6</td>
<td>6.9</td>
<td>3</td>
<td>7.1</td>
<td>8.8</td>
<td>5.9</td>
<td>3.3</td>
<td>N</td>
<td>South</td>
<td>FC</td>
</tr>
<tr>
<td>MIRLOM_2_CORONA</td>
<td>LA Basin</td>
<td>MWD Corona Hydroelectric Recovery Plant</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>N</td>
<td>South</td>
<td>FC</td>
</tr>
<tr>
<td>VALLEY_5_REDMTN</td>
<td>LA Basin</td>
<td>MWD Red Mountain Hydroelectric Recovery</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2.1</td>
<td>2.6</td>
<td>2.9</td>
<td>3.5</td>
<td>3.8</td>
<td>3.5</td>
<td>2.6</td>
<td>2.3</td>
<td>1.5</td>
<td>N</td>
<td>South</td>
<td>FC</td>
</tr>
<tr>
<td>MIRLOM_2_TEMESC</td>
<td>LA Basin</td>
<td>MWD Temescal Hydroelectric Recovery Plant</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>N</td>
<td>South</td>
<td>FC</td>
</tr>
<tr>
<td>LACIEN_2_VENICE</td>
<td>LA Basin</td>
<td>MWD Venice Hydroelectric Recovery Plant</td>
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<td>0</td>
<td>0</td>
<td>1.4</td>
<td>3.1</td>
<td>3</td>
<td>2.2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>N</td>
<td>South</td>
<td>FC</td>
</tr>
</tbody>
</table>
EXHIBIT D

AUTHORIZED REPRESENTATIVES AND NOTICES CONTACT INFORMATION

1. AUTHORIZED REPRESENTATIVES

   a. As to the Buyer:
      i. ___________________
         Office: ____________
         Cell: ______________
         Email: ______________

   b. As to the Metropolitan Water District of Southern California:

      Manager, Power Operations and Planning
      Metropolitan Water District of Southern California
      700 North Alameda Street
      Los Angeles, CA 90012
      Office: (213) 217-7381
      Facsimile: (213) 830-4529
      Email: sbailey@mwdh2o.com

2. NOTICES:

   a. As to the Buyer:
      i. ___________________
         Office: ____________
         Cell: ______________
         Email: ______________

   b. As to the Metropolitan Water District of Southern California:

      Manager, Power Operations and Planning
      Metropolitan Water District of Southern California
      700 North Alameda Street
      Los Angeles, CA 90012
      Office: (213) 217-7381
      Facsimile: (213) 830-4529
      Email: sbailey@mwdh2o.com

Financial:
Submit invoices to MWD’s Accounts Payable at:
Email: AccountsPayableBusiness@mwdh2o.com
Send copy of invoices to:
Email: PResources@mwdh2o.com
Duns: 06-384-2975
Federal Tax ID Number: 95-6002071

Submit payments to MWD’s Accounts Receivables at:
Email: AccountsReceivablesBusiness@mwdh2o.com
MWD Accounts Receivables
700 North Alameda Street
Los Angeles, CA 90054-0153

MWD Wiring Transfer/Deposit Instructions:
Bank of America
Los Angeles Regional Commercial Banking Office
333 Hope Street
Los Angeles, CA 90071-1406
ABA: 026-009-593
MWD Account No:

Legal:
Metropolitan Water District of Southern California
700 North Alameda Street
Los Angeles, CA 90012
Attn: Legal Department
Mark Parsons, Senior Deputy General Counsel
Office: (213) 217-6317
Email: mparsons@mwdh2o.com
EXHIBIT E
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]
Expiry Date:

Beneficiary:
Metropolitan Water District of Southern California
700 North Alameda Street
Los Angeles, CA  90012

Ladies and Gentlemen:

By the order of   (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of the Metropolitan Water District of Southern California, a political subdivision of the State of California organized and operating pursuant to the Metropolitan Water District Act of the State of California (Stats. 1969, Chapter 209 as amended) (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Power Purchase and Sales Agreement dated as of   and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an
e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer’s own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary’s account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you, the Beneficiary, and Applicant written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the “UCP”), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer’s control (as defined in Article 36 of the UCP) that interrupts Issuer’s business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of
Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

[Bank Name]

__________________________________________________
[Insert officer name]

[Insert officer title]
DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD

Drawing Certificate

[Insert Bank Name and Address]

The undersigned, a duly authorized representative of the Metropolitan Water District of Southern California, a political subdivision of the State of California organized and operating pursuant to the Metropolitan Water District Act of the State of California (Stats. 1969, Chapter 209 as amended) (“Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of ___________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of __________, 20___ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred pursuant to section Article 11 of the Agreement, or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of the Metropolitan Water District of Southern California and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to the Metropolitan Water District of Southern California by wire transfer in immediately available funds to the following account:

[Specify account information]
Metropolitan Water District of Southern California

_____________________________________
Name and Title of Authorized Representative

Date ___________
EXHIBIT F

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [] (the “Effective Date”) by and between [_____], a [_____________] (“Guarantor”), and the Metropolitan Water District of Southern California, a political subdivision of the State of California organized and operating pursuant to the Metropolitan Water District Act of the State of”). California (Stats. 1969, Chapter 209 as amended) (together with its successors and permitted assigns, (“Seller”).

Recitals

A. Seller and [BUYER ENTITY], a (“Buyer”), entered into that certain Power Purchase and Sales Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [___], 20___.

B. Guarantor is entering into this Guaranty as security to secure Buyer’s obligations under the PPA, as required by Section 8.4 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Seller the full, complete and prompt payment by Buyer of any and all amounts and payment obligations now or hereafter owing from Buyer to Seller under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed Dollars ($  ). The Parties understand and agree that any payment by Guarantor or Buyer of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Seller first attempt to collect the payment of the Guaranteed Amount from Buyer, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Buyer shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.
2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Buyer to Seller under the terms and conditions of the Agreement. If Buyer fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Buyer’s receipt of Seller’s written notice of such failure (the “Demand Notice”), then Seller may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Seller is requesting that Guarantor pay under this Guaranty in form similar to the Payment Demand attachment below. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Seller.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired in any such proceeding, or otherwise affected for the following reasons:

   (i) the extension of time for the payment of any Guaranteed Amount, or
   
   (ii) any amendment, modification or other alteration of the PPA, or
   
   (iii) any indemnity agreement Buyer may have from any party, or
   
   (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
   
   (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Buyer or any of its assets, including but not limited to any rejection or other discharge of Buyer’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
   
   (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
   
   (vii) any payment to Seller by Buyer that Seller subsequently returns to Buyer pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
   
   (viii) those defenses based upon (a) the legal incapacity or lack of power or authority of any Person, including Buyer and any representative of Buyer to enter into the PPA or perform its obligations thereunder, (b) lack of due execution, delivery, validity or enforceability, including of
the PPA, or (c) Buyer’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction; provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Buyer is or may be entitled to assert against Seller (except for such defenses, setoffs or counterclaims that may be asserted by Buyer with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Seller in reliance hereon, (c) any requirement that Seller exhaust any right, power or remedy or proceed against Buyer under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

   (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

   (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

   (iii) subject to Section 10, any (a) sale, transfer or consolidation of Buyer into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Buyer or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

   (iv) the failure by Seller or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Seller or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Buyer or seek contribution or reimbursement of such payments from Buyer.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor’s organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor,

   (d) there are no actions, suits or proceedings pending before any court, governmental agency or
arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile or electronic mail, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Seller, to it at [ ] Attn: [ ]
Fax: [ ]

If delivered to Guarantor, to it at [ ] Attn: [ ]
Fax: [ ]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of Los Angeles, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Seller. This Guaranty is not assignable by Guarantor without the prior written consent of Seller. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Seller’s successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination
shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]
IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

By: ______________________

Printed Name: _____________

Title: _____________________

BUYER:

By: ______________________

Printed Name: _____________

Title: _____________________
(DEMAND REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Payment Demand

[Insert Bank Name and Address]

The undersigned, a duly authorized representative of the Metropolitan Water District of Southern California, a political subdivision of the State of California organized and operating pursuant to the Metropolitan Water District Act of the State of California (Stats. 1969, Chapter 209 as amended) (“Seller”). Pursuant to that certain Guaranty, dated _________(the “Guaranty”) entered into by [insert guarantor name] (the “Guarantor”), the Seller and _____________ (the “Applicant”), I hereby certify to the Guarantor as follows:

1. Applicant and Seller are party to that certain Renewable Power Purchase Agreement dated as of ___________, 20___ (the “Agreement”).

2. Seller is making a payment demand under the Guaranty in the amount of U.S. $___________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred pursuant to section Article 11 of the Agreement, or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Guaranty has occurred.

OR

Beneficiary is making a payment demand under this Guaranty in the amount of U.S. $___________, which equals the full available amount under the Guaranty, because Applicant is required to maintain the Guaranty in force and effect beyond the expiration date of the Guaranty but has failed to provide Beneficiary with a substitute Guaranty or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of the Metropolitan Water District of Southern California and is authorized to execute and deliver this Payment Demand on behalf of Seller.

You are hereby directed to make payment of the requested amount to the Metropolitan Water District of Southern California by wire transfer in immediately available funds to the following account:
[Specify account information]

Metropolitan Water District of Southern California

_____________________________
Name and Title of Authorized Representative

Date ____________