

**AMENDMENT  
POWER PURCHASE AGREEMENT AND OPTION AGREEMENT**

This POWER PURCHASE AGREEMENT and OPTION AGREEMENT AMENDMENT (“Amendment”) is made as of [\_\_\_\_\_] by and between the City of Los Angeles acting by and through the Department of Water and Power (“LADWP” or “Buyer”), and Moapa Southern Paiute Solar, LLC (f/k/a K Road Moapa Solar LLC) (“Seller”). Buyer and Seller are sometimes referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS**

WHEREAS, the Parties have heretofore entered into that certain Power Purchase Agreement dated as of October 1, 2012 (as amended, supplemented or otherwise modified from time to time, the “PPA”) and that certain Option Agreement dated as of October 1, 2012 (as amended, supplemented or otherwise modified from time to time, the “Option Agreement”);

WHEREAS, market conditions have changed significantly since the signing of the PPA and Option Agreement that require certain changes to the PPA and Option Agreement, and Buyer has asked for significant value for the City of Los Angeles ratepayers in exchange for making those changes and entering into this Amendment;

WHEREAS, the Parties recognize that a critical aspect of the PPA and Option Agreement as approved by the LADWP is that the Moapa solar electric generating facility be treated as a service contract under the Internal Revenue Code Section 7701(e) in order to ensure that the Facility qualifies for certain investment tax credits;

WHEREAS, during exploration of various financing options for the Facility, tax advisors for the Seller and certain prospective purchasers of the Facility have determined that the Purchase Option, as currently structured, is unfinanceable in the tax equity market;

WHEREAS, tax advisors determined that a modification to the Option Agreement would render the Facility financeable as contemplated in the PPA and Option Agreement previously approved by LADWP;

WHEREAS, certain of Seller’s financing options may result in a Change in Control of Seller (as defined below) upon consummation of the contemplated transactions;

WHEREAS, Buyer has requested approval rights over Purchasers of the Facility in the event of such a Change of Control of Seller;

WHEREAS, Seller has requested that Buyer provide its advance consent to the Pre-Approved Purchasers (as defined below);

WHEREAS, to clarify the circumstances in which Buyer’s consent will be required for future transactions and certain other rights and obligations of the Parties under the PPA and Option Agreement, the Parties wish to address certain provisions of the PPA and Option Agreement as set forth below; and

WHEREAS, capitalized terms defined in the PPA or Option Agreement, as applicable, are used in this Amendment as defined in the PPA or Option Agreement, as applicable.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

## AMENDMENTS

### **I. Amendments to the PPA**

The PPA is hereby amended, effective as of the date of this Amendment, as follows:

#### **A. Section 3.7**

Seller hereby agrees to waive its right to be reimbursed for project management and administrative costs pursuant to Section 3.7.

#### **B. Section 4.6**

Seller agrees to provide Buyer 25,000 MWh of curtailment per year at a reduced level of compensation to Seller as follows:

- (i) The first 12,500 MWh of curtailment shall be uncompensated; and
- (ii) The remaining 12,500 MWh of curtailment shall be compensated at 50% of the then applicable purchase price for Delivered Energy.

#### **C. Appendix A**

Seller agrees to reduce the purchase price for Delivered Energy, that is not Test Energy, by \$4.00/MWh throughout the Term of the PPA. For the avoidance of doubt:

- (i) The purchase price for Delivered Energy in Appendix A, Section 2 will be Eighty-Nine Dollars and Nineteen Cents (\$89.19) per MWh without escalation instead of Ninety-Three Dollars and Nineteen Cents (\$93.19) per MWh, without escalation; and
- (ii) The purchase price for Delivered Energy in Appendix A, Section 2 (a) will be Eighty-Seven Dollars and Sixty Nine Cents (\$87.69) per MWh without escalation instead of Ninety-One Dollars and Sixty Nine Cents (\$91.69) per MWh, without escalation.

## II. Amendments to the Option Agreement

The Option Agreement is hereby amended, effective as of the date of this Amendment, as follows:

### A. Amendment to Exhibit 2.10:

Exhibit 2.10 of the Option Agreement is amended by deleting the first sentence thereof “The Purchase Price for the Facility Assets shall be an amount equal to the Fair Market Value; *provided* that the Purchase Price shall not be less than the “*Minimum Purchase Price*” or greater than the “*Maximum Purchase Price*” corresponding to the applicable Purchase Option opportunity for which Buyer has exercised its Purchase Option” and replacing it with the following:

“The Purchase Price for the Facility Assets shall be an amount equal to the Fair Market Value, subject to the additional provisions of this paragraph. The Fair Market Value shall be determined in accordance with Section 2.10 and Exhibit 2.10 of the Option Agreement and shall constitute the Purchase Price without regard to the Minimum Purchase Price or Maximum Purchase Price set forth in Exhibit 2.10.”

The Parties further agree that (1) the provisions and values associated with the Minimum Purchase Price and Maximum Purchase Price in Exhibit 2.10 shall not be determinative of the Fair Market Value, and (2) if the Fair Market Value associated with a Purchase Option Opportunity is less than the Minimum Purchase Price Buyer may still proceed with the purchase of the Facility Assets for the Fair Market Value, and (3) if the Buyer does not wish to pay the Fair Market Value associated with a Purchase Option Opportunity because it exceeds the Maximum Purchase Price, as set forth in Exhibit 2.10, and as a consequence Buyer does not wish to proceed with the purchase of the Facility Assets, the Buyer may, upon written notice to Seller and without liability, revoke its decision to exercise the Purchase Option with respect to the applicable Purchase Option Opportunity, and such Purchase Option Opportunity shall expire and shall no longer be effective; provided, further, such expiration shall not affect Buyer's right to exercise any Purchase Option with respect to any future Purchase Option Opportunity.

## III. CONSENT

### A. Grant of Consent Rights in the Event of Change of Control

Seller hereby agrees that:

- (i) Any Change in Control (whether voluntary or by operation of law) shall require the prior written consent of Buyer's Authorized Representative, which consent shall not be unreasonably withheld.

- (ii) “Change of Control” means the sale of all or substantially all of the assets of Seller; any consolidation of Seller with, by or into another entity; or any change in the ownership of more than fifty percent (50%) of Seller.

**B. Consent**

Buyer hereby consents to any Change in Control of Seller resulting from the sale or transfer of equity interests in Seller to any of the following entities or any Affiliate of the following entities (collectively, the “Pre-Approved Purchasers”):

- Southern Power Company
- Berkshire Hathaway Energy
- Exelon
- Consolidated Edison
- NextEra Energy Resources
- Dominion Resources
- Duke Energy
- GE Financial Services
- Enbridge
- Google
- 8point3 Energy Partners

For the avoidance of doubt, Seller agrees to provide Buyer with written notice of a Change of Control with the Pre-Approved Purchasers upon the sale.

**IV. Miscellaneous**

1. Effect of Amendment. The PPA and Option Agreement, as modified by this Amendment, remain in effect in accordance with their terms. If there is any conflict between the PPA or Option Agreement and this Amendment, this Amendment shall control. The Parties each agree that (1) this Amendment satisfies the requirements of Section 14.11 of the PPA and Section 12.5 of the Option Agreement, and (2) its entrance into this Amendment confirms its willingness to proceed under the operative agreements without regard to, or future action based upon, defaults or breaches of the PPA or the Option Agreement to the extent arising prior to the date of this Amendment.

2. Entire Agreement. This Amendment along with the PPA and Option Agreement constitutes the entire agreement between the Parties relating to the subject matter thereof and shall supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter thereof.

3. Captions; Construction. The headings used for the sections and articles herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Amendment. Any term and provision of this Amendment shall be construed simply according to its fair meaning and not strictly for or against any Party. The Parties collectively have prepared this Amendment, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

4. Counterparts. This Amendment may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Amendment. Delivery of an executed counterpart of this Amendment by fax or PDF will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile or PDF will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.


5. Any Amendments or Modifications. This Amendment may only be amended or modified in writing signed by each of the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by its authorized representatives, as of the day and year written below. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

MOAPA SOUTHERN PAIUTE  
SOLAR, LLC, a Delaware limited  
liability company

CITY OF LOS ANGELES, acting by and  
through the DEPARTMENT OF WATER  
AND POWER

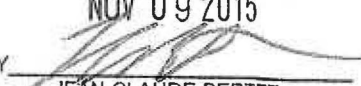
By: BOARD OF WATER AND POWER  
COMMISSIONERS

  
Name: Richard A. Lemmers  
Title: VP - Asset Management  
Date: Nov 9, 2015

Name: Marcie L. Edwards  
Title: General Manager  
Date: \_\_\_\_\_

And: \_\_\_\_\_  
Barbara E. Moschos  
Board Secretary

APPROVED AS TO FORM AND LEGALITY  
MICHAEL N. FEUER, CITY ATTORNEY

NOV 09 2015  
BY   
JEAN-CLAUDE BERTET  
DEPUTY CITY ATTORNEY

