

POWER PURCHASE AGREEMENT

BETWEEN

RE BARREN RIDGE 1 LLC

AND

**THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER**

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SCHEDULE 12.2(h) CORPORATE STRUCTURE OF SELLER AND RE HOLDINGS

POWER PURCHASE AGREEMENT

PARTIES

THIS POWER PURCHASE AGREEMENT (this "*Agreement*"), dated as of this ____ day of _____, 2014, is being entered into by and between THE CITY OF LOS ANGELES, ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER, a municipal corporation of the State of California ("*Buyer*"), and RE BARREN RIDGE 1 LLC, a limited liability company organized and existing under the laws of the State of Delaware ("*Seller*"). Each of Buyer and Seller is referred to individually in this Agreement as a "*Party*" and together as the "*Parties*."

RECITALS

WHEREAS, Buyer has adopted a Renewables Portfolio Standard Policy and Enforcement Program to comply with the California Renewable Energy Resources Act enacted for the purpose of increasing the amount of energy provided to retail customers from eligible renewable energy resources; and

WHEREAS, in September 2010, the Southern California Public Power Authority ("*SCPPA*") issued a request for proposals to acquire renewable energy resources and Buyer, a member of SCPPA, desires to avail itself of the benefits of this competitive process and responses to the request for proposals; and

WHEREAS, Recurrent Energy, LLC, an Affiliate of Seller ("*Recurrent Energy*"), responded to SCPPA's request for proposals on behalf of Seller and, following negotiation, has agreed to permit Seller to sell to Buyer, and Buyer has agreed to purchase from Seller, certain renewable energy and associated environmental attributes; and

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

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, the mutual covenants and agreements herein set forth, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

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

"*Affiliate*" means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person. As used in this Agreement, "*control*" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of

management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble of this Agreement, and includes Appendices A through R, and Schedule 12.2(h) attached hereto.

“**Agreement Term**” has the meaning set forth in Section 2.2(a).

“**Ancillary Documents**” means the Land Option Agreement, the Option Agreement, the Security Documents, all agreements and other documents included in the Performance Security, the Site Control Documents, and all other instruments, agreements, certificates, and documents required to be executed and delivered by and between Buyer and any Affiliate of Seller pursuant to or in connection with any of the foregoing or this Agreement.

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

“**ASME**” means American Society of Mechanical Engineers.

“**Assumed Daily Deliveries**” has the meaning set forth in Section 13.4(c).

“**ASTM**” means American Society for Testing and Materials.

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

“**Authorized Representative**” has the meaning set forth in Section 14.1.

“**AWS**” means American Welding Society.

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

“**BLM**” means the United States Bureau of Land Management.

“**Board of Commissioners**” means the Board of Water and Power Commissioners of the City of Los Angeles created pursuant to Section 600 and 670 of the Charter of the City of Los Angeles.

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

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

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

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

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

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

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

“CEC Certified” means that the CEC has certified that the Facility is an eligible renewable Energy resource in accordance with Public Utilities Code Section 399.12(e) and the guidelines adopted by the CEC.

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

“CEQA” means the California Environmental Quality Act, California Public Resources Code §§ 21000, et seq.

“CEQA Determinations” means that:

(a) The lead agency conducting the review of the Facility as required under CEQA shall have (i) considered and certified the CEQA Documents, (ii) issued a final approval for the Facility, and (iii) filed a Notice of Determination in compliance with CEQA; and

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

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

“Change in Control” means the occurrence, whether in a single transaction or in a series of related transactions, of any one or more of the following: (i) a merger or consolidation of Seller or RE Holdings with or into any other Person or any other reorganization in which the members of Seller or RE Holdings immediately prior to such consolidation, merger, or reorganization, own less than fifty percent (50%) of the equity ownership of the surviving entity

or cease to have the power to control the management and policies of the surviving entity immediately after such consolidation, merger, or reorganization, (ii) any transaction or series of related transactions in which in excess of fifty percent (50%) of the equity ownership of Seller or RE Holdings, or the power to control the management and policies of Seller or RE Holdings is transferred to another Person, (iii) a sale, lease, or other disposition of all or substantially all of the assets of Seller or RE Holdings, (iv) the dissolution or liquidation of Seller or RE Holdings, or (v) any transaction or series of related transactions that has the substantial effect of any one or more of the foregoing; *provided, however*, that a Change in Control shall not include any transaction or series of transactions in which an equity interest in Seller or RE Holdings is issued or transferred to another Person solely for the purpose of a Tax Equity Transaction.

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

“Closing” means the consummation of the transactions (a) under the Option Agreement or (b) with respect to a sale pursuant to Buyer’s exercise of the Right of First Offer or Right of First Refusal.

“COD Notice” has the meaning set forth in Section 3.5(b).

“Commercial Operation” means all of the following have occurred:

(a) Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement, “substantial completion” under the relevant construction contracts has been achieved, and the Facility possesses all of the characteristics and satisfies all of the requirements set forth for the Facility in this Agreement;

(b) The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to operate the Facility;

(c) Seller has delivered to Buyer a certificate of an independent engineer in the form attached hereto as Appendix P.

(d) Seller has obtained all Permits (including the CEQA Determinations and the National Environmental Policy Act record of decision) required for the operation and maintenance of the Facility in accordance with this Agreement, including the Permits identified on Appendix B-1, and all such Permits (other than with respect to those that are subject to the National Environmental Policy Act) are final and non-appealable;

(e) Seller has entered into an agreement providing for the operation and maintenance of the Facility with a Qualified Operator;

(f) Buyer has received the Delivery Term Security in a form reasonably acceptable to Buyer; and

(g) The Facility is both authorized and able to operate and deliver Energy at the Contract Capacity in accordance with the Generator Interconnection Agreement, Prudent Utility Practices, the Requirements, and all Requirements of Law; *provided* that the Facility need not be CEC Certified as a condition to achieving Commercial Operation.

“Commercial Operation Date” means the date on which Commercial Operation occurs, as determined pursuant to Section 3.5.

“Compliance Costs” has the meaning set forth in Section 7.6(b).

“Condition Satisfaction Notice” has the meaning set forth in Section 3.5(a).

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

“Contract Capacity” means at least 60 MW, as measured by the sum of inverter nameplate capacity.

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

“Contract Year” means (a) with respect to the first (1st) Contract Year, the period beginning on the Commercial Operation Date and extending through December 31 of the calendar year in which the Commercial Operation Date occurs, (b) with respect to the second (2nd) through the twentieth (20th) Contract Years, the applicable calendar year, and (c) with respect to the twenty-first (21st) Contract Year, the period beginning on January 1 of the applicable calendar year and extending through the day before the anniversary of the Commercial Operation Date.

“Costs” has the meaning set forth in Section 13.4(f)(iii).

“Cover Damages” has the meaning set forth in Section 6.3.

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

“CRO” has the meaning set forth in Section 14.26(h).

“Curtailment Period” means an Emergency Curtailment Period or an Optional Curtailment Period.

“Daily Delay Damages” has the meaning set forth in Section 3.6(c).

“Day-Ahead Schedule” has the meaning set forth in Section 7.3(d).

“DBEs” has the meaning set forth in Section 14.26(c)(i).

“Deemed Generated Energy” means the quantity of Energy, expressed in MWh, that would have been produced by the Facility and delivered to the Point of Delivery during a Seller Excused Hour.

"Default" has the meaning set forth in Section 13.1.

"Defaulting Party" has the meaning set forth in Section 13.1.

"Delivery Term" has the meaning set forth in Section 2.2(b).

"Delivery Term Security" has the meaning set forth in Section 5.7(b).

"Dispute" has the meaning set forth in Section 14.3(a).

"Dispute Notice" has the meaning set forth in Section 14.3(a).

"DNP" has the meaning set forth in Section 7.3(g).

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

"DVBE" has the meaning set forth in Section 14.26(c).

"Early Termination Date" has the meaning set forth in Section 13.4(a).

"EBO" has the meaning set forth in Section 14.26(g).

"EEI" means Edison Electric Institute.

"Effective Date" means the date Buyer executes this Agreement, so long as the conditions precedent set forth in Section 2.1 have been met by such date.

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

"Emergency Curtailment Period" means a period of time during which the generation of Facility Energy is curtailed as a result of an order, direction, alert, request, or notice by the Transmission Provider due to (a) a System Emergency or any other similar situation that affects the normal functioning of the Transmission System, (b) improvements or scheduled or unscheduled repairs or maintenance on the Transmission System or at the Point of Delivery that prevents (i) Buyer from receiving or (ii) Seller from delivering Facility Energy at the Point of Delivery, or (c) an event of Force Majeure at or beyond the Point of Delivery.

"Energy" means electrical energy.

"Environmental Attributes" means RECs, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated that are (a) at any time recognized or

deemed of value (or both) by Buyer, applicable law, or any voluntary or mandatory program of any Governmental Authority or other Person, and (b) attributable to (i) generation by the Facility of Energy during the Delivery Term or any Replacement Energy required to be delivered by Seller to Buyer during the Delivery Term, and (ii) the emissions or other environmental characteristics of such generation or such Replacement Energy or its displacement of conventional or other types of Energy generation. Environmental Attributes include any of the aforementioned arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the "UNFCCC"), the Kyoto Protocol to the UNFCCC, California's greenhouse gas legislation (including California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to that act, including any compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations of the California Air Resources Board), or any similar international, federal, state or local program or crediting "early action" with a view thereto, or laws or regulations involving or administered by the CAMD, and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as renewable Energy certificates of any kind. Environmental Attributes for purposes of this definition are separate from the Facility Energy. Environmental Attributes exclude (i) investment tax credits, any local, state or federal production tax credits, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on ownership or a security interest in the Facility or Energy production from any portion of the Facility, including any investment or production tax credit expected to be available to Seller with respect to the Facility, (ii) depreciation deductions and benefits, and other tax benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean Energy, and (iii) cash grants or other financial incentives from any local, state or federal government available to Seller with respect to the Facility.

"Environmental Attribute Reporting Rights" means all rights to report ownership of the Environmental Attributes to any Person, including under Section 1605(b) of the Energy Policy Act of 1992 or any other current or future international, federal, state or local law, regulation or bill, or otherwise.

"Environmental Attributes Value" means the value of Environmental Attributes purchased by Buyer under this Agreement, stated in \$/MWh, determined based on a Renewable Energy Credit pricing index that has been mutually agreed upon by Seller and Buyer or, if such index is not available, the value of the Environmental Attributes as determined by the average of three (3) nationally-recognized broker quotes for Environmental Attributes that meet the definition of Environmental Attributes set forth in this Agreement; *provided* that such index pricing or broker quotes shall relate to Environmental Attributes that are derived from comparable vintage and generation technology as the Environmental Attributes that are being replaced, and are from a generator that qualifies as an "eligible renewable energy resource" within the meaning of Section 399.16(b)(1)(A) of the California Public Utilities Code at the time of such pricing or broker quotes, as applicable.

"EPA" means the Environmental Protection Agency.

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

“EPS Law” means Sections 8340 and 8341 of the California Public Utilities Code.

“Excess Energy” means, in any Contract Year, any Facility Energy delivered in excess of one hundred twenty percent (120%) of the Annual Contract Quantity for such Contract Year.

“Expected Initial Delivery Date” means the Milestone Date for the Initial Delivery Date set forth in Appendix I.

“Facility” means the 60 MW (ac) solar photovoltaic power generating facility in Appendix B-1 and depicted on Appendix B-2, including all property interests and related transmission and other facilities.

“Facility Assets” has the meaning set forth in Section 14.25(a).

“Facility Cost” means, measured as of the applicable measurement date, the aggregate amount of all costs and expenses incurred by Seller for the development, design, engineering, equipping, procuring, constructing, installing, starting up, and testing of the Facility, including (a) the cost of all labor, services, materials, suppliers, equipment, tools, transportation, supervision, storage, training, demolition, site preparation, civil works, and remediation in connection therewith, (b) the cost of acquiring the Site Control Documents, (c) real and personal property taxes, ad valorem taxes, sale, use, and excise taxes, and insurance (including title insurance) premiums payable with respect to the Facility, (d) initial working capital requirements of the Facility, (e) the cost of acquiring the Permits for the Facility, (f) the cost of establishing a spare parts inventory for the Facility, and (g) financial, legal, and consulting fees, costs, and expenses, each to the extent such item is treated as a capitalized cost of the Facility in accordance with GAAP (including costs of Affiliates of Seller that are capitalized costs of the Facility).

“Facility Debt” means, measured as of the applicable measurement date, any payment obligations of Seller in connection with borrowed money, including (a) principal of and premium and interest on indebtedness, (b) fees, charges, penalties, and expenses related to indebtedness, (c) amounts due upon acceleration or in connection with prepayment or restructuring of indebtedness, and (d) swap or interest rate hedging breakage costs.

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

“Facility Lender” means any financing party providing senior or subordinated construction, interim or long-term debt or Tax Equity Transaction or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility,

including any Tax Equity Investor, any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

“**Facility Lender Consent**” has the meaning set forth in Section 13.3.

“**Facility Site**” means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B-1 and Appendix B-2 where the Facility is or will be located

“**Facility Site Option**” has the meaning set forth in the definition of Site Control, a redacted copy of which is attached hereto as Appendix R.

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

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

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

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

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

“**Gains**” has the meaning set forth in Section 13.4(f)(i).

“**Generator Interconnection Agreement**” means the generator interconnection agreement to be entered into by Seller and the Transmission Provider for the interconnection of the Facility into the Transmission System.

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

“**Guaranteed Commercial Operation Date**” means December 31, 2015.

“**Guaranteed Generation**” means, for each Contract Year, 80% of the Annual Contract Quantity for such Contract Year, which amount shall be reduced by the aggregate amount of Deemed Generated Energy during all Seller Excused Hours during such Contract Year.

"IEEE" means the Institute of Electrical and Electronics Engineers.

"In-Service Interconnection Date" has the meaning set forth in Section 3.6(b).

"Indemnitees" has the meaning set forth in Section 14.19(a).

"Independent Manager" means a manager who is not at the time of initial appointment, or at any time while serving as Independent Manager, and has not been at any time during the preceding five (5) years: (i) a member, stockholder, equityholder, director, manager (except as the Independent Manager of Seller), officer, employee, partner, attorney or counsel of Seller, any member of Seller, or any Affiliate of Seller; (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with Seller, any member of Seller, or any Affiliate of Seller (other than for serving as Independent Manager of Seller), (iii) a Person controlling or under common control with any such stockholder, equityholder, partner, manager, customer, supplier or other like Person, or (iv) a member of the immediate family of any such member, stockholder, equityholder, director, officer, employee, manager, partner, customer, supplier or other like Person.

"Initial Delivery Date" means the date that Seller first delivers Facility Energy to the Point of Delivery.

"Insurance" means the policies of insurance as set forth in Appendix F.

"Interest Rate" has the meaning set forth in Section 11.3.

"ISA" means the Instrument Society of America.

"Key Milestone" means a Milestone for which liquidated damages are provided in Appendix I.

"LAAC" has the meaning set forth in Section 14.26(g).

"Land Lease" means that certain Land Lease between Seller and LandCo LLC in the form set forth in Appendix N.

"Land Option Agreement" means that certain Land Option Agreement of even date herewith in the form set forth in Appendix O.

"LandCo LLC" means RE Barren Ridge LandCo LLC, a Delaware limited liability company.

"Legal Opinion" means a customary legal opinion of Milbank, Tweed, Hadley & McCloy LLP, counsel for Seller, dated as of the Effective Date and addressed to Buyer, concerning this Agreement, the Ancillary Documents (other than the Site Control Documents) then in effect, and the validity and perfection of Buyer's security interest in the Facility Site Option, which (a) assumes that the Facility Site Option is a general intangible and (b) excludes any opinion on the ability of Buyer to exercise the collateral, in form and substance satisfactory to Buyer and its counsel.

“Lessor” means any lessor of real property or grantor of an interest in real property for the Facility pursuant to a Site Control Document, including LandCo LLC and the BLM.

“Licensed Professional Engineer” means an independent, professional engineer reasonably acceptable to Buyer, licensed in the State of California and otherwise qualified to perform the work required hereunder.

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

“Los Angeles City Attorney” means Buyer’s “Counsel” as provided under Section 270 of the Charter of the City of Los Angeles.

“Losses” has the meaning set forth in Section 13.4(f)(ii).

“Major Maintenance Blockout” has the meaning set forth in Section 4.4(a).

“MBEs” has the meaning set forth in Section 14.26(c)(i).

“Measure H” has the meaning set forth in Section 14.26(j).

“Milestone” has the meaning set forth in Section 3.6(a).

“Milestone Date” has the meaning set forth in Section 3.6(a).

“Moody’s” means Moody’s Investor Services, Inc.

“Month” means a calendar month commencing at 00:00 Pacific Prevailing Time on the first day of such month and ending at 24:00 Pacific Prevailing Time on the last day of such month.

“MW” means megawatt in alternating current, or AC.

“MWh” means megawatt-hours.

“NERC” means the North American Electric Reliability Corporation.

“Non-Defaulting Party” has the meaning set forth in Section 13.4(a).

“Notice of Proposed Thirty Party Sale” has the meaning set forth in Section 14.25(c).

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

“O&M Agreement” means that certain agreement for the provision of operation and maintenance services for the Facility entered into or to be entered into by and between Seller and a Qualified Operator.

"OBEs" has the meaning set forth in Section 14.26(c)(i).

"Option Agreement" means that certain Option Agreement of even date herewith in the form set forth in Appendix K.

"Optional Curtailment Period" means a period of time during which the generation of Facility Energy is curtailed by Buyer, excluding any Emergency Curtailment Period.

"OSHA" means the Occupational Safety and Health Administration of the United States Department of Labor.

"Outside Commercial Operation Date" means December 31, 2016, which date shall not be subject to extension of any kind (except as provided in Section 3.5(b) and Section 3.6(b)).

"Pacific Prevailing Time" means the local time in Los Angeles, California.

"Party" or "Parties" has the meaning set forth in the preamble of this Agreement.

"Performance Security" means the Project Development Security or Delivery Term Security, together or individually, as applicable.

"Permits" means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described that are required to be obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Facility, the production and delivery of Products, including Facility Energy, Capacity Rights and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements), including the CEQA Determinations and the Permits described in Appendix B-1.

"Permitted Encumbrances" means (a) the Lien of any Facility Lender on the Facility and (b) other Liens secured by, or encumbrances on, the Facility that at any time do not exceed Ten Million Dollars (\$10,000,000) in the aggregate, and that also satisfy one or more of the following criteria: (i) any Lien approved by Buyer's Authorized Representative in a writing separate from this Agreement that expressly identifies the Lien as a Permitted Encumbrance, (ii) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, (iii) suppliers', vendors', mechanics', workman's, repairman's, employees' or other like Liens arising in the ordinary course of business for work or service performed or materials furnished in connection with the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings, (iv) Liens of any judgment, if such judgment shall not have remained undischarged or unstayed on appeal for more than three (3) Months, (v) encumbrances consisting of zoning restrictions, licenses, easements, restrictions on the use of the Site and minor defects and irregularities in title which do not materially impair the use of the Site, the Facility or any portion thereof by Seller or materially impact the value of the Site, the Facility or any portion thereof, (vi) rights arising under the Site Control Documents, or (vii) other Liens incidental to the conduct of Seller's

business or the ownership of its property that were not incurred in connection with the borrowing of money or obtaining advances of credit and do not materially detract from the value of the Facility, or any portion thereof, or its use.

“Permitting Delay” means delays in obtaining Permits necessary for the construction and operation of the Facility if Seller has used commercially reasonable efforts (including Seller’s timely filing of required documents and payment of all applicable fees) to obtain such Permits but is unable to obtain such permits by the permitting Milestone Date.

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

“Point of Delivery” means the 230 kV bus bar of the Barren Ridge Switching Station.

“Power Revenue Fund” means the fund in the City of Los Angeles’ treasury known as the “Power Revenue Fund” to which all revenue from every source collected by Buyer in connection with its possession, management and control of the power assets is required to be deposited and credited.

“PPT” has the meaning set forth in Section 7.3(d).

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

“Present Value Rate” means, at any date, the sum of 0.50% plus the yield reported on page “USD” of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally-recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that most nearly matches the Remaining Term at that date.

“Products” means any and all Energy, Capacity Rights, Environmental Attributes, and ancillary products, services or attributes similar to the foregoing that are or can be produced by or are associated with the Facility, whether now attainable or established in the future, including delivered energy, renewable attributes, and renewable energy credits.

“Project Development Security” has the meaning set forth in Section 5.7(a).

“Project Purchase Option” means the right of Buyer to purchase the Facility and certain related assets from Seller in accordance with the provisions of the Option Agreement.

“Proposed Purchase Notice” has the meaning set forth in Section 14.25(b).

“Proposed Sale Notice” has the meaning set forth in Section 14.25(b).

“Prudent Utility Practices” means those practices, methods, and acts, that are commonly used by a significant portion of the solar-powered electric generation industry in prudent engineering and operations to design and operate electric equipment (including solar-

powered facilities) lawfully and with safety, dependability, reliability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of FERC, NERC, WECC, and all applicable Requirements of Law. Prudent Utility Practices are not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the industry.

“Public Utilities Code” means the Public Utilities Code of the State of California.

“PUC” means the California Public Utilities Commission.

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

“QRE” has the meaning set forth in Section 8.4.

“Qualified Issuer” means a Person that (a) maintains a current long-term credit rating (corporate or long-term senior unsecured debt) of (i) “A3” or higher by Moody’s and “A-” or higher by S&P, if such Person is rated by both Moody’s and S&P or equivalent ratings by any other credit rating agency of recognized national standing; or (ii) “A3” or higher by Moody’s or “A-” or higher by S&P if such Person is rated by only one of S&P or Moody’s or equivalent ratings by any other credit rating agency of recognized national standing, and (b) is listed on Appendix E-2, as such list may be modified by the Authorized Representatives of the Parties in accordance with Section 5.7(h).

“Qualified Operator” means (a) a Person reasonably acceptable to Buyer that has at least five (5) years of operating experience with a utility-scale solar project of 20 MW ac or larger, (b) any Person identified on Appendix O or any such Person’s Affiliates, or (c) any other Person reasonably acceptable to Buyer.

“Qualified Transferee” means a Person that (a) has financial qualifications equivalent to the financial qualifications of Recurrent Energy as of the Effective Date and agrees to operate the Facility by a Qualified Operator or (b) is reasonably acceptable to Buyer.

“Quality Assurance Program” has the meaning set forth in Section 5.4.

“Quarterly Certificate” has the meaning set forth in Section 12.5.

“RE Holdings” means Recurrent Energy Development Holdings, LLC, a Delaware limited liability company.

“REC” or “Renewable Energy Credit” means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, which certificate is issued through the accounting system established by the CEC pursuant to the RPS Law, evidencing that one (1) MWh of Energy was generated and delivered from such eligible renewable energy

resource. Such certificate is a tradable environmental commodity (also known as a "green tag") for which the owner of the REC can prove that it has purchased renewable Energy.

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

"Recurrent Energy" has the meaning set forth in the Recitals.

"Remedial Action Plan" has the meaning set forth in Section 3.6(a).

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

"Replacement Energy" means Energy produced by a facility other than the Facility that, at the time delivered to Buyer, (a) other than during any period Seller is receiving the SP-15 Price, (i) is both RPS Compliant and EPS Compliant, (ii) qualifies under Public Utilities Code 399.16(b)(1), and (iii) includes Environmental Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Environmental Attributes, if any, as the Environmental Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided, and (b) includes Capacity Rights, if any, equivalent to those that would have been provided by the Facility during the Contract Year for which the Replacement Energy is being provided.

"Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases Replacement Energy, or, absent such a purchase, (a) the SP-15 Price, plus (b) the price of the Environmental Attributes that would have been generated by the Facility valued at the Environmental Attributes Value, plus (c) the value of Capacity Rights, if any, equivalent to those that would have been provided by the Facility, whether sold separately or bundled as a package, in each case, for the calculation period, all as reasonably calculated by Buyer.

"Requirements" means, collectively, (a) any standards or requirements of ASTM, ASME, AWS, EPA, EEL, IEEE, ISA, National Electrical Code, National Electric Safety Code, OSHA, Cal-OSHA, Uniform Building Code, Uniform Plumbing Code applicable to the design or construction of the Facility, (b) any applicable local county fire department standards or codes, (c) Prudent Utility Practices, (d) all applicable Requirements of Law, (e) Seller's Quality Assurance Program, and (f) all other requirements of this Agreement.

"Requirement of Law" means any federal, state, local or other law (including any environmental law, EPS Law or RPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements.

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

"Right of First Refusal" and "ROFR" have the meaning set forth in Section 14.25(a).

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

"RPS Compliance Period" means each "Compliance Period" as defined in California Public Utilities Code Section 399.30(c).

"RPS Law" means the California Renewable Energy Resources Act, including the California Renewables Portfolio Standard Program, Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code, California Public Resources Code § 25740 through 25751, and any related regulations or guidebooks promulgated by the CEC or, as applicable, the PUC.

"RPS Qualification Expenditure Maximum" has the meaning set forth in Section 7.6(b).

"SBE" has the meaning set forth in Section 14.26(c).

"SCADA" means the supervisory control and data acquisition system for the Facility.

"SCPPA" has the meaning set forth in the Recitals.

"Schedule" or "Scheduling" means the actions of Seller and Buyer, their Authorized Representatives, and their Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Facility Energy to be delivered hourly at the Point of Delivery on any given date during the Delivery Term.

"Scheduled Outage" means any outage affecting more than ten percent (10%) of the Contract Capacity other than a Forced Outage.

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

"Scheduler" means the Persons conducting Scheduling for each Party. The contact information for each Party's Scheduler is set forth in Appendix J.

"Scheduling Procedures" has the meaning set forth in Section 7.3.

"Security Documents" means the documents, in form and substance satisfactory to Buyer in its sole discretion, granting to Buyer a security interest in (a) the Real Property as defined in the Land Option Agreement, and (b) the Facility and related assets, in the case of (a), in accordance with Section 2.10 of the Land Option Agreement and in the case of (b), such security interest subordinated only to the security interest of the Facility Lender providing construction or term financing for the Facility and any replacement, substitution or refinancing thereof.

“**Security Documents Legal Opinion**” means a customary legal opinion of Milbank, Tweed, Hadley & McCloy LLP, counsel for Seller, addressed to Buyer concerning the Security Documents, in form and substance satisfactory to Buyer and its counsel.

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

“**Seller Excused Hour**” means an hour during which Seller is unable to produce or deliver Facility Energy as a result of (a) a Curtailment Period, (b) a Forced Outage, (c) Buyer’s failure to perform, or (d) Force Majeure.

“**Seller Parties**” means Seller and any Affiliates of Seller executing any Ancillary Document now or hereafter in effect (so long as such Affiliates remain party to any such Ancillary Document), including any such Affiliate providing Performance Security and any such Affiliate that is a party to a Site Control Document.

“**SFPO**” has the meaning set forth in Section 14.26(i).

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

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

“**Shortfall Makeup Period**” means the Contract Year following the Contract Year during which Shortfall Energy accrues.

“**Site**” means the Facility Site and the Transmission and Roadway Site.

“**Site Control**” means that each of the following has occurred: (a) LandCo LLC: (i) has purchased the real property described in that certain Option Agreement for the Purchase and Sale of Real Property between SiteCo LLC, Lancaster Commercial, LLC and Darwood Golshirazien, dated September 11, 2009, as assigned to LandCo LLC, pursuant to that certain assignment agreement between SiteCo LLC and LandCo LLC (the “*Facility Site Option*”); and (ii) has granted to Buyer a security interest in the real property described in the Facility Site Option in form and substance satisfactory to Buyer; and (b) Seller: (i) has executed the Land Lease, has received an executed counterpart of such Land Lease from LandCo LLC, and has delivered an executed copy of such Land Lease to Buyer; (ii) is the grantee of one or more easements or rights of way with respect to the Transmission and Roadway Site, which, in each case, permits Seller and the Seller Parties to perform their obligations under this Agreement and the Ancillary Documents to which it is a party; and (iii) has demonstrable exclusive right to control the Facility Site as lessee under one or more site leases with respect to any portion of the Facility Site not covered by the Land Lease, and a non-exclusive easement or right of way with respect to the use of the Transmission and Roadway Site, in each case, so as to permit Seller and the Seller Parties to perform their obligations under this Agreement and the Ancillary Documents to which it is a party.

“**Site Control Documents**” means the real property leases and easements for the Site that together establish Site Control, including (a) the Land Lease, and (b) an easement granted by the BLM for the real property underlying the generation-tie line between the Facility and the Point of Delivery.

“Site Control Milestone Date” means the date specified on Appendix A with respect to the attainment of Site Control, as may be extended pursuant to Section 3.6.

“SiteCo LLC” means SiteCo, LLC, a Delaware limited liability company.

“SP-15 Price” means the CAISO Day-Ahead Market SP-15 Trading Hub Day-Ahead Market prices, as published by the California ISO Open Access Same-time Information System. For the avoidance of doubt, the SP-15 Price shall not include the value of any Environmental Attributes or Capacity Rights, if any.

“Special Purpose Entity” means a limited liability company which:

(a) shall not (i) engage in any consolidation or merger with or into any other business entity, (ii) acquire by purchase or otherwise all or substantially all of the business or assets of or beneficial interest in any other entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its properties or assets except to the extent permitted herein, (iv) modify, amend or waive any provisions of its organizational documents related to its status as a Special Purpose Entity, or (v) terminate its organizational documents or its qualifications and good standing in any jurisdiction.

(b) was, is and will be organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Facility, entering into this Agreement with Buyer and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(c) has not been, is not, and will not be engaged in any business unrelated to the acquisition, development, ownership, management or operation of the Facility.

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

(e) has held itself out and will hold itself out to the public as a legal entity separate and distinct from any other entity and has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

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

(g) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Seller and not as a division, department or part of any other Person;

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

(i) has not made and will not make loans or advances to any Person or hold evidence of indebtedness issued by any other Person (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity) or made any gifts or fraudulent conveyances to any Person;

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

(k) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its members or Affiliates, except in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(l) on and after the date that Seller commences construction of the Facility, will not have any obligation to indemnify and will not indemnify its officers, managers, or members, as the case may be, other than (i) the Independent Manager, and (ii) natural Persons who are officers, managers, or members of Seller or an Affiliate of Seller;

(m) it has considered and shall consider the interests of its creditors in connection with all limited liability company actions;

(n) from and after the Commercial Operation Date, will not have any of its obligations guaranteed by any Affiliate and will not hold itself out as being responsible for the debts or obligations of any other Persons;

(o) has complied and will comply with all of the terms and provisions contained in its organizational documents, including the provision requiring that there be an Independent Manager (on and after the date Seller commences construction of the Facility), and has done or caused to be done and will do all things necessary to preserve its existence;

(p) has not commingled, and will not commingle, its funds or assets with those of any Person and has not participated and will not participate in any cash management system with any other Person;

(q) has held and will hold its assets in its own name and conducted and will conduct all business in its own name;

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

(s) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;

(t) has observed and will observe all limited liability company formalities;

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

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

(w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including paying for shared space and services performed by any employee of an Affiliate;

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

(y) has not pledged and will not pledge its assets for the benefit of any other Person (other than in connection with a transfer to a Facility Lender in accordance with this Agreement);

(z) on and after the date Seller commences construction of the Facility, will have articles of organization, a certificate of formation or an operating agreement, as applicable, that provides that it will not, without the affirmative vote of its Independent Manager: (A) dissolve, merge, liquidate or consolidate; (B) sell, transfer, lease or otherwise convey all or substantially all of its assets (other than in connection with a transfer to a Facility Lender in accordance with this Agreement); (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition; or (D) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(aa) has been, is and intends to remain solvent and has paid and intends to continue to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall have or become due, and has maintained, is maintaining and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; and

(bb) has and will have no indebtedness other than (i) the indebtedness due to the Facility Lender providing construction financing for the Facility and any indebtedness in

replacement or substitution thereof, (ii) Taxes and Insurance premiums, (iii) liabilities incurred in the ordinary course of business relating to its ownership, leasing and operation of the Facility and its routine administration, which liabilities are not more than sixty (60) days past due, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and in any event not in excess of Ten Million Dollars (\$10,000,000) in the aggregate, and (iv) such other liabilities that are permitted pursuant to this Agreement.

“S&P” means Standard & Poor’s Financial Services LLC.

“Subcontract” means any agreement or contract entered into on or after the Effective Date by Seller and a Person other than Buyer, which Person is providing goods or services to Seller that are related to the performance of Seller’s obligations under this Agreement. Subcontracts specifically include any agreement or contract that is referred to or defined as a “subcontract” in the policies, ordinances, codes or laws with which Seller must comply pursuant to this Agreement, or that is made with a “subcontractor” as such term is used or defined in such policies, ordinances, codes, or laws.

“Subcontractor” means any party to a Subcontract with Seller.

“System Emergency” means an emergency condition or abnormal interconnection situation designated by the Transmission Provider that requires automatic or immediate action to prevent or limit harm to or loss of life or property, to prevent loss of transmission facilities or generation supply, to preserve system reliability or to enable the Transmission Provider to comply with federal or state environmental or wildlife protection laws as determined by the Transmission Provider, as applicable.

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

“Tax Equity Transaction” means, with respect to Seller or RE Holdings, any transaction or series of transactions pursuant to which (i) a Person (a “Tax Equity Investor”) obtains less than one hundred percent (100%) of the equity interests in Seller or RE Holdings, and (ii) the Tax Equity Investor is allocated a share of profits, losses, and tax allocations associated with such equity interest; *provided, however,* that RE Holdings or any Affiliate of RE Holdings retains direct management control of Seller.

“Tax Equity Investor” has the meaning set forth in the definition of Tax Equity Transaction.

“Termination Notice” has the meaning set forth in Section 13.4(a).

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

“Test Energy” means Facility Energy that is delivered to the Point of Delivery prior to the Commercial Operation Date.

“Transmission and Roadway Site” means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B-1 and Appendix B-2 where any transmission lines and roadways servicing the Facility are or will be located.

“Transmission Providers” means Persons operating the Transmission System to and from the Point of Delivery.

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

“Transmission System” means the facilities utilized to provide Transmission Services.

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

“UNFCCC” has the meaning set forth in the definition of “Environmental Attributes.”

“WBEs” has the meaning set forth in Section 14.26(c)(i).

“WECC” means the Western Electricity Coordinating Council.

“WREGIS” means Western Renewable Energy Generation Information System, and any successor; *provided* that said successor is capable of performing substantially similar functions and is acceptable to Buyer.

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

“WREGIS Operating Rules” means the rules describing the operations of the WREGIS, as published by WREGIS.

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

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

- (a) time is of the essence;
- (b) the singular number includes the plural number and vice versa;
- (c) reference to any Person includes such Person’s successors and assigns but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (d) reference to any gender includes the other;

(e) reference to any agreement (including this Agreement), document, instrument, tariff or Requirement means such agreement, document, instrument, or tariff, or Requirement, as amended, modified, replaced or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;

(f) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;

(g) "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;

(h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(i) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including";

(j) reference to time shall always refer to Pacific Prevailing Time; and reference to any "day" shall mean a calendar day, unless otherwise indicated; and

(k) the term "or" is not exclusive.

ARTICLE II EFFECTIVE DATE, TERM, AND EARLY TERMINATION

Section 2.1 Effective Date. This Agreement is effective as of the Effective Date. On or prior to the Effective Date, each of the following has occurred: (a) both Parties have executed this Agreement; (b) Buyer has received (i) copies of all requisite resolutions and incumbency certificates of each Seller Party and any other documents evidencing all actions taken by each Seller Party to authorize the execution and delivery of this Agreement and all Ancillary Documents requiring execution by such Seller Party, such resolutions to be certified as of the Effective Date by an authorized representative of the Seller Party and (ii) audited balance sheets and statements of income and cash flow of Recurrent Energy for the most recent fiscal year for Recurrent Energy, prepared in compliance with GAAP; (c) Seller has delivered the Legal Opinion to Buyer; (d) Buyer and Seller have executed and delivered the Option Agreement; (e) SiteCo LLC has assigned the Facility Site Option to LandCo LLC; and (f) Buyer and LandCo LLC have executed and delivered the Land Option Agreement (the "*Effective Date*").

Section 2.2 Term.

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

(b) **Delivery Term.** This Agreement shall have a delivery term (the "*Delivery Term*") commencing on the Initial Delivery Date and ending at 11:59 pm on the day before the twentieth (20th) anniversary of the Commercial Operation Date, unless sooner terminated in accordance with the terms of this Agreement.

Section 2.3 Survivability. The provisions of this Article II, Article XII, Article XIII, Section 14.19 and Section 14.21 shall survive for a period of one year following the termination of this Agreement. The provisions of Article XI shall survive for a period of four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, Article VIII, and Article IX shall continue in effect after termination to the extent necessary to provide for final billing, adjustments, and deliveries (including the provision to Buyer of Replacement Energy or Shortfall Liquidated Damages) related to any period prior to termination of this Agreement.

Section 2.4 Early Termination.

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

(b) **Early Termination for Default.** Upon the occurrence of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 13.4.

(c) **Early Termination for Failure to Achieve the In-Service Interconnection Date.** Either party may terminate this Agreement pursuant to Section 3.6(b) without further obligation to the other party.

(d) **Early Termination for Failure to Achieve a Key Milestone.** Buyer, in its sole discretion, may terminate this Agreement pursuant to Section 3.6(c).

(e) **Early Termination for Failure to Achieve Commercial Operation Date.** Buyer, in its sole discretion, may terminate this Agreement effective upon notice to Seller if Seller fails to achieve the Commercial Operation Date on or before the Outside Commercial Operation Date, except as otherwise set forth in Section 3.5 and Section 3.6(b).

(f) **Early Termination for Failure to Obtain CEC Certification.** Buyer, in its sole discretion, may terminate this Agreement effective upon notice to Seller if the Facility is not CEC Certified by the date that is six (6) months following the Commercial Operation Date, which date may be extended (i) due to a Change in Law, in which case the provisions of Section 7.6(b) shall apply, or (ii) for such additional period as the Parties may agree is required to obtain CEC Certification if Seller (A) demonstrates to Buyer's reasonable satisfaction that the failure to obtain CEC Certification is not due to any act or omission by Seller, (B) has provided the Delivery Term Security, and (C) is otherwise in compliance with the terms and conditions of this Agreement.

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

(h) **Early Termination for Change in Law.** Prior to the achievement of the commencement of construction Milestone, this Agreement may be terminated by either Party, and following such termination, neither Party shall have any further obligations to the other Party, if (i) there is a Change in Law that causes the Facility to not be either RPS Compliant or EPS Compliant, and (ii) the terminating Party provides evidence reasonably satisfactory to the other Party that compliance with such Change in Law is impossible for the Facility or commercially impractical without expending Compliance Costs in excess of the RPS Qualification Expenditure Maximum; *provided* that Seller shall not be permitted to terminate this Agreement pursuant to this Section 2.4(h) if Buyer agrees in writing to pay, or reimburse Seller for, Compliance Costs in excess of the RPS Qualification Expenditure Maximum.

(i) **Exercise of First Right of Offer.** If Buyer accepts the Right of First Offer for any proposed sale of the Facility, this Agreement shall terminate effective upon the Closing with respect to the Right of First Offer.

(j) **Exercise of Project Purchase Option.** If Buyer elects to exercise the Project Purchase Option, this Agreement shall terminate effective upon the Closing under the Option Agreement.

(k) **Early Termination for Shortfall.** Buyer, in its sole discretion, may terminate this Agreement pursuant to Section 9.4.

(l) **Early Termination for Business Policies.** Buyer, in its sole discretion, may terminate this Agreement pursuant to Section 14.26.

(m) **Effect of Termination.** Any early termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of either Party for Defaults occurring prior to such termination; *provided* that the unused portion of the Project Development Security or Delivery Term Security, as applicable, if any shall be returned to Seller within ten (10) Business Days after any such termination in accordance with Section 5.7(c)(ii).

ARTICLE III DEVELOPMENT OF THE FACILITY

Section 3.1 Reserved.

Section 3.2 **Project Design.** Seller shall determine the proposed location, design, and configuration of the Facility as it deems appropriate, subject to the Requirements, including the characteristics and other requirements for the Facility set forth in Appendix B-1, and also subject to any conditions imposed by any responsible agency as part of the CEQA review of the Facility.

Section 3.3 **Site Confirmation.** Seller represents and warrants that (a) Seller's agents and representatives have visited, inspected and become familiar with the Site and its surface physical condition relevant to the obligations of Seller pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, and topographical, solar radiation, air and water quality conditions, (b) Seller is familiar with all local and other conditions that may be material to Seller's performance of its obligations under this Agreement (including, transportation, seasons and climate, access, weather, handling and storage of

materials and equipment, and availability and quality of labor and utilities), and (c) Seller has determined that the Site constitutes an acceptable and suitable site for the construction and operation of the Facility in accordance herewith. Any failure by Seller to take the actions described in this Section shall not relieve Seller from any responsibility for estimating properly the difficulty and cost of successfully constructing, maintaining or operating the Facility in accordance with this Agreement or from proceeding to construct, maintain and operate the Facility successfully without any additional expense to Buyer. The foregoing shall not restrict Seller's right to claim Force Majeure hereunder to the extent the requirements therefor hereunder are satisfied.

Section 3.4 Contract Provisions.

(a) Seller shall cause to be included in each Subcontract provisions that provide: (i) Buyer with rights of access to the Facility and the work performed under such Subcontract at all reasonable times (but subject to Site safety protocols and orientation) and the right to inspect, make notes about, and review all documents, drawings, plans, specifications, permits, test results and information as Buyer may reasonably request, subject to redaction of confidential or proprietary information; and (ii) that the personnel of, and consultants to, the applicable contractor and Seller shall be available to Buyer and its agents, representatives and consultants at reasonable times and with prior notice for purpose of discussing any aspect of the Facility or the development, engineering, construction, installation, testing or performance thereof.

(b) Seller shall deliver to Buyer a schedule for the performance of initial performance tests and all other tests required under the Subcontracts at least ten (10) Business Days before such tests begin.

Section 3.5 Certification of Commercial Operation Date.

(a) Seller may provide Buyer with notice (a "*Condition Satisfaction Notice*") when Seller believes that it has achieved one or more of the conditions precedent to achieving Commercial Operation of the Facility as specified in the definition of "*Commercial Operation*". Buyer shall review any Condition Satisfaction Notice in good faith and use commercially reasonable efforts to either accept or reject the Condition Satisfaction Notice within a reasonable period of time after Seller's delivery thereof. If Buyer rejects a Condition Satisfaction Notice, Buyer shall specify the reasons for such rejection. In no event shall any failure by Buyer to respond to a Condition Satisfaction Notice be considered an acceptance of Seller's satisfaction of the condition identified therein.

(b) When Seller believes that all conditions precedent to achieving Commercial Operation of the Facility as specified in the definition of "*Commercial Operation*" have been satisfied, Seller shall provide Buyer with notice of the achievement of Commercial Operation ("*COD Notice*"). Buyer shall either accept the COD Notice, or reject the COD Notice if reasonable cause exists, *provided* that Buyer shall not unreasonably withhold, delay or condition any acceptance of COD Notice, and in any event shall provide in reasonable detail a written description of the reasons for any rejection; *provided further* that Buyer may not reject the COD Notice on the basis of Seller's failure to satisfy a condition precedent which it has

accepted pursuant to Section 3.5(a). Buyer shall in all cases respond to any COD Notice within fifteen (15) Business Days after delivery by Seller and shall be deemed to have accepted such COD Notice if Buyer fails to respond in such time. If Buyer rejects the COD Notice, Seller shall promptly correct any defects or deficiencies and resubmit the COD Notice. The Commercial Operation Date shall be deemed to relate back to the date of any COD Notice that is accepted (or deemed accepted) by Buyer. So long as Seller provides, in good faith, COD Notice prior to the Outside Commercial Operation Date, Buyer may not terminate this Agreement under Section 2.4(e) for failure to achieve the Commercial Operation Milestone under Section 3.6 so long as (a) Buyer either (i) accepts such COD Notice or (ii) rejects such COD Notice due to minor defects or deficiencies that do not affect the ability of the Facility to be placed in service and operated in accordance with this Agreement, and (b) Seller promptly corrects such minor defects or deficiencies identified by Buyer. In no event shall any extension of the Outside Commercial Operation Date under this Section 3.5 affect the amount of the Contract Price, notwithstanding any tax benefits lost as a result of the delay of the Commercial Operation Date.

Section 3.6 Milestone Schedule.

(a) Attached as Appendix I is a milestone schedule with deadlines for the development of the Facility through the Commercial Operation Date (each milestone, a "*Milestone*" and each date, a "*Milestone Date*"). Until the Commercial Operation Date, Seller shall provide Buyer a report (which shall be provided on a quarterly basis until the date that is six (6) months prior to the scheduled Commercial Operation Date, at which time, such reports shall be provided on a monthly basis, and which shall set forth the status of each Milestone, any issues that have arisen with respect to the timely achievement of such Milestone, and any slippage in any Milestone Date). If Seller anticipates that it will not achieve a Milestone by the applicable Milestone Date (as such date may be extended pursuant to this Section 3.6), Seller shall promptly prepare and deliver to Buyer a remedial action plan ("*Remedial Action Plan*") which shall set forth (a) the anticipated period of delay, (b) the basis for such delay, (c) an outline of the steps that Seller is taking to address the delay, (d) a proposed revised date for achievement of the applicable Milestone and (e) such other information and in such detail as may be reasonably requested by Buyer. Except as set forth in Section 3.6(c), Seller shall not have any liability for failure to timely achieve a Milestone other than the obligation to submit a Remedial Action Plan *provided, however*, that the foregoing shall not limit Buyer's right to exercise any right or remedy available under this Agreement or at law or in equity for any other Default occurring concurrently with or before or after Seller's delay in achievement of the applicable Milestone.

(b) Each Milestone Date (other than the Outside Commercial Operation Date) shall be extended, on a day-for-day basis, to the extent Seller is unavoidably delayed in achieving such Milestone due to (i) the failure by Buyer to perform any covenant or obligation under this Agreement, (ii) Buyer's exercise of its rights under Section 5.2, but only if such delay is solely caused by such exercise, (iii) Force Majeure, or (iv) either (A) the failure of Seller and the Transmission Provider at the Point of Delivery to have executed a mutually-acceptable Generator Interconnection Agreement for the delivery of Facility Energy at the Point of Delivery by the Milestone Date therefor or (B) the failure of the Transmission Provider at the Point of Delivery to achieve the in-service date under the Generator Interconnection Agreement (the "*In-Service Interconnection Date*") for the Facility's interconnection facilities by the date that is at least sixty (60) days before the Expected Initial Delivery Date, but only to the extent such failure

is not the direct or indirect result of the fault or negligence of Seller or any of its Affiliates or the direct or indirect result of any delay in the engineering, procurement, construction, and installation of any portion of the interconnection facilities required to be constructed or installed by Seller or any of its Affiliates. If the Transmission Provider at the Point of Delivery fails to timely achieve the In-Service Interconnection Date for the Facility's interconnection facilities and as a result, Seller is unable to achieve Commercial Operation by the Outside Commercial Operation Date despite Seller's commercially reasonable efforts, the Outside Commercial Operation Date may be extended by mutual agreement of the Parties; *provided* that (x) if the Parties mutually agree that achievement of the In-Service Interconnection Date by September 30, 2016, is not reasonably achievable, either Party in its sole discretion may terminate this Agreement upon notice thereof to the other Party and (y) if the Transmission Provider at the Point of Delivery fails to timely achieve the In-Service Interconnection Date, and as a result, Seller is unable to achieve Commercial Operation by the Outside Commercial Operation Date (as extended pursuant to the forgoing clause) despite Seller's commercially reasonable efforts, either Party in its sole discretion may terminate this Agreement upon notice thereof to the other Party. If a Party terminates this Agreement as provided in the previous sentence, then Buyer shall refund to Seller any amounts previously paid as Daily Delay Damages. Notwithstanding the foregoing, the Outside Commercial Operation Date shall not be extended, and Seller shall not have a termination right under this Section 3.6(b) to the extent the failure to achieve the In-Service Interconnection Date is the direct or indirect result of (1) the failure of Seller to enter into the Generator Interconnection Agreement on or before the Milestone Date therefor (as may be extended pursuant to this Section 3.6(b)), or (2) the fault or negligence of Seller or any of its Affiliates or the direct or indirect result of any delay in the engineering, procurement, construction, and installation of any portion of the interconnection facilities required to be constructed or installed by Seller or any of its Affiliates.

(c) If Seller fails to achieve any Key Milestone by the Milestone Date (as extended pursuant to Section 3.6(b)), Seller shall pay liquidated damages to Buyer in an amount equal to (i) the number of days between the Milestone Date and the date upon which such Key Milestone is achieved (or the Agreement is terminated by Buyer), multiplied by (ii) the applicable daily liquidated damage amount set forth for such Key Milestone in Appendix I (the "*Daily Delay Damages*"), subject to a maximum amount for any Key Milestone equal to the applicable daily liquidated damage amount in clause (ii) above multiplied by (A) to the extent that there has been an Permitting Delay and there has been a delay in achieving Key Milestones 8, 13, or 15 because of such Permitting Delay, three hundred sixty-five (365) days, and (B) in all other circumstances, one hundred eighty (180) days, at which point Buyer shall have the right in its sole discretion, to either (1) terminate this Agreement, or (2) allow Seller to continue to pay liquidated damages to Buyer, during which time Buyer shall not terminate the Agreement. If Seller, notwithstanding having failed to timely achieve any other Key Milestone, is able to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date (and prior to the exercise by Buyer of its termination right hereunder), then Buyer shall refund to Seller any amounts previously paid as Daily Delay Damages.

(d) In no event shall the Commercial Operation Date be extended beyond the Outside Commercial Operation Date other than pursuant to Section 3.5(b) or Section 3.6(b).

(e) Seller may change the Guaranteed Commercial Operation Date to a date that is earlier than the then-scheduled Guaranteed Commercial Operation Date by providing Buyer with notice at least eighteen (18) months prior to the new Guaranteed Commercial Operation Date.

(f) The damages that Buyer would incur due to Seller's failure to timely achieve a Key Milestone would be difficult or impossible to predict with certainty, and it is impractical or difficult to assess actual damages in those circumstances, but the Daily Delay Damages are a fair and reasonable calculation of such damages, and shall be Seller's sole liability and obligation, and Buyer's sole right and remedy, other than termination of the Agreement, for Seller's failure to achieve any Key Milestone by the Milestone Date therefor. Notwithstanding the foregoing, the Daily Delay Damages shall not limit Buyer's right to exercise any right or remedy available under this Agreement or at law or in equity for any Default occurring concurrently with or before or after Seller's delay in achievement of the applicable Key Milestone.

Section 3.7 Decommissioning and Other Costs. Unless a Closing occurs pursuant to the exercise by Buyer of the Project Purchase Option or the ROFO, Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility without regard to the timing or cause of the decommissioning or demolition.

ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY

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

(a) At its sole expense, operate and maintain the Facility (i) in accordance with the Requirements and (ii) in a manner that is reasonably likely to achieve the Annual Contract Quantity and result in a useful life for the Facility of not less than the Delivery Term;

(b) At its sole expense, operate and maintain the Facility using a Qualified Operator in accordance with the Requirements;

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

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

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

Section 4.2 Operation and Maintenance Plan. Seller shall devise and implement a plan of inspection, maintenance, and repair for the Facility and the components thereof in order to maintain such equipment in accordance with Prudent Utility Practices and shall keep records with respect to inspections, maintenance, and repairs thereto. The aforementioned plan and all

records of such activities shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice.

Section 4.3 Environmental Credits. Seller shall, if applicable, obtain in its own name and at its own expense all pollution or environmental credits or offsets necessary to operate the Facility in compliance with any Requirement of Law; *provided, however*, that Seller shall not use any Environmental Attributes to satisfy the foregoing obligation.

Section 4.4 Scheduled Outage.

(a) Buyer and Seller shall cooperate to minimize Scheduled Outages during specified times of each Contract Year (such periods, the "*Major Maintenance Blockout*") in accordance with this Section 4.4; *provided* that the Major Maintenance Blockout shall not exceed (i) during Contract Years 1 and 21, the number of days (rounded to the nearest whole number) equal to the product of eighty-four (84) multiplied by the ratio between (1) number of calendar days remaining in the applicable Contract Year and (2) three hundred sixty-five (365), and (ii) during any other Contract Year, eighty-four (84) days in accordance with Prudent Utility Practices. No later than thirty (30) days prior to the anticipated Commercial Operation Date and the commencement of each Contract Year thereafter, Buyer shall provide Seller with its specified Major Maintenance Blockout. In the absence of such updated notification, the most recent previous Major Maintenance Blockout notification shall apply. Seller shall attempt to minimize its Scheduled Outages during the Major Maintenance Blockout consistent with Prudent Utility Practices; *provided* that Seller shall be permitted to perform scheduled and unscheduled maintenance on the Facility during Major Maintenance Blockouts during such hours in which solar irradiance levels are insufficient to permit the production of Energy. No later than thirty (30) days prior to the anticipated Commercial Operation Date and the commencement of each Contract Year thereafter, Seller shall provide Buyer with its non-binding written projection of all Scheduled Outages for the succeeding Contract Year (the "*Scheduled Outage Projection*") reflecting a minimized schedule of scheduled maintenance during the Major Maintenance Blockout. In addition, Seller shall cooperate in good faith with maintenance scheduling requests by Buyer's Authorized Representative consistent with Prudent Utility Practices. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (A) the anticipated start and end dates of each Scheduled Outage; (B) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (C) the anticipated MW capacity, if any, during the Scheduled Outage. Seller shall notify Buyer or Buyer's Authorized Representative of any change in the Scheduled Outage Projection as soon as practicable, but in no event later than thirty (30) days prior to the originally-scheduled date of the Scheduled Outage. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer or Buyer's Authorized Representative with respect to the timing of Scheduled Outages and shall, to the extent consistent with Prudent Utility Practices, coordinate Scheduled Outages to coincide with planned transmission outages. In the event of a System Emergency, Seller shall make reasonable efforts to reschedule any Scheduled Outage previously scheduled to occur during the System Emergency.

(b) In the event of a Forced Outage affecting at least ten percent (10%) of the Contract Capacity, to the extent practicable, Seller shall notify Buyer within two (2) hours after the commencement of the Forced Outage and, in any event, within seven (7) days thereafter,

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

ARTICLE V COMPLIANCE DURING OPERATIONS; GUARANTEES

Section 5.1 Guarantees. Seller warrants and guarantees that it will perform, or cause to be performed, all engineering, design and construction in a good and workmanlike manner and in accordance with the Requirements. Seller warrants that, at the Commercial Operation Date, the Facility, its engineering, design and construction, its components and related work, shall be free from material defects caused by errors or omissions in design, engineering and construction. Seller further warrants that, throughout the Delivery Term, and at the time (if any) that Buyer exercises the Project Purchase Option: (a) the Facility will be free and clear of all Liens other than Permitted Encumbrances, and (b) the Facility will be designed, constructed and tested in compliance with the Requirements. Seller also warrants and guarantees that throughout the Agreement Term it will monitor the operation and maintenance of the Facility and that said operation and maintenance is, and will be, in compliance with all Requirements applicable to the Facility as of the Effective Date. Without limiting the foregoing, Seller shall promptly repair or replace, consistent with Prudent Utility Practice, any component of the Facility that may be damaged or destroyed or otherwise not operating properly and efficiently. Seller shall exercise commercially reasonable efforts to timely undertake all updates or modifications to the Facility, and its equipment and materials, including procedures, programming and software, required by Prudent Utility Practice. Seller shall, at its expense, maintain throughout the Agreement Term an inventory of spare parts for the Facility in a quantity that is consistent with Prudent Utility Practice.

Section 5.2 Buyer's Right to Monitor in General. Upon no less than ten (10) Business Days' notice to Seller, Buyer shall have the right, and Seller shall permit Buyer and its Authorized Representative, advisors, engineers and consultants, to (a) observe, inspect and monitor all operations and activities at the Site before and after the Commercial Operation Date, including the performance and achievement of all initial performance tests and all other tests required under the Subcontracts that must be performed in order to achieve completion, and (b) perform such detailed examinations, inspections, quality surveillance, and tests as, in the judgment of Buyer, are appropriate and advisable to determine that the components of the Facility have been installed in accordance with the Requirements; *provided, however*, that ten (10) Business Days' notice shall not be required if Buyer's inspection, monitoring, or performance of examinations inspections, quality surveillance, or tests is due to an emergency situation at the Site, a Facility curtailment, or any other occurrence causing an operational concern to Buyer with respect to the Facility, in which case Buyer shall provide as much advance notice as is practicable under the circumstances. The presence of Buyer and Buyer's Authorized Representative on the Site shall be at Buyer's sole risk and expense. While at the Site, Buyer and Buyer's Authorized Representative shall comply with all of Seller's written Site safety rules (including any required Site safety protocols and orientation). Seller shall cause its personnel,

consultants, and contractors to be available to Buyer and its Authorized Representatives, advisors, engineers, and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility or the development, engineering, construction, installation, testing, performance, operation, or maintenance thereof. Buyer shall be limited to no more than ten (10) such visits to the Facility each Contract Year, except that visits made by Buyer due to emergency situations, Facility curtailments, or any occurrence causing an operational concern to Buyer with respect to the Facility shall not count toward such ten (10) visit limit.

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

Section 5.4 Quality Assurance Program. Seller agrees to maintain and comply with a written quality assurance policy ("*Quality Assurance Program*") attached hereto as Appendix G, and Seller shall cause all work performed on or in connection with the Facility to materially comply with said Quality Assurance Program.

Section 5.5 No Liens. Except as otherwise permitted by this Agreement, the Facility shall be owned by Seller during the Agreement Term. Seller shall not sell or otherwise dispose of or create, incur, assume or permit to exist any Lien (other than Permitted Encumbrances) on any portion of the Facility or any other property or assets that are related to the operation, maintenance and use of the Facility without the prior approval of Buyer's Authorized Representative.

Section 5.6 Reporting and Information. Seller shall provide to Buyer (a) monthly reports of the operation of the Facility, which shall include (i) a performance summary of the Month- and Contract Year-to-date MWh delivery of Facility Energy, capacity factor, and availability, (ii) descriptions of the weather, reasons for any downtime, maintenance or repairs, and Curtailment Periods and other curtailment events during the applicable Month, and (iii) a safety and environmental summary, and (b) such other information regarding the permitting, engineering, construction or operations of the Facility, as Buyer's Authorized Representative may, from time to time, reasonably request.

Section 5.7 Performance Security.

(a) Within ten (10) days after the Effective Date, Seller shall furnish to Buyer (i) one or more letters of credit issued by Qualified Issuers in the form attached hereto as

Appendix E-1, (ii) cash (to be held in escrow pursuant to an escrow agreement in form and substance satisfactory to Buyer in its sole discretion), or (iii) a combination of the two, in the aggregate amount of Three Million Dollars (\$3,000,000.00), which shall guarantee Seller's obligations under this Agreement (the "*Project Development Security*"). Seller shall maintain the Project Development Security until Seller posts the Delivery Term Security pursuant to Section 5.7(b), or until Buyer is required to return the Project Development Security under Section 5.7(c) below.

(b) As a condition to the achievement of the Commercial Operation Date, Seller shall have furnished to Buyer (i) one or more letters of credit issued by Qualified Issuers in the form attached hereto as Appendix E-1, (ii) cash (to be held in escrow pursuant to an escrow agreement in form and substance satisfactory to Buyer in its sole discretion), or (iii) a combination of the two, and in the aggregate amount of Nine Million Five Hundred Thousand Dollars (\$9,500,000.00) which shall guarantee Seller's obligations under this Agreement ("*Delivery Term Security*"); *provided* that Seller may elect to apply the Project Development Security toward the Delivery Term Security. From and after the Commercial Operation Date, Seller shall maintain the Delivery Term Security until the end of the Agreement Term or until Buyer is required to return the Delivery Term Security to Seller as set forth in Section 5.7(c) below.

(c) Buyer shall return the unused portion of the Project Development Security, if any, to Seller within ten (10) Business Days after (i) Seller's provision of the Delivery Term Security, unless Seller elects to apply the Project Development Security toward the Delivery Term Security, or (ii) the effective date of any earlier termination, so long as damages are no longer due and owing to Buyer. Buyer shall return the unused portion of the Delivery Term Security, if any, to Seller promptly after the following have occurred: (1) the Agreement Term has ended, and (2) all obligations of Seller arising under this Agreement are paid (whether directly or indirectly such as through set-off or netting) or performed in full.

(d) Buyer may draw on the Performance Security (i) at any time following the accrual of Daily Delay Damages hereunder in the amount of such Daily Delay Damages, (ii) upon Seller's failure to pay Buyer the Shortfall Liquidated Damages prior to the end of the Shortfall Makeup Period as provided in Section 9.3, or (iii) upon Seller's failure to make any other payment due to Buyer hereunder in the amount of such unpaid payment; *provided* that, in the case of a draw under clause (iii), any such amount shall have been invoiced to Seller, shall be past due, and shall not be the subject of a good faith dispute between the Parties. Within five (5) Business Days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn such that the Performance Security is restored to the applicable amount set forth in Section 5.7(a) or Section 5.7(b).

(e) Seller shall notify Buyer of the occurrence of a Downgrade Event involving an issuer of the Performance Security within five (5) Business Days after obtaining knowledge of the occurrence of such event. If at any time there shall occur a Downgrade Event, Buyer may require that Seller replace the Performance Security from the Person that has suffered the Downgrade Event in accordance with Section 5.7(g).

(f) Seller shall provide replacement Performance Security in accordance with Section 5.7(g) after the occurrence of any one of the following events: (i) the failure of the issuer of the letter of credit to renew such letter of credit thirty (30) Business Days prior to the expiration of such letter of credit; (ii) the failure of the issuer of the letter of credit to immediately honor Buyer's properly documented request to draw on such letter of credit; or (iii) the issuer of the letter of credit becomes bankrupt.

(g) If replacement Performance Security is required due to (i) a Downgrade Event, or (ii) upon the occurrence of any of the events described in Section 5.7(f), then Seller shall, within ten (10) Business Days after the earlier of the date that Seller becomes aware, or Buyer notifies, Seller of the need for replacement Performance Security, provide, or cause to be provided, (1) a letter of credit substantially in the form of Appendix E-1 from a Qualified Issuer, (2) cash (to be held in escrow pursuant to an escrow agreement in form and substance satisfactory to Buyer in its sole discretion account), or (3) a combination of the two, in each event, in the amount required under this Section 5.7.

(h) Buyer may notify Seller after Buyer becomes aware of any Person listed on Appendix E-2 that experiences a Downgrade Event and therefore are no longer Qualified Issuer after which the Parties' Authorized Representatives shall promptly thereafter coordinate to remove any Person who has experienced a Downgrade Event, from Appendix E-2 and identify and mutually agree to amend Appendix E-2 to include additional Qualified Issuers. The Authorized Representatives of the Parties may also periodically identify and mutually agree to amend Appendix E-2 to include different Qualified Issuers.

(i) Seller shall, from time to time as requested by Buyer's Authorized Representative, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all Requirements of Law the Performance Security (including any Ancillary Documents required therefor) and the rights, Liens and priorities of Buyer with respect to such Performance Security.

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

ARTICLE VI PURCHASE AND SALE OF PRODUCT

Section 6.1 Purchases by Buyer.

(a) Prior to the Commercial Operation Date, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Test Energy for the Contract Price set forth in Section 1 of Appendix A.

(b) On and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products

associated with Facility Energy (other than Excess Energy) and Replacement Energy at the Contract Price set forth in Section 2 of Appendix A.

(c) On and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Excess Energy at the Contract Price set forth in Section 3 of Appendix A.

(d) Notwithstanding the provisions of Section 6.1(a) through Section 6.1(c), during the period of time between the Initial Delivery Date and the day that is one (1) day following the date upon which Seller delivers evidence to Buyer that the Facility is CEC Certified (the "Pre-Certification Period"), Buyer shall have the right to retain a portion of any payment to be made to Seller under Section 6.1(a) through Section 6.1(c) in an amount equal to the difference between (i) the applicable Contract Price, and (ii) SP-15 Price for the respective hours in which Facility Energy was generated. Buyer shall release such retained amount, without interest of any kind, within thirty (30) days following Buyer's receipt from Seller of the CEC certificate confirming that the Facility is CEC Certified, but only to the extent that Buyer is able to apply the RECs generated by the Facility during the Pre-Certification Period towards compliance with Buyer's obligations under RPS Law and the requirements of Public Utilities Code Section 399.16(b)(1) to obtain a "portfolio content category 1" eligible resource.

Section 6.2 Seller's Failure. Except as provided in Article IX, in no event shall Seller have the right to procure Energy from sources other than the Facility for sale and delivery pursuant to this Agreement. Unless excused by Force Majeure or Buyer's failure to perform, if Seller sells all or any part of the Products required to be delivered by Seller under this Article VI, Article VIII or Article X to a third party, Seller shall pay Buyer, on the date payment would otherwise be due to Seller, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting (A) the price per MWh that would have been payable by Buyer for the Products not delivered from (B) the Replacement Price. Buyer shall provide Seller prompt notice of the Replacement Price together with back-up documentation.

Section 6.3 Buyer's Failure. Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to receive at the Point of Delivery all or any part of the Facility Energy required to be received by Buyer under this Article VI, Article VIII or Article X, Buyer shall pay Cover Damages, on the date payment would otherwise be due to Seller; *provided* that Seller shall use commercially reasonable efforts to resell any Facility Energy not received by Buyer. "**Cover Damages**" means the positive difference, if any, obtained by subtracting (A) the amount for which Seller, acting in a commercially reasonable manner, resells any such Facility Energy (or, absent any such sales despite using commercially reasonable efforts to procure such sales, zero dollars (\$0)) from (B) the price that would have been payable by Buyer for the Energy not received by Buyer. Seller shall provide Buyer prompt notice of the Cover Damages together with back-up documentation.

Section 6.4 Nature of Remedies. The Parties acknowledge and agree that the damages that Buyer would incur as a result of Seller's failure as described in Section 6.2 or that Seller would incur as a result of Buyer's failure as described in Section 6.3 would be difficult or impossible to predict with certainty, and it is impractical and difficult to assess actual damages in those circumstances, and the liquidated damages set forth in Section 6.2 and Section 6.3 are fair

and reasonable calculations of such damages. To the extent permitted by law, (a) the remedy set forth in Section 6.2 is in addition to, and not in lieu of, any other right or remedy of Buyer under this Agreement or otherwise, for failure of Seller to sell and deliver the Products as and when required by this Agreement, and (b) the remedy set forth in Section 6.3 is in addition to, and not in lieu of, any other right or remedy of Seller for any failure by Buyer to receive Energy as and when required by this Agreement.

ARTICLE VII TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

Section 7.1 In General. Seller shall arrange and be responsible for any Transmission Services required to deliver Energy to the Point of Delivery and shall Schedule or arrange for Scheduling services with its Transmission Providers to so deliver the Energy to the Point of Delivery. Buyer shall arrange and be responsible for Transmission Services at and from the Point of Delivery, and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive Energy at the Point of Delivery. Each Party shall designate an authorized Scheduler to effect the Scheduling of all Energy.

Section 7.2 Costs. Seller shall be responsible for any costs or charges imposed on or associated with the delivery of Energy up to the Point of Delivery, as applicable. Buyer shall be responsible for any costs or charges imposed on or associated with the delivery of Energy at and from the Point of Delivery, including, as applicable, control area services, inadvertent energy flows, transmission losses, imbalance costs, congestion charges and charges relating to the transmission of Energy at and from the Point of Delivery.

Section 7.3 Scheduling of Energy. The Parties agree to the following scheduling procedures: (i) Seller shall notify Buyer's Grid Operations on a forward (monthly, weekly and day-ahead) basis, as provided in this Section 7.3 and, as needed, in real time, of any reduction in availability of the Facility that exceed one (1) MW; (ii) Seller shall make available to Buyer, as a graphical display, the output for the Facility in increments not to exceed one (1) minute averages via a web portal and secure client login; (iii) Seller shall make available to Buyer real-time data of actual output that shall be automatically telemetered to Buyer's SCADA system; and (iv) Buyer's Grid Operations shall have the right, in accordance with Section 7.4 to contact Seller and require that the Facility be curtailed (collectively, the "*Scheduling Procedures*") which may be modified, from time to time, by written agreement of both Authorized Representatives in order to comply with all applicable requirements, including those of the Transmission Provider, WECC, and any balancing authority involved in the Scheduling of Energy under this Agreement. The Authorized Representatives shall promptly cooperate with respect to any reasonably necessary and appropriate modifications to such Scheduling Procedures.

(a) Seller or Seller's Authorized Representative shall be responsible for providing a forecast of Facility Energy to the Point of Delivery during the Delivery Term consistent with the Scheduling Procedures, as may be updated from time to time in accordance with this Section 7.3. All generation Scheduling and Transmission Services shall be performed in accordance with the applicable NERC and WECC operating policies, criteria, and any other applicable guidelines. Seller shall also fulfill the contractual, metering and interconnection requirements so as to be able to deliver Energy to the Point of Delivery.

(b) No later than forty-five (45) days before the beginning of each Contract Year, Seller or Seller's Authorized Representative shall provide, or cause to be provided, a non-binding forecast of each Month's average-day deliveries of Energy, by hour, for the following twelve (12) Months.

(c) Ten (10) Business Days before the beginning of each Month, Seller or Seller's Authorized Representative shall provide, or cause to be provided, a non-binding forecast of the following Month's average-day deliveries of Energy, by hour, for the following Month.

(d) By 5:30 AM Pacific Prevailing Time ("PPT") on the WECC pre-scheduling day immediately preceding the date of delivery of Energy during the Delivery Term, Seller or Seller's Authorized Representative shall cause the Facility's scheduling coordinator to provide Buyer or Buyer's Authorized Representative with a copy of a non-binding hourly forecast of deliveries of Energy for each hour of the date of delivery of such Facility Energy (the "*Day-Ahead Schedule*"). If the WECC pre-scheduling day pertains to multiple dates of delivery, then this requirement shall apply to each of those dates. After 5:30 AM PPT, Seller, Seller's Authorized Representative or the Facility's scheduling coordinator may contact Buyer or Buyer's Authorized Representative by telephone to provide any scheduling updates or changes and the reason for such updates or changes. Acceptable reasons for such updates shall be with respect to current conditions (other than commercial considerations), including weather and the applicable balancing authority rules.

(e) Commencing on the Initial Delivery Date, and continuing throughout the Delivery Term, Seller shall provide to Buyer the following data on a real-time basis:

(i) Read-only access to meteorological and pyranometer measurements, the parameters of which are provided in Appendix L, MW capacity based upon inverter and panel availability and any other Facility availability information;

(ii) Read-only access to energy output information collected by the SCADA system for the Facility; *provided* that if Buyer is unable to access the Facility's SCADA system, then upon written request from Buyer, Seller shall provide energy output information and meteorological measurements to Buyer in four (4)-second intervals in the form of a one (1)-hour flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back-up for each flat file submittal; and

(iii) Read-only access to all Electric Metering Devices installed, owned and operated by Seller at the Facility.

(f) During the Delivery Term, if Seller, Seller's Authorized Representative or the Facility's scheduling coordinator notifies Buyer of changes to its Day-Ahead Schedule on the actual date of delivery of Facility Energy due to current conditions, including weather or environmental conditions, an unscheduled outage or a scheduling change imposed by Buyer or a Transmission Provider that results in a change to the Facility's deliveries (whether in part or in whole), Seller or Seller's Authorized Representative shall cause the Facility's scheduling coordinator to notify Buyer immediately to provide any and all changes to the Day-Ahead

Schedule and to provide a revised schedule as soon as possible, in either electronic format, via an internet website accessible to Buyer, Buyer's Authorized Representative, Buyer's real time operators, and Buyers designated Scheduling representatives, or via email in the form of an excel spreadsheet (or any combination thereof), but in no event later than two (2) hours prior to the first updated hour.

(g) Seller shall provide forecasts and data required under this Section 7.3 in accordance with the following protocols: (1) Distributed Network Protocol ("DNP") 3.0 TCP/IP for primary communications between the Facility and Buyer, (2) DNP 3.0 Serial for backup communication between the Facility and Buyer, and (3) DNP 3.0 for communication between the Distributed Control Systems and Intelligent Electronic Devices (IEDs) (such as SEL Relays, ION Meters, and Areva Relays).

Section 7.4 Curtailments; Seller Excused Hours.

(a) Seller shall reduce deliveries of Facility Energy during Curtailment Periods immediately upon notice from Buyer or, in the case of Emergency Curtailment Periods, the Transmission Provider. If required by the Transmission Provider, Seller shall provide the capability to implement curtailments and adjust ramp rates, megawatt output, and (if applicable) megavar output in real-time by means of setpoints received from the SCADA system of Buyer or Buyer's Authorized Representative. In the case of an Optional Curtailment Period, Buyer shall comply with the operational characteristics of the Facility, as described in Appendix M.

(b) Seller shall install a meteorological station, the parameters of which are provided in Appendix L, at the Facility capable of measuring and recording representative solar data twenty-four (24) hours per day and collecting other data necessary to reasonably determine the amount of Deemed Generated Energy during each Seller Excused Hour. In no event shall Buyer be obligated to pay for any Products associated with Deemed Generated Energy, except as set forth in Section 7.4(c).

(c) During each Contract Year, Buyer shall pay Seller the Contract Price for Deemed Generated Energy to the extent (i) an aggregate of more than two thousand (2000) MWh of Deemed Generated Energy accrues during the Optional Curtailment Periods of such Contract Year, and (ii) such excess Deemed Generated Energy would not have constituted Excess Energy had Facility Energy actually been delivered. Notwithstanding the foregoing, Seller shall use commercially reasonable efforts to sell any such excess Deemed Generated Energy to third parties, and to the extent such Deemed Generated Energy is sold, (A) Buyer's obligation to pay the Contract Price under this Section 7.4(c) shall be reduced by an amount equal to the net proceeds Seller receives from such sales of Deemed Generated Energy to third parties (after subtracting any scheduling fees, wheeling charges, and other associated costs, fees, and reasonable expenses incurred in connection with such sales) and (B) any Environmental Attributes not sold with such Deemed Generated Energy shall be delivered to Buyer at no additional cost to Buyer.

Section 7.5 Title; Risk of Loss. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy prior to the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and

responsible for any damages or injury caused thereby), of all Energy at and from the Point of Delivery. Seller warrants that it will deliver all Energy and all of the associated Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to and risk of loss as to all Energy and all of the associated Products shall pass from Seller to Buyer at the Point of Delivery.

Section 7.6 RPS and EPS Compliance.

(a) Seller warrants and guarantees that, from the time it receives notice from the CEC that the Facility is CEC Certified, and at all times thereafter until the expiration or earlier termination of the Agreement, the Facility (including the Facility Energy and the associated Environmental Attributes) shall be both RPS Compliant and EPS Compliant.

(b) Notwithstanding Section 7.6(a), if (i) a Change in Law occurs that prevents Seller from causing the Facility to be CEC Certified or that causes the Facility to cease to be both RPS Compliant and EPS Compliant and Seller uses commercially reasonable efforts to comply with such Change in Law, which efforts shall include the incurrence of up to Five Million Dollars (\$5,000,000) (the "*RPS Qualification Expenditure Maximum*") in costs and expenses, including registration fees, volumetric expenses, license renewal fees, external consultant fees, and capital costs (collectively, "*Compliance Costs*") to cause the Facility to be RPS Compliant and EPS Compliant, or (ii) Buyer and Seller mutually agree, in the exercise of their reasonable discretion, that a Change in Law has occurred that causes the Facility to cease to be both RPS Compliant and EPS Compliant and it is impossible for Seller to cause the Facility to become both RPS Compliant and EPS Compliant, then in either such case, (A) Buyer shall pay Seller the SP-15 Price in lieu of the Contract Price for the respective hours in which Facility Energy was generated despite the failure of the Facility to be RPS Compliant and EPS Compliant, subject to the limitation that the average price for Facility Energy paid by Buyer in any Month shall not exceed the Contract Price, and (B) such failure shall not be a Default; *provided that*, if a Change in Law requires Seller to incur Compliance Costs in connection with Seller's obligation to cause the Facility to be RPS Compliant and EPS Compliant that, in the aggregate, exceeds the RPS Qualification Expenditure Maximum, Buyer shall elect to either reimburse Seller for such Compliance Costs in excess of the RPS Qualification Expenditure Maximum or excuse Seller from performing its obligations under this Agreement that would otherwise cause Seller to incur such excess Compliance Costs. Within sixty (60) days after Seller becomes aware of circumstances that Seller anticipates will cause it to incur Compliance Costs in excess of the RPS Qualification Expenditure Maximum, Seller shall notify Buyer of Seller's estimate of the expected excess Compliance Costs. Within sixty (60) days after the delivery of such notice, Buyer shall notify Seller either that Buyer elects to (1) reimburse Seller for Compliance Costs in excess of the RPS Qualification Expenditure Maximum, or (2) not pay Seller for such additional Compliance Costs, in which case this Agreement shall continue in full force and effect, except that (x) Seller shall not be required to fund further Compliance Costs, (y) Seller shall be fully excused from its obligations under this Agreement related to the Project being EPS Compliant and RPS Compliant, and (z) Buyer shall continue to pay Seller the SP-15 Price for Facility Energy in accordance with this Section 7.6(b).

(c) For the avoidance of doubt, (i) at any time, Seller shall be permitted to expend Compliance Costs in excess of the RPS Qualification Expenditure Maximum to comply

with a Change in Law, and (ii) during any period in which the Facility is RPS Compliant and EPS Compliant, Buyer shall pay Seller the Contract Price in accordance with this Agreement (regardless of whether there was an intervening period of non-compliance or whether the Buyer paid, or reimbursed Seller for, Compliance Costs in excess of the RPS Qualification Expenditure Maximum).

(d) From time to time and at any time requested by Buyer's Authorized Representative, Seller will furnish to Buyer, Governmental Authorities, or other Persons designated by Buyer, all certificates and other documentation reasonably requested by Buyer's Authorized Representative in order to demonstrate that the Facility, the Facility Energy, and the associated Environmental Attributes were or are RPS Compliant and EPS Compliant.

(e) Notwithstanding anything in this Agreement to the contrary, in the event that the Facility ceases to be both RPS Compliant and EPS Compliant, and Seller is obligated to receive the SP-15 Price in accordance with Section 7.6(b) in lieu of the Contract Price, if the Environmental Attributes of Energy sold to Buyer under this Agreement nonetheless have value, the Parties shall equitably adjust this Agreement by mutual agreement.

ARTICLE VIII ENVIRONMENTAL ATTRIBUTES

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

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

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

Section 8.4 Use of Accounting System to Transfer Environmental Attributes. In furtherance and not in limitation of Section 8.3, prior to Seller's first delivery of Facility Energy hereunder, Seller shall register with WREGIS (or any successor system) to evidence the transfer of any Environmental Attributes considered RECs under applicable law or any voluntary program ("*WREGIS Certificates*") associated with Facility Energy or Replacement Energy and shall arrange for a Qualified Reporting Entity ("*QRE*") in accordance with WREGIS reporting protocols and WREGIS Operating Rules. Seller shall transfer WREGIS Certificates from Seller's WREGIS account to Buyer's WREGIS accounts, as designated by Buyer's Authorized Representative. Seller shall be responsible for WREGIS Certificate issuance fees and WREGIS expenses associated with registering the Facility, maintaining its account, acquiring and arranging for a QRE and any applicable QRE agreements, and transferring WREGIS Certificates to Buyer, Buyer's Authorized Representative, or any other designees. Buyer shall be responsible for the WREGIS expenses associated with maintaining its account, or the accounts of its designees, if any, and subsequent transferring or retiring by it of WREGIS Certificates, or Seller's fees for the retirement of WREGIS Certificates on behalf of Buyer. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each Month. In the event that WREGIS is not in operation, or WREGIS does not track Seller's transfer of WREGIS Certificates to Buyer's Authorized Representative or its designees for purposes of any RECs attributed, accrued, realized, generated, produced, recognized or validated relative to the Facility Energy or Replacement Energy, if any, or Buyer chooses not to use WREGIS for any reason, Seller shall document the production and transfer of RECs under this Agreement by delivering to Buyer an attestation in substantially the form attached as Appendix D for the RECs associated with Facility Energy, or Replacement Energy, if any, measured in whole MWh, or by such other method as Buyer shall designate.

Section 8.5 Further Assurances. Pursuant to Section 8.4, if WREGIS (or any successor thereto) is not in operation, or for Environmental Attributes to which WREGIS does not apply, Seller shall document the production of Environmental Attributes other than RECs by delivering with each invoice to Buyer an attestation for the amount of such Environmental Attributes associated with Facility Energy or included with Replacement Energy, if any, for the preceding Month in the form of the attestation set forth as Appendix D. At Buyer's request, the Parties shall execute all such documents and instruments and take such other action in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer and to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement shall not be recorded, each Party shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

ARTICLE IX MAKEUP OF SHORTFALL ENERGY

Section 9.1 Makeup of Shortfall. Within thirty (30) days after the end of each Contract Year, Seller shall provide Buyer with a calculation of Facility Energy for such Contract Year. If Seller fails during any Contract Year to deliver Facility Energy in an amount equal to

the Guaranteed Generation, then Seller shall make up that shortfall of Facility Energy ("*Shortfall Energy*") in accordance with this Article IX.

Section 9.2 Replacement Energy. During the Shortfall Makeup Period, the amount of Shortfall Energy shall first be reduced by the amount of any Facility Energy or Deemed Generated Energy delivered or deemed to be delivered above the Annual Contract Quantity during the applicable Shortfall Makeup Period. To the extent there remains Shortfall Energy after the end of the applicable Shortfall Makeup Period, Seller shall, within ninety (90) days following the end of such Shortfall Makeup Period, deliver to Buyer, at the Point of Delivery (or other point as reasonably requested by Seller or as mutually agreed to in writing by the Parties) on a delivery schedule consistent with the Facility's historic percentage of on-peak and off-peak Facility Energy, or such other delivery schedule as mutually agreed to by the Parties, that quantity of Replacement Energy that is sufficient to make up the remaining Shortfall Energy in full. To the extent Seller is unable to procure sufficient Replacement Energy to make up the remaining Shortfall Energy, then Seller shall, at the end of the ninety (90)-day period, pay Buyer liquidated damages in accordance with Section 9.3. Notwithstanding the foregoing, at the end of each RPS Compliance Period during the Delivery Term, if there is any Shortfall Energy at such time, Seller shall pay Buyer liquidated damages in accordance with Section 9.3 for the amount of Shortfall Energy in the last calendar year of such RPS Compliance Period.

Section 9.3 Shortfall Liquidated Damages. If Seller is required to pay liquidated damages pursuant to Section 9.2 or Section 9.4, such liquidated damages shall be equal to an amount for each MWh of remaining Shortfall Energy equal to the positive difference, if any, obtained by subtracting (a) the Contract Price specified in Section 2 of Appendix A from (b) the Replacement Price ("*Shortfall Liquidated Damages*"). If Seller fails to pay Buyer the Shortfall Liquidated Damages prior to the end of the Shortfall Makeup Period, Buyer shall have the right, as early as the last day of such Shortfall Makeup Period, to draw the amount of Shortfall Liquidated Damages owed to Buyer from the Delivery Term Security. The Shortfall Liquidated Damages payable under this Section 9.3 shall be payable in lieu of actual damages and shall be Buyer's sole remedy, and Seller's sole liability, for Seller's failure to achieve the Guaranteed Generation and deliver Replacement Energy in the amount of the Shortfall Energy, except that the foregoing shall not limit Buyer's right to terminate this Agreement under Section 9.4 or exercise any right or remedy available under this Agreement or at law or in equity for any Default occurring concurrently with or before or after the accrual of such Shortfall Energy. The Parties acknowledge and agree that (1) the damages that Buyer would incur due to shortfalls in Facility Energy would be difficult or impossible to predict with certainty, and (2) it is impractical and difficult to assess actual damages in those circumstances and, therefore, Shortfall Liquidated Damages are a fair and reasonable calculation of such damages.

Section 9.4 Shortfall Energy Termination. If Seller fails during any two consecutive Contract Years to deliver at least sixty-two and one half percent (62.5%) of the Guaranteed Generation then Buyer, in its sole discretion, may within thirty (30) days after the end of such Contract Year, elect to either (a) collect Shortfall Liquidated Damages for the Shortfall Energy pursuant to Section 9.3 and terminate this Agreement, *provided* that such termination will be without further liability to either Party; or (b) allow Seller to cure such failure by providing Buyer with Replacement Energy or Shortfall Liquidated Damages as described in Section 9.2 and Section 9.3.

**ARTICLE X
CAPACITY RIGHTS**

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

Section 10.2 Representation Regarding Ownership of Capacity Rights. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any of the Capacity Rights to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Capacity Rights. During the Agreement Term, Seller shall not report to any Person that any of the Capacity Rights belong to any Person other than Buyer. Buyer may, at Buyer's own risk and expense, report to any Person that the Capacity Rights belong to it. Seller makes no representations, warranties or covenants to Buyer, either expressed or implied, regarding the current or future characterization or treatment of the Capacity Rights under any Requirement of Law.

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

**ARTICLE XI
BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES**

Section 11.1 Billing and Payment. Billing and payment for all Products shall be as set forth in this Article XI.

Section 11.2 Calculation of Energy Delivered; Invoices and Payment.

(a) Not later than the tenth (10th) day of each Month, commencing with the next Month following the Month in which Facility Energy is first delivered by Seller and received by Buyer under this Agreement, Seller shall deliver to Buyer a proper invoice showing the amount due to Seller for Facility Energy, Capacity Rights and Environmental Attributes. Seller shall calculate the amount of Facility Energy from meter readings at the Electric Metering Devices maintained pursuant to Section 11.6, adjusting for any applicable station load, transformation losses and transmission losses to the Point of Delivery in accordance with a methodology agreed to by Buyer. Each invoice shall show the title of the Agreement and, if applicable, the Agreement number, the name, address and identifying information of Seller and the identification of material, equipment or services covered by the invoices, and shall be sent to the address set forth in Appendix J or such other address as Buyer may provide to Seller. Seller shall separately provide in such invoice Seller's computation of any allocation for Replacement

Energy delivered by Seller and taken by Buyer under this Agreement during the preceding Month, any Deemed Generated Energy calculated during the preceding Month (including any supporting documentation associated therewith) and any other amounts due to Seller, including amounts due under Section 6.3 or Section 7.4. Seller shall also separately designate in such invoice the generation of Excess Energy, if any. Seller shall also provide Buyer with a summary of the calculations pursuant to Section 6.2, and in the case of Replacement Energy, the amount in MWh actually supplied by Seller pursuant to Section 9.2.

(b) Subject to Section 11.2(c) and Section 11.3, not later than the thirtieth (30th) day after receipt by Buyer of Seller's Monthly invoice (or the next succeeding Business Day, if the thirtieth (30th) day is not a Business Day), Buyer shall pay to Seller, by wire transfer of immediately available funds to an account specified by Seller or by any other means agreed to by the Parties from time to time, the amount set forth as due in such Monthly invoice.

(c) With respect to Deemed Generated Energy, within thirty (30) days after receipt of an invoice from Seller, Buyer shall notify Seller if Buyer believes that it has insufficient information to verify the amount of Deemed Generated Energy calculated by Seller in the invoice, or if Buyer requires additional time to verify such information. Within thirty (30) days after receipt by Buyer of additional information regarding such Deemed Generated Energy calculation, or on the date mutually agreed to by the Parties pursuant to Buyer's request for additional time to verify the information provided by Seller, Buyer shall notify Seller of any discrepancies with respect to its calculation of the Deemed Generated Energy, in which event such invoice may be subject to the provisions of Section 11.3. The failure of Buyer to respond to Seller's calculation of Deemed Generated Energy, if any, within thirty (30) days of receipt of an invoice shall be deemed approval of such calculation by Buyer.

(d) Seller shall, in subsequent invoices, adjust previously invoiced amounts to reflect (i) adjustments pursuant to Section 11.3, or (ii) adjustments, reconciliations or final settlements with WREGIS occurring after the date of the initial invoice, or any other adjustments agreed to by the Parties (which shall be without interest of any kind), *provided* that Buyer shall not be required to make invoice payments if the invoice is received more than one (1) year after the billing period.

Section 11.3 Disputed Invoices. If any portion of any invoice is in dispute, the undisputed amount, as applicable, shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the dispute, setting forth the details of such dispute in reasonable specificity. If necessary, Disputes may be discussed directly by the Parties' Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve such Disputes, and any failure to agree shall be subject to resolution in accordance with Section 14.3. Upon resolution of any Dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 11.3, "*Interest Rate*" shall mean the lesser of (i) two percent (2%) above the per annum Prime Rate reported daily in *The Wall Street Journal*, or (ii) the maximum rate permitted by applicable Requirements of Law.

Section 11.4 Buyer's Right of Setoff. In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, Buyer shall have the right at any time or from time to time without notice to Seller or to any other Person, any such notice being hereby expressly waived, to set off against any amount due Seller from Buyer under this Agreement or otherwise any amount due Buyer from Seller under this Agreement or otherwise, including any amounts due because of breach of this Agreement or any other obligation and any costs payable by Seller under Section 7.2 if and to the extent paid in the first instance by Buyer.

Section 11.5 Records and Audits. Seller shall maintain, and the Authorized Auditors shall have access to, all records and data pertaining to the performance and management of this Agreement (including compliance with the Requirements) and related subcontracts, and as necessary to properly reflect all costs claimed to have been incurred hereunder and thereunder, including (a) in their original form, all (i) documents provided to Seller in the ordinary course of business for the Facility, (ii) documents for billing, costs, metering, and Environmental Attributes, (iii) books, records, documents, reports, deliverables, employee time sheets, accounting procedures and practices, and (iv) records of financial transactions, and (b) other evidence, regardless of form (for example, machine readable media such as disk or tape, etc.) or type (for example, databases, applications software, database management software, or utilities). If Seller is required to submit cost or pricing data in connection with this Agreement, Seller shall maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. In the event of a Dispute, records that relate to the Agreement, Dispute, litigation or costs, or items to which an audit exception has been taken, shall be maintained by Seller. Buyer and the Authorized Auditors may discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested. All such records shall be retained, and shall be subject to examination and audit by the Authorized Auditors, for a period of not less than four (4) years following final payment made by Buyer hereunder, the expiration or termination date of this Agreement, or final settlement of all disputes, claims, or litigation, whichever is later. Seller shall make said records or, to the extent accepted by the Authorized Auditors, photographs, micro-photographs, or other authentic reproductions thereof, available to the Authorized Auditors at Seller's principal business office or any other of Seller's offices as mutually agreed upon by Buyer and Seller, at all reasonable times and without charge. The Authorized Auditors may reproduce, photocopy, download, transcribe, and the like any such records. Any information provided by Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. Seller shall not, however, be required to furnish the Authorized Auditors with commonly available software. Seller shall be subject at any time with fourteen (14) days prior notice to audits or examinations by Authorized Auditors, relating to all billings and required to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation, and documentation. Examinations and audits shall be performed using generally accepted auditing practices and principles and applicable Governmental Authority audit standards. If Seller utilizes or is subject to Federal Acquisition Regulation, Part 30 and 31, et seq. accounting procedures, or a portion thereof, examinations and audits shall utilize such information. To the extent that an Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective. Consistent with standard auditing procedures, Seller shall be provided fifteen (15) days to review an

Authorized Auditor's examination results or audit and respond to Buyer prior to the examination's or audit's finalization and public release. If an Authorized Auditor's examination or audit indicates Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by Seller to Buyer within fifteen (15) days of notice to Seller of the identified overpayment. If an Authorized Auditor's examination or audit reveals that Buyer's overpayment to Seller is more than five percent (5.0%) of the billings reviewed, Seller shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit, which examination or audit expenses and costs shall be paid by Seller to Buyer within fifteen (15) days of notice to Seller. Seller shall contractually require all Subcontractors performing services under this Agreement to comply with the provisions of this Section 11.5 by inserting this Section 11.5 into each Subcontract. In addition, Seller and its Subcontractors shall also include the following language in such Subcontract: "The City of Los Angeles acting by and through the Department of Water and Power is a third party beneficiary of the foregoing audit provision. The benefits of the audit provision shall inure solely for the benefit of the City of Los Angeles acting by and through the Department of Water and Power. The designation of the City of Los Angeles acting by and through the Department of Water and Power as a third party beneficiary of the audit provision shall not confer any rights or privileges on [Seller], [Subcontractor] or any other person/entity."

Section 11.6 Electric Metering Devices.

(a) The Facility Energy made available to Buyer or Buyer's Authorized Representative by Seller under this Agreement shall be measured using Electric Metering Devices installed, owned and maintained by Seller or its Authorized Representative at the Facility. All Electric Metering Devices used to provide data for the computation of payments shall be sealed and Seller shall only break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Section 11.6. Seller or its Authorized Representative shall specify the number, type, and location of such Electric Metering Devices.

(b) Seller, at no expense to Buyer, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections and tests. Upon request by Buyer, Seller or its Authorized Representative shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of Buyer to inspect or witness the testing of any Electric Metering Device. The actual expense of any such requested additional inspection or testing shall be borne by Seller, except that if a test performed by Seller at Buyer's request demonstrates that an Electric Metering Device is registering accurately or within the margin of error provided in Section 11.6(c), Buyer shall reimburse Seller for the cost of such test. Seller shall provide copies of any inspection or testing reports to Buyer. Any representative of Buyer witnessing or verifying a test under this Section 11.6(b) shall (i) not interfere with Seller's performance of such test, and (ii) comply with any site-specific rules or regulations.

(c) If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than plus or minus three tenths of one percent (+/- 0.3%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device for both the amount of the

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

Section 11.7 Power Revenue Fund. Any amounts payable by Buyer under this Agreement shall be payable solely from the Power Revenue Fund. No other fund or account held by or on behalf of Buyer (or any department or division thereof) may be used to satisfy any such obligations.

Section 11.8 Taxes. Seller shall pay or cause to be paid all Taxes on or with respect to the Products or the transaction arising before or at the Point of Delivery. Buyer shall pay or cause to be paid all Taxes on or with respect to the Products or the transaction from (but excluding) the Point of Delivery. If Seller is required by a Requirement of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by Requirement of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller hereunder; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a party to pay or be liable to pay any Taxes for which it is exempt under law. A Party that is exempt at any time and for any reason from one or more Taxes shall bear the risk that such exemption shall be lost or the benefit of such execution be reduced.

ARTICLE XII REPRESENTATIONS, WARRANTIES AND COVENANTS

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

(a) Buyer is a validly existing California charter city and has the legal power and authority to own its properties, to carry on its business as now being conducted, to enter into this Agreement, and to carry out the transactions contemplated hereby and thereby, and to 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 Buyer of this Agreement (i) have been duly authorized by all necessary action and do not require any consent or approval of Buyer's Board of Commissioners or the Los Angeles City Council, other than that which has been obtained; *provided* that further authorizations from Buyer's Board of Commissioners and the Los Angeles City Council, if applicable, will be required for Buyer to exercise the Project Purchase Option and Buyer's option under the Land Option Agreement, and (ii) do not violate any federal, state, and local law, including the California Government Code and similar laws, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the ability of Buyer to perform any of its obligations under this Agreement.

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

(d) Buyer is not in violation of any federal, state, or local law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the ability of Buyer to perform any of its obligations under this Agreement.

Section 12.2 Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer as of the Effective Date and, with respect to the representations and warranties listed in Section 12.5, as of each date on which a Quarterly Certificate is delivered:

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

(b) Each Seller Party has taken all corporate or limited liability company action required to authorize the execution, delivery, and performance of this Agreement and all Ancillary Documents requiring execution by such Seller Party, and such Seller Party has delivered to Buyer (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of such Seller Party as being true, correct, and complete, and (ii) an incumbency certificate signed by the secretary of such Seller Party certifying as to the names and signatures of the authorized representatives of such Seller Party;

(c) The execution, delivery and performance by each Seller Party of this Agreement and any Ancillary Documents to which it is a party have been duly authorized by all

necessary organizational action, and do not and will not require any consent or approval other than those which have already been obtained.

(d) The execution and delivery of this Agreement and all Ancillary Documents to which any Seller Party is a party, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and any Ancillary Documents to which any Seller Party is a party, do not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which any Seller Party is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of any Seller Party (except as contemplated hereby), and each Seller Party has obtained all Permits (including the CEQA Determinations) required for the construction, operation, and maintenance of the Facility in accordance with the Requirements and the performance of such Seller Party's obligations hereunder and under the Ancillary Documents to which such Seller Party is a party, or such Permits are reasonably expected to be timely obtained in the ordinary course of business.

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

(f) (i) There is no pending action or proceeding against any Seller Party before any Governmental Authority, and to the Knowledge of Seller, no action or proceeding before any Governmental Authority has been overtly threatened in writing against any Seller Party that, in either case, questions the legality, validity or enforceability of this Agreement or any Ancillary Document, other than a Site Control Document, to which it is a party; and (ii) to the Knowledge of Seller, no action or proceeding before any Governmental Authority has been overtly threatened in writing against any Seller Party that questions the legality, validity, or enforceability of any Site Control Document, except as, individually or in the aggregate, could not reasonably be expected to result in a material adverse effect on the ability of such Seller Party to perform any of its obligations under this Agreement or any Ancillary Document (other than any Site Control Document) to which it is a party.

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

(h) (i) The corporate organizational structure, capital structure and ownership of Seller and RE Holdings is as set forth on Schedule 12.2(h), (ii) Seller is a Special Purpose Entity, (iii) all of the membership interests in Seller are directly owned and controlled by RE

Holdings, and (iv) all of the membership interests in RE Holdings are directly owned and controlled by Recurrent Energy. The limited liability company interests in each of Seller and RE Holdings have been duly issued under and authorized by their respective limited liability company agreements and in accordance with applicable Requirements of Law.

(i) The Seller Parties have (i) not entered into this Agreement or any Ancillary Document to which they are a party with the actual intent to hinder, delay or defraud any creditor, and (ii) received reasonably equivalent value in exchange for its obligations under this Agreement and any Ancillary Document to which they are a party. No petition in bankruptcy has been filed against any Seller Party, and no Seller Party nor any of their respective constituent Persons have ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(j) [Reserved.]

(k) Tax returns and reports of each Seller Party required to be filed by it have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all assessments, fees and other governmental charges upon each Seller Party and upon its properties, assets, income, business and franchises that are due and payable have been paid when due and payable. Seller knows of no proposed Tax assessment against it that is not being actively contested by it in good faith and by appropriate proceeding.

(l) Seller owns or possesses, or reasonably expects to obtain in the ordinary course of business, all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by Seller of its obligations under this Agreement, and Seller's use thereof does not infringe on the intellectual property rights of third parties.

(m) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of the Products except to Buyer.

(n) Seller has obtained the CEQA Determinations and is in compliance with any mitigation plans, monitoring programs or other requirements associated therewith, and the applicable period for any legal challenges to any action by either the lead agency or any responsible agency under CEQA has expired without any such challenge having been filed, or in the event of any such challenge, the challenge has been determined adversely to the challenger by final judgment or settlement.

Section 12.3 Covenants of Seller Related to Site Control Documents.

(a) Seller shall deliver evidence of LandCo LLC's purchase of the real property under the Facility Site Option, promptly upon the purchase thereof, but in no event later than the Site Control Milestone Date.

(b) Seller shall, no later than the applicable Milestone Date set forth therefor in Appendix I, (i) execute and deliver to Buyer the Security Documents and have properly perfected the interests granted therein and (ii) deliver to Buyer the Security Documents Legal Opinion.

(c) A copy of the Land Lease duly executed by Seller and LandCo LLC shall be delivered to Buyer promptly upon execution thereof, but in no event any later than the Site Control Milestone Date.

(d) Seller shall use commercially reasonable efforts to cause each easement granted by the BLM to include provisions providing (i) that Buyer is a third party beneficiary of the representations, warranties, and covenants of the BLM under the Site Control Document, and that Buyer has all of the rights and benefits of Seller under, and the ability to enforce, the Site Control Document, (ii) consent to Seller's grant of the Project Purchase Option and assignment of the Site Control Document to Buyer following the exercise of the Project Purchase Option, (iii) a right for Buyer to step in and cure any breach or default by Seller under the Site Control Document prior to termination thereof, and (iv) an obligation of the BLM to deliver to Buyer upon Buyer's request an estoppel certificate certifying (A) whether the Site Control Document has been supplemented, amended, assigned, or subleased, and if so, the substance and manner thereof, (B) the validity and force and effect of the Site Control Document, (C) the existence of any default thereunder, (D) the commencement and expiration dates of the Site Control Document, (E) the rights of Buyer under the Project Purchase Option and the Site Control Document, and (F) any other matters as may be reasonably requested by Buyer.

(e) Upon any payment by Buyer to cure any default of Seller under a Site Control Document that prevents termination of such Site Control Document or the exercise of any other remedy of the Lessor thereunder arising out of such default, Seller, within ten (10) days following receipt of notice from Buyer that it made such payment, shall reimburse the amount of such payment to Buyer plus interest accruing thereon at the Interest Rate, from and including the date of the payment by Buyer to cure such default to but excluding the date of such reimbursement by Seller.

(f) Seller shall provide to Buyer copies of any proposed amendments or modifications to Site Control Documents and obtain Buyer's approval (which approval shall not be unreasonably withheld, conditioned, or delayed) prior to execution and delivery of any such amendments or modifications by Seller.

(g) Seller shall (i) cause the execution, delivery, and performance by Seller of the Site Control Documents to be duly authorized by all necessary action by Seller and to constitute the legal, valid, and binding obligation of Seller, (ii) maintain Site Control at all times after the Site Control Milestone Date, and (iii) provide Buyer with prompt notice of any change in the status of Seller's Site Control.

(h) Seller shall at all times keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by or on behalf of Seller from time to time pursuant to the Site Control Documents, and Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, could impair or tend to impair the rights of Seller under the Site Control Documents, or could be grounds for any Lessor to terminate a Site Control Document.

(i) Seller shall use commercially reasonable efforts to enforce the provisions of the Site Control Documents short of termination thereof such that Seller may enjoy all of the rights granted to Seller thereunder.

(j) Seller shall give Buyer immediate notice of (i) any default or of any event which, with the giving of notice or passage of time, or both, would become a default under any of the Site Control Documents, or of the receipt by Seller of any notice from any Lessor thereof, or (ii) the commencement or threat of any action or proceeding or arbitration pertaining to any Site Control Document. Buyer or Buyer's Authorized Representative, at its option, may take any action (but shall not be obligated to take any action) from time to time deemed necessary or desirable by Buyer to prevent or cure, in whole or in part, any default by Seller under a Site Control Document. Seller shall deliver to Buyer, immediately upon service or delivery thereof on, to or by Seller, a copy of each petition, summons, complaint, notice of motion, order to show cause and other pleading or paper, however designated, which shall be served or delivered in connection with any such action, proceeding or arbitration.

(k) As long as this Agreement is in effect, there shall be no merger of any Site Control Document or of the leasehold estate or easement created thereby with the fee estate in the property subject to the Site Control Document and Seller shall not acquire any interest in such fee estate without the prior consent of Buyer.

(l) After Seller's execution and delivery of a Site Control Document, Seller shall not terminate, cancel, sever or surrender, or permit or suffer the subordination, termination, cancellation, severance or surrender of, or modify, change, amend or assign the Site Control Document in a way that could, individually or in the aggregate, have a material adverse effect on Buyer (including Buyer's ability to exercise the Project Purchase Option and take possession of the Facility, generate Energy at the Facility, and transmit Energy from the Facility to the Point of Delivery in substantially the same manner as Seller during the Agreement Term), the Facility, or Seller's performance of its obligations under this Agreement, without the prior consent of Buyer's Authorized Representative.

(m) In the event that a petition under the Bankruptcy Code shall be filed by or against Seller, Seller hereby presently, absolutely, irrevocably, and unconditionally grants and assigns to Buyer the sole and exclusive right to elect to assume and assign or to reject the Land Lease pursuant to Section 365 of the Bankruptcy Code, and Seller agrees that any such election, if made by Seller or Seller's trustee without the prior consent of Buyer shall be void at inception and of no force or effect. Buyer shall have the right, but not the obligation, to instruct Seller or Seller's trustee as to such assumption and assignment or rejection of the Land Lease, and Seller shall, or shall cause Seller's trustee to, comply with such instructions.

(n) In the event of the rejection by the Lessor (or by any receiver, trustee, custodian, or other party that succeeds to the rights of the Lessor) under the Land Lease pursuant to the Bankruptcy Code, Seller hereby presently, absolutely, irrevocably, and unconditionally grants and assigns to Buyer the right to make any election available to lessees under the Bankruptcy Code (including, without limitation, the election available pursuant to Section 365(h)(1)(A)(i) or (ii) of the Bankruptcy Code, 11 U.S.C. § 365(h) and any successor provision); *provided, however*, Seller shall have the right for a period of thirty (30) days following the

Lessor's rejection of the Land Lease in which to elect treatment under Section 365(h)(1)(A)(ii) to retain its rights under the Land Lease. Without limiting the generality of the foregoing sentence, Seller shall not, without Buyer's prior consent, elect to treat the Land Lease or the leasehold estate created thereby as terminated under Section 365(h)(1)(A)(i) of the Bankruptcy Code, after rejection of the Land Lease by the Lessor (whether as debtor in possession or otherwise) or by any trustee of the Lessor, and any such election made without such consent shall be void at inception and of no force or effect. At the request of Buyer, Seller will join in any election made by Buyer under the Bankruptcy Code and will take no action in contravention of the rights granted to Buyer pursuant to this Section 12.3.

(o) In the event there is a rejection by the Lessor under the Land Lease (whether as debtor in possession or otherwise) or by any trustee of such Lessor pursuant to the Bankruptcy Code, Seller shall remain in possession under any legal right Seller may have to occupy the property pursuant to the Land Lease, perform all acts necessary for Seller to retain its right to remain in such possession, whether such acts are required under the then existing terms and provisions of the Land Lease or otherwise.

(p) Seller shall cause a memorandum of each Site Control Document to be recorded in the applicable county for such Site Control Document promptly upon execution and delivery thereof.

Section 12.4 Additional Covenants of Seller.

(a) In the event of a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller or an event of default by Seller or the operator under the O&M Agreement, Seller shall promptly thereafter notify Buyer, and Seller shall, within thirty (30) days after providing such notice, provide to Buyer a plan or report, including a report (at Seller's sole cost and expense) of a Licensed Professional Engineer with respect to an operational problem related to the Facility if reasonably requested by Buyer, that will demonstrate in detail or explanation reasonably acceptable to Buyer that such material adverse effect or event of default by Seller or the operator under the O&M Agreement has been mitigated or cured, or will be mitigated or cured within a reasonable period or within the cure periods provided therefor (and listing, in detail, the actions that Seller has taken, is taking, or proposes to take with respect to such condition or event), or that such material adverse effect or event of default by Seller or the operator under the O&M Agreement will not have a material adverse effect on the performance of Seller under this Agreement. A failure to provide such plan or report within thirty (30) days, or to diligently undertake any of the obligations set forth under such plan or report, including the cure of such material adverse effect or default, will be deemed a failure by Seller to perform an obligation under Section 13.1(b).

(b) Seller shall timely obtain all Permits required for the construction of the Facility, the performance of such Seller Party's obligations hereunder and under the Ancillary Documents to which such Seller Party is a party, and the operation of the Facility in accordance with the Requirements.

(c) Seller shall timely obtain all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by Seller of its obligations under this Agreement.

(d) Seller shall not permit Facility Debt in an amount that, in the aggregate, exceeds seventy percent (70%) of the Facility Cost. On January 1, April 1, July 1, and October 1 of each year commencing on the Effective Date, Seller shall provide to Buyer a certificate of an officer, director or member of Seller attesting to the Facility Debt as being equal to or less than seventy percent (70%) of the Facility Cost as of such date, which certificate shall be accompanied by supporting documentation in reasonable detail, including Seller's most recent annual and quarterly financial statements and a statement of the Facility's then-current Facility Debt and Facility Cost values.

(e) Seller shall at all times comply with the requirements of, and qualify as, a Special Purpose Entity.

Section 12.5 Covenants of Seller to Provide Quarterly Attestations. Seller shall provide to Buyer on January 1, April 1, July 1 and October 1 of each Contract Year, a certificate of an authorized officer of Seller (each, a "*Quarterly Certificate*") certifying that (a) the representations and warranties set forth in Section 12.2(a), Section 12.2(b), Section 12.2(c), Section 12.2(d), Section 12.2(e), Section 12.2(f), Section 12.2(g), Section 12.2(h), Section 12.2(k), Section 12.2(m), and Section 12.2(n) in this Agreement remain true and correct as of the date of such Quarterly Certificate, (b) Seller continues to adhere to the policies set forth in Section 14.26, and (c) there exists no Default by Seller or any event that, after notice or with the passage of time or both, would constitute a Default; *provided*, that with respect to any attestation with respect to the representation and warranty set forth in Section 12.2(h), Seller may update such attestation and Schedule 12.2(h) in order to account for any mergers, transfers, consolidations, assignments, restructurings, or similar transactions that either (A) do not constitute a Change in Control or (B) have been consented to by Buyer in accordance with the terms of this Agreement.

ARTICLE XIII DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

Section 13.1 Default. Each of the following events or circumstances shall constitute a "*Default*" by the responsible Party (or in the case of a default by LandCo LLC as responsible party, a Default by Seller) (the "*Defaulting Party*"):

(a) **Payment Default.** Failure by a Party to make any payment under this Agreement when and as due (other than payments disputed in good faith) that is not cured within thirty (30) days after receipt of notice thereof from the other Party (which amount shall include payment of interest from the due date at the Interest Rate);

(b) **Performance Default.** Failure by a Party to perform any of its duties or obligations under this Agreement (other than any failure for which a sole remedy is provided in this Agreement and any failure which is separately listed as a Default of Seller under this Section 13.1) that is not cured within thirty (30) days after receipt of notice thereof from the other Party;

provided that if such failure cannot be cured within such thirty (30) day period despite commercially reasonable efforts and such failure is not a failure to make a payment when due, such Party shall have an additional sixty (60) days for a total cure period of ninety (90) days.

(c) **Breach of Representation and Warranty.** Any representation, warranty, certification, or other statement made by a Party or Seller Party in this Agreement or any Ancillary Document is materially false or inaccurate at the time made; *provided* that no Default shall exist if such falsity or inaccuracy is remedied within thirty (30) days after receipt of notice thereof from the other Party in the case of (a) any falsity or inaccuracy in any of the representations or warranties provided in a Quarterly Certificate delivered by Seller pursuant to Section 12.5, or (b) any of Buyer's representations or warranties.

(d) **Bankruptcy.** Any Bankruptcy of Buyer, Seller or LandCo LLC, provided, that, with respect to a Bankruptcy of LandCo LLC, only so long as LandCo LLC is an Affiliate of Seller.

(e) **Performance Security Failure.** (i) The failure of Seller to furnish the Performance Security by the times set forth in Section 5.7, or the failure of Seller to maintain or replace the Performance Security in compliance with Section 5.7, (ii) the failure of any of the Performance Security to be in full force and effect in accordance with Section 5.7 or (iii) any Person contests the validity or enforceability of the Performance Security or the letter of credit provider denies that it has any liability in respect of any Performance Security and such Performance Security is not replaced in compliance with Section 5.7.

(f) **Insurance Default.** The failure of Seller to maintain and provide acceptable evidence of the required Insurance for the required period of coverage as set forth in Appendix F that is not cured within three Business Days after receipt of notice of such failure from Buyer.

(g) **Fundamental Change.** Except as permitted by Section 14.7, which requires prior consent, (i) a Party makes an assignment of its rights or delegation of its obligations under this Agreement or the Option Agreement, or (ii) a Change in Control occurs (whether voluntary or by operation of law).

(h) **Site Control Document Default.** (i) Seller breaches any of its obligations under Section 12.3, and such breach is not cured within ten (10) days after receipt of notice thereof from Buyer, except that such cure period shall not apply to a breach of Seller's obligations under Section 12.3(g), or (ii) for so long as LandCo LLC is an Affiliate of Seller, LandCo LLC breaches its obligations under the Land Option Agreement and such breach is not cured within the time period set forth in the Land Option Agreement.

(i) **Security Interest Default.** From and after the effective date of the Security Documents, (i) Seller or, so long as LandCo LLC is an Affiliate of Seller, LandCo LLC, breaches any of its obligations under the Security Documents to which it is a party, (ii) any of the Security Documents fails to be in full force and effect, (iii) Buyer ceases to have a valid and perfected Lien in the collateral purported to be covered by any of the Security Documents, or (iv) Seller, or so long as LandCo LLC is an Affiliate of Seller, LandCo LLC, or any other Person

contests the validity or enforceability of any of the Security Documents or any provision thereof in writing or denies that it has any further liability thereunder.

Section 13.2 Default Remedy.

(a) 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 nothing in this Section 13.2(a) shall affect Seller's rights and remedies set forth in this Section 13.2. Seller's continued service to Buyer shall not act to relieve Buyer of any of its duties or obligations under this Agreement.

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

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Buyer is the Defaulting Party, Seller may without further notice exercise any rights and remedies provided herein or otherwise available at law or in equity, including termination of this Agreement pursuant to Section 13.4. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Performance Security against any amounts then payable by Seller to Buyer under this Agreement, (ii) termination of this Agreement pursuant to Section 13.4, (iii) the exercise of its rights under the Security Documents, and (iv) exercise of the Project Purchase Option as provided in the Option Agreement. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

Section 13.3 Cure Rights of Facility Lender. In connection with any financing or refinancing of the Facility, Buyer shall provide such consents to assignment (in form and substance satisfactory to Buyer and the Los Angeles City Attorney), as may be reasonably requested by Seller or any Facility Lender in connection with the financing of the Facility, including the acquisition of equity for the development, construction, and operation of the Facility, which consent may include provisions permitting reasonable extensions of the cure periods for Defaults hereunder to permit the Facility Lender to cure any Default prior to Buyer's termination (such consent, the "*Facility Lender Consent*"); *provided, however*, that (a) the terms of such financing and the documentation relating thereto shall comply with the applicable terms and conditions of this Agreement, (b) any additional cure period provided to the Facility Lender shall not exceed (i) five (5) Business Days in the event of a monetary default or (ii) forty-five

(45) days in the event of a non-monetary default (or in the case of clause (ii), ninety (90) days in the aggregate if possession of the Facility is necessary to effectuate a cure), and (c) Seller shall cause the Facility Lender to grant Buyer the ability to cure any default by Seller under the financing documents with the Facility Lender and, in exchange for any additional cure Facility Lender cure period, be provided an additional cure period of up to five (5) Business Days in the event of a monetary default and forty-five (45) days in the event of a non-monetary default. If, at any time, and from time to time, Buyer exercises its right to cure a Seller default under such financing documents, Buyer shall be entitled to recover all of its costs and expenses associated with such cure by drawing on the Performance Security or requiring reimbursement by Seller. The Facility Lender Consent shall provide the Facility Lender or its agent notice of the occurrence of any Default described in Section 13.1 and the opportunity to cure any such default.

Section 13.4 Termination for Default.

(a) If a Default occurs, the Party that is not the Defaulting Party (the "*Non-Defaulting Party*") may, for so long as the Default is continuing and, to the extent permitted by applicable law, without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice by it ("*Termination Notice*") to the Defaulting Party (i) establish a date (which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such notice) ("*Early Termination Date*") on which this Agreement shall terminate, and (ii) withhold any payments due in respect of this Agreement; *provided*, upon the occurrence of any Default of the type described in Section 13.1(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) If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate in a commercially reasonable manner its Gains, Losses and Costs resulting from the termination of this Agreement and the resulting Termination Payment. The Gains, Losses and Costs relating to the Products that would have been required to be delivered under this Agreement had it not been terminated shall be determined by comparing the amounts Buyer would have paid therefor under this Agreement to the equivalent quantities and relevant market prices either quoted by a bona fide third party offer or which are reasonably expected by Buyer to be available in the market under a replacement contract for this Agreement covering the same products and having a term equal to the Remaining Term at the date of the Termination Notice adjusted to account for differences in transmission, if any. The Non-Defaulting Party shall not be required to enter into any such replacement agreement in order to determine its Gains, Losses and Costs or the Termination Payment. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from dealers in Energy contracts and bona fide third party offers.

(c) For purposes of the Non-Defaulting Party's determination of its Gains, Losses and Costs and the Termination Payment, it shall be assumed, regardless of the facts, that Seller would have sold, and Buyer would have purchased, each day during the Remaining Term (i) Facility Energy in an amount equal to the Assumed Daily Deliveries, (ii) the Environmental Attributes associated therewith, and (iii) all other components of the Products. The "*Assumed Daily Deliveries*" is an amount equal to the greater of (A) the quotient of the Guaranteed

Generation divided by 365, and (B) the average daily amount of Facility Energy during the Delivery Term, if any.

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

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to the dispute resolution process provided in Section 14.3. Following resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment (if any) determined by such resolution as and when required, but no later than thirty (30) days following the date of such resolution, together with all interest, at the Interest Rate, that accrued from the Early Termination Date until the date the Termination Payment is paid.

(f) For purposes of this Agreement:

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

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

(iii) "*Costs*" means, with respect to a Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or in entering into new arrangements which replace this Agreement, excluding attorneys' fees, if any, incurred in connection with enforcing its rights under this Agreement. Each Party shall use reasonable efforts to mitigate or eliminate its Costs.

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

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

(g) At the time for payment of any amount due under this Section 13.4, each Party shall pay to the other Party all additional amounts, if any, payable by it under this Agreement (including any amounts withheld pursuant to Section 13.4(a)(ii) above).

ARTICLE XIV
MISCELLANEOUS

Section 14.1 Authorized Representative. Each Party shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an "*Authorized Representative*"), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternates if designated, and such 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.

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

Section 14.3 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 14.3) (a "*Dispute*"), either Party (the "*Notifying Party*") may deliver to the other Party (the "*Recipient Party*") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "*Dispute Notice*"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

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

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Section 14.3(a) and (b) by the expiration of the thirty (30) day period set forth in Section

14.3(a), then either Party may pursue any legal remedy available to it in accordance with the provisions of Section 14.12 and Section 14.13 of this Agreement.

(d) In addition to the Dispute Resolution process set forth in this Section, the Parties shall comply with California law governing claims against public entities and presentment of such claims.

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

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

Section 14.6 Force Majeure.

(a) A Party shall not be considered to be in default in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate, *provided* the Party has given a written detailed description of the full particulars of the Force Majeure to the other Party promptly after becoming aware thereof (and in any event within fourteen (14) days after the initial occurrence of the claimed Force Majeure event) (the "*Force Majeure Notice*"), which notice shall include information with respect to the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay. The Party providing such Force Majeure 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, Facility Energy due to a Force Majeure, then Buyer shall have no obligation to pay Seller for Facility Energy not delivered or received by reason thereof. The foregoing provisions shall not excuse any obligation of Seller with respect to Shortfall Energy (and Replacement Energy, as applicable) arising prior to the occurrence of any Force Majeure event. In no event shall either Party be obligated to compensate the other Party or any other Person for any losses, expenses or liabilities sustained as a consequence of any Force Majeure.

(b) The term "*Force Majeure*" means any act of God (including fire, flood, earthquake, storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor disturbance, strike or lockout, act of the public enemy, war (declared or undeclared), insurrection, riot, explosion, terrorist activities or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the date of this Agreement, (iii) is not within the reasonable control of, or the

result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; *provided*, nothing in clause (iv) above shall be construed so as to require either Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each an "*Unexcused Cause*"): (1) any requirement to meet an RPS Law or any change (whether voluntary or mandatory) in any RPS Law, or other Change in Law, that may affect the value of the Products; (2) events arising from the failure by Seller to construct, operate or maintain the Facility in accordance with this Agreement; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller's ability to sell any Facility Energy at a price in excess of those provided in this Agreement; (6) curtailment or other interruption of any Transmission Service; (7) failure of third parties to provide goods or services essential to a Party's performance; (8) Facility or equipment failure of any kind; or (9) any changes in the financial condition of Buyer, Seller, the Facility Lender or any subcontractor or supplier affecting the affected Party's ability to perform its obligations under this Agreement.

(c) Buyer may terminate this Agreement if (i) a Force Majeure event occurs that diminishes the production of the Facility by more than fifty percent (50%) of the Contract Capacity for a period of eighteen (18) consecutive months, or (ii) the Facility is rendered inoperable and an independent engineer that is mutually acceptable to both Parties determines that the Facility cannot be repaired or replaced within a period not to exceed twenty four (24) months following the date of the occurrence of the Force Majeure event.

(d) Any termination of this Agreement under Section 14.6(c) shall be "no-fault" and neither Party shall have any liability or obligation to the other Party arising out of such termination. Notwithstanding the foregoing, upon any such termination, Seller shall pay Buyer for any and all amounts hereunder that may be owing, including for any existing GEP Shortfall or other outstanding payments due in the ordinary course that occurred prior to the termination. Buyer shall return to Seller the Performance Security (less any amounts drawn by Buyer in accordance with this Agreement). The exercise by Buyer of its right to terminate the Agreement shall not render Buyer liable for any losses or damages incurred by Seller whatsoever.

Section 14.7 Assignment of Agreement; Change in Control.

(a) Except as set forth in this Section 14.7, neither Party may assign any of its rights, or delegate any of its obligations, under this Agreement or the Option Agreement without the prior consent of the other Party, such consent not to be unreasonably withheld. Any Change in Control (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior consent of Buyer, which consent shall not be unreasonably withheld.

Concurrently with any reorganization, financing transaction, or other transactions constituting any Change in Control (whether voluntary or by operation of law), the successor entity to Seller (if any) shall execute a written assumption agreement in favor of Buyer pursuant to which any such successor entity shall assume all of the obligations of Seller under this Agreement and the Option Agreement and agree to be bound by all the terms and conditions of this Agreement and the Option Agreement, as applicable. Seller shall (i) provide Buyer with ninety (90) days' prior notice of any proposed voluntary transaction which could constitute a Change in Control and (ii) provide notice to Buyer of (x) any transaction or series of transactions with respect to the sale, transfer or disposition of RE Holdings or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or the power to control the management and policies of RE Holdings and (y) any Bankruptcy of RE Holdings. The General Manager of Buyer is authorized to grant the consents contemplated by this Section 14.7 on behalf of Buyer.

(b) Buyer may assign this Agreement, the Option Agreement, and the Land Option Agreement without the consent of Seller to a third party, so long as such third party is rated (i) "A3" or higher by Moody's and "A-" or higher by S&P, if such third party is rated by both Moody's and S&P or equivalent ratings by any other credit rating agency of recognized national standing, or (ii) "A3" or higher by Moody's or "A-" or higher by S&P if such third party is rated by either S&P or Moody's or equivalent ratings by any other credit rating agency of recognized national standing; *provided*, that in connection with any such assignment any such assignee shall execute a written assumption agreement in favor of Seller pursuant to which any such assignee shall assume all the obligations of Buyer under this Agreement, the Option Agreement, and the Land Option Agreement as applicable, and agree to be bound by all the terms and conditions of this Agreement, the Option Agreement and the Land Option Agreement, as applicable; *provided further* that any modifications or amendments to this Agreement, the Option Agreement or the Land Option Agreement to accommodate the technical requirements of such assignee (including as they relate to transmission and scheduling) shall require the consent of Seller, which consent shall not be unreasonably withheld.

(c) Seller shall not sell or transfer the Facility to any Person other than a Person to whom Seller assigns this Agreement and the Option Agreement in accordance with this Section 14.7, without the prior consent of Buyer, an assumption in writing by such assignee of all of the obligations of Seller under this Agreement and the Option Agreement, and an agreement to be bound thereby and otherwise subject to compliance with the Right of First Offer and Right of First Refusal set forth in Section 14.25. Any purported sale or transfer in violation of this Section 14.7(c) shall be null and void and of no force or effect.

(d) Buyer's consent shall not be required in connection with (i) any Tax Equity Transaction or (ii) the collateral assignment or pledge of this Agreement, the Option Agreement or all or a portion of the membership interests in Seller to any Facility Lender, in each case for the purpose of financing the Facility; *provided, however*, that (1) the terms of such financing and the documentation relating thereto shall comply with the applicable terms and conditions of this Agreement and the Option Agreement, as applicable, and (2) in connection with any such assignment or pledge and the exercise of remedies by any Facility Lender, the Facility Lender acknowledges and agrees to be bound by the requirement the Facility be operated and maintained by a Qualified Operator. Seller shall provide Buyer with ninety (90) days' prior notice of any (i) Tax Equity Transaction or (ii) such collateral assignment or pledge.

Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Products (not including the proceeds thereof) to any Facility Lender. To facilitate Seller's obtaining of financing for the Facility, Buyer agrees to provide the Facility Lender Consent. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the incremental direct expenses incurred by Buyer in the preparation, negotiation, execution or delivery of the Facility Lender Consent and any documents requested by Seller or the Facility Lender, and provided by Buyer, pursuant to this Section 14.7(d).

(e) In no event shall Buyer be liable to Facility Lender, or its transferees or their successors in interest or assigns for any claims, losses, expenses or damages whatsoever other than liability Buyer may have to Seller under this Agreement or the Option Agreement, as applicable. In the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, Facility Lender or other transferee, and their successors in interest and assigns, shall be bound by the covenants and agreements of Seller in this Agreement and the Option Agreement; *provided, however*, that until the Person who acquires title to the Facility executes and delivers to Buyer a written assumption of Seller's obligations under this Agreement in form and substance acceptable to Buyer or Buyer's Authorized Representative, such Person shall not be entitled to any of the benefits of this Agreement. Any sale or transfer of the Facility by Facility Lender shall be made only to an entity that is a Qualified Transferee.

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

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

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

Section 14.11 Entire Agreement; Amendments. This Agreement (including all Appendices) contains the entire understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, discussions or agreements between the Parties, or any of them, concerning that subject matter, whether written or oral, except as expressly provided for herein. This is a fully integrated document. Each Party acknowledges that no other party, representative or agent, has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement that induced the other Party to sign

this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party.

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

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

Section 14.14 Execution in Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

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

Section 14.16 Waiver; Available Remedies. 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. Except to the extent this Agreement provides an exclusive remedy for a breach, nothing contained herein shall preclude either Party from seeking and obtaining any available remedies hereunder, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief, or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise as a court of competent jurisdiction may deem just and proper to enforce this Agreement or to prevent any violation hereof. The rights granted herein are cumulative.

Section 14.17 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either such Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

Section 14.18 Third Party Beneficiaries. The provisions of this Agreement are solely for the benefit of the Parties. Nothing in this Agreement, whether express or implied, shall be construed to give to, or be deemed to create in, any other Person, whether as a third party beneficiary of this Agreement or otherwise, any legal or equitable right, remedy or claim in respect of this Agreement or any covenant, condition, provision, duty, obligation or undertaking

contained or established herein. This Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any Person that is not a party hereto.

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

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

(b) Subject to Section 14.6, in the event of any damage or destruction of the Facility or any part thereof, the Facility or such part thereof shall be diligently repaired, replaced or reconstructed by Seller so that the Facility or such part thereof shall be restored to substantially the same general condition and use as existed prior to such damage or destruction, unless a different condition or use is approved by Buyer. Proceeds of Insurance with respect to such damage or destruction maintained as provided in this Agreement shall be applied to the payment for such repair, replacement or reconstruction of the damage or destruction.

(c) Throughout the Agreement Term, Seller shall immediately notify Buyer of the institution of any proceeding for the condemnation or other taking of the Facility, or any portion thereof. Buyer may participate in any such proceeding and Seller shall deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Without Buyer's prior consent, Seller (i) shall not agree to any compensation or award, and (ii) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the taking or purchase in lieu of condemnation of the Facility, or any portion thereof shall be applied toward the repair, restoration, reconstruction or replacement of the Facility.

(d) EXCEPT TO THE EXTENT INCLUDED IN THE LIQUIDATED DAMAGES, INDEMNIFICATION OBLIGATIONS RELATED TO THIRD PARTY CLAIMS OR OTHER SPECIFIC CHARGES EXPRESSLY PROVIDED FOR HEREIN, IN NO EVENT SHALL EITHER PARTY OR, IN THE CASE OF BUYER, ANY INDEMNITEES, BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR OTHER COSTS, BUSINESS INTERRUPTION DAMAGES RELATED TO OR ARISING OUT OF A PARTY'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, WHETHER BASED ON OR CLAIMED UNDER STATUTE, CONTRACT, TORT (INCLUDING SUCH

PARTY'S OWN NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY AT LAW OR IN EQUITY. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, and that the liquidated damages constitute a reasonable approximation of the anticipated harm or loss. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes of such damages, including the negligence of any Party, whether such negligence be sole, joint, contributory, concurrent, or active or passive. The Parties hereby waive any right to contest such payments as an unreasonable penalty.

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

Section 14.21 Confidentiality.

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by law, all documents, data (including operating data provided in connection with the scheduling of energy pursuant to Section 7.3 or otherwise pursuant to this Agreement), drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, either Party under this Agreement, and with respect to documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("*Confidential Information*"). The provisions of this Section 14.21 shall survive and shall continue to be binding upon the Parties for a period of one (1) year following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

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

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

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

(iii) to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other Requirement of Law, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.

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

(d) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer, as a California municipal corporation, is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250 et seq. ("*CPRA*") and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 et seq. ("*Brown Act*"). Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA or Brown Act.

(e) Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement and the Ancillary Documents, and the rights, Liens and priorities of Buyer with respect to such credit support.

(f) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under CPRA, then Buyer shall notify Seller of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer and the Indemnitees from and against all suits, claims, and causes of action brought against Buyer or any Indemnitees for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include all actual costs incurred by Buyer and any Indemnitees, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against Buyer or any Indemnitees, through and including any appellate proceedings. Seller's obligations to Buyer and all Indemnitees under this indemnification provision shall be due and

payable on a monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer and all Indemnitees, as well as all damages or liability of any nature.

(g) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party or their Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity, subject to the limitations set forth in Section 14.19(d).

Section 14.22 Mobile-Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of this Agreement proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

Section 14.23 Taxpayer Identification Number (TIN). Seller declares that its authorized TIN is 27-0176702. No payment will be made under this Agreement without a valid TIN.

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

Section 14.25 Right of First Offer and Right of First Refusal.

(a) Buyer has a "*Right of First Offer*" (or "*ROFO*") and a "*Right of First Refusal*" (or "*ROFR*") for any proposed sale of the Facility and related assets (the "*Facility Assets*") by Seller, all in accordance with the provisions of this Section 14.25.

(b) Prior to Seller commencing the negotiation of a sale of the Facility Assets, Seller shall provide notice to Buyer of Seller's intention to sell the Facility Assets (a "*Proposed Sale Notice*"). Upon receipt of such Proposed Sale Notice, Buyer shall have forty-five (45) days in which to provide notice to Seller indicating whether Buyer is interested in negotiating with Seller to purchase the Facility Assets from Seller, which notice shall include Buyer's proposed purchase price for the Facility Assets (a "*Proposed Purchase Notice*"). If Buyer provides such

Proposed Purchase Notice, then the Parties shall undertake for a period of up to ninety (90) days from the date of Buyer's Proposed Purchase Notice to determine if they are able to reach mutual agreement on the terms and conditions of a sale of the Facility Assets to Buyer.

(c) If (i) Buyer does not provide such Proposed Purchase Notice to Seller indicating that Buyer is interested in negotiating the purchase of the Facility Assets from Seller following a Proposed Sale Notice, or (ii) the Parties are unable to agree upon the terms and conditions of a sale of the Facility Assets to Buyer within the ninety (90) day period set forth in Section 14.25(b), then Seller shall be free to negotiate the sale of the Facility Assets to any third party; *provided, however*, that prior to consummating any such sale, Seller shall provide Buyer with a concise summary of the commercial terms negotiated by Seller with the third party (a "*Notice of Proposed Third Party Sale*"). If the proposed purchase price for the Facility Assets set forth in the Notice of Proposed Third Party Sale is equal to or less than 110% of the purchase price included in the Proposed Purchase Notice or negotiated in connection with Buyer's exercise of the ROFO pursuant to Section 14.25(b), then Buyer shall have forty-five (45) days to exercise its Right of First Refusal and complete its purchase of the Facility Assets on substantially similar terms as set forth in the Notice of Proposed Third Party Sale, subject to any modifications required to conform the transaction to requirements for transactions entered into by public agencies. If Buyer does not elect to exercise its Right of First Refusal and complete its purchase within such forty-five (45) days, Seller shall be free to consummate the sale of the Facility Assets to the third party; *provided*, that such sale shall be on substantially similar terms and conditions presented to Buyer in the Notice of Proposed Third Party Sale.

(d) If Seller fails to (i) present a Notice of Proposed Third Party Sale within six (6) months after the expiration of the ninety (90) day period set forth in Section 14.25(b), or (ii) consummate the sale of the Facility Assets to a third party within forty-five (45) days after the expiration of the forty-five (45) day period set forth in Section 14.25(c), then Seller shall provide another Proposed Sale Notice hereunder (and go through the ROFO and ROFR processes hereunder) before commencing or continuing negotiations with any third party or consummating a sale of the Facility Assets.

(e) Neither the ROFO nor the ROFR shall (i) apply to any sale-leaseback or similar Facility financing by Seller or to any sale by any Facility Lender in connection with the exercise of Facility Lender remedies under financing security documents, nor (ii) limit Buyer's rights to purchase the Facility Assets under the Option Agreement.

Section 14.26 Buyer's Business Policies.

(a) Recycling Policy.

(i) Buyer supports the use of recycled-content products of all types. Recycled-content products help conserve natural resources, including water and energy, and reduce demands upon landfills.

(ii) To the extent feasible, Seller shall submit all written documents on paper with a minimum of thirty percent (30%) post-consumer recycled content. Existing company/corporate letterhead or stationery that accompanies these documents

is exempt from this requirement. Documents of two (2) or more pages in length shall be duplex-copied (double-sided pages). Neon or fluorescent paper shall not be used in any written documents submitted to Buyer.

(b) Non-Discrimination/Equal Employment Practices/Affirmative Action Construction & Non-Construction Agreements.

(i) During the performance of this Agreement, Seller shall not discriminate in its employment practices against any employee or applicant for employment because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition. All subcontracts awarded by Seller under this Agreement shall contain a like nondiscrimination provision. The applicable provisions of Executive Order No. 11246 of September 24, 1965; Part 60-741 of 41 Code of Federal Regulations pertaining to handicapped workers, including 60-741.4 Affirmative Action Clause; and Sections 10.8 to 10.13 of the Los Angeles Administrative Code pertaining to nondiscrimination in employment in the performance of City of Los Angeles contracts are incorporated herein by reference and made a part hereof as if they were fully set forth herein.

(ii) Any of the above-mentioned subcontracts shall be effective for twelve (12) months following the date of approval for the Affirmative Action practices. An Affirmative Action plan shall be in effect and on file with Buyer for the duration of this Agreement.

(c) Small Business Enterprise ("SBE") and Disabled Veteran Business Enterprise ("DVBE") Opportunity Program.

(i) It is the policy of Buyer to provide SBEs, DVBEs, Disadvantaged Business Enterprises ("DBEs"), Women Business Enterprises ("WBEs"), Minority Business Enterprises ("MBEs"), and all Other Business Enterprises ("OBEs") an equal opportunity to participate in the performance of all Buyer contracts. Buyer's goals for SBE/DVBE participation in performance of its contracts are twenty percent (20%) for SBEs and three percent (3%) for DVBEs. Seller shall assist Buyer in implementing this policy by taking all reasonable steps to ensure that all available business enterprises, including SBEs and DVBEs, have an equal opportunity to compete for and participate in the work being requested by this Agreement.

(ii) Seller shall notify Buyer if Seller is a certified SBE, DVBE, DBE, WBE, or MBE. Seller shall provide to Buyer (A) the company name, contact person, address, and telephone number of each proposed Subcontractor that qualifies as an SBE, DVBE, DBE, WBE, or MBE, and (B) copies of all certifications of such Subcontractor as an SBE, DVBE, DBE, WBE, or MBE, as applicable.

(d) **Prevailing Wage.** Seller and Seller's agents, employees, and Subcontractors shall comply with all applicable provisions of the California Labor Code and all other Requirements of Law that affect the hours of work, wages, and other compensation of employees, nondiscrimination, and other conduct of the work. Workers at the Facility shall be

paid not less than prevailing wages pursuant to determinations of the Director of Industrial Relations as applicable in accordance with the California Labor Code. To access the most current information on effective determination rates, Seller shall contact: Department of Industrial Relations, Division of Labor Statistics and Research, PO Box 420603, San Francisco, CA 94142-0603; Telephone (Division Office): (415) 703-4780; Telephone (Prevailing Wage Unit): (415) 703-4774; Web: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

(e) **Child Support Policy.** Seller and any of its subcontractor shall fully comply with all applicable state and federal employment reporting requirements for Seller's and any Seller's subcontractors' employees. Seller and any of its subcontractors shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with the California Family Code. Seller and any of its subcontractors shall certify that the principal owners thereof (which shall include any person who owns an interest of ten percent (10%) or more) are in compliance with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally. Seller and any of its subcontractors shall certify that such compliance will be maintained throughout the Agreement Term. Failure of Seller or any its subcontractors to fully comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owners to comply with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute a Default under this Agreement. Failure of Seller or any its subcontractors or principal owners thereof to cure the Default within ninety (90) days of notice of such Default by Buyer shall subject this Agreement to termination.

(f) **Current Los Angeles City Business Tax Registration Certificate Required.** Seller shall obtain and keep in full force and effect during the Agreement Term all Business Tax Registration Certificates required by the City of Los Angeles Business Tax Ordinance, Article 1, Chapter II, Section 21.00 and following, of the Los Angeles Municipal Code or Seller's Vendor Registration Number, which must be shown on all invoices submitted for payment. Failure to do so, may delay payment. For additional information regarding applicability of the City Business Tax Registration, contact the City of Los Angeles Clerk's Office at (213) 978-1521.

(g) **Equal Benefits Ordinance.** Seller agrees to comply with the requirements of the Equal Benefits Ordinance ("**EBO**"), codified at Los Angeles Administrative Code ("**LAAC**") §10.8.2.1, and to sign any required certifications related to such ordinance. Seller agrees to complete the form attached to Appendix H related to the EBO and any certifications attached thereto.

(h) **Contractor Responsibility Ordinance.** Seller agrees to comply with the requirements of the Contractor Responsibility Ordinance ("**CRO**"), codified at LAAC §10.40 et seq., and sign any required certifications related to such ordinance. Seller agrees to complete the form attached to Appendix H related to the CRO and any certifications attached thereto.

(i) **Sweat-Free Procurement Ordinance.** Seller agrees to comply with the requirements of the Sweat-Free Procurement Ordinance ("**SFPO**"), codified at LAAC §10.43 et seq., and sign any required certifications related to such ordinance. Seller agrees to complete the form attached to Appendix H related to the SFPO and any certifications attached thereto. In the

case of impracticality in any provisions of the form due to the substitution of Buyer for the City of Los Angeles, Buyer will reasonably accommodate changes or substitutions in the requirements of the form as necessary to accomplish the purpose of the SFPO.

(j) **Compliance with Los Angeles City Charter Section 470(c)(12) (also known as "Measure H").** Seller, Seller's Subcontractors and their Principals (the term "Principals" is defined as Seller or Seller's Subcontractor's board chair, president, chief executive officer, chief operating officer, or the functional equivalent of those positions; any individual who holds an ownership interest in Seller or Seller's Subcontractors of twenty percent (20%) or more; and an individual employee of the bidder or subcontractor authorized by the bid or proposal to represent the person before the City of Los Angeles) are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances regarding limitations on campaign contributions and fundraising for certain elected officials of the City of Los Angeles or candidates for elected office of the City of Los Angeles if the contract is valued at One Hundred Thousand Dollars (\$100,000) or more and requires approval of an elected official of the City of Los Angeles. Additionally, Seller is required to provide and update certain information for the City of Los Angeles as specified by law. Seller, being subject to Charter Section 470(c)(12), shall include the following notice in any contract with a Subcontractor expected to receive at least One Hundred Thousand Dollars (\$100,000) for performance under such contract:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions. As provided in Charter Section 470(c)(12) and related ordinances, you are subcontractor on City of Los Angeles contract # _____. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Subcontractor is required to provide to contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to contractor within 10 business days. Failure to comply may result in termination of contract or any other legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling (213) 978-1960.

Seller, Seller's Subcontractors, and its and their Principals shall comply with these requirements and limitations. Violations of this provision shall entitle the City of Los Angeles to terminate this Agreement and pursue any and all legal remedies that may be available.

(k) **Iran Contracting Act of 2010.** Seller agrees to comply with California Public Contract Code Sections 2200-2208, wherein all bidders submitting proposals for, entering into, or renewing contracts with Buyer for goods and services estimated at one million dollars (\$1,000,000) or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit" attached to Appendix H.

[Remainder of Page Intentionally Left Blank]

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

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

By BOARD OF WATER AND POWER
COMMISSIONERS OF THE CITY OF
LOS ANGELES

Date: _____

By: _____
Marcie L. Edwards
GENERAL MANAGER

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

And: _____
Barbara E. Moschos
BOARD SECRETARY

MAY 23 2014
BY _____
VAUGHN MINASSIAN
DEPUTY CITY ATTORNEY

RE BARREN RIDGE 1 LLC

Date: May 23, 2014

By: Michael Metzner
Its: Chief Financial Officer

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APPENDIX A
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC

CONTRACT PRICE

1. Test Energy. The Contract Price for Products associated with Test Energy is equal to seventy-five percent (75%) of the Contract Price set forth in Section 2 of this Appendix A.
2. Facility Energy. The Contract Price for the Products associated with all Facility Energy other than Excess Energy is \$67.83 per MWh.
3. Excess Energy. The Contract Price for Products associated with Excess Energy is equal to seventy-five percent (75%) of the Contract Price set forth in Section 2 of this Appendix A.

**APPENDIX B-1
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC**

FACILITY, PERMITS AND OPERATOR

1. Name of Facility: RE Barren Ridge 1
2. Owner: RE Barren Ridge 1 LLC
3. Operator: Qualified Operator
4. Type of Facility: Solar
5. Facility Capacity: At least 60 MW, as measured by the sum of inverter nameplate capacity
6. Equipment: Solar Photovoltaic
7. Expected Commercial Operation Date: December 31, 2015
8. Site: Physical address: 26709 Highway 14, Mojave, CA 93501 (Intersection of Phillips Rd and Hwy 14)
9. Location, design and configuration of Facility: *See map attached on page Appendix B-2.*
10. Permits
 - a. Development and Construction:
 - i. Conditional Use Permit – Kern County
 - ii. Grading/Building Permit – Kern County
 - iii. Streambed Alteration Agreement – CDFW
 - iv. Waste Discharge Requirements – RWQCB
 - v. Incidental Take Permit - USFWS
 - vi. Incidental Take Permit – CDFW

vii. National Environmental Policy Act Record of Decision

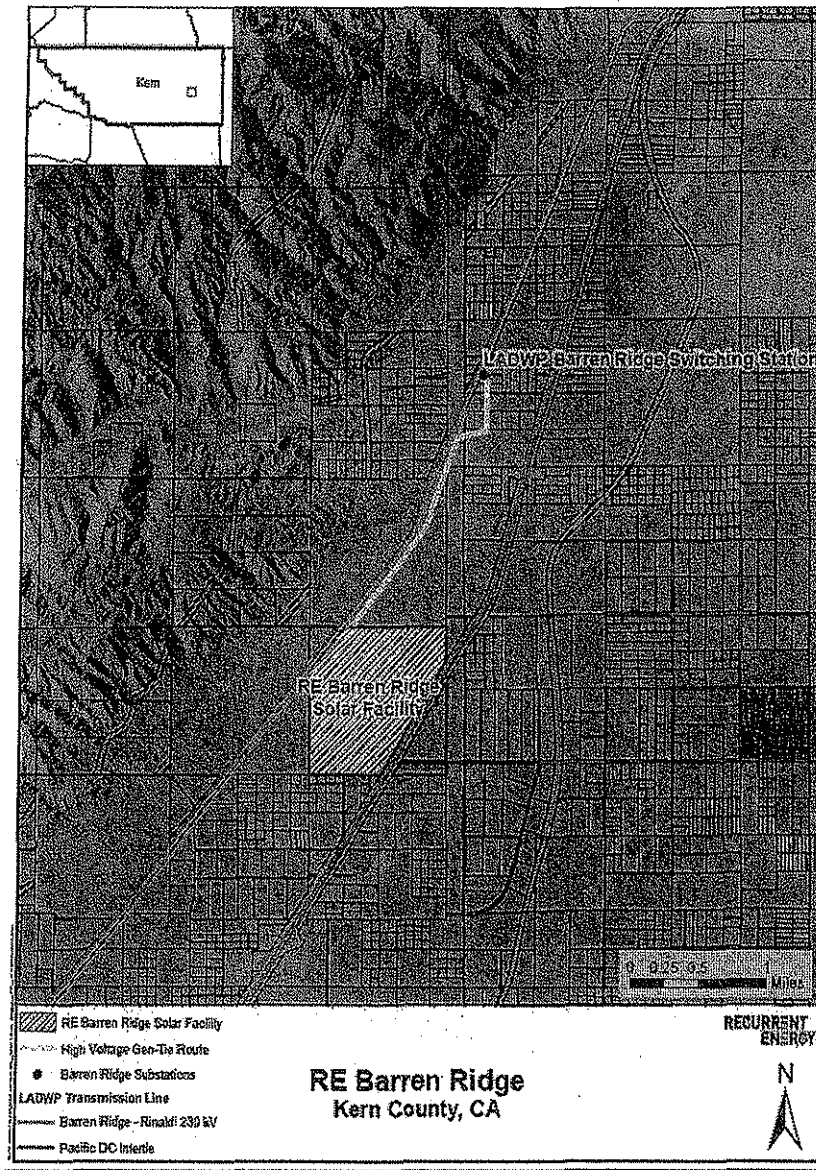
b. Operation and Maintenance:

i. Conditional Use Permit – Kern County

ii. Job Card – Kern County

APPENDIX B-2
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC

MAP OF FACILITY



APPENDIX C
 TO POWER PURCHASE AGREEMENT,
 DATED AS OF _____, 2014
 BETWEEN
 THE CITY OF LOS ANGELES ACTING BY AND THROUGH
 THE DEPARTMENT OF WATER AND POWER
 AND
 RE BARREN RIDGE 1 LLC

ANNUAL CONTRACT QUANTITY

Contract Year	Annual Contract Quantity, MWh
1 (Commercial Operation Date through December 31)	Year 1 ACQ
2	181,894
3	180,985
4	180,080
5	179,179
6	178,284
7	177,392
8	176,505
9	175,623
10	174,745
11	173,871
12	173,001
13	172,136
14	171,276
15	170,419
16	169,567
17	168,719
18	167,876
19	167,036
20	166,201
21 (January 1 until anniversary of Commercial Operation Date)	Year 21 ACQ

“Year 1 ACQ” means the Annual Contract Quantity for Contract Year 1, based on the actual Commercial Operation Date of the Facility, calculated on the basis of the following formula:

$$\text{Year 1 ACQ} = 182,808 \text{ MWh} * \text{Annual Adjustment (as defined below)}$$

“Year 21 ACQ” means the Annual Contract Quantity for Contract Year 21, based on the actual anniversary of the Commercial Operation Date of the Facility, calculated on the basis of the following formula:

$$\text{Year 21 ACQ} = 165,370 \text{ MWh} * (1 - \text{Annual Adjustment})$$

“Annual Adjustment” means the percentage, expressed as a decimal, of annual production for Contract Year 1, based on the actual Commercial Operation Date of the Facility and the Annual Production Breakdown table below.

Annual Production Breakdown

Month	Days in Month	Percent Annual Production in Month
January	31	5.55%
February	28	5.99%
March	31	8.61%
April	30	9.36%
May	31	10.67%
June	30	11.15%
July	31	10.86%
August	31	10.25%
September	30	9.09%
October	31	7.71%
November	30	5.78%
December	31	4.98%

Sample Calculation:

Assuming the Commercial Operation Date for the Facility is October 15, 2015, the Year 1 ACQ and Year 21 ACQ would be calculated as follows:

Annual Adjustment = (October Percent Annual Production * Days Operational in October / Total Days in October) + November Percent Annual Production + December Percent Annual Production

$$\text{Annual Adjustment} = (7.71\% * 16/31) + 5.78\% + 4.98\% = 14.74\%$$

$$\text{Year 1 ACQ} = 182,808 \text{ MWh} * 14.74\% = 26,946 \text{ MWh}$$

$$\text{Year 21 ACQ} = 165,370 \text{ MWh} * (1 - 14.74\%) = 140,994 \text{ MWh}$$

APPENDIX D
 TO POWER PURCHASE AGREEMENT,
 DATED AS OF _____, 2014
 BETWEEN
 THE CITY OF LOS ANGELES ACTING BY AND THROUGH
 THE DEPARTMENT OF WATER AND POWER
 AND
 RE BARREN RIDGE 1 LLC
FORM OF ATTESTATION

_____ (Seller) Environmental Attribute Attestation and Bill of Sale

_____ (“Seller”) hereby sells, transfers and delivers to the City of Los Angeles acting by and through the Department of Water and Power (“Buyer”) the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below:

Facility name and location:

Fuel Type: Capacity (MW): _____ Operational Date: _____
 As applicable: CEC Reg. no. _____ Energy Admin. ID no. _____ Q.F. ID no. _____

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

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

Seller further attests, warrants and represents as follows:

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

This serves as a bill of sale, transferring from Seller to Buyer all of Seller’s right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the Energy for delivery to the grid.

Contact Person/telephone: _____

APPENDIX E-1
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014.
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC
FORM OF LETTER OF CREDIT

IRREVOCABLE AND UNCONDITIONAL
STANDBY LETTER OF CREDIT NO. _____

Applicant:

RE Barren Ridge 1 LLC

Beneficiary:

City of Los Angeles acting by and through the Department of Water and Power
Finance and Risk Control
111 North Hope St., Room 465
Los Angeles, CA 90012

Issuance Date: [____], 201[____]

Amount:

Expiration Date:

Expiration Place:

Ladies and Gentlemen:

We hereby issue our Irrevocable and Unconditional Standby Letter of Credit in favor of the beneficiary by order and for the account of the applicant which is available at sight for USD \$XX,XXX,XXX by sight payment upon presentation to us at our office at [bank's address], of: (i) your written demand for payment containing the text of Exhibit I, (ii) your signed statement containing the text of Exhibit II and, (iii) the original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings) (the "Documents"). Drawings may be presented via fax to _____. The original Letter of Credit and documents are to be sent via overnight courier to our address indicated above.

A presentation under this Letter of Credit may be made only on a day, and during hours, in which such office is open for business, and payments can be effected via wire transfer (a "Business Day"). Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided* that the Available Amount shall be reduced by the amount of each such drawing.

Upon presentation to us of your Documents in conformity with the foregoing, we will, on the third (3rd) succeeding Business Day after such presentation, irrevocably and without reserve or condition except as otherwise stated herein, make payment hereunder in the amount set forth in the demand. Payment shall be made to your order in the account at the bank designated by you in the demand in immediately available funds. We agree that if, on the Expiration Date, the office specified above is not open for business by virtue of an interruption of the nature described in the Uniform Customs Article 36, this Letter of Credit will be duly honored if the specified Documents are presented by you within thirty (30) days after such office is reopened for business.

Provided that the presentation on this Letter of Credit is made on or prior to the Expiration Date and the applicable Documents as set forth above conform to the requirements of this Letter of Credit, payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from the Applicant or any other person except you, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the documents presented by you, but excluding solely a written order issued by a court, which order specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment.

We agree that the time set forth herein for payment of any demand(s) for payment is sufficient to enable us to examine such demand(s) and the related Documents(s) referred to above with care so as to ascertain that on their face they appear to comply with the terms of this credit and that if such demand(s) and Document(s) on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s).

This Letter of Credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Exhibit IV hereto signed by an authorized officer of Beneficiary, accompanied by this Letter of Credit for cancellation, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the next Business Day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for one (1) year from the Expiration Date, or any future expiration date, unless at least thirty (30) calendar days prior to the Expiration Date (or any future expiration date), we send you notice by registered mail, return receipt requested or overnight courier at your address herein stated or such other address of which you notify us in advance in writing that we elect not to consider this Letter of Credit extended for any such additional period.

We may, in our sole discretion, increase or decrease the stated amount of this Letter of Credit, and the Expiration Date may be extended, by an amendment to this Letter of Credit in the form of Exhibit III signed by us. Any such amendment for decrease shall become effective only upon acceptance by your and our signature on a hard copy amendment.

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

We hereby engage with you that your demand(s) for payment in conformity with the terms of this Letter of Credit will be duly honored as set forth above. All fees and other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of the Applicant. All of the rights of the Beneficiary set forth above shall inure to the benefit of your successors by operation of law. In this connection, in the event of a drawing made by a party other than the Beneficiary, such drawing must be accompanied by the following signed certification and copy of document proving such successorship:

“The undersigned does hereby certify that [drawer] is the successor by operation of law to the City of Los Angeles acting by and through the Department of Water and Power, a beneficiary named in [name of bank] Letter of Credit No. _____.”

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the “Uniform Customs and Practices for Documentary Credits,” (2007 Revision) of the International Chamber of Commerce Publication No. 600 (the “Uniform Customs”). As to matters not governed by the Uniform Customs, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of California. Any litigation arising out of, or relating to this Letter of Credit, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Exhibit I, II, III and IV hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at the address referred to above, and shall specifically refer to this Letter of Credit no. _____.

Yours faithfully,

(name of issuing bank)

By _____
Title _____

EXHIBIT I

DEMAND FOR PAYMENT

Re: Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated _____, 20__

[Insert Bank Address]

To Whom It May Concern:

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

DATED: _____, 20__.

CITY OF LOS ANGELES ACTING BY AND
THROUGH THE DEPARTMENT OF WATER
AND POWER

By _____

Title _____

EXHIBIT II
STATEMENT

Re: Your Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated _____, 20__

[Insert Bank Address]

To Whom It May Concern:

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

We hereby certify to you that \$ _____ is due, owing and unpaid to us by the Applicant in that certain [DESCRIBE AGREEMENT].

DATED: _____, 20__.

CITY OF LOS ANGELES ACTING BY AND
THROUGH THE DEPARTMENT OF WATER
AND POWER

By _____

Title _____

EXHIBIT III

AMENDMENT

Re: Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated _____, 20__

Beneficiary:

Applicant:

City of Los Angeles acting by and through the Department of Water and Power
Finance and Risk Control
111 North Hope St., Room 465
Los Angeles, CA 90012

To Whom It May Concern:

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

An amendment is effective only when accepted by the City of Los Angeles acting by and through the Department of Water and Power, below.

Dated: _____

Yours faithfully,

(name of issuing bank)

By _____
Title _____

ACCEPTED

CITY OF LOS ANGELES ACTING BY AND THROUGH THE DEPARTMENT OF WATER
AND POWER

By _____
Title _____
Date _____

EXHIBIT IV

SURRENDER

Re: Your Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated _____, 20__

[Insert Bank Address]

Notice of Surrender of Letter of Credit

Date: _____

Attention: Letter of Credit Department

Ladies and Gentlemen:

We refer to your above-mentioned Irrevocable and Unconditional Standby Letter of Credit (the "Letter of Credit"). The undersigned, an authorized signer of the City of Los Angeles acting by and through the Department of Water and Power, hereby surrenders this Letter of Credit to you for cancellation as of the date set forth above. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

CITY OF LOS ANGELES ACTING BY AND
THROUGH THE DEPARTMENT OF WATER
AND POWER

By _____

Title _____

APPENDIX E-2
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC

QUALIFIED ISSUERS LIST

1. BTMU (Bank of Tokyo-Mitsubishi UFJ)
2. Union Bank, N.A.
3. Wells Fargo & Company
4. Rabobank
5. Royal Bank of Canada

APPENDIX F
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014

BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC

INSURANCE

I. GENERAL REQUIREMENTS

Within ten (10) days after the Effective Date, Seller shall furnish Buyer evidence of coverage from insurers acceptable to Buyer and in a form acceptable to the risk management section of the project manager for Buyer or acceptable to Buyer's agent for this purpose. Such insurance shall be maintained by Seller at Seller's sole cost and expense.

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

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

Such insurance shall not be canceled or reduced in coverage or amount without first giving thirty (30) days' prior notice thereof (ten (10) days for non-payment of premium) by registered mail to Buyer, addressed as follows: Department of Water and Power of the City of Los Angeles, P.O. Box 5111, Los Angeles, CA 90041, attention: Risk Management, Room 465.

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

II. SPECIFIC COVERAGES REQUIRED

A. Commercial Automobile Liability

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

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

B. Commercial General Liability

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

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

C. Excess Liability

Seller may use an Umbrella or Excess Liability Coverage to meet coverage limits specified in this Agreement. Seller shall require the carrier for Excess Liability to properly schedule and to identify the underlying policies on an endorsement to the policy

acceptable to Buyer's risk management agent. Such policy shall include, as appropriate, coverage for Commercial General Liability, Commercial Automobile Liability, Employer's Liability, or other applicable insurance coverages.

D. Workers' Compensation/Employer's Liability Insurance

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

E. Builders' Risk

Builder's Risk insurance shall be of the "all risk" type, shall be written in completed value form, and shall provide coverage against risks of damage to buildings, structures, and materials and equipment whether on site or while in the course of inland transit. Buyer shall be a named additional insured as their interest may appear. The Builders' Risk insurance shall provide for losses to be payable to Seller or Facility Lender (if applicable) and the aforementioned additional insured, as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against Seller and the aforementioned named additional insured. The Builders' Risk policy shall insure against all risks of direct physical loss or damage to property from any cause including testing, ensuing loss, commissioning, earthquake and flood. Limits for earthquake or flood shall be the maximum amount commercially available as determined by Seller. The Builders' Risk policy shall be in full force and effect until the "Substantial Completion Date" (as such date shall be defined in the contract for the construction of the Facility) shall have occurred.

F. Property All Risk Insurance

This policy shall be in full force and effect at the expiration of the Builder's Risk Policy in an amount that is not less than the full replacement cost of the property located at the Facility as described in this Agreement, or such other amount as agreed by Buyer. Seller shall procure and maintain an All Risk Physical Damage policy to insure the full replacement value of the property located at Facility as described in this Agreement. The policy shall include coverage for expediting expense, extra expense, flood, Business Interruption; ensuing loss from faulty workmanship, faulty materials, or faulty design. This policy shall have the same additional insureds as their interests may appear, and all

losses shall be payable in the same manner, as provided for the Builders' Risk Policy in section II(E).

APPENDIX G
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC
QUALITY ASSURANCE PROGRAM

Seller shall implement a Quality Assurance ("Q/A") Program to ensure that the performance of the Facility fulfills the Requirements. The Q/A Program shall provide assurance that the Facility will comply with the Requirements and the manufacturers' or suppliers' requirements for successful operation of the Facility.

Quality at Seller

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

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

The Quality Management Process

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

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

- 1) A written Q/A Manual.
- 2) Independent engineering review of the entire project process, from design review through Commercial Operation.
- 3) A written maintenance manual for the Facility for the duration of the commercial operation that complies with the maintenance manuals of the manufacturers and suppliers from whom Seller has purchased equipment or material and best industry practices.

Q/A Manual

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

Seller's quality program shall be documented in a Quality Assurance manual (the "Q/A Manual"). The form and the format of the Q/A Manual shall be developed by Seller, but must comply with Prudent Utility Practices and follow manufacturers' and suppliers' recommendations without deviation. The content of the Q/A Manual shall provide written descriptions of policies, procedures and methodology to accomplish a quality project. Seller shall submit three (3) copies of the Q/A Manual within ninety (90) days after the Effective Date to Buyer or Buyer's Authorized Representative. The Q/A Manual shall be kept current by Seller throughout the term of this Agreement through the submittal of revisions, as appropriate, by Seller to Buyer or Buyer's Authorized Representative.

The Q/A Manual shall describe the authority and the responsibility of the Persons in charge of the Q/A Program and inspection activities. Furthermore, it shall provide the plan and strategy for quality control and review during the construction period. The Q/A Manual shall strive, at a minimum, to define control procedures or methods to assure the following:

- (a) The design documents, drawings, specifications, Q/A procedures, records, inspection procedures and purchase documents are maintained to be current, accurate and in compliance with all applicable law.
- (b) The purchased materials, equipment and services comply with the Requirements.
- (c) The materials received at the site are inspected for compliance with specifications.
- (d) The subcontracted work is adequately inspected by third parties as necessary.
- (e) Proper methods are employed for the qualification of personnel who are performing work for the construction of the Facility.

- (f) Proper documentation, control and disposition of nonconforming equipment and materials is maintained.
- (g) Proper records are kept and available following project completion to ensure accurate documentation of as-built conditions.
- (h) Detailed and complete plan for maintenance and operation during commercial operations consistent with manufacturers' and suppliers' recommendations and best industry practices.

Conceptual Design Review

Seller has a team of professionals who develop and review conceptual design. The team consists of specialists in land-use and planning, permitting, meteorology, engineering, construction, project management, and finance. A preliminary site plan is developed in order to assess the solar resource, project constructability, site access, cultural and biological impact, land use restrictions, and landowner requirements. At this stage, the site plan is reviewed, modified as necessary, and used to begin the permitting and public review process. The site plan may be further modified based on comments received during the permitting and public review process. Subsequent to this phase, final third party engineering will commence.

Final Engineering Design

Third party engineering firms, licensed to practice in the state in which the project is to be constructed, will commence the detailed design necessary for the permitting and construction of the Facility. Each firm will have its own quality assurance and quality control procedures, however, Seller and a third party independent engineer will review the final work products to ensure conformance with this Agreement. When Seller and third party independent engineer have completed a multiple phase review process, and all comments have been addressed, the design is considered final and ready for construction permitting.

During the final engineering design process, geotechnical studies will be finalized as needed. If existing subsurface conditions are different from anticipated, the design may be modified to account for any variances. Any changes of this nature will be documented in as-built design drawings and approved in advance by Seller.

Quality Assurance at the Construction Site

Seller will hire a third party general contractor to construct the project. The contractor will be required to have a quality assurance program implemented by its own staff, and utilizing third party inspectors as necessary. The primary areas of focus are assuring conformance of construction to design drawings, conformance of materials to specifications, and to ensure prudent industry standards and best practices are being utilized. The contractor will be required to provide third party inspection and testing as necessary. The contractor will also be required to maintain a set of drawings during the course of construction, which will be used to document any changes to the design documents. Proposed project changes would be reviewed and approved in the field by Seller's construction management team prior to implementation.

The contractor will provide the required oversight and training of its installation crew to ensure the construction of the facility meets their quality guidelines. As necessary, equipment suppliers will have technical advisors on site to inspect, advise, and sign off on installation means and methods. In addition, Seller will have its own construction management team on site consisting of a construction manager and quality inspectors who will observe performance of all areas of the work and ensure compliance with design documents and Q/A procedures. The contractor and appropriate equipment suppliers will commission the generating facility per prudent industry standards, equipment specifications, and utility requirements. Prior to construction completion, a punchlist will be developed by the contractor, Seller, Seller's representatives, and third party independent engineer. This punchlist is maintained by the contractor, and is signed off by Seller upon completion of all punchlist items. Lastly, the independent engineer will perform periodic audits during construction to oversee critical items, confirm construction progress, and provide independent reporting and assessments to the project stakeholders.

Following completion of the project, the contractor will be required to provide to Seller as-built design drawings, record of all testing documentation, and final permit approvals. This documentation will be maintained at the project site during operations of the Facility.

Quality Assurance During Commercial Operations

Seller shall supply a Quality Assurance Plan for Buyer's review and approval no less than sixty (60) days prior to the anticipated Commercial Operation Date. Upon receipt of Quality Assurance Plan, Buyer shall provide written approval, such approval not to be unreasonably withheld, or comment within ten (10) Business Days.

APPENDIX H
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC
BUSINESS POLICIES FORMS

[See attached]

City of Los Angeles
Department of Public Works
Bureau of Contract Administration
Office of Contract Compliance
1149 S. Broadway, Suite 300, Los Angeles, CA 90015
Phone: (213) 847-2625 E-mail: bca.eccc@lacity.org

EQUAL BENEFITS ORDINANCE COMPLIANCE AFFIDAVIT

Prime contractors must certify compliance with Los Angeles Administrative Code (LAAC) Section 10.8.2.1 et seq. prior to the execution of a City agreement subject to the Equal Benefits Ordinance (EBO).

SECTION 1. CONTACT INFORMATION

Company Name: _____

Company Address: _____

City: _____ State: _____ Zip: _____

Contact Person: _____ Phone: _____ E-mail: _____

Approximate Number of Employees in the United States: _____

Approximate Number of Employees in the City of Los Angeles: _____

SECTION 2. EBO REQUIREMENTS

The EBO requires City Contractors who provide benefits to employees with spouses to provide the same benefits to employees with domestic partners. Domestic Partner means any two adults, of the same or different sex, who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing this registration, or with an internal registry maintained by the employer of at least one of the domestic partners.

Unless otherwise exempt, the contractor is subject to and shall comply with the EBO as follows:

- A. The contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the City Contract; and
- B. The contractor's operations located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the contractor's presence at or on the property is connected to a Contract with the City; and
- C. The Contractor's employees located elsewhere in the United States, but outside of the City Limits, if those employees are performing work on the City Contract.

A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners."

SECTION 3. COMPLIANCE OPTIONS

I have read and understand the provisions of the Equal Benefits Ordinance and have determined that this company will comply as indicated below:

- I have no employees.
- I provide no benefits.
- I provide benefits to employees only. Employees are prohibited from enrolling their spouse or domestic partner.
- I provide equal benefits as required by the City of Los Angeles EBO.
- I provide employees with a "Cash Equivalent." Note: The "Cash Equivalent" is the amount of money equivalent to what your company pays for spousal benefits that are unavailable for domestic partners, or vice versa.
- All or some employees are covered by a collective bargaining agreement (CBA) or union trust fund. Consequently, I will provide Equal Benefits to all non-union represented employees, subject to the EBO, and will propose to the affected unions that they incorporate the requirements of the EBO into their CBA upon amendment, extension, or other modification of the CBA.
- Health benefits currently provided do not comply with the EBO. However, I will make the necessary changes to provide Equal Benefits upon my next Open Enrollment period which begins on (Date) _____.
- Our current company policies, i.e., family leave, bereavement leave, etc., do not comply with the provisions of the EBO. However, I will make the necessary modifications within three (3) months from the date of this affidavit.

SECTION 4. DECLARATION UNDER PENALTY OF PERJURY

I understand that I am required to permit the City of Los Angeles access to and upon request, must provide certified copies of all company records pertaining to benefits, policies and practices for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance. Furthermore, I understand that failure to comply with LAAC Section 10.8.2.1 et seq., Equal Benefits Ordinance may be deemed a material breach of any City contract by the Awarding Authority. The Awarding Authority may cancel, terminate or suspend in whole or in part, the contract; monies due or to become due under a contract may be retained by the City until compliance is achieved. The City may also pursue any and all other remedies at law or in equity for any breach. The City may use the failure to comply with the Equal Benefits Ordinance as evidence against the Contractor in actions taken pursuant to the provisions of the LAAC Section 10.40, et seq., Contractor Responsibility Ordinance.

_____ will comply with the Equal Benefits Ordinance requirements
Company Name
as indicated above prior to executing a contract with the City of Los Angeles and will comply for the entire duration of the contract(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, in the year 20____, at _____, _____
(City) (State)

Signature

Mailing Address

Name of Signatory (please print)

City, State, Zip Code

Title

BIN/TIN

CITY OF LOS ANGELES

PLEDGE OF COMPLIANCE WITH CONTRACTOR RESPONSIBILITY

Los Angeles Administrative Code (LAAC) Section 10.40 et seq. (Contractor Responsibility Ordinance) provides that, unless specifically exempt, City contractors working under service contracts of at least \$25,000 and three months, contracts for the purchase of goods and products of at least \$100,000, contracts for the purchase of garments of at least \$25,000, and construction contracts of any amount; public lessees; public licensees; and certain recipients of City financial assistance or City grant funds, shall comply with all applicable provisions of the Ordinance. Upon award of a City contract, public lease, public license, financial assistance or grant, the contractor, public lessee, public licensee, City financial assistance recipient, or grant recipient, and any its subcontractor(s), shall submit this Pledge of Compliance to the awarding authority.

The contractor agrees to comply with the Contractor Responsibility Ordinance and the following provisions:

- (a) To comply with all federal, state, and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
- (b) To notify the awarding authority within 30 calendar days after receiving notification that any governmental agency has initiated an investigation which may result in a finding that the contractor did not comply with any federal, state, or local law in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
- (c) To notify the awarding authority within 30 calendar days of all findings by a governmental agency or court of competent jurisdiction that the contractor has violated any federal, state, or local law in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees.
- (d) If applicable, to provide the awarding authority, within 30 calendar days, updated responses to the Responsibility Questionnaire if any change occurs which would change any response contained within the Responsibility Questionnaire and such change would affect the contractor's fitness and ability to continue the contract.
- (e) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, or sublicensee that perform or assist in performing services on the leased or licensed premises) shall comply with all federal, state, and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
- (f) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, sublicensee that perform or assist in performing services on the leased or licensed premises) submit a Pledge of Compliance.
- (g) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, or sublicensee that perform or assist in performing services on the leased or licensed premises) shall comply with paragraphs (b) and (c).

Failure to complete and submit this form to the Awarding Authority may result in withholding of payments by the City Controller, or contract termination.

Company Name, Address and Phone Number

Signature of Officer or Authorized Representative

Date

Print Name and Title of Officer or Authorized Representative

Awarding City Department

Contact Number

**CITY OF LOS ANGELES
RESPONSIBILITY QUESTIONNAIRE**

RESPONSES TO THE QUESTIONS CONTAINED IN THIS QUESTIONNAIRE MUST BE SUBMITTED ON THIS FORM. In responding to the Questionnaire, neither the City form, nor any of the questions contained therein, may be retyped, recreated, modified, altered, or changed in any way, in whole or in part. Bidders or Proposers that submit responses on a form that has been retyped, recreated, modified, altered, or changed in any way shall be deemed non-responsive.

The signatory of this Questionnaire guarantees the truth and accuracy of all statements and answers to the questions herein. Failure to complete and return this questionnaire, any false statements, or failure to answer (a) question(s) when required, may render the bid/proposal non-responsive. All responses must be typewritten or printed in ink. Where an explanation is required or where additional space is needed to explain an answer, use the Responsibility Questionnaire Attachments. Submit the completed form and all attachments to the awarding authority. Retain a copy of this completed form for future reference. Contractors must submit updated information to the awarding authority if changes have occurred that would render any of the responses inaccurate in any way. Updates must be submitted to the awarding authority within 30 days of the change(s).

A. CONTACT INFORMATION

CITY DEPARTMENT INFORMATION

City Department/Division Awarding Contract _____ City Contact Person _____ Phone _____
City Bid or Contract Number (if applicable) and Project Title _____

BIDDER/CONTRACTOR INFORMATION

Bidder/Proposer Business Name _____
Street Address _____ City _____ State _____ Zip _____
Contact Person, Title _____ Phone _____ Fax _____

TYPE OF SUBMISSION:

The Questionnaire being submitted is:

- An initial submission of a completed Questionnaire.
- An update of a prior Questionnaire dated ____/____/____.
- No change. I certify under penalty of perjury under the laws of the State of California that there has been no change to any of the responses since the last Responsibility Questionnaire dated ____/____/____ was submitted by the firm. Attach a copy of that Questionnaire and sign below.

Print Name, Title _____ Signature _____ Date _____

TOTAL NUMBER OF PAGES SUBMITTED, INCLUDING ALL ATTACHMENTS: _____

B. BUSINESS ORGANIZATION/STRUCTURE

Indicate the organizational structure of your firm. "Firm" includes a sole proprietorship, corporation, joint venture, consortium, association, or any combination thereof.

Corporation: Date incorporated: ____/____/____ State of incorporation: _____

List the corporation's current officers.

President: _____

Vice President: _____

Secretary: _____

Treasurer: _____

Check the box only if your firm is a publicly traded corporation.

List those who own 5% or more of the corporation's stocks. Use Attachment A if more space is needed. Publicly traded corporations need not list the owners of 5% or more of the corporation's stocks.

Limited Liability Company: Date of formation: ____/____/____ State of formation: _____

List members who own 5% or more of the company. Use Attachment A if more space is needed.

Partnership: Date formed: ____/____/____ State of formation: _____

List all partners in your firm. Use Attachment A if more space is needed.

Sole Proprietorship: Date started: ____/____/____

List any firm(s) that you have been associated with as an owner, partner, or officer for the last five years. Use Attachment A if more space is needed. Do not include ownership of stock in a publicly traded company in your response to this question.

Joint Venture: Date formed: ____/____/____

List: (1) each firm that is a member of the joint venture and (2) the percentage of ownership the firm will have in the joint venture. Use Attachment A if more space is needed. **Each member of the Joint Venture must complete a separate Questionnaire for the Joint Venture's submission to be considered as responsive to the invitation.**

C. OWNERSHIP AND NAME CHANGES

1. Is your firm a subsidiary, parent, holding company, or affiliate of another firm?

Yes No

If **Yes**, explain on Attachment A the relationship between your firm and the associated firms. Include information about an affiliated firm only if one firm owns 50% or more of another firm, or if an owner, partner or officer of your firm holds a similar position in another firm.

2. Has any of the firm's owners, partners, or officers operated a similar business in the past five years?

Yes No

If **Yes**, list on Attachment A the names and addresses of all such businesses, and the person who operated the business. Include information about a similar business only if an owner, partner or officer of your firm holds a similar position in another firm.

3. Has the firm changed names in the past five years?

Yes No

If **Yes**, list on Attachment A all prior names, addresses, and the dates they were used. Explain the reason for each name change in the last five years.

4. Are any of your firm's licenses held in the name of a corporation or partnership?

Yes No

If **Yes**, list on Attachment A the name of the corporation or partnership that actually holds the license.

Bidders/Contractors must continue on to Section D and answer all remaining questions contained in this Questionnaire.

The responses in this Questionnaire will not be made available to the public for review. This is not a public document. [CPCC §20101(a)]

D. FINANCIAL RESOURCES AND RESPONSIBILITY

5. Is your firm now, or has it ever been at any time in the last five years, the debtor in a bankruptcy case?
 Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

6. Is your company in the process of, or in negotiations toward, being sold?
 Yes No

If **Yes**, explain the circumstances on Attachment B.

E. PERFORMANCE HISTORY

7. How many years has your firm been in business? _____ Years.

8. Has your firm ever held any contracts with the City of Los Angeles or any of its departments?
 Yes No

If, **Yes**, list on an Attachment B all contracts your firm has had with the City of Los Angeles for the last 10 years. For each contract listed in response to this question, include: (a) entity name; (b) purpose of contract; (c) total cost; (d) starting date; and (e) ending date.

9. List on Attachment B all contracts your firm has had with any private or governmental entity (other than the City of Los Angeles) over the last five years that are similar to the work to be performed on the contract for which you are bidding or proposing. For each contract listed in response to this question, include: (a) entity name; (b) purpose of contract; (c) total cost; (d) starting date; and (e) ending date.

Check the box if you have not had any similar contracts in the last five years

10. In the past five years, has a governmental or private entity or individual terminated your firm's contract prior to completion of the contract?
 Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

11. In the past five years, has your firm used any subcontractor to perform work on a government contract when you knew that the subcontractor had been debarred by a governmental entity?
 Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

12. In the past five years, has your firm been debarred or determined to be a non-responsible bidder or contractor?
 Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

F. DISPUTES

13. In the past five years, has your firm been the defendant in court on a matter related to any of the following issues? For parts (a) and (b) below, check **Yes** even if the matter proceeded to arbitration without court litigation. For part (c), check **Yes** only if the matter proceeded to court litigation. If you answer **Yes** to any of the questions below, explain the circumstances surrounding each instance on Attachment B. You must include the following in your response: the name of the plaintiffs in each court case, the specific causes of action in each case; the date each case was filed; and the disposition/current status of each case.

(a) Payment to subcontractors?

Yes No

(b) Work performance on a contract?

Yes No

(c) Employment-related litigation brought by an employee?

Yes No

14. Does your firm have any outstanding judgements pending against it?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

15. In the past five years, has your firm been assessed liquidated damages on a contract?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance and identify all such projects, the amount assessed and paid, and the name and address of the project owner.

G. COMPLIANCE

16. In the past five years, has your firm or any of its owners, partners or officers, ever been investigated, cited, assessed any penalties, or been found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed on Attachment C (Page 9)? For this question, the term "owner" does not include owners of stock in your firm if your firm is a publicly traded corporation.

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance, including the entity that was involved, the dates of such instances, and the outcome.

17. If a license is required to perform any services provided by your firm, in the past five years, has your firm, or any person employed by your firm, been investigated, cited, assessed any penalties, subject to any disciplinary action by a licensing agency, or found to have violated any licensing laws?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance in the last five years.

18. In the past five years, has your firm, any of its owners, partners, or officers, ever been penalized or given a letter of warning by the City of Los Angeles for failing to obtain authorization from the City for the substitution of a Minority-owned (MBE), Women-owned (WBE), or Other (OBE) business enterprise?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance in the last five years.

H. BUSINESS INTEGRITY

19. For questions (a), (b), and (c) below, check **Yes** if the situation applies to your firm. For these questions, the term "firm" includes any owners, partners, or officers in the firm. The term "owner" does not include owners of stock in your firm if the firm is a publicly traded corporation. If you check **Yes** to any of the questions below, explain on Attachment B the circumstances surrounding each instance.

(a) Is a governmental entity or public utility currently investigating your firm for making (a) false claim(s) or material misrepresentation(s)?

Yes No

(b) In the past five years, has a governmental entity or public utility alleged or determined that your firm made (a) false claim(s) or material misrepresentation(s)?

Yes No

(c) In the past five years, has your firm been convicted or found liable in a civil suit for, making (a) false claim(s) or material misrepresentation(s) to any governmental entity or public utility?

Yes No

20. In the past five years, has your firm or any of its owners or officers been convicted of a crime involving the bidding of a government contract, the awarding of a government contract, the performance of a government contract, or the crime of fraud, theft, embezzlement, perjury, bribery? For this question, the term "owner" does not include those who own stock in a publicly traded corporation.

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury under the laws of the State of California that I have read and understand the questions contained in this questionnaire and the responses contained on all Attachments. I further certify that I have provided full and complete answers to each question, and that all information provided in response to this Questionnaire is true and accurate to the best of my knowledge and belief.

Print Name, Title

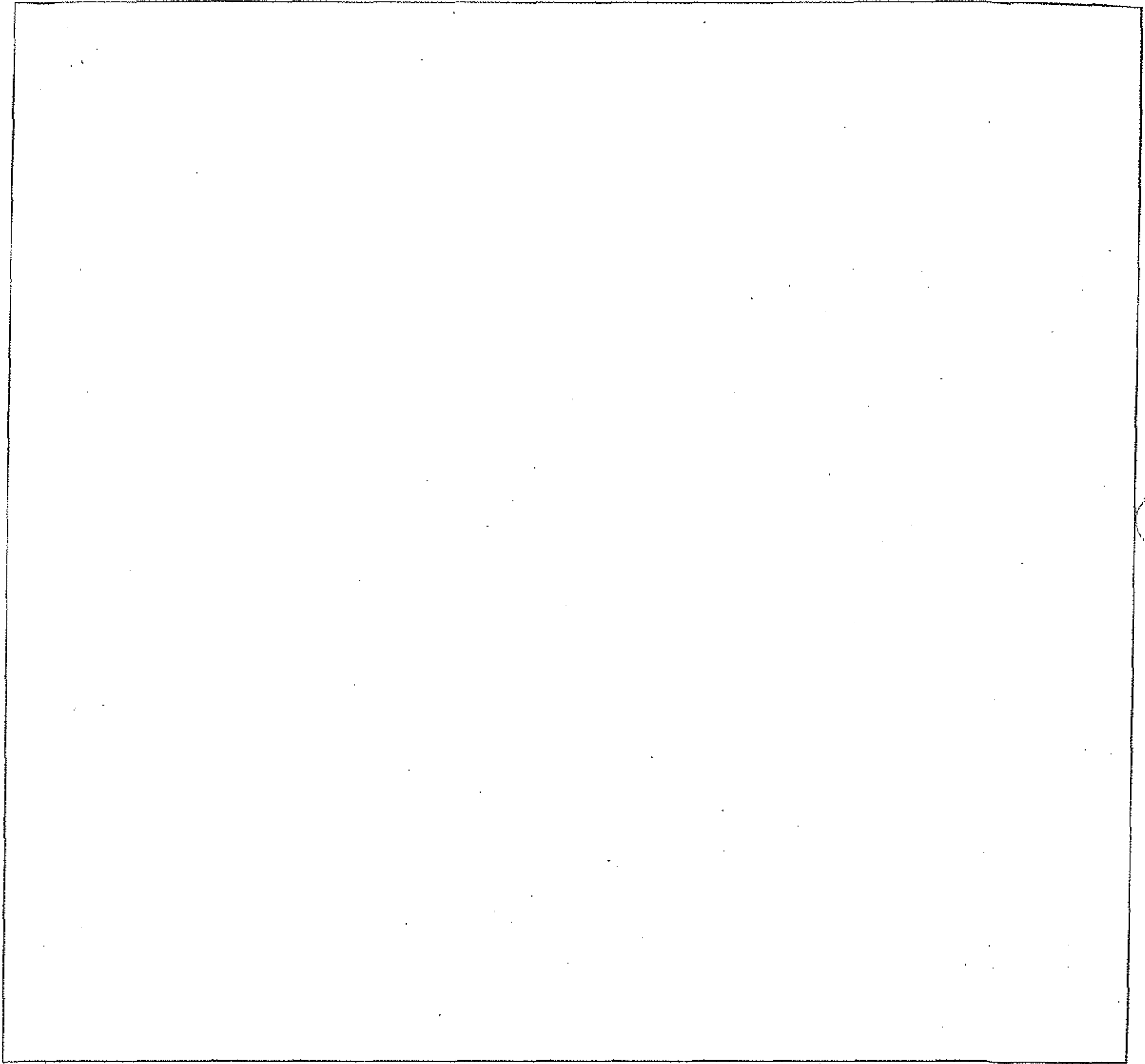
Signature

Date

ATTACHMENT A FOR SECTIONS A THROUGH C

Where additional information or an explanation is required, use the space below to provide the information or explanation. Information submitted on this sheet must be typewritten or printed in ink. Include the number of the question for which you are submitting additional information. Make copies of this Attachment if additional pages are needed.

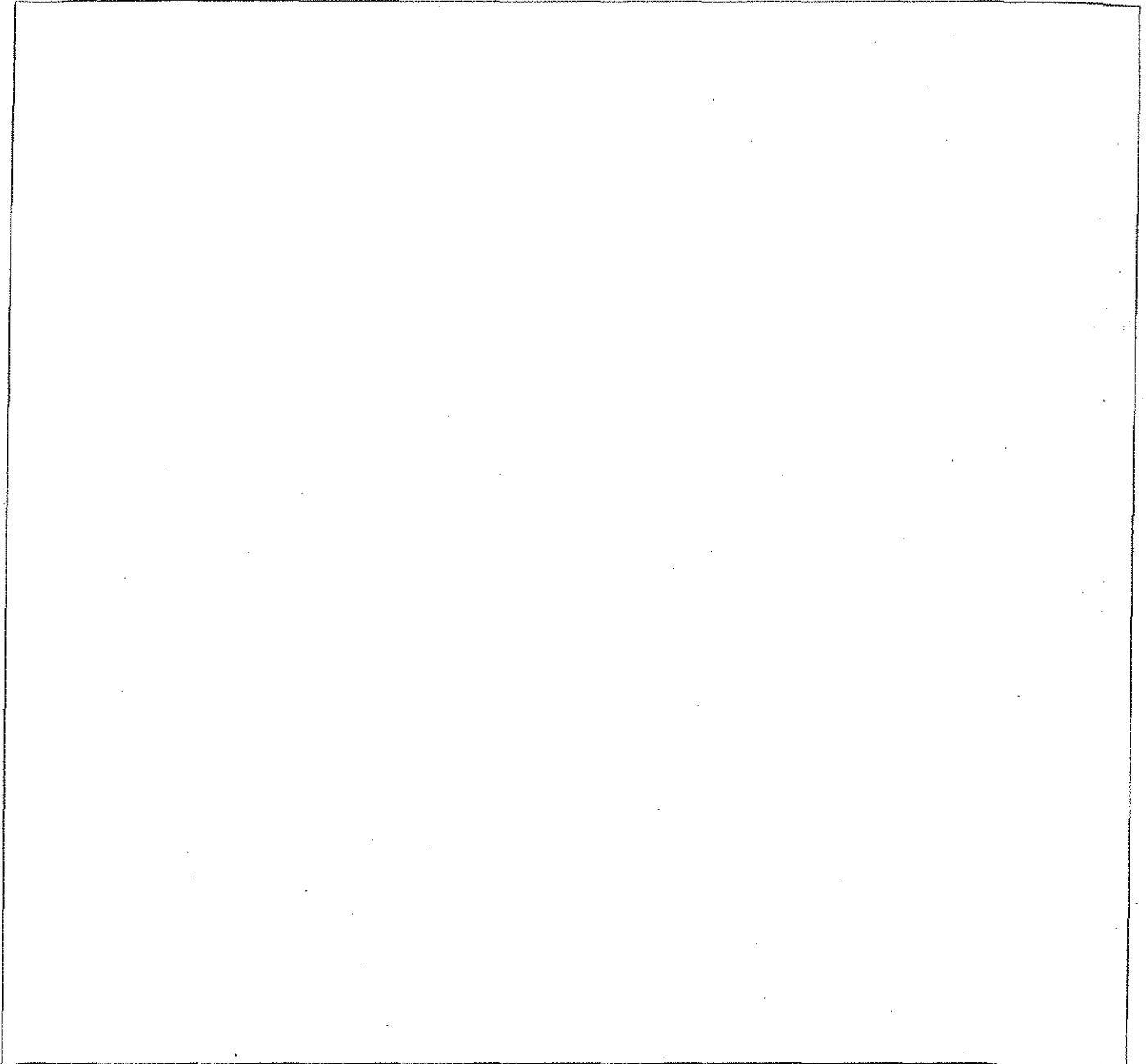
Page _____



ATTACHMENT B FOR SECTIONS D THROUGH H

Where additional information or an explanation is required, use the space below to provide the information or explanation. Information submitted on this sheet must be typewritten or printed in ink. Include the number of the question for which you are submitting additional information. Make copies of this Attachment if additional pages are needed.

Page _____



ATTACHMENT C: GOVERNMENTAL ENTITIES FOR QUESTION NO. 16

Check **Yes** in response to Question No. 16 if your firm or any of its owners, partners or officers, have ever been cited, assessed any penalties, or found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed below (or any of its subdivisions), including but not limited to those examples specified below. The term "owner" does not include owners of stock in your firm if your firm is a publicly traded corporation. If you answered **Yes**, provide an explanation on Attachment B of the circumstances surrounding each instance, including the entity involved, the dates of such instances, and the outcome.

FEDERAL ENTITIES

Federal Department of Labor

- American with Disabilities Act
- Immigration Reform and Control Act
- Family Medical Leave Act
- Fair Labor Standards Act
- Davis-Bacon and laws covering wage requirements for federal government contract workers
- Migrant and Seasonal Agricultural Workers Protection Act
- Immigration and Naturalization Act
- Occupational Safety and Health Act
- anti-discrimination provisions applicable to government contractors and subcontractors
- whistleblower protection laws

Federal Department of Justice

- Civil Rights Act
- American with Disabilities Act
- Immigration Reform and Control Act of 1986
- bankruptcy fraud and abuse

Federal Department of Housing and Urban Development (HUD)

- anti-discrimination provisions in federally subsidized/assisted/sponsored housing programs
- prevailing wage requirements applicable to HUD related programs

Federal Environmental Protection Agency

- Environmental Protection Act

National Labor Relations Board

- National Labor Relations Act

Federal Equal Employment Opportunity Commission

- Civil Rights Act
- Equal Pay Act
- Age Discrimination in Employment Act
- Rehabilitation Act
- Americans with Disabilities Act

STATE ENTITIES

California's Department of Industrial Relations

- wage and labor standards, and licensing and registration
- occupational safety and health standards
- workers' compensation self insurance plans
- Workers' Compensation Act
- wage, hour, and working standards for apprentices
- any provision of the California Labor Code

California's Department of Fair Employment and Housing

- California Fair Employment and Housing Act
- Unruh Civil Rights Act
- Ralph Civil Rights Act

California Department of Consumer Affairs

- licensing, registration, and certification requirements
- occupational licensing requirements administered and/or enforced by any of the Department's boards, including the Contractors' State Licensing Board

California's Department of Justice

LOCAL ENTITIES

City of Los Angeles or any of its subdivisions for violations of any law, ordinance, code, rule, or regulation administered and/or enforced by the City, including any letters of warning or sanctions issued by the City of Los Angeles for an unauthorized substitution of subcontractors, or unauthorized reductions in dollar amounts subcontracted.

OTHERS

Any other federal, state, local governmental entity for violation of any other federal, state, or local law or regulation relating to wages, labor, or other terms and conditions of employment.

**CITY OF LOS ANGELES
CONTRACTOR CODE OF CONDUCT**

The City of Los Angeles has long supported the premise that employers should fairly compensate employees, that the health and safety of workers should be protected, and that no form of discrimination or abuse should be tolerated. Experience indicates that laws and regulations designed to safeguard basic tenets of ethical business practices are disregarded in some workplaces, commonly referred to as "sweatshops."

In its role as a market participant that procures equipment, goods, materials and supplies, the City seeks to protect its interests by assuring that the integrity of the City's procurement process is not undermined by contractors who engage in sweatshop practices and other employment practices abhorrent to the City. When the City inadvertently contracts with these contractors, the City's ethical contractors are placed at a distinct competitive disadvantage. Many times ethical contractors are underbid by unscrupulous contractors in competition for City contracts. These ethical contractors may be dissuaded from participating in future procurement contracts.

The City's proprietary contracting interests are served by doing business with contractors who make a good faith effort to ensure that they and their subcontractors shun sweatshop practices and adhere to workplace and wage laws. Seeking to protect these municipal interests, the City requires that all contractors subject to the Sweat-free Procurement Ordinance certify that they and, to the best of their knowledge, their subcontractors will comply with the City's Contractor Code of Conduct and to promise the following:

- (a) To comply with all applicable wage, health, labor, environmental and safety laws, legal guarantees of freedom of association, building and fire codes, and laws and ordinances relating to workplace and employment discrimination.
- (b) To comply with all human and labor rights and labor obligations that are imposed by treaty or law on the country in which the equipment, supplies, goods or materials are made or assembled, including but not limited to abusive forms of child labor, slave labor, convict or forced labor, or sweatshop labor.
- (c) To take good faith measures to ensure, to the best of the contractor's knowledge, that the contractor's subcontractors also comply with the City's Contractor Code of Conduct.
- (d) To pay employees working on contracts for garments, uniforms, foot apparel, and related accessories a procurement living wage, meaning for domestic manufacturers a base hourly wage adjusted annually to the amount required to produce, for 2,080 hours worked, an annual income equal to or greater than the U.S. Department of Health and Human Services most recent poverty guideline for a family of three plus an additional 20 percent of the wage level paid either as hourly wages or health benefits. For manufacturing operations in countries other than the United States, a procurement living wage which is comparable to the wage for domestic manufacturers as defined above, adjusted to reflect the country's level of economic development by using the World Bank's Gross National Income Per Capita Purchasing Power index.

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury under the laws of the State of California that I have read and understood the City's Contractor Code of Conduct and agree to comply with its requirements.

Signature of Officer or Authorized Representative

Date

Print Name and Title of Authorized Representative

Print Company Name, Address and Phone Number

IRAN CONTRACTING ACT OF 2010 COMPLIANCE AFFIDAVIT

(California Public Contract Code Sections 2200-2208)

The California Legislature adopted the Iran Contracting Act of 2010 to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The Iran Contracting Act prohibits proposers engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A proposer who "engages in investment activities in Iran" is defined as either:

1. A proposer providing goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including provision of oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
1. A proposer that is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2203(b) as a person engaging in the investment activities in Iran.

The proposer shall certify that at the time of submitting a proposal for new contract or renewal of an existing contract, he or she is **not** identified on the DGS list of ineligible businesses or persons and that the proposer is **not** engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts (PCC § 2205).

To comply with the Iran Contracting Act of 2010, the proposer shall complete and sign **ONE** of the options shown below.

OPTION #1: CERTIFICATION

I, the official named below, certify that I am duly authorized to execute this certification on behalf of the proposer or financial institution identified below, and that the proposer or financial institution identified below is **not** on the current DGS list of persons engaged in investment activities in Iran and is **not** a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person or vendor, for 45 days or more, if that other person or vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current DSG list of persons engaged in investment activities in Iran.

Name of Proposer/Financial Institution (Printed): _____

Signed by: _____ (Authorized Signature)

_____ (Printed Name)

_____ (Title of Person Signing)

OPTION #2: EXEMPTION

Pursuant to PCC § 2203(c) and (d), a public entity may permit a proposer or financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enter into, or renew, a contract for goods and services. If the proposer or financial institution identified below has obtained an exemption from the certification requirement under the Iran Contracting Act of 2010, the proposer or financial institution shall complete and sign below and attach documentation demonstrating the exemption approval.

Name of Proposer/Financial Institution (Printed): _____

Signed by: _____ (Authorized Signature)

_____ (Printed Name)

_____ (Title of Person Signing)



**Department of General Services
Procurement Division**

707 Third Street, Second Floor, West Sacramento, CA 95605
(916) 375-4400 (800) 559-5529

List Date: July 17, 2012

**Entities Prohibited from Contracting with Public Entities in California per the
Iranian Contracting Act, 2010**

- | | |
|---|---|
| 1. Ak Makina | 21. Naffiran |
| 2. Amona | 22. Oil and Natural Gas Corp (ONGC) |
| 3. Belaz | 23. Oil India Limited |
| 4. Belneftkhim | 24. Panyu Chu Kong Steel Pipe
Company, Ltd. |
| 5. Bharat Petroleum Corporation
Limited | 25. Petroleos de Venezuela |
| 6. ChinaOil | 26. Saras |
| 7. CNPC (China National Petroleum
Corporation) | 27. Schwing America Inc. |
| 8. Daniell | 28. Shandong FIN CNC Machine Co.,
Ltd. |
| 9. DK Tech Corporation | 29. Shanghai Sunry Petroleum
Equipment Company, Ltd. |
| 10. Double Hull Tankers, Inc. | 30. Sinohydro |
| 11. Emirates National Oil Company | 31. Sinopec Corp |
| 12. Grimley Smith Associates | 32. SK Energy |
| 13. Hellenic Petroleum S.A. | 33. Snam Rete Gas |
| 14. Hin Leong Trading | 34. Sonangol |
| 15. Hyundai Heavy Industries | 35. Unipet |
| 16. Indian Oil Corporation | 36. Zhenhua Oil Company |
| 17. Kingdream PLC | |
| 18. Liquefied Natural Gas Limited | |
| 19. Lukoil | |
| 20. Maire Tecnimont | |

If you have any questions regarding this list, please contact:

Office of Policies, Procedures and Legislation
charles.deyoe@dgs.ca.gov

APPENDIX I
 TO POWER PURCHASE AGREEMENT,
 DATED AS OF _____, 2014
 BETWEEN
 THE CITY OF LOS ANGELES ACTING BY AND THROUGH
 THE DEPARTMENT OF WATER AND POWER
 AND
 RE BARREN RIDGE 1 LLC
MILESTONE SCHEDULE

No.	<u>Guaranteed Date</u>	<u>Milestone Description</u>	<u>Daily Liquidated Damages/Other Remedy</u>
1.	Ten (10) days after the Effective Date	Seller has delivered all certificates and other documents required to establish that the Insurance is in full force and effect	
2.	Ten (10) days after the Effective Date	Seller has delivered to Buyer a CEC pre-certification form duly approved by the CEC	
3.	June 30, 2014	Seller has delivered a copy of the executed Generator Interconnection Agreement	\$5,000 per day
4.	December 31, 2014	Seller has entered into a Subcontract for the engineering, procurement, and construction of the Facility that satisfies the requirements set forth in the Agreement and has delivered a copy of such Subcontract to Buyer (with confidential or proprietary information redacted at Seller's reasonable discretion)	
5.	April 1, 2015	LandCo LLC has purchased the Site (excluding the real property owned by the BLM)	
6.	April 1, 2015	Seller has entered into the	

		Land Lease	
7.	April 1, 2015	Buyer has received a valid, binding and enforceable mortgage policy of title insurance with respect to the real property and real property interests covered by the Security Documents issued by a company and in an amount and a form all acceptable to Buyer in its sole discretion	
8.	April 1, 2015	Seller has entered into a Site Control Document with the BLM and has obtained Site Control	\$5,000 per day
9.	April 1, 2015	Each of Seller and LandCo LLC has executed and delivered to Buyer the Security Documents and properly perfected the interests granted therein	
10.	April 1, 2015	Seller has delivered to Buyer the Security Documents Legal Opinion	
11.	April 1, 2015	Seller has delivered to Buyer true, correct, and complete copies of all documents relating to the environmental condition of the Site in form, scope, and substance reasonably satisfactory to Buyer, including any Phase I Environmental Site Assessment prepared relative to the Site	
12.	April 1, 2015	Seller has delivered to Buyer a copy of Seller's policy of title insurance in form reasonably satisfactory to Buyer	
13.	June 30, 2015	Seller has obtained all Permits set forth on	\$10,000 per day

		<u>Appendix B-1</u> (which shall be final and non-appealable), excluding all Permits not yet required for Seller's development and construction of the Facility but that are reasonably expected to be obtained in due course	
14.	June 30, 2015	Closing of project financing, if applicable, or demonstration of financial capability and equity support to complete the construction of the Facility	
15.	June 30, 2015	Begin construction of Facility	\$10,000 per day
16.	August 14, 2015	Initial Delivery Date	
17.	December 31, 2015	Guaranteed Commercial Operation Date	\$10,000 per day

APPENDIX J
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC

AUTHORIZED REPRESENTATIVES:
BUYER AND SELLER BILLING, NOTIFICATION AND
SCHEDULING CONTACT INFORMATION

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

1.1 Buyer:

Department of Water and Power of the City of Los Angeles
111 North Hope Street, Room 1263 JFB
Los Angeles, California 90012
Attention: LADWP Operating Agent – Minh T. Le

Or if sent electronically, send to all the emails listed below:

Minh.Le@ladwp.com
Michael.Webster@ladwp.com

1.2 Seller:

300 California St, Suite 700
San Francisco, CA 94104

Attention: Operations & Maintenance
Telephone: (415) 675-1500
Facsimile: (415) 675-1501
Email: ops@recurrentenergy.com

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

2.1 If Billing to Buyer:

The Department of Water and Power of the City of Los Angeles
P.O. Box 51211
Room 424 JFB

Los Angeles, California 90051-5511
Attention: Accounting Division – Accounts Payable Section – Supervisor
Accounts Payable

Or if sent electronically, send to all the emails listed below:

Sherry.Grueter@ladwp.com
Andrew.Virzi@ladwp.com
Matin.Lackpour@ladwp.com

2.2 If Payment to Buyer:

The Department of Water and Power of the City of Los Angeles
P.O. Box 51211
Room 424 JFB
Los Angeles, California 90051-5511
Attention: Accounting Division – Accounts Payable Section – Supervisor
Accounts Payable

Or if sent electronically, send to all the emails listed below:

Sherry.Grueter@ladwp.com
Andrew.Virzi@ladwp.com
Matin.Lackpour@ladwp.com

2.3 If Payment or Billing to Seller:

RE Barren Ridge 1 LLC
300 California St, Suite 700

San Francisco, CA 94104
Attention: Accounts Receivable
Telephone: (415) 675-1500 ext 407
Facsimile: (415) 675-1501
Email: ap@recurrentenergy.com

3. Notices. Unless otherwise specified by Buyer all notices (other than Scheduling notices, curtailment notices, and Deemed Generated Energy notices):

If to Buyer:

Department of Water and Power of the City of Los Angeles
111 North Hope Street, Room 1263 JFB
Los Angeles, California 90012
Attention: LADWP Operating Agent – Minh T. Le

Or if sent electronically, send to all the emails listed below:

Minh.Le@ladwp.com
Michael.Webster@ladwp.com

If to Seller:

RE Barren Ridge 1 LLC
300 California St, Suite 700
San Francisco, CA 94104
Attention: General Counsel's Office
Telephone: (415) 675-1500 ext 413
Facsimile: (415) 675-1501
Email: legal@recurrentenergy.com

4. **Schedulers.** Unless otherwise specified by Buyer, all notices related to Scheduling of the Facility shall be sent to the following address:

If to Buyer:

Department of Water and Power of the City of Los Angeles
P.O. Box 111
Room 1148 JFB
Los Angeles, California 90051
Attention: Manage of Wholesale Energy Resources -- ECC Dispatcher
Phone: (818) 771-6771
Facsimile: (818) 771-6606

Or if sent electronically, send to all the emails listed below:

Brad.Packer@ladwp.com
Minh.Le@ladwp.com

If to Seller:

RE Barren Ridge 1 LLC
300 California St, Suite 700
San Francisco, CA 94104
Attention: Operations & Maintenance
Telephone: (415) 675-1500
Facsimile: (415) 675-1501
Email: ops@recurrentenergy.com

5. **Curtailments.** All notices related to curtailments of the Facility pursuant to Section 7.4 shall be sent to the following address:

If to Buyer:

Department of Water and Power of the City of Los Angeles
P.O. Box 111
Room 1148 JFB
Los Angeles, California 90051
Attention: Manage of Wholesale Energy Resources – ECC Dispatcher
Phone: (818) 771-6771
Facsimile: (818) 771-6606

Or if sent electronically, send to all the emails listed below:

Brad.Packer@ladwp.com
Minh.Le@ladwp.com

If to Seller:

RE Barren Ridge 1 LLC
300 California St, Suite 700
San Francisco, CA 94104
Attention: Operations & Maintenance
Telephone: (415) 675-1500
Facsimile: (415) 675-1501
Email: ops@recurrentenergy.com

6. **Deemed Generated Energy.** Unless otherwise specified by Buyer, all notices related to calculations of Deemed Generated Energy shall be sent to the following address:

If to Buyer:

Department of Water and Power of the City of Los Angeles
P.O. Box 111
Room 1148 JFB
Los Angeles, California 90051
Attention: Manage of Wholesale Energy Resources – ECC Dispatcher
Phone: (818) 771-6771
Facsimile: (818) 771-6606

Or if sent electronically, send to all the emails listed below:

Brad.Packer@ladwp.com
Matin.Lackpour@ladwp.com
Minh.Le@ladwp.com

If to Seller:

RE Barren Ridge 1 LLC
300 California St, Suite 700
San Francisco, CA 94104
Attention: Operations & Maintenance
Telephone: (415) 675-1500
Facsimile: (415) 675-1501
Email: ops@recurrentenergy.com

APPENDIX K
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC
FORM OF OPTION AGREEMENT

[See attached]

OPTION AGREEMENT

by and between

RE BARREN RIDGE 1 LLC
as "Seller"

and

THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
as "Buyer"

Dated as of _____

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OPTION AGREEMENT

This OPTION AGREEMENT is entered into as of this ____ day of _____, 2014 ("*Effective Date*"), by and between RE BARREN RIDGE 1 LLC, a limited liability company organized and existing under the laws of the State of Delaware ("*Seller*"), and THE CITY OF LOS ANGELES ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER, a municipal corporation of the State of California ("*Buyer*"). Each of Buyer and Seller is referred to individually in this Agreement as a "*Party*" and together they are referred to as the "*Parties*."

RECITALS

WHEREAS, Seller and Buyer have entered into that certain Power Purchase Agreement of even date herewith (the "*PPA*"), relating to the purchase by Buyer of all of the Facility Energy, Capacity Rights and associated Environmental Attributes (each as defined in the PPA and collectively defined therein as the "*Products*") generated by a 60 MW (AC) solar photovoltaic facility to be developed, constructed, owned and operated by Seller in Mojave, California; and

WHEREAS, Seller desires to grant to Buyer, and Buyer wishes to have, an option, exercisable at various times as set forth herein, to purchase the Facility Assets (as defined herein) on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, Buyer entering into the PPA, and the agreements herein and in the other Operative Documents (as defined herein) and in reliance upon the representations and warranties therein and herein, Buyer and Seller, intending to be legally bound, hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. Except as otherwise expressly provided herein, capitalized terms used in this Agreement, including in its *Recitals*, *Schedules* and *Exhibits*, shall have the meanings given in *Exhibit 1.1*. Capitalized terms used herein but not defined in *Exhibit 1.1* shall have their meanings ascribed thereto in the PPA.

1.2 Rules of Interpretation. Except as otherwise expressly provided herein, the rules of interpretation set forth in *Exhibit 1.1* shall apply to this Agreement.

ARTICLE II OPTION TO PURCHASE; CLOSING

2.1 Option to Purchase. Seller hereby grants Buyer an option, on the terms and conditions set forth in this Agreement, to purchase all of Seller's right, title and interest in and to the Facility Assets, but not the Excluded Assets, and to assume the Assumed Liabilities, but not the Excluded Liabilities, on and subject to the terms and conditions set forth in this Agreement

(the "*Project Purchase Option*"). The Project Purchase Option may only be exercised with respect to all of Seller's right, title and interest in and to the Facility Assets, and not with respect to only a portion thereof.

2.2 Exercise of Project Purchase Option. Buyer may exercise the Project Purchase Option in accordance with the provisions set forth in Section 2.4 at any time:

(a) during the six (6) month period commencing on the date that is eighteen (18) months prior to the sixth (6th) anniversary of the Commercial Operation Date (in which case the Closing Date shall be on the sixth (6th) anniversary of the Commercial Operation Date, subject to the terms and conditions of this Article II, Article VII, and Article VIII); or

(b) during the six (6) month period commencing on the date that is eighteen (18) months prior to the tenth (10th) anniversary of the Commercial Operation Date (in which case the Closing Date shall be on the tenth (10th) anniversary of the Commercial Operation Date, subject to the terms and conditions of this Article II, Article VII, and Article VIII); or

(c) during the six (6) month period commencing on the date that is eighteen (18) months prior to the fifteenth (15th) anniversary of the Commercial Operation Date (in which case the Closing Date shall be on the fifteenth (15th) anniversary of the Commercial Operation Date, subject to the terms and conditions of this Article II, Article VII, and Article VIII); or

(d) during the six (6) month period commencing on the date that is eighteen (18) months prior to the twentieth (20th) anniversary of the Commercial Operation Date (in which case the Closing Date shall be on the twentieth (20th) anniversary of the Commercial Operation Date, subject to the terms and conditions of this Article II, Article VII, and Article VIII); or

(e) during the sixty (60) day period commencing on the date on which a Termination Notice is provided by Buyer to Seller and Buyer has exercised its remedies pursuant to Section 13.2(d) of the PPA (in which case the Closing Date shall be the date designated by Buyer that is no later than the date that is six (6) months following delivery by Buyer of the Purchase Option Exercise Notice, subject to the terms and conditions of this Article II, Article VII, and Article VIII).

Each opportunity of Buyer to exercise the Project Purchase Option set forth in Sections 2.2(a) through (e) above shall be referred to herein as a "*Purchase Option Opportunity*."

Seller acknowledges that Buyer has no obligation to exercise the Project Purchase Option and that Buyer may decline to exercise the Project Purchase Option for any or no reason, as Buyer deems appropriate in its sole discretion.

2.3 Environmental Review. Seller acknowledges and agrees that the sale of the Transferred Assets could potentially be subject to environmental review pursuant to CEQA and the National Environmental Policy Act of 1969. Any additional costs and expenses incurred in

connection with any environmental reviews requested by Buyer or required because of Buyer's status as a public agency, in each case, in connection with the exercise of the Project Purchase Option, shall be borne by Buyer.

2.4 Tentative Exercise Notice. Buyer shall exercise the Project Purchase Option (if at all) by delivering to Seller a notice of exercise signed by Buyer (the "*Purchase Option Tentative Exercise Notice*") within the periods of time specified in Section 2.2. Within sixty (60) days after it receives a Purchase Option Tentative Exercise Notice (the "*Schedule Delivery Date*"), Seller will deliver to Buyer the following, dated as of the Schedule Delivery Date: *Schedule 3.3* (Real Property Matters); *Schedule 3.4* (Seller's Consents); *Schedule 3.5* (Certain Excluded Assets); *Schedule 3.7* (Environmental Matters); *Schedule 3.8* (Liabilities); *Schedule 3.9* (Tax Matters); *Schedule 3.10* (Compliance with Laws); *Schedule 3.11* (Litigation); *Schedule 3.12* (Assumed Contracts); *Schedule 3.13* (Intellectual Property); *Schedule 3.15* (Non-Environmental Permits); *Schedule 3.18* (Employee Matters); *Schedule 3.19* (Shared Facilities); and *Schedule 3.20* (Untrue Statements; Omissions) (collectively, the "*Seller Disclosure Schedules*"), each of which shall be applicable to the Facility and shall list, as required, any qualifications required to make the representations in Article III true and correct, and Buyer will deliver to Seller, dated as of the Schedule Delivery Date, *Schedule 4.3* (Buyer's Consents) (together with the Seller Disclosure Schedules, the "*Disclosure Schedules*").

2.5 Tentative Purchase Price; Exercise Notice.

(a) The Tentative Purchase Price shall be determined in accordance with Exhibit 2.5 following the later to occur of (i) the delivery of the Seller Disclosure Schedules, and (ii) the Schedule Delivery Date.

(b) After the Disclosure Schedules have been delivered and the Tentative Purchase Price has been determined pursuant to Section 2.5(a), and prior to the Purchase Option Exercise Deadline, Buyer shall elect, in its sole discretion to (i) withdraw its exercise of the Project Purchase Option with respect to the applicable Purchase Option Opportunity by delivering notice thereof to Seller, or (ii) continue with the exercise of the Project Purchase Option by delivering notice to Seller thereof (the "*Purchase Option Exercise Notice*"). The delivery of a Purchase Option Exercise Notice by Buyer shall constitute a binding and irrevocable commitment by Buyer to purchase, and shall create a binding obligation of Seller to sell, the Facility Assets as specified herein (subject to the satisfaction or waiver of each of the conditions to Closing set forth in Article VII and Article VIII) by the applicable Closing Date.

(c) If Buyer (i) withdraws its exercise of the Project Purchase Option pursuant to Section 2.5(b)(i) or (ii) fails to timely deliver either a Purchase Option Tentative Exercise Notice or Purchase Option Exercise Notice with respect to any Purchase Option Opportunity within the deadlines therefor under Sections 2.4 or 2.5, respectively, then Buyer's right to exercise the Project Purchase Option with respect to such Purchase Option Opportunity shall expire and shall no longer be effective (but such expiration shall not affect Buyer's right to exercise any Project Purchase Option with respect to any future Purchase Option Opportunity).

2.6 Memorandum of Option. Promptly after the execution of the lease agreement between Seller and LandCo LLC, the Parties shall execute and acknowledge a memorandum of option in form and substance acceptable to Buyer, and Seller shall record such memorandum in the Official Records of Kern County, California. Seller shall be responsible for payment of all fees and Taxes associated with such recording.

2.7 Closing. In the event Buyer delivers a Purchase Option Exercise Notice, the closing of the purchase and sale of the Facility Assets (the "Closing") shall occur at 11:59 p.m., local time on the Closing Date (subject to the satisfaction or waiver of each of the conditions to Closing set forth in Article VII and Article VIII). The Closing shall be held at the offices of Buyer in Los Angeles, California, or such other location in California that Buyer designates in a timely notice to Seller, unless the Parties otherwise agree. All events at the Closing shall be deemed to occur simultaneously, unless otherwise provided herein. In the event the Closing has not occurred by the designated Closing Date in respect of a Purchase Option Opportunity because of the failure of any of the conditions to Closing set forth in Article VII or Article VIII to be satisfied by such designated Closing Date, then Buyer (in the case of the conditions set forth in Article VII) or Seller (in the case of the conditions set forth in Article VIII), upon notice to the other Party and without liability, may terminate the Project Purchase Option with respect to such Purchase Option Opportunity, and such Purchase Option Opportunity shall expire and shall no longer be effective (but such termination shall not effect Buyer's right to exercise any Project Purchase Option with respect to any future Purchase Option Opportunity); provided that a Party cannot terminate any Project Purchase Option with respect to a Purchase Option Opportunity if the failure of the Closing to occur is the result of the failure on the part of such Party to perform its obligations under this Agreement.

2.8 EXCLUSIVE WARRANTIES. OTHER THAN THE REPRESENTATIONS AND WARRANTIES EXPLICITLY SET FORTH IN THIS AGREEMENT OR ANY OPERATIVE DOCUMENT, NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, SHALL BE GIVEN OR DEEMED GIVEN AS TO THE FACILITY OR THE FACILITY ASSETS CONSTITUTING THE FACILITY IN CONNECTION WITH SELLER'S SALE OF THE FACILITY FOLLOWING THE EXERCISE OF THE PROJECT PURCHASE OPTION.

2.9 Assumed Liabilities. At the Closing, Buyer shall assume, and agree to pay for, perform, fulfill and discharge from and after the Closing, all liabilities and obligations relating to the Facility Assets or the Business arising or occurring after the Closing Date other than the Excluded Liabilities (collectively, the "Assumed Liabilities").

2.10 Excluded Liabilities. Anything in this Agreement to the contrary notwithstanding, Buyer shall not assume, and shall not be deemed to have assumed, and shall have no liability with respect to (whether asserted before or after the Closing and regardless of whether the same or the basis therefor may have been disclosed to Buyer by Seller or otherwise be known to Buyer), any of the following liabilities or obligations of Seller (all such unassumed liabilities and obligations referred to in this Agreement as the "Excluded Liabilities"):

(a) Any liability or obligation of Seller in respect of Taxes attributable to Facility Assets for taxable periods ending on or prior to the Closing, including any supplemental tax liability related to activity or state of facts at the Facility conducted on or before the Closing that arises after the Closing, except that Buyer will be obligated to pay its prorated portion of current property taxes as provided below and all property taxes related to any periods beginning after the Closing;

(b) Any liability or obligation of Seller relating to the Facility Assets or the Business, including arising out of Seller's ownership and operation of the Facility Assets, arising or occurring prior to the Closing;

(c) Any liability or obligation of Seller arising out of Seller's ownership and operation of any assets other than the Facility Assets or any business other than the Business at any time;

(d) Any liability or obligation of Seller arising from a breach by Seller, or any event, circumstance or condition occurring or existing prior to the Closing that, with notice or lapse of time, constitutes or results in a breach by Seller under this Agreement, the PPA (including the Ancillary Documents), or any of the Operative Documents;

(e) Any liability or obligation of Seller under any Contract (including with respect to any contractors or subcontractors thereunder) other than an Assumed Contract or a permit other than a Transferred Permit;

(f) Any liability or obligation under any Assumed Contract or a Transferred Permit to the extent such liability or obligation arises from or relates to any breach by Seller of any provision of any of such Assumed Contracts or Transferred Permits prior to the Closing;

(g) Any liability or obligation under any Contract entered into during the Applicable Diligence Period and not assumed by Buyer pursuant to Section 5.10;

(h) Any liability or obligation of Seller with respect to the employment or termination of any employee or group of employees by Seller, or the terms thereof, whether union or nonunion, whether the liability or obligation calls for performance or observance before or after the Closing and whether the liability or obligation arises from a collective bargaining agreement, pension trust fund plan, or other agreement or arrangement to which Seller is a party or by which Seller is bound (whether oral or written and whether express or implied in fact or in law) or any past practice or custom or otherwise, it being understood and agreed that after the Closing, Buyer will itself be specifying the terms on which it offers employment to any individual to whom it, in its sole discretion, chooses to offer employment and will not be bound by any term of employment in effect at or at any time prior to the Closing;

(i) Any liability or obligation of Seller for pension fund payments or unfunded pension fund liabilities;

(j) Any liability or obligation arising from or associated with any of the Excluded Assets;

(k) Any liability or obligation of Seller or its Affiliates arising out of or related to any claim or loss against Seller or its Affiliates or any third-party claims or losses which adversely affects the Facility Assets and which shall have been asserted prior to the Closing or to the extent the basis of which shall have arisen exclusively prior to the Closing;

(l) Any liability or obligation of Seller or its Affiliates to a third party arising from any indemnification claim, injury to or death of any person or damage to or destruction of any property (and including workers' compensation claims, discrimination, wrongful discharge, or unfair labor practice), whether based on negligence, breach of warranty, strict liability, enterprise liability or any other legal or equitable theory arising from actions by, for or on behalf of Seller or its Affiliates arising prior to the Closing; and

(m) Any liability or obligation of Seller or its Affiliates representing Facility Debt incurred by Seller or its Affiliates or Liens or encumbrances other than Closing Permitted Encumbrances.

Seller agrees to pay or otherwise discharge, or cause the payment or discharge, of all Excluded Liabilities prior to the Closing, and shall provide Buyer with evidence thereof that is reasonably satisfactory to Buyer.

2.11 Schedule Updating: Final Purchase Price.

(a) No later than the date that is thirty (30) days prior to the designated Closing Date (the "*Updated Schedule Delivery Date*"), Seller shall have provided Buyer with updated Seller Disclosure Schedules, and such Seller Disclosure Schedules shall be used as the final Seller Disclosure Schedules for purposes of its representations and warranties made under Article III as of the Closing; *provided, however*, that if after the Updated Schedule Delivery Date, an event or circumstance occurs or exists that requires additional updates to the Seller Disclosure Schedules, Seller shall deliver such updates to Buyer as soon as practicable, and Buyer may, at its option, extend the Closing Date on a day-for-day basis for the period of time between the Updated Schedule Delivery Date and the date on which such updates were delivered to Buyer. Notwithstanding the foregoing, any update included in an updated Seller Disclosure Schedule delivered pursuant to this Section 2.11(a) shall have no effect for the purposes of determining the satisfaction of any condition to Closing set forth in Article VII and shall not alter or affect Buyer's right to terminate the Project Purchase Option with respect to the applicable Purchase Option Opportunity pursuant to Section 2.7; provided, however, that if a Closing occurs, then Buyer shall be deemed to have waived its right to indemnification under Section 12.1(a) with respect to any matter disclosed in any update.

(b) At the Closing, upon the terms and subject to the conditions set forth herein, Buyer shall, in exchange for the sale, transfer, assignment, conveyance and delivery of the Facility Assets by Seller, and the assumption by Buyer of the Assumed

Liabilities in accordance with this Agreement, pay Seller the Final Purchase Price determined in accordance with *Exhibit 2.5*. Such Final Purchase Price shall be paid by Buyer by wire transfer of immediately available funds to an account designated by Seller. The Final Purchase Price shall be allocated among the Facility Assets in the manner required by Section 1060 of the Code.

2.12 Proration. Without limiting Buyer's obligation to pay its portion of the Transfer Taxes under Section 2.13, Buyer and Seller agree that any items normally prorated, including those listed below, relating to the Business and the Facility Assets, shall be prorated as of the Closing, with Seller being liable therefor to the extent such items relate to periods on or prior to the Closing Date, and Buyer being liable to the extent such items relate to periods after the Closing with, to the extent practicable, a cash settlement on the Closing:

(a) personal property and real estate Taxes, assessments and other charges, if any, by the applicable municipality, on the basis of the applicable municipality's fiscal year, on or with respect to the Business;

(b) rent, Taxes and other items payable by or to Seller under any of the Assumed Contracts assigned to and assumed by Buyer hereunder which are associated with the Facility Assets;

(c) any Permit, registration, compliance, assurance fees or other fees with respect to any Transferred Permit comprising part of the Facility Assets; and

(d) sewer rents and charges for water, telephone, electricity and other utilities.

In connection with the prorations referred to in this Section 2.12, in the event that actual amounts for such items are not available on the Closing Date, the proration shall be based upon the actual Taxes or fees for the preceding year (or appropriate period) for which actual Taxes or fees are available and such Taxes or fees shall be re-prorated upon the request of Seller, on the one hand, or Buyer, on the other hand, within sixty (60) days of the date that the actual amounts become available. Seller and Buyer agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 2.12.

2.13 Closing Costs; Transfer Taxes and Fees. Each Party shall be solely liable for and shall pay (i) all recording, documentary and transfer Taxes and any sales, use or other Taxes imposed on such Party by reason of the transfer of the Facility Assets as provided hereunder (excluding Taxes imposed on or measured by the net income or profits of Seller), and any deficiency, interest or penalty asserted with respect thereto, under applicable Laws ("*Transfer Taxes*") and (ii) except as set forth in Section 2.3 and Section 2.12 all transaction costs incurred by it in connection with the exercise of the Project Purchase Option and the Closing (including, but not limited to, the costs and expenses of its outside legal counsel and advisors). Each Party shall provide the other Party with evidence satisfactory to such Party that such Transfer Taxes have been paid by such Party. The Parties acknowledge that a Party's obligation to collect Taxes from the other Party to whom such Taxes are imposed shall not constitute an imposition of such Taxes on such first Party.

2.14 Decommissioning and Other Costs. Unless a Closing occurs pursuant to the exercise by Buyer of the Project Purchase Option, Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with such decommissioning or demolition, without regard to the timing or cause of such decommissioning or demolition.

2.15 Closing Obligations. At the Closing: (a) Seller will deliver (or will have delivered) to Buyer each of the certificates, instruments, documents and agreements referred to in Article VII to be provided by Seller on or prior to the Closing, and (b) Buyer will deliver (or will have delivered) to Seller (i) the Final Purchase Price, and (ii) each of the certificates, instruments, documents and agreements referred to in Article VIII to be provided by Buyer on or prior to the Closing.

2.16 Bulk Sales Law. Unless waived by Buyer, Seller shall, prior to the Closing, comply with the requirements of sellers under any applicable bulk sales law.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Upon the exercise of the Project Purchase Option, and with the understanding that following the Schedule Delivery Date, Seller shall have the right, until it delivers final Seller Disclosure Schedules as provided in Section 2.11(a), to update any information contained in the Seller Disclosure Schedules if the occurrence of events or the discovery of new information makes the revision of such Seller Disclosure Schedules necessary or desirable (subject to a Purchase Price adjustment as set forth in Exhibit 2.5 and the limitations on the effect of such revisions set forth in Section 2.11(a)), Seller represents and warrants to Buyer as follows, as of the Schedule Delivery Date, the Closing Date, and, with respect to Section 3.1 and Section 3.2, the Effective Date:

3.1 Organization and Good Standing. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of its state of organization and is qualified to do business in the State of California, and has the legal power and authority to own or to hold its interests in properties, to carry on its Business as now being conducted and to enter into and perform its obligations under this Agreement and each of the Operative Documents to which Seller is a party.

3.2 Authority; Absence of Conflict or Breach. The sale of the Facility Assets and the execution, delivery and performance by Seller of this Agreement and each of the Operative Documents to be executed and delivered by Seller in connection with such sale have been duly authorized by all necessary limited liability company action on the part of Seller and the owners of any interest in Seller and do not require any consent or approval other than those which have already been obtained or otherwise as disclosed in the Seller Disclosure Schedules. This Agreement and each of the Operative Documents to which Seller is a party constitutes the legal, valid and binding obligation of Seller, 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. The

execution and delivery of this Agreement and each of the Operative Documents to which Seller is a party, the consummation of the sale of the Facility Assets and the fulfillment of and compliance with the provisions of this Agreement and the Operative Documents to which Seller is a party do not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirements 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).

3.3 Real Property Matters.

(a) *Schedule 3.3(a)* contains a true, correct and complete list of any Contracts, including the Land Documents, that provide Seller with any rights in or to real property ("*Real Property Contracts*"), including rights in the nature of leases, easements, licenses, rights of way, franchise agreements, restrictive covenants, purchase agreements, agreements to relinquish or limit surface access rights with regards to minerals, options to purchase or lease, or applications for or bids to Governmental Authorities with respect to, any of the foregoing interests in real property (collectively, "*Real Property Interests*"), as well as leases (including farm and grazing leases) and other agreements in the possession of Seller, or of which Seller has Knowledge, that grant or purport to grant, or reserve or purport to reserve, to third parties, interests in or to the land which is subject to Real Property Interests, including grants of mineral and any other surface or access rights to third parties ("*Third Party Property Interests*"). True, correct and complete copies of the Real Property Contracts have been delivered to Buyer. Seller holds no Real Property Interests other than those that are set forth in such Real Property Contracts. Except as set forth in *Schedule 3.3*, to Seller's Knowledge, no counterparty thereto is in default in any material respect of any material obligation with respect to the Real Property Contracts. Except as set forth in *Schedule 3.3*, each of the Real Property Interests granted by a Real Property Contract provides legal, valid, and enforceable rights in favor of Seller to the extent set forth therein and, to Seller's Knowledge, constitutes a legal, valid and binding obligation of the other parties thereto. True, correct and complete copies of all title reports, surveys, mineral reports for any severed minerals (including any evaluation as to feasibility or likelihood of mineral extraction and any separate chain of title for severed minerals), material records searches (for any governmental records not included in any title reports) and exception documents referenced in such reports, policies, or searches have been delivered to Buyer.

(b) Except as set forth in *Schedule 3.3(b)*, Seller has not received any written notice of any appropriation, condemnation or like proceeding, or of any material violation of any applicable zoning or land use law, regulation or rule or other law, order, regulation, rule or requirement relating to or affecting any of the Real Property Interests.

(c) Except as set forth in *Schedule 3.3(c)*, Seller has not previously severed any mining, mineral or water rights from any of the Real Property Interests and has

disclosed to Buyer any material information in its possession regarding any severed mining, mineral or water rights affecting any of the Real Property Interests.

(d) Other than with respect to the Real Property Contracts or Permits and except as set forth in *Schedule 3.3(d)*, Seller has not received any written notice that any agreements with any Governmental Authority or public or private utility affect the Real Property Interests.

3.4 Consents. Except as set forth in *Schedule 3.4*, other than those that have been obtained or filed, no Consent of, or registration, qualification or filing with any Person, including any Governmental Authority, is required for the sale of the Facility Assets or the execution and delivery by Seller of this Agreement or any of the Operative Documents to which it is a party or in order for Seller to perform its obligations hereunder or thereunder.

3.5 Assets of the Business. Except as set forth in *Schedule 3.5*, the Facility Assets constitute all of the assets, properties, rights, privileges, claims and Contracts of every kind and nature, real or personal, tangible or intangible, absolute or contingent, wherever located, owned or used (including those necessary to access and utilize any common use facilities) comprising the Facility as owned and operated by Seller prior to the Closing.

3.6 Title to Facility Assets. Immediately prior to the Closing, Seller has good and marketable title to all real property interests comprising the Facility Assets, free and clear of all Liens, except for the Purchase Option Permitted Encumbrances. Immediately prior to the Closing, Seller has good and marketable title to the Facility Assets (other than the real property interests), free and clear of all Liens, except for the Purchase Option Permitted Encumbrances. Upon the Closing, to Seller's Knowledge, Buyer will acquire good and marketable title to the real property interests comprising the Facility Assets free and clear of all Liens, except for Closing Permitted Encumbrances. Upon the Closing, Buyer will acquire good and marketable title to the Facility Assets (other than the real property interests) free and clear of all Liens, except for the Closing Permitted Encumbrances.

3.7 Environmental. Except as set forth in *Schedule 3.7*:

(a) There are no pending, outstanding, or, to Seller's Knowledge, threatened Agency Actions concerning the Facility or the Premises with respect to Environmental Laws applicable to Seller, the Facility or the Premises, and Seller's ownership, operation and use of the Facility. Seller is, and at all times has been, and has owned and operated (or its designee has operated) the Facility and the Premises, in compliance with all applicable Environmental Laws. There are no writs, injunctions, decrees, orders or judgments outstanding or pending, or to Seller's Knowledge any notices, actions, suits, or Proceedings threatened involving Seller relating to (i) its compliance with any Environmental Laws with respect to any of the Facility Assets, the Premises, or any other asset owned or used by Seller or in which it has or had an interest in connection with the Facility, or (ii) the Release of any Hazardous Substances at the Premises.

(b) All Permits required by Environmental Laws and necessary for the operation of the Facility as currently configured and as operated by Seller have been

obtained, are currently in full force and effect and are transferrable to Buyer without the requirement of any third party consent; Seller's operations at the Premises and in connection with the Facility Assets are in compliance in all material respects with all the requirements of such Permits; and, to Seller's Knowledge, Seller is not subject to any pending notice of violation from any Governmental Authority or from any other Person alleging that Seller has committed any act, or failed to act, in any manner or under any circumstance that would preclude continued operation of the Facility Assets, including the Premises, under any of these Permits.

(c) Seller has delivered to Buyer all written reports, written notices or written inquiries from any Governmental Authority that are in Seller's possession relating to the Environmental Conditions at, upon or beneath the Facility or the Premises regardless of whether such Environmental Conditions were caused by or arose from Seller's operation of the Facility, except to the extent (i) such reports, notices or inquiries constitute communications from Seller's counsel to Seller that are subject to attorney-client privilege or (ii) the provision of such reports, notices or inquiries would conflict with any confidentiality obligations to which Seller is bound.

(d) To Seller's Knowledge, (i) each of the Facility Assets and Seller is in compliance with all Environmental Laws and (ii) there are no circumstances, conditions or proposed regulations that could reasonably be expected to prevent or substantially interfere with Buyer's compliance with Environmental Laws in connection with Buyer's operation of the Facility and use of the Premises in the foreseeable future in a manner consistent with Seller's operation of the Facility during the term of the PPA.

(e) To Seller's Knowledge, there are currently no circumstances or conditions existing on the Premises that could reasonably be expected to prevent or substantially adversely interfere with Seller's compliance with Environmental Laws in connection with Seller's current operation of the Facility Assets and use of the Premises.

(f) Seller has not, and to Seller's Knowledge, no third party has, generated, used, treated or stored on, or transported to or from any of the Premises any Hazardous Substances in violation of Environmental Laws.

(g) There is no asbestos contained in or forming any part of any building, building component, structure or other asset that is part of the Facility Assets, and no asbestos has been stored, disposed of, or otherwise been present at the Premises or on or in any of the Facility Assets, and Seller does not have any liability for asbestos in connection with the use, operation, renovation or demolition of any of the Facility Assets.

(h) There has been no Release or threatened Release of Hazardous Substances by Seller or any party under the reasonable control of Seller, and, to Seller's Knowledge, there has been no Release or threatened Release of Hazardous Substances by any other party at, on, under or from any of the Premises or at, on, under or from any property adjoining any of the Premises, other than in compliance with applicable Environmental Laws or as has previously been remediated in accordance with applicable Environmental Laws.

(i) In connection with its ownership and operation of the Facility Assets, Seller has disposed of all wastes, including those containing any Hazardous Substances, in compliance with all applicable Environmental Laws, and Seller has not received any notice or demand letter from any Person claiming Seller may be liable for any on- or off-site Release or threatened Release of Hazardous Substances.

(j) There are not now and, to Seller's Knowledge, never have been, any aboveground or underground storage tanks or PCB-containing transformers or equipment located at the Premises.

(k) Seller has provided Buyer with all written reports, surveys, studies, correspondence, investigations, tests and environmental sampling and analyses (whether commissioned by Seller or otherwise) that are in Seller's possession concerning the wildlife, cultural resources, natural resources and the environmental condition of any of the Facility Assets, Hazardous Substances in, on and under the Premises, or Seller's compliance with applicable Environmental Laws in the operation of the Facility or the use of the Facility Assets, except to the extent (i) such documents constitute communications from Seller's counsel to Seller that are subject to attorney-client privilege or (ii) the provision of such documents would conflict with any confidentiality obligations to which Seller is bound.

(l) Seller has not received any written request for information nor any written notification that it is a potentially responsible party under CERCLA or any similar state Environmental Law, including any such request or notification relating directly or indirectly to any of the Facility Assets, and none of the Premises is proposed to be listed or is listed on the National Priorities List under CERCLA or any similar state Environmental Law requiring environmental investigation or cleanup.

3.8 No Undisclosed Liabilities. Seller has no material liabilities (absolute, accrued, contingent or otherwise) in excess of Fifty Thousand Dollars (\$50,000.00) in the aggregate, except for (a) those set forth in *Schedule 3.5, Schedule 3.7, Schedule 3.8, Schedule 3.9, Schedule 3.10, or Schedule 3.11*, (b) those otherwise disclosed to Buyer or explicitly set forth in any of the Assumed Contracts or Transferred Permits, (c) those constituting Excluded Liabilities, or (d) those disclosed in the Financial Statements.

3.9 Taxes. Any Liens for Taxes are set forth in *Schedule 3.9*.

(a) There are no Liens for Taxes on any of the Facility Assets, except for (i) as of the Schedule Delivery Date, Purchase Option Permitted Encumbrances, and (ii) as of the Closing Date, Closing Permitted Encumbrances.

(b) The Facility Assets do not include any equity interest in any corporation or other entity.

(c) Seller has filed or caused to be filed with the appropriate Governmental Authorities all Tax Returns and reports relating to Seller required to be filed as of the Closing Date, all such Tax Returns were correct and complete in all respects and all

Taxes of Seller due and payable have been paid whether or not shown to be due on such Tax Returns and reports.

(d) Seller has not received any notice from any Governmental Authority of, and has no other Knowledge of, any outstanding claims or assessments with respect to any Tax relating to the Facility Assets and, to Seller's Knowledge, no such claim is pending or is presently being asserted against the Seller or with respect to any of the Facility Assets.

(e) Seller has no Knowledge of any proposed tax assessment against the Facility Assets that is not being actively contested by it in good faith and by appropriate proceedings.

(f) Seller has timely paid all Taxes shown to be due on such Tax Returns, all Tax assessments received, and all Taxes that have or may become due under applicable Law with respect to all periods or portions thereof ending on or prior to the Closing Date.

(g) Seller is not a party to any pending Tax audit, investigation, action or Proceeding with any Governmental Authority, and, to Seller's Knowledge, there is no threatened audit, investigation, action or Proceeding by any Governmental Authority with respect to any of the Facility Assets. Seller has not received notice of any claim by any Governmental Authority in any jurisdiction where it does not file Tax Returns or pay Taxes that it is or may be subject to Tax by that jurisdiction.

(h) Seller has timely withheld and timely paid all Taxes that are required to have been withheld and paid by it in connection with amounts paid or owing to any employee, independent contractor, creditor or other Person.

3.10 Compliance With Laws. Except as set forth in *Schedule 3.10*, (a) Seller is in compliance with all Laws applicable to the Facility Assets and operation and use of the Facility and (b) there are no condemnations or similar proceedings applicable to any part of the Facility.

3.11 Litigation. Except as set forth in *Schedule 3.11*:

(a) There are no Proceedings pending or, to Seller's Knowledge, threatened against Seller which could reasonably be expected to result, or have resulted in (i) the institution of legal proceedings to prohibit or restrain the operation of the Facility or any portion thereof, or the consummation of the transactions contemplated hereby, or (ii) a claim for damages for which Buyer could be liable or that could place any Lien on the Facility Assets;

(b) There are no existing Orders, writs, injunctions, judgments or decrees of any court, arbitrator, tribunal or other Governmental Authority issued against Seller which could reasonably be expected to result, or have resulted in (i) the institution of legal proceedings to prohibit or restrain the operation of the Facility or any portion thereof, or the consummation of the transactions contemplated hereby, or (ii) a claim for damages for which Buyer could be liable or that could place any Lien on the Facility Assets.

3.12 Assumed Contracts. Seller has delivered or made available to Buyer true and complete copies of all Contracts. Except as set forth in *Schedule 3.12*, all Assumed Contracts are in full force and effect, and neither Seller, nor any other party thereto, is in default under or in breach of any of them, nor does any event or condition exist that after notice or lapse of time or both could constitute a default thereunder or breach thereof on the part of Seller or any other party thereto (except for defaults, events of default and other events as to which requisite waivers have been, or prior to the Closing will have been, obtained). No approval, consent, or waiver of or by any Person that has not already been obtained is needed in order that the Assumed Contracts continue in full force and effect following the consummation of the transactions contemplated by this Agreement, and no Assumed Contract includes any provision, the effect of which may be to terminate (or give rise to a right of termination under) such Assumed Contract, to give rise to, enlarge, or accelerate any obligations of Seller thereunder, or to give additional rights to any other Person, upon or by reason of the consummation of the transactions contemplated by this Agreement.

3.13 Intellectual Property.

(a) Except as set forth in *Schedule 3.13*, Seller is the licensee of, or has such rights under the patents, patent applications, inventions, improvements, computer programs, computer applications, operating programs, other programs and software, including system documentation and instructions, engineering, construction and other drawings (other than drawings not needed for the operation, maintenance or repair of the Facility), designs, technology, know-how, trade secrets, trademarks, trademark applications, trade names, copyrights and other proprietary rights and proprietary information (to the extent any of the foregoing are necessary to operate or maintain the Facility in substantially the same manner as it has been operated and maintained during the Operations Period, collectively, the "*Intellectual Property Assets*"). Except as set forth in *Schedule 3.13*, Seller has not received notice that any of the Intellectual Property Assets infringes on or conflicts with the intellectual property of others. Seller has the right to use the Intellectual Property Assets in connection with its ongoing operation and maintenance of the Facility.

(b) Except as set forth in *Schedule 3.13*, there have been no claims, and, to Seller's Knowledge, there is no basis for any claim, challenging the scope, validity or enforceability of any of the Intellectual Property Assets. Except as set forth in *Schedule 3.13*, there are no instances where it has been held, or to Seller's Knowledge, claimed or alleged, whether directly or indirectly, and, to Seller's Knowledge, there is no basis upon which a claim may be made, that any activity of Seller relating to the operation or maintenance of the Facility, infringes or may infringe upon, is in violation of, or misappropriates, any rights of a third party.

(c) *Schedule 3.13* lists all of the Intellectual Property Assets, including the software used in connection with the operation of the Facility as of the Schedule Delivery Date, including control room operating system software, all of which shall, except as set forth in *Schedule 3.13*, remain available at the Facility for use by Buyer.

3.14 Brokers or Finders. Neither Seller nor any of its officers, directors, employees, shareholders or Affiliates has employed or made any agreement with any broker, finder or similar agent or any Person which will result in the obligation of Buyer or any of its Affiliates to pay any finder's fee, brokerage fees or commission or similar payment in connection with the transactions contemplated hereby.

3.15 Permits. Except as set forth in *Schedule 3.15*, all non-environmental Permits currently required by Law and necessary for the operation of the Facility as configured and operated by Seller have been obtained, are currently in effect, are final and non-appealable, and are transferrable to Buyer without the requirement of any third-party Consent. Seller's operations at the Premises and in connection with the Facility Assets are in compliance with all the requirements of such Permits, and as of Closing, Seller is not in possession of, and, to Seller's Knowledge, there is no reasonable basis for the issuance of, any written notice of violation or other notification from any Governmental Authority or from any other Person alleging that Seller has committed any act, or failed to act, in any manner or under any circumstance that could preclude continued operation of the Facility Assets, including the Premises, by Buyer under any of these Permits. Seller has made available to Buyer complete and correct copies of each such Permit, together with all amendments thereto. No suspension, cancellation or termination of any such Permit is threatened or imminent.

3.16 Investment Company Act. Seller is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act.

3.17 Regulatory Status. The Facility is either (a) a "Qualifying Facility" within the meaning of 18 C.F.R. § 292.101, holding all of the exemptions from regulation provided for under 18 C.F.R. §§ 292.601(c), 292.602(b), and 292.602(c), or (b) an "Exempt Wholesale Generator," as that term is defined under 18 C.F.R. § 366.1, which is also a "public utility" under the Federal Power Act, and the regulations of the Federal Energy Regulatory Commission ("*FERC*") thereunder (all collectively, the "*FPA*"). The status of Seller and the Facility under either subsection (a) or (b) hereof is final, non-appealable, and not subject to any pending or threatened challenge, petition or investigation by or before the FERC. Seller requires no authorization under the FPA to execute, deliver, and perform its obligations under this Agreement, apart from such authorizations from FERC which have already been received. The Facility is interconnected to the electrical grid pursuant to a valid and effective agreement for such interconnection, which agreement is sufficient to permit the delivery of the Facility's entire net electrical output to the therein-specified point of interconnection.

3.18 Employees and Employee Benefit Plans. Except as set forth in *Schedule 3.18*, Seller does not have and has never had any employees, and Seller does not maintain or contribute to, and has not ever maintained or contributed to, any pension, profit-sharing, deferred compensation, bonus, stock, option, share, appreciation right, severance, group or individual health, dental, medical, life, insurance, survivor benefit or similar plan, policy or arrangement for the benefit of any director, officer, consultant or employee, whether active or terminated, of Seller.

3.19 No Shared Facilities. There are no shared facilities (including control rooms, interties, buildings, or rights of way) required for the use or operation of the Facility or all or any

portion of the Facility Assets, except for those that are required by Law and set forth in *Schedule 3.19*.

3.20 General Representation. Except as set forth on *Schedule 3.20*, no representation or warranty made by Seller, its agents and representatives in this Agreement or any of the Operative Documents or in any certificate or other agreement delivered by Seller to Buyer in connection with the transactions contemplated hereby or thereby contains any untrue statement of a material fact, or omits to state a material fact necessary in order to make the statements contained herein, in light of the circumstances in which they were made, not materially misleading. All material information contained in the Provided Materials is or will be materially consistent with the information which has been used by Seller in the management of the Business and also with what has been reported to Seller's management, equity holders and the Facility Lender in connection with the Business.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows as of the Closing Date:

4.1 Organization. Buyer is a validly existing charter city of the State of California formed under the laws of 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 and perform its obligations under this Agreement and each of the Operative Documents to which Buyer is a party.

4.2 Authority; Binding Nature. The purchase of the Facility Assets and the execution, delivery and performance by Buyer of this Agreement and each of the Operative Documents executed and delivered by Buyer in connection with such purchase have been duly authorized by all necessary action, and do not require any consent or approval of Buyer's regulatory/governing bodies, other than that which has been obtained; provided that further authorizations from Buyer's Board of Commissioners and the Los Angeles City Council will be required for Buyer to exercise the Project Purchase Option. This Agreement and each of the Operative Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law. The execution and delivery of this Agreement and each of the Operative Documents to which Buyer is a party, the consummation of the purchase of the Facility Assets and the fulfillment of and compliance with the provisions of this Agreement and each of the Operative Documents to which Buyer is a party do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirements 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 Buyer 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, in each case, which breaches or defaults, individually or in the aggregate, could reasonably be expected to result in a material adverse effect on the ability of Buyer to perform any of its obligations under this Agreement.

4.3 Consents. Except as set forth in *Schedule 4.3*, other than those that have been obtained or filed, no Consent of, or registration, qualification or filing with any Person, including any Governmental Authority, is required for the purchase of the Facility Assets or the execution and delivery by Buyer of any of the Operative Documents to which it is a party or in order for Buyer to perform its obligations hereunder.

4.4 Brokers or Finders. Neither Buyer nor any of Buyer's officers, directors, or employees has employed or made any agreement with any broker, finder or similar agent or any Person which will result in the obligation of Seller or any of its Affiliates to pay any finder's fee, brokerage fees, or commission or similar payment in connection with the transactions contemplated hereby.

4.5 Litigation. There are no Proceedings pending, or to Buyer's knowledge, threatened, against Buyer which could reasonably be expected to materially adversely affect its ability to perform its obligations with respect to the purchase of the Facility Assets pursuant to the Project Purchase Option.

ARTICLE V COVENANTS OF SELLER PRIOR TO CLOSING DATE

5.1 Access to Materials. Prior to the Schedule Delivery Date, Seller will furnish to Buyer all information required to be furnished pursuant to Section 3.7(c). Between the Schedule Delivery Date and the Closing Date (or such earlier date upon which the applicable Purchase Option Opportunity has been declined, expired or is no longer in effect, or when the Agreement has terminated) (such period, the "*Applicable Diligence Period*"), upon reasonable advance notice, Seller will (a) afford Buyer and its Representatives (and the Qualified Appraiser) full and complete access during normal business hours to the Facility and to Seller's personnel, Assumed Contracts, Transferred Permits, Books and Records, properties and other documents and data (provided that Buyer shall observe, and shall cause its Representatives to observe, all of Seller's security protocols), (b) furnish Buyer and Buyer's Representatives (and the Qualified Appraiser) with copies of all such Assumed Contracts, Transferred Permits, Books and Records, and other existing documents and data in Seller's possession or to which Seller has access with respect to the Facility or pertaining to the design of the Facility (including design schematics, blueprints or other similar documents) and other Facility Assets as Buyer or the Qualified Appraiser may reasonably request, and (c) furnish Buyer and its Representatives (and the Qualified Appraiser) with such additional financial, operating, and other data and information of or pertaining to the Business in Seller's possession or to which Seller has access as Buyer and its representatives (and the Qualified Appraiser) may reasonably request (all such Assumed Contracts, Transferred Permits, Books and Records, documents, data and information required to be furnished by Seller under this Section 5.1 shall hereinafter be referred to as "*Provided Materials*"). Buyer shall have the right to diligently review the Provided Materials. The Provided Materials may be redacted as necessary to allow for disclosure to Buyer and the Qualified Appraiser to the extent any Provided Materials are (i) subject to confidentiality, non-disclosure or similar agreements in favor of third parties whose consent to disclose cannot be obtained by the Closing, (ii) legally-privileged information of Seller, (iii) concerning any alleged dispute or pending litigation, investigation or Proceeding involving Seller or its Affiliates that is protected by or subject to a court order or the

attorney-client privilege, or (iv) restricted by an agreement entered into in connection with such dispute, litigation, investigation or Proceeding or an order entered by any court.

5.2 Investigations. During the Applicable Diligence Period, upon reasonable advance notice (but not less than twenty-four (24) hours), Seller shall afford Buyer and its Representatives (and the Qualified Appraiser), with reasonable access to the Facility Assets for the purpose of inspecting the same, to conduct any performance tests or physical inspections or otherwise (including to conduct a Phase 1 environmental site assessment), during normal business hours and in such manner so as not to materially disturb or interfere with the normal operations of the Facility Assets. While on the Premises, Buyer shall cause its Representatives to comply with all of Seller's rules and regulations applicable to individuals at the Premises. In the event Buyer is dissatisfied with the Facility Assets for any reason, Buyer may elect, in its sole discretion, to withdraw its exercise of the Project Purchase Option with respect to the applicable Purchase Option Opportunity by delivering notice thereof to Seller on or before delivery by Buyer to Seller of a Purchase Option Exercise Notice.

5.3 Financial Statements. On the Schedule Delivery Date, Seller will deliver to Buyer unaudited balance sheets and unaudited statements of income and cash flow of Seller for the three (3) most recent fiscal years of Seller, prepared in compliance with GAAP and certified by an officer of Seller. From and after the Schedule Delivery Date, as soon as available and in any event during the Applicable Diligence Period or the end of each fiscal quarter of Seller, Seller will provide Buyer with unaudited statements of income and cash flow for such quarter, setting forth in comparative form figures for the corresponding period of the preceding fiscal year, accompanied by a certificate signed by an authorized officer of Seller stating that such financial statements present fairly in all material respects the financial condition of Seller and that the same have been prepared in material compliance with GAAP. Seller will also deliver to Buyer copies of all financial statements or other financial information delivered to any Facility Lender during the Applicable Diligence Period contemporaneously with the delivery thereof to such Facility Lender; provided that Seller shall have the right to redact financial information provided to any such Facility Lender that is unrelated to the Facility. The financial statements required to be provided by Seller to Buyer under this Section are collectively referred to as the "*Financial Statements.*"

5.4 Operation of the Business. During the Applicable Diligence Period, Seller will conduct its Business with respect to the Facility in all material respects in accordance with the ordinary course of business consistent with past practices and Prudent Utility Practices.

5.5 Disposition of Assets. During the Applicable Diligence Period, unless required by any Assumed Contract existing prior to the Schedule Delivery Date, Seller shall not (a) sell or otherwise dispose of or encumber (other than Purchase Option Permitted Encumbrances) any of the Facility Assets or any other property or assets which are primarily related to the operation, maintenance and use of the Facility (other than sales, leases, transfers or dispositions in the ordinary course of business consistent with past practice and Prudent Utility Practices), or (b) except as may be required by their terms, and except in the ordinary course of business consistent with past practice, modify, subordinate, amend, terminate, cancel, sever or surrender, or permit or suffer the modification, subordination, amendment, termination, cancellation,

severance or surrender of any Assumed Contract, Transferred Permit or Warranties, without the prior approval of Buyer.

5.6 Required Approvals. As promptly as practicable following Buyer's delivery of the Purchase Option Exercise Notice until the end of the Applicable Diligence Period, Seller will make, and thereafter diligently pursue during the Applicable Diligence Period, all registrations, qualifications or filings to be identified in *Schedule 3.4* or necessary or appropriate to obtain all the Consents therein identified.

5.7 Notification. During the Applicable Diligence Period, Seller shall give prompt notice (each notice, a "*Breach Notice*") to Buyer of the occurrence or non-occurrence of any event, change, effect or development of any kind which would or might cause (a) any representation or warranty of Seller contained in any Operative Document or this Agreement to be untrue or incorrect in any material respect on the date such representation or warranty is to be made, (b) a Material Adverse Effect, or (c) a breach of any of Seller's covenants under this Agreement or any Operative Document. Each Breach Notice must include a detailed description of the event, change, effect, development or failure and a description of the action Seller has taken and proposes to take with respect thereto. The delivery of, or the failure to deliver, a Breach Notice will not be deemed to (i) modify any representation or warranty hereunder, (ii) modify any condition set forth in Article VII, or (iii) limit or otherwise affect the remedies available hereunder to Buyer.

5.8 Reasonable Efforts. Following Buyer's delivery of the Purchase Option Exercise Notice and until the end of the Applicable Diligence Period, Seller will, or will cause its Affiliates to use all commercially reasonable efforts to satisfy the conditions in Article VII and Article VIII to be performed by Seller or such Affiliates.

5.9 Waivers of Claims. During the Applicable Diligence Period, Seller shall not cancel or compromise any debt or claim, or waive or release any material right relating to the Facility Assets and the Assumed Liabilities, other than such adjustments with respect to Persons involved with this transaction.

5.10 Additional Contracts. Any Contract entered into by Seller during the Applicable Diligence Period shall be an Excluded Liability unless Buyer agrees in writing to include such Contract as an Assumed Contract.

5.11 Transitional Services. At Buyer's option during the period between Buyer's delivery of the Purchase Option Tentative Exercise Notice until the earliest to occur of (a) Buyer's delivery of the Purchase Option Exercise Notice, (b) the Purchase Option Exercise Deadline, (c) termination of the relevant Purchase Option Opportunity, or (d) termination of this Agreement, Buyer and Seller shall negotiate in good faith an agreement for transition operation and maintenance services from Seller to Buyer or Buyer's designee upon terms and conditions to be mutually agreed upon by both Parties, in form and substance consistent with Exhibit 5.11.

ARTICLE VI
COVENANTS OF BUYER PRIOR TO CLOSING DATE

6.1 Required Approvals. As promptly as practicable following Buyer's delivery of the Purchase Option Exercise Notice and until the end of the Applicable Diligence Period, Buyer will make, and thereafter during the Applicable Diligence Period pursue, all registrations, qualifications or filings identified in *Schedule 4.3* or necessary or appropriate to obtain any Consent therein identified, consistent with and based upon Seller's acknowledgement and agreement in Section 2.3, and Seller shall provide assistance to Buyer in connection therewith.

6.2 Reasonable Efforts. Following Buyer's delivery of the Purchase Option Exercise Notice until the end of the Applicable Diligence Period, Buyer will use reasonable efforts to cause the conditions in Article VII and Article VIII to be performed by Buyer, to be satisfied.

ARTICLE VII
CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE

Buyer's obligation to purchase the Facility Assets and to take the other actions required to be taken by Buyer at the Closing Date is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer in its sole discretion, in whole or in part):

7.1 Accuracy of Representations. (a) All of Seller's representations and warranties in this Agreement and the other Operative Documents (considered collectively) shall be true and correct, (b) each of these representations and warranties (considered individually) that are qualified with respect to materiality shall be true and correct as so qualified, and (c) each of these representations and warranties that are not so qualified shall be true and correct in all material respects, in each case, as of the date when deemed made.

7.2 Seller's Performance. All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement or any of the other Operative Documents at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects.

7.3 Consents. Each of the Consents identified in *Schedule 3.4* and *Schedule 4.3* must have been obtained and must be in full force and effect.

7.4 Additional Seller Documents. Seller shall deliver each of the following documents to Buyer:

(a) an opinion of Seller's counsel, dated the Closing Date, with respect to the sale of the Facility Assets pursuant to this Agreement and related matters in form and substance acceptable to Buyer;

(b) a written certificate, in form and substance satisfactory to Buyer, executed and delivered by Seller by its authorized officer, certifying that each of the conditions specified in Sections 7.1, 7.2, and 7.3 have been satisfied;

(c) a Bill of Sale, dated as of the Closing Date, in form and substance reasonably acceptable to Buyer ("*Bill of Sale*"), and executed by Seller by its authorized officer;

(d) agreements and related documentation in a form reasonably acceptable to Buyer effective to transfer to Buyer the Transferred Permits, the Assumed Contracts, the Real Property Contracts, and any other Facility Assets (together with the Bill of Sale, the "*Asset Assignment Documents*"), executed by Seller by its authorized officer;

(e) an irrevocable commitment by a title company acceptable to Buyer to issue an extended coverage owner's policy of title insurance based upon a recent ALTA survey, including such endorsements as Buyer may reasonably require, insuring Buyer in the amount of the Final Purchase Price, that title to the Premises (in fee, leasehold or easement, as applicable) is vested in Buyer, subject only to those exceptions that are Closing Permitted Encumbrances;

(f) confirmation in writing by Seller that any existing operations and maintenance agreement with respect to the Facility shall terminate upon the Closing Date (unless (i) Buyer elects to assume such agreement, in which case such agreement shall be deemed an Assumed Contract or (ii) the operations and maintenance provider under the operations and maintenance agreement will be providing transition services in connection with the services to be provided by Seller pursuant to a transition services agreement entered into in accordance with Section 5.11, in which case such operations and maintenance agreement shall terminate upon the termination of the transition services agreement);

(g) duly executed pay-off letters for the release or termination of all Liens securing Facility Debt that acknowledge repayment in full of such Facility Debt (unless Buyer otherwise agrees in writing that any such Liens shall not be released or terminated); and

(h) such other customary documents as Buyer may reasonably request for the purpose of (i) evidencing the accuracy of any of Seller's representations and warranties, (ii) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller, including under Section 2.3, or (iii) evidencing the satisfaction of any condition referred to in this Article VII.

7.5 Litigation. No Proceeding shall have been instituted or any other action taken or Law or Environmental Law enacted, promulgated or deemed applicable by any Governmental Authority or by any other Person and, at what would otherwise have been the Closing Date, remain pending, to delay, restrain or prohibit any part of the transactions contemplated by this Agreement or to seek any divestiture or to revoke or suspend any Permit by reason of any or all of the transactions contemplated by this Agreement; nor shall any Governmental Authority have notified either Party or any of their respective Affiliates that consummation of any part of the transactions contemplated by this Agreement would constitute a violation of the Laws or Environmental Laws of any jurisdiction or that it intends to commence a Proceeding to restrain

or prohibit any part of the transactions contemplated by this Agreement or to require such divestiture, revocation or suspension; unless, in any such case, such Governmental Authority or other Person shall have withdrawn such notice and abandoned such Proceeding, action, Law or Environmental Law to the satisfaction of Buyer.

7.6 Liens. Title to the Facility Assets shall be free and clear at the Closing of all Liens other than Closing Permitted Encumbrances. Following the Schedule Delivery Date and prior to the determination of the Tentative Purchase Price, Buyer shall provide Seller with a notice setting forth Buyer's approval of any Liens with respect to the Facility Assets which Buyer expressly approves for inclusion as Closing Permitted Encumbrances.

7.7 No Material Adverse Effect. During the Applicable Diligence Period, no action shall have been taken or omitted and no event shall have occurred or be threatened which has had or could reasonably be expected to result in a Material Adverse Effect.

7.8 Final Purchase Price. All adjustments to the Tentative Purchase Price required under Section 3 of *Exhibit 2.5* shall have been made, including any adjustments required as a result of updates to the Seller Disclosure Schedules delivered by Seller pursuant to Section 2.11(a).

ARTICLE VIII CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE

Seller's obligation to sell the Facility Assets and to take the other actions required to be taken by Seller at the Closing Date is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller in its sole discretion, in whole or in part):

8.1 Accuracy of Representations. (a) All of Buyer's representations and warranties in this Agreement (considered collectively), (b) each of these representations and warranties (considered individually) that are qualified with respect to materiality shall be true and correct as so qualified, and (c) each of these representations and warranties that are not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the date when deemed made.

8.2 Buyer's Performance.

(a) All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement or any of the other Operative Documents at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been performed and complied with in all material respects.

(b) Buyer must have paid the Final Purchase Price to Seller.

8.3 Consents. Each of the Consents identified in *Schedule 3.4* and *Schedule 4.3* must have been obtained and must be in full force and effect.

8.4 Asset Assignment Documents. Buyer shall deliver to Seller a Bill of Sale and other Asset Assignment Documents executed by Buyer by its authorized Representative.

8.5 Litigation. No Proceeding shall have been instituted or any other action taken or Law or Environmental Law enacted, promulgated or deemed applicable by any Governmental Authority or by any other Person and, at what would otherwise have been the Closing Date, remain pending to delay, restrain or prohibit any material part of the transactions contemplated by this Agreement; nor shall any Governmental Authority have notified either Party or any of their respective Affiliates that consummation of any part of the transactions contemplated by this Agreement would constitute a violation of the Laws or Environmental Laws of any jurisdiction or that it intends to commence a Proceeding to restrain or prohibit any part of the transactions contemplated by this Agreement, unless, in any such case, such Governmental Authority or other Person shall have withdrawn such notice and abandoned such Proceeding, action, Law or Environmental Law to the satisfaction of Seller.

ARTICLE IX MUTUAL COVENANTS, TAXES AND OTHER MATTERS

9.1 Tax Matters. Seller, at its own expense, will file, to the extent required by applicable Law, all necessary Tax Returns and other documentation with respect to its portion of any Transfer Taxes, and, if required by applicable Law, Seller will join in the execution of any such Tax Returns or other documentation and will take such positions in such returns as are reasonably requested by Buyer.

(a) With respect to Taxes to be prorated in accordance with Section 2.12 only, Buyer shall prepare and timely file all Tax Returns required to be filed with respect to the Facility Assets, if any, and shall duly and timely pay all such Taxes, whether imposed on Buyer or Seller, shown to be due on such Tax Returns. Buyer's preparation of any such Tax Returns shall be subject to Seller's approval, which approval shall not be unreasonably withheld. Buyer shall make such Tax Returns available for Seller's review and approval no later than fifteen (15) Business Days prior to the due date for filing such Tax Return. Within ten (10) Business Days after receipt of such Tax Return, Seller shall pay to Buyer Seller's proportionate share of the amount shown as due on such Tax Return, determined in accordance with Section 2.12.

(b) Each of Buyer and Seller shall provide the other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative Proceeding relating to liability for Taxes, and each will retain and provide the requesting Party with any records or information which may be relevant to such return, audit or examination, Proceedings or determination. Each Party will take any and all commercially reasonable steps, act in good faith, and cooperate fully, to permit the other Party to comply with its obligations and secure its rights to indemnification hereunder.

(c) Seller will be entitled to any refunds or credits of Taxes relating to the Facility Assets for the period on or prior to the Closing Date (and such refunds and

credits shall be Excluded Assets), and Buyer shall be entitled to such refunds or credits of Taxes relating to the Facility Assets for the period on and after the Closing Date. Each of Buyer and Seller will promptly notify and forward to the other Party the amounts of any such refunds or credits received by such Party, but to which the other Party is entitled, within sixty (60) days after receipt thereof.

(d) After the Closing, Buyer will notify Seller, within thirty (30) days after its receipt, of any correspondence, notice or other communication from a taxing authority or any representative thereof, of any pending or threatened tax audit, or any pending or threatened Proceeding that involves Taxes relating to the Facility Assets for the period prior to the Closing, and furnish Seller with copies of all correspondence received from any taxing authority in connection with any audit or information request with respect to any such Taxes relating to the Facility Assets for the period prior to the Closing. After the Closing, Seller will notify Buyer, within thirty (30) days after its receipt, of any correspondence, notice or other communication from a taxing authority or any representative thereof, of any pending or threatened tax audit, or any pending or threatened judicial or administrative Proceeding that involves Taxes relating to the Facility Assets for the period after the Closing, and furnish Buyer with copies of all correspondence received from any taxing authority in connection with any audit or information request with respect to any such Taxes relating to the Facility Assets for the period after the Closing.

(e) Notwithstanding any provision of this Agreement to the contrary, with respect to any claim for refund, audit, examination, notice of deficiency or assessment or any Proceeding that involves Taxes relating to the Facility Assets (collectively, "*Tax Claim*"), each of Buyer and Seller will reasonably cooperate with the other Party in prosecuting or contesting any Tax Claim, including making available original books, records, documents and information for inspection, copying and, if necessary, introduction of evidence at any such Tax Claim contest or Proceeding and making employees available on a mutually convenient basis to provide additional information or explanation of any material provided hereunder with respect to such Tax Claim or to testify at Proceedings relating to such Tax Claim. Seller will control all Proceedings taken in connection with any Tax Claim that pertains entirely to any period prior to the Closing, and Buyer will control all Proceedings taken in connection with any Tax Claim that pertains to any period commencing after the Closing, and Seller and Buyer will jointly control all Proceedings taken in connection with any Tax Claim pertaining to any period commencing prior to and ending after the Closing; provided, however, that Buyer may request that Seller take any action reasonably necessary to remove any Liens on the Facility Assets relating to any Tax Claim that pertains to the period prior to or including the Closing. Buyer shall have no right to settle or otherwise compromise any Tax Claim which pertains entirely to the period prior to the Closing; Seller shall have no right to settle or otherwise compromise any Tax Claim which pertains entirely to the period after the Closing and neither Buyer nor Seller shall have the right to settle or otherwise compromise any Tax Claim which pertains to the period both prior to and after the Closing without the other Party's prior consent, which consent shall not be unreasonably withheld or delayed.

9.2 Seller Cooperation Post-Closing. To the extent consistent with the transition services agreement to be executed in connection with Section 5.11, Seller agrees that, for a period of two (2) years after the Closing, it will use good faith efforts to respond to Buyer's inquiries relating to the Facility or the Facility Assets.

9.3 Risk of Loss.

(a) If, during the Applicable Diligence Period, all or any portion of the Facility is damaged or destroyed in whole or in part or becomes subject to or threatened with any condemnation or eminent domain proceeding (the "*Affected Portion*"), the Tentative Purchase Price shall be reduced by an amount that is equal to the greater of the (i) fair market value of the Affected Portion (such value to be determined as of the date immediately prior to such damage, destruction or actual or threatened condemnation or eminent domain proceeding) or (ii) the cost of repair of the Affected Portion, as determined by the Qualified Appraiser(s); provided, that if Seller elects to repair the Affected Portion prior to the Closing Date, the Tentative Purchase Price shall be adjusted to reflect the reasonable value of the repairs performed by Seller. For the avoidance of doubt, any insurance proceeds received by Seller with respect to the Facility during the Applicable Diligence Period shall belong to the Seller, subject to application in accordance with the requirements of the Facility Debt.

(b) If, during the Applicable Diligence Period, all or any portion of the Facility is damaged or destroyed in whole or in part or becomes subject to or threatened with any condemnation or eminent domain proceeding, such that it cannot reasonably be expected (as determined by the Qualified Appraiser(s)) that, (i) in the case of damage or destruction, the Facility will be fully repaired within sixty (60) days after the Closing Date or (ii) in the case of a condemnation or eminent domain proceeding, such condemnation or eminent domain proceeding would have a Material Adverse Effect, then Buyer may, in its sole discretion, elect to terminate the Project Purchase Option with respect to the applicable Purchase Option Opportunity.

9.4 Liabilities.

(a) After Closing, Buyer shall assume, shall pay, perform and discharge when due, and, as between Buyer and Seller, shall be solely responsible for, the Assumed Liabilities. Seller shall have no liability or obligation for the Assumed Liabilities after the Closing Date.

(b) Except for the Assumed Liabilities, Buyer shall not assume by virtue of this Agreement or the transactions contemplated by this Agreement, and shall have no liability under this Agreement for, the Excluded Liabilities.

ARTICLE X
TERM AND TERMINATION

10.1 Term. This Agreement shall become effective when it is executed by each of the Parties and delivered to the other Party and the term of this Agreement shall continue for the Agreement Term (including the survival periods of those provisions with survivability under

Section 2.3 of the PPA), or such other period as may be provided for in this Agreement, unless terminated earlier as provided in Section 10.2, or as provided elsewhere under this Agreement; *provided* that (a) the term of this Agreement shall in any event extend up to and including the Closing so long as Buyer shall be entitled under the terms of this Agreement to exercise its Project Purchase Option and (b) the provisions of this Agreement shall survive any Closing or termination of this Agreement as set forth in Section 10.3(b) and Section 11.1.

10.2 Termination Events. This Agreement may, by notice given prior to the Closing, be terminated:

(a) by either Buyer or Seller upon (i) a failure by the other Party to perform any of its duties or obligations under this Agreement when and as due which is not cured to the reasonable satisfaction of the performing Party by the earlier of the Closing Date or the date that is thirty (30) days after receipt of notice thereof from the other Party, or (ii) an inaccuracy in any material respect of any representation, warranty, certification or other statement made by the other Party herein or in any other document contemplated hereby or in any Operative Document at any time given by a Party pursuant hereto or thereto, or in connection herewith or therewith at the time made or deemed to be made;

(b) either (i) by Buyer if satisfaction of any of the conditions in Article VII has become impossible due to an event outside of Buyer's reasonable control despite the exercise of due care and diligence (and in no event through the failure of Buyer to comply with its obligations under this Agreement) and Buyer has not previously waived such condition; or (ii) by Seller if satisfaction of any of the conditions in Article VIII has become impossible due to an event outside of Seller's reasonable control despite the exercise of due care and diligence (and in no event through the failure of Seller to comply with its obligations under this Agreement) and Seller has not previously waived such condition on or before the Closing Date; or

(c) (i) by Seller, if a Default of Buyer shall have occurred under the PPA and the PPA is terminated prior to or concurrently with this Agreement, (ii) by either Party, in the event that the PPA shall fail to be in full force and effect in accordance with its terms for any reason, or (iii) by either Party, if the other Party or such other Party's Affiliates shall contest the validity or enforceability of the PPA or any provision thereof in writing or deny that it has any further liability thereunder.

10.3 Effect of Termination.

In the event of termination of this Agreement:

(a) Upon a request from the other Party, each Party will redeliver all documents, work papers and other material of any other Party relating to the transactions contemplated hereby or by the other Operative Documents to the Party furnishing the same, whether so obtained before or after the execution hereof, and each Party will withdraw any applications for approval of transfer of Permits and surrender any Permits already transferred, as necessary;

(b) The provisions of Article XII shall survive and continue in full force and effect;

(c) Neither Party shall have any liability or further obligation to the other Party, except as stated in Sections 10.3(a) and (b), and except for any breach of representation, warranty or obligation arising under this Agreement or otherwise occurring prior to the proper termination of this Agreement. The foregoing provisions shall not limit or restrict the availability of specific performance or other injunctive relief to the extent that specific performance or such other relief would otherwise be available to a Party hereunder; and

(d) The PPA shall remain in full force and effect in accordance with its terms.

ARTICLE XI LIMITATION OF LIABILITY

11.1 Survival of Representations, Etc. The representations, warranties, covenants, and agreements, and indemnities of the Parties contained herein shall survive the consummation of the transactions contemplated hereby and the Closing Date, without regard to any investigation made by either of the Parties or the fact that the damaged Party had knowledge of any misrepresentation or breach of warranty or covenant at the time of Closing or at any other time, until the expiration of the applicable statute of limitations (and shall thereafter terminate, at which time the other Party shall be precluded from making a claim or commencing a cause of action with respect thereto). The termination of any representation and warranty provided herein shall not affect the rights of a Party in respect of a Claim made by such Party with specificity and in a writing received by the other Party prior to the expiration of the applicable survival period provided herein.

11.2 Limitation of Liability. Notwithstanding anything contained in this Agreement to the contrary, in no event shall Seller's aggregate liability under this Agreement or any Operative Document to Buyer under any theory of liability (whether contract, tort, strict liability or otherwise) exceed one hundred percent (100%) of the Final Purchase Price, provided that the foregoing limitation shall not apply (A) to the extent based upon a breach of any representation or warranty made in Section 3.1, 3.2, 3.3, 3.4, 3.7, 3.13 or 3.18, or (B) to death, bodily injury or personal injury to any person or damage or destruction to any property of either Party or third persons arising from activities conducted on any Premises on or prior to the Closing Date or from Hazardous Substances that were present at or on the Premises on or prior to the Closing Date or that were released by Seller or any other person for whose conduct Seller is responsible at any time on or prior to the Closing Date.

ARTICLE XII GENERAL PROVISIONS

12.1 Indemnification.

(a) Subject to Article XI, Seller undertakes and agrees to indemnify and hold harmless Buyer, its Affiliates, the Board of Commissioners, and the City of Los Angeles, and all of their respective commissioners, officers, agents, employees, attorneys,

consultants, advisors, representatives, and assigns and successors in interest (collectively, "Indemnitees") from and against any and all charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, arising by reason of any (a) breach of this Agreement by Seller, (b) failure of any representation, warranty or guarantee made by Seller herein or in any of the other Operative Documents that is qualified by materiality to be true, (c) failure of any representation, warranty or guarantee made by Seller herein or in any of the other Operative Documents that is not so qualified by materiality to be true in all material respects, or (d) Excluded Liability; provided, however, that before making a Claim based on any misrepresentation or inaccuracy of Seller's representations in Section 3.6 with respect to Seller's title to the real property interests in the Facility Assets, Buyer shall have exhausted its remedies with respect to the title policy issued pursuant to Section 7.4(e).

(b) Buyer shall promptly notify Seller of any action, suit, proceeding, demand, or breach (a "Claim") with respect to which Buyer claims indemnification; *provided, however,* that failure of Buyer to give such notice shall not relieve Seller of its obligations under this Section 12.1. If such Claim relates to any action, suit, proceeding, or demand instituted by a third party (a "Third Party Claim"), upon receipt of such notice from Buyer, Seller shall be entitled to participate in the defense of such Third Party Claim, and if and only if each of the conditions set forth in clauses (i) through (iv) below is satisfied, Seller shall assume the defense of such Third Party Claim, and in the case of such an assumption, Seller shall have the authority, with consent of Buyer, to negotiate, compromise, and settle such Third Party Claim;

(i) Seller confirms in writing, without qualification of any kind, that it is obligated to indemnify the Indemnitees with respect to such Third Party Claim;

(ii) Seller has selected counsel to handle the defense who is acceptable to the Los Angeles City Attorney;

(iii) Buyer does not give Seller notice that it has determined, in the exercise of its reasonable discretion, that matters of policy or a conflict of interest make separate representation by Buyer's own counsel advisable; and

(iv) Seller establishes to the reasonable satisfaction of Buyer that Seller has (and will continue to have) adequate financial resources to satisfy and discharge such action or claim.

(c) Buyer shall retain the right to participate in the defense of any Third Party Claim, the defense of which has been assumed by Seller pursuant hereto, but Buyer shall bear and shall be solely responsible for its own costs and expenses in connection with such participation. In the event Seller shall fail or not be entitled to assume the defense of any Third Party Claim, then Buyer shall control the defense and settlement thereof at Seller's cost and expense, and any judgment on or settlement of such Third Party Claim shall be conclusive and binding on Seller for all purposes.

(d) The provisions of this Section 12.1 shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies.

(e) No individual Representative of either Party shall be personally liable for any losses under the provisions contained in this Section 12.1. Except as set forth in Section 12.1(d), nothing herein shall relieve either Party of any liability to make any payment expressly required to be made by such Party pursuant to this Agreement.

12.2 Expenses. Except as otherwise expressly provided in this Agreement, each Party will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement, including all fees and expenses of agents, representatives, counsel, and accountants. Both Parties agree that, in any action to enforce the terms of this Agreement, each Party shall be responsible for its own attorney fees and costs. Each of the Parties was represented by its respective legal counsel during the negotiation and execution of this Agreement.

12.3 Ambiguity. The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted in accordance with Exhibit 1.1 and according to the application of the rules on interpretation of contracts.

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

12.5 Notices. All notices, requests, demands, consents, approvals, waivers, and other communications which are required or may be given under this Agreement shall be in writing (regardless of whether the applicable provision expressly requires a writing) and shall be deemed to have been duly given when given in the manner set forth in Section 14.2 of the PPA.

12.6 Entire Agreement; Amendments.

(a) This Agreement (including all Schedules and Exhibits) and the PPA contain the entire understanding concerning the subject matter herein and supersede and replace any prior negotiations, discussions or agreements 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 or the other documents of even date herewith between the Parties that induced the other Party to sign this document.

(b) This Agreement may be amended or modified only by an instrument in writing signed by each Party.

12.7 Further Assurances. The Parties agree to furnish upon request to the other Party such further information, to execute and deliver to the other Party such other documents, and to do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the other Operative Documents, including in the case of Seller, to assist Buyer in pursuing and obtaining any Consents or Permits required to be obtained in the name of Buyer after the Closing Date.

12.8 Waiver. The failure of either Party 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.

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

12.10 Consequential or Punitive Damages. Neither Party shall be liable to the other Party for special, incidental, exemplary, indirect, punitive or consequential damages arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under contract, tort (including such Party's own negligence) or any other theory at law or in equity, including damages for lost revenues, income or profits.

12.11 Equitable Remedies. The Parties acknowledge that money damages may not be an adequate remedy for violations of this Agreement by Seller and that Buyer may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other equitable relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. The Parties hereby waive any objection to specific performance or injunctive or other equitable relief.

12.12 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

12.13 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California without consideration of conflicts of law principles. The venue for any litigation relating to this Agreement shall be in Los Angeles, California and each Party hereby waives any objections on the basis of *forum non-conveniens* or otherwise with respect to the venue of any such action being heard in Los Angeles, California.

12.14 Execution in Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

12.15 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties 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.

12.16 Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

12.17 Provisions of PPA. The provisions of Section 14.3 ("Dispute Resolution"), Section 14.7 ("Assignment of Agreement"), Section 14.21 ("Confidentiality"), and Section 14.22 ("Mobile Sierra") of the PPA are incorporated herein in their entirety, *mutatis mutandis*.

12.18 First Priority Interests. The rights of Buyer under this Agreement shall be prior and superior to the rights of the Facility Lender, and prior and superior to any other person or entity that subsequently acquires an interest in the Facility.

12.19 Exhibits and Schedules. The Exhibits and Schedules referred to in and attached to this Agreement are incorporated herein in full by this reference. To the extent that the terms and conditions of an Exhibit or Schedule conflict with the terms and conditions of the main body of this Agreement, the terms and conditions of the main body of this Agreement shall control.

12.20 Relationship with PPA; Right of First Offer and Right of First Refusal. Except as otherwise specifically stated herein, this Agreement is independent of the PPA and, as a separate agreement, shall survive the amendment, modification, or termination of the PPA, except as otherwise provided herein. In the event of a conflict between this Agreement and the PPA, this Agreement shall control. Notwithstanding the foregoing, this Agreement shall not be deemed to limit Buyer's Right of First Offer or Right of First Refusal set forth in the PPA.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

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

By BOARD OF WATER AND POWER
COMMISSIONERS OF THE CITY OF
LOS ANGELES

Date: _____

By: _____
Marcie L. Edwards,
GENERAL MANAGER

And: _____
Barbara E. Moschos,
BOARD SECRETARY

RE BARREN RIDGE 1 LLC

Date: _____

By: _____
Its: _____

[Signature Page to Option Agreement]

EXHIBIT 1.1
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

DEFINITIONS; RULES OF INTERPRETATION

“*Affected Portion*” shall have the meaning ascribed to it in Section 9.3(a).

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

“*Agency Action*” means any notice of violation, complaint, order, consent order, consent agreement, assessment of a fine or penalty or other similar demand for action brought by a Governmental Authority having the requisite authority and jurisdiction to bring such action.

“*Agreement*” means this Option Agreement.

“*Applicable Diligence Period*” shall have the meaning ascribed to it in Section 5.1.

“*Asset Assignment Documents*” shall have the meaning ascribed to it in Section 7.4(d).

“*Assumed Contracts*” means the Contracts to which Seller is a party or to which the Facility is subject, listed in *Schedule 3.3* and *Schedule 3.12*.

“*Assumed Liabilities*” shall have the meaning ascribed to it in Section 2.9.

“*Bill of Sale*” means the document described in Section 7.4(c).

“*Board of Commissioners*” means the Board of Water and Power Commissioners of the City of Los Angeles created pursuant to Section 600 and 670 of the Charter of the City of Los Angeles.

“*Books and Records*” means, to the extent relating to any period of time prior to the Closing, (a) all books, records, purchasing records, lists, files and papers in the possession of Seller or its agents pertaining to the Facility Assets and the Facility, and all records and lists concerning suppliers to and personnel of the Facility or Taxes with respect thereto; (b) all ledgers, and reports, plans, drawings, maps, photographs, technical manuals and operating records of every kind maintained by Seller with respect to the Facility, whether in hard copy or

electronic format; and (c) all software used by Seller primarily in connection with the operation of the Facility, in each case to the extent transferable; provided that Books and Records may include inextricable information or data unrelated to the Facility, in which case such information or data may be redacted.

"Breach Notice" shall have the meaning ascribed to it in Section 5.7.

"Business" means the business of owning and operating the Facility.

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

"Buyer" shall have the meaning ascribed to it in the first paragraph of this Agreement.

"CEQA" means the California Environmental Quality Act.

"CERCLA" means the federal Comprehensive Environmental Response, Compensation and Liability Act.

"Claim" shall have the meaning ascribed to it in Section 12.1(b).

"Closing" shall have the meaning ascribed to it in Section 2.7.

"Closing Date" means the date on which the Closing is required to take place, as set forth in Section 2.2.

"Closing Permitted Encumbrances" means any Purchase Option Permitted Encumbrances other than those that secure any form of Facility Debt or any other monetary obligation (other than Liens for Taxes not yet due).

"Code" means the Internal Revenue Code of 1986.

"Commercial Operation Date" shall have the meaning ascribed to it in the PPA.

"Consent" means any approval, consent, ratification, waiver, license, permit, certification, registration or other authorization (including any Governmental Approval).

"Contract" means any agreement, arrangement, lease, commitment, sales order, purchase order, indenture, mortgage, right, warrant or instrument, which provides for ownership or operation of the Facility and is intended to, or purports to be, or is required to be binding and enforceable as contemplated under this Agreement, other than the Permits.

"Disclosure Schedules" shall have the meaning ascribed to it in Section 2.4.

"Effective Date" shall have the meaning ascribed to it in the preamble to this Agreement.

"Environment" includes (a) the navigable waters, the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the

United States under the Magnuson-Stevens Fishery Conservation and Management Act and (b) any other surface water, ground water, drinking water supply, stream sediments, soil, land surface or subsurface strata, or ambient air, plant and animal life, and any other environmental medium or natural resource within the United States, or a foreign nation or under jurisdiction of the United States or a foreign nation.

"Environmental Conditions" means the presence of Hazardous Substances which have been Released into the Environment or the presence of Hazardous Substances that could reasonably be expected to pose a threat of Release of Hazardous Substances into the Environment.

"Environmental Law" means any applicable current or future treaty, constitution, law, statute, ordinance, rule, order, decree, regulation or other directive which is legally binding and has been enacted, issued or promulgated by any Governmental Authority that imposes liability for or standards of conduct or compliance or other requirements or obligations concerning protection of health, or safety (in each case, to the extent relating to exposure to Hazardous Substances), natural resources or the Environment and includes all Hazardous Substances Law.

"Excluded Assets" means, notwithstanding any other provision of this Agreement, the following assets:

(a) cash, certificates of deposit and other bank deposits, treasury bills and other cash equivalents or other investments, on hand or in bank accounts, and all of Seller's bank accounts, intercompany accounts and accounts receivable;

(b) accounts and notes receivable relating to the period prior to the Closing Date, including amounts owing under the PPA;

(c) all of Seller's rights under the PPA and any other Contract between Seller and Buyer or between Seller and any other third party for the sale of Facility Energy or Capacity Rights from the Facility;

(d) any Contract between Seller and its Affiliates, other than for on-going operations and maintenance of the Facility;

(e) any Contract that is not an Assumed Contract and any Permit that is not a Transferred Permit;

(f) any computers not used primarily in connection with the Facility, any communication or data network systems not used primarily in connection with the Facility, and any other equipment not reasonably required to operate the Facility;

(g) all refunds or credits, if any, of Taxes due to or from Seller and (i) accrued prior to the Closing or (ii) which otherwise cannot be assigned by Law;

(h) all corporate, financial and tax records of Seller which (i) do not relate in whole or in part to the Facility, (ii) relates solely to any Excluded Asset, (iii) relates solely to any Excluded Liability, (iv) relates to the organization, existence, capitalization

or debt financing of Seller, (v) relates to information about Seller or its Affiliates pertaining to energy or project evaluation methodologies, economic evaluation of the Facility Assets (other than the Financial Statements), energy or natural gas price curves or projections or other economic predictive models, or (vi) do not constitute Books and Records;

(i) all rights to claims, refunds or adjustments against Buyer or any other third parties arising out of the period prior to the Closing Date;

(j) Seller's insurance policies; and

(k) the assets identified as "Excluded Assets" in *Schedule 3.5*.

"*Excluded Liabilities*" shall have the meaning set forth in Section 2.10.

"*Facility Assets*" means the following assets (excluding those assets constituting Excluded Assets):

1. the Premises;
2. all Assumed Contracts;
3. all Fixtures and Equipment;
4. all Books and Records;
5. all Transferred Permits;
6. all Intellectual Property Assets;
7. all Supplies;
8. all Transmission Assets;
9. all Warranties; and
10. all other assets, properties, rights, privileges, claims and Contracts of every kind and nature, real or personal, tangible or intangible, absolute or contingent, wherever located, owned or used (including those necessary to access to utilize any common use facilities), comprising the Facility.

"*Fair Market Value*" shall mean, with respect to a particular time of calculation, the amount a willing buyer would pay for the Facility Assets and all rights and interests associated therewith, in an arm's-length transaction, to a willing seller under no compulsion to sell on the applicable Closing Date, taking into account all relevant facts and circumstances relating to the Facility Assets, the Excluded Assets, the Assumed Liabilities, the Excluded Liabilities and the Disclosure Schedules, as of the Closing Date, and assuming that the Facility is able to generate revenue for the then-remaining Agreement Term at a price per MWh equal to the Contract Price set forth in the PPA and thereafter for the remaining useful life of the Facility Assets at a price per MWh equal to the then fair market price for Energy, Capacity Rights, Environmental Attributes and other Products generated by the Facility (except in the case Buyer is exercising its Project Purchase Option as a result of an Event of Default of Seller under the PPA, in which case the Energy, Capacity Rights, Environmental Attributes and other Products generated by the Facility will be assumed to be sold at their fair market value price as of the Closing Date for the remaining useful life of the Facility Assets), as determined in accordance with *Exhibit 2.5*.

"*FERC*" shall have the meaning ascribed to it in Section 3.17.

"*Final Purchase Price*" shall have the meaning ascribed to it in Exhibit 2.5.

"*Financial Statements*" shall have the meaning ascribed to it in Section 5.3.

"*Fixtures and Equipment*" means the fixtures, equipment (including solar panels, control rooms and other auxiliaries, furniture, office equipment, communications equipment, fixtures, furnishings, machinery, vehicles, computers, air conditioning ventilation and heating equipment and control stations) but excluding any Supplies, and other tangible personal property located on the Premises and owned or used by Seller in connection with the operation of the Facility.

"*FPA*" shall have the meaning ascribed to it in Section 3.17.

"*GAAP*" means generally accepted accounting principles that are consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors in effect for the applicable period of Seller.

"*Governmental Approval*" means any Consent issued, granted, given, or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law or Environmental Law.

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

"*Hazardous Substances*" means any substance, material or waste that is regulated by or forms the basis of liability now or hereafter under, any Hazardous Substances Law, including any material, substance or waste that is (a) defined as a "solid waste," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "contaminant," "hazardous constituent," "special waste," "toxic substance" or other similar term or phrase under any Environmental Law, (b) petroleum or any fraction or by-product thereof, asbestos, polychlorinated biphenyls (PCB's), or any radioactive substance.

"*Hazardous Substances Law*" means any applicable current or future treaty, constitution, law, statute, ordinance, rule, order, decree, regulation or other directive which is legally binding and has been enacted, issued or promulgated by any Governmental Authority that imposes liability for or standards of conduct or compliance concerning the generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Hazardous Substances, including, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act of 1976, CERCLA, the Toxic Substances Control Act, the Oil Pollution Act, the Safe Drinking Water Act, and the Occupational Safety and Health Act of 1970 (to the extent that it relates to the handling of and exposure to hazardous or toxic materials or similar substances).

"Indemnitees" shall have the meaning ascribed to it in Section 12.1(a).

"Intellectual Property Assets" shall have the meaning ascribed to it in Section 3.13(a).

"Investment Company Act" means the Investment Company Act of 1940.

"Knowledge" means with respect to any fact, circumstance, or condition, (a) the actual, current knowledge of any officer, agent, employee, or representative of the applicable Party, or (b) the knowledge that an officer of such Party should have had upon reasonable investigation and inquiry.

"Law" means any Order, and any federal, state, local, or foreign law, statute, regulation, rule, code or ordinance enacted, adopted, issued or promulgated by any Governmental Authority, but excluding Environmental Laws.

"Land Documents" means the real property leases and easements for the Site that together establish Site Control.

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

"Material Adverse Effect" means a material adverse effect on (a) Seller, (b) the Facility, (c) the business, condition (financial or otherwise), results of operations or prospects of the Business, or (d) the Facility Assets.

"Maximum Purchase Price" shall have the meaning ascribed to it in *Exhibit 2.5*.

"Minimum Purchase Price" shall have the meaning ascribed to it in *Exhibit 2.5*.

"National Priorities List" means the list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States and its territories and that guides the Environmental Protection Agency in determining which sites warrant further investigation.

"Operations Period" means the six (6) month period of time prior to the delivery by Buyer of the Purchase Option Exercise Notice.

"Operative Documents" means each of the agreements, instruments, certificates and other documents executed and delivered by a Party under this Agreement in connection with the performance and consummation of the transaction contemplated by this Agreement.

"Order" means any final, non-appealable award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Authority, or by any arbitrator.

"Organizational Documents" means as applicable, (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person; (c) the certificate of organization and the operating agreement of a limited liability company; and (d) any amendment to any of the foregoing.

"Party" and **"Parties"** shall have the meaning ascribed to it in the first paragraph of this Agreement.

"Permit" means any permit, license, franchise, concession, consent, authorization, approval, registration, filing or similar act of or made with any Governmental Authority that are used by or necessary to operate the Facility.

"Person" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Authority.

"PPA" shall have the meaning ascribed to it in the Recitals.

"Premises" means the fee, leasehold, easement and other Real Property Interests held by Seller in connection with the ownership or operation of the Facility, including under the Land Documents, together with all buildings, improvements, structures and fixtures thereon owned by Seller, and all easements, privileges, rights-of-way, lands underlying any adjacent streets or roads, appurtenants, licenses and other rights owned by Seller pertaining to or accruing to the benefit of such property.

"Proceeding" means any action, order, writ, judgment or decree outstanding, arbitration, audit, hearing, investigation, claim, litigation, or suit (whether civil, criminal, regulatory, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Person.

"Products" shall have the meaning ascribed to it in the Recitals.

"Project Purchase Option" shall have the meaning ascribed to it in Section 2.1.

"Provided Materials" shall have the meaning ascribed to it in Section 5.1.

"Purchase Option Exercise Deadline" means a period of one hundred twenty (120) days after the determination of the Fair Market Value for the applicable Purchase Option Opportunity.

"Purchase Option Exercise Notice" shall have the meaning ascribed to it in Section 2.5(b).

"Purchase Option Opportunity" shall have the meaning ascribed to it in Section 2.2.

"Purchase Option Permitted Encumbrances" means (a) any Lien approved by Buyer or set forth in *Schedule 3.6*; (b) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, so long as either (i) such proceedings do not involve a

substantial risk of the sale, forfeiture, loss or restriction on the use of the Facility or any part thereof, or (ii) a bond or other security reasonably acceptable to Buyer has been posted or provided in such manner and amount as to assure Buyer that any Taxes determined to be due will be promptly paid in full when such contest is determined; (c) zoning, building codes and other land use laws regulating the use or occupancy of the Premises or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over the Premises; (d) suppliers', vendors', mechanics', workman's, repairman's, employees' or other like Liens arising in the ordinary course of business for work or service performed, or materials furnished in connection with, the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings, so long as either (i) such proceedings do not involve a substantial risk of the sale, forfeiture, loss or restriction on use of the Facility or any part thereof, or (ii) a bond or other security reasonably acceptable to Buyer has been posted or provided in such manner and amount as to assure Buyer that any amounts determined to be due will be promptly paid in full when such contest is determined; (e) easements, rights of way, use rights, exceptions, encroachments, reservations, restrictions, conditions or limitations which do not materially impair the Premises affected thereby for the purpose for which title was acquired or materially interfere with or impair the operation of the Facility Assets; (f) the fee owner's interest in the Premises (if such fee owner is different than Seller); (g) any mortgage, pledge, security interest, encumbrance, lien (statutory or other) or conditional sale agreement on or affecting the landowner's interest in the Premises that does not have a material adverse effect upon Seller's rights or obligations under the Land Documents or for which the beneficiary of any of the foregoing has agreed not to disturb Seller's interest in the Land Documents through a customary recognition, non-disturbance, and attornment agreement or other agreement of similar effect; (h) the terms and conditions of the Land Documents; and (i) Liens created or reserved pursuant to or contemplated by the PPA, this Agreement or any Performance Security under the PPA.

"Purchase Option Tentative Exercise Notice" shall have the meaning ascribed to it in Section 2.4.

"Qualified Appraiser" means a nationally recognized California Licensed Certified General Real Estate Appraiser, which shall (a) be qualified to appraise independent electric generating businesses, (b) have been engaged in the appraisal or business valuation and consulting business for a period of not less than five (5) years, and (c) not be associated with Seller, Buyer or any of their respective Affiliates.

"Real Property Contracts" shall have the meaning ascribed to it in Section 3.3(a).

"Real Property Interests" shall have the meaning ascribed to it in Section 3.3(a).

"Release" means any physical release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Substances in the Environment, including the movement of Hazardous Substances through or in the Environment, including the Premises.

"Representative" means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

"Requirements of Law" means all Laws, Permits (including those pertaining to electrical, building, zoning, and occupational safety and health requirements) and Environmental Laws.

"Schedule Delivery Date" shall have the meaning ascribed to it in Section 2.4.

"Seller" shall have the meaning ascribed to it in the first paragraph of this Agreement.

"Seller Disclosure Schedules" shall have the meaning ascribed to it in Section 2.4.

"Supplies" means those supplies, inventories and spare parts on the Premises or otherwise dedicated to the Facility as of the Closing Date.

"Tax Claim" shall have the meaning ascribed to it in Section 9.1(e).

"Tax Return" means any return, report, information return or other document (including any related or supporting information) required to be supplied to any authority with respect to Taxes.

"Taxes" means all taxes, charges, fees, levies, penalties or other similar assessments imposed by any United States federal, state or local, or foreign taxing authority, including, income, excise, property, sales, use, transfer, franchise, payroll, withholding, social security or other taxes, including any interest, penalties or additions attributable thereto.

"Tentative Purchase Price" shall have the meaning ascribed to it in Exhibit 2.5.

"Third Party Claim" shall have the meaning ascribed to it in Section 12.1(b).

"Third Party Property Interests" shall have the meaning ascribed to it in Section 3.3(a).

"Transferred Permits" means all Permits other than those Permits that will not be transferred to Buyer as of the Closing.

"Transfer Taxes" shall have the meaning ascribed to it in Section 2.13.

"Transmission Assets" means the fixtures, equipment (including transformers and switchgear) and other tangible property interests owned by Seller and required for the transmission of Energy to the Point of Delivery.

"Treasury" means the regulations issued by the U.S. Department of Treasury under the Internal Revenue Code.

"Updated Schedule Delivery Date" shall have the meaning ascribed to it in Section 2.11(a).

“Warranties” means all rights of Seller under or pursuant to all third-party warranties, representations and guarantees made by manufacturers and suppliers in connection with the Facility Assets or services furnished to Seller pertaining to the Facility or affecting the Facility Assets.

RULES OF INTERPRETATION

1. The headings of Sections in this Agreement are provided for convenience only and shall not affect its construction or interpretation.
2. All references to "Article," "Articles," "Section" or "Sections" refer to the corresponding Article, Articles, Section or Sections of this Agreement, unless otherwise specified. Each reference to an Article or Section of, or Exhibit or Schedule to, this Agreement shall be deemed to be followed by the word "hereof."
3. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require.
4. The word "including" does not limit the preceding words or terms.
5. A reference to any Person includes its permitted successors and permitted assigns.
6. The words "herein," "hereof," "hereunder" and words of like import shall refer to this Agreement as a whole and not to any particular section or subdivision of this Agreement.
7. The singular includes the plural and the plural includes the singular.
8. The term "or" is not exclusive.
9. A reference to any Law, rule, regulation, statute, ordinance, Order, code or similar form of decision of any Governmental Authority having the effect and force of Law includes any amendment or modification or successor thereto, and all regulations rulings promulgated under such Governmental Rule.
10. Accounting terms have the meanings assigned to them by generally accepted accounting principles, as consistently applied by the accounting entity to which they refer.
11. References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time, regardless of whether any of the foregoing are expressly referred to in the applicable provision.
12. References to "days" and "months" shall mean calendar days and calendar months, respectively. References to a time of day shall mean such time in Los Angeles, California.

13. The terms "shall," "will," and "must" shall have the same meaning and be of equal force and effect.

EXHIBIT 2.5
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

PURCHASE PRICE

1. The "*Tentative Purchase Price*" shall be an amount equal to the Fair Market Value, as determined in accordance with this *Exhibit 2.5*.
2. Within fifteen (15) days following the later of (a) the Schedule Delivery Date, or (b) the actual delivery by Seller to Buyer of the Seller Disclosure Schedules (the "*Actual Schedule Delivery Date*") the Parties shall meet and attempt to agree on the Tentative Purchase Price based on the Seller Disclosure Schedules delivered by Seller. If the Parties are unable to agree on the Tentative Purchase Price within thirty (30) days after the Actual Schedule Delivery Date, the Parties shall, within fourteen (14) additional days, jointly select a Qualified Appraiser. If the Parties cannot agree on a Qualified Appraiser within such fourteen (14) day period, then each of Seller and Buyer shall select an independent recognized appraiser within fourteen (14) days after the conclusion of such period, which independent appraisers shall, within fourteen (14) days after being selected by each of Buyer and Seller, agree upon and appoint a third Qualified Appraiser to perform the appraisal. If the two selected appraisers cannot agree on a third Qualified Appraiser within such fourteen (14) day period, then either Party may apply to the American Arbitration Association to make such an appointment within fourteen (14) days after such application. The appraisal shall be completed within thirty (30) days of the appointment of the Qualified Appraiser.
3. The Tentative Purchase Price shall be adjusted from time to time by the amount (as determined by the Parties in good faith, or absent their mutual agreement, by Qualified Appraisers using the same methodology set forth in paragraph 2 above) necessary to take into account (i) any differences between the Seller Disclosure Schedules originally delivered to Buyer on the Actual Schedule Delivery Date and any updated Seller Disclosure Schedules delivered to Buyer from time to time prior to Closing, (ii) any item or omission in a Seller Disclosure Schedule that is not resolved to the reasonable satisfaction of Buyer, (iii) any differences in Facility Assets, Excluded Assets, Assumed Liabilities or Excluded Liabilities from the Actual Schedule Delivery Date to the Closing, (iv) the inability of Seller to satisfy any of the Buyer Closing Conditions set forth in Article VII, (v) damage or destruction of all or a portion of the Facility or any real or threatened condemnation or eminent domain proceeding as described under Section 9.3(a) of the Agreement, or (vi) following the delivery of a Breach Notice, the event or circumstance described in such Breach Notice.

4. The "*Final Purchase Price*" to be paid by Buyer at the Closing shall be an amount equal to the greater of (a) the Tentative Purchase Price, or (b) the Minimum Purchase Price (as defined below); provided that in the event that (i) the Tentative Purchase Price is at any time greater than the Maximum Purchase Price (as defined below), then Buyer, upon notice to Seller, may, without liability, terminate the Project Purchase Option with respect to the relevant Purchase Option Opportunity, and such Purchase Option Opportunity shall expire and shall no longer be effective (but such expiration shall not affect Buyer's right to exercise any Project Purchase Option with respect to any future Purchase Option Opportunity).
5. The "*Minimum Purchase Price*" and the "*Maximum Purchase Price*" shall be as follows, corresponding to the applicable Purchase Option Opportunity for which Buyer has exercised its Project Purchase Option:

Purchase Option Opportunity	Minimum Purchase Price	Maximum Purchase Price
6 th Contract Year	\$108,200,000	\$127,300,000
10 th Contract Year	\$101,000,000	\$118,800,000
15 th Contract Year	\$89,700,000	\$105,500,000
20 th Contract Year	\$75,000,000	\$88,200,000
Event of Default under PPA	The aggregate amount of the Facility Debt immediately prior to Closing, if any. Otherwise, none.	None.

EXHIBIT 5.11
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

FORM OF TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (this "Agreement") is entered into on [•], 20__ (the "Effective Date"), by and between RE BARREN RIDGE 1 LLC, a Delaware limited liability company ("Seller") and THE CITY OF LOS ANGELES ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER, a municipal corporation of the State of California ("Buyer"). Seller and Buyer are hereinafter sometimes collectively referred to as the "Parties," and each individually as a "Party."

WITNESSETH:

WHEREAS, the Parties have entered into that certain Option Agreement, dated as of _____, 2013 (the "Option Agreement"), pursuant to which, among other things, Seller has agreed to sell, transfer, assign, convey and deliver to Buyer, and Buyer has agreed to purchase, receive and assume from Seller, the Facility Assets (as defined in the Option Agreement), upon the terms and subject to the conditions set forth in the Option Agreement; and

WHEREAS, Section 5.11 of the Option Agreement provides that Seller or its Affiliates will provide Buyer with transitional operation and maintenance services; and

WHEREAS, Buyer hereby requests that Seller (or its Affiliates) perform certain transitional operation and maintenance services for a period of time following the Closing Date to facilitate the transition of the operations of the Facility to Buyer; and

WHEREAS, Seller is willing to provide, or cause its Affiliates to provide, such services to Buyer subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the covenants set forth herein and the benefits to be derived herefrom, the Parties hereby agree as follows:

ARTICLE I
DEFINED TERMS

Capitalized terms used in this Agreement shall have (unless provided elsewhere in this Agreement) the meanings given to such terms in the Option Agreement and as set forth below:

“Services” means the services that are listed on Schedule 1 attached hereto; provided, however, that the term “Services” shall not include the services listed under the heading “Excluded Services” on Schedule 1 attached hereto.

ARTICLE II DESCRIPTION OF SERVICES

2.1 Seller’s Undertakings. The purpose of this Agreement is to enable Buyer to receive the Services from Seller or Seller’s Affiliates on an interim basis in order to permit Buyer the opportunity to obtain alternate sources of supply of such Services prior to the expiration of the Initial Term, or if extended, the Extension Term (as such terms are defined in Section 3.1 below). Seller agrees to provide, or to cause the provision through its Affiliates of, the Services to Buyer during the Initial Term and each Extension Term in accordance with the terms and conditions of this Agreement and all Requirements of Law, in a professional, workmanlike manner, subject to the applicable Laws and in a manner that is substantially the same as the manner in which such Services were performed prior to the date of this Agreement.

2.2 Resources Committed. Seller shall provide the Services set forth on Schedule 1; provided that Seller shall not be required to provide any services to Buyer that neither Seller nor its Affiliates previously provided or performed in connection with the ownership of the Facility Assets prior to the Closing. Nothing herein shall require Seller to install equipment, acquire licenses, expand any systems or services or expend any resources beyond the level provided by Seller and its Affiliates prior to the Closing. In connection with the performance of the Services, Seller may, at its sole cost and expense: (a) subcontract with a non-Affiliate or personnel of a non-Affiliate to perform any portion of the Services to be performed hereunder; (b) utilize personnel who are employees of Affiliates of Seller; or (c) subcontract work to Affiliates of Seller; provided that all such personnel and subcontractors shall be fully qualified to perform the applicable Services pursuant to the terms and conditions of this Agreement and Buyer shall have consented to such personnel and subcontracts, such consent not to be unreasonably withheld or delayed.

2.3 Limitations. EXCEPT AS PROVIDED IN THIS AGREEMENT NEITHER SELLER NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION, WARRANTY OR GUARANTY, EXPRESS OR IMPLIED OF ANY KIND CONCERNING THE SERVICES AND ANY RESULTS OR WORK PRODUCT. SELLER AND ITS AFFILIATES SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NONE SHALL BE IMPLIED AND ALL OTHER REPRESENTATIONS, WARRANTIES OR GUARANTIES, WRITTEN OR ORAL, EXPRESSED OR IMPLIED ARE EXCLUDED.

ARTICLE III TERM AND TERMINATION

3.1 Term. The initial term of this Agreement (the “Initial Term”) shall commence as of the Closing Date and shall continue in effect for a maximum of six (6) months; provided, however, that this Agreement may be extended for an additional period not to exceed two (2) months following the expiration of the Initial Term (the “Extension Term,” and collectively with

the Initial Term, the "Term") if (a) Buyer provides notice not less than thirty (30) days prior to the expiration of the Initial Term of (i) the Services Buyer desires to receive during the Extension Term and (ii) the number of months during the Extension Term for which it desires to receive such Services and (b) Buyer is in compliance with all of its obligations under this Agreement at the time Seller receives a notice of Buyer's intent to extend this Agreement for an Extension Term.

3.2 Termination of Entire Agreement. Notwithstanding anything herein or elsewhere to the contrary, this Agreement may be terminated and the transactions contemplated hereby abandoned, at any time, upon the occurrence of any of the following events or conditions:

(a) upon the mutual written agreement of the Parties to terminate this Agreement;

(b) by Seller, upon Buyer's breach of any obligation under this Agreement (including Buyer's failure to pay Seller amounts owing hereunder) and such breach is not remedied to Seller's reasonable satisfaction within fifteen (15) days after notice to Buyer of such breach or if such breach is not capable of rectification within fifteen (15) days, if Buyer has not promptly commenced to rectify the breach within such fifteen (15)-day period and is not proceeding diligently to rectify the breach; provided, however, that such right to continue to rectify a breach shall end upon expiration of this Agreement; or

(c) by Buyer, upon Seller's breach of any obligation under this Agreement and such breach is not remedied to Buyer's reasonable satisfaction within fifteen (15) days after notice to Seller of such breach or if such breach is not capable of rectification within fifteen (15) days, if Seller has not promptly commenced to rectify the breach within such fifteen (15)-day period and is not proceeding diligently to rectify the breach; provided, however, that such right to continue to rectify a breach shall end upon expiration of this Agreement.

In the event of termination of this Agreement pursuant to this Section 3.2, no Party will have any further liability or obligation hereunder, except that any such termination will not affect (i) the provisions of Section 4.1, Article V and Article VI, which will survive any such termination, or (ii) the rights and obligations of the Parties accruing prior to such termination.

3.3 Termination of Particular Service. Notwithstanding anything herein or elsewhere to the contrary, Buyer shall have the right, upon thirty (30) days' notice to Seller, to terminate this Agreement as to any Service listed on Schedule 1. Upon the effectiveness of the termination of any particular Service, Seller shall no longer be required to provide such Service to Buyer, and Buyer shall incur no additional obligations to pay Seller the fee associated with the provision of such Service, other than obligations that have accrued prior to the termination of such Service, including any third-party fees, penalties or other payments related to the termination by Seller of such Service.

3.4 Termination Procedures. Upon any termination of this Agreement (in whole or in part), each Party shall cooperate with the other Party as reasonably necessary to assist Buyer in

transferring responsibility for the provision of the terminated Service(s) to Buyer (or any third party as designated in writing by Buyer).

ARTICLE IV FEES, BILLING, AND PAYMENT

4.1 Compensation. Buyer shall, in accordance with Section 4.2, (a) pay Seller the fees set forth on Schedule 1 attached hereto for the provision of each particular Service provided under this Agreement, and (b) except as set forth in Section 3.3 above, reimburse Seller for any incidental, out-of-pocket expenses reasonably incurred by Seller or Seller's Affiliates in connection with performing the Services. All amounts paid by Buyer to Seller hereunder shall be paid in full without any deduction or withholding for taxes or any other fees or expenses.

4.2 Billing and Payment. After the end of each calendar month, Seller shall send to Buyer an invoice, setting forth a description of the Services provided during the prior calendar month and identifying the fees that are to be paid. Buyer shall pay to Seller the amounts due and payable on each such invoice within sixty (60) days after its receipt thereof. If Buyer in good faith disputes any portion of an invoice, and Buyer notifies Seller of the nature and basis of such good faith dispute within thirty (30) days after Buyer's receipt of such invoice, Buyer shall have the right to withhold payment of the disputed portion, and Buyer shall pay only the undisputed portion. Seller shall be entitled to a late fee on any undisputed amounts, and any amounts not disputed in good faith by Buyer, due hereunder that remain unpaid following the date due hereunder at the rate of one percent (1%) per month.

4.3 Access. During the Term, Buyer will provide Seller, Seller's Affiliates, and their respective authorized representatives, at each such Person's sole risk, reasonable access (during regular business hours and upon reasonable prior notice), to Buyer and its employees, representatives, facilities and books and records as Seller, Seller's Affiliates and their respective authorized representatives may reasonably request in order to provide the Services; provided, that (i) Buyer shall have the right to have a representative present for any communication with employees or representatives of Buyer; (ii) such access and activities incidental thereto shall be undertaken in accordance with applicable Laws and Buyer's generally applicable policies and procedures; and (iii) Buyer shall have the right to impose reasonable restrictions and requirements for safety purposes. Buyer grants to Seller and its representatives access to the Facility for a period of thirty (30) days after the expiration or termination of this Agreement so that Seller may demobilize its work force, including the removal of its personal property that was brought to the Facility by Seller to provide the Services.

4.4 Records Retention. Each Party shall retain all records relating to this Agreement for so long as required by any Governmental Authority having jurisdiction.

ARTICLE V RELEASE

5.1 Indemnity. Subject to Section 5.2, Seller undertakes and agrees to indemnify and hold harmless Buyer, the Board of Commissioners, and the City of Los Angeles, and all of their respective commissioners, officers, agents, employees, advisors, representatives, and assigns and

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

5.2 Limitation of Liability. Seller's liability to Buyer in connection with its performance of the Services hereunder, regardless of whether such liability arises in contract, tort or otherwise, shall not exceed the total amount invoiced under Section 4.2 hereof for all the Services actually provided hereunder during the term of this Agreement, determined in accordance with Schedule 1 hereto; provided that the foregoing limitation shall not apply to the liabilities that arise from the gross negligence or willful misconduct of Seller. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, OR ANY OF THEIR AFFILIATES, HAVE ANY LIABILITY HEREUNDER TO THE OTHER PARTY OR ITS AFFILIATES IN RESPECT OF ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSSES, OR EXPENSES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF SERVICES HEREUNDER.

ARTICLE VI RELATIONSHIP OF PARTIES

This Agreement is not intended to and shall not be construed as creating a joint venture, partnership, agency or other association within the meaning of the common law or under the laws of the state in which any Party is incorporated, organized, or conducting business. Except for the obligations arising from the authorized activities of Seller as described herein, no Party shall be responsible for the obligations or actions of any other Party, each Party being severally responsible only for its obligations and actions arising hereunder. It is the intent of the Parties that with respect to performing the Services, the Seller and its Affiliates are independent contractors, and shall provide the Services in accordance with the reasonable instructions provided by authorized representatives of Buyer, subject to the provisions of this Agreement.

ARTICLE VII FORCE MAJEURE

7.1 Force Majeure Event. No Party shall be liable to any other Party for its failure or delay in performing its obligations hereunder (other than its obligation to pay money) due to any contingency beyond such Party's reasonable control (a "force majeure event") including acts of God, fires, floods, wars, acts of war, sabotage, terrorism, accidents, labor disputes (whether or not such disputes are within the power of the Party to settle), shortages, governmental laws, ordinances, rules or regulations.

7.2 Notice of Force Majeure Event. Each Party affected by a force majeure event will give notice to the other Party as promptly as practicable of the nature and probable duration of the force majeure event as well as of the anticipated termination of such force majeure event. The Party affected by force majeure will use commercially reasonable efforts to remove the force majeure event and, in the case of Seller, to resume the performance of the Services as soon as reasonably practicable after such removal.

ARTICLE VIII CONFIDENTIALITY

This Agreement is subject to the terms and conditions of Section 12.17 of the Option Agreement, which incorporates the assignment and confidentiality provisions as set forth in that certain Power Purchase Agreement between the Parties (the "PPA").

ARTICLE IX MISCELLANEOUS

9.1 Operational Coordination. On the Effective Date, each Party shall designate a representative for purposes of operational coordination under this Agreement by providing notice to the other Party. Either Party may change its designee for purposes of this Section 9.1 by providing notice thereof to the other Party at any time during the Term.

9.2 Expenses. Except as otherwise expressly provided in this Agreement, each Party will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement, including all fees and expenses of agents, representatives, counsel, and accountants. Both Parties agree that, in any action to enforce the terms of this Agreement, each Party shall be responsible for its own attorney fees and costs. Each of the Parties was represented by its respective legal counsel during the negotiation and execution of this Agreement.

9.3 Ambiguity. The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted in accordance with Exhibit 1.1 to the Option Agreement and according to the application of the rules on interpretation of contracts.

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

9.5 Notices. All notices, requests, demands, consents, waivers, approvals, and other communications which are required or may be given under this Agreement shall be in writing (regardless of whether the applicable provision expressly requires a writing) and shall be deemed to have been duly given when given in the manner set forth in Section 14.2 of the PPA.

9.6 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. Except to the extent this Agreement provides an exclusive remedy for a breach, nothing contained herein shall preclude either Party from seeking and obtaining any available remedies hereunder, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief, or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise as a court of competent jurisdiction may deem just and proper to enforce this Agreement or to prevent any violation hereof. The rights granted herein are cumulative.

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

9.8 Dispute.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 9.8) (a "Dispute"), either Party (the "Notifying Party") may deliver to the other Party (the "Recipient Party") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "Dispute Notice"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

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

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 9.8(a) and (b) by the expiration of the thirty (30) day period set forth in Section 9.8(a), then either Party may pursue any legal remedy available to it in accordance with the provisions of Section 9.9 of this Agreement.

(d) In addition to the Dispute Resolution process set forth in this Section, the Parties shall comply with California law governing claims against public entities and presentment of such claims.

9.9 Governing Law; Venue. 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 and the City of Los Angeles, without regard to conflict of law principles. All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

9.10 No Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

9.11 Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

9.12 Entire Agreement; Amendments. This Agreement (including Schedule 1 hereto), the Option Agreement, and the PPA contain the entire understanding concerning the subject matter herein and supersede and replace any prior negotiations, discussions or agreements 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 or the other documents of even date herewith between the Parties that induced the other Party to sign this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party.

9.13 Headings. The headings of Articles and Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect in any way the meaning or interpretation of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above by their duly authorized representatives.

SELLER

RE BARREN RIDGE 1 LLC

By: _____
Name: _____
Title: _____

BUYER

THE CITY OF LOS ANGELES, ACTING BY
AND THROUGH THE DEPARTMENT OF
WATER AND POWER

By: _____
Name: _____
Title: _____

SCHEDULE 1
to Transition Services Agreement
between
RE Barren Ridge 1 LLC
and
the City of Los Angeles acting by and through
the Department of Water and Power

SERVICES

A. Seller's Services.

Following the Closing Date, during the Initial Term and, if applicable, each Extension Term, Seller shall perform (or shall cause its Affiliates to perform) the following Services:

1. Access, Information and Training. Seller shall provide Buyer and Buyer's representatives, agents, employees and personnel ("Buyer's Personnel") with access, information and training as may be reasonably required so that the transfer of the duties and responsibilities of Seller cause as little disruption as possible to the Facility.
2. System Monitoring. Seller shall conduct system monitoring or assist Buyer's Personnel with conducting system monitoring, including, as applicable, continued upkeep and operation of any operations center that monitors project metrics or hosts SCADA activities, retrieval and storage of performance data and remote or on-Premises monitoring and support.
3. Preventative and Scheduled Maintenance. Seller shall perform (or cause to be performed) or assist Buyer's Personnel with performing maintenance of the Facility Assets, which may include, but are not limited to, the following duties:
 - Regular inspection, repair and functional testing of Facility components, including, as necessary, of photovoltaic modules, mounting systems, combiner boxes and fuse boxes, inverter shelters, power conversion station performers, switchgear and other components.
 - Regular inspection, repair and functional testing of inverters in compliance with, and to ensure continued coverage under, any applicable warranties.
 - Regular inspection and repair, adjustment or cleaning, in accordance with manufacturers' recommendations, of filters, cable connections, warning labels, paint and exterior, operators and handles, weather stripping, relays, transistors and other items.
 - Visual inspection of the Facility and the Premises and correction of undesirable conditions, including fencing, shading, vegetation, animal damage, erosion, corrosion and discolored panels.
 - Inspection and correction of loose electrical connections and ground connections.

- Training regarding Seller's or Seller's Affiliate's Quality Assurance Program (as defined in the Power Purchase Agreement between the Parties), and provision of and training regarding Seller's operation and maintenance plan and related records.
 - Maintain records of service history and information and training regarding such maintenance.
 - Maintenance and testing of sensors and meters.
4. Emergency Response. Seller shall provide or assist Buyer's Personnel with providing responses to emergency events that reduce or halt power production and with performing unscheduled repairs. Seller shall provide, and provide training regarding, any documents, plans or protocols Seller has developed in relation to such events.
 5. Warranty Management. Seller shall verify and enforce or assist Buyer's Personnel with verifying and enforcing all warranties applicable to the Facility Assets.
 6. Spare Parts Inventory Management. Seller shall maintain or assist Buyer's Personnel with maintaining spare parts inventories for the Facility and documentation related to the usage and location of spare parts. Seller shall assist Buyer's Personnel in determining appropriate quantities of inventory and with the procurement of goods and materials that Buyer will need for continued operating and maintenance of the Facility.
 7. Performance Reporting. Seller shall continue to generate or assist Buyer's Personnel with generating appropriate reports from Facility data.
 8. Compliance with Requirements. Seller shall comply with, assist Buyer's Personnel in complying with, and provide information and training regarding compliance with all applicable permits (including Transferred Permits), Operative Documents, Assumed Contracts, warranties, and other requirements applicable to the Facility Assets.
 9. Data Transfer. Seller shall transfer the historical project maintenance data in a digital format, which format shall be consistent with prudent industry standards and to be mutually agreed by the Parties by the Closing Date.

B. Excluded Services.

[Seller and Buyer shall mutually agree on any Excluded Services on or before the Closing Date.]

C. Fees for Services.

[Seller and Buyer shall mutually agree on fees for Services on or before the Closing Date.]

SCHEDULE 3.3
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

[All Consents of Seller which are necessary or incidental to the Facility
shall be specified and briefly described in this Schedule]

SCHEDULE 3.3(a)
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

[All known defaults to Real Property Contracts or Real Property Interests not providing legal, valid, and enforceable rights in favor of Seller shall be specified and briefly described in this Schedule]

SCHEDULE 3.3(b)
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

[All appropriation, condemnation, or other like proceedings, or any material violation shall be specified and briefly described in this Schedule]

SCHEDULE 3.3(c)
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

[All mining, mineral, or water rights severed from any of the Real Property Interests shall be specified and briefly described in this Schedule]

SCHEDULE 3.3(d)
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

[All written notices that any agreements with any Governmental Authority or private utility affect the Real Property Interests shall be specified and briefly described in this Schedule]

SCHEDULE 3.4
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
SELLER'S CONSENTS

[All consents that need to be obtained shall be specified and briefly described in this Schedule]

SCHEDULE 3.5
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
CERTAIN EXCLUDED ASSETS

[Any assets that Seller specifically intends to exclude
shall be specified and briefly described in this Schedule]

SCHEDULE 3.6
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

LIENS

[All Liens that are to be set forth in accordance with Section 3.6 shall be specified and fully described in this Schedule.]

SCHEDULE 3.7
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
ENVIRONMENTAL MATTERS

[All environmental matters referred to in Section 3.7
shall be specified and briefly described in this Schedule]

SCHEDULE 3.8
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

LIABILITIES

[All liabilities referred to in Section 3.8
shall be specified and briefly described in this Schedule]

SCHEDULE 3.9
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

TAX MATTERS

[All tax matters referred to in Section 3.9
shall be specified and briefly described in this Schedule]

SCHEDULE 3.10
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

COMPLIANCE WITH LAWS

[All non-compliance with laws referred to in Section 3.10
shall be specified and briefly described in this Schedule]

SCHEDULE 3.11
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
LITIGATION

[All litigation proceedings referred to in Section 3.11
shall be specified and briefly described in this Schedule]

SCHEDULE 3.12
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

CONTRACTS

[All Contract matters referred to in the Agreement
shall be specified and briefly described in this Schedule]

SCHEDULE 3.13
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
INTELLECTUAL PROPERTY

[All Intellectual Property Asset matters referred to in Section 3.13 with respect to the Facility shall be specified and briefly described in this Schedule]

SCHEDULE 3.15
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
NON-ENVIRONMENTAL PERMITS

[All Permits, other than those included in Section 3.7(b), which are necessary or incidental to the Facility shall be specified and briefly described in this Schedule]

SCHEDULE 3.18
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
EMPLOYEE MATTERS

[All Employee matters referred to in Section 3.18
shall be specified and briefly described in this Schedule]

SCHEDULE 3.19
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
SHARED FACILITIES

[All Shared Facilities matters referred to in Section 3.19
shall be specified and briefly described in this Schedule]

SCHEDULE 3.20
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

UNTRUE STATEMENTS; OMISSIONS

[Any untrue statement of a material fact or omission of a material fact in the Agreement, the Operative Documents, or any certificate or other agreement delivered by Seller shall be stated in this Schedule]

SCHEDULE 4.3
to
OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE 1 LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

BUYER'S CONSENTS

[All Consents of Buyer which are necessary or incidental to the Closing
shall be specified and briefly described in this Schedule]

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APPENDIX L
 TO POWER PURCHASE AGREEMENT,
 DATED AS OF _____, 2014
 BETWEEN
 THE CITY OF LOS ANGELES ACTING BY AND THROUGH
 THE DEPARTMENT OF WATER AND POWER
 AND
 RE BARREN RIDGE 1 LLC

TELEMETRY PARAMETERS FOR SOLAR FACILITY

Telemetry Parameters	Measurement Uncertainty	Units
Back Panel Temperature	+/- 1	°C
Global Horizontal Irradiance	+/- 25	W/m ²
Plane of Array Irradiance	+/- 25	W/m ²
Wind Speed	+/- 1	m/s
Peak Wind Speed (Within 1. minute)	+/- 1	m/s
Wind Direction	+/- 5	Degrees
Ambient Air Temperature	+/- 1	°C
Relative Humidity	+/- 5	Percent
Precipitation (Rain Rate)	+/- 0.2	mm/hr
Precipitation (Running 30 day total)	N/A	mm
Barometric Pressure	+/- 1	hPa

APPENDIX M
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC
FACILITY OPERATIONAL CHARACTERISTICS

- Minimum Operating Capacity: 12MW
- Advance notification required for Optional Curtailment Period order: Not less than five (5) minutes
- Ramp rate: No more than 6MW/minute increase or decrease
- Minimum Down Time: 30 minutes
- Any other requirements:
 - Minimum time between Optional Curtailment Periods: Ten (10) minutes
 - Increments of Contract Capacity that can be curtailed: One (1) MW
 - Advance notification required for Ramp-Up: Five (5) minutes in addition to the advance notification required for Optional Curtailment Period as set forth above

For purposes of this Appendix M, the following terms have the following meanings:

“Minimum Operating Capacity” means the minimum set point, in MWs, to which the Facility may be curtailed during an Optional Curtailment Period (provided sufficient solar insolation).

“Minimum Down Time” means the minimum amount of time, in minutes, between adjustments to the set points specified by Buyer during an Optional Curtailment Period.

APPENDIX N
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC

FORM OF LEASE

[See attached]

LAND LEASE

THIS LAND LEASE (this "Agreement") is entered into as of [_____], 2014 ("Effective Date") by and between RE BARREN RIDGE LANDCO LLC, a Delaware limited liability company ("Owner"), and RE BARREN RIDGE 1 LLC, a Delaware limited liability company ("Lessee"). Owner and Lessee are sometimes herein together referred to as the "Parties" and individually as a "Party". For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner and Lessee hereby agree as follows:

1. Definitions. The following terms shall have the following meanings when capitalized in this Agreement:

1.1. "Addresses"

"Owner's Address"

RE BARREN RIDGE LANDCO LLC
c/o Recurrent Energy LandCo LLC
300 California Street, 7th Floor
San Francisco, California 94104
Attention: Judith Hall – Office of the General Counsel
Telephone: (415) 675-1500
Facsimile: (415) 675-1501

with a copy to:

RE BARREN RIDGE LANDCO LLC
c/o Recurrent Energy LandCo LLC
300 California Street, 7th Floor
San Francisco, California 94104
Attention: Seth Israel, Vice President, Site Acquisition
and Permitting
Telephone: (415) 675-1500
Facsimile: (415) 675-1501

"Lessee's Address"

RE BARREN RIDGE 1 LLC
c/o Recurrent Energy Development Holdings, LLC
300 California Street, 7th Floor
San Francisco, California 94104
Attention: Judith Hall – Office of the General Counsel
Telephone: (415) 675-1500
Facsimile: (415) 675-1501

with a copy to:

RE BARREN RIDGE 1 LLC
c/o Recurrent Energy Development Holdings, LLC
300 California Street, 7th Floor
San Francisco, California 94104
Attention: Seth Israel, Vice President, Site Acquisition

and Permitting
Telephone: (415) 675-1500
Facsimile: (415) 675-1501

- 1.2. "Commercial Operation" The condition existing when the applicable Solar Power Facilities are mechanically complete and operating in accordance with their manufacturing specifications and net electricity is regularly generated, delivered and sold (excluding start-up and testing of the Solar Power Facilities) by the Solar Power Facilities to purchasers of generated electricity as agreed to by Lessee and such purchaser.
- 1.3. "Commencement of Construction" The date on which Lessee's installation and construction of the applicable Solar Power Facilities have been approved by all applicable governmental authorities, and Lessee shall have commenced the installation and construction of the applicable Solar Power Facilities (including, without limitation, commencement of any required foundations).
- 1.4. "Commercial Operation Date" The date on which Commercial Operation of the Solar Power Facilities is achieved as evidenced by a confirmatory letter or similar notice from the purchasers of generated electricity to Lessee.
- 1.5. "Construction Period" The period commencing on the Effective Date and ending the day immediately preceding the Commercial Operation Date.
- 1.6. "Decommissioning Period" See Section 11.8.
- 1.7. "Extended Period" See Section 4.2.
- 1.8. "Initial Period" The period commencing on the Commercial Operation Date and expiring on the date that is twenty (20) years following the Commercial Operation Date.
- 1.9. "LADWP" The City of Los Angeles acting by and through the Department of Water and Power, a municipal corporation of the State of California.
- 1.10. "Operations" See Section 2.2.
- 1.11. "Permitting Authority" Kern County, California.
- 1.12. "Property" That certain real property located in Kern County (the "County"), State of California, consisting of approximately [588] acres, described in Exhibit A to this

Agreement and incorporated herein by this reference, commonly known as Assessor's Parcel Number [561-150-10].

1.13. "Rent"

During the Construction Period and the Initial Period, annual rental equal to Three Hundred Thousand Dollars and No/100 (\$300,000.00).

During the Extended Periods, if any, a commencing annual rental equal to Four Hundred Forty-Five Thousand Dollars and No/100 (\$445,000.00), which shall be increased thereafter as follows: on each succeeding January 1 following the commencement of the First Extended Period (each, an "Adjustment Date"), the amount of annual rent shall be equal to the amount of annual rent in effect on the date immediately preceding the Adjustment Date as increased by two and one-half percent (2.5%).

During the Term, the annual rental shall be divided by four (4) and paid quarterly to Owner. See Sections 5.1 and 5.2.

1.14. "Solar Power Facilities"

See Section 2.1(b).

1.15. "State"

California

1.16. "Term"

See Section 4.1.

2. Grant of Lease.

2.1. Owner hereby leases to Lessee, and Lessee hereby leases from Owner the Property, and Owner further grants and conveys to Lessee the exclusive occupancy of the Property for the Term, together with the following rights.

(a) Lessee shall have the exclusive right to evaluate, develop and use solar energy resources found on, about, over and around the Property (such energy resources collectively referred to as the "Renewable Energy Resources"), together with the exclusive right to the free and unobstructed insolation and flow of the Renewable Energy Resources on, about, over and across the Property.

(b) Lessee shall have the exclusive right to use the Property for: (a) using, converting, maintaining, and capturing the Renewable Energy Resources on, above, over, through and across the Property ("Renewable Energy"); (b) developing the Renewable Energy; (c) collecting, distributing, transmitting, and selling the energy output from the Renewable Energy; and (d) engaging in any other uses reasonably related to the development of the Renewable Energy, including, without limitation, the development, erection, installation, construction, improvement, reconstruction, enlargement, removal, relocation, replacement and repowering, and the use, maintenance, repair and operation, of the following: (i) a weather station and solar radiation and solar energy monitoring

devices and other weather measurement devices, monitoring and recording equipment and facilities with respect to the Renewable Energy Resources, including, without limitation, the establishment at Lessee's sole discretion of a land-based or satellite-based high speed Internet connection and/or a meter for the load at the Property (collectively, "Monitoring Equipment"); (ii) solar energy collection cells, photovoltaic panels, concentrating solar technology equipment, mirrors, lenses and other facilities related to the harnessing of sunlight for photovoltaic or solar thermal electric generation, together with mounting substrates or supports and their associated structure and foundations; (iii) underground and/or overhead distribution, collection and transmission lines; underground and/or overhead control, communications and radio relay systems and telecommunications equipment; energy storage facilities; interconnection and/or switching facilities, circuit breakers, transformers; utility lines and installations, cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors, and any related or associated improvements, fixtures, facilities, appliances, machinery and equipment ("Transmission Facilities"); and (iv) any other improvements, fixtures, facilities, appliances, machinery and equipment, whether temporary or permanent, that are related to or associated with any of the foregoing items (clauses (i) – (iv), collectively referred to as the "Solar Power Facilities"); (v) filming and recording (including a webcam showing site activities on the Internet) any aspect of the Property, the Solar Power Facilities and/or Lessee's Operations for measuring the energy output, publicity, marketing, security, research or educational purposes associated with development of Renewable Energy Resources or Lessee's Operations, and (vi) implementing, operating and maintaining security appropriate to the facility, which may include (but shall not be limited to): video monitoring, night-vision monitoring, motion detection, and on-site security personnel. Notwithstanding anything to the contrary herein, Lessee shall be entitled to determine the size, type, manufacturer and exact location of the Solar Power Facilities to be located upon the Property in its sole discretion.

(c) Lessee shall have the non-exclusive right to remove, trim, prune, top or otherwise control the growth of any tree, shrub, plant or other vegetation; dismantle, demolish, and remove any improvement, structure, impediment, wall, fence or other object, on the Property, including, without limitation, anything that could obstruct, interfere with or impair the Solar Power Facilities or the intended uses of the Property by Lessee under this Agreement; and excavating, grading, leveling and otherwise modifying the land, all in Lessee's sole discretion as Lessee may deem desirable or necessary in connection with Lessee's intended uses of the Property under this Agreement.

(d) Water Rights. Lessee shall be responsible at its sole cost and expense to obtain any water necessary for the construction, operation and maintenance of the Solar Power Facilities from offsite sources and shall comply with all applicable Laws (as hereinafter defined) in connection therewith. Lessee acknowledges that there is no onsite water resource available on the Property for its use.

(e) Entry by Owner. Owner shall have the right upon prior notice to Lessee (which may be by e-mail or telephone) to enter the Property and to inspect it to determine if Lessee is in compliance with its obligations under this Agreement. Lessee shall have the right, but not the obligation, to have a representative accompany Owner during any such entry. The foregoing notwithstanding, no prior notice shall be required in the event of an emergency, as reasonably determined by Owner; provided however, Owner shall provide prompt notice after such entry, which shall include an explanation of the emergency and the results of the inspection.

2.2. All of the uses and purposes permitted Lessee under this Agreement, including, without limitation, use of the Property, are referred to herein collectively as "Operations." Lessee shall be

required to obtain the prior written consent of Owner, which may be withheld in its sole and absolute discretion, to use the Property for any uses other than its Operations as described herein.

3. **Easements.**

3.1. Easements for Lessee's Benefit. INCLUDE ANY SPECIFIC EASEMENTS]

3.2. Easements for Public Utilities. Upon Lessee's request, Owner agrees that it shall grant easements across the Property for the benefit of the local public electric utility for purposes of ingress and egress, constructing a substation, overhead and underground utility lines, communication lines and other related facilities for interconnection purposes to the substation or other point of interconnection in connection with the Solar Power Facilities, and for operation, maintenance and repair thereof, in locations and using a form reasonably agreed to by Owner for a term that extends through the expiration of the Decommissioning Period, or as otherwise required by the local public electric utility. Owner shall not be entitled to any additional compensation for any such granted easements.]

4. **Term.**

4.1. Initial Period. The term ("Term") of this Agreement shall commence on the Effective Date and shall continue through the Construction Period and shall automatically continue through the Initial Period, which Term may be extended as provided below. Lessee shall obtain a confirmatory letter or similar notice from the purchasers of generated electricity to Lessee confirming the Commercial Operation Date (the "COD Notice") and shall deliver a copy of the COD Notice to Owner on the later of: (i) the date that is thirty (30) days after the Commercial Operation Date or (ii) five (5) days after its receipt of the COD Notice. The Parties agree to execute and record a supplemental memorandum of this Agreement setting forth the expiration date of the Term within ninety (90) days after the later of the Commercial Operation Date or receipt of the COD Notice.

4.2. Extensions. Lessee shall have the right to extend the Term for up to three (3) additional periods for the following terms: (a) a period of five (5) years (the "First Extended Period"); (b) a period of five (5) years (the "Second Extended Period"); and (c) a period equal to (4) years and eleven (11) months, less the Construction Period (the "Third Extended Period") (each an "Extended Period"), all subject to the following restrictions. Any such extension shall only be effective if the following conditions (the "Extension Conditions") are met both at the time Lessee exercises such extension and at the time such Extension Period commences: (i) there shall be no Event of Default by Lessee (and no breach of this Agreement by Lessee which by the giving of notice and the lapse of any cure period without cure would become an Event of Default), and (ii) Lessee meets the Underwriting Requirement (as hereinafter defined). The Underwriting Requirement shall mean any one of the following: (1) Lessee holds a current long-term senior unsecured debt rating of at least BBB+ by S&P or Baa1 by Moody's (or, if a major U.S. utility, of at least BBB- by S&P or Baa3 by Moody's) (an "Approved Rating"); (2) Lessee has provided to Owner either a guarantee of Lessee's obligations under this Agreement and of its obligations with respect to the Solar Power Facilities (including its obligations set forth in Section 11.8) (collectively, "Lessee's Project Obligations") by a party that holds an Approved Rating or some other comparable security, all in a form and in an amount reasonably acceptable to Owner; or (3) Lessee has provided to Owner reasonably satisfactory evidence of a contracted revenue stream benefitting Lessee that is reasonably acceptable to Owner that demonstrates its ability to meet Lessee's Project Obligations. Lessee must notify Owner in writing at least ninety (90) days prior to the expiration of the Initial Period or the then-current Extended Period if Lessee elects to extend into an Extended Period.

Owner agrees to notify Lessee in writing of its approval or disapproval of the items set forth in (ii) above within thirty (30) days after receiving all such information and receiving a written request from Lessee requesting such a written response. Lessee may exercise more than one Extended Period at one time (for example, Lessee may elect prior to the expiration of the Initial Period, to extend the Term for the First Extended Period and the Second Extended Period or for all three (3) of the Extended Periods), which extensions shall be subject to the Extension Conditions as set forth above. The Parties agree to execute and record a supplemental memorandum of this Agreement within ninety (90) days after the exercise of an extension of the Term by an Extended Period setting forth the new expiration date of the Term. If Lessee fails to exercise any of the Extended Periods as and when required hereunder, or if Lessee fails to meet the Extension Conditions at the times specified above, Lessee shall have no further right to exercise such Extended Period or any subsequent Extended Period under this Agreement. During any Extended Period, Lessee shall continue to pay Rent as set forth in Sections 1.12, 5.1 and 5.2.

4.3. Total Term. The Parties' express intent is to not trigger any property tax reassessment or deemed change of ownership of the Property. Accordingly, in no event shall the Term exceed thirty-four (34) years and eleven (11) months, and in the event the overall Term would exceed or be construed to exceed such maximum, the Third Extended Period (as hereinafter defined) shall automatically be deemed reduced and adjusted to a period such that the total Term does not exceed thirty-four (34) years and eleven (11) months (or the maximum number of years and months to avoid a property tax reassessment or deemed change of ownership of the Property, if less).

5. Payments to Owner.

5.1. Rent. Beginning on the Effective Date and continuing throughout the Term, Lessee shall timely pay, without notice, demand or offset, the Rent as provided in Section 1.13 to Owner, in quarterly portions in advance.

5.2. Time When Rent is Paid. Such Rent shall be payable in quarterly installments, in advance. Such quarterly installments of the Rent shall be due and payable to Owner by Lessee on or before the date that is five (5) days after the beginning of the applicable Calendar Quarter, and the first installment of the Rent shall be due and payable to Owner by Lessee on or before the date that is five (5) days after the Effective Date of this Agreement, such amount shall be prorated from the Effective Date through the end of the applicable Calendar Quarter. For the purposes of this Agreement, a "Calendar Quarter" shall mean January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31. The amount of rent for any partial acre and any partial period shall be prorated (using a ninety (90) day calendar quarter for any partial quarter). If any installment of rent owing to Owner under this Agreement is not received by Owner by the tenth (10th) day after such rent is due, Lessee shall pay a late charge equal to two percent (2%) of such rent due; provided, however, that the payment of such charge shall be excused one time in each successive twelve (12) month period during the Term of this Agreement if the installment at issue is paid by the thirtieth (30th) day after such rent is due. All rent shall be paid to Owner at the address set forth in Section 1.1 above or at such other place as Owner has notified Lessee in writing.

5.3. Security Deposit. Upon the due date for the first payment of quarterly Rent, Lessee shall deposit with Owner the additional sum of Seventy Five Thousand Dollars and No/100 (\$75,000.00) which shall be the "Security Deposit" and which shall be held by Owner as security for the faithful performance by Lessee of its obligations under this Agreement. If an "Event of Default" (as defined below) by Lessee shall have occurred and be continuing with respect to any of the provisions of this

Agreement, including those relating to the payment of rent, then Owner may (but is not obligated to and without limiting or waiving any other rights or remedies Owner may have) use, apply or retain all or any part of the Security Deposit for the payment of any rent or any other sum in default, or for the payment of any other amount Owner may spend or become obligated to spend by reason of Lessee's default and/or to compensate Owner for any loss of damage that Owner may suffer by reason of Lessee's default. If any portion of the Security Deposit is so used or applied, Lessee shall, within ten (10) days following demand, deposit such cash with Owner as necessary to restore the Security Deposit to the original amount. Lessee hereby waives the provisions of California Civil Code Section 1950.7 or any future law regarding the holding and uses of a Security Deposit and agrees the provisions of this Agreement shall apply in lieu thereof. Owner shall have no obligation to pay Lessee any interest on the Security Deposit. Within thirty (30) days following the expiration or earlier termination of this Agreement and Lessee's surrender of the Property in the condition required by this Agreement (including, without limitation, as required pursuant to Section 11.8 below) and full performance of all other obligations of Lessee under this Agreement, Owner shall return the Security Deposit to Lessee, less only those amounts which Owner is entitled to deduct therefrom as provide for herein.

6. Lessee's Covenants. Lessee covenants to Owner as follows:

6.1. Compliance with Law. Lessee shall comply with all valid federal, state or local laws, ordinances, rules, regulations and statutes of any governmental agency and any covenants, conditions or restrictions related to the Property included in any recorded agreement encumbering the Property (including, without limitation, those matters of record identified in the Preliminary Title Report described in Section 6.3 below, and any documents recorded pursuant to Section 3 above) (each, a "Law"), including Laws relating to the presence, release or threat of release of any material defined or regulated as a pollutant, contaminant, solid waste, or hazardous or toxic substance, material or waste under any Law (a "Hazardous Substance"), applicable to Lessee's Operations on the Property, subject to Lessee's right to contest the same, as provided in Section 6.5 below. Except for any Hazardous Substance contained in products used by Lessee in de minimis quantities for ordinary cleaning, maintenance, repair and improvements, and operating purposes in compliance with Law, and those normally contained in the make-up of the Solar Power Facilities as of the date of this Agreement, Lessee shall not permit or cause any party to bring any Hazardous Substance upon the Property, and Lessee shall not transport, store, use, generate, manufacture or release any Hazardous Substance in or about the Property without Owner's prior written consent (collectively, "Lessee's Hazardous Substances").

6.2. Payment of Taxes. Lessee shall be responsible for and timely pay before delinquency any real or personal property taxes, assessments, liens, levies, charges or fees levied against (a) the Solar Power Facilities (or any portion thereof), (b) improvements made to the Property by Lessee in connection with the installation and operation of the Solar Power Facilities, and (c) the Property to the extent that any increase in real property taxes are attributable to Lessee's Operations (collectively, "Lessee's Taxes"). Owner shall be responsible for, and shall pay when due, any property taxes levied or assessed by any governmental authority upon the Property or against Owner's ownership of the Property and any other monetary obligations associated with the Property (excluding Lessee's Taxes or any other obligations relating, directly or indirectly, to Lessee's Operations or the Solar Power Facilities); subject to Owner's right to contest the same in a manner that does not jeopardize Lessee's rights hereunder. If Lessee is not separately billed for Lessee's Taxes, Owner shall promptly deliver a copy of the tax statement received by Owner and Lessee shall pay any Lessee's Taxes prior to delinquency.

6.3. Condition of Title. Lessee has obtained a leasehold owner's policy of title insurance issued by First American Title Insurance Company, dated as of the Effective Date, and a copy of all underlying documents referenced therein. Lessee represents that it has reviewed these materials and is familiar with their contents. Other than as shown in the leasehold owner's policy and other than as permitted in Section 3 above and Section 8 below, Owner shall not further encumber the Property or Owner's fee interest therein with any liens, encumbrances or other exceptions to title that would interfere with Lessee's use of the Property, or result in damage to the Solar Power Facilities.

6.4. Compliance with Permits. Lessee, at its sole cost and expense, shall be responsible for obtaining, satisfying and complying with all of the terms, conditions, covenants and restrictions of all permits and related agreements and documents issued in connection with Property and/or in connection with Lessee's Operations, including, without limitation, those included in (1) the conditions of approval included in the Kern County Conditional Use Permit Number [_____] as approved by Planning Commission Resolution No. [_____] and adopted on [_____, 20__], as may be amended (the "CUP") (which includes, among other conditions, an obligation to implement and satisfy the mitigation monitoring and reporting plan attached thereto), and (2) any permits issued by any state or federal agencies.

6.5. Liens. Lessee shall keep Owner's interest in the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies and equipment furnished in connection with Lessee's Operations on the Property, subject to Lessee's right to contest such liens and claims, as provided below. Owner shall have the right to post notices of non-responsibility on the Property related to the labor and services performed on and materials, supplies and equipment furnished in connection with the Lessee's Operations on the Property, and Lessee shall provide to Owner at least thirty (30) days' prior written notice of the commencement of any construction on the Property, or any portion thereof, in order to enable Owner to timely post such notices of non-responsibility. Lessee shall have the right to contest the legal validity or application of any such Law (pursuant to Section 6.1 above), the legal validity or amount of any such tax (for which it is responsible pursuant to Sections 6.2 and 6.3 above), and/or the legal validity or amount of any such liens and claims for which it is responsible under this Agreement, as applicable, and may institute such proceedings as it considers necessary, provided that Lessee shall provide Owner with written notice of Lessee's intention to contest any lien within twenty (20) business days after the recording of any lien or at least ten (10) business days prior to the delinquency of such tax, assessment, charge or other item, as the case may be, such contest shall be prosecuted to a final conclusion as speedily as reasonably possible, and Lessee shall bear all expenses in pursuing such contest or proceeding. Notwithstanding the foregoing, Lessee shall, within fifteen (15) business days following receipt of Owner's written demand therefor, pay, bond over or otherwise cause the release of any mechanic's lien, materialmen's lien or other lien filed against the Property; provided that the foregoing shall not apply to any lien in favor of Mortgagee as defined in Section 8. If such liens are filed and not released within such fifteen (15) business day period, Owner may, without waiving its rights and remedies based on that breach by Lessee and without releasing Lessee from any of its obligations, cause such liens to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such liens. Lessee shall pay to Owner at once, within thirty (30) days after notice to Lessee, any sum paid by Owner to remove such liens, together with interest at ten percent (10%) per annum from the date of such payment by Owner until paid by Lessee. In addition, if contesting a tax for which it is responsible under Sections 6.2 and 6.3, Lessee shall pay the full amount of such tax prior to delinquency to avoid any and all penalties that could be levied against Owner, liens against any portion of the Property, or any other adverse actions that could be taken against Owner or the Property for failure to pay such tax.

6.6. Liability Insurance. Lessee agrees to maintain commercial general liability insurance covering its Operations on the Property and to name Owner as an additional insured. Such coverage shall have a minimum coverage amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, except that such amount may be provided as part of a blanket policy covering other properties. Lessee shall also maintain worker's compensation in accordance with federal and statutory requirements. In addition, if applicable, Lessee shall obtain and maintain automobile liability insurance and such other liability coverage and in such amounts as may be reasonably required by Owner from time to time. Lessee shall increase insurance coverage limits at least every five (5) years as required to reasonably reflect commercially reasonable increases in insurance coverages for similar uses on similar properties in the State, as reasonably determined by Owner and Lessee after consultation with their respective insurance consultants. If this Agreement is assigned to LADWP, Lessee may provide the insurance coverage required under this Section 6.6 by a program of "self-insurance", provided that (i) the self-insurance program, in the reasonable judgment of Owner, provides adequate, enforceable, sufficiently funded and long-term coverage for the risks to be insured against, (ii) Lessee's net worth and financial standing is sufficient, in the reasonable judgment of Owner, to support the self-insurance program, and (iii) such program of self-insurance shall otherwise provide Owner with the same rights and privileges to which Owner is otherwise entitled under the terms of this Section 6.6 when there is a third-party insurer. Lessee shall provide to Owner all documents (including without limitation such financial statements of Lessee as may be requested by Owner from time to time) that are necessary to permit a complete review and analysis of the self-insurance program. This right to self-insure is personal to LADWP, only applies if this Agreement is assigned to LADWP, and shall not inure to the benefit of any other lessee under this Agreement, or to any successor, assign or subtenant of LADWP.

6.7. Property Insurance. During the Term, Lessee shall maintain all risk property insurance, in an amount not less than ninety percent (90%) of replacement cost covering all Solar Power Facilities, which may be included within a blanket policy covering other properties. Such property insurance shall include a replacement cost endorsement, providing protection against any peril included within the classification fire and extended coverage, vandalism, malicious mischief, and such other additional perils as covered in a "cause of loss-special form" standard insurance policy to the extent applicable to property similar to the Solar Power Facilities.

6.8. Certificates of Insurance. All insurance required to be carried by Lessee hereunder shall be issued by responsible insurance companies which are rated by Best Insurance Reports as B:VII or better and licensed or authorized to do business in the State of California. Each general liability policy shall name Owner and mortgagees of Owner as an additional insured and be obtained on an occurrence basis. Each policy shall contain a separation of insureds condition. Lessee's insurance shall be primary and non-contributing with respect to any policies carried by Owner and that any coverage carried by Owner shall be excess insurance for Owner's interest only. A copy of each paid up policy (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Owner as soon as practicable after the Effective Date (but in all events prior to any entry onto the Property by Lessee), and thereafter, within fifteen (15) days after any demand by Owner therefor. Owner may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Lessee hereunder, if such policies are available to Lessee. No such policy shall be cancelable, materially changed or reduced in coverage except after thirty (30) days' written notice to Owner and Owner's lender (except that ten (10) days' notice shall be sufficient in the case of cancellation for non-payment of premium). Lessee shall furnish Owner with an insurance binder evidencing renewal within ten (10) days after the expiration thereof and with new

certificates of insurance for any such policy within sixty (60) days after such renewal. Lessee agrees that if Lessee does not take out and maintain such insurance, Owner may (but shall not be required to), after ten (10) days' written notice to Lessee, procure said insurance on Lessee's behalf and charge the Lessee the premiums plus any reasonable costs incurred by Owner in connection therewith, which shall be payable upon demand.

6.9. Waiver of Subrogation. To the extent of any and all property insurance maintained, or required to be maintained, by either Owner or Lessee in any way connected with the Property, Owner and Lessee hereby waive on behalf of their respective insurance carriers any right of subrogation that may exist or arise as against the other Party to this Agreement. Owner and Lessee shall either endeavor to cause the insurance companies issuing their property insurance policies with respect to the Property to waive any subrogation rights that the companies may have against Lessee and Owner, respectively, or add the other Party as an named insured under its respective property insurance policy.

6.10. Maintenance; Repair; Operations. Lessee shall, at its sole cost and expense, maintain, repair and replace the Property and the Solar Power Facilities in a clean, safe and operational condition and in compliance with all Laws. Lessee shall also maintain the Property (whether within the perimeter fence or not), including the landscaping, to prevent debris, weeds and other noxious plants, dust and trash from becoming an unreasonable nuisance on the Property. In conducting the Operations (including construction and power generation), Lessee shall use commercially reasonable efforts to minimize excessive noise or dust released from the Property. Lessee acknowledges that Owner shall have absolutely no obligation to maintain the Property or any Solar Power Facilities.

6.11. Authority. The execution and delivery of this Agreement by Lessee and the performance and observance of its terms have all been authorized by all necessary actions of Lessee. The person(s) executing this Agreement on behalf of Lessee have been duly authorized to execute and deliver this Agreement on behalf of Lessee and have the power to bind Lessee to perform the terms of this Agreement. Lessee is duly organized, validly existing, in good standing in the state of its incorporation, and has all requisite power and authority to lease the Property and conduct business in the State.

7. Condition of Property and Covenants.

7.1. Condition of Property. Except as otherwise disclosed in writing by Owner to Lessee prior to the Effective Date, Owner makes the following representations and warranties to Lessee, all of which shall be true, correct and complete as of the Effective Date (and, as of the effective date of an assignment by Lessee to LADWP pursuant to the Project Purchase Option, as such terms are defined in Section 8.2):

(a) Authority. The execution and delivery of this Agreement by Owner and the performance and observance of its terms have all been authorized by all necessary actions of Owner. The person(s) executing this Agreement on behalf of Owner have been duly authorized to execute and deliver this Agreement on behalf of Owner and have the power to bind Owner to perform the terms of this Agreement. Owner is duly organized, validly existing, in good standing in the state of its formation, and has all requisite power and authority to lease the Property and conduct business in the State. Owner is not the subject of any: (a) legal administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature that could be reasonably expected to impact the Property; or (b) bankruptcy, insolvency or probate proceedings.

(b) Quiet Enjoyment; No Interference; Exclusive Rights. Owner warrants that Lessee shall peaceably hold and enjoy the Property and any and all other rights granted by this Lease for the entire Term without hindrance, interruption, suit, trouble or interference of any kind by Owner or any other person or entity claiming (whether at law or in equity) by, through or under Owner, so long as an Event of Default by Lessee does not exist and is continuing.

(c) Title: Hazardous Substances; Third Party Rights. Owner has fee title to the Property. Owner has not stored, handled, or disposed of Hazardous Substances on the Property. To Owner's knowledge and except as disclosed in the title policy referenced in Section 6.3, there are no circumstances or commitments to third parties that may damage, impair or otherwise affect the Solar Power Facilities or its construction, installation or function in any material respect.

Lessee agrees, prior to making any claim against Owner based on any misrepresentation or inaccuracy of Owner's representations in (c) above with respect to Owner's title to the Property, Lessee shall have exhausted its remedies with respect to any title policy it holds covering its interest under this Lease.

7.2. Property "As Is". Except as expressly set forth in this Agreement, Lessee shall lease the Property and take any related easements on an "As Is" basis, and this Agreement shall be subject to all matters of public record as of the Effective Date and all items which may be shown on a survey as of the Effective Date.

7.3. Parties' Rights and Covenants.

(a) Solar Power Facilities. Owner shall not: (i) interfere with or impair the free, unobstructed and natural availability, accessibility, flow, frequency, or direction of any Renewable Energy Resources upon, over or across the Property, the operation of the Solar Power Facilities, or the lateral or subjacent support for any of the Solar Power Facilities; (ii) engage in any other activity on the Property or any property adjacent to the Property that is owned or controlled by Owner or any affiliate of Owner that might interrupt or cause a decrease in the output or efficiency of the Solar Power Facilities; or (iii) require the relocation or removal of any of the Solar Power Facilities during the Term.

(b) Hazardous Substances. Each Party (the "Responsible Party") shall comply with, and shall indemnify the Indemnified Parties (as defined below) against any obligations imposed under or violation of, any Law relating to the generation, manufacture, storage, use, release or threatened release, disposal, transportation or presence of any Hazardous Substance on or under the Property by the Responsible Party, except for a violation of applicable Law by an Indemnified Party (as defined below) resulting directly from any release of Hazardous Substances by an Indemnified Party. Indemnified Parties shall have no liability or responsibility under this Agreement, and, without limiting the generality of Section 7.3(b) hereof, the Responsible Party shall hold the Indemnified Parties harmless and defend the Indemnified Parties from, and reimburse the Indemnified Parties for, any and all loss, costs, liability, damage and expense (including, without limitation, reasonable attorneys' fees and costs), incurred in connection with or arising from, Hazardous Substances located on or within the Property resulting from the Responsible Party's acts or omissions. These indemnifications shall survive the termination of this Agreement. Each Party shall immediately notify the other Party in writing should it discover or be informed of the presence or any threatened release or presence of any Hazardous Substance on the Property. Lessee has had the following environmental studies prepared on the Property: [_____]. Lessee represents that it has reviewed and is familiar with all of the matters contained in these studies. If Lessee's use of the Property (including, without limitation,

its construction activities) triggers any obligations imposed under any Law related to Hazardous Substances, Lessee shall promptly and completely comply with such Laws at its sole cost and expense. Notwithstanding the foregoing, if this Agreement is assigned to LADWP, LADWP as Lessee shall have no obligations under this Section 7.3(b). The prior sentence shall in no way restrict any other party's liability under this section should this Agreement be assigned to any other party, either before or after any assignment to LADWP.

(c) Indemnification. Each Party shall indemnify, defend (with counsel reasonably acceptable to the other), protect and hold harmless the other and the other's members, partners, Mortgagees (as defined below), officers, employees, agents and contractors (each of the other Party and each of the parties listed shall be referred to as an "Indemnified Party" and, together collectively, shall be referred to as the "Indemnified Parties") from and against any and all loss, claims, demands, costs, injuries, damages, expenses and liabilities, including fines, penalties, court costs and fees of lawyers, accountants and other professionals and experts reasonably incurred by a Party, whether incurred through settlement or otherwise, in each case whether arising before or after the termination of this Lease ("Damages"), resulting from or arising out of (a) any of its Operations or activities on the Property; (b) any negligent act or negligent failure to act by it or any other party engaged in doing work for it; (c) its breach of this Agreement; or (e) the failure to be true of any representation or warranty made by it in this Agreement. This indemnification shall survive the termination of this Agreement. This indemnification shall not apply to Damages claimed by an Indemnified Party to the extent such Damages are caused by any negligent act or omission on the part of such Indemnified Party, or any breach of this Agreement by such Indemnified Party. Notwithstanding the foregoing, if this Agreement is assigned to LADWP, LADWP as Lessee shall have no obligations under this Section 7.3(c). The prior sentence shall in no way restrict any other party's liability under this section should this Agreement be assigned to any other party, either before or after any assignment to LADWP.

(d) Ownership of Renewable Energy and Attributes; Tax Credits and Incentives. Owner hereby acknowledges and agrees that Lessee has the exclusive right to harness the Renewable Energy Resources on, around, about or at the Property and Lessee is the exclusive owner of all Renewable Energy and related economic benefits generated by the Solar Power Facilities, including, but not limited to, any real property tax rebates or abatements, any carbon credits, any production, energy or investment tax credits, incentives, allowances and other entitlements associated with the development, construction, ownership or operation of the Solar Power Facilities, rebate payments, green tags, renewable energy credits, or tradable renewable certificates, and any other federal, state and/or local tax benefits attributable to the Solar Power Facilities, whether in effect as of the date of this Agreement or as may come into effect in the future.

(e) Title Insurance. Owner shall reasonably cooperate with the title insurance company ("Title Company"), if any, selected by Lessee to issue title insurance insuring (a) Lessee's leasehold and easement interests in the Property, and/or (b) any mortgage encumbering such leasehold and easement interests, including without limitation, executing and delivering such title affidavits and such other documents reasonably required by the Title Company.

8. Encumbrances; Mortgagee Protections; PPA Protections

8.1 Mortgagee Protections. Lessee shall have the right at any time and from time to time, in connection with obtaining financing for Lessee's Solar Power Facilities or Operations on the Property,

to mortgage, encumber or pledge (including by mortgage, deed of trust or personal property security instrument) to any Mortgagee, without the consent of Owner, all or any part of Lessee's rights and/or interests under this Agreement and/or in any Solar Power Facilities. Lessee shall also have the right at any time and from time to time, in connection with the Power Purchase Agreement entered into between Lessee and LADWP, to grant a security interest in all or any part of Lessee's rights and/or interests under this Agreement and/or in any Solar Power Facilities to LADWP. Lessee shall promptly provide written notice to Owner of any such mortgage, encumbrance or pledge. Owner shall have the right at any time and from time to time to mortgage, encumber or pledge (including by mortgage, deed of trust or personal property security instrument) to any Mortgagee, without the consent of Lessee, all or any part of Owner's rights and interests under this Agreement and in the Property. As used herein, the term "Mortgagee" means any financial institution or other person or entity that from time to time provides secured financing to a Party, collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender, and their respective representatives, successors and assigns. Each Party agrees, within ten (10) business days of receiving a written request from the other Party, to execute an agreement with a Mortgagee requiring it to send such Mortgagee written notice of any default by the other Party under this Agreement, giving such Mortgagee the right to cure such default until such Mortgagee has completed foreclosure, and preventing it from terminating this Agreement unless such default remains uncured after foreclosure has been completed and including such other reasonable terms as may be requested by the Mortgagee. In addition, Lessee agrees to subordinate this Agreement to the interest of any Mortgagee taking a security interest in Owner's interest in the Property subject to such Mortgagee's agreement not to disturb Lessee's Operations on the Property and use of the Property as long as there is no Event of Default by Lessee, and Lessee agrees to deliver to Owner an agreement setting forth such subordination in recordable form within ten (10) business days of receiving a written request from Owner therefor. Each Party hereby consents to the recordation of the interest of any such Mortgagee in the official records of the County. Upon the termination of any mortgage, deed of trust or personal property security instrument, Mortgagee shall promptly record a release or reconveyance of the Property.

8.2 PPA Protections. Owner recognizes that Lessee has entered into: (1) a power purchase agreement with LADWP for the purchase and sale of energy generated from the Solar Power Facilities (the "PPA") and (2) a purchase option agreement in which Lessee granted LADWP an option to purchase all of its assets relating to the Solar Power Facilities, including its interest under this Agreement (the "Project Purchase Option"). Notwithstanding anything to the contrary in this Agreement, Owner: (i) consents to the grant of a security interest to LADWP in all or any part of Lessee's rights and/or interests under this Agreement and/or in any Solar Power Facilities, (ii) agrees that LADWP is a third party beneficiary of the representations, warranties, and covenants of Owner under this Agreement, and that LADWP has all of the rights and benefits of Lessee under, and the ability to enforce, this Agreement, (iii) consents to Lessee's grant of the Project Purchase Option and assignment of this Agreement to LADWP following the exercise of the Project Purchase Option, (iv) agrees that LADWP shall have an additional period of thirty (30) days following the expiration of Lessee's cure period afforded pursuant to Section 9.1 to step in and cure any breach or default by Lessee under this Agreement prior to termination thereof, and (v) agrees to deliver to LADWP upon its request an estoppel certificate certifying (A) whether this Agreement has been supplemented, amended, assigned, or subleased, and if so, the substance and manner thereof, (B) the validity and force and effect of this Agreement, (C) the existence of any default thereunder, (D) the commencement and expiration dates of this Agreement, (E) the rights of LADWP under the Project Purchase Option and this Agreement, and (F) any other matters as may be reasonably requested by LADWP.

9. **Defaults.**

9.1. **Lessee Default.** Each of the following events shall constitute an event of default ("Event of Default") by Lessee and shall permit Owner to terminate this Agreement and/or pursue all other appropriate remedies available at law or equity:

(a) The failure or omission by Lessee to pay amounts required to be paid hereunder when due, and such failure or omission has continued for thirty (30) days after written notice from Owner; or

(b) The failure or omission by Lessee to observe, keep or perform any other material term, agreement or condition set forth in this Agreement, and such failure or omission has continued for thirty (30) days (or such longer period of time as may reasonably be required to cure such failure or omission, if such failure or omission cannot reasonably be cured within a thirty (30) day period) after written notice from Owner; or

(c) (i) The making by Lessee of any general assignment for the benefit of creditors, (ii) the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Lessee, the same is dismissed within sixty (60) days), (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Agreement, where possession is not restored to Lessee within ninety (90) days, or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Agreement where such seizure is not discharged within sixty (60) days; or

(d) An assignment, subletting or other transfer in violation of Section 11.3 hereof; or

(e) The repeated failure or omission by Lessee to observe, keep or perform the same material term, agreement or condition set forth in this Agreement within the applicable cure period set forth in this Section 9.1 on more than three (3) occasions in any five (5) year period.

9.2. **Owner Default.** Each of the following events shall constitute an Event of Default by Owner and shall permit Lessee to terminate this Agreement and/or pursue all other appropriate remedies available at law or equity:

(a) The failure or omission by Owner to pay amounts required to be paid hereunder when due, and such failure or omission has continued for thirty (30) days after written notice from Lessee;

(b) The failure or omission by Owner to observe, keep or perform any other material term, agreement or condition set forth in this Agreement, and such failure or omission has continued for thirty (30) days (or such longer period of time as may reasonably be required to cure such failure or omission, if such failure or omission cannot reasonably be cured within a thirty (30) day period) after written notice from Lessee;

(c) The repeated failure or omission by Owner to observe, keep or perform the same material term, agreement or condition set forth in this Agreement within the applicable cure period set forth in this Section 9.2 on more than three (3) occasions in any five (5) year period.

9.3. Right to Cure. At any time after a Party fails to perform any covenant or provision of this Agreement within the applicable cure period provided for in Sections 9.1 and 9.2, after notice to the defaulting Party, the other Party may, but is not obligated to, cure such failure at the defaulting Party's cost, in which case the curing Party shall not have the right to terminate this Agreement if it so elects to undertake such cure. If a Party at any time, by reason of such failure by the other Party, pays any sum or does any act, the reasonable, ascertainable and verifiable sum paid by such Party plus the reasonable, ascertainable and verifiable cost of performing such act shall be due by the defaulting Party to the curing Party. Such amount if due from Lessee to Owner shall be additional rent due immediately on written demand by Owner to Lessee along with evidence of the foregoing expenditures. No such payment or act shall constitute a waiver of default or of any remedy for default or render the curing Party liable for any loss or damage resulting from any such act.

10. Condemnation.

Should title to or possession of all of the Property be taken in condemnation proceedings or by inverse condemnation by a governmental agency, governmental body or private party under the exercise of the right of eminent domain, or should a partial taking render the remaining portion of the Property unsuitable for Lessee's use (as reasonably determined by Lessee), then this Agreement shall terminate upon such vesting of title or taking of possession. All payments (including severance damages) made on account of any total taking, partial taking or any threatened taking shall be deposited promptly with an independent third-party escrow company mutually agreed upon by the Parties. Owner shall be entitled to all portions of the award for any total or partial taking, except for any portion of the award that is attributable to the following, which shall be paid to Lessee: (a) any removal and relocation costs of the Solar Power Facilities; (b) any loss of or damage to any Solar Power Facilities; (c) the loss of use of the Property by Lessee; and (d) Lessee's lost profits, including, but not limited to, lost revenues and damages under Lessee's power purchase agreement. Lessee shall have the right to participate in any settlement proceedings, and Owner shall not enter into any binding settlement agreement without the prior written consent of Lessee, which consent shall not be unreasonably withheld. In the event that title to or possession of part of the Property is taken in condemnation proceedings and this Agreement remains in effect, then there shall be an equitable reduction in the Rent.

11. Miscellaneous.

11.1. Ownership of Solar Power Facilities. Owner agrees that all Solar Power Facilities installed or placed on any portion of the Property by Lessee and its Permitted Successors and Assigns, whether real, personal or mixed, shall remain the property of Lessee and shall be removable by Lessee at any time, subject to Section 11.8 below. Notwithstanding the manner in which the Solar Power Facilities may be installed on the Property, or that the Solar Power Facilities may be regarded as "fixtures" or "accessions" under applicable laws, Owner acknowledges and agrees that the Solar Power Facilities shall not become a part of the real property comprising the Property, and Owner shall have no ownership interest in the Solar Power Facilities, and Owner hereby waives and disclaims any such interest. The Solar Power Facilities may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Owner with Owner's fee or leasehold interest to the Property. Without

limiting the generality of the foregoing, Owner hereby waives any statutory or common law lien or security interest that it might otherwise have in or to the Solar Power Facilities or any part thereof; and Owner agrees that, notwithstanding the occurrence of an Event of Default under the Agreement beyond all applicable notice and cure periods (including those granted to Mortgagee), Lessee or Mortgagee (or its designee) may remove the Solar Power Facilities from the Property free and clear of any such Owner's lien or interest.

11.2. Force Majeure - Delays. Notwithstanding any other provision in this Agreement to the contrary, except for any obligation to make any payment to the Owner herein, if performance of any act required to be performed by Lessee under this Agreement is in whole or in part prevented or delayed by reason of any act of God, strike, lock-out, labor trouble, inability to secure materials, restrictive Laws, or any other cause, event or circumstance not the fault of Lessee, then Lessee, upon giving notice to Owner, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or delay.

11.3. Assignments and Subleases. Except as hereinafter provided, and as provided in Section 8, this Agreement shall not be assignable by Lessee, nor shall Lessee sublease any part of the Property or allow any other party to use the Property, without the prior written consent of Owner, which consent shall not be unreasonably withheld or delayed. In addition, each of the following events (whether occurring in a single transaction or series of transactions) shall be deemed an assignment of this Agreement and shall require Owner's prior written consent, which consent shall not be unreasonably withheld or delayed: (1) any sale, assignment, issuance, transfer or change of fifty percent (50%) or more of the equity interests (whether stock, partnership interests, membership interests or otherwise) in Lessee or in the parent of Lessee, or (2) any change in the power to direct the operations of Lessee or Lessee's parent (including, without limitation, by a change in equity ownership, by contract, or by consolidation, merger, acquisition or reorganization). Notwithstanding the foregoing, Lessee shall be expressly permitted to assign this Agreement or sublease the Property without the prior written consent of Owner (but upon ten (10) days prior written notice to Owner except as to (d) below, for which written notice shall be provided to Owner promptly after such assignment or sublease) to: (a) any party that has an Approved Rating (as defined in Section 4.2) as of the effective date of such assignment or sublease; (b) any party whose obligations under the assignment or sublease have been guaranteed to Owner by a third party that holds an Approved Rating or some other comparable security has been provided to Owner, all in a form and in an amount reasonably acceptable to Owner; (c) any party who has provided to Owner reasonably satisfactory evidence of a contracted revenue stream benefitting such assignee or sublessee that is reasonably acceptable to Owner and demonstrates its ability to meet its obligations under the assignment or sublease; (d) any Mortgagee, its successors or assigns, or any purchaser in any foreclosure sale; or (e) LADWP. The leasehold interest, easements and the other rights of Lessee hereunder shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees, and sublessees permitted hereunder (each, a "Permitted Successor and Assign" and collectively, "Permitted Successors and Assigns"). The burdens of the leasehold interest, easements and other rights contained in this Agreement shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Owner and its successors, assigns, permittees, licensees, lessees, employees, and agents. Neither an assignment or subletting or use of the Property by any person other than Lessee, nor the collection of rent by Owner from any person other than Lessee, shall be deemed a waiver of any of the provisions of this Section 11.3 or release Lessee from its obligation to comply with the provisions of this Agreement. No permitted assignment or subletting by Lessee shall be effective until there has been delivered to Owner a fully executed counterpart of the assignment or sublease which expressly provides that the Permitted Successor and

Assign will comply with all of the provisions of this Agreement, and Owner may enforce this Agreement directly against such Permitted Successor and Assign. Any assignment or subletting in violation of this Section 11.3 shall be void and shall constitute an Event of Default under this Agreement. Lessee recognizes that Owner has entered into a land option agreement with LADWP in which Owner granted LADWP an option to purchase the Property, including Owner's interest under this Agreement (the "Land Purchase Option"), and Lessee hereby consents to Owner's grant of the Land Purchase Option and assignment of this Agreement to LADWP following LADWP's exercise of the Land Purchase Option.

11.4. No Severance of Solar Rights. Except as otherwise provided in this Agreement, no interest in any resource located on the Property and associated with the production or potential production of energy from solar power on the Property has been or will be severed from the surface estate.

11.5. No "Subordination" or Encumbrance of Fee. In no event shall Owner be required to subordinate or encumber its fee title interest in the Property or any part thereof or interest therein in connection with any encumbrance or hypothecation hereunder.

11.6. Runs With the Land. Subject only to termination as provided in this Agreement the leases and easements and any restrictions in this Agreement shall run with the land affected and shall be binding on, and inure to the benefit of, Owner and its successors and assigns and Lessee and Permitted Successors and Assigns.

11.7. Notices. All notices or other communications required or permitted hereunder, including notices to Mortgagees, shall, unless otherwise provided herein, be in writing, and shall be (a) personally delivered, (b) delivered by reputable overnight courier, (c) sent by registered or certified mail, return receipt requested and postage prepaid, or (d) transmitted by facsimile telecopy, with a copy sent on the same day by one of the other permitted methods of delivery, sent addressed to Owner at Owner's Address, to Lessee at Lessee's Address and to a Mortgagee at such Mortgagee's address as from time to time provided to Owner. Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Notices transmitted by facsimile shall be deemed given upon receipt so long as a copy is sent on the same day by one of the other permitted methods of delivery. Notice of change of address shall be given by written notice in the manner detailed in this Section 11.7.

11.8. Surrender of Property; Decommissioning.

(a) Decommissioning Period. Upon the expiration or earlier termination of this Agreement (whether or not following an Event of Default), Lessee shall peaceably and quietly leave, surrender and return the Property to Owner. Lessee agrees and hereby covenants to dismantle and remove all Solar Power Facilities owned or installed by Lessee or its affiliates on the Property (but not including any improvements in use by the grantees of any easements granted pursuant to Section 3.2 above) within six (6) months after the date of such expiration or earlier termination (the "Decommissioning Period"), and shall restore the Property to a condition, to the extent practical, and generally consistent with the conditions that existed as of the Effective Date, for agricultural uses (including, without limitation, Lessee shall remove all fixtures, equipment and non-agricultural roads, restore all compacted soil to its condition on the Effective Date, and otherwise restore the soil and the Property to the condition as existed on the Effective Date, except any improvements that have been

publicly dedicated and accepted by the County); and Lessee shall have a continuing license to enter the Property for such purposes during the Decommissioning Period.

(b) Permitting Authority's Decommissioning Requirements. In addition to the terms of this Agreement, Lessee shall otherwise comply with any requirements of the CUP respecting the decommissioning and reclamation obligations for the Property, if any, and which may be imposed by the Permitting Authority at anytime during the Term of this Agreement and the Decommissioning Period (including, without limitation, the posting of any letter of credit, performance bond or other security backing Lessee's decommissioning and reclamation obligations). Lessee shall pay any fees and expenses imposed, charged or incurred during the Term of this Agreement and the Decommissioning Period by the Permitting Authority in connection with the decommissioning and reclamation of the Property.

(c) Security Deposit. Lessee shall deliver to Owner, as security for the removal of the Solar Power Facilities and the restoration of the Property to the condition required under Section 11.8(a) above, one or more letters of credit (each, a "Letter of Credit") or other security, in form reasonably satisfactory to Owner (collectively, the "Removal Security") in the following amounts and in accordance with the following schedule: (a) Fifty Thousand Dollars (\$50,000) shall be delivered on or before the eighteenth (18th) anniversary of the Commercial Operation Date (or, if the Term has been extended pursuant to Section 4.2, on or before the first day of the twenty-fourth (24th) month preceding the expiration of the Term as so extended), and (b) Fifty Thousand Dollars (\$50,000) shall be delivered on or before the nineteenth (19th) anniversary of the Commercial Operation Date (or, if the Term has been extended pursuant to Section 4.2, on or before the first day of the twelfth (12th) month prior to the expiration of the Term as so extended) (such that One Hundred Thousand Dollars (\$100,000) shall be funded on or before such date).

(d) Letter of Credit. The Letter of Credit shall be for an initial term of one (1) year, and shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining Term and Decommissioning Period of this Agreement or until Lessee has completed the removal of the Solar Power Facilities and restoration of the Property in accordance with the provisions of this Agreement, whichever occurs later. Each increase in the Removal Security shall be evidenced by an amendment to the Letter of Credit which increases the amount of the then-issued Letter of Credit to the required percentage of the Removal Security set forth in Section 11(c) above, or by a new Letter of Credit in an amount equal to the total required percentage of the Removal Security set forth in Section 11(c) above. Owner shall be authorized under the Letter of Credit to make one or more drawings thereon upon certification to the issuing bank of (i) the Lessee's failure to perform its obligation to remove the Solar Power Facilities and restore the Property in accordance with the provisions of this Agreement within thirty (30) days after Owner has provided Lessee written notice to Lessee of such failure, or (ii) the Lessee's failure, within thirty (30) days after Owner has provided Lessee written notice to Lessee of such failure, to commence to perform its obligation to remove the Solar Power Facilities and restore the Property in accordance with the provisions of this Agreement within seven (7) months after the expiration or earlier termination of the Term, or (iii) the Lessee's failure to renew the Letter of Credit within thirty (30) days prior to the expiration thereof. Lessee shall notify Owner in writing upon the completion of Lessee's decommissioning and reclamation obligations, and upon receipt of such notice, Owner shall have the right to inspect the Property to confirm that the Property has been restored to the condition required under Section 11.8(a) above. The Removal Security will be returned to Lessee within thirty (30) days after Owner's confirmation that the Property has been restored to the condition required under Section 11.8(a) above. If providing a Letter of Credit to Owner shall be

commercially impracticable, the Removal Security may be provided by Lessee, as reasonably approved by Owner, by one of the following methods:

(i) Performance Bond. Lessee may provide the Removal Security through a Performance Bond issued by a surety registered with the State of California Insurance Commissioner and is, at the time of delivery of the bond, on the authorized insurance provider list published by the Insurance Commissioner. The Performance Bond shall be for a term of one (1) year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining Term and Decommissioning Period of this Agreement or until Lessee has removed the Solar Power Facilities and restored the Property, whichever occurs later. In order to ensure continuous renewal of the Performance Bond with no lapse, each Performance Bond shall be required to be extended or replaced at least one month in advance of its expiration date. Failure to secure such renewal or extension shall constitute an Event of Default by Lessee under this Agreement; or

(ii) Cash. Lessee may provide the Removal Security in cash, which shall be held by an escrow agent reasonably acceptable to Lessee and Owner pursuant to an escrow agreement among such escrow agent, Owner and Lessee (the terms of which shall be reasonably agreed to by such parties) which shall permit the investment of the cash in investments reasonably approved by Owner and shall provide for the interest on such investments to be paid to Lessee so long as there is no continuing Event of Default by Lessee hereunder. Lessee shall pay all costs of the escrow agent for such escrow.

(e) Exercise of Extended Periods. Notwithstanding the foregoing, if Lessee exercises its right to extend the Term of this Agreement pursuant to Section 4.2 (and Lessee has satisfied the Extension Conditions at the time of such exercise), any Removal Security previously posted by Lessee with Owner may be removed or shall be returned to Lessee, as applicable (since Lessee is only obligated to maintain such Removal Security with Owner during the last twenty-four (24) months of the Term as so extended). Lessee shall then be obligated to deliver the Removal Security in the amounts and time periods based on the new expiration of the Term as set forth in Section 11.8(c) above (i.e. Fifty Thousand Dollars (\$50,000) no later than the first day of the twenty-fourth (24th) month preceding the expiration of the Term as so extended, which amount shall be increased to One Hundred Thousand Dollars (\$100,000) no later than the first day of the twelfth (12th) month preceding the expiration of the Term as so extended).

(f) No Limitation of Liability. Notwithstanding anything set forth in this Section 11.8, Lessee acknowledges and agrees that the Removal Security required to be posted by Lessee as set forth herein is security for Lessee's performance of its obligations under this Section 11.8, and that the amount of the Removal Security is not a limit on Lessee's liability for its obligations under this Section 11.8, and Lessee shall remain liable to Owner for the complete performance of Lessee's obligations under this Section 11.8 and for any costs incurred in connection with the restoration of the Property in accordance with this Section 11.8 in excess of the Removal Security. Subject to Section 8 above and the terms of any agreement with a Mortgagee as required therein, if Lessee abandons the Property and fails to restore the Property to the condition required under Section 11.8(a) above, or fails to complete the restoration of the Property to the condition required under Section 11.8(a) above prior to the expiration of the Decommissioning Period, in addition to any other rights and remedies that Owner may have under this Agreement, at Owner's election, any and all fixtures and equipment remaining on the Property shall become the property of Owner. Owner shall have the right to enter the Property and

remove, recycle and/or sell any and all fixtures and equipment located on the Property, in which event Owner shall have the sole right to any proceeds in connection with such fixtures and equipment.

(g) The obligations under this Section 11.8 shall survive the expiration or earlier termination of this Agreement.

11.9. Estoppel Certificates. Each Party agrees that it shall, at any time and from time to time during the Term of this Agreement and within fifteen (15) business days after a written request by the other Party, execute, acknowledge and deliver to the requesting Party a written statement certifying that this Agreement is unmodified and in full force and effect (or modified and stating the modifications), the dates to which the payments and any other charges have been paid, and that there are no defaults existing (or that defaults exist and stating the nature of such defaults), and stating such other facts as the requesting Party may reasonably provide. The failure of a Party to deliver any such certificate within such time shall be conclusive upon such Party that this Agreement is unmodified and in full force and effect, all payments to such Party are current, there are no defaults existing, and such other facts are true and correct.

11.10. No Waiver. No waiver of any right under this Agreement shall be effective for any purpose unless it is in writing and is signed by the Party possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Agreement.

11.11. Brokerage Commissions. Each of Owner and Lessee represent to the other that such Party has not incurred, directly or indirectly, any liability on behalf of the other Party for the payment by the other Party of any real estate brokerage commission, finder's fee or other compensation to any agent, broker or finder in connection with this Agreement. Owner and Lessee do each hereby agree to indemnify, defend and hold the other Party harmless from and against any claim for any brokerage commissions, finder's fees or other compensation claimed to be due and owing by reason of the indemnifying Party's activities

11.12. Entire Agreement. This Agreement, together with its attached exhibits and Addenda, contains the entire agreement between the Parties with respect to the subject matter hereof, and any prior or contemporaneous agreements, discussions or understandings, written or oral (including any options or agreements for leases and/or easements previously entered into by the Parties with respect to all or any portion of the Property), are superseded by this Agreement and shall be of no force or effect. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by each of the Parties.

11.13. Governing Law. The terms and provisions of this Agreement shall be interpreted in accordance with the Laws of the State applicable to contracts made and to be performed within such State and without reference to the choice of law principles of such State or any other state.

11.14. Interpretation. The Parties agree that the terms and provisions of this Agreement embody their mutual intent and that such terms and conditions are not to be construed more liberally in favor of, or more strictly against, either Party.

11.15. Partial Invalidity. Should any term or provision of this Agreement, or the application thereof to any person or circumstance, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to

which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Law.

11.16. WAIVER OF RIGHT TO JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, IF THIS AGREEMENT IS ASSIGNED TO LADWP BY EITHER OWNER OR LESSEE, THIS PROVISION AND THE WAIVER INCLUDED HEREIN SHALL HAVE NO FORCE OR EFFECT AND THE PARTIES SHALL NOT BE BOUND BY ITS TERMS. IF THIS AGREEMENT IS SUBSEQUENTLY ASSIGNED BY LADWP TO ANOTHER PARTY, THEN THE PARTIES SHALL AGAIN BE BOUND BY ITS TERMS.

11.17. Counterparts; Facsimiles. This Agreement may be executed, and any memorandum thereof recorded, in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each Party shall be entitled to rely upon executed copies of this Agreement transmitted by facsimile to the same and full extent as the originals.

11.18. Attorneys' Fees. The prevailing party in any action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Agreement or for the interpretation of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing party.

11.19. Time. Time is of the essence in connection with all provisions of this Agreement where time is a factor, provided, however, should the date for payment or performance required under this Agreement fall on a non-business day (i.e., Saturday, Sunday or any other day on which national banks in San Francisco, California are not open for business), then the date required for payment or performance under this Agreement shall be extended to the first business day following the non-business day on which such payment or performance was required.

11.20. Memorandum. The Parties shall execute and record a memorandum of this Agreement in the form attached to this Agreement as Exhibit B. The Parties shall execute an amendment to the memorandum in each instance as reasonably requested by the other Party, or if this Agreement expires or is terminated, Lessee shall execute and deliver a quit-claim in recordable form relinquishing all of its right, title and interest in and to this Agreement.

11.21. Other General Provisions. The covenants contained herein are made solely for the benefit of the Parties, and shall not be construed as benefiting any person or entity who is not a Party to this Agreement. Neither this Agreement nor any agreements or transactions contemplated hereby shall be interpreted as creating any partnership, joint venture, association or other relationship between the Parties, other than that of landlord and tenant with respect to this Agreement. The use of the neuter gender includes the masculine and feminine, and the singular number includes the plural, and vice

versa, whenever the context so requires. The terms "include", "includes" and "including", as used herein, are without limitation. Captions and headings used herein are for convenience of reference only and do not define, limit or otherwise affect the scope, meaning or intent hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date referred to above.

Owner:

RE BARREN RIDGE LANDCO LLC,
a Delaware limited liability company

By: _____
Name:
Title:

Lessee:

RE BARREN RIDGE 1 LLC,
a Delaware limited liability company

By: _____
Name:
Title:

Exhibit A

DESCRIPTION OF PROPERTY

Real property in the unincorporated area of the County of Kern, State of California, described as follows:

[ALL OF SECTION 25, TOWNSHIP 36 EAST, RANGE 36 EAST, MOUNT DIABLO MERIDIAN, IN THE UNINCORPORATED AREA OF KERN, COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION LYING WITHIN A STRIP OF LAND 250 FEET IN WIDTH AS DESCRIBED IN DEED TO THE CITY OF LOS ANGELES, RECORDED NOVEMBER 8, 1977 IN BOOK 5067, PAGE 1906 OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED IN GRANT DEED, RECORDED JUNE 19, 1992 AS INSTRUMENT NO. 92-873900 OFFICIAL RECORDS.

APN: 461-150-10-00-4]

Exhibit B

MEMORANDUM OF LAND LEASE

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

RE BARREN RIDGE LANDCO LLC
c/o Recurrent Energy Development Company, LLC
300 California Street, 7th Floor
San Francisco, California 94104
Attention: Judith Hall – Office of the General Counsel

(Space above this line for Recorder's use only)

MEMORANDUM OF
LAND LEASE

THIS MEMORANDUM OF LAND LEASE ("Memorandum") is made and entered into as of _____
20__ by and between RE BARREN RIDGE LANDCO LLC, a Delaware limited liability company ("Owner"),
and RE BARREN RIDGE 1 LLC, a Delaware limited liability company ("Lessee").

WHEREAS:

A. On the date hereof (the "Effective Date"), the Parties have entered into a Land Lease (the "Agreement") which by its terms grants to Lessee a solar energy project lease for: renewable energy development and related rights; transmission lines and facilities; monitoring and studying of solar radiation, solar energy and gathering of other meteorological data; and access on, over, and across certain land which is more particularly described in Exhibit A attached to this Memorandum and incorporated by this reference (the "Property");

B. The term of the Agreement commences on the Effective Date and continues for a period of twenty (20) years following the Commercial Operation Date (as defined in the Agreement) (unless earlier terminated). Lessee shall have the right to extend the term of the Agreement for two (2) additional five (5) year periods and one (1) additional period of four (4) years and eleven (11) months less the number of days between the Effective Date and the Commercial Operation Date (such that the total term of the Agreement, if fully extended, does not extend beyond the date that is thirty-four (34) years and eleven (11) months following the Effective Date).

C. The Parties desire to enter into this Memorandum of Land Lease which is to be recorded in order that third parties may have notice of the interests of Lessee in the Property and of the existence of the lease and rights granted to Lessee in the Property as part of the Agreement.

NOW, THEREFORE, in consideration of the rents and covenants provided in the Agreement to be paid and performed by Lessee, Owner hereby grants to Lessee those certain rights of use on, over, under and across the Property on the terms and conditions set forth in the Agreement. All of the terms, conditions, provisions and covenants of the Agreement are hereby incorporated into this Memorandum by reference as though fully set forth herein, and the Agreement and this Memorandum shall be deemed to constitute a single instrument or document. Without limiting the generality of the foregoing, Owner hereby grants to Lessee the exclusive right to evaluate, develop and use solar energy found on, about, above, over, through and across the Property (such energy sources herein, the "Renewable Energy Resources"), together with the exclusive right to the free and unobstructed insolation and flow of the Renewable Energy Resources over the entirety of the horizontal space and the entirety of the vertical air space lying above the surface of the Property as set forth in the Agreement, including, without limitation, the exclusive right to: (i) evaluate, develop, use, convert, maintain and capture energy from the Renewable Energy Resources on, about, over and around the Property ("Renewable Energy"); (ii) develop the Renewable Energy; (iii) collect, distribute, transmit and sell the energy output from the Renewable Energy; and (iv) engage in any other uses of the Property related to the development of the Renewable Energy.

Should there be any inconsistency between the terms of this Memorandum and the Agreement, the terms of the Agreement shall prevail.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Land Lease as of the date set forth above.

Owner:

RE BARREN RIDGE LANDCO LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Lessee:

RE BARREN RIDGE 1 LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____)
County of _____) §

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

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the
foregoing paragraph is true and correct

(Affix seal here)

WITNESS my hand and official seal.

Signature of Notary

STATE OF _____)
County of _____) §

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

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the
foregoing paragraph is true and correct

(Affix seal here)

WITNESS my hand and official seal.

Signature of Notary

APPENDIX O
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC

QUALIFIED OPERATORS

1. Signal Energy, LLC
2. Swinerton Builders
3. EDF Renewable Services, Inc.
4. First Solar Electric (California) Inc.
5. SunEdison Services, Inc.
6. NRG Energy, Inc.
7. True South Renewables, Inc.

APPENDIX P
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC

FORM OF COMMERCIAL OPERATION CERTIFICATE

This certification ("*Certification*") of the Commercial Operation is delivered by [independent engineer] ("*Engineer*") to The City of Los Angeles, acting by and through the Department of Water and Power ("*Buyer*") in accordance with the terms of that certain Power Purchase Agreement dated _____ ("*Agreement*") by and between RE Barren Ridge 1 LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

1. Equipment sufficient to generate at least ninety-five percent (95%) of the Contract Capacity of the Facility has been erected in accordance with the equipment manufacturer's specifications ("*Initial Mechanical Completion*");
2. The electrical collection system related to the Facility comprising the total installed power capacity referenced in (1) above is substantially complete (subject to completion of punch-list items), functional, and energized for the Facility;
3. The substation for the Facility is substantially complete (subject to completion of punch-list items) and capable of delivering the Facility Energy;
4. The Initial Commissioning Completion (defined below) has been achieved for the equipment that has achieved Initial Mechanical Completion; and
5. The Facility is operational and interconnected with Buyer's grid and released by Buyer, as the Transmission Provider, for Commercial Operation and capable of delivering Facility Energy through the permanent interconnection facilities for the Facility, in each case in accordance with the Generator Interconnection Agreement; and
6. the Facility is reasonably expected to be capable of sustained operations for a period of not less than twenty (20) consecutive days and, provided sufficient irradiance, capable of delivering Facility Energy during such period to the Point of Delivery at ninety-five percent (95%) of the Contract Capacity for at least two (2) hours per day, every day, during such period in accordance with Prudent Utility Practices.

For purposes of Section 4 above, "*Initial Commissioning Completion*" means that the electrical and control systems have been energized and tested in accordance with the equipment manufacturer's specifications.

EXECUTED by [INDEPENDENT ENGINEER]
this _____ day of _____, 20__.

[INDEPENDENT ENGINEER]

By: _____

Its: _____

Date: _____

APPENDIX Q
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC

FORM OF LAND OPTION AGREEMENT

[to be attached]

**LAND OPTION AGREEMENT AND
AGREEMENT TO ASSIGN FACILITY SITE OPTION**

by and between

**RE BARREN RIDGE LANDCO LLC
as "Seller"**

and

**THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
as "Buyer"**

Dated as of _____

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LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION

This LAND OPTION AGREEMENT AND AGREEMENT TO ASSIGN FACILITY SITE OPTION (the "*Agreement*") is entered into as of this ____ day of _____, 2014 ("*Effective Date*"), by and between RE BARREN RIDGE LANDCO LLC, a limited liability company organized and existing under the laws of the State of Delaware ("*Seller*"), and THE CITY OF LOS ANGELES ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER, a municipal corporation of the State of California ("*Buyer*"). Each of Buyer and Seller is referred to individually in this Agreement as a "*Party*" and together they are referred to as the "*Parties*."

RECITALS

WHEREAS, RE BARREN RIDGE 1 LLC ("*Project Seller*") and Buyer have entered into that certain Power Purchase Agreement of even date herewith (the "*PPA*"), relating to the purchase by Buyer of all of the Facility Energy, Capacity Rights and associated Environmental Attributes (each as defined in the PPA and collectively defined therein as the "*Products*") generated by a 60 MW (AC) solar photovoltaic facility to be developed, constructed, owned and operated by Project Seller in Mojave, California;

WHEREAS, Project Seller and Buyer have entered into that certain Option Agreement as of even date herewith (the "*Project Option Agreement*"), relating to Buyer's option to purchase the Facility Assets (as defined in the Project Option Agreement);

WHEREAS, Seller is a party to that certain Option Agreement for the Purchase and Sale of Real Property dated September 11, 2009 (the "*Facility Site Option*") by and between Lancaster Commercial, LLC and Davood Golshirazian, as Seller thereunder, and Seller's predecessor-in-interest, SiteCo, LLC, as purchaser thereunder, pursuant to which Seller has the option to purchase the real property described therein consisting of approximately 588 acres of land located in Kern County, California, APN 461-150-10 (the "*Real Property*").

WHEREAS, the PPA requires Seller to exercise its option to purchase the Real Property under the Facility Site Option by the Site Control Milestone Date defined and described therein.

WHEREAS, Project Seller and Seller plan to enter into a land lease (the "*Land Lease*"), pursuant to which Seller plans to lease to Project Seller, and Project Seller plans to lease from Seller, the Real Property on the terms and conditions contained in the Land Lease; and

WHEREAS, Seller desires to grant to Buyer, and Buyer wishes to have, an option, exercisable at various times as set forth herein, to purchase the Real Property on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and the agreements herein and in the other Operative Documents (as defined herein) and in reliance upon the representations and warranties therein and herein, Buyer and Seller, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. Except as otherwise expressly provided herein, capitalized terms used in this Agreement, including in its *Recitals*, *Schedules* and *Exhibits*, shall have the meanings given in *Exhibit 1.1*. Capitalized terms used herein but not defined in *Exhibit 1.1* shall have their meanings ascribed thereto in the PPA.

1.2 Rules of Interpretation. Except as otherwise expressly provided herein, the rules of interpretation set forth in *Exhibit 1.1* shall apply to this Agreement.

ARTICLE II
OPTION CONSIDERATION; ASSIGNMENT OF FACILITY SITE OPTION;
GRANT OF SECURITY INTEREST; OPTION TO PURCHASE; CLOSING

2.1 Option Consideration. On the Effective Date, as consideration for the grant of the option hereunder, Buyer shall pay to Seller the amount of One Hundred Dollars (\$100).

2.2 Assignment of Facility Site Option. Seller hereby agrees that at any time after (a) a Default by Project Seller under the PPA, (b) either (i) a failure by Seller to perform any of its duties or obligations under this Agreement when and as due, which failure is not cured to the reasonable satisfaction of Buyer by the date that is thirty (30) days after receipt of notice thereof from Buyer, or (ii) an inaccuracy in any material respect of the representations made by Seller in Section 3.1 or Section 3.2, below, (c) subject to the last two sentences of Section 2.3, a failure of the security interest granted pursuant to Section 2.3 to be in full force and effect except if such failure is due to an intentional act of Buyer or any representative of Buyer, or a failure of Buyer to act (where it had a duty to act), or (d) subject to the last two sentences of Section 2.3, Buyer ceases to have a valid security interest in the Collateral except if the same is due to an intentional act of Buyer or any representative of Buyer, or a failure of Buyer to act (where it had a duty to act) (each, a "*Seller Default*"), and so long as Seller has not yet purchased the Real Property pursuant to the Facility Site Option, Buyer may require that Seller, at Seller's cost and expense, assign all of its right, title and interest in, to and under the Facility Site Option to Buyer on a form prepared by Buyer and reasonably acceptable to Seller, by delivering notice to Seller of Buyer's demand to take an assignment of such Facility Site Option, together with a proposed form of assignment document for Seller's review and approval (the "*Assignment Demand*"). In the event of the occurrence of any of (a), (b), (c) or (d) in the foregoing sentence, Seller shall deliver to Buyer an unredacted copy of the Facility Site Option upon Buyer's request therefor. If Buyer delivers the Assignment Demand to Seller and does not concurrently terminate the PPA, Buyer shall thereafter (A) exercise the Facility Site Option, and (B) execute the Land Lease, such obligations expressly surviving any termination of this Agreement; provided, that further authorizations from Buyer's Board of Commissioners and the Los Angeles City Council will be required for Buyer to exercise the Facility Site Option and execute the Land Lease. Buyer and Seller shall execute an agreed upon assignment document after Seller's receipt of the Assignment Demand and, upon execution and delivery of the same by the Parties, this Agreement shall be null and void and of no further force and effect, the Parties expressly acknowledging and agreeing that such future assignment, if it occurs, shall constitute an assignment of all or substantially all of Seller's assets. Such assignment may be recorded by

Buyer in the Official Records of Kern County, California, in Buyer's sole discretion, and Buyer shall be responsible for payment of all fees associated with such recording.

2.3 Security Interest. To secure the full and complete performance of the obligations of Seller under Section 2.2, above, Seller hereby grants to Buyer a first priority security interest in all of Seller's right, title and interest in and to the Facility Site Option ("*Collateral*"). Seller shall file in the appropriate offices at Seller's cost any financing statements, and amendments, continuation statements, and other instruments related thereto, to perfect and maintain the security interest in the Collateral granted in this Agreement. Seller shall, from time-to-time, promptly execute and deliver all further instruments and documents, and take all further actions that may be reasonably necessary or that Buyer may reasonably request in order to perfect and protect the security interest granted or intended to be granted hereby or to enable Buyer to exercise its rights and remedies hereunder with respect to the security interest of the Collateral, and Seller hereby authorizes Buyer to file such further instruments and documents, including any additional financing statements, or amendments and continuation statements thereof, as Buyer reasonably deems necessary to perfect, maintain, or foreclose on the security interest granted herein as collateral for a contractual right under the Uniform Commercial Code as adopted by the State of California. If Seller fails to comply with the obligations under Section 2.2, then Buyer will have, in addition to the rights and remedies set forth in this Agreement, all of the rights and remedies of a Secured Party under Article 9 of the California Uniform Commercial Code or other applicable law with respect to such pledge, all of which rights and remedies shall, to the full extent permitted by law, be cumulative. Upon any foreclosure by Buyer of the security interest herein granted, and only at such time, Seller shall assign to Buyer all of Seller's right, title, and interest in and to the Facility Site Option, the Parties expressly acknowledging and agreeing that such future assignment, if it occurs, shall constitute an assignment of all or substantially all of Seller's assets. The security interest granted in this Section 2.3 is not an assignment and is not subject to the terms of Section 16(a) of the Facility Site Option. If, at any time, it is determined that the security interest granted herein violates any term or condition of Section 16(a) of the Facility Site Option (a "*Section 16(a) Violation*"), this Section 2.3 shall be deemed to be void and ineffective for all purposes and shall be treated as if never included in this Agreement. In the event of (a) a Section 16(a) Violation, (b) a failure of the security interest granted pursuant to Section 2.3 to be in full force and effect except if such failure is due to an intentional act of Buyer or any representative of Buyer or a failure of Buyer to act (where it had a duty to act), or (c) Buyer ceases to have a valid security interest in the Collateral, except if the same is due to an intentional act of Buyer or any representative of Buyer or a failure of Buyer to act (where it had a duty to act), the Parties shall work together in good faith to accomplish the intended benefit of the grant of the security interest pursuant to this Section 2.3, during which time no Seller Default shall have occurred, notwithstanding anything to the contrary contained in Section 2.2. If the Parties are unable to accomplish the intended benefit of the grant of the security interest as required by the immediately preceding sentence, Seller may (a) elect to exercise the Facility Site Option, in which event, upon and effective as of the closing of the purchase of the Real Property, no Seller Default shall have occurred, notwithstanding anything to the contrary contained in Section 2.2, and the terms and conditions of Section 2.2 and Section 2.3 will be void and of no force or effect, or (b) elect not to exercise the Facility Site Option, in which event the terms and conditions of Section 2.2 will apply. Seller shall provide Buyer notice of its election.

2.4 Option to Purchase. Seller hereby grants Buyer an option, on the terms and conditions set forth in this Agreement, to purchase all of Seller's right, title and interest in and to the Real Property, but not the Excluded Assets, and to assume the Assumed Liabilities, but not the Excluded Liabilities, on and subject to the terms and conditions set forth in this Agreement (the "Land Purchase Option"). The Land Purchase Option may only be exercised with respect to all of Seller's right, title and interest in and to the Real Property, and not with respect to only a portion thereof.

2.5 Exercise of Land Purchase Option. Buyer may exercise the Land Purchase Option in accordance with the provisions set forth in Section 2.7 at any time:

(a) during the six (6) month period commencing on the date that is eighteen (18) months prior to the sixth (6th) anniversary of the Commercial Operation Date (in which case the Closing Date shall be on the sixth (6th) anniversary of the Commercial Operation Date, subject to the terms and conditions of this Article II, Article VII, and Article VIII); or

(b) during the six (6) month period commencing on the date that is eighteen (18) months prior to the tenth (10th) anniversary of the Commercial Operation Date (in which case the Closing Date shall be on the tenth (10th) anniversary of the Commercial Operation Date, subject to the terms and conditions of this Article II, Article VII, and Article VIII); or

(c) during the six (6) month period commencing on the date that is eighteen (18) months prior to the fifteenth (15th) anniversary of the Commercial Operation Date (in which case the Closing Date shall be on the fifteenth (15th) anniversary of the Commercial Operation Date, subject to the terms and conditions of this Article II, Article VII, and Article VIII);

(d) during the six (6) month period commencing on the date that is eighteen (18) months prior to the twentieth (20th) anniversary of the Commercial Operation Date (in which case the Closing Date shall be on the twentieth (20th) anniversary of the Commercial Operation Date, subject to the terms and conditions of this Article II, Article VII, and Article VIII);

(e) if Buyer exercises its option under the Project Option Agreement, during the six (6) month period commencing on the date that is six (6) months prior to each anniversary of the "Closing Date" under the Project Option Agreement (in which case the Closing Date under this Agreement shall be on the applicable anniversary of the "Closing Date" under the Project Option Agreement, subject to the terms and conditions of this Article II, Article VII, and Article VIII); or

(f) during the sixty (60) day period commencing on the date on which a Termination Notice is provided by Buyer to Project Seller and Buyer has exercised its remedies pursuant to Section 13.2(d) of the PPA (in which case the Closing Date shall be the date designated by Buyer that is no later than the date that is six (6) months following

delivery by Buyer of the Purchase Option Exercise Notice, subject to the terms of this Article II, Article VII, and Article VIII).

Each opportunity of Buyer to exercise the Land Purchase Option set forth in Sections 2.5(a) through (f) above shall be referred to herein as a "*Purchase Option Opportunity*."

Seller acknowledges that Buyer has no obligation to exercise the Land Purchase Option and that Buyer may decline to exercise the Land Purchase Option for any or no reason, as Buyer deems appropriate in its sole discretion.

2.6 Environmental Review. Seller acknowledges and agrees that the sale of the Real Property could potentially be subject to environmental review pursuant to CEQA and the National Environmental Policy Act of 1969. Any additional costs and expenses incurred in connection with any environmental reviews requested by Buyer or required because of Buyer's status as a public agency, in each case, in connection with the exercise of the Land Purchase Option, shall be borne by Buyer.

2.7 Tentative Exercise Notice. Buyer shall exercise the Land Purchase Option (if at all) by delivering to Seller a notice of exercise signed by Buyer (the "*Purchase Option Tentative Exercise Notice*") within the periods of time specified in Section 2.5.

(a) Disclosure Schedules. Within sixty (60) days after Seller receives a Purchase Option Tentative Exercise Notice (the "*Schedule Delivery Date*"), Seller will deliver to Buyer the following, dated as of the Schedule Delivery Date: *Schedule 3.3* (Real Property Matters); *Schedule 3.4* (Seller's Consents); *Schedule 3.5* (Certain Excluded Assets); *Schedule 3.7* (Environmental Matters); *Schedule 3.8* (Liabilities); *Schedule 3.9* (Tax Matters); *Schedule 3.10* (Compliance with Laws); *Schedule 3.11* (Litigation); *Schedule 3.12* (Assumed Contracts); *Schedule 3.13* (Intellectual Property); *Schedule 3.15* (Non-Environmental Permits); *Schedule 3.17* (Employee Matters); *Schedule 3.18* (Shared Facilities); and *Schedule 3.19* (Untrue Statements; Omissions) (collectively, the "*Seller Disclosure Schedules*"), each of which shall be applicable to the Real Property and shall list, as required, any qualifications required to make the representations in Article III true and correct, and Buyer will deliver to Seller, dated as of the Schedule Delivery Date, *Schedule 4.3* (Buyer's Consents) (together with the Seller Disclosure Schedules, the "*Disclosure Schedules*").

(b) Title Review. Within thirty (30) days after Seller receives a Purchase Option Tentative Exercise Notice, Seller shall order (and shall deliver or cause to be delivered to Buyer promptly upon receipt) a current commitment for extended coverage title insurance insuring Buyer in the amount of the Final Purchase Price, together with legible copies of all documents listed as exceptions therein, and a current certificate of taxes due with respect to the Real Property, from the Title Company, on the current standard form of commitment for an extended coverage ALTA Owners Policy (collectively, the "*Title Commitment*"). In order to obtain an extended coverage ALTA Owners Policy, a Survey shall be obtained pursuant to Section (c) and Seller shall provide the affidavits or certificates as may be required by the Title Company, as provided in the last sentence of this Section (b). The Title Company shall promptly

provide copies of any amendments or modifications of the Title Commitment to Buyer prior to Closing. At Closing or as soon as reasonably practicable after Closing, the Title Company shall issue and deliver to Buyer the owner's title insurance policy referred to above (the "*Title Policy*"), issued by the Title Company insuring Buyer's fee title to the Real Property consistent with the Title Commitment, providing "gap" coverage, deleting standard exceptions including deletions for (i) the standard survey exception, (ii) the standard exception regarding parties in possession, (iii) the standard exception regarding easements and other Liens not of public record, and (iv) the standard exception re materialmen's liens, endorsing over arbitration and creditors' rights exceptions, if necessary, and subject only to taxes and assessments for the year of Closing and subsequent years, the other matters approved by Buyer in accordance with Section 2.7(d) below, and any encumbrances upon the Real Property caused by Buyer, which matters and encumbrances shall be deemed Purchase Option Permitted Encumbrances. At Closing, Seller shall pay for the portion of the premium for the Title Policy solely attributable to the Title Company's issuance of a CLTA policy and Buyer shall pay the portion of the premium for the Title Policy attributable to the Title Company's issuance of an extended coverage ALTA Owners Policy. Buyer may obtain endorsements to the Title Policy as Buyer desires, which endorsements will be at the sole cost and expense of Buyer, except for the endorsements to be obtained by Seller pursuant to Section 2.7(d) below. Seller shall provide such affidavits or certificates as may be required by the Title Company to remove all liens, including mechanics' or materialmen's liens, as exceptions to the Title Policy.

(c) Survey Review. Within thirty (30) days after Seller receives a Purchase Option Tentative Exercise Notice, Seller shall order, at Buyer's expense (and shall deliver or cause to be delivered to Buyer promptly upon receipt), an ALTA/ACSM land and improvements survey plat prepared by a surveyor licensed in the State of California containing the description of the Real Property and location of all improvements and encroachments thereon, including but not limited to any improvements, fence locations and easements, rights of way and roadways adjacent to the Real Property, in a form sufficient to enable the Title Company to issue the Title Policy in compliance with this Section 2.7, certified to Buyer, Seller, and the Title Company (the "*Survey*"). Seller shall provide copies of any amendments or modifications of the Survey to Buyer and the Title Company promptly following Seller's receipt thereof.

(d) Title Defects and Objections. Buyer will have until sixty (60) days after the last to be received of the Title Commitment and the Survey to notify Seller of any objections to any items identified in the Title Commitment or on the Survey. Seller will have until forty-five (45) days after receipt of Buyer's objections ("*Seller's Cure Period*") to elect, at its reasonable discretion, to cure all items to which Buyer has objected, cause such items to be modified in a manner which is reasonably satisfactory to Buyer or to advise Buyer that Seller does not intend to cure such items; it being expressly understood and agreed that, if any item objected to by Buyer in such sixty (60) day period is not curable within Seller's Cure Period, Seller shall have such additional time to cure such item(s) as is necessary so long as Seller commences such cure within Seller's Cure Period and diligently pursues the same to completion; provided, that in no event shall the additional time to cure exceed ninety (90) days after the expiration of the initial sixty (60)

day cure period. Alternatively, within the Seller's Cure Period, Seller at Seller's cost may elect to obtain one or more endorsements to the Title Commitment, in a form reasonably acceptable to Buyer, providing title insurance protection with regard to any objections raised by Buyer. If Seller fails to respond with its election prior to the expiration of Seller's Cure Period, or Seller fails to cure to the satisfaction of Buyer any objection by Buyer of which Seller has been given notice in accordance with this Section 2.7(d), or elects not to cure, then Buyer shall elect, in its sole discretion to (i) withdraw its exercise of the Land Purchase Option with respect to the applicable Purchase Option Opportunity by delivering notice thereof to Seller, or (ii) approve any items previously objected to and continue with the exercise of the Land Purchase Option in accordance with the terms of Section 2.8 below by delivering notice to Seller thereof. Buyer will have ten (10) days after receipt of any amendment to the Title Commitment or Survey to object to any changes in the same fashion as objections to the initial Title Commitment or Survey under this Section 2.7(d). Anything above to the contrary notwithstanding, Seller shall be obligated to, and shall, cause all financing, judgment and tax liens to be removed as title exceptions prior to or concurrently with Closing. If Buyer fails to elect either option (i) or option (ii) above to Seller prior to the Purchase Option Exercise Deadline, Buyer will be deemed to have elected to proceed under option (i) above.

2.8 Tentative Purchase Price; Exercise Notice.

(a) The Tentative Purchase Price shall be determined in accordance with *Exhibit 2.8* following the later to occur of (i) the delivery of the Seller Disclosure Schedules, and (ii) the Schedule Delivery Date.

(b) After the Disclosure Schedules have been delivered and the Tentative Purchase Price has been determined pursuant to Section 2.8(a), and prior to the Purchase Option Exercise Deadline, Buyer shall elect, in its sole discretion to (i) withdraw its exercise of the Land Purchase Option with respect to the applicable Purchase Option Opportunity by delivering notice thereof to Seller, or (ii) continue with the exercise of the Land Purchase Option by delivering notice to Seller thereof (the "*Purchase Option Exercise Notice*"). The delivery of a Purchase Option Exercise Notice by Buyer shall constitute a binding and irrevocable commitment by Buyer to purchase, and shall create a binding obligation of Seller to sell, the Real Property as specified herein (subject to the satisfaction or waiver of each of the conditions to Closing set forth in Article VII and Article VIII) by the applicable Closing Date.

(c) If Buyer (i) withdraws its exercise of the Land Purchase Option pursuant to Section 2.8(b)(i) or (ii) fails to timely deliver either a Purchase Option Tentative Exercise Notice or Purchase Option Exercise Notice with respect to any Purchase Option Opportunity within the deadlines therefor under Sections 2.7 or 2.8, respectively, then Buyer's right to exercise the Land Purchase Option with respect to such Purchase Option Opportunity shall expire and shall no longer be effective (but such expiration shall not affect Buyer's right to exercise any Land Purchase Option with respect to any future Purchase Option Opportunity).

2.9 Memorandum of Option. Promptly after Seller has acquired a fee interest in the Real Property, the Parties shall execute and acknowledge a memorandum of option in form and substance acceptable to Buyer, and Seller shall record such memorandum in the Official Records of Kern County, California. Seller shall be responsible for payment of all fees and Taxes associated with such recording.

2.10 Deed of Trust. Concurrently with the closing on the acquisition of the Real Property by Seller, the Parties shall execute and record a deed of trust pursuant to which Seller shall grant a security interest in the Real Property to Buyer to secure any damages incurred by Buyer as a result of a Seller Default, in form and substance reasonably acceptable to Buyer; it being expressly acknowledged and agreed that any such deed of trust shall be subordinate to any mortgage or deed of trust of any Land Lender, and Buyer shall execute a subordination and nondisturbance agreement reasonably satisfactory to Land Lender evidencing such subordination. Buyer shall be responsible for payment of all fees and Taxes associated with such recording. In the event the same is requested by any Facility Lender (as defined in the PPA) at any time, Buyer shall execute and deliver a customary nondisturbance agreement in form and substance satisfactory to Buyer to the Project Seller and the Facility Lender, pursuant to which Buyer, on behalf of itself and its successors and assigns, shall agree: (a) not to disturb Project Seller's interest in, or possession under, the Land Lease in connection with Buyer's exercise of any rights or remedies that may be available to Buyer under the deed of trust granted to Buyer pursuant to this Section 2.10, (b) that the interests of Project Seller and Facility Lender in and under the Land Lease will not by operation of law or otherwise be terminated or disturbed, except in accordance with the terms of the Land Lease, (c) that Buyer will provide concurrent notice of any default under the Agreement to Facility Lender and permit Facility Lender to cure any such default and (d) that Buyer will become landlord under, and will be bound by terms and conditions of, the Land Lease if Buyer acquires the Real Property by virtue of exercise of its rights or remedies under the deed of trust granted to Buyer pursuant to this Section 2.10; provided, that in no event shall Buyer, upon any deemed assumption of the Land Lease obligations of the landlord, be liable for any unperformed obligation of landlord or any damages caused by landlord. The General Manager of Buyer is authorized to negotiate and execute the nondisturbance agreement.

2.11 Closing. In the event Buyer delivers a Purchase Option Exercise Notice, the closing of the purchase and sale of the Real Property (the "Closing") shall occur at 11:59 p.m. PST on the Closing Date (subject to the satisfaction or waiver of each of the conditions to Closing set forth in Article VII and Article VIII). The Closing shall be held at the offices of the Title Company by delivery of all closing documents into escrow. All events at the Closing shall be deemed to occur simultaneously, unless otherwise provided herein. In the event the Closing has not occurred by the designated Closing Date in respect of a Purchase Option Opportunity because of the failure of any of the conditions to Closing set forth in Article VII or Article VIII to be satisfied by such designated Closing Date, then Buyer (in the case of the conditions set forth in Article VII) or Seller (in the case of the conditions set forth in Article VIII), upon notice to the other Party and without liability, may terminate the Land Purchase Option with respect to such Purchase Option Opportunity, and such Purchase Option Opportunity shall expire and shall no longer be effective (but such termination shall not effect Buyer's right to exercise any Land Purchase Option with respect to any future Purchase Option Opportunity); provided that a Party cannot terminate any Land Purchase Option with respect to a Purchase Option Opportunity if the

failure of the Closing to occur is the result of the failure on the part of such Party to perform its obligations under this Agreement.

2.12 EXCLUSIVE WARRANTIES. OTHER THAN THE REPRESENTATIONS AND WARRANTIES EXPLICITLY SET FORTH IN THIS AGREEMENT OR ANY OPERATIVE DOCUMENT, NO REPRESENTATIONS OR WARRANTIES SHALL BE GIVEN OR DEEMED GIVEN AS TO THE REAL PROPERTY IN CONNECTION WITH SELLER'S SALE OF THE REAL PROPERTY FOLLOWING THE EXERCISE OF THE LAND PURCHASE OPTION.

2.13 Assumed Liabilities. At the Closing, Buyer shall assume, and agree to pay for, perform, fulfill and discharge from and after the Closing, all liabilities and obligations relating to the Real Property or the Assumed Contracts arising or occurring after the Closing Date other than the Excluded Liabilities (collectively, the "*Assumed Liabilities*").

2.14 Excluded Liabilities. Anything in this Agreement to the contrary notwithstanding, Buyer shall not assume, and shall not be deemed to have assumed, and shall have no liability with respect to (whether asserted before or after the Closing and regardless of whether the same or the basis therefor may have been disclosed to Buyer by Seller or otherwise be known to Buyer), any of the following liabilities or obligations of Seller (all such unassumed liabilities and obligations referred to in this Agreement as the "*Excluded Liabilities*"):

(a) Any liability or obligation of Seller in respect of Taxes attributable to the Real Property for taxable periods ending on or prior to the Closing, including any supplemental tax liability related to activity or state of facts at the Real Property conducted on or before the Closing that arises after the Closing, except that Buyer will be obligated to pay its prorated portion of current property taxes as provided below and all property taxes related to any periods beginning after the Closing;

(b) Any liability or obligation of Seller relating to the Real Property, including arising out of Seller's ownership and operation of the Real Property, arising or occurring prior to the Closing;

(c) Any liability or obligation of Seller arising out of Seller's ownership and operation of any assets other than the Real Property at any time;

(d) Any liability or obligation of Seller arising from a breach by Seller, or any event, circumstance or condition occurring or existing prior to the Closing that, with notice or lapse of time, constitutes or results in a breach by Seller under this Agreement, or any of the Operative Documents;

(e) Any liability or obligation of Seller under any Contract (including with respect to any contractors or subcontractors thereunder) other than an Assumed Contract or a permit other than a Transferred Permit;

(f) Any liability or obligation under any Assumed Contract or a Transferred Permit to the extent such liability or obligation arises from or relates to any breach by

Seller of any provision of any of such Assumed Contracts or Transferred Permits prior to the Closing;

(g) Any liability or obligation under any Contract entered into during the Applicable Diligence Period and not assumed by Buyer pursuant to Section 5.11;

(h) Any liability or obligation of Seller with respect to the employment or termination of any employee or group of employees by Seller, or the terms thereof, whether union or nonunion, whether the liability or obligation calls for performance or observance before or after the Closing and whether the liability or obligation arises from a collective bargaining agreement, pension trust fund plan, or other agreement or arrangement to which Seller is a party or by which Seller is bound (whether oral or written and whether express or implied in fact or in law) or any past practice or custom or otherwise, it being understood and agreed that, after the Closing, Buyer will itself be specifying the terms on which it offers employment to any individual to whom it, in its sole discretion, chooses to offer employment and will not be bound by any term of employment in effect at or at any time prior to the Closing;

(i) Any liability or obligation of Seller for pension fund payments or unfunded pension fund liabilities;

(j) Any liability or obligation arising from or associated with any of the Excluded Assets;

(k) Any liability or obligation of Seller or its Affiliates arising out of or related to any claim or loss against Seller or its Affiliates or any third-party claims or losses which adversely affects the Real Property and which shall have been asserted prior to the Closing or to the extent the basis of which shall have arisen exclusively prior to the Closing;

(l) Any liability or obligation of Seller or its Affiliates to a third party arising from any indemnification claim, injury to or death of any person or damage to or destruction of any property (and including workers' compensation claims, discrimination, wrongful discharge, or unfair labor practice), whether based on negligence, breach of warranty, strict liability, enterprise liability or any other legal or equitable theory arising from actions by, for or on behalf of Seller or its Affiliates arising prior to the Closing; and

(m) Any liability or obligation of Seller or its Affiliates representing Land Debt incurred by Seller or its Affiliates or Liens or encumbrances other than Closing Permitted Encumbrances.

Seller agrees to pay or otherwise discharge, or cause the payment or discharge, of all Excluded Liabilities, prior to the Closing, and shall provide Buyer with evidence thereof that is reasonably satisfactory to Buyer.

2.15 Schedule Updating; Final Purchase Price.

(a) No later than the date that is thirty (30) days prior to the designated Closing Date (the "Updated Schedule Delivery Date"), Seller shall have provided Buyer with updated Seller Disclosure Schedules, and such Seller Disclosure Schedules shall be used as the final Seller Disclosure Schedules for purposes of its representations and warranties made under Article III as of the Closing; provided, however, that if after the Updated Schedule Delivery Date, an event or circumstance occurs or exists that requires additional updates to the Seller Disclosure Schedules, Seller shall deliver such updates to Buyer as soon as practicable, and Buyer may, at its option, extend the Closing Date on a day-for-day basis for the period of time between the Updated Schedule Delivery Date and the date on which such updates were delivered to Buyer. Notwithstanding the foregoing, any update included in an updated Seller Disclosure Schedule delivered pursuant to this Section 2.15(a) shall have no effect for the purposes of determining the satisfaction of any condition to Closing set forth in Article VII and shall not alter or affect Buyer's right to terminate the Land Purchase Option with respect to the applicable Purchase Option Opportunity pursuant to Section 2.11; provided, however, that if a Closing occurs, then Buyer shall be deemed to have waived its right to indemnification under Section 12.1(a) with respect to any matter disclosed in any update.

(b) At the Closing, upon the terms and subject to the conditions set forth herein, Buyer shall, in exchange for the sale, transfer, assignment, conveyance and delivery of the Real Property by Seller, and the assumption by Buyer of the Assumed Liabilities in accordance with this Agreement, pay Seller the Final Purchase Price determined in accordance with Exhibit 2.8. Such Final Purchase Price shall be paid by Buyer by wire transfer of immediately available funds to an account designated by Seller.

2.16 Proration. Without limiting Buyer's obligation to pay its portion of the Transfer Taxes under Section 2.17, Buyer and Seller agree that any items normally prorated, including those listed below, relating to the Real Property, the Assumed Contracts, or the Assumed Liabilities, shall be prorated as of the Closing, with Seller being liable therefor to the extent such items relate to periods on or prior to the Closing Date, and Buyer being liable to the extent such items relate to periods after the Closing with, to the extent practicable, a cash settlement on the Closing:

(a) personal property and real estate Taxes, assessments and other charges, if any, by the applicable municipality, on the basis of the applicable municipality's fiscal year, on or with respect to the Real Property, the Assumed Contracts, or the Assumed Liabilities;

(b) rent, Taxes and other items payable by or to Seller under any of the Assumed Contracts assigned to and assumed by Buyer hereunder which are associated with the Real Property;

(c) any Permit, registration, compliance, assurance fees or other fees with respect to any Transferred Permit comprising part of the Real Property; and

(d) sewer rents and charges for water, telephone, electricity and other utilities.

In connection with the proration referred to in this Section 2.16, in the event that actual amounts for such items are not available on the Closing Date, the proration shall be based upon the actual Taxes or fees for the preceding year (or appropriate period) for which actual Taxes or fees are available and such Taxes or fees shall be re-prorated upon the request of Seller, on the one hand, or Buyer, on the other hand, within sixty (60) days of the date that the actual amounts become available. Seller and Buyer agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 2.16.

2.17 Closing Costs: Transfer Taxes and Fees. Each Party shall be solely liable for and shall pay (i) all recording, documentary and transfer Taxes and any sales, use or other Taxes imposed on such Party by reason of the transfer of the Real Property, as provided hereunder (excluding Taxes imposed on or measured by the net income or profits of Seller), and any deficiency, interest or penalty asserted with respect thereto, under applicable Laws ("*Transfer Taxes*") and (ii) except as set forth in Section 2.6 and Section 2.16 all transaction costs incurred by it in connection with the exercise of the Land Purchase Option and the Closing (including, but not limited to, the costs and expenses of its outside legal counsel and advisors) except for closing and escrow fees charged by the Title Company, which shall be shared equally by the Parties. Each Party shall provide the other Party with evidence satisfactory to such Party that such Transfer Taxes have been paid by such Party. The Parties acknowledge that a Party's obligation to collect Taxes from the other Party to whom such Taxes are imposed shall not constitute an imposition of such Taxes on such first Party.

2.18 Closing Obligations. At the Closing: (a) Seller will deliver (or will have delivered) to Buyer each of the certificates, instruments, documents and agreements referred to in Article VII to be provided by Seller on or prior to the Closing, and (b) Buyer will deliver (or will have delivered) to Seller (i) the Final Purchase Price, and (ii) each of the certificates, instruments, documents and agreements referred to in Article VIII to be provided by Buyer on or prior to the Closing.

2.19 Bulk Sales Law. Unless waived by Buyer, Seller shall, prior to the Closing, comply with the requirements of sellers under any applicable bulk sales law.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Upon the exercise of the Land Purchase Option, and with the understanding that, following the Schedule Delivery Date, Seller shall have the right, until it delivers final Seller Disclosure Schedules as provided in Section 2.15(a), to update any information contained in the Seller Disclosure Schedules if the occurrence of events or the discovery of new information makes the revision of such Seller Disclosure Schedules necessary or desirable (subject to a Purchase Price adjustment as set forth in *Exhibit 2.8* and the limitations on the effect of such updates set forth in Section 2.15), Seller represents and warrants to Buyer as follows, as of the Schedule Delivery Date, the Closing Date, and, with respect to Section 3.1 and Section 3.2, the Effective Date:

3.1 Organization and Good Standing. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of its state of organization and is qualified to do business in the State of California, and has the legal power and authority to own or to hold its interests in properties, to carry on its business as now being conducted and to enter into and perform its obligations under this Agreement and each of the Operative Documents to which Seller is a party.

3.2 Authority: Absence of Conflict or Breach. The sale of the Real Property and the execution, delivery and performance by Seller of this Agreement and each of the Operative Documents to be executed and delivered by Seller in connection with such sale have been duly authorized by all necessary limited liability company action on the part of Seller and the owners of any interest in Seller and do not require any consent or approval other than those which have already been obtained or otherwise as disclosed in the Seller Disclosure Schedules. This Agreement and each of the Operative Documents to which Seller is a party constitutes the legal, valid and binding obligation of Seller, 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. The execution and delivery of this Agreement and each of the Operative Documents to which Seller is a party, the consummation of the sale of the Real Property and the fulfillment of and compliance with the provisions of this Agreement and the Operative Documents to which Seller is a party do not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirements 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).

3.3 Real Property Matters.

(a) *Schedule 3.3(a)* contains a true, correct and complete list of any Contracts, including the Land Documents and the Land Lease, that provide Seller with any rights in or to real property ("*Real Property Contracts*"), including rights in the nature of leases, easements, licenses, rights of way, franchise agreements, restrictive covenants, purchase agreements, agreements to relinquish or limit surface access rights with regards to minerals, options to purchase or lease, or applications for or bids to Governmental Authorities with respect to, any of the foregoing interests in real property (collectively, "*Real Property Interests*"), as well as leases (including farm and grazing leases) and other agreements in the possession of Seller, or of which Seller has Knowledge, that grant or purport to grant, or reserve or purport to reserve, to third parties, interests in or to the land which is subject to Real Property Interests, including grants of mineral and any other surface or access rights to third parties ("*Third Party Property Interests*"). True, correct and complete copies of the Real Property Contracts have been delivered to Buyer. Seller holds no Real Property Interests other than those that are set forth in such Real Property Contracts. Except as set forth in *Schedule 3.3*, to Seller's Knowledge, no counterparty thereto is in default in any material respect of any material obligation with respect to the

Real Property Contracts. Except as set forth in *Schedule 3.3*, each of the Real Property Interests granted by a Real Property Contract provides legal, valid, and enforceable rights in favor of Seller to the extent set forth therein and to Seller's Knowledge constitutes a legal, valid and binding obligation of the other parties thereto. True, correct and complete copies of all title reports, surveys, mineral reports for any severed minerals (including any evaluation as to feasibility or likelihood of mineral extraction and any separate chain of title for severed minerals), material records searches (for any governmental records not included in any title reports) and exception documents referenced in such reports, policies, or searches have been delivered to Buyer.

(b) Except as set forth in *Schedule 3.3(b)*, Seller has not received any written notice of any appropriation, condemnation or like proceeding, or of any material violation of any applicable zoning or land use law, regulation or rule or other law, order, regulation, rule or requirement relating to or affecting any of the Real Property Interests.

(c) Except as set forth in *Schedule 3.3(c)*, Seller has not previously severed any mining, mineral or water rights from any of the Real Property Interests and has disclosed to Buyer any material information in its possession regarding any severed mining, mineral or water rights affecting any of the Real Property Interests.

(d) Other than with respect to the Real Property Contracts or Permits and except as set forth in *Schedule 3.3(d)*, Seller has not received any written notice that any agreements with any Governmental Authority or public or private utility affect the Real Property Interests.

3.4 Consents. Except as set forth in *Schedule 3.4*, other than those that have been obtained or filed, no Consent of, or registration, qualification or filing with any Person, including any Governmental Authority, is required for the sale of the Real Property or the execution and delivery by Seller of this Agreement or any of the Operative Documents to which it is a party or in order for Seller to perform its obligations hereunder or thereunder.

3.5 Assets of the Business. Except as set forth in *Schedule 3.5*, the Real Property constitutes all of the assets, properties, rights, privileges, claims and Contracts of every kind and nature, real or personal, tangible or intangible, absolute or contingent, wherever located, owned or used (including those necessary to access and utilize any common use facilities) comprising the Real Property as owned and operated by Seller prior to the Closing.

3.6 Title. Immediately prior to the Closing, Seller has good and marketable fee title to the Real Property, free and clear of all Liens, except for the Purchase Option Permitted Encumbrances. To Seller's Knowledge, upon the Closing, Buyer will acquire good and marketable fee title to the Real Property free and clear of all Liens, except for Closing Permitted Encumbrances.

3.7 Environmental. Except as set forth in *Schedule 3.7*:

(a) There are no pending, outstanding, or, to Seller's Knowledge, threatened Agency Actions concerning the Real Property with respect to Environmental Laws applicable to Seller, the Real Property, and Seller's ownership, operation and use of the

Real Property. Seller is, and at all times has been, and has owned and operated (or its designee has operated) the Real Property, in compliance with all applicable Environmental Laws. There are no writs, injunctions, decrees, orders or judgments outstanding or pending, or to Seller's Knowledge any notices, actions, suits, or Proceedings threatened involving Seller relating to (i) its compliance with any Environmental Laws with respect to any of the Real Property or any other asset owned or used by Seller or in which it has or had an interest in connection with the Real Property, or (ii) the Release of any Hazardous Substances at the Real Property.

(b) All Permits required by Environmental Laws and necessary for the operation of the Real Property as currently configured and as operated by Seller have been obtained, are currently in full force and effect and are transferrable to Buyer without the requirement of any third party consent; Seller's operations at the Real Property are in compliance in all material respects with all the requirements of such Permits; and, to Seller's Knowledge, Seller is not subject to any pending notice of violation from any Governmental Authority or from any other Person alleging that Seller has committed any act, or failed to act, in any manner or under any circumstance that would preclude continued operation of the Real Property under any of these Permits.

(c) Seller has delivered to Buyer all written reports, written notices or written inquiries from any Governmental Authority that are in Seller's possession relating to the Environmental Conditions at, upon or beneath the Real Property regardless of whether such Environmental Conditions were caused by or arose from Seller's operation of the Real Property, except to the extent (i) such reports, notices or inquiries constitute communications from Seller's counsel to Seller that are subject to attorney-client privilege or (ii) the provision of such reports, notices or inquiries would conflict with any confidentiality obligations to which Seller is bound.

(d) To Seller's Knowledge, (i) each of the Real Property and Seller is in compliance with all Environmental Laws and (ii) there are no circumstances, conditions or proposed regulations that could reasonably be expected to prevent or substantially interfere with Buyer's compliance with Environmental Laws in connection with Buyer's operation or use of the Real Property in the foreseeable future in a manner consistent with Seller's operation or use of the Real Property during the term of the PPA.

(e) To Seller's Knowledge, there are currently no circumstances or conditions existing on the Real Property that could reasonably be expected to prevent or substantially adversely interfere with Seller's compliance with Environmental Laws in connection with Seller's current operation and use of the Real Property.

(f) Seller has not, and to Seller's Knowledge, no third party has, generated, used, treated or stored on, or transported to or from any of the Real Property any Hazardous Substances in violation of Environmental Laws.

(g) There is no asbestos contained in or forming any part of any building, building component, structure or other asset that is part of the Facility Assets, and no asbestos has been stored, disposed of, or otherwise been present at the Real Property, and

Seller does not have any liability for asbestos in connection with the use, operation, or renovation of the Real Property.

(h) There has been no Release or threatened Release of Hazardous Substances by Seller or any party under the reasonable control of Seller, and, to Seller's Knowledge, there has been no Release or threatened Release of Hazardous Substances by any other party at, on, under or from any of the Real Property or at, on, under or from any property adjoining part of the Real Property, other than in compliance with applicable Environmental Laws or as has previously been remediated in accordance with applicable Environmental Laws.

(i) In connection with its ownership and operation of the Real Property, Seller has disposed of all wastes, including those containing any Hazardous Substances, in compliance with all applicable Environmental Laws, and Seller has not received any notice or demand letter from any Person claiming Seller may be liable for any on- or off-site Release or threatened Release of Hazardous Substances.

(j) There are not now and, to Seller's Knowledge, never have been, any aboveground or underground storage tanks or PCB-containing transformers or equipment located at the Real Property.

(k) Seller has provided Buyer with all written reports, surveys, studies, correspondence, investigations, tests and environmental sampling and analyses (whether commissioned by Seller or otherwise) that are in Seller's possession concerning the wildlife, cultural resources, natural resources and the environmental condition of the Real Property, Hazardous Substances in, on and under the Real Property, or Seller's compliance with applicable Environmental Laws in the operation or use of the Real Property, except to the extent (i) such documents constitute communications from Seller's counsel to Seller that are subject to attorney-client privilege or (ii) the provision of such documents would conflict with any confidentiality obligations to which Seller is bound.

(l) Seller has not received any written request for information nor any written notification that it is a potentially responsible party under CERCLA or any similar state Environmental Law, including any such request or notification relating directly or indirectly to the Real Property, and none of the Real Property is proposed to be listed or is listed on the National Priorities List under CERCLA or any similar state Environmental Law requiring environmental investigation or cleanup.

3.8 No Undisclosed Liabilities. Seller has no material liabilities (absolute, accrued, contingent or otherwise) in excess of Fifty Thousand Dollars (\$50,000.00) in the aggregate, except for (a) those set forth in *Schedule 3.5*, *Schedule 3.7*, *Schedule 3.8*, *Schedule 3.9*, *Schedule 3.10*, or *Schedule 3.11*, (b) those otherwise disclosed to Buyer or explicitly set forth in any of the Assumed Contracts or Transferred Permits, or (c) those constituting Excluded Liabilities.

3.9 Taxes. Any Liens for Taxes are set forth in *Schedule 3.9*.

(a) There are no Liens for Taxes on the Real Property, except for (i) as of the Schedule Delivery Date, Purchase Option Permitted Encumbrances, and (ii) as of the Closing Date, Closing Permitted Encumbrances.

(b) Intentionally omitted.

(c) Seller has filed or caused to be filed with the appropriate Governmental Authorities all Tax Returns and reports relating to Seller required to be filed as of the Closing Date, all such Tax Returns were correct and complete in all respects and all Taxes of Seller due and payable have been paid whether or not shown to be due on such Tax Returns and reports.

(d) Seller has not received any notice from any Governmental Authority of, and has no other Knowledge of, any outstanding claims or assessments with respect to any Tax relating to the Real Property and, to Seller's Knowledge, no such claim is pending or is presently being asserted against the Seller or with respect to the Real Property.

(e) Seller has no Knowledge of any proposed tax assessment against the Real Property that is not being actively contested by it in good faith and by appropriate proceedings.

(f) Seller has timely paid all Taxes shown to be due on such Tax Returns, all Tax assessments received, and all Taxes that have or may become due under applicable Law with respect to all periods or portions thereof ending on or prior to the Closing Date.

(g) Seller is not a party to any pending Tax audit, investigation, action or Proceeding with any Governmental Authority, and, to Seller's Knowledge, there is no threatened audit, investigation, action or Proceeding by any Governmental Authority with respect to the Real Property. Seller has not received notice of any claim by any Governmental Authority in any jurisdiction where it does not file Tax Returns or pay Taxes that it is or may be subject to Tax by that jurisdiction.

(h) Seller has timely withheld and timely paid all Taxes that are required to have been withheld and paid by it in connection with amounts paid or owing to any employee, independent contractor, creditor or other Person.

3.10 Compliance With Laws. Except as set forth in *Schedule 3.10*, (a) Seller is in compliance with all Laws applicable to the Real Property and operation and use of thereof and (b) there are no condemnations or similar proceedings applicable to the Real Property.

3.11 Litigation. Except as set forth in *Schedule 3.11*:

(a) There are no Proceedings pending or, to Seller's Knowledge, threatened against Seller which could reasonably be expected to result, or have resulted in (i) the institution of legal proceedings to prohibit or restrain the operation or use of the Real Property or any portion thereof, or the consummation of the transactions contemplated

hereby, or (ii) a claim for damages for which Buyer could be liable or that could place any Lien on the Real Property;

(b) There are no existing Orders, writs, injunctions, judgments or decrees of any court, arbitrator, tribunal or other Governmental Authority issued against Seller which could reasonably be expected to result, or have resulted in (i) the institution of legal proceedings to prohibit or restrain the operation or use of the Real Property or any portion thereof, or the consummation of the transactions contemplated hereby, or (ii) a claim for damages for which Buyer could be liable or that could place any Lien on the Real Property.

3.12 Assumed Contracts. Seller has delivered or made available to Buyer true and complete copies of all Contracts. Except as set forth in *Schedule 3.12*, all Assumed Contracts are in full force and effect, and neither Seller, nor any other party thereto, is in default under or in breach of any of them, nor does any event or condition exist that after notice or lapse of time or both could constitute a default thereunder or breach thereof on the part of Seller or any other party thereto (except for defaults, events of default and other events as to which requisite waivers have been, or prior to the Closing will have been, obtained). No approval, consent, or waiver of or by any Person that has not already been obtained is needed in order that the Assumed Contracts continue in full force and effect following the consummation of the transactions contemplated by this Agreement, and no Assumed Contract includes any provision, the effect of which may be to terminate (or give rise to a right of termination under) such Assumed Contract, to give rise to, enlarge, or accelerate any obligations of Seller thereunder, or to give additional rights to any other Person, upon or by reason of the consummation of the transactions contemplated by this Agreement.

3.13 Intellectual Property.

(a) Except as set forth in *Schedule 3.13*, Seller is the licensee of, or has such rights under the patents, patent applications, inventions, improvements, computer programs, computer applications, operating programs, other programs and software, including system documentation and instructions, engineering, construction and other drawings (other than drawings not needed for the operation, maintenance or repair of the Real Property), designs, technology, know-how, trade secrets, trademarks, trademark applications, trade names, copyrights and other proprietary rights and proprietary information (to the extent any of the foregoing are necessary to operate and maintain the Real Property in substantially the same manner as it has been operated or maintained during the Operations Period, collectively, the "*Intellectual Property Assets*"). Except as set forth in *Schedule 3.13*, Seller has not received notice that any of the Intellectual Property Assets infringes on or conflicts with the intellectual property of others. Seller has the right to use the Intellectual Property Assets in connection with its ongoing operation and maintenance of the Real Property.

(b) Except as set forth in *Schedule 3.13*, there have been no claims, and, to Seller's Knowledge, there is no basis for any claim, challenging the scope, validity or enforceability of any of the Intellectual Property Assets. Except as set forth in *Schedule 3.13*, there are no instances where it has been held, or to Seller's Knowledge,

claimed or alleged, whether directly or indirectly, and, to Seller's Knowledge, there is no basis upon which a claim may be made, that any activity of Seller relating to the operation or maintenance of the Real Property, infringes or may infringe upon, is in violation of, or misappropriates, any rights of a third party.

(c) *Schedule 3.13* lists all of the Intellectual Property Assets, including the software used in connection with the operation or use of the Real Property as of the Schedule Delivery Date, including control room operating system software, all of which shall, except as set forth in *Schedule 3.13*, remain available at the Real Property for use by Buyer.

3.14 Brokers or Finders. Neither Seller nor any of its officers, directors, employees, shareholders or Affiliates has employed or made any agreement with any broker, finder or similar agent or any Person which will result in the obligation of Buyer or any of its Affiliates to pay any finder's fee, brokerage fees or commission or similar payment in connection with the transactions contemplated hereby.

3.15 Permits. Except as set forth in *Schedule 3.15*, all non-environmental Permits currently required by Law and necessary for the operation or use of the Real Property as operated and used by Seller have been obtained, are currently in effect, are final and non-appealable, and are transferrable to Buyer without the requirement of any third-party Consent. Seller's operations at the Real Property and use thereof are in compliance with all the requirements of such Permits, and, as of Closing, Seller is not in possession of, and, to Seller's Knowledge, there is no reasonable basis for the issuance of, any written notice of violation or other notification from any Governmental Authority or from any other Person alleging that Seller has committed any act, or failed to act, in any manner or under any circumstance that could preclude continued operation and use of the Real Property by Buyer under any of these Permits. Seller has made available to Buyer complete and correct copies of each such Permit, together with all amendments thereto. No suspension, cancellation or termination of any such Permit is threatened or imminent. Notwithstanding anything to the contrary contained in this Section 3.15 or elsewhere in this Agreement, Seller has not made any representation or warranty to Buyer, and Buyer acknowledges that it is not acting in reliance on any such purported representation or warranty, that the Real Property is fit for use as a solar project or any other use by Project Seller or any other person or entity which may use or occupy the Real Property at any time.

3.16 Investment Company Act. Seller is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act.

3.17 Employees and Employee Benefit Plans. Except as set forth in *Schedule 3.17*, Seller does not have and has never had any employees, and Seller does not maintain or contribute to, and has not ever maintained or contributed to, any pension, profit-sharing, deferred compensation, bonus, stock, option, share, appreciation right, severance, group or individual health, dental, medical, life, insurance, survivor benefit or similar plan, policy or arrangement for the benefit of any director, officer, consultant or employee, whether active or terminated, of Seller.

3.18 No Shared Facilities. There are no shared facilities (including control rooms, interties, buildings, or rights of way) required for the use or operation of the Real Property, except for those that are required by Law and set forth in *Schedule 3.18*.

3.19 General Representation. Except as set forth on *Schedule 3.19*, no representation or warranty made by Seller, its agents and representatives in this Agreement or any of the Operative Documents or in any certificate or other agreement delivered by Seller to Buyer in connection with the transactions contemplated hereby or thereby contains any untrue statement of a material fact, or omits to state a material fact necessary in order to make the statements contained herein, in light of the circumstances in which they were made, not materially misleading. All material information contained in the Provided Materials is or will be materially consistent with the information which has been used by Seller in the management of the Real Property and also with what has been reported to Seller's management, equity holders and the Land Lender in connection with the Real Property.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows as of the Closing Date:

4.1 Organization. Buyer is a validly existing charter city of the State of California formed under the laws of 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 and perform its obligations under this Agreement and each of the Operative Documents to which Buyer is a party.

4.2 Authority; Binding Nature. The purchase of the Real Property and the execution, delivery and performance by Buyer of this Agreement and each of the Operative Documents executed and delivered by Buyer in connection with such purchase have been duly authorized by all necessary action, and do not require any consent or approval of Buyer's regulatory/governing bodies, other than that which has been obtained; provided that further authorizations from Buyer's Board of Commissioners and the Los Angeles City Council will be required for Buyer to exercise the Land Purchase Option. This Agreement and each of the Operative Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law. The execution and delivery of this Agreement and each of the Operative Documents to which Buyer is a party, the consummation of the purchase of the Real Property and the fulfillment of and compliance with the provisions of this Agreement and each of the Operative Documents to which Buyer is a party do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirements 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 Buyer 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, in each case, which breaches or defaults,

individually or in the aggregate, could reasonably be expected to result in a material adverse effect on the ability of Buyer to perform any of its obligations under this Agreement.

4.3 Consents. Except as set forth in *Schedule 4.3*, other than those that have been obtained or filed, no Consent of, or registration, qualification or filing with any Person, including any Governmental Authority, is required for the purchase of the Real Property or the execution and delivery by Buyer of any of the Operative Documents to which it is a party or in order for Buyer to perform its obligations hereunder.

4.4 Brokers or Finders. Neither Buyer nor any of Buyer's officers, directors, or employees has employed or made any agreement with any broker, finder or similar agent or any Person which will result in the obligation of Seller or any of its Affiliates to pay any finder's fee, brokerage fees, or commission or similar payment in connection with the transactions contemplated hereby.

4.5 Litigation. There are no Proceedings pending, or to Buyer's knowledge, threatened, against Buyer which could reasonably be expected to materially adversely affect its ability to perform its obligations with respect to the purchase of the Real Property pursuant to a Purchase Option Exercise Notice.

ARTICLE V COVENANTS OF SELLER PRIOR TO CLOSING DATE

5.1 Access to Materials. Prior to the Schedule Delivery Date, Seller will furnish to Buyer all information required to be furnished pursuant to Section 3.7(c). Between the Schedule Delivery Date and the Closing Date (or such earlier date upon which the applicable Purchase Option Opportunity has been declined, expired or is no longer in effect, or when the Agreement has terminated) (such period, the "*Applicable Diligence Period*"), upon reasonable advance notice, Seller will (a) afford Buyer and its Representatives (and the Qualified Appraiser) full and complete access during normal business hours to the Real Property and to Seller's personnel, Assumed Contracts, Transferred Permits, Books and Records, properties and other documents and data (provided that Buyer shall observe, and shall cause its Representatives to observe, all of Seller's security protocols), (b) furnish Buyer and Buyer's Representatives (and the Qualified Appraiser) with copies of all such Assumed Contracts, Transferred Permits, Books and Records, and other existing documents and data in Seller's possession or to which Seller has access with respect to the Real Property as Buyer or the Qualified Appraiser may reasonably request, and (c) furnish Buyer and its Representatives (and the Qualified Appraiser) with such additional financial, operating, and other data and information of or pertaining to the Real Property in Seller's possession or to which Seller has access as Buyer and its representatives (and the Qualified Appraiser) may reasonably request (all such Assumed Contracts, Transferred Permits, Books and Records, documents, data and information required to be furnished by Seller under this Section 5.1 shall hereinafter be referred to as "*Provided Materials*"). Buyer shall have the right to diligently review the Provided Materials. The Provided Materials may be redacted as necessary to allow for disclosure to Buyer and the Qualified Appraiser to the extent any Provided Materials are (i) subject to confidentiality, non-disclosure or similar agreements in favor of third parties whose consent to disclose cannot be obtained by the Closing, (ii) legally-privileged information of Seller, (iii) concerning any alleged dispute or pending litigation, investigation or

Proceeding involving Seller or its Affiliates that is protected by or subject to a court order or the attorney-client privilege, or (iv) restricted by an agreement entered into in connection with such dispute, litigation, investigation or Proceeding or an order entered by any court.

5.2 Investigations. During the Applicable Diligence Period, upon reasonable advance notice (but not less than twenty-four (24) hours), Seller shall afford Buyer and its Representatives (and the Qualified Appraiser), with reasonable access to the Real Property for the purpose of inspecting the same, to conduct any performance tests or physical inspections or otherwise (including to conduct a Phase I environmental site assessment), during normal business hours and in such manner so as not to materially disturb or interfere with the normal operations or use of the Real Property. While on the Real Property, Buyer shall cause its Representatives to comply with all of Seller's rules and regulations applicable to individuals at the Real Property. In the event Buyer is dissatisfied with the Real Property for any reason, Buyer may elect, in its sole discretion, to withdraw its exercise of the Land Purchase Option with respect to the applicable Purchase Option Opportunity by delivering notice thereof to Seller on or before delivery by Buyer to Seller of a Purchase Option Exercise Notice.

5.3 Facility Site Option.

(a) Seller shall (i) not encumber, terminate, cancel, sever or surrender, or permit or suffer the subordination, encumbrance, termination, cancellation, severance or surrender of, or modify, change, amend or assign the Facility Site Option in a way that could, individually or in the aggregate, have a material adverse effect on Buyer (including Buyer's ability to exercise the Land Purchase Option and take possession of the Real Property), the Real Property, or Seller's performance of its obligations under this Agreement, without the prior consent of Buyer, (ii) provide to Buyer copies of any proposed amendments or modifications to the Facility Site Option and obtain Buyer's approval (which approval shall not be unreasonably withheld, conditioned, or delayed) prior to execution and delivery of any such amendments or modifications by Seller, (iii) at all times keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by or on behalf of Seller from time to time pursuant to the Facility Site Option, and Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, could impair or tend to impair the rights of Seller under the Facility Site Option, or could be grounds for the seller thereunder to terminate the Facility Site Option, and (iv) give Buyer immediate notice of (a) any default or of any event which, with the giving of notice or passage of time, or both, would become a default under the Facility Site Option, or of the receipt by Seller of any notice from the seller thereunder, or (b) the commencement or threat of any action or proceeding or arbitration pertaining to the Facility Site Option (and Buyer, at its option may take any action (but shall not be obligated to take any action) from time to time deemed necessary or desirable by Buyer to prevent or cure, in whole or in part, any default by Seller under the Facility Site Option) and Seller shall deliver to Buyer, immediately upon service or delivery thereof on, to or by Seller, a copy of each petition, summons, complaint, notice of motion, order to show cause and other pleading or paper, however designated, which shall be served or delivered in connection with any such action, proceeding or arbitration.

(b) In the event that a petition under the Bankruptcy Code shall be filed by or against Seller, Seller absolutely, irrevocably, and unconditionally grants and assigns to Buyer the sole and exclusive right to designate and direct Seller's assumption and assignment, or rejection, of the Facility Site Option and the Land Lease pursuant to Section 365 of the Bankruptcy Code, and Seller agrees that any such election, if made by Seller or Seller's trustee without the prior consent of Buyer shall be void at inception and of no force or effect. Buyer shall have the right, but not the obligation, to instruct Seller or Seller's trustee as to such assumption and assignment or rejection of the Facility Site Option or the Land Lease, and Seller shall, or shall cause Seller's trustee to, comply with such instructions.

5.4 Seller's Purchase of Real Property. Seller shall deliver evidence of Seller's purchase of the Real Property under the Facility Site Option, promptly upon the purchase thereof, but in no event later than the Site Control Milestone Date specified in the PPA.

5.5 Seller's Assets. Seller represents and warrants to Buyer that, as of the Effective Date, the Facility Site Option is the only asset held by Seller. Until Seller exercises its option to purchase the Real Property under the Facility Site Option, the Facility Site Option will constitute all or substantially all of the assets of Seller.

5.6 Operation of the Business. During the Applicable Diligence Period, Seller will conduct its business with respect to the Real Property in all material respects in accordance with the ordinary course of business consistent with past practices and Prudent Utility Practices.

5.7 Required Approvals. As promptly as practicable following Buyer's delivery of a Purchase Option Exercise Notice until the end of the Applicable Diligence Period, Seller will make, and thereafter diligently pursue during the Applicable Diligence Period, all registrations, qualifications or filings to be identified in *Schedule 3.4* or necessary or appropriate to obtain all the Consents therein identified.

5.8 Notification. During the Applicable Diligence Period, Seller shall give prompt notice (each notice, a "*Breach Notice*") to Buyer of the occurrence or non-occurrence of any event, change, effect or development of any kind which would or might cause (a) any representation or warranty of Seller contained in any Operative Document or this Agreement to be untrue or incorrect in any material respect on the date such representation or warranty is to be made, (b) a Material Adverse Effect, or (c) a breach of any of Seller's covenants under this Agreement or any Operative Document. Each Breach Notice must include a detailed description of the event, change, effect, development or failure and a description of the action Seller has taken and proposes to take with respect thereto. The delivery of, or the failure to deliver, a Breach Notice will not be deemed to (i) modify any representation or warranty hereunder, (ii) modify any condition set forth in Article VII, or (iii) limit or otherwise affect the remedies available hereunder to Buyer.

5.9 Reasonable Efforts. Following Buyer's delivery of the Purchase Option Exercise Notice and until the end of the Applicable Diligence Period, Seller will, or will cause its Affiliates to, use all commercially reasonable efforts to satisfy the conditions in Article VII and Article VIII to be performed by Seller or such Affiliates.

5.10 Waivers of Claims. During the Applicable Diligence Period, Seller shall not cancel or compromise any debt or claim, or waive or release any material right relating to the Real Property and the Assumed Liabilities, other than such adjustments with respect to Persons involved with this transaction.

5.11 Additional Contracts. Any Contract entered into by Seller during the Applicable Diligence Period shall be an Excluded Liability unless Buyer agrees in writing to include such Contract as an Assumed Contract.

5.12 Liens; Changes in Zoning. During the Applicable Diligence Period, Seller shall not consent to, or cause, the placement of any Liens on the Real Property, or a rezoning of the Real Property, without Buyer's prior consent, such consent not to be unreasonably withheld, conditioned, or delayed.

ARTICLE VI COVENANTS OF BUYER PRIOR TO CLOSING DATE

6.1 Required Approvals. As promptly as practicable following Buyer's delivery of the Purchase Option Exercise Notice and until the end of the Applicable Diligence Period, Buyer will make, and thereafter during the Applicable Diligence Period pursue, all registrations, qualifications or filings identified in *Schedule 4.3* or necessary or appropriate to obtain any Consent therein identified, consistent with and based upon Seller's acknowledgement and agreement in Section 2.6, and Seller shall provide assistance to Buyer in connection therewith.

6.2 Reasonable Efforts. Following Buyer's delivery of the Purchase Option Exercise Notice until the end of the Applicable Diligence Period, Buyer will use reasonable efforts to cause the conditions in Article VII and Article VIII to be performed by Buyer, to be satisfied.

ARTICLE VII CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE

Buyer's obligation to purchase the Real Property and to take the other actions required to be taken by Buyer at the Closing Date is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer in its sole discretion, in whole or in part):

7.1 Accuracy of Representations. (a) All of Seller's representations and warranties in this Agreement and the other Operative Documents (considered collectively) shall be true and correct, (b) each of these representations and warranties (considered individually) that are qualified with respect to materiality shall be true and correct as so qualified, and (c) each of these representations and warranties that are not so qualified shall be true and correct in all material respects, in each case, as of the date when deemed made.

7.2 Seller's Performance. All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement or any of the other Operative Documents at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects.

7.3 Consents. Each of the Consents identified in *Schedule 3.4* and *Schedule 4.3* must have been obtained and must be in full force and effect.

7.4 Additional Seller Documents. Seller shall deliver each of the following documents to Buyer:

- (a) intentionally omitted;
- (b) a written certificate, in form and substance satisfactory to Buyer, executed and delivered by Seller by its authorized officer, certifying that each of the conditions specified in Sections 7.1, 7.2, and 7.3 have been satisfied;
- (c) Intentionally omitted;
- (d) a grant deed with special warranty covenants (the "*Deed*") in a form reasonably acceptable to Buyer and executed by Seller, conveying fee title to the Real Property to Buyer, subject only to the Closing Permitted Encumbrances;
- (e) agreements and related documentation in a form reasonably acceptable to Buyer effective to transfer to Buyer the Transferred Permits, the Assumed Contracts and the Real Property Contracts (the "*Asset Assignment Documents*"), executed by Seller by its authorized officer;
- (f) an irrevocable commitment by the Title Company to issue the Title Policy, subject only to those exceptions that are Closing Permitted Encumbrances;
- (g) Intentionally omitted;
- (h) duly executed pay-off letters for the release or termination of all Liens securing Land Debt that acknowledge repayment in full of such Land Debt (unless Buyer otherwise agrees in writing that any such Liens shall not be released or terminated); and
- (i) such other customary documents as Buyer may reasonably request for the purpose of (i) evidencing the accuracy of any of Seller's representations and warranties, (ii) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller, including under Section 2.6, or (iii) evidencing the satisfaction of any condition referred to in this Article VII; and such other customary documents as the Title Company may require in order to issue the Title Policy to Buyer.

7.5 Litigation. No Proceeding shall have been instituted or any other action taken or Law or Environmental Law enacted, promulgated or deemed applicable by any Governmental Authority or by any other Person and, at what would otherwise have been the Closing Date, remain pending, to delay, restrain or prohibit any part of the transactions contemplated by this Agreement or to seek any divestiture or to revoke or suspend any Permit by reason of any or all of the transactions contemplated by this Agreement; nor shall any Governmental Authority have notified either Party or any of their respective Affiliates that consummation of any part of the transactions contemplated by this Agreement would constitute a violation of the Laws or

Environmental Laws of any jurisdiction or that it intends to commence a Proceeding to restrain or prohibit any part of the transactions contemplated by this Agreement or to require such divestiture, revocation or suspension; unless, in any such case, such Governmental Authority or other Person shall have withdrawn such notice and abandoned such Proceeding, action, Law or Environmental Law to the satisfaction of Buyer.

7.6 Liens. Title to the Real Property shall be free and clear at the Closing of all Liens other than Closing Permitted Encumbrances.

7.7 No Material Adverse Effect. During the Applicable Diligence Period, no action shall have been taken or omitted and no event shall have occurred or be threatened which has had or could reasonably be expected to result in a Material Adverse Effect.

7.8 Final Purchase Price. All adjustments to the Tentative Purchase Price required under Section 3 of *Exhibit 2.8* shall have been made, including any adjustments required as a result of updates to the Seller Disclosure Schedules delivered by Seller pursuant to Section 2.15(a).

ARTICLE VIII CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE

Seller's obligation to sell the Real Property and to take the other actions required to be taken by Seller at the Closing Date is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller in its sole discretion, in whole or in part):

8.1 Accuracy of Representations. (a) All of Buyer's representations and warranties in this Agreement (considered collectively), (b) each of these representations and warranties (considered individually) that are qualified with respect to materiality shall be true and correct as so qualified, and (c) each of these representations and warranties that are not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the date when deemed made.

8.2 Buyer's Performance.

(a) All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement or any of the other Operative Documents at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been performed and complied with in all material respects.

(b) Buyer must have paid the Final Purchase Price to Seller.

8.3 Consents. Each of the Consents identified in *Schedule 3.4* and *Schedule 4.3* must have been obtained and must be in full force and effect.

8.4 Asset Assignment Documents. Buyer shall deliver to Seller all Asset Assignment Documents executed by Buyer by its authorized Representative and such other documents as may be required by the Title Company for the Title Company to issue the Title Policy.

8.5 Litigation. No Proceeding shall have been instituted or any other action taken or Law or Environmental Law enacted, promulgated or deemed applicable by any Governmental Authority or by any other Person and, at what would otherwise have been the Closing Date, remain pending to delay, restrain or prohibit any material part of the transactions contemplated by this Agreement; nor shall any Governmental Authority have notified either Party or any of their respective Affiliates that consummation of any part of the transactions contemplated by this Agreement would constitute a violation of the Laws or Environmental Laws of any jurisdiction or that it intends to commence a Proceeding to restrain or prohibit any part of the transactions contemplated by this Agreement, unless, in any such case, such Governmental Authority or other Person shall have withdrawn such notice and abandoned such Proceeding, action, Law or Environmental Law to the satisfaction of Seller.

ARTICLE IX MUTUAL COVENANTS, TAXES AND OTHER MATTERS

9.1 Tax Matters. Seller, at its own expense, will file, to the extent required by applicable Law, all necessary Tax Returns and other documentation with respect to its portion of any Transfer Taxes, and, if required by applicable Law, Seller will join in the execution of any such Tax Returns or other documentation and will take such positions in such returns as are reasonably requested by Buyer.

(a) With respect to Taxes to be prorated in accordance with Section 2.16 only, Buyer shall prepare and timely file all Tax Returns required to be filed with respect to the Real Property, if any, and shall duly and timely pay all such Taxes, whether imposed on Buyer or Seller, shown to be due on such Tax Returns. Buyer's preparation of any such Tax Returns shall be subject to Seller's approval, which approval shall not be unreasonably withheld. Buyer shall make such Tax Returns available for Seller's review and approval no later than fifteen (15) Business Days prior to the due date for filing such Tax Return. Within ten (10) Business Days after receipt of such Tax Return, Seller shall pay to Buyer Seller's proportionate share of the amount shown as due on such Tax Return, determined in accordance with Section 2.16.

(b) Each of Buyer and Seller shall provide the other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative Proceeding relating to liability for Taxes, and each will retain and provide the requesting Party with any records or information which may be relevant to such return, audit or examination, Proceedings or determination. Each Party will take any and all commercially reasonable steps, act in good faith, and cooperate fully, to permit the other Party to comply with its obligations and secure its rights to indemnification hereunder.

(c) Seller will be entitled to any refunds or credits of Taxes relating to the Real Property for the period on or prior to the Closing Date (and such refunds and credits shall be Excluded Assets), and Buyer shall be entitled to such refunds or credits of Taxes relating to the Real Property for the period on and after the Closing Date. Each of Buyer and Seller will promptly notify and forward to the other Party the amounts of any such refunds or credits received by such Party, but to which the other Party is entitled, within sixty (60) days after receipt thereof.

(d) After the Closing, Buyer will notify Seller, within thirty (30) days after its receipt, of any correspondence, notice or other communication from a taxing authority or any representative thereof, of any pending or threatened tax audit, or any pending or threatened Proceeding that involves Taxes relating to the Real Property for the period prior to the Closing, and furnish Seller with copies of all correspondence received from any taxing authority in connection with any audit or information request with respect to any such Taxes relating to the Real Property for the period prior to the Closing. After the Closing, Seller will notify Buyer, within thirty (30) days after its receipt, of any correspondence, notice or other communication from a taxing authority or any representative thereof, of any pending or threatened tax audit, or any pending or threatened judicial or administrative Proceeding that involves Taxes relating to the Real Property for the period after the Closing, and furnish Buyer with copies of all correspondence received from any taxing authority in connection with any audit or information request with respect to any such Taxes relating to the Real Property for the period after the Closing.

(e) Notwithstanding any provision of this Agreement to the contrary, with respect to any claim for refund, audit, examination, notice of deficiency or assessment or any Proceeding that involves Taxes relating to the Real Property (collectively, "*Tax Claim*"), each of Buyer and Seller will reasonably cooperate with the other Party in prosecuting or contesting any Tax Claim, including making available original books, records, documents and information for inspection, copying and, if necessary, introduction of evidence at any such Tax Claim contest or Proceeding and making employees available on a mutually convenient basis to provide additional information or explanation of any material provided hereunder with respect to such Tax Claim or to testify at Proceedings relating to such Tax Claim. Seller will control all Proceedings taken in connection with any Tax Claim that pertains entirely to any period prior to the Closing, and Buyer will control all Proceedings taken in connection with any Tax Claim that pertains to any period commencing after the Closing, and Seller and Buyer will jointly control all Proceedings taken in connection with any Tax Claim pertaining to any period commencing prior to and ending after the Closing; provided, however, that Buyer may request that Seller take any action reasonably necessary to remove any Liens on the Real Property relating to any Tax Claim that pertains to the period prior to or including the Closing. Buyer shall have no right to settle or otherwise compromise any Tax Claim which pertains entirely to the period prior to the Closing; Seller shall have no right to settle or otherwise compromise any Tax Claim which pertains entirely to the period after the Closing and neither Buyer nor Seller shall have the right to settle or otherwise compromise any Tax Claim which pertains to the period both prior to and after the

Closing without the other Party's prior consent, which consent shall not be unreasonably withheld or delayed.

9.2 Intentionally omitted.

9.3 Risk of Loss.

(a) If, during the Applicable Diligence Period, all or any portion of the Real Property is damaged or destroyed in whole or in part or becomes subject to or threatened with any condemnation or eminent domain proceeding (the "*Affected Portion*"), the Tentative Purchase Price shall be reduced by an amount that is equal to the greater of the (i) fair market value of the Affected Portion (such value to be determined as of the date immediately prior to such damage, destruction or actual or threatened condemnation or eminent domain proceeding) or (ii) the cost of repair of the Affected Portion, as determined by the Qualified Appraiser; provided, that if Seller elects to repair the Affected Portion prior to the Closing Date, the Tentative Purchase Price shall be adjusted to reflect the reasonable value of the repairs performed by Seller. For the avoidance of doubt, any insurance proceeds received by Seller with respect to the Real Property during the Applicable Diligence Period shall belong to the Seller, subject to application in accordance with the requirements of the Land Debt.

(b) If, during the Applicable Diligence Period, all or any portion of the Real Property is damaged or destroyed in whole or in part or becomes subject to or threatened with any condemnation or eminent domain proceeding such that it cannot reasonably be expected (as determined by the Qualified Appraiser) that, (i) in the case of damage or destruction, the Real Property will be fully repaired within sixty (60) days after the Closing Date or (ii) in the case of a condemnation or eminent domain proceeding, such condemnation or eminent domain proceeding would have a Material Adverse Effect, then Buyer may, in its sole discretion, elect to terminate the Land Purchase Option with respect to the applicable Purchase Option Opportunity.

9.4 Liabilities.

(a) After Closing, Buyer shall assume, shall pay, perform and discharge when due, and, as between Buyer and Seller, shall be solely responsible for, the Assumed Liabilities. Seller shall have no liability or obligation for the Assumed Liabilities after the Closing Date.

(b) Except for the Assumed Liabilities, Buyer shall not assume by virtue of this Agreement or the transactions contemplated by this Agreement, and shall have no liability under this Agreement for, the Excluded Liabilities.

ARTICLE X TERM AND TERMINATION

10.1 Term. This Agreement shall become effective when it is executed by each of the Parties and delivered to the other Party and the term of this Agreement shall continue for the Agreement Term (including the survival periods of those provisions with survivability under

Section 2.3 of the PPA), or such other period as may be provided for in this Agreement, unless terminated earlier as provided in Section 10.2, or as provided elsewhere under this Agreement; provided that (a) the term of this Agreement shall in any event extend up to and including the Closing so long as Buyer shall be entitled under the terms of this Agreement to exercise its Land Purchase Option and (b) the provisions of this Agreement shall survive any Closing or termination of this Agreement as set forth in Section 10.3(b) and Section 11.1.

10.2 Termination Events. This Agreement may, by notice given prior to the Closing, be terminated:

(a) by either Buyer or Seller upon (i) a failure by the other Party to perform any of its duties or obligations under this Agreement when and as due which is not cured to the reasonable satisfaction of the performing Party by the earlier of the Closing Date or the date that is thirty (30) days after receipt of notice thereof from the other Party, or (ii) an inaccuracy in any material respect of any representation, warranty, certification or other statement made by the other Party herein or in any other document contemplated hereby or in any Operative Document at any time given by a Party pursuant hereto or thereto, or in connection herewith or therewith at the time made or deemed to be made;

(b) either (i) by Buyer if satisfaction of any of the conditions in Article VII has become impossible due to an event outside of Buyer's reasonable control despite the exercise of due care and diligence (and in no event through the failure of Buyer to comply with its obligations under this Agreement) and Buyer has not previously waived such condition; or (ii) by Seller if satisfaction of any of the conditions in Article VIII has become impossible due to an event outside of Seller's reasonable control despite the exercise of due care and diligence (and in no event through the failure of Seller to comply with its obligations under this Agreement) and Seller has not previously waived such condition on or before the Closing Date; or

(c) (i) by Seller, if a Default of Buyer shall have occurred under the PPA and the PPA is terminated prior to or concurrently with this Agreement, or (ii) by either Party, in the event that the PPA shall fail to be in full force and effect in accordance with its terms for any reason other than a termination of the PPA as a result of Buyer's exercise of its right to purchase the Facility Assets pursuant to the terms of the Project Option Agreement, or (iii) by either Party, if the other Party or such other Party's Affiliates shall contest the validity or enforceability of the PPA or any provision thereof in writing or deny that it has any further liability thereunder.

10.3 Effect of Termination.

In the event of termination of this Agreement:

(a) Upon a request from the other Party, each Party will redeliver all documents, work papers and other material of any other Party relating to the transactions contemplated hereby or by the other Operative Documents to the Party furnishing the same, whether so obtained before or after the execution hereof, and each Party will

withdraw any applications for approval of transfer of Permits and surrender any Permits already transferred, as necessary;

(b) The provisions of Article XII shall survive and continue in full force and effect;

(c) Neither Party shall have any liability or further obligation to the other Party, except as stated in Sections 10.3(a) and (b), and except for any breach of representation, warranty or obligation arising under this Agreement or otherwise occurring prior to the proper termination of this Agreement. The foregoing provisions shall not limit or restrict the availability of specific performance or other injunctive relief to the extent that specific performance or such other relief would otherwise be available to a Party hereunder; and

(d) The PPA shall remain in full force and effect in accordance with its terms.

ARTICLE XI LIMITATION OF LIABILITY

11.1 Survival of Representations, Etc. The representations, warranties, covenants, and agreements, and indemnities of the Parties contained herein shall survive the consummation of the transactions contemplated hereby and the Closing Date, without regard to any investigation made by either of the Parties or the fact that the damaged Party had knowledge of any misrepresentation or breach of warranty or covenant at the time of Closing or at any other time, until the expiration of the applicable statute of limitations (and shall thereafter terminate, at which time the other Party shall be precluded from making a claim or commencing a cause of action with respect thereto). The termination of any representation and warranty provided herein shall not affect the rights of a Party in respect of a Claim made by such Party with specificity and in a writing received by the other Party prior to the expiration of the applicable survival period provided herein.

11.2 Limitation of Liability. Notwithstanding anything contained in this Agreement to the contrary, in no event shall Seller's aggregate liability under this Agreement or any Operative Document to Buyer under any theory of liability (whether contract, tort, strict liability or otherwise) exceed one hundred percent (100%) of the Final Purchase Price, provided that the foregoing limitation shall not apply (A) to the extent based upon a breach of any representation or warranty made in Section 3.1, 3.2, 3.3, 3.4, 3.7, 3.13 or 3.17, or (B) to death, bodily injury or personal injury to any person or damage or destruction to any property of either Party or third persons arising from activities conducted on the Real Property on or prior to the Closing Date or from Hazardous Substances that were present at or on the Real Property on or prior to the Closing Date or that were released by Seller or any other person for whose conduct Seller is responsible at any time on or prior to the Closing Date.

ARTICLE XII
GENERAL PROVISIONS

12.1 Indemnification.

(a) Subject to Article XI, Seller undertakes and agrees to indemnify and hold harmless Buyer, its Affiliates, the Board of Commissioners, and the City of Los Angeles, and all of their respective commissioners, officers, agents, employees, attorneys, consultants, advisors, representatives, and assigns and successors in interest (collectively, "Indemnitees") from and against any and all charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, arising by reason of any (a) breach of this Agreement by Seller, (b) failure of any representation, warranty or guarantee made by Seller herein or in any of the other Operative Documents that is qualified by materiality to be true, (c) failure of any representation, warranty or guarantee made by Seller herein or in any of the other Operative Documents that is not so qualified by materiality to be true in all material respects, or (d) Excluded Liability; provided, however, that before making a Claim based on any misrepresentation or inaccuracy of Seller's representations in Section 3.6 with respect to Seller's title to the Real Property, Buyer shall have exhausted its remedies with respect to the Title Policy delivered to Buyer pursuant to Section 2.7(b).

(b) Buyer shall promptly notify Seller of any action, suit, proceeding, demand, or breach (a "Claim") with respect to which Buyer claims indemnification; provided, however, that failure of Buyer to give such notice shall not relieve Seller of its obligations under this Article XII. If such Claim relates to any action, suit, proceeding, or demand instituted by a third party (a "Third Party Claim"), upon receipt of such notice from Buyer, Seller shall be entitled to participate in the defense of such Third Party Claim, and if and only if each of the conditions set forth in clauses (i) through (iv) below is satisfied, Seller shall assume the defense of such Third Party Claim, and in the case of such an assumption, Seller shall have the authority, with consent of Buyer, to negotiate, compromise, and settle such Third Party Claim;

(i) Seller confirms in writing, without qualification of any kind, that it is obligated to indemnify the Indemnitees with respect to such Third Party Claim;

(ii) Seller has selected counsel to handle the defense who is acceptable to the Los Angeles City Attorney;

(iii) Buyer does not give Seller notice that it has determined, in the exercise of its reasonable discretion, that matters of policy or a conflict of interest make separate representation by Buyer's own counsel advisable; and

(iv) Seller establishes to the reasonable satisfaction of Buyer that Seller has (and will continue to have) adequate financial resources to satisfy and discharge such action or claim.

(c) Buyer shall retain the right to participate in the defense of any Third Party Claim, the defense of which has been assumed by Seller pursuant hereto, but Buyer shall

bear and shall be solely responsible for its own costs and expenses in connection with such participation. In the event Seller shall fail or not be entitled to assume the defense of any Third Party Claim, then Buyer shall control the defense and settlement thereof at Seller's cost and expense, and any judgment on or settlement of such Third Party Claim shall be conclusive and binding on Seller for all purposes.

(d) The provisions of this Section 12.1 shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies.

(e) No individual Representative of either Party shall be personally liable for any losses under the provisions contained in this Section 12.1. Except as set forth in Section 12.1(d), nothing herein shall relieve either Party of any liability to make any payment expressly required to be made by such Party pursuant to this Agreement.

12.2 Expenses. Except as otherwise expressly provided in this Agreement, each Party will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement, including all fees and expenses of agents, representatives, counsel, and accountants. Both Parties agree that, in any action to enforce the terms of this Agreement, each Party shall be responsible for its own attorney fees and costs. Each of the Parties was represented by its respective legal counsel during the negotiation and execution of this Agreement.

12.3 Ambiguity. The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted in accordance with *Exhibit 1.1* and according to the application of the rules on interpretation of contracts.

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

12.5 Notices. All notices, requests, demands, consents, approvals, waivers and other communications which are required under this Agreement shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing), (b) deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Exhibit 12.5, and (c) deemed delivered, given and received on the date of delivery, in the case of facsimile transmission, or on the date of receipt or rejection in the case of reliable overnight courier or registered or certified mail. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests, demands, consents, waivers and other communications through alternate methods, such as electronic mail.

12.6 Entire Agreement; Amendments.

(a) This Agreement (including all Schedules and Exhibits) contains the entire understanding concerning the subject matter herein and supersede and replace any prior negotiations, discussions or agreements 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 or the other documents of even date herewith between the Parties that induced the other Party to sign this document.

(b) This Agreement may be amended or modified only by an instrument in writing signed by each Party.

12.7 Further Assurances. The Parties agree to furnish upon request to the other Party such further information, to execute and deliver to the other Party such other documents, and to do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the other Operative Documents, including in the case of Seller, to assist Buyer in pursuing and obtaining any Consents or Permits required to be obtained in the name of Buyer after the Closing Date.

12.8 Waiver. The failure of either Party 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.

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

12.10 Consequential or Punitive Damages. Neither Party shall be liable to the other Party for special, incidental, exemplary, indirect, punitive or consequential damages arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under contract, tort (including such Party's own negligence) or any other theory at law or in equity, including damages for lost revenues, income or profits.

12.11 Equitable Remedies. The Parties acknowledge that money damages may not be an adequate remedy for violations of this Agreement by Seller and that Buyer may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other equitable relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. The Parties hereby waive any objection to specific performance or injunctive or other equitable relief.

12.12 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

12.13 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California without consideration of conflicts of law principles. The venue for any litigation relating to this Agreement shall be in Los Angeles, California and each Party hereby waives any objections on the basis of *forum non-conveniens* or otherwise with respect to the venue of any such action being heard in Los Angeles, California.

12.14 Execution in Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

12.15 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties 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.

12.16 Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

12.17 Provisions of PPA. The provisions of Section 14.3 ("Dispute Resolution") and Section 14.21 ("Confidentiality") of the PPA are incorporated herein in their entirety, *mutatis mutandis*; provided, however, that in such incorporation the term "Option Agreement" shall mean this Agreement, the term "Seller" shall mean Seller, and the term "Party" shall include Seller.

12.18 First Priority Interests. The rights of Buyer under this Agreement shall be prior and superior to the rights of the Land Lender, and prior and superior to any other person or entity that subsequently acquires an interest in the Real Property.

12.19 Exhibits and Schedules. The Exhibits and Schedules referred to in and attached to this Agreement are incorporated herein in full by this reference. To the extent that the terms and conditions of an Exhibit or Schedule conflict with the terms and conditions of the main body of this Agreement, the terms and conditions of the main body of this Agreement shall control.

12.20 Relationship with PPA; Right of First Offer and Right of First Refusal. Except as otherwise specifically stated herein, this Agreement is independent of the PPA and, as a separate agreement, shall survive the amendment, modification, or termination of the PPA, except as otherwise provided herein. In the event of a conflict between this Agreement and the PPA, this Agreement shall control. The only contractual relationship between Buyer and Seller is set forth in this Agreement. Seller has no rights or obligations under the PPA or the Project Option Agreement except to the extent expressly incorporated herein and Seller is not a third-party beneficiary under either of such documents. Notwithstanding the foregoing, this Agreement

shall not be deemed to limit Buyer's Right of First Offer or Right of First Refusal set forth in the PPA, or any rights of Buyer under the Project Option Agreement.

12.21 Right of First Offer and Right of First Refusal.

(a) Buyer has a "*Right of First Offer*" (or "*ROFO*") and a "*Right of First Refusal*" (or "*ROFR*") for any proposed sale of the Real Property by Seller, all in accordance with the provisions of this Section 12.21.

(b) Prior to Seller commencing the negotiation of a sale of the Real Property, Seller shall provide notice to Buyer of Seller's intention to sell the Real Property (a "*Proposed Sale Notice*"). Upon receipt of such Proposed Sale Notice, Buyer shall have forty-five (45) days in which to provide notice to Seller indicating whether Buyer is interested in negotiating with Seller to purchase the Real Property from Seller, which notice shall include Buyer's proposed purchase price for the Real Property (a "*Proposed Purchase Notice*"). If Buyer provides such Proposed Purchase Notice, then the Parties shall undertake for a period of up to ninety (90) days from the date of Buyer's Proposed Purchase Notice to determine if they are able to reach mutual agreement on the terms and conditions of a sale of the Real Property to Buyer.

(c) If (i) Buyer does not timely provide such Proposed Purchase Notice to Seller indicating that Buyer is interested in negotiating the purchase of the Real Property from Seller following a Proposed Sale Notice, or (ii) the Parties are unable to agree upon the terms and conditions of a sale of the Real Property to Buyer within the ninety (90) day period set forth in Section 12.21(b), then Seller shall be free to negotiate the sale of the Real Property to any third party; provided, however, that prior to consummating any such sale, Seller shall provide Buyer with a concise summary of the commercial terms negotiated by Seller with the third party (a "*Notice of Proposed Third Party Sale*"). If the proposed purchase price for the Real Property set forth in the Notice of Proposed Third Party Sale is equal to or less than 105% of the purchase price included in the Proposed Purchase Notice or negotiated in connection with Buyer's exercise of the ROFO pursuant to Section 12.21(b), then Buyer shall have forty-five (45) days to exercise its Right of First Refusal and complete its purchase of the Real Property on substantially similar terms as set forth in the Notice of Proposed Third Party Sale, subject to any modifications required to conform the transaction to requirements for transactions entered into by public agencies. If Buyer does not elect to exercise its Right of First Refusal and complete its purchase within such forty-five (45) days, Seller shall be free to consummate the sale of the Real Property to the third party; provided, that such sale shall be on substantially similar terms and conditions presented to Buyer in the Notice of Proposed Third Party Sale.

(d) If Seller fails to (i) present a Notice of Proposed Third Party Sale within six (6) months after the expiration of the ninety (90) day period set forth in Section 12.21(b), or (ii) consummate the sale of the Real Property to a third party within forty-five (45) days after the expiration of the forty-five (45) day period set forth in Section 12.21(c), then Seller shall provide another Proposed Sale Notice hereunder (and go through the ROFO and ROFR processes hereunder) before commencing or continuing negotiations with any third party or consummating a sale of the Real Property.

(e) Neither the ROFO nor the ROFR shall (i) apply to any sale-leaseback or similar financing by Seller, nor (ii) limit Buyer's rights to purchase the Facility Assets under the Project Option Agreement.

12.22 Assignment of Agreement; Change in Control.

(a) Except as set forth in this Section 12.22, neither Party may assign any of its rights, or delegate any of its obligations, under this Agreement without the prior consent of the other Party, such consent not to be unreasonably withheld. Any Change in Control (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior consent of Buyer, which consent shall not be unreasonably withheld. Concurrently with any reorganization, financing transaction, or other transactions constituting any Change in Control (whether voluntary or by operation of law), the successor entity to Seller shall execute a written assumption agreement in favor of Buyer pursuant to which any such successor entity shall assume all of the obligations of Seller under this Agreement and agree to be bound by all the terms and conditions of this Agreement. Seller shall (i) provide Buyer with ninety (90) days' prior notice of any proposed voluntary transaction which could constitute a Change in Control and (ii) provide notice to Buyer of (x) any transaction or series of transactions with respect to the sale, transfer or disposition of any RE Holding Company or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or the power to control the management and policies of any RE Holding Company and (y) any Bankruptcy of any RE Holding Company. The general manager of Buyer is authorized to grant the consents contemplated by this Section 12.22 on behalf of Buyer.

(b) In the event that Buyer also assigns the Project Option Agreement and the PPA to a third party, and only in such event, Buyer may assign this Agreement without the consent of Seller to such third party, so long as such third party is rated (i) "A3" or higher by Moody's and "A-" or higher by S&P, if such third party is rated by both Moody's and S&P or equivalent ratings by any other credit rating agency of recognized national standing, or (ii) "A3" or higher by Moody's or "A-" or higher by S&P if such third party is rated by either S&P or Moody's or equivalent ratings by any other credit rating agency of recognized national standing; provided, that in connection with any such assignment any such assignee shall execute a written assumption agreement in favor of Seller pursuant to which any such assignee shall assume all the obligations of Buyer under this Agreement and agree to be bound by all the terms and conditions of this Agreement.

(c) Seller shall not sell or transfer the Real Property to any Person other than a Person to whom Seller assigns this Agreement in accordance with this Section 12.22, without the prior written consent of Buyer, an assumption in writing by such assignee of all of the obligations of Seller under this Agreement, and an agreement to be bound thereby and otherwise subject to compliance with the Right of First Offer and Right of First Refusal set forth in Section 12.21. Any purported sale or transfer in violation of this Section 12.22(c) shall be null and void and of no force or effect.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

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

By BOARD OF WATER AND POWER
COMMISSIONERS OF THE CITY OF
LOS ANGELES

Date: _____

By: _____
Marcie L. Edwards
GENERAL MANAGER

And: _____
Barbara E. Moschos
BOARD SECRETARY

RE BARREN RIDGE LANDCO LLC

Date: _____

By: _____

Its: _____

EXHIBIT 1.1
to
LAND OPTION AGREEMENT
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

DEFINITIONS; RULES OF INTERPRETATION

“*Affected Portion*” shall have the meaning ascribed to it in Section 9.3(a).

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

“*Agency Action*” means any notice of violation, complaint, order, consent order, consent agreement, assessment of a fine or penalty or other similar demand for action brought by a Governmental Authority having the requisite authority and jurisdiction to bring such action.

“*Agreement*” means this Land Option Agreement and Agreement to Assign Facility Site Option.

“*Applicable Diligence Period*” shall have the meaning ascribed to it in Section 5.1.

“*Asset Assignment Documents*” shall have the meaning ascribed to it in Section 7.4(e).

“*Assignment Demand*” shall have the meaning ascribed to it in Section 2.2.

“*Assumed Contracts*” means the Contracts to which Seller is a party or to which the Real Property is subject listed in *Schedule 3.3* and *Schedule 3.12*.

“*Assumed Liabilities*” shall have the meaning ascribed to it in Section 2.12.

“*Board of Commissioners*” means the Board of Water and Power Commissioners of the City of Los Angeles created pursuant to Section 600 and 670 of the Charter of the City of Los Angeles.

“*Books and Records*” means, to the extent relating to any period of time prior to the Closing, (a) all books, records, purchasing records, lists, files and papers in the possession of Seller or its agents pertaining to the Real Property, and all records and lists concerning suppliers to and personnel of the Real Property or Taxes with respect thereto; (b) all ledgers, and reports, plans, drawings, maps, photographs, technical manuals and operating records of every kind

maintained by Seller with respect to the Real Property, whether in hard copy or electronic format; and (c) all software used by Seller primarily in connection with the operation of the Real Property, in each case to the extent transferable; provided that Books and Records may include inextricable information or data unrelated to the Facility, in which case such information or data may be redacted.

"Breach Notice" shall have the meaning ascribed to it in Section 5.8.

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

"Buyer" shall have the meaning ascribed to it in the first paragraph of this Agreement.

"CEQA" means the California Environmental Quality Act.

"CERCLA" means the federal Comprehensive Environmental Response, Compensation and Liability Act.

"Change in Control" means the occurrence, whether in a single transaction or in a series of related transactions, of any one or more of the following: (i) a merger or consolidation of Seller or any RE Holding Company with or into any other Person or any other reorganization in which the members of Seller or any RE Holding Company immediately prior to such consolidation, merger, or reorganization, own less than fifty percent (50%) of the equity ownership of the surviving entity or cease to have the power to control the management and policies of the surviving entity immediately after such consolidation, merger, or reorganization, (ii) any transaction or series of related transactions in which in excess of fifty percent (50%) of the equity ownership of Seller or any RE Holding Company, or the power to control the management and policies of Seller or any RE Holding Company is transferred to another Person, (iii) a sale, lease, or other disposition of all or substantially all of the assets of Seller or any RE Holding Company, (iv) the dissolution or liquidation of Seller or any RE Holding Company, or (v) any transaction or series of related transactions that has the substantial effect of any one or more of the foregoing.

"Claim" has the meaning ascribed to it in Section 12.1(b).

"Closing" shall have the meaning ascribed to it in Section 2.11.

"Closing Date" means the date on which the Closing is required to take place, as set forth in Section 2.5.

"Closing Permitted Encumbrances" means any Purchase Option Permitted Encumbrances other than those that secure any form of Land Debt or any other monetary obligation (other than Liens for Taxes not yet due).

"Code" means the Internal Revenue Code of 1986.

"Collateral" shall have the meaning ascribed to it in Section 2.3.

“Commercial Operation Date” shall have the meaning ascribed to it in the PPA.

“Consent” means any approval, consent, ratification, waiver, license, permit, certification, registration or other authorization (including any Governmental Approval).

“Contract” means any agreement, arrangement, lease, commitment, sales order, purchase order, indenture, mortgage, right, warrant or instrument, which provides for ownership or operation of the Real Property and is intended to, or purports to be, or is required to be binding and enforceable as contemplated under this Agreement, other than the Permits, but expressly including any Real Property Contract.

“Deed” shall have the meaning ascribed to it in Section 7.4(d).

“Disclosure Schedules” shall have the meaning ascribed to it in Section 2.7(a).

“Effective Date” shall have the meaning ascribed to it in the preamble of this Agreement.

“Environment” includes (a) the navigable waters, the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act and (b) any other surface water, ground water, drinking water supply, stream sediments, soil, land surface or subsurface strata, or ambient air, plant and animal life, and any other environmental medium or natural resource within the United States, or a foreign nation or under jurisdiction of the United States or a foreign nation.

“Environmental Conditions” means the presence of Hazardous Substances which have been Released into the Environment or the presence of Hazardous Substances that could reasonably be expected to pose a threat of Release of Hazardous Substances into the Environment.

“Environmental Law” means any applicable current or future treaty, constitution, law, statute, ordinance, rule, order, decree, regulation or other directive which is legally binding and has been enacted, issued or promulgated by any Governmental Authority that imposes liability for or standards of conduct or compliance or other requirements or obligations concerning protection of health, or safety (in each case, to the extent relating to exposure to Hazardous Substances), natural resources or the Environment and includes all Hazardous Substances Law.

“Excluded Assets” means, notwithstanding any other provision of this Agreement, the following assets:

- (a) cash, certificates of deposit and other bank deposits, treasury bills and other cash equivalents or other investments, on hand or in bank accounts, and all of Seller’s bank accounts, intercompany accounts and accounts receivable;
- (b) accounts and notes receivable relating to the period prior to the Closing Date, including amounts owing under the PPA;
- (c) intentionally omitted;

(d) any Contract between Seller and its Affiliates, other than for on-going operations and maintenance of the Real Property;

(e) any Contract that is not an Assumed Contract and any Permit that is not a Transferred Permit;

(f) any computers not used primarily in connection with the Real Property, any communication or data network systems not used primarily in connection with the Real Property, and any other equipment not reasonably required to operate the Real Property;

(g) all refunds or credits, if any, of Taxes due to or from Seller and (i) accrued prior to the Closing or (ii) which otherwise cannot be assigned by Law;

(h) all corporate, financial and tax records of Seller which (i) do not relate in whole or in part to the Real Property, (ii) relates solely to any Excluded Asset, (iii) relates solely to any Excluded Liability, (iv) relates to the organization, existence, capitalization or debt financing of Seller, (v) relates to information about Seller or its Affiliates pertaining to energy or project evaluation methodologies, economic evaluation of the Real Property, energy or natural gas price curves or projections or other economic predictive models, or (vi) do not constitute Books and Records;

(i) all rights to claims, refunds or adjustments against Buyer or any other third parties arising out of the period prior to the Closing Date;

(j) Seller's insurance policies; and

(k) the assets identified as "Excluded Assets" in *Schedule 3.5*.

"*Excluded Liability*" shall have the meaning set forth in Section 2.14.

"*Facility Assets*" shall have the meaning ascribed to it in the Project Option Agreement.

"*Facility Site Option*" shall have the meaning ascribed to it in the Recitals.

"*Fair Market Value*" shall mean, with respect to a particular time of calculation, the amount a willing buyer would pay for the Real Property and all rights and interests associated therewith, in an arm's-length transaction, to a willing seller under no compulsion to sell on the applicable Closing Date, taking into account all relevant facts and circumstances relating to the Real Property, the Excluded Assets, the Assumed Liabilities, the Excluded Liabilities and the Disclosure Schedules, as of the Closing Date, and assuming the Land Lease will remain in place for the term thereof (assuming all extensions in the Land Lease are exercised).

"*Final Purchase Price*" shall have the meaning ascribed to it in *Exhibit 2.8*.

"*GAAP*" means generally accepted accounting principles that are consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors in effect for the applicable period of Seller.

"Governmental Approval" means any Consent issued, granted, given, or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law or Environmental Law.

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

"Hazardous Substances" means any substance, material or waste that is regulated by or forms the basis of liability now or hereafter under, any Hazardous Substances Law, including any material, substance or waste that is (a) defined as a "solid waste," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "contaminant," "hazardous constituent," "special waste," "toxic substance" or other similar term or phrase under any Environmental Law, (b) petroleum or any fraction or by-product thereof, asbestos, polychlorinated biphenyls (PCB's), or any radioactive substance.

"Hazardous Substances Law" means any applicable current or future treaty, constitution, law, statute, ordinance, rule, order, decree, regulation or other directive which is legally binding and has been enacted, issued or promulgated by any Governmental Authority that imposes liability for or standards of conduct or compliance concerning the generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Hazardous Substances, including, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act of 1976, CERCLA, the Toxic Substances Control Act, the Oil Pollution Act, the Safe Drinking Water Act, and the Occupational Safety and Health Act of 1970 (to the extent that it relates to the handling of and exposure to hazardous or toxic materials or similar substances).

"Indemnitees" shall have the meaning ascribed to it in Section 12.1(a).

"Intellectual Property Assets" shall have the meaning ascribed to it in Section 3.13(a).

"Investment Company Act" means the Investment Company Act of 1940.

"Knowledge" means with respect to any fact, circumstance, or condition, (a) the actual, current knowledge of any officer, agent, employee, or representative of the applicable Party, or (b) the knowledge that an officer of such Party should have had upon reasonable investigation and inquiry.

"Law" means any Order, and any federal, state, local, or foreign law, statute, regulation, rule, code or ordinance enacted, adopted, issued or promulgated by any Governmental Authority, but excluding Environmental Laws.

"Land Debt" means the obligations of Seller secured by a Lien of a Land Lender, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, or benefit monetization, swap or

interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

“Land Documents” means the real property leases and easements for the Real Property that together establish control of the same in Seller.

“Land Lease” shall have the meaning ascribed to it in the Recitals.

“Land Lender” means any lender providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with Seller’s acquisition of the Real Property.

“Land Purchase Option” shall have the meaning ascribed to it in Section 2.4.

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

“Material Adverse Effect” means a material adverse effect on (a) Seller, (b) the Real Property, or (c) the business, condition (financial or otherwise), results of operations or prospects of the Real Property.

“Maximum Purchase Price” shall have the meaning ascribed to it in *Exhibit 2.8*.

“Minimum Purchase Price” shall have the meaning ascribed to it in *Exhibit 2.8*.

“National Priorities List” means the list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States and its territories and that guides the Environmental Protection Agency in determining which sites warrant further investigation.

“Notice of Proposed Third Party Sale” shall have the meaning ascribed to it in Section 12.21(c).

“Operations Period” means the six (6) month period of time prior to the delivery by Buyer of the Purchase Option Exercise Notice.

“Operative Documents” means each of the agreements, instruments, certificates and other documents executed and delivered by a Party under this Agreement in connection with the performance and consummation of the transaction contemplated by this Agreement.

“Order” means any final, non-appealable award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Authority, or by any arbitrator.

“Organizational Documents” means as applicable, (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) any charter or similar document adopted or

filed in connection with the creation, formation, or organization of a Person; (c) the certificate of organization and the operating agreement of a limited liability company; and (d) any amendment to any of the foregoing.

"Party" and **"Parties"** shall have the meaning ascribed to it in the first paragraph of this Agreement.

"Permit" means any permit, license, franchise, concession, consent, authorization, approval, registration, filing or similar act of or made with any Governmental Authority that are used by or necessary to operate the Real Property.

"Person" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Authority.

"PPA" shall have the meaning ascribed to it in the Recitals.

"Proceeding" means any action, order, writ, judgment or decree outstanding, arbitration, audit, hearing, investigation, claim, litigation, or suit (whether civil, criminal, regulatory, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Person.

"Products" shall have the meaning ascribed to it in the Recitals.

"Project Option Agreement" shall have the meaning ascribed to it in the Recitals.

"Project Seller" shall have the meaning ascribed to it in the Recitals.

"Proposed Purchase Notice" shall have the meaning ascribed to it in Section 12.21(b).

"Proposed Sale Notice" shall have the meaning ascribed to it in Section 12.21(b).

"Provided Materials" shall have the meaning ascribed to it in Section 5.1.

"Purchase Option Exercise Deadline" means a period of one hundred twenty (120) days after the determination of the Fair Market Value for the applicable Purchase Option Opportunity, as such period shall be extended on a day for day basis by the number of days it takes for Seller to cure a defect pursuant to Section 2.7(d).

"Purchase Option Exercise Notice" shall have the meaning ascribed to it in Section 2.8(b).

"Purchase Option Opportunity" shall have the meaning ascribed to it in Section 2.5.

"Purchase Option Permitted Encumbrances" means (a) any Lien approved by Buyer in a writing or set forth in Schedule 3.6; (b) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, so long as either (i) such proceedings do not involve a substantial risk of the sale, forfeiture, loss or restriction on the use of the Real Property

or any part thereof, or (ii) a bond or other security reasonably acceptable to Buyer has been posted or provided in such manner and amount as to assure Buyer that any Taxes determined to be due will be promptly paid in full when such contest is determined; (c) zoning, building codes and other land use laws regulating the use or occupancy of the Real Property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over the Real Property; (d) suppliers', vendors', mechanics', workman's, repairman's, employees' or other like Liens arising in the ordinary course of business for work or service performed, or materials furnished in connection with, the Real Property for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings, so long as either (i) such proceedings do not involve a substantial risk of the sale, forfeiture, loss or restriction on use of the Real Property or any part thereof, or (ii) a bond or other security reasonably acceptable to Buyer has been posted or provided in such manner and amount as to assure Buyer that any amounts determined to be due will be promptly paid in full when such contest is determined; (e) easements, rights of way, use rights, exceptions, encroachments, reservations, restrictions, conditions or limitations which do not materially impair the Real Property affected thereby for the purpose for which title was acquired or materially interfere with or impair the operation of the Real Property, as well as any items identified in the Title Commitment or on the Survey which are not objected to, are deemed acceptable, or are waived, by Buyer pursuant to Section 2.7(d) above; (f) intentionally omitted; (g) intentionally omitted; (h) the terms and conditions of the Land Documents; and (i) Liens created or reserved pursuant to or contemplated by this Agreement.

"Purchase Option Tentative Exercise Notice" shall have the meaning ascribed to it in Section 2.7.

"Qualified Appraiser" means a nationally recognized California Licensed Certified General Real Estate Appraiser, which shall (a) be qualified to appraise land substantially similar to the Real Property in location, size, and intended use, (b) have been engaged in the appraisal or business valuation and consulting business for a period of not less than ten (10) years, and (c) not be associated with Seller, Buyer or any of their respective Affiliates.

"RE Holding Companies" means Recurrent Energy Portfolio Holdings, LLC, Recurrent Energy US Holdings, LLC, and Recurrent Energy LandCo LLC.

"Real Property" shall have the meaning ascribed to it in the Recitals.

"Real Property Contracts" shall have the meaning ascribed to it in Section 3.3(a).

"Real Property Interests" shall have the meaning ascribed to it in Section 3.3(a).

"Release" means any physical release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Substances in the Environment, including the movement of Hazardous Substances through or in the Environment, including the Premises.

"Representative" means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

“Requirements of Law” means all Laws, Permits (including those pertaining to electrical, building, zoning, and occupational safety and health requirements) and Environmental Laws.

“Right of First Offer” (or ***“ROFO”***) shall have the meaning ascribed to it in Section 12.21(a).

“Right of First Refusal” (or ***“ROFR”***) shall have the meaning ascribed to it in Section 12.21(a).

“Schedule Delivery Date” shall have the meaning ascribed to it in Section 2.7(a).

“Section 16(a) Violation” shall have the meaning ascribed to it in Section 2.3.

“Seller” shall have the meaning ascribed to it in the first paragraph of this Agreement.

“Seller Default” shall have the meaning ascribed to it in Section 2.2.

“Seller Disclosure Schedules” shall have the meaning ascribed to it in Section 2.7(a).

“Seller’s Cure Period” shall have the meaning ascribed to it in Section 2.7(d).

“Survey” shall have the meaning ascribed to it in Section 2.7(c).

“Tax Claim” shall have the meaning ascribed to it in Section 9.1(e).

“Tax Return” means any return, report, information return or other document (including any related or supporting information) required to be supplied to any authority with respect to Taxes.

“Taxes” means all taxes, charges, fees, levies, penalties or other similar assessments imposed by any United States federal, state or local, or foreign taxing authority, including, income, excise, property, sales, use, transfer, franchise, payroll, withholding, social security or other taxes, including any interest, penalties or additions attributable thereto.

“Tentative Purchase Price” shall have the meaning ascribed to it in Exhibit 2.8.

“Third Party Claim” shall have the meaning ascribed to it in Section 12.1(b).

“Third Party Property Interests” shall have the meaning ascribed to it in Section 3.3(a).

“Title Company” means a title company acceptable to Buyer.

“Title Commitment” shall have the meaning ascribed to it in Section 2.7(b).

“Title Policy” shall have the meaning ascribed to it in Section 2.7(b).

“Transferred Permits” means all Permits other than those Permits that will not be transferred to Buyer as of the Closing.

“Transfer Taxes” shall have the meaning ascribed to it in Section 2.17.

“Treasury” means the regulations issued by the U.S. Department of Treasury under the Internal Revenue Code.

“Updated Schedule Delivery Date” shall have the meaning ascribed to it in Section 2.15(a).

“Warranties” means all rights of Seller under or pursuant to all third-party warranties, representations and guarantees made by manufacturers and suppliers in connection with the Real Property or services furnished to Seller pertaining to the Real Property.

RULES OF INTERPRETATION

1. The headings of Sections in this Agreement are provided for convenience only and shall not affect its construction or interpretation.
2. All references to "Article," "Articles," "Section" or "Sections" refer to the corresponding Article, Articles, Section or Sections of this Agreement, unless otherwise specified. Each reference to an Article or Section of, or Exhibit or Schedule to, this Agreement shall be deemed to be followed by the word "hereof."
3. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require.
4. The word "including" does not limit the preceding words or terms.
5. A reference to any Person includes its permitted successors and permitted assigns.
6. The words "herein," "hereof," "hereunder" and words of like import shall refer to this Agreement as a whole and not to any particular section or subdivision of this Agreement.
7. The singular includes the plural and the plural includes the singular.
8. The term "or" is not exclusive, regardless of whether "and/or" is included in the applicable provision.
9. A reference to any Law, rule, regulation, statute, ordinance, Order, code or similar form of decision of any Governmental Authority having the effect and force of Law includes any amendment or modification or successor thereto, and all regulations rulings promulgated under such Governmental Rule.
10. Accounting terms have the meanings assigned to them by generally accepted accounting principles, as consistently applied by the accounting entity to which they refer.
11. References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time, regardless of whether any of the foregoing are expressly referred to in the applicable provision.
12. References to "days" and "months" shall mean calendar days and calendar months, respectively. References to a time of day shall mean such time in Los Angeles, California.

13. The terms "shall," "will," and "must" shall have the same meaning and be of equal force and effect.

EXHIBIT 2.8
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

PURCHASE PRICE

1. The "*Tentative Purchase Price*" shall be an amount equal to the Fair Market Value, as determined in accordance with this *Exhibit 2.8*.
2. Within fifteen (15) days following the later of (a) the Schedule Delivery Date, or (b) the actual delivery by Seller to Buyer of the Seller Disclosure Schedules (the "*Actual Schedule Delivery Date*"), the Parties shall meet and attempt to agree on the Tentative Purchase Price based on the Seller Disclosure Schedules delivered by Seller. If the Parties are unable to agree on the Tentative Purchase Price within thirty (30) days after the Actual Schedule Delivery Date, the Parties shall, within fourteen (14) additional days, jointly select a Qualified Appraiser. If the Parties cannot agree on a Qualified Appraiser within such fourteen (14) day period, then each of Seller and Buyer shall select an independent recognized appraiser within fourteen (14) days after the conclusion of such period, which independent appraisers shall, within fourteen (14) days after being selected by each of Buyer and Seller, agree upon and appoint a third Qualified Appraiser to perform the appraisal. If the two selected appraisers cannot agree on a third Qualified Appraiser within such fourteen (14) day period, then either Party may apply to the American Arbitration Association to make such an appointment within fourteen (14) days after such application. The appraisal shall be completed within thirty (30) days of the appointment of the Qualified Appraiser.
3. The Tentative Purchase Price shall be adjusted from time to time by the amount (as determined by the Parties in good faith, or absent their mutual agreement, by Qualified Appraisers using the same methodology set forth in paragraph 2 above) necessary to take into account (i) any differences between the Seller Disclosure Schedules originally delivered to Buyer on the Actual Schedule Delivery Date and any updated Seller Disclosure Schedules delivered to Buyer from time to time prior to Closing, (ii) any item or omission in a Seller Disclosure Schedule that is not resolved to the reasonable satisfaction of Buyer, (iii) any differences in the Real Property, Excluded Assets, Assumed Liabilities or Excluded Liabilities from the Actual Schedule Delivery Date to the Closing, (iv) the inability of Seller to satisfy any of the Buyer Closing Conditions set forth in Article VII, (v) damage or destruction of all or a portion of the Real Property or any real or threatened condemnation or eminent domain proceeding as described under Section 9.3(a) of the Agreement, or (vi) following the delivery of a Breach Notice, the event or circumstance described in such Breach Notice.

4. The "*Final Purchase Price*" to be paid by Buyer at the Closing shall be an amount equal to the greater of (a) the Tentative Purchase Price, or (b) the Minimum Purchase Price (as defined below); provided that in the event that (i) the Tentative Purchase Price is at any time greater than the Maximum Purchase Price (as defined below), then Buyer, upon notice to Seller, may, without liability, terminate the Land Purchase Option with respect to the relevant Purchase Option Opportunity, and such Purchase Option Opportunity shall expire and shall no longer be effective (but such expiration shall not affect Buyer's right to exercise any Land Purchase Option with respect to any future Purchase Option Opportunity).
5. The "*Minimum Purchase Price*" and the "*Maximum Purchase Price*" shall be as follows, corresponding to the applicable Purchase Option Opportunity for which Buyer has exercised its Land Purchase Option:

Purchase Option Opportunity	Minimum Purchase Price	Maximum Purchase Price
1 st Contract Year	\$3,645,000	\$4,375,000
2 nd Contract Year	\$3,780,000	\$4,535,000
3 rd Contract Year	\$3,925,000	\$4,710,000
4 th Contract Year	\$4,090,000	\$4,910,000
5 th Contract Year	\$4,275,000	\$5,130,000
6 th Contract Year	\$4,480,000	\$5,375,000
7 th Contract Year	\$4,700,000	\$5,640,000
8 th Contract Year	\$4,955,000	\$5,945,000
9 th Contract Year	\$5,240,000	\$6,290,000
10 th Contract Year	\$5,555,000	\$6,665,000
11 th Contract Year	\$5,890,000	\$7,070,000
12 th Contract Year	\$6,280,000	\$7,535,000
13 th Contract Year	\$6,710,000	\$8,050,000
14 th Contract Year	\$7,195,000	\$8,635,000
15 th Contract Year	\$7,730,000	\$9,275,000
16 th Contract Year	\$8,095,000	\$9,715,000

17 th Contract Year	\$8,450,000	\$10,140,000
18 th Contract Year	\$8,820,000	\$10,585,000
19 th Contract Year	\$9,160,000	\$10,990,000
20 th Contract Year	\$9,500,000	\$11,400,000
Event of Default under PPA	The aggregate of the Land Debt immediately prior to Closing, if any. Otherwise, none.	None.

EXHIBIT 12.5
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

NOTICES

Notices to Seller:

RE Barren Ridge LandCo LLC
c/o Recurrent Energy, LLC
300 California St, 7th Floor
San Francisco, CA 94104
Attention: Office of the General Counsel
Telephone: (415) 675-1500
Facsimile: (415) 675-1501
Email: legal@recurrentenergy.com

Notices to Buyer:

Los Angeles Department of Water and Power
Reynan Luison Ledesma
Property Manager
111 North hope Street
Room 1025
Los Angeles, CA 90012
Telephone: (213) 792-9076
Facsimile: (213) 367-0746
Email: reynan.ledesma@ladwp.com

SCHEDULE 3.3
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

[All Real Property Contracts of Seller shall be specified and briefly described in this Schedule]

SCHEDULE 3.3(a)
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

[All known defaults to Real Property Contracts or Real Property Interests not providing legal, valid, and enforceable rights in favor of Seller shall be specified and briefly described in this Schedule]

SCHEDULE 3.3(b)
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

[All appropriation, condemnation, or other like proceedings, or any material violation shall be specified and briefly described in this Schedule]

SCHEDULE 3.3(c)
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

[All mining, mineral, or water rights severed from any of the Real Property Interests shall be specified and briefly described in this Schedule]

SCHEDULE 3.3(d)
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

[All written notices that any agreements with any Governmental Authority or private utility affect the Real Property Interests shall be specified and briefly described in this Schedule]

SCHEDULE 3.4
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

SELLER'S CONSENTS

[All Consents that need to be obtained by Seller shall be specified and briefly described in this Schedule]

SCHEDULE 3.5
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
CERTAIN EXCLUDED ASSETS

[Any assets that Seller specifically intends to exclude
shall be specified and briefly described in this Schedule]

SCHEDULE 3.6
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

LIENS

[All Liens that are to be set forth in accordance with Section 3.6 shall be specified and fully described in this Schedule.]

SCHEDULE 3.7
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

ENVIRONMENTAL MATTERS

[All environmental matters referred to in Section 3.7
shall be specified and briefly described in this Schedule]

SCHEDULE 3.8
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

LIABILITIES

[All liabilities referred to in Section 3.8
shall be specified and briefly described in this Schedule]

SCHEDULE 3.9
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

TAX MATTERS

[All tax matters referred to in Section 3.9
shall be specified and briefly described in this Schedule]

SCHEDULE 3.10
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

COMPLIANCE WITH LAWS

[All non-compliance with laws referred to in Section 3.10
shall be specified and briefly described in this Schedule]

SCHEDULE 3.11
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

LITIGATION

[All litigation proceedings referred to in Section 3.11
shall be specified and briefly described in this Schedule]

SCHEDULE 3.12
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

CONTRACTS

[All Contract matters referred to in Section 3.12 of the Agreement shall be specified and briefly described in this Schedule]

SCHEDULE 3.13
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

INTELLECTUAL PROPERTY

[All Intellectual Property Asset matters referred to in Section 3.13 with respect to the Real Property shall be specified and briefly described in this Schedule]

None.

SCHEDULE 3.15
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

NON-ENVIRONMENTAL PERMITS

[All Permits, other than those included in Section 3.7(b), which are necessary or incidental to the Real Property shall be specified and briefly described in this Schedule]

SCHEDULE 3.17
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

EMPLOYEE MATTERS

[All employee matters referred to in Section 3.17
shall be specified and briefly described in this Schedule]

SCHEDULE 3.18
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

SHARED FACILITIES

[All Shared Facilities matters referred to in Section 3.18
shall be specified and briefly described in this Schedule]

SCHEDULE 3.19
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

UNTRUE STATEMENTS; OMISSIONS

[Any untrue statement of a material fact or omission of a material fact in the Agreement, the Operative Documents, or any certificate or other agreement delivered by Seller shall be stated in this Schedule]

SCHEDULE 4.3
to
LAND OPTION AGREEMENT
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION
dated as of _____, 2014
by and between
RE BARREN RIDGE LANDCO LLC
and
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER

BUYER'S CONSENTS

[All Consents of Buyer which are necessary or incidental to the Closing shall be specified and briefly described in this Schedule]

**APPENDIX R
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC**

FACILITY SITE OPTION

[See attached]

**SECOND AMENDMENT TO OPTION AGREEMENT
FOR THE PURCHASE AND SALE OF REAL PROPERTY**

APN NO. 461-150-10, KERN COUNTY, CALIFORNIA

THIS SECOND AMENDMENT TO OPTION AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY (this "Second Amendment") is made and entered into as of this 14 day of October, 2013 (the "Amendment Effective Date"), by and between Lancaster Commercial, LLC, a California limited liability company, as to an undivided 2/3 ownership interest, and Davood Golshirazian, a married man as to an undivided 1/3 interest, as tenants in common (collectively, "Seller"), and SiteCo, LLC, a Delaware limited liability company ("Purchaser").

RECITALS

A. Seller is the owner of certain real property in Kern County, in the State of California, commonly identified as APN 461-150-10, consisting of approximately 588 acres of land (the "Land").

B. Seller and Purchaser are parties to that certain Option Agreement for the Purchase and Sale of Real Property dated as of September 11, 2009 (the "Original Option Agreement"), as amended by that certain First Amendment to Option Agreement for the Purchase and Sale of Real Property dated as of September 11, 2009 (the "First Amendment"; the Original Option Agreement, as amended by the First Amendment, the "Option Agreement"), pursuant to which Seller granted to Purchaser an option to purchase the Land as more particularly described in the Option Agreement.

C. Seller and Purchaser desire to supplement and amend certain provisions of the Option Agreement as set forth herein.

AGREEMENT

For valuable consideration, the receipt of which is hereby acknowledged, the parties agree that the Option Agreement is hereby amended as follows:

1. Incorporation of Defined Terms. All terms not otherwise defined in this Second Amendment shall have the meaning as set forth in the Option Agreement.

2. Option to Extend Option Term. Prior to the expiration of the Extended Option Term, Purchaser may extend the term for one (1) additional period of fifteen (15) months commencing on March 12, 2014 and expiring on June 11, 2015 (the "Second Extended Option Term") by so notifying Seller in writing prior to the expiration of the Initial Option Term and paying to Seller the required Second Extension Option Consideration as set forth in Paragraph 3 of this Second Amendment. If Purchaser elects to extend the term for the Second Extended Option Term, the term "Extended Option

Term" as used in the Option Agreement shall mean the Extended Option Term, as extended through the Second Extended Option Term.

3. Second Extended Option Consideration. If Purchaser elects to extend the term for the Second Extended Option Term in accordance with Paragraph 2 of this Second Amendment, Purchaser shall pay to the escrow agent the sum of [REDACTED] as consideration for the Second Extended Option Term (the "Second Extension Option Consideration"), which shall be immediately released to Seller once deposited into escrow, shall be non-refundable to Purchaser (except as provided in Section 9 of the Original Option Agreement) and shall not be credited toward the Purchase Price at Closing if Purchaser exercises the Option; provided, however, if Closing occurs prior to June 11, 2015, Purchaser shall be entitled to a credit against the Purchase Price equal to [REDACTED] for each day from the date of Closing to and including June 11, 2015.

4. Closing Date. Purchaser will deliver the Exercise Notice to Seller at least fifteen (15) days prior to the Closing Date and in any event prior to the expiration of the Extended Option Term and outside Closing Date of June 11, 2015. The Closing Date will occur no later than June 11, 2015, or on such other date as Purchaser and Seller may agree in writing in their sole and absolute discretion. The Closing Date may not be extended without the prior written approval of both Seller and Purchaser. If Buyer elects to exercise the Option and Closing occurs on or before June 11, 2015, then Buyer and Seller shall authorize the escrow agent, Ms. JB Jennings, to open a new escrow for the purpose for the Closing of the transaction in accordance with Paragraph 6 below.

5. Title Company. The title order under the Option Agreement has been transferred to, and hereafter all references to the "Title Company" under the Option Agreement shall refer to: Ginger McCully, Fidelity National Title Company, (949) 230.4755 Mobile, Ginger.McCully@fnf.com, 1300 Dove Street, Suite 310, Newport Beach, CA 92660.

6. Escrow Agent. Seller and Purchaser acknowledge and agree that the escrow funds under the Option Agreement are currently held with, and the "escrow agent" under the Option Agreement is, Fidelity National Title Company, Attention: Ms. JB Jennings under escrow # 23019945-002JJ. On or before March 1, 2014, Seller and Purchaser shall instruct the escrow agent in writing to cancel the current escrow # 23019945-002JJ and shall instruct the escrow agent to open a new escrow with Fidelity National Title Company, Attention: Ms. JB Jennings, which new escrow shall be used to facilitate the Closing.

7. Consent to Transfer of Title. Purchaser hereby consents to the transfer of the undivided two-thirds (2/3) share of the Property by Lancaster Commercial, LLC, a California limited liability company, to Daniel Saparzadeh, an individual, and Shalom Shamoelian, an individual (collectively, the "Transferees"), so long as all of the following conditions are satisfied: (a) the transfer to the Transferees is documented by a deed or deeds properly executed, delivered and recorded in the Official Records of Kern County, California, (b) the Transferees execute and deliver to Purchaser an assumption of

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all of the obligations of Seller under the Option Agreement, as amended hereby, in form and substance acceptable to Purchaser, which assumption shall be recorded in the Official Records of Kern County, California, (c) Lancaster Commercial LLC shall not be released from its liabilities and obligations under the Option Agreement, as amended hereby, and (d) the transfer to the Transferees shall not affect the owner's policy of title insurance to be issued to Purchaser at Closing.

8. Reaffirmation of Option Agreement; Effect of Amendment. Seller and Purchaser hereby acknowledge and agree that the Option Agreement is hereby reaffirmed, ratified and confirmed in its entirety. Except as modified and amended by this Second Amendment, the terms and provisions of the Option Agreement remain in full force and effect and are hereby ratified and confirmed. If there is any conflict between the terms and provisions of the Option Agreement and this Second Amendment, the terms and provisions of this Second Amendment shall control and prevail. Any reference in the Option Agreement to the "Agreement" shall refer to the Option Agreement, as modified by this Second Amendment.

9. Counterparts and Facsimile. This Second Amendment may be executed in counterparts (which may be by fax, followed up with hard copy, but effective upon fax), each of which shall be deemed to be an original, and all of such counterparts shall together constitute one instrument. The headings to sections of this Second Amendment are for convenient reference only and shall not be used in interpreting this Second Amendment.

10. Applicable Law. This Second Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

11. Successors and Assigns. This Second Amendment shall inure to the benefit of Seller, Purchaser and each of their successors and assigns.

12. Recordation. Seller and Purchaser agree that a memorandum of the Option Agreement, as amended by this Second Amendment, may be recorded in the recording office of Kern County, California, and each party agrees to execute such memorandum and cause such instrument to be recorded.

13. Entire Agreement. This Second Amendment and the other documents referred to herein constitute the entire agreement among the parties hereto pertaining to the subject matter hereof, and any and all other written or oral agreements existing among the parties hereto are expressly canceled.

14. Legal Costs. If any legal action is brought by either party to enforce any provision of this Second Amendment, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

15. Amendments. This Second Amendment may not be modified or otherwise altered without the written consent of Seller and Purchaser.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date first written above.

SELLER:

Lancaster Commercial, LLC,
a California limited liability company

By: 

Name: Daniel Sadoviz

Its: Member in Charge


Davood Golshirazian, a married man

PURCHASER:

SiteCo, LLC,
a Delaware limited liability company

By: 

Name: Michael Melzner

Its: Chief Financial Officer

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**FIRST AMENDMENT TO OPTION AGREEMENT
FOR THE PURCHASE AND SALE OF REAL PROPERTY**

APN NO. 461-150-10, KERN COUNTY, CALIFORNIA

THIS FIRST AMENDMENT TO OPTION AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY (this "First Amendment") is made and entered into as of this 13th day of September, 2011 (the "Amendment Effective Date"), by and between Lancaster Commercial, LLC, a California limited liability company, as to an undivided 2/3 ownership interest, and Davood Golshirazian, a married man as to an undivided 1/3 interest, as tenants in common (collectively, "Seller"), and SiteCo, LLC, a Delaware limited liability company ("Purchaser").

RECITALS

A. Seller is the owner of certain real property in Kern County, in the State of California, commonly identified as APN 461-150-10, consisting of approximately 588 acres of land (the "Land").

B. Seller and Purchaser are parties to that certain Option Agreement for the Purchase and Sale of Real Property dated as of September 11, 2009 (the "Original Option Agreement"), pursuant to which Seller granted to Purchaser an option to purchase the Land as more particularly described in the Original Option Agreement.

C. Seller and Purchaser desire to supplement and amend certain provisions of the Original Option Agreement as set forth herein.

AGREEMENT

For valuable consideration, the receipt of which is hereby acknowledged, the parties agree that the Original Option Agreement is hereby amended as follows:

1. Incorporation of Defined Terms. All terms not otherwise defined in this First Amendment shall have the meaning as set forth in the Original Option Agreement.

2. Amendment to Section 3. The third (3rd) sentence of Section 3 of the Original Option Agreement is hereby deleted in its entirety and the following sentence is substituted in its place:

"Prior to the expiration of the Initial Option Term, Purchaser may extend the term for one (1) additional thirty (30) month period beyond the last day of the Initial Option Term ("Extended Option Term") (i.e., ending on March 11, 2014) by so notifying Seller in writing prior to the expiration of the Initial Option Term and paying to Seller the required Additional Option Consideration set forth under Section 2(i)."

3. Reaffirmation of Original Option Agreement; Effect of Amendment. Seller and Purchaser hereby acknowledge and agree that the Original Option Agreement is hereby reaffirmed, ratified and confirmed in its entirety. Except as modified and amended by this First Amendment, the terms and provisions of the Original Option Agreement remain in full force and effect and are hereby ratified and confirmed. If there is any conflict between the terms and provisions of the Original Option Agreement and this First Amendment, the terms and provisions of this First Amendment shall control and prevail. Any reference in the Original Option Agreement to the "Agreement" shall refer to the Original Option Agreement, as modified by this First Amendment.

4. Counterparts and Facsimile. This First Amendment may be executed in counterparts (which may be by fax, followed up with hard copy, but effective upon fax), each of which shall be deemed to be an original, and all of such counterparts shall together constitute one instrument. The headings to sections of this First Amendment are for convenient reference only and shall not be used in interpreting this First Amendment.

5. Applicable Law. This First Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

6. Successors and Assigns. This First Amendment shall inure to the benefit of Seller, Purchaser and each of their successors and assigns.

7. Recordation. Seller and Purchaser agree that a memorandum of the Original Option Agreement, as amended by this First Amendment, may be recorded in the recording office of Kern County, California, and each party agrees to execute such memorandum and cause such instrument to be recorded.

8. Entire Agreement. This First Amendment and the other documents referred to herein constitute the entire agreement among the parties hereto pertaining to the subject matter hereof, and any and all other written or oral agreements existing among the parties hereto are expressly canceled.

9. Legal Costs. If any legal action is brought by either party to enforce any provision of this First Amendment, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

10. Amendments. This First Amendment may not be modified or otherwise altered without the written consent of Seller and Purchaser.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first written above.

SELLER:

Lancaster Commercial, LLC,
a California limited liability company

By: _____
Name: _____
Its: _____

Davood Golshirazian, a married man

PURCHASER:

SiteCo, LLC,
a Delaware limited liability company

By: _____
Name: Sheldon Kimber
Its: Vice President

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first written above.

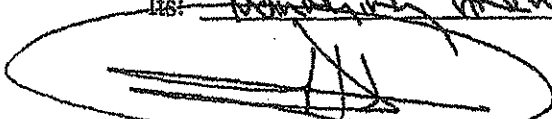
SELLER:

Lancaster Commercial, LLC,
a California limited liability company

By: _____

Name: DANIEL SADDYZCI

Its: Member



Davood Golshirazian, a married man

PURCHASER:

SiteCo, LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

OPTION AGREEMENT FOR
THE PURCHASE AND SALE OF REAL PROPERTY

APN: 461-150-10, KERN COUNTY, CALIFORNIA

THIS OPTION AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY (this "Agreement") is made and entered into as of this 11 of September, 2009, by and between Lancaster Commercial, LLC, a California limited liability company as to an undivided 2/3 ownership interest and Davood Golshirazan, a married man as to an undivided 1/3 ownership interest, as tenants in common ("Seller"), and SFTECO, LLC, a Delaware limited liability company ("Purchaser").

RECITALS

A. Seller is the owner of certain real property in Kern County, in the state of California, containing approximately 588 acres of land, as more particularly described on Exhibit A attached hereto and incorporated herein (the "Land").

B. Seller acknowledges that upon acquisition of all or a portion of the Property, Purchaser shall be free to use and dispose of such Property in any manner Purchaser deems appropriate and that Purchaser may sell such Property for any price Purchaser deems appropriate to any subsequent buyer. As used in this Agreement, the term the "Property" shall mean, collectively: (a) the Land, together with all of Seller's right, title and interest in all rights, easements and interests appurtenant thereto including, but not limited to, any streets or other public ways adjacent to the Land and any development rights, water or mineral rights owned by, or leased to, Seller; (b) all improvements located on the Land, if any (all such improvements being referred to herein as the "Improvements"), and (c) all trademarks, trade names, permits, approvals, and entitlements and other intangible property used in connection with the foregoing, including, without limitation, all of Seller's right, title and interest in any and all warranties and guarantees relating to the Property (the "Intangible Personal Property").

C. Seller desires to grant to Purchaser an option to purchase all or a portion of the Property on the terms set forth herein.

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereto agree as follows:

1. Grant of Option to Purchase.

Seller hereby grants to Purchaser an exclusive and irrevocable option (the "Option") to purchase from Seller and, if Purchaser exercises the Option, agrees to sell to Purchaser, the Property, subject to and upon the terms, covenants and conditions set forth herein.

2. Option Consideration.

(a) Within five (5) business days following the Effective Date, Purchaser shall pay to First American Title Company, as escrow agent, the amount of [REDACTED] (the "Initial Option Consideration"). The Initial Option Consideration shall be immediately released to Seller following a successful completion of the ninety (90) day Due Diligence Period (as provided below), shall be non-refundable to Purchaser (except as provided in Section 9), but one-half of such payment shall be credited toward the Purchase Price if Purchaser exercises the Option.

(b) On or before one hundred eighty (180) days after the Effective Date, Purchaser shall deliver to escrow agent for immediate release to Seller the additional sum of [REDACTED] in the form of immediately available funds.

(c) On or before two hundred seventy (270) days after the Effective Date, Purchaser shall deliver to escrow agent for immediate release to Seller the additional sum of [REDACTED] in the form of immediately available funds.

(d) On or before three hundred sixty (360) days after the Effective Date, Purchaser shall deliver to escrow agent for immediate release to Seller the additional sum of [REDACTED] in the form of immediately available funds.

(e) On or before four hundred fifty (450) days after the Effective Date, Purchaser shall deliver to escrow agent for immediate release to Seller the additional sum of [REDACTED] in the form of immediately available funds.

(f) On or before five hundred forty (540) days after the Effective Date, Purchaser shall deliver to escrow agent for immediate release to Seller the additional sum of [REDACTED] in the form of immediately available funds.

(g) On or before six hundred thirty (630) days after the Effective Date, Purchaser shall deliver to escrow agent for immediate release to Seller the additional sum of [REDACTED] in the form of immediately available funds.

(h) All of the above payments in clauses 2(a) through (g) shall be collectively referred to as "Option Consideration". All amounts paid as Option Consideration shall be non-refundable to Purchaser (except as provided in Section 9), but one-half of such payment shall be credited toward the Purchase Price if Purchaser exercises the Option.

(i) If Purchaser elects to extend the Initial Option Term in accordance with Section 3, during the Extended Option Term, Purchaser shall pay to the escrow agent the sum of [REDACTED] every ninety (90) days commencing twenty four (24) months after the Effective Date as consideration for the Extended Option Term (collectively, "Additional Option Consideration"), which shall be immediately released to Seller once deposited into escrow, shall be non-refundable to Purchaser (except as provided in Section 9), but not credited towards the Purchase Price at Closing if Purchaser exercises the Option.

(j) If for any reason Purchaser fails to make a payment of Option Consideration or Additional Option Consideration, if applicable, within three (3) business days after Seller notifies Purchaser that such payment is past due under this Section 2, or if Purchaser

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has not exercised the Option on or before the expiration of the Initial Option Term or the Extended Option Term, if applicable, this Agreement and the Escrow shall thereupon be terminated, Purchaser shall no longer be entitled to purchase the Property, Seller shall no longer be obligated to sell the Property to Purchaser, Seller shall be entitled to retain the Option Consideration and Additional Option Consideration previously delivered to Seller pursuant to this Section 2 as liquidated damages, and the parties shall be relieved of any further obligation to each other with respect to the Property.

3. Option Term.

The Option shall be effective as of the date this Agreement is last signed (the "Effective Date") and shall expire on the date that is twenty four (24) months from the Effective Date (the "Initial Option Term"). (Signatures transmitted by facsimile or other electronic transmission shall be accepted in accordance with Section 16(m) of this Agreement.) Prior to the expiration of the Initial Option Term, Purchaser may extend the term for one (1) additional twelve (12) month period beyond the last day of the Initial Option Term ("Extended Option Term") by so notifying Seller in writing prior to the expiration of the Initial Option Term and paying to Seller the required Additional Option Consideration set forth under Section 2. Half of the amounts paid by Purchaser to Seller as Option Consideration and none of any amounts paid by Purchaser to Seller as Additional Option Consideration shall be credited towards the Purchase Price if Purchaser exercises the Option, but shall otherwise be nonrefundable, except as provided in Section 9.

4. Exercise of Option.

The Option may be exercised upon Purchaser's written notice to Seller of its election to exercise the Option ("Option Notice") within the Initial Option Term (or, if applicable, the Extended Option Term) specified in Section 3. Such Option Notice shall be deemed timely if it is transmitted by facsimile, deliver or mailed, certified mail, return receipt requested, or via a nationally recognized overnight delivery service within the term specified in Section 3. Purchaser's Option Notice shall specify whether Purchaser will purchase the Property and the Purchase Price (defined below) for the Property. In the event that Purchaser timely exercises the Option, Seller shall sell to Purchaser and Purchaser shall buy from Seller the Property, on the terms and conditions established in this Agreement.

5. Purchase Price.

(a) The "Purchase Price" shall be calculated as follows: (i) if the Closing occurs during the Initial Option Period, [REDACTED] per acre multiplied by the number of acres in the Property, (ii) if the Closing occurs after the twenty-fourth (24th) month after the Effective Date, but prior to the expiration of the Extended Option Term, [REDACTED] per acre multiplied by the number of acres in the Property. The Purchase Price shall be payable in cash on the close of escrow, plus or minus prorations and other adjustments hereunder.

(b) The Purchase Price shall be paid as follows:

(i) Half of the amounts paid by Purchaser to Seller as Option Consideration and none of any Additional Option Consideration, if applicable, shall be credited



towards the Purchase Price at the closing of the purchase and sale (the "Closing") if Purchaser exercises the Option, but shall otherwise be nonrefundable, except as provided in Section 9.

(ii) The balance of the Purchase Price shall be paid to Seller in cash or other immediately available funds at the Closing.

6. Due Diligence and Time for Satisfaction of Conditions.

Purchaser shall have the right to commence due diligence with respect to the Property immediately following the Effective Date and the due diligence period ("Due Diligence Period") shall expire at 5:00 p.m. Pacific Standard Time on the ninetieth (90th) day after the Effective Date. Seller shall make available to Purchaser and its employees, representatives, counsel and consultants access to all of its books, records and files relating to the Property in Seller's possession or control, including, without limitation, all of the Items set forth in Section 7 below (collectively, the "Due Diligence Items").

7. Diligence Period Conditions.

The following shall be conditions precedent to Purchaser's obligation to purchase the Property (the "Diligence Period Conditions"):

(a) Purchaser's review and approval of the Due Diligence Items, including, but not limited to, tenant leases, if any, any guaranties thereof and any other occupancy agreements, and all amendments and modifications thereof (collectively, the "Leases") affecting the Property, and of all contracts pertaining to the operation of the Property, including all management, leasing, service and maintenance agreements, and equipment leases, if any (collectively, the "Service Contracts");

(b) Purchaser's review and approval of title to the Property, as follows. Seller shall deliver to Purchaser at Seller's sole cost and expense, within three (3) days of the Effective Date, the following:

(i) a current standard coverage preliminary title report with respect to all of the Land, issued by First American Title Insurance Company (the "Title Company"), accompanied by copies of all documents referred to in the report (the "Preliminary Report");

(ii) copies of all existing and proposed easements, covenants, restrictions, agreements or other documents which affect title to the Property that are actually known by Seller and that are not disclosed by the Preliminary Report.

Purchaser shall have until the ten (10) business days prior to the end of the Due Diligence Period to notify Seller of any objections (the "Title Objections") with respect to the Preliminary Report based on its review thereof. If Purchaser does not give such notice, such failure shall be conclusively deemed to be full and complete approval of the Preliminary Report and any matter disclosed therein. If Purchaser does give such notice, Seller shall have five (5) business days after receipt thereof to notify Purchaser that Seller (a) will cause or (b) elects not to cause any or all Title Objections disclosed therein to be removed. Seller's failure to notify Purchaser within such five (5) business day period as to any Title Objection shall be deemed an

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election by Seller not to remove such Title Objection. If Seller notifies or is deemed to have notified Purchaser that Seller shall not remove any or all of the Title Objections, Purchaser shall have until the end of the Due Diligence Period to (i) terminate this Agreement or (ii) waive such Title Objections and proceed to closing without any abatement or reduction in the Purchase Price on account of such Title Objections. If Purchaser does not give such notice, Purchaser shall be deemed to have elected to waive such Title Objections. Notwithstanding the foregoing, Seller shall in any event be obligated to cure (and cause to either be removed from record or endorsed over, subject to Purchaser's reasonable approval thereof) any of the following matters: (i) mortgage or deed of trust liens against the Property, (ii) mechanics' liens against the Property, but only those mechanics' liens that arise pursuant to agreements in which Seller or its agents is the contracting party, and (iii) delinquent liens for real estate taxes and assessments.

(c) Purchaser's review and approval in its sole and absolute discretion, prior to the expiration of the Due Diligence Period, of all aspects of the Property, including, without limitation, all of the Due Diligence Items, and the results of Purchaser's examinations, inspections, testing, and or investigations of the Property and the Due Diligence Items (collectively, "Purchaser's Due Diligence Investigations"), During the period from the date hereof through the expiration of the Due Diligence Period (the "Inspection Period"), Purchaser's Due Diligence Investigations shall include an examination for the presence or absence of Hazardous Material (as defined below) on, under or in the Property and the review and approval of any Phase I environmental report which Purchaser may obtain during the Due Diligence Period. (The cost of the Phase I environmental report shall be paid for by the Purchaser). In the event Purchaser wishes to conduct a Phase II environmental audit report, at Purchaser's sole cost and expense, Seller agrees to such testing on the Property.

(d) Purchaser's review and approval in its sole and absolute discretion, prior to the expiration of the Due Diligence Period, of reports by engineers and/or architects selected by Purchaser to inspect the Property.

(e) Purchaser's review and approval in its sole and absolute discretion, prior to the expiration of the Due Diligence Period, of evidence satisfactory to Purchaser and its legal counsel that the Property and Purchaser's proposed development thereof complies with all applicable zoning, subdivision, land use, redevelopment, energy, environmental, building and other governmental requirements applicable to the use, maintenance and occupancy of the Property and the proposed development thereof.

(f) Written documentation satisfactory to Purchaser, confirming that all state and local real property and business taxes pertaining to the Property (including, without limitation, all corporate, sales, and withholding taxes) have been paid in full by Seller.

Prior to the end of the Due Diligence Period, Purchaser shall deliver written notice (the "Approval Notice") to Seller informing Seller whether or not Purchaser has approved or waived all of the Diligence Period Conditions. If, by the end of the Due Diligence Period, Purchaser has not delivered the Approval Notice to Seller approving or waiving all of the Diligence Period Conditions, Seller shall have the right to terminate this Agreement, provided that (a) Seller delivers written notice to Purchaser informing Purchaser of the expiration of the Due Diligence Period (the "Seller's Notice"), and (b) Purchaser does not deliver the Approval Notice to Seller

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within five (5) business days after Purchaser's receipt of the Seller's Notice. Notwithstanding anything in this Agreement to the contrary, Purchaser shall have the right to terminate this Agreement at any time prior to the end of the Initial Option Term (or the Extended Option Term, if applicable) in its sole and absolute discretion and for any or for no reason whatsoever. Upon such termination, neither party shall have any further obligations hereunder except as otherwise specified in this Agreement.

8. Conditions to Closing.

The following conditions are precedent to Purchaser's obligation to acquire the Property and to deliver the Purchase Price (the "Conditions Precedent"). If any Conditions Precedent are not satisfied as determined by Purchaser in Purchaser's reasonable discretion, Purchaser may elect by written notice to Seller to terminate this Agreement. In addition, if any of the Conditions Precedent set forth in (a), (d), (e), (f) and (g) are not satisfied as determined by Purchaser in Purchaser's reasonable discretion, such failure shall constitute a default by Seller, and Seller shall immediately return to Purchaser any Option Consideration and Additional Option Consideration Payments previously made by Purchaser. Upon such termination, neither party shall have any further obligations hereunder except as otherwise specified in this Agreement. The failure of the Conditions Precedent set forth in either (b) or (c) shall not constitute a default by Seller and any Option Consideration and Additional Option Consideration, if applicable, shall be retained by Seller if Purchaser elects to terminate this Agreement due to such unsatisfied Conditions Precedent.

(a) This Agreement shall not have terminated pursuant to any other provision hereof, including, without limitation, Sections 7 above.

(b) Purchaser shall have fully executed a Power Purchase Agreement with a power utility company with terms satisfactory to Purchaser, in Purchaser's sole and absolute discretion, which include, but are not limited to, price, duration, delivery, and point of interconnection. Purchaser agrees to make a diligent effort to obtain said agreement with the power utility company.

(c) Purchaser shall have determined that financing can be obtained to purchase the Property in an amount and on terms satisfactory to Purchaser, in Purchaser's sole and absolute discretion. Purchaser agrees to apply for and to make a diligent effort to obtain said financing.

(d) The physical condition of the Property shall be substantially the same on the day of Closing as on the Effective Date, loss by casualty excepted (subject to the provisions of Section 13 below), and, as of the day of Closing, there shall be no litigation or administrative agency or other governmental proceeding of any kind whatsoever, pending or threatened, which after Closing would materially adversely affect the value of the Property, and no proceedings shall be pending or threatened which could or would cause the redesignation or other modification of the zoning classification of the Property or any portion thereof, which after Closing would materially adversely affect the value of the Property or the ability of Purchaser to develop the Property in the manner contemplated by Purchaser.

(e) Seller shall convey title to the Property to Purchaser by good and sufficient grant deed in the form of Exhibit B attached hereto (the "Deed") free and clear of all liens and encumbrances and subject to no exceptions other than the following:

(i) Non-delinquent real property taxes and all assessments and unpaid installments thereof which are not delinquent,

(ii) Any other lien, encumbrance, easement or other exception or matter voluntarily imposed or consented to by Purchaser prior to or as of the Closing, and

(iii) All exceptions to title contained or disclosed in the Preliminary Report other than Title Objections identified and not thereafter waived by Purchaser.

(f) Title Company shall be irrevocably and unconditionally committed to issue to Purchaser, at Seller's cost, a title insurance policy as approved by Purchaser.

(g) All of Seller's representations and warranties contained herein shall be true and correct on the Closing Date.

9. Remedies.

(a) In the event the sale of the Property is not consummated because of the failure of any condition or solely because of a default under this Agreement on the part of Purchaser after the expiration of the Due Diligence Period, Seller shall be excused from further performance hereunder.

(b) Following the Due Diligence Period, in the event the sale of the Property is not consummated solely because of a default under this Agreement on the part of Seller, Purchaser may either (1) terminate this Agreement by delivery of written notice of termination to Seller, whereupon (A) Seller shall immediately return to Purchaser any Option Consideration and Additional Option Consideration Payments previously made by Purchaser, and (B) Seller shall pay to Purchaser any out-of-pocket title, escrow, legal and inspection fees, costs and expenses actually incurred by Purchaser and any other out-of-pocket fees, costs and expenses actually incurred by Purchaser in connection with the performance of its due diligence review of the Property and the negotiation and performance of this Agreement, including, without limitation, environmental and engineering consultants' fees and expenses, and neither party shall have any further rights or obligations hereunder except to the extent otherwise specified in this Agreement, or (2) continue this Agreement and bring an action for specific performance hereof.

10. Closing and Escrow.

(a) The parties shall conduct an escrow Closing pursuant to this Section 10 on the date which is sixty (60) days after the Purchaser exercises the Option, or on such other date as Purchaser and Seller may agree in writing in their sole and absolute discretion (the "Closing Date"). Such date and time may not be extended without the prior written approval of both Seller and Purchaser. In the event the Closing does not occur on or before the Closing Date, the Title Company shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date shall return to Purchaser any items previously delivered by Purchaser to the

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Title Company. Any such return shall not, however, relieve either party of any liability it may have for its wrongful failure to close.

(b) At or before the Closing, Seller shall deliver to the Title Company (for delivery to Purchaser upon Closing) the following:

(i) a duly executed and acknowledged Deed in the form attached hereto as Exhibit B;

(ii) all material documents, agreements and correspondence and items relating to the ownership, operation, maintenance or management of the Property; and

(iii) any other closing documents reasonably requested by the Title Company or Purchaser. Purchaser may waive compliance on Seller's part under any of the foregoing items by an instrument in writing.

(c) At or before the Closing, Purchaser shall deliver to the Title Company (for delivery to Seller upon Closing) the following:

(i) the balance of the Purchase Price in cash or other immediately available funds, subject to prorations and adjustments as set forth herein; and

(ii) any customary and/or reasonable closing documents requested by the Title Company.

(d) The following are to be apportioned as of the Closing Date as follows, with Purchaser being deemed to be the owner of the Property during the entire day on which the Deed is recorded and being entitled to receive all income of the Property, and being obligated to pay all expenses of the Property, with respect to such day:

(i) Utility Charges. Seller shall be responsible for the cost of all utilities used, if any, prior to the Closing Date.

(ii) Other Apportionments: Closing Costs. Amounts payable under any annual or periodic permit and/or inspection fees (calculated on the basis of the period covered); and liability for other Property operation and maintenance expenses and other recurring costs shall be apportioned as of the Closing Date. Seller and Purchaser shall each pay 1/2 of any escrow fee charged by the Escrow Holder. All other costs and charges of the escrow for the sale not otherwise provided for in this Subsection 10(d)(i) or elsewhere in this Agreement shall be allocated in accordance with the applicable closing customs for the county in which the Property is located as determined by the Title Company. If any of the aforesaid prorations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other party.

(iii) Survival. The provisions of this Section 10(d) shall survive the Closing.

11. Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Purchaser, each of which shall be deemed an inducement to Purchaser to enter into this Agreement, shall be deemed made as of the Closing and shall survive execution and delivery of this Agreement and the Closing for a period of one (1) year:

(a) Seller has not, and as of the Closing, Seller shall not have (A) made a general assignment for the benefit of creditors, (B) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (C) suffered the appointment of a receiver to take possession of all, or substantially all, of Seller's assets, which remains pending as of such time, (D) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, which remains pending as of such time, (E) admitted in writing its inability to pay its debts as they come due, or (F) made an offer of settlement, extension or composition to its creditors generally,

(b) Seller is not, and as of the Closing shall not be, a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code") and any related regulations.

(c) This Agreement (A) has been duly authorized, executed and delivered by Seller, and (B) does not, and as of the Closing shall not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

(d) There is no litigation pending or threatened with respect to the Property or the transactions contemplated hereby.

(e) There are no violations of any applicable environmental, zoning or land use law, or any other applicable local, state or federal law or regulation relating to the Property, including, without limitation, the Americans with Disabilities Act of 1990 and Seller is not aware of any proposed or pending changes in zoning or proposed relocation, reconfiguration or other change with respect to any street or road affecting the Property, if any.

(f) There are no condemnation proceedings pending or threatened that would result in the taking of any portion of the Property. Seller has not received any written notice of any special assessment proceedings affecting the Property that is not disclosed on the Preliminary Reports.

(g) The parties comprising Seller under this Agreement are the sole owners of the Property and Seller holds good and marketable title to the Property according to laws of the State where the Property is located.

(h) The Property constitutes a separate legal parcel in accordance with all applicable laws.

(i) Seller has not granted any option or right of first refusal or first opportunity to any party to acquire any fee or ground leasehold interest in any portion of the Property.

(j) The Due Diligence Items and documents delivered to Purchaser pursuant to this Agreement will be all of the relevant documents, materials, reports and other items pertaining to the condition and operation of the Property, will be true and correct copies, and will be in full force and effect, without default by any party and without any right of set-off except as disclosed in writing at the time of such delivery.

12. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller as follows:

(a) Purchaser is a duly organized and validly existing corporation in good standing under the laws of the State in which it was formed; this Agreement and all documents executed by Purchaser which are to be delivered to Seller at the Closing are or at the time of Closing will be duly authorized, executed and delivered by Purchaser, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which Purchaser is subject.

(b) Purchaser has not, and as of the Closing, Purchaser shall not have (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Purchaser's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Purchaser's assets, which remains pending as of such time, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Purchaser's assets, which remains pending as of such time, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement shall be deemed to be material and shall survive the execution and delivery of this Agreement and the Closing for a period of twelve (12) months. In the event that a claim is not made with respect to a breach of a representation or warranty set forth herein or made in writing pursuant to this Agreement within such twelve (12) month period, such claim shall be deemed waived.

13. Condition of Improvements and Risk of Loss.

(a) Seller agrees that upon delivery of the deed, the improvements constituting part of the Property, if any, shall be in the same condition as they are on the date of this offer, reasonable wear and tear excepted. Seller shall continue to insure the improvements until Closing. Nothing in this Section shall be deemed to release Purchaser from responsibility or liability for any damage or destruction caused by the acts of Purchaser or Purchaser's agents.

(b) In the event of loss before Closing, such loss may be repaired by and at the cost of Seller prior to Closing, and if not so repaired, the Purchaser may elect to accept the Property in its damaged condition, and Purchaser shall be entitled to a credit against the Purchase Price in the amount of any insurance proceeds collected by Seller as a result of any such damage to the Property, less any sums reasonably expended by Seller toward the restoration or repair of the Property, and, if all of the proceeds have not been collected as of the Closing, then such proceeds shall be assigned to Purchaser, and Purchaser shall also be entitled to a credit against

the Purchase Price in the amount of any deductible or uninsured loss. Alternatively, Purchaser may elect to terminate this Agreement.

(c) Purchaser shall assume all risk of loss with respect to the Property at 5:00 p.m. Pacific Standard Time on the Closing Date.

14. Access; Indemnity; Possession.

(a) Commencing on the Effective Date and through the Initial Option Term (or the Extended Option Term, if applicable) or the earlier termination of this Agreement, Seller shall afford authorized representatives of Purchaser reasonable access to the Property for purposes of satisfying Purchaser with respect to the representations, warranties and covenants of Seller contained herein and with respect to satisfaction of any Diligence Period Condition or any Condition Precedent, including, without limitation, measurement of meteorological characteristics of the Property which may require the installation of a meteorological station, and performing a Phase I environmental site assessment of the soils, waters and improvements on the Property, provided Seller shall have the right to pre-approve in its reasonable discretion and be present during any physical testing of the Property. All installations, tests or inspections shall be at Purchaser's expense, and Purchaser shall indemnify and hold Seller harmless from and against any and all costs, claims or damages incurred or suffered by Seller, Purchaser, its agents or employees, or third parties arising from the performance of such tests or inspections; provided this indemnity shall not apply to conditions existing at the Property which are merely discovered by Purchaser. Purchaser will notify Seller in advance if and when it plans to conduct any inspection or investigations on the Property, and to the extent reasonably possible, will schedule such investigation or inspection at a time that is convenient and agreeable to Seller. In addition to the foregoing, during the term of this Agreement and prior to the Closing of the purchase and sale of the Property, Purchaser may pursue property tax exemption(s) for the Property and certain equipment located thereon in accordance with the applicable local ordinances. During the initial evaluation period, Purchaser shall determine whether the site is adequate for Purchaser's purposes. In the event Purchaser determines the site is not adequate for its purposes or if Purchaser is unable to obtain any required operating approvals, it shall have the right to terminate this Agreement prior to the expiration of the Initial Option Term, or the Extended Option Term, if applicable. If this Agreement is terminated, Purchaser shall repair the damage caused by Purchaser's entry onto and/or inspections of the Property, provided the foregoing shall not require Purchaser to repair or remediate any conditions that are merely discovered by Purchaser. The foregoing indemnity shall survive the Closing, or in the event that the Closing does not occur, the termination of this Agreement.

(b) Possession of the Property shall be delivered to Purchaser at 5:00 p.m. Pacific Standard Time on the Closing Date.

15. Seller Covenants.

(a) At the time of Closing, Seller shall cause to be paid in full all obligations under any outstanding written or oral contracts made by Seller for any improvements to the Property, and Seller shall cause to be discharged all mechanics' and materialmen's liens arising from any labor or materials furnished to the Property prior to the time of Closing.

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(b) Between the Effective Date and the Closing, to the extent Seller has any knowledge thereof, Seller shall promptly notify Purchaser of the following items relating to the Property: (i) any condemnation, environmental, zoning or other land-use regulation proceedings, (ii) any notices of violations of any Laws, and (iii) any litigation relating to the Property or that arises out of the ownership of the Property.

(c) Through the Closing Date, Seller shall maintain or cause to be maintained, at Seller's sole cost and expense, all policies of insurance currently in effect with respect to the Property (or comparable replacements thereof).

(d) Seller shall also deliver to Purchaser copies of any bills for real estate taxes and personal property taxes and copies of any notices pertaining to real estate taxes or assessments applicable to the Property that are received by Seller after the Effective Date, even if received after Closing. The obligations set forth in this Section 15(d) shall survive the Closing.

(e) Seller agrees that it shall cooperate in good faith with Purchaser in connection with Purchaser's efforts to obtain any necessary land permits and approvals.

16. Miscellaneous.

(a) Assignment. Except as provided below, Purchaser may assign its rights under this Agreement only upon the prior written consent of Seller, which consent may not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Purchaser may assign its rights under this Agreement without Seller's consent to (i) an affiliate of Purchaser, (ii) to any person or entity succeeding to all or substantially all of the assets of Purchaser, or (iii) as security in connection with any financing transaction entered into by Purchaser.

(b) Binding on Successors. This Agreement shall be binding not only upon the parties but also upon their respective heirs, personal representatives, assigns, and other successors in interest.

(c) Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) one (1) business day after being deposited with FedEx or another reliable overnight courier service, with receipt acknowledgment requested, (iii) upon receipt if transmitted by facsimile telecopy, with a copy sent on the same day by one of the other permitted methods of delivery, or (iii) upon receipt or refused delivery deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

IF TO SELLER: Lancaster Commercial, LLC
11950 San Vicente Blvd., Ste 200
Los Angeles, CA 90049
Phone: (310) 442-6006
Fax No.: (310) 442-6002
Attention: Daniel Saparzadeh

IF TO PURCHASER: SiteCo, LLC
300 California Street, 8th Floor
San Francisco, CA 94104
Phone: (415) 675-1500
Fax No.: (415) 675-1301
Attention: Judith Hall -- General Counsel
CC: Seth Israel -- Manager, Site Acquisition

or such other address as either party may from time to time specify in writing to the other.

(d) Brokers and Finders. Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee in connection with the sale contemplated herein except for Bill Korek of Korek Land Company ("Seller's Broker") whose commission and fees shall be paid by Seller pursuant to a separate agreement between Seller and Seller's Broker. In the event that any other broker or finder makes a claim for a commission or finder's fee based upon any contact, dealings or communication, the party whose conduct is the basis for the broker or finder making its claim shall indemnify, defend and hold harmless the other party against and from any commission, fee, liability, damage, cost and expense, including without limitation attorneys' fees, arising out of or resulting from any such claim. The provisions of this Section 16(d) shall survive the Closing, or in the event that the Closing does not occur, the termination of this Agreement.

(e) Recording. Purchaser may not record this Agreement, but Seller and Purchaser shall execute a memorandum of this Agreement which Purchaser may record in the real property records of the county in which the Property is located. Concurrently with the execution of the memorandum, Purchaser shall execute and deliver to escrow agent a Quitclaim Deed from Purchaser to Seller to be held by escrow agent. In the event that the Agreement and the escrow hereunder is terminated for any reason in accordance with the terms of this Agreement, escrow agent shall provide written notice to Purchaser and Seller of its intent to record the Quitclaim Deed and thereafter, but no sooner than five (5) days after delivery of such notice to Purchaser and Seller shall record the Quitclaim Deed in the real property records of the county in which the Property is located.

(f) Amendments. Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by Seller and Purchaser.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state where the Property is located.

(h) Merger of Prior Agreements. This Agreement and the exhibits and schedules hereto, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings between the parties relating to the subject matter hereof.

(i) Time of the Essence. Time is of the essence of this Agreement.

(j) Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

(k) Legal Costs. If any legal action is brought by either party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

(l) Confidentiality. Each party agrees to maintain in confidence, and not to disclose to any third party, the information contained in this Agreement or pertaining to the sale contemplated hereby and the information and data furnished or made available by Seller to Purchaser, its agents and representatives in connection with Purchaser's investigation of the Property and the transactions contemplated by the Agreement; provided, however, that each party, its agents and representatives may disclose such information and data (a) to such party's accountants, attorneys, prospective lenders, accountants, partners, consultants and other advisors in connection with the transactions contemplated by this Agreement (collectively "Representatives") to the extent that such Representatives reasonably need to know (in Purchaser's or Seller's reasonable discretion) such information and data in order to assist, and perform services on behalf of, Purchaser or Seller; (b) to the extent required by any applicable statute, law, regulation, governmental authority or court order; (c) in connection with any securities filings, registration statements or similar filings undertaken by Purchaser; and (d) in connection with any litigation that may arise between the parties in connection with the transactions contemplated by this Agreement. The provisions of this Section 16(l) shall survive the Closing, or in the event that the Closing does not occur, the termination of this Agreement.

(m) Counterparts and Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement. Signatures required under this Agreement may be transmitted by facsimile and, once received by the party to the Agreement to whom such signatures were transmitted, shall be binding on the party transmitting its signatures as though they were an original signature of such party.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written below.

PURCHASER:

SITECO, LLC,
a Delaware limited liability company

By: 

Name: Sweldan Kimber

Its: Vice President

Date: 9/10/09

SELLER:

LANCASTER COMMERCIAL, LLC,
a California limited liability company

By: 

Name: Daniel Sapdzad

Its: MANA member

Date: 9/11/09

DAVOOD GOLSHRAZIAN, a married man



Date: 9/11/09

SCHEDULE 12.2(h)
TO POWER PURCHASE AGREEMENT,
DATED AS OF _____, 2014
BETWEEN
THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE DEPARTMENT OF WATER AND POWER
AND
RE BARREN RIDGE 1 LLC

CORPORATE STRUCTURE

