

**DRAFT**

**POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

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

**Buyer:** To be determined

**Description of Facilities:** Foothill Feeder, San Dimas, Lake Mathews and Yorba Linda Hydroelectric Plants (HEP)

**Commercial Operation Date:** 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

Delivery Term 3 Years	Delivery Term 5 Years	Delivery Term 10 Years
Option 1: Term 10/01/2019 - 09/30/2022	Option 2: Term 10/01/2019 - 09/30/2024	Option 3: Term 10/01/2019 - 09/30/2029
Fixed Price in \$/MWh:	Fixed Price in \$/MWh:	Fixed Price in \$/MWh:
2019	2019	2019
2020	2020	2020
2021	2021	2021
	2022	2022
	2023	2023
		2024
		2025
		2026
		2027
		2028

<sup>1</sup> The contract year shall begin October 1 and end September 30.

**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](mailto: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](mailto: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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Exhibit D	Notices, Authorized Representatives and Address

## 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 four (4) hydroelectric power plants commonly known as the Foothill Feeder, San Dimas, Lake Mathews, and Yorba Linda, located in the Counties of Los Angeles, Riverside and Orange, State of California as identified in Exhibit A (the “**Facilities**”); and

WHEREAS, on March 27, 2019, 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 29 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 “CAISO 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-1 2 (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 October 1, 2019 and ending on September 30, 2020, and (ii) each succeeding period of twelve consecutive months following the period described in the preceding clause.

**“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 3, 5, or 10 Contract Years beginning on the October 1, 2019 and ending on September 30, 2022, or 2024, or 2029, 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.

“**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.

“**Insurance**” means the policies of insurance as set forth in Exhibit E.

“**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.

“**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.

“**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 5.8(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 5.8(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 taxatio 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 October 1, 2019 and ending on September 30, \_\_\_\_, 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 terminated by mutual written agreement of the Parties, or under the following conditions:

(a) **Buyer Termination for Change in RPS Law.** In the event that the Facility Energy is not RPS Complaint at a future date during the Delivery Term due to a change in RPS Law, then Buyer may terminate this Agreement upon 180 days advance written notice to Seller, unless compliance is restored and Buyer is given written notice of such restoration before the expiration of the 180 day notice to terminate.

(b) **Interconnection or WDAT Agreement Termination.** This Agreement may be terminated pursuant to Section 5.3.

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

(d) **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.** Seller shall not sell or otherwise transfer any Facilities Products to any Person other than Buyer during the Delivery Term. 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) Seller shall 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 obligations.

## **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 Use-Limited Resource. Seller discloses and Buyer acknowledges that, effective April 1, 2019, the Facilities do not qualify as CAISO Use-Limited Resources.

5.5 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.

5.6 **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**. Seller shall provide a non-binding forecast for the subsequent calendar year by January 31<sup>st</sup> of each year of the subsequent 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**. Seller shall provide to Buyer a non-binding 50-day advance forecast of the Metered Energy for each month due by 10<sup>th</sup> of the following month. The following month's forecast will show the estimated daily schedules at the Point of Delivery, and planned Scheduled Outages.

5.7 **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.

5.8 **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 maximum 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, of which Seller has no jurisdiction or influence over. As of the date of this Agreement, the most recently published Report for Calendar Year 2019 is shown in Exhibit C for reference purposes.

(a) RA Deficiency Determination. Notwithstanding Seller's obligations set forth in Section 5.8 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. 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 **Renewable Attributes.** Seller hereby provides and conveys all Renewable Attributes associated with the Metered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Renewable Attributes from the Facilities, and Seller agrees to convey and hereby conveys all such Renewable Attributes to Buyer as included in the delivery of the Product from the Facilities.

7.4 **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.

7.5 **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.

7.6 **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, but Buyer may exercise its termination right pursuant to Section 2.3(a).

7.7 **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 7.7(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 measures 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 Buyer from the best available data, subject to review and approval by Seller. 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 to 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 and 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; CREDIT**

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 (10<sup>th</sup>) 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 (15<sup>th</sup>) day after receipt by Buyer of Seller's monthly invoice (or the next succeeding Business Day, if such 15<sup>th</sup> 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) Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal non-binding dispute resolution as provided in Section 14.1(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 a credit rating of BBB or higher by Standard and Poor's (S&P), and Baa2 or higher by Moody's Investor Services, Inc., if the Buyer is rated by both agencies. If Buyer is not rated, or Buyer's credit is lower than BBB by S&P or Baa2 by Moody's, then Buyer must provide a guaranty by a guarantor company with a company credit rating of BBB or higher by S&P, or Baa2 or higher by Moody's. If Buyer fails to maintain the minimum credit requirements or provide a guaranty by a guarantor company, then Buyer is deemed in default pursuant to Section 11 of this Agreement.

12.2 **Guaranty.** If Buyer provides a guaranty by a guarantor company, the guaranty amount shall be equal to the Contract Price multiplied by the averaged generation of the three (3) prior years. Buyer shall (i) post cash, or (ii) provide a substitute guaranty from another qualified company with a Credit Rating of at least either BBB by S&P or Baa2 by Moody's, in each case 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 falls below BBB by S&P or Baa2 by Moody's.

(b) The issuer of the guaranty is no longer incorporated or organized in a jurisdiction of the United States and in good standing in such jurisdiction.

(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.

(f) The failure of the guarantor's guaranty 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, then Buyer shall have failed to meet the creditworthiness requirements of Section 12.

## **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 13 (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**

(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 **Insurance.** Seller shall obtain and maintain the Insurance coverage listed in Exhibit E, under the terms set forth in Exhibit E.

19.12 **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.

19.13 **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.

19.14 **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.

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

19.16 **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.

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

19.18 **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      BUYER  
OF SOUTHERN CALIFORNIA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to Form:

General Counsel

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF THE FACILITIES**

<b>Plant</b>	<b>Nameplate Capacity (MW)</b>	<b>Averaged Annual Historical Facility Energy (MWh)*</b>	<b>Location</b>	<b>Energy Available for Buyer</b>	<b>Capacity Available for Buyer</b>	<b>Renewable Attributes Available for Buyer</b>
Foothill Feeder	9.04	415,038	Castaic, CA	100%	100%	100%
San Dimas	9.92	301,299	San Dimas, CA	100%	100%	100%
Lake Mathews	4.9	240,942	Riverside, CA	100%	100%	100%
Yorba Linda	5.1	88,814	Yorba Linda, CA	Buyer to receive any energy leftover after Seller serves its retail load at the Diemer Treatment Plant.	Buyer to receive any available capacity	Buyer to receive any available renewable attributes
	<b>29.0</b>					

\*Averaged Historical Facility Energy is an average of Years 2009-2018 Energy, for reference only. Future Energy will depend on water operations conditions.

**EXHIBIT B**  
**CONTRACT PRICE**

The Contract Price of the Product shall be:

Delivery Term 3 Years		Delivery Term 5 Years		Delivery Term 10 Years	
Option 1: Term 10/01/2019 - 09/30/2022		Option 2: Term 10/01/2019 - 09/30/2024		Option 3: Term 10/01/2019 - 09/30/2029	
Fixed Price in \$/MWh:		Fixed Price in \$/MWh:		Fixed Price in \$/MWh:	
2019		2019		2019	
2020		2020		2020	
2021		2021		2021	
		2022		2022	
		2023		2023	
				2024	
				2025	
				2026	
				2027	
				2028	

<sup>1</sup> The contract year shall begin October 1 and end September 30.

**CAISO DELIVERY POINTS AND PRICING NODES WITH CAISO**

Conduit Hydros	SCE WDAT ID	Pt of Delivery with CAISO (POD)	Pricing Node with CAISO (Pnode)	Local Area
Foothill Feeder	WDT133	Pardee 230kV	SAUGUS_6_N009	Big Creek - Ventura
San Dimas	WDT133	Padua 230kV	PADUA_6_N006	LA Basin
Lake Mathews	WDT133	Chino 230kV	MIRALOMA_6_N007	LA Basin
Yorba Linda	WDT133	Villa Park 230kV	VILLPK_6_MWDYOR	LA Basin

## EXHIBIT C

### CAISO NET QUALIFYING CAPACITY REPORT (2019)\*

Effective Date (MM/DD/YYYY)	RESOURCE_ID	Queue#/ WDAT#	Local Regulatory Authority	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Local Area
1/1/2019	MIRLOM_7_MWDLKM (Lake Mathews)	caiso	CPUC	3.45	2.73	2.78	5.00	5.00	5.00	5.00	5.00	3.75	0.00	0.00	0.00	LA Basin
1/1/2019	PADUA_6_MWDSDM (San Dimas)	caiso	CPUC	2.87	3.65	3.92	4.98	4.58	4.98	4.29	2.74	3.97	0.00	0.00	0.00	LA Basin
1/1/2019	SAUGUS_6_MWDFTH (Foothill Feeder)	caiso	CPUC	8.76	6.92	2.09	6.91	8.82	7.85	6.71	8.76	8.68	0.00	0.00	0.00	Big Creek- Ventura
1/1/2019	VILLPK_6_MWDYOR (Yorba Linda)**	caiso	OTHER	3.77	4.15	5.10	5.10	5.10	5.10	3.91	3.99	3.84	0.00	0.00	0.00	LA Basin

\*For Reference Only

\*\* The NQC Table may be revised by CAISO from time to time and does not reflect the Yorba Linda HEP load used to serve the Diemer Treatment Plant. It is anticipated that the service load to the Diemer Treatment Plant will reduce the capacity of the Yorba Linda HEP.

**EXHIBIT D**

**BUYER AND SELLER BILLING, NOTIFICATION AND SCHEDULING 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](mailto: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](mailto:sbailey@mwdh2o.com)

Financial:

Submit invoices to MWD's Accounts Payable at:

Email: [AccountsPayableBusiness@mwdh2o.com](mailto:AccountsPayableBusiness@mwdh2o.com)

Send copy of invoices to:

Email: [PResources@mwdh2o.com](mailto: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](mailto: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](mailto:mparsons@mwdh2o.com)

**EXHIBIT E**  
**INSURANCE**

**(Insurance Requirement to be provided by Buyer)**