

ARP-LOYALTON BIOMASS PROJECT

POWER SALES AGREEMENT

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

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

Dated as of November 16, 2017

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ARP-LOYALTON BIOMASS PROJECT

POWER SALES AGREEMENT

1. **PARTIES.** This ARP-Loyalton Biomass Project Power Sales Agreement (this "Agreement"), is dated for convenience as of the 16th day of November, 2017, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as "SCPPA," and the CITY OF LOS ANGELES ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER, a California municipality. City of Los Angeles is also periodically designated in this Agreement as "LADWP" or as "Purchaser", or, depending upon the context as "SCPPA Participating Member." LADWP and SCPPA are also sometimes herein referred to individually as a "Party" and together as the "Parties."

2. **RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.** The Recitals set forth herein and the facts that follow are incorporated into this Agreement by reference for all purposes. The facts and the circumstances of the Parties contained in the Recitals, among others, represent the background and framework for this Agreement, the aim and purpose of this Agreement and the intendments of the Parties with respect thereto. This Agreement has been reviewed by attorneys for both Parties and shall not be interpreted with reference to the rules of construction providing for construction against a Party responsible for drafting or creating a particular provision or section, but should instead be interpreted in a manner which broadly carries forth the goals and objectives of the Parties as expressed herein. References to "Sections" and "Appendices" shall be to Sections and Appendices, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose nor be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. This Agreement is made with reference to the following facts, among others:
 - 2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the "Act" as defined in Appendix A), by its members, which are municipalities and an irrigation district that supply, among other things, electrical energy in the State of California, for the purpose of jointly and cooperatively undertaking the planning, financing, development, acquisition, construction, improvement, betterment, operation, and maintenance of projects for the generation or transmission of electric energy, including the development and implementation of systems and frameworks for the acquisition and delivery of secure, long-term and reliable supplies of renewable electric energy.

- 2.2 Pursuant to the terms of the Act, SCPPA has the power, for the purpose of promoting, maintaining and operating electric generation and transmission, to plan, develop, contract for, finance, acquire, design, undertake, own, construct, manage, operate, maintain and administer projects involving systems, methodologies and programs for the acquisition, supply procurement and delivery of secure, long-term reliable supplies of renewable electric energy and to cause such projects to be planned, developed, contracted for, financed, acquired, designed, undertaken, constructed, managed, operated, maintained and administered and to provide by agreement for the performance and carrying out of any such activities.
- 2.3 Purchaser is a chartered California municipality which provides electric energy to its citizens through its municipally owned electric system. Purchaser is one of the parties to the SCPPA Joint Powers Agreement.
- 2.4 In response to the mandate imposed on them by the State of California in 2016 by passage of Senate Bill 859 (Stats. 2016, c. 368, eff. Sept. 14, 2016, hereinafter "SB 859") to procure a specified amount of electric generation capacity from biomass-fueled resources, LADWP, together with the City of Anaheim, the City of Riverside, and the Imperial Irrigation District, (with LADWP "SCPPA Participating Members") and other publicly-owned utilities subject to the SB 859 mandate, have identified a potential biomass generation resource owned and operated by ARP-Loyalton Biomass, LLC. Such biomass resource is denominated as the ARP-Loyalton Biomass Project ("the Project") and is owned and operated by ARP-Loyalton Biomass, LLC, a California limited liability company and an affiliate of American Renewable Power, LLC.
- 2.5 After negotiations SCPPA, together with the Sacramento Municipal Utility District ("SMUD"), the Modesto Irrigation District ("MID"), and the Turlock Irrigation District ("TID"), is entering into a Power Purchase Agreement with ARP-Loyalton Cogen LLC for the purchase of capacity, electric output and associated environmental attributes of the Project.
- 2.6 SCPPA, SMUD, MID and TID are also entering into the Buyers Joint Project Agreement, a copy of which is attached hereto as Appendix D, providing for the coordination of the exercise of certain of their rights and activities with respect to the Project and authorizing SCPPA as Buyers' Agent to take certain actions on their behalf under the Power Purchase Agreement.
- 2.7 Purchaser has a need for the capacity, electric output and associated rights, benefits and credits of the Project which comply with environmental and energy procurement laws, and has determined to enter into this Power Sales Agreement with SCPPA to purchase from SCPPA capacity, electric output and associated rights, benefits and credits of the Project.

3. **AGREEMENT.** For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and in order to pay SCPPA for Purchaser's share of SCPPA's costs with respect to the Project, the Parties agree as herein set forth.
4. **DEFINITIONS.** Appendix A to this Agreement, attached hereto and incorporated herein, sets forth definitions of certain terms used in this Agreement. The terms defined in Appendix A and this Section 4, whether in the singular or plural, unless specifically provided otherwise, when used herein or in the Appendices hereto and initially capitalized, shall have the meaning ascribed thereto in said Appendix A or as set out below:
- 4.1 Agreement. "Agreement" means this Agreement, which includes the Appendices attached hereto, as it may be amended, modified or supplemented from time to time.
- 4.2 Effective Date. "Effective Date" means the date described in Section 15.1 hereof.
- 4.3 SCPPA Percentage of Facility Output. "SCPPA Percentage of Facility Output" means the Buyers' Percentage of Facility Output (as defined in the Power Purchase Agreement) allocated to SCPPA under the Power Purchase Agreement, attached hereto as Appendix C.
- 4.4 Total Power Costs. "Total Power Costs" mean all of SCPPA's costs resulting from SCPPA's contracting for, providing for, accommodating, and facilitating the Project, including costs arising under any of the Power Purchase Agreement or other Project Agreements associated with SCPPA percentage of Facility Output. SCPPA shall apply, as a credit against Total Power Costs, any receipts, revenues and other moneys received by SCPPA from surplus equipment, materials, supplies or assets relating to the Project sold prior to the date of Commercial Operation for the benefit of SCPPA, as well as such other amounts to be applied as a credit against Total Power Costs pursuant to this Agreement. Total Power Costs shall consist of (i) the Delivery Output cost component (described in Section 4.4.1), (ii) the Power Purchase Agreement General and Administrative cost component (described in Section 4.4.2), (iii) a Supplementary Services cost component to the extent SCPPA incurs such costs (described in Section 4.4.3), (iv) a Reserve Fund cost component (described in Section 4.4.4), and (v) a Power Purchase Agreement cost component (described in Section 4.4.5), and shall include the items of cost and expense referred to in the Power Purchase Agreement and this Section 4.4 that are accrued or paid by SCPPA during each Month of each Power Supply Year. In the event any Power Supply Year shall consist of fewer than twelve Months, the fraction set forth in Section 4.4.2 shall be adjusted accordingly and, in the event of any revision of the Annual Budget after the commencement of any Power Supply Year, the amount determined pursuant to Section 4.4.2 shall be appropriately adjusted so that any increase or decrease in the portion of the Annual Budget applicable to Section 4.4.2 shall be evenly apportioned over the remaining Months of such Power Supply Year, excluding any cost associated with SCPPA acting as Buyers Agent for other Buyers.

- 4.4.1 The Delivery Output cost component of Total Power Costs for each Month shall consist of the costs of the SCPPA's Percentage of Facility Output, as calculated at the applicable Contract Price therefor in the Power Purchase Agreement.
- 4.4.2 The Power Purchase Agreement General and Administrative cost component of Total Power Costs for each Month shall consist of the administrative and general costs with respect to SCPPA's Percentage of Facility Output, including (i) legal fees, costs relating to litigation (including disbursements and other amounts paid as a result of such litigation), insurance costs (including amounts to fund any self-insurance program), overhead costs, any taxes required to be paid by SCPPA with respect to SCPPA's Percentage of Facility Output, (ii) all expenses incurred in enforcing the Power Purchase Agreement and the Project Agreements, any applicable associated ancillary costs under the Power Purchase Agreement, and any costs SCPPA is required to pay with respect to the Facility Output; (iii) all costs related to the conducting of the business of SCPPA with respect to SCPPA's Percentage of Facility Output, including the applicable portion of salaries, fees for legal, engineering, financial and other services, and costs of the Project Manager, and shall include all costs incurred by SCPPA, as a Buyer, under the Buyers Joint Project Agreement (exclusive, however, of costs of SCPPA as Buyers' Agent that are paid under the Buyers Joint Project Agreement), as well as all other costs attributable to miscellaneous and incidental expenses in connection with the administration of SCPPA's Percentage of Facility Output, and all other expenses properly related to the conduct of such affairs by SCPPA.
- 4.4.3 The Supplementary Services cost component of Total Power Costs shall consist of all monthly costs incurred by SCPPA, if any, and to the extent not included in Section 4.4.1, in connection with services for transmission, dispatching, scheduling, tagging, firming, balancing, swapping, exchanging or delivery and for otherwise facilitating the disposition, movement, taking, receiving, crediting and accounting for SCPPA's Percentage of Facility Output provided for under this Agreement. The Supplementary Services cost component of the Total Power Costs shall also include all monthly costs incurred by SCPPA, if any, that are necessary to move or otherwise handle delivery of any portion of Facility Output from the Point of Delivery to one or more specified delivery point(s) as determined by Purchaser pursuant to Sections 9.2 and 9.5 and by other SCPPA Participating Members pursuant to the terms of their respective power sales agreement relating to the Project. Absent a request by Purchaser for SCPPA to provide Supplementary Services during a Month, no Supplementary Services cost component shall be included in Purchaser's Total Power Costs for such Month.

4.4.4 The Reserve Fund cost component of Total Power Costs for a Month shall consist of the amount for such Month necessary to establish and maintain the Reserve Funds at the level deemed prudent and appropriate by the Board of Directors.

4.5 Monthly Costs. "Monthly Costs" mean the costs payable by the Purchaser to SCPPA as described in Section 7.1 hereof.

5. PURCHASE AND SALE OF FACILITY OUTPUT AND THE OBLIGATIONS OF SCPPA AND THE PURCHASER.

5.1 Purchase and Sale of SCPPA Participant Entitlement Share. In accordance with the terms and conditions of this Agreement, commencing on the earliest of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the effective date of the Power Purchase Agreement, or (iii) the date of the first delivery of energy to Purchaser pursuant to this Agreement, and continuing through the term of this Agreement, except as otherwise provided herein, SCPPA shall provide Purchaser its SCPPA Participant Entitlement Share of any and all products, rights, and benefits, whether tangible or intangible received or obtained by SCPPA with respect to the Project, including without limitation the Environmental Attributes and Facility Output, and Purchaser shall be responsible for and pay its SCPPA Participant Entitlement Share of any and all costs, liabilities and obligations associated with the acquisition by SCPPA of such products, rights, and benefits, which shall include all costs, liabilities and obligations associated with Facility Output under the Power Purchase Agreement and any other applicable Project Agreement, including purchase or acquisition of any rights pursuant to the Power Purchase Agreement and any other applicable Project Agreement.

5.2 Facility Output and Deliverables. SCPPA shall provide and Purchaser shall purchase and receive Purchaser's SCPPA Participant Entitlement Share of Facility Output pursuant to the terms of this Agreement. To the extent permitted by the Power Purchase Agreement, the applicable Project Agreements, or otherwise determined by the Board of Directors, SCPPA will endeavor to take such actions or implement such measures as may be necessary or desirable for the utilization, maintenance or preservation of the rights and interests of the SCPPA Participating Members with respect to the Project including, if appropriate, such enforcement actions or other measures as the Board of Directors deems to be in the Purchaser's best interests. To the extent such services are available and can be carried forth in accordance with the Power Purchase Agreement or other applicable Project Agreements, SCPPA shall also provide such other services, as approved by the Board of Directors, as may be deemed necessary to secure the benefits and/or satisfy the obligations associated with the Power Purchase Agreement or other applicable Project Agreements. SCPPA shall use its best efforts, on behalf of the SCPPA Participating Members, to secure the benefits of the transactions contemplated under the Power Purchase Agreement or other applicable Project Agreements including the delivery of the Facility Output

contemplated by this Agreement, and shall endeavor to maintain and secure the rights and benefits accruing to SCPPA through the Power Purchase Agreement and the other applicable Project Agreements. SCPPA is authorized to exercise the powers vested in SCPPA pursuant to the Act, its Joint Powers Agreement and this Agreement, as agent for Purchaser to fully carry forth Purchaser's objectives in the Project as set forth herein.

5.3 Project Manager. SCPPA or its designee or designees shall act as Project Manager as provided in this Agreement to administer the Project, or cause the Project to be administered, as provided in this Agreement or pursuant to assignments, instructions or requests by the Coordinating Committee or the Board of Directors, or through any project management or agency agreement, or contracts for services between SCPPA and a third party.

5.4 Adoption of Annual Budget. The Annual Budget and any amendments to the Annual Budget shall be prepared and approved in accordance with Sections 5.4.1 or 5.4.2, respectively.

5.4.1 SCPPA will prepare and submit to Purchaser a proposed Annual Budget at least 60 Days prior to the beginning of each Power Supply Year. In connection with the preparation of the Annual Budget, SCPPA shall incorporate therein the Operating Budget for such Power Supply Year as prepared by the Project Manager and approved by the Board of Directors. Purchaser may then submit to SCPPA, at any time until the Annual Budget is adopted, any matters or suggestions relating to the Annual Budget. SCPPA shall adopt the Annual Budget not less than thirty (30) nor more than sixty (60) Days prior to the beginning of such Power Supply Year and shall cause copies of such adopted Annual Budget to be delivered to the Purchaser; provided, however, the Annual Budget for the first Power Supply Year shall be prepared, considered, adopted and delivered in the most practicable manner available prior to Commercial Operation of the Facility. As required from time to time during any Power Supply Year after seven Days written notice to the Purchaser, SCPPA may, pursuant to the foregoing provisions for adopting the Annual Budget, adopt an amended Annual Budget for and applicable to such Power Supply Year for the remainder of such Power Supply Year. The Annual Budget shall establish the basis for monthly Billing Statements to be sent to each SCPPA Participating Member, as provided in Section 7 hereof.

5.4.2 Any adjustment, and any other or further mechanism for adjustment, as may be required to address the variability of costs of operation of the Project at any time during the Power Supply Year or the variability of or addition to any other Annual Budget component, may be incorporated into the Annual Budget as provided above, or any amendment to an Annual Budget may be made at any time during any Power Supply Year, upon the seven Days written notice to the Purchaser as set forth in Section 5.4.1.

- 5.5 Reports. SCPPA will prepare and issue to Purchaser the following reports as soon as reasonably practicable after the end of each calendar quarter in a Power Supply Year:
- 5.5.1 Financial and operating statement relating to the Project.
 - 5.5.2 Variance report comparing the costs in the Annual Budget versus actual costs, and the status of other cost-related issues with respect to the Project.
- 5.6 Records and Accounts. SCPPA will keep, or cause to be kept, accurate records and accounts of each of the properties and facilities comprising the Project as well as of the operations relating to the Project, all in a manner similar to accepted accounting methodologies associated with similar projects. All transactions of SCPPA relating to the Project with respect to each Fiscal Year shall be subject to an annual audit by Purchaser. Purchaser shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice during regular business hours.
- 5.7 Provide Information. Purchaser agrees to supply SCPPA, upon written request and being provided a reasonable amount of time to respond, with such information, documentation and certifications as SCPPA shall reasonably determine to be requisite to and necessary or desirable for the administration and ongoing activities of the Project, including information reasonably available to allow SCPPA to respond to requests for such information from any federal, state or local regulatory body or other authority.
- 5.8 Consultants and Advisors Available. SCPPA shall make available to the Project Manager, all consultants and advisors that are retained by SCPPA, and such consultants and advisors shall be authorized to consult with and advise the Project Manager on Project matters.
- 5.9 Liquidated Damages. Any amounts paid to SCPPA as and for Daily Delay Damages by the Power Purchase Provider as provided under the Power Purchase Agreement shall be remitted to the SCPPA Participating Members in accordance with their respective SCPPA Participant Entitlement Shares.

6. COORDINATING COMMITTEE.

- 6.1 Establishment and Authorization of the Coordinating Committee.
- 6.1.1 The Coordinating Committee is hereby established and duly authorized to act on behalf of the SCPPA Participating Members as provided in this Section 6 for the purpose of (i) providing coordination among, and information to, the SCPPA Participating Members and SCPPA, (ii) the administration of the Power Purchase Agreement, (iii) the administration of the Project Agreements, (iv) making any recommendations to the Board of Directors regarding the

administration of the Project and any acquisitions related thereto and (v) execution of the Coordinating Committee responsibilities set forth in Section 6.2 hereof, including the various financial, administrative, and technical matters which may arise from time to time in connection with the Project or the administration thereof, and such further developments as may need to be addressed; provided that the above purposes of the Coordinating Committee shall be authorized only to the extent such purposes are not within the responsibilities of the Buyers Joint Project Committee as provided under the Buyers Joint Project Agreement.

- 6.1.2 The Coordinating Committee shall consist of one representative designated by each of the SCPPA Participating Members. Each SCPPA Participating Member shall be entitled to cast a vote equal to its SCPPA Participant Entitlement Share as set forth in Appendix B hereof. An alternate representative of each SCPPA Participating Member shall be its alternate Joint Committee Representative or, if none has been appointed, an alternate representative may be appointed by written notice by such SCPPA Participating Member to SCPPA and each of the other SCPPA Participating Members to act on the Coordinating Committee, or on any subcommittee established by the Coordinating Committee, in the absence of such SCPPA Participating Member's regular representative or to act on specified occasions with respect to specified matters. An alternate representative may attend all meetings of the Coordinating Committee but may vote only if the representative for whom she/he serves as alternate is absent. SCPPA shall be responsible for calling and presiding over meetings of the Coordinating Committee.
- 6.1.3 No SCPPA Participating Member's representative shall exercise any greater authority than permitted for the SCPPA Participating Member which she/he represents.
- 6.1.4 SCPPA shall promptly call a meeting of the Coordinating Committee at the request of any representative in a manner and to the extent permitted by law.
- 6.1.5 For the purpose of conducting meetings, a quorum shall exist so long as SCPPA's representative and the representatives of at least a majority of the SCPPA Participating Members are present.
- 6.1.6 Except as may otherwise be provided in an agreement to which all of the SCPPA Participating Members agree, all actions taken by the Coordinating Committee shall require an affirmative vote of SCPPA Participating Members having SCPPA Participant Entitlement Shares aggregating at least eighty percent (80%) of the total SCPPA Participant Entitlement Shares. Unless the Board of Directors shall otherwise determine to require a majority vote pursuant to the terms of the Joint Powers Agreement, all actions with respect to the Project

taken by the SCPPA Board of Directors shall require an affirmative vote of at least eighty percent (80%) of the Project Votes (as defined in SCPPA's Joint Powers Agreement, dated as of November 1, 1980, as amended from time to time) cast thereon. Notwithstanding the forgoing, however, if a proposed action before the Coordinating Committee or the Board of Directors relates solely to the interests of another SCPPA Participating Member and Purchaser determines, in good faith, that such proposed action will not adversely affect Purchaser, economically or otherwise, then Purchaser agrees that it shall not unreasonably withhold its affirmative vote with respect to such proposed action.

- 6.1.7 Purchaser acknowledges and agrees that SCPPA, through the Coordinating Committee or the Board of Directors, as applicable, may from time to time enter into applicable Project Agreements or amendments of and supplements to the applicable Project Agreements (in accordance with their respective terms) and that, except as provided herein or as otherwise provided by resolution of the Board of Directors, SCPPA will not be required to obtain the consent or approval of Purchaser in connection with any such Project Agreement or supplement or amendment, provided that any such amendment shall be approved by the Coordinating Committee or the Board of Directors in the manner provided by this Agreement.
- 6.1.8 Conducting of Coordinating Committee meetings and actions taken by the Coordinating Committee may be taken by vote given in an assembled meeting or by telephone, video conferencing, telegraph, telex, letter, e-mail or by any combination thereof, to the extent permitted by law.
- 6.2 Coordinating Committee Responsibilities. In addition to those responsibilities enumerated in Section 6.1 and to the extent not within the responsibilities of the Buyers Joint Project Committee as provided under the Buyers Joint Project Agreement, the Coordinating Committee shall have the following responsibilities:
 - 6.2.1 Provide liaison between SCPPA and the SCPPA Participating Members at the management or other levels with respect to the ongoing administration of the Project and maintain a liaison between the SCPPA Participating Members and all other SCPPA members with respect to the Project, and where the Coordinating Committee deems it appropriate, maintain a liaison with the counterparties to any Project Agreements and with any other entities or utilities engaged in or in connection with other renewable energy projects.
 - 6.2.2 Exercise general supervision over any subcommittee established pursuant to Section 6.5.

- 6.2.3 Review, develop, discuss, and, if appropriate, recommend, modify or approve all budgets and revisions thereof prepared and submitted by SCPPA or the Project Manager at the request of the Coordinating Committee or pursuant to any applicable agreement.
- 6.2.4 Review, develop, discuss, and, if appropriate, modify, approve or otherwise act upon any systems or procedures for adjustment of the Annual Budget or any alternative methodologies for budgeting or billing as set forth in Section 5 and Section 7 of this Agreement.
- 6.2.5 Carry out all other actions reposed in the Coordinating Committee with respect to budgeting and billing as set forth in Section 5 and Section 7 of this Agreement.
- 6.2.6 Review, discuss and attempt to resolve any disputes among the SCPPA Participating Members or the parties to any Project Agreements including, without limitation, the Power Purchase Provider, the counterparties under the Power Purchase Agreement or any other counterparty with respect to any Project Agreement.
- 6.2.7 Make recommendations to the Project Manager, the SCPPA Participating Members, the Board of Directors or to the counterparties to any of the Project Agreements, as appropriate, with respect to the ongoing administration of the Project.
- 6.2.8 Review, develop, and if appropriate, modify and approve rules, procedures and protocols for the administration of the Project or Project Agreements, including rules, procedures and protocols for the management of the costs of the scheduling, handling, tagging, dispatching and crediting of SCPPA's Percentage of Facility Output and the handling and crediting of Environmental Attributes associated with SCPPA's Percentage of Facility Output.
- 6.2.9 Review, and, if appropriate, modify, approve or otherwise act upon the form or content of any written statistical, administrative, or operational reports, biomass energy related data, electric generation information, biomass energy production data, and technical information, facility reliability data, transmission information, forecasting scheduling, dispatching, tagging, parking, exchanging, balancing, movement, or other delivery information, climate and weather related matters, regulatory matters or requirements, and other information and other similar records or matters pertaining to the Project which are furnished to the Coordinating Committee by the Project Manager as requested by the Coordinating Committee, or by the counterparties to Project Agreements, experts, consultants or others.
- 6.2.10 Review, and, if appropriate, modify, approve or otherwise act upon, practices and procedures as formulated by the Project Manager as

requested by the Coordinating Committee or, if applicable, the counterparty to any Project Agreement, to be followed by the SCPPA Participating Members for, among other things, the production, scheduling, tagging, transmission, delivery, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale or disposition of SCPPA's Percentage of Facility Output. For avoidance of doubt, upon SCPPA's delivery and sale of Facility Output to Purchaser at the Point of Delivery, Purchaser shall have full unilateral rights to remarket, sell or otherwise dispose of such Facility Output.

- 6.2.11 Review, modify and approve, if appropriate, any activities with respect to the performance of any Project Agreement, including policies for selection and utilization of contractors and consultants included in the budgets with respect to the Project. In approving such activities, consideration may be given, if possible, to each SCPPA Participating Member's electric system conditions, which may prevail during such planned activities.
- 6.2.12 Review, and, if appropriate, recommend, modify, approve or otherwise act with respect to the exercise of SCPPA's rights under the Power Purchase Agreement or review, recommend, approve or otherwise act with respect to the procurement of resources in connection with the Power Purchase Agreement.
- 6.2.13 Review, and if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager, as requested by the Coordinating Committee, or by any counterparty to any Project Agreements giving due recognition to the needs, rights and electric system requirements and capabilities of all SCPPA Participating Members.
- 6.2.14 Review and act upon any matters involving the Power Purchase Agreement and any other Project Agreement, any guarantee or letter of credit delivered to or for the benefit of SCPPA by the Power Purchase Provider or any other counterparty to any Project Agreement in connection with the Project, and take such actions or make such recommendations as may be appropriate or desirable in connection therewith.
- 6.2.15 Review, modify or approve recommendations of the Project Manager or counterparties made pursuant to the provisions of any Project Agreement.
- 6.2.16 Review, modify and where appropriate, recommend or approve the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of the SCPPA Percentage of Facility Output to the Point of Delivery of from any of the Point of Delivery to other points or destinations, as applicable.

- 6.2.17 Review, examine modify and where appropriate, recommend or approve the implementation of methods for addressing curtailments or other interruptions of transmission.
 - 6.2.18 Review, modify and where appropriate, recommend or approve the implementation of practices and procedures to carry forth the provisions of Section 9 herein, as may be applicable with respect to any of the SCPPA Participating Members, provided that the Coordinating Committee shall take no action with respect to the possible provision of Supplementary Services unless and until a SCPPA Participating Member makes a specific request that SCPPA provide such Supplementary Services.
 - 6.2.19 Review and approve adjustments to the SCPPA Participant Entitlement Shares, and associated SCPPA capacity amounts set forth in Appendix B when and as required by this Agreement; provided, that such action shall require the affirmative vote of Purchaser's representative if such adjustment would change Purchaser's SCPPA Participant Entitlement Share, and the associated SCPPA capacity amounts.
 - 6.2.20 Perform such other functions and duties as may be provided for under this Agreement, the Power Purchase Agreement or any other applicable Project Agreement or as may otherwise be appropriate or beneficial to the Project or the SCPPA Participating Members.
- 6.3 Management Decisions and the Role of Board of Directors. To the extent not provided for under the Buyers Joint Project Agreement, the rights and obligations of SCPPA under the Project Agreements shall be subject to the ultimate control at all times of the Board of Directors. Purchaser shall be entitled to participate in the decisions of the Board of Directors with respect to SCPPA's rights and interests with respect to the Project as provided in this Section 6.3. SCPPA through the Board of Directors shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:
- 6.3.1 Future Matters Liaison. The Board of Directors shall provide liaison between the SCPPA Participating Members at the management level with respect to the administration of the Project and other future matters arising out of the Project Agreements.
 - 6.3.2 Dispute Resolution. The Board of Directors shall endeavor to review, discuss and attempt to resolve any disputes among SCPPA, the SCPPA Participating Members and the counterparties under the Project Agreements relating to the Project Agreements.
 - 6.3.3 Scheduling Procedures. When recommended by the Project Manager, or when otherwise appropriate, the Board of Directors shall act upon and approve or modify the practices and procedures to be

followed by the SCPPA Participating Members for scheduling, delivering, controlling and allocating the SCPPA Percentage of Facility Output.

- 6.3.4 Committees. The Board of Directors shall exercise such review, direction or oversight as may be appropriate with respect to the Coordinating Committee and any other committees established pursuant to the Project Agreements.
 - 6.3.5 Project Agreements. The Board of Directors shall have the authority to approve any future Project Agreements, including agreements for scheduling coordinator services, and to review modify and approve, as appropriate, all amendments, modifications and supplements to the Project Agreements.
 - 6.3.6 Budgeting. The Board of Directors shall review, modify and approve each Annual Budget and the revisions thereto in accordance with Section 5.4 of this Agreement.
 - 6.3.7 Application of Certain Payments Under the Power Purchase Agreement. The Board of Directors shall review, modify and approve recommendations of the Project Manager as to the application of any payments or amounts received by SCPPA from the Performance Security or as a result of Default by the Power Purchase Provider under the Power Purchase Agreement; provided that such payments and amounts shall be applied to one or more of the purposes set forth in Section 4.4 to the credit of Purchaser and the other SCPPA Member Participants in proportion to their respective SCPPA Member Entitlement Share.
 - 6.3.8 Other Matters. The Board of Directors is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Project Manager, as may be provided for under this Power Sales Agreement and under the other Project Agreements, or as may otherwise be appropriate.
- 6.4 Periodic Audits. The Board of Directors or the Coordinating Committee may arrange for the annual audit under Section 5.6 of this Agreement by certified accountants, selected by SCPPA and experienced in electric generation or electric utility accounting, of the books and accounting records of SCPPA, and where deemed appropriate the Project Manager (if other than SCPPA), the Power Purchase Provider (to the extent provided under the Power Purchase Agreement) and any other counterparty under any Project Agreement to the extent allowable, and any cost reimbursable consultant or cost reimbursable contractor relevant to the administration of the Project, and such audit shall be completed and submitted to SCPPA as soon as reasonably practicable after the close of the Fiscal Year. SCPPA shall promptly furnish to Purchaser copies of all audits. No more frequently than once every calendar year, the Purchaser may, at its sole cost and expense, audit or cause

to be audited the books and cost records of SCPPA, the Project Manager (if other than SCPPA), the counterparty under any Project Agreement to the extent so provided in the applicable Project Agreement, and any cost reimbursable consultant or cost reimbursable contractor relevant to the administration of the Project.

- 6.5 Additional Committees. The Board of Directors may establish as needed subcommittees including, but not limited to, auditing, legal, financial, engineering, mechanical, weather, diurnal, barometric, meteorologic, operating, insurance, community relations, governmental relations, environmental and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the Board of Directors; provided, however, such authority, membership or duties shall not conflict with the provisions of any of the Project Agreements. Each subcommittee shall be initially responsible to the Coordinating Committee.
- 6.6 Written Record. All actions, resolutions, determinations and reports made by the Coordinating Committee as required by this Agreement shall be set forth in a written record or its minutes.
- 6.7 Change in Representative. Purchaser shall promptly give written notice to the other SCPPA Participating Member and SCPPA of any changes in the designation of its representative on the Coordinating Committee or any subcommittee, and SCPPA shall promptly give written notice to Purchaser and the other SCPPA Participating Member of any changes in the designation of its representative on the Coordinating Committee or any subcommittee.
- 6.8 Costs of Consultants. Costs (or the applicable portion thereof) of consultants and others employed or appointed by the Board of Directors to perform the duties required hereunder shall be included in Total Power Costs, as appropriate, and shall be billed to SCPPA or the Project Manager (if other than SCPPA).
- 6.9 Representative's Expenses. Any expenses incurred by any representative of any SCPPA Participating Member or group of SCPPA Participating Members serving on the Coordinating Committee or any other committee in connection with his/her duties on such committee shall be the responsibility of the SCPPA Participating Member which he/she represents and shall not be an expense payable under this Agreement.
- 6.10 Inaction by Committee. It is recognized by SCPPA and the SCPPA Participating Members that if the Coordinating Committee is unable or fails to agree with respect to any matter or dispute which it is authorized to determine, resolve, approve, disapprove or otherwise act upon after a reasonable opportunity to do so, or within the time specified herein or in any other applicable Project Agreement, then SCPPA may take such action as in its discretion is necessary for its timely performance under any Project Agreement pending the resolution of any such inability or failure to agree, but

nothing herein shall be construed to allow SCPPA to act in violation of the express terms of any Project Agreement.

- 6.11 Compliance with the Power Purchase Agreement. It is further recognized by SCPPA and the SCPPA Participating Members that notwithstanding Section 6.10 or any other provision of this Agreement, no action by the Coordinating Committee, or the Project Manager shall require or authorize SCPPA to act in any manner inconsistent with requirements of the Power Purchase Agreement or to refrain from acting in a manner required by the Power Purchase Agreement.
- 6.12 Delegation. To secure the effective cooperation and interchange of information in a timely manner in connection with various administrative, technical and other matters which may arise from time to time in connection with administration of the Project Agreements, in appropriate cases, duties and responsibilities of the Board of Directors or the Coordinating Committee, as the case may be under this Section 6, may be delegated to SCPPA's Executive Director by the Board of Directors upon notice to the SCPPA Participating Members.

7. CHARGES AND BILLINGS.

- 7.1 Monthly Costs. The amount of Monthly Costs which shall be paid by Purchaser for a particular Month shall be the sum of the following, as applicable, subject to Sections 7.9 and 7.10 hereof and any applicable adjustments as provided in Section 12 hereof:
- 7.1.1 Purchaser's SCPPA Participant Entitlement Share multiplied by the Delivery Output cost component of Total Power Costs (as provided in Section 4.4.1) for such Month.
 - 7.1.2 Purchaser's SCPPA Participant Entitlement Share multiplied by the Power Purchase Agreement General and Administrative cost component of Total Power Costs (as provided in Section 4.4.2 hereof) for such Month.
 - 7.1.3 Purchaser's SCPPA Participant Entitlement Share multiplied by the Reserve Fund cost component of Total Power Costs (as provided in Section 4.4.4 hereof) for such Month.
 - 7.1.4 Purchaser's share of the Supplementary Services cost component of Total Power Costs (as provided in Section 4.4.3 hereof) based on Purchaser's allocated share of any such services procured by SCPPA on behalf of the Purchaser for such Month.
- 7.2 Billing Statement. By the fifth Day of each Month during each Power Supply Year, SCPPA shall bill Purchaser for the amount of Monthly Costs to be paid by Purchaser for the current Month by providing Purchaser with a Billing Statement in accordance with the charges established pursuant to the

provisions of this Agreement; provided, however, that such Billing Statement, with respect to the cost of Facility Output provided by SCPPA to Purchaser under this Agreement, shall also include with respect to the performance by SCPPA or the counterparty under and pursuant to applicable Project Agreements, any charge or credit to Purchaser with respect to the costs or revenues attributable to Purchaser pursuant to and under any applicable Project Agreement. Such Billing Statement shall detail the costs described in Section 7.1 hereof and shall set forth, among other things, the amounts due for such Month by Purchaser with respect to the items of Monthly Costs set forth in Section 7.1, as such Monthly Costs may be adjusted from time to time in accordance with Section 5 and this Section 7. Such Billing Statement shall be paid by Purchaser on or before twenty (20) Days after receipt of such Billing Statement.

- 7.3 Adoption of Alternative Billing Statement Procedures. The Coordinating Committee may recommend the adoption of an alternative Billing Statement billing methodology in connection with each SCPPA Participating Member's Billing Statement with respect to the Monthly Costs and the costs associated with any Project Agreement. Such alternative Billing Statement procedures may be placed into effect with the approval of the same by resolution of the Board of Directors. Any such alternative Billing Statement billing methodology shall be fiscally prudent, financially sound and shall assure coverage of all potential and actual costs and obligations of SCPPA.
- 7.4 Disputed Monthly Billing Statement. In case any portion of any Billing Statement received by Purchaser from SCPPA shall be in bona fide dispute, Purchaser shall pay SCPPA the full amount of such Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, if any, including interest at the rate received by SCPPA on any overpayment, will be credited to Purchaser by SCPPA after such determination; provided, however, that such interest shall not accrue on any overpayment that is acknowledged by SCPPA and returned to Purchaser by the fifth Day following the receipt by SCPPA of the disputed overpayment. In the event such Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise Purchaser with regard to SCPPA's position relative thereto within thirty (30) Days following receipt of written notification by Purchaser of such dispute.
- 7.5 Reconciliation of Monthly Costs. As soon as practicable after the end of each Power Supply Year, or more frequently if so determined by the Board of Directors, SCPPA will submit to Purchaser and each of the other SCPPA Participating Members a detailed statement of the actual aggregate Monthly Costs and other amounts payable hereunder, including any credits thereto, for all of the Months of such Power Supply Year, and the adjustments of the aggregate Monthly Costs and other amounts payable hereunder, if any, for any prior Power Supply Year, based on the annual audit of accounts provided for in Section 5.6. If, on the basis of the statement submitted as provided in this Section 7.5, the actual aggregate Monthly Costs and other amounts payable by the Purchaser for any Power Supply Year exceed the amount

thereof which Purchaser has been billed, Purchaser shall pay SCPPA, within twenty (20) Days of receipt of SCPPA's invoice, the amount to which SCPPA is entitled. If, on the basis of the statement submitted pursuant to this Section 7.5, the actual aggregate Monthly Costs or other amounts payable by the Purchaser for any Power Supply Year are less than the amount therefor which Purchaser has been billed, SCPPA shall, unless otherwise directed by Purchaser or other SCPPA Participating Member with respect to moneys owed to it, credit such excess against Purchaser's and other SCPPA Participating Members' next monthly Billing Statement.

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

7.10 Credit or other Payment Attributable to a Specific SCPPA Participating Member. Should any SCPPA Participating Member make or provide, through any type of payment mechanism, for a separate payment or prepayment for Facility Output or other Project purpose which results in a credit or reduction in SCPPA's obligation being credited to the purchase of Facility Output, or a reduced cost of power or otherwise credited under the Power Purchase Agreement or other Project Agreement, then, to the extent that such credit is credited to an obligation of SCPPA under the Power Purchase Agreement or such other Project Agreement, such credit shall be passed through or credited to the applicable SCPPA Participating Member under such SCPPA Participating Member's Power Sales Agreement. Such a credit may, at the request of the applicable SCPPA Participating Member, be credited on SCPPA Participating Member's subsequent Billing Statements or handled pursuant to a Billing Statement methodology which bills for and places an amount which is the equivalent of the credit into the SCPPA Participating Member's project stabilization account or such a credit may be otherwise handled in such manner as the applicable SCPPA Participating Member may reasonably request. The provisions of this Section 7.10 shall be in addition to the terms and provisions of Section 12 and shall not be applicable to any circumstances, conditions or matters that are within the scope of Section 12.

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

8.1 Unconditional Payment Obligation. Beginning with the earliest of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date of Commercial Operation of the Facility, or (iii) the date of the first delivery of Facility Output to Purchaser and continuing through the term of this Agreement, Purchaser shall pay SCPPA the amounts of Monthly Costs set forth in the Billing Statements submitted by or on behalf of SCPPA to Purchaser in accordance with the provisions of Section 7 hereof whether or not this Agreement has been terminated, or the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

8.2 Source of Payments. The Purchaser hereby represents and warrants that the obligations of Purchaser to make the payments to SCPPA under this Agreement shall constitute a cost of purchased power and an operating expense of Purchaser payable solely from its electric power revenue fund, including any and all legally available electric system reserves. Purchaser will annually in each and every fiscal year of Purchaser during the term of this Agreement include in its power system budget, whether or not any other items are included, an appropriation from the revenues of its electric system sufficient to satisfy all the payments required to be made in such year under

this Agreement until all payments required under this Agreement have been paid in full.

- 8.3 Rate Covenant. Purchaser will establish, maintain and collect rates and charges for the electric service of its electric system each year so as to provide revenues sufficient, together with any legally available electric system reserves, to enable Purchaser to pay to SCPPA all amounts payable when due under this Agreement and to pay all other amounts payable from, and all lawful charges against or liens on, the revenues of its electric system.
- 8.4 Authorizations. The Purchaser hereby represents and warrants that no order, approval, consent or authorization of any governmental or public agency, authority or person, is required on the part of the Purchaser for the execution and delivery by the Purchaser of this Agreement, or the performance by the Purchaser of its obligations under this Agreement except for such as have been obtained.

9. OTHER TERMS AND SERVICES.

- 9.1 Delivery Procedures. Prior to the time at which any Energy will be delivered to Purchaser from the Facility, Purchaser will schedule and shall be obligated to take delivery of the Energy of Purchaser's SCPPA Participant Entitlement Share to be delivered under this Agreement. The SCPPA Percentage of Facility Output generated and produced from the Project shall be scheduled and delivered to Purchaser at the Point of Delivery under the practices and procedures approved pursuant to Sections 6.2 and 6.3, as applicable.
- 9.2 Other Services and Transmission From Point of Delivery. It is the obligation of Purchaser to receive its SCPPA Participant Entitlement Share and to arrange for delivery of such Facility Output to its ultimate destination or destinations after having reached the Point of Delivery, as determined by Purchaser. However, to the extent specified by the Purchaser, and to the extent practicable for SCPPA to do so, SCPPA shall assist in arranging for Supplementary Services and for such additional transmission, interconnection arrangements, energy management, firming, shaping, swaps, exchanges or other services associated with the transmission, use or disposition of Facility Output to be utilized by the Purchaser and to provide for delivery, accounting for, transferring and crediting the ownership and transfer of such Facility Output from the Point of Delivery to any other points or destinations, as determined by the Purchaser.
- 9.3 Energy Services. Except as otherwise provided in this Agreement, nothing herein shall prevent or restrict Purchaser from providing for its own transmission, energy management services, firming, balancing, or exchanging services or otherwise using or dispatching its Energy under this Agreement; provided, however, that such services, use or activities shall not materially affect any of the obligations of Purchaser under this Agreement.

- 9.4 Transfer of Environmental Attributes to Purchasers. SCPPA shall transfer or pass through all Environmental Attributes received by SCPPA under the Power Purchase Agreement to SCPPA Participating Members in the same manner by which SCPPA receives Environmental Attributes.

10. PROJECT SPECIFIC MATTERS AND PURCHASER'S RIGHTS AND OBLIGATIONS UNDER PROJECT AGREEMENTS.

- 10.1 Rights and Obligations under the Project Agreements. Notwithstanding anything to the contrary contained herein: (i) the obligation of SCPPA to deliver to Purchaser its SCPPA Participant Entitlement Share during the Delivery Term of the Power Purchase Agreement is limited to the SCPPA Percentage of Facility Output which SCPPA receives from the Power Purchase Provider for redelivery to Purchaser hereunder during such time; (ii) the obligation of SCPPA to pay any amount to Purchaser hereunder or to give credits against amounts due from Purchaser hereunder is limited to amounts SCPPA receives in connection with the transaction to which the payment or credit relates (or is otherwise available to SCPPA in connection with this Agreement for which such payment or credit relates); (iii) any purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which SCPPA is responsible under the Project Agreements shall be considered purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges incurred by SCPPA and payable by SCPPA Participating Members as provided in this Agreement; and (iv) any Force Majeure under the Power Purchase Agreement or other event of force majeure affecting the delivery of Energy pursuant to applicable provisions of the Project Agreements shall be considered an event caused by Uncontrollable Forces affecting SCPPA with respect to the delivery of energy and/or Environmental Attributes hereunder and SCPPA forwarding to Purchaser notices and information from the Power Purchase Provider concerning an event of Force Majeure upon receipt thereof shall be sufficient to constitute a notice that Uncontrollable Forces have occurred pursuant to Section 12.2 of this Agreement.

- 10.2 Revision of Appendix B. The Parties agree that adjustments of the SCPPA Participant Entitlement Shares in Appendix B in compliance with this Agreement shall be made and treated as an element of administration and not an amendment of this Agreement. The revised Appendix B shall become Appendix B to this Agreement in replacement of the prior Appendix B hereof.

11. NONPERFORMANCE AND PAYMENT DEFAULT.

- 11.1 Nonperformance by Purchaser. If Purchaser fails to perform any covenant, agreement or obligation under this Agreement or causes SCPPA to be in default with respect to any undertaking entered into for the Project or to be in

default under the Power Purchase Agreement, or any other Project Agreement, as applicable, or causes a default to occur pursuant to such agreements, SCPPA may, in the event the performance of any such obligation remains unsatisfied after thirty (30) Days' prior written notice thereof to the Purchaser and a demand to so perform, take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of this Agreement, and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against the Purchaser with regard to its failure to so perform.

- 11.2 Notice of Payment Default. On or promptly following the Initial Payment Default Date by Purchaser, SCPPA shall issue a Default Invoice and shall provide written notice to Purchaser that as a result of a Payment Default it is in default under this Agreement and has assumed the status of a Defaulting Purchaser and that Purchaser's Project Rights are subject to discontinuance, termination and disposal in accordance with Sections 11.4 and 11.5 of this Agreement. Notice of such Payment Default shall be provided promptly by SCPPA to the other SCPPA Participating Members. In addition to the foregoing the notice of Payment Default shall specify that five (5) Days after the issuance of the written notice of Payment Default by SCPPA, deliveries of Facility Output to the Purchaser pursuant to this Agreement shall be thereafter suspended until such time as Purchaser is in Compliance. SCPPA may take any action through or in conjunction with the Power Purchase Provider or any other counterparty under a Project Agreement or with the Project Manager, if applicable, to expeditiously carry forth the provisions of this Section 11.
- 11.3 Cured Payment Default. If after a Payment Default, Purchaser cures such Payment Default within thirty (30) Days (the Cure Period), its Project Rights shall not be subject to discontinuance, termination or disposal as provided for in Sections 11.4 and 11.5 of this Agreement as a result of any Payment Default associated with such Cured Payment Default.
- 11.4 Failure to Cure Payment Default. If at any time thirty (30) Days after an uncured Payment Default by Purchaser, Purchaser fails to be in Compliance, Purchaser's Project Rights shall immediately be discontinued and terminated; provided, however, the Defaulting Purchaser's obligation to make payments under this Agreement shall not be eliminated or reduced except to the extent provided in Section 11.5. SCPPA shall provide to the Defaulting Purchaser a separate monthly invoice of any such payment obligations under this Agreement. SCPPA shall immediately notify the Project Manager (if other than SCPPA), the other SCPPA Participating Members and such others as SCPPA deems appropriate, of such discontinuance and termination of the Defaulting Purchaser's Project Rights.
- 11.5 Elimination or Reduction of Payment Obligations. Upon termination of Defaulting Purchaser's Project Rights pursuant to Section 11.4, Defaulting Purchaser's obligation to make payments under this Agreement (notwithstanding anything to the contrary in this Agreement) shall not be

eliminated or reduced except to the extent of moneys received by SCPA as a result of the conveyance, transfer and assignment of Defaulting Purchaser's Project Rights and Obligations, provided, however, such payment obligations for Defaulting Purchaser may be eliminated or reduced to the extent permitted by law, if and to the extent any costs incurred by SCPA have been fully paid, and the Board of Directors, by resolution, determines to eliminate or reduce such payment obligations, which determination shall not be unreasonably withheld.

- 11.6 Use of Reserve Fund. With respect to a Payment Default by Purchaser, funds in the reserve fund account, if any, held by SCPA may be used, to the extent necessary and to the extent available, to cover any deficiency with respect to any payment due by SCPA attributable to Purchaser's participation in the Project.

12. CHARACTER, CONTINUITY OF SERVICE.

- 12.1 Outages, Interruptions and Curtailment of Energy Deliveries. The Power Purchase Provider or other counterparty may under certain conditions set forth in the applicable provisions of a Project Agreement or other applicable operating agreement, interrupt or curtail deliveries of Facility Output to Purchaser under prescribed circumstances pursuant to the applicable provisions of a Project Agreement or other applicable operating agreement. Should such an interruption or curtailment occur Purchaser shall be credited with such revenues as are credited or paid to SCPA on Purchaser's behalf and shall be obligated to pay any costs incurred by SCPA attributable to Purchaser which are payable by SCPA pursuant to the Power Purchase Agreement or any other applicable Project Agreement. SCPA or the Project Manager (if other than SCPA) or SCPA's agent will use its best efforts to apprise Purchaser of potential outages, interruptions or curtailments, the reason therefor and the probable duration thereof, when such outages, interruptions or curtailments can be deemed likely to occur.

- 12.2 Uncontrollable Forces. SCPA shall not be required to provide, and SCPA shall not be liable for failure to provide, Facility Output or other service under this Agreement when such failure or the cessation or curtailment of or interference with the service is caused by Uncontrollable Forces or by the inability of the Power Purchase Provider or other applicable counterparty to obtain any required governmental permits, licenses or approvals to enable the Power Purchase Provider to acquire, administer or operate the Project; provided, however, that Purchaser shall not thereby be relieved of its obligations to make payments under this Agreement except to the extent SCPA is so relieved pursuant to the Project Agreements.

13. LIABILITY.

- 13.1 Participating Members' Obligations Several. Purchaser and each of the other SCPA Participating Members shall be solely responsible and liable for performance under its respective Power Sales Agreement. The obligation of Purchaser to make

payments under this Agreement is a several obligation and not a joint obligation with those of the other SCPPA Participating Members under the other Power Sales Agreements to which such SCPPA Participating Members are parties.

- 13.2 No Liability of SCPPA or Purchaser, or Their Directors, Officers, Employees, Etc.; SCPPA's and Purchaser's and Project Manager's (within its capacity as Project Manager) Directors, Officers, Employees Not Individually Liable. Both Parties agree that neither SCPPA, the Purchaser, the Project Manager, nor any of their respective past, present or future directors, officers, board members, agents, attorneys, advisors, employees or employees of the municipal entity of which the Purchaser is a part (collectively the "Released Parties") shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise suffered by any of the Released Parties as a result of the performance or non-performance by the Power Purchase Provider or any of the Released Parties under this Agreement or any Project Agreement (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Each Party releases the Released Parties from any claim or liability that either Party may have cause to assert as a result of any actions or inactions of the Released Parties under this Agreement or the performance or non-performance by the Project Manager under this Agreement or any Project Agreement (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order).

No such performance or non-performance by the Project Manager, the Power Purchase Provider, or SCPPA shall relieve SCPPA or Purchaser from their respective obligations under this Agreement, including, without limitation, Purchaser's obligation to make payments required under Section 8.1 or any other provision of this Agreement and SCPPA's obligation to make payments under Section 13.8 or any other provision of this Agreement, or under any other Project Agreements. The provisions of this Section 13.2 shall not be construed so as to relieve the Project Manager or the Power Purchase Provider from any obligation (or liability in the case of the Power Purchase Provider) under this Agreement or any other Project Agreement. It is also hereby recognized and agreed that no member of the Board of Directors, SCPPA, the Project Manager or the Purchaser, nor any of their respective past, present or future directors, officers, board members, agents, attorneys, advisors, employees or employees of the governmental entity of which the agent is a part or member of SCPPA in its capacity as a member of SCPPA, shall be individually liable in respect of any undertakings by any of the Released Parties under this Agreement or any Project Agreement. Nothing in this Section 13.2 or in any other provision of this Agreement shall affect Purchaser's or SCPPA's obligation under this Agreement, including without limitation, Purchaser's obligation to make any payment in accordance with Section 8.1 of this Agreement or to pay any other amounts or costs required to be paid by it under this Agreement and SCPPA's obligation to make

payments under Section 13.8 or any other provision of this Agreement, or under any other Project Agreements.

- 13.3 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 13.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, either Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of the other Party and shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment, underpayment or other direct monetary damages owed by either a Purchaser, SCPPA or the Project Manager (within its capacity as Project Manager) as the case may be, including, without limitation, any costs payable to SCPPA and any costs payable to the Purchaser or the Project Manager.
- 13.4 Determination or Enforcement of Rights. Notwithstanding the provisions of Sections 13.2 and 13.3 hereof, Purchaser or SCPPA may determine, protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of, or declaratory action with respect to, any obligation or duty hereunder or thereunder.
- 13.5 No Relief From Insurer's Obligations. Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in this Section 13, the provisions of this Section 13 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy provided under the Project Agreements.
- 13.6 No General Liability of SCPPA. The Parties agree that the undertakings under this Agreement by SCPPA, or the Project Manager (within its capacity as Project Manager), shall never constitute a debt or indebtedness of SCPPA or the Project Manager (within its capacity as Project Manager) within the meaning of any provision or limitation of the Constitution or statutes of the State of California and shall not constitute or give rise to a charge against its general credit.
- 13.7 Indemnification of Purchaser. SCPPA undertakes and agrees, to the extent permitted by law, to indemnify and hold harmless Purchaser, its board, officers, agents, attorneys, advisors, employees, and the employees of the governmental entity of which the agent is a part, past, present or future (collectively, "Purchaser Indemnitees"), from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Purchaser, SCPPA or third persons) (collectively, "Losses") which may be imposed on, incurred by or asserted against Purchaser arising by manner of any breach of this Agreement by SCPPA, or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of SCPPA or any of SCPPA's directors, board members, officers, employees, agents and advisors, past, present or future. At Purchaser's option, SCPPA shall defend Purchaser Indemnitees from and against any

and all Losses. If SCPPA, in response to Purchaser's request, defends any Purchaser Indemnitee, Purchaser shall approve the selection of counsel, and Purchaser shall further approve any settlement or disposition, such approval not to be unreasonably withheld. Nothing in this Section 13.7 or in any other provision of this Agreement shall affect Purchaser's obligation to make any payment in accordance with Section 8.1 of this Agreement or to pay any other amounts or costs required to be paid by it under this Agreement.

13.8 Indemnification of Project Manager. The Parties acknowledge that SCPPA is obligated to indemnify any Project Manager (when acting within its capacity as the Project Manager), including as provided under any agency agreement to indemnify and hold harmless Project Manager, its board, officers, agents, attorneys, advisors, employees, and the employees of the governmental entity of which the agent is a part, past, present or future, when acting as Project Manager (collectively, the "Project Manager Indemnitees") from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of SCPPA or third persons) arising by reason of any actions, inactions, errors or omissions incident to the performance of the agency agreement (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order) on the part of Project Manager Indemnitees, when acting as Project Manager. It is further acknowledged by the Parties that all payments, costs and expenses of SCPPA with respect to compliance with any such indemnification obligations, including under any agency agreement, shall be payable as Monthly Costs by SCPPA Participating Members in accordance with the terms of their respective Power Sales Agreements. At Project Manager's option, SCPPA shall defend Project Manager Indemnitees from and against any and all Losses. If SCPPA, with Project Manager's consent, defends any Project Manager Indemnitee, Project Manager and Project Manager's City Attorney's Office (or other appropriate Project Manager counsel or authority, as appropriate) shall approve the selection of counsel, and Project Manager shall further approve any settlement or disposition, such approval not to be unreasonably withheld. Notwithstanding any provision of this Agreement which might be construed to the contrary, nothing in this Section 13.8 or in any other provision of this Agreement shall affect the obligations of any other SCPPA Participating Member under its Power Sales Agreement, to make any payment or to pay any cost required of it, or SCPPA's obligation to make any payment or to pay any cost required of it under any agency agreement.

13.9 Separate Capacities. The Parties acknowledge that any agent of SCPPA acting as Project Manager acts in a legal capacity that is separate from its capacity as a Purchaser, SCPPA Participating Member and a Party under this Agreement. Accordingly, for purposes of this Agreement, the rights, entitlements, obligations and liabilities of agent, as Purchaser, SCPPA Participating Member and a Party under this Agreement, shall not apply to or otherwise be affected by, and shall be legally separate from the rights, entitlements, obligations, and liabilities of agent in its

capacity as Project Manager under ant agency agreement.

14. RESTRICTIONS ON DISPOSITION.

- 14.1 Assignment. It is understood and agreed that each SCPPA Participating Member (including Purchaser) may sell, assign or otherwise dispose of some or all of its Project Rights and Obligations to other SCPPA Participating Members or SCPPA members under the same terms and conditions as set forth in this Agreement, provided that each such other SCPPA Participating Member or SCPPA member agrees in writing to be bound by the provisions of the Power Sales Agreement of the SCPPA Participating Member making such sale, assignment or other disposition. In the event of such a sale, assignment or other disposition, SCPPA shall revise Appendix B to reflect the new SCPPA Participant Entitlement Share allocation and such revision to Appendix B shall not be considered an amendment to any Power Sales Agreement.
- 14.2 Restrictions on Elimination of Payment Obligations. No sale, assignment or other disposition of Purchaser's Project Rights and Obligations to any Person ("Assignee") shall release Purchaser from its payment obligations under this Agreement; provided, however, such payment obligations may be eliminated or reduced if the sale, assignment or other disposition is made pursuant to Section 14.1 of this Agreement, or if (i) such Assignee assumes and agrees in writing to fully perform and discharge the Project Rights and Obligations under its Power Sales Agreement, (ii) such Assignee has a corporate or long-term senior unsecured credit rating of A- or higher by S&P or A 3 or higher by Moody's, unless otherwise provided by the Board of Directors, and (iii) the Board of Directors, by resolution, determines to eliminate or reduce such payment obligations, which determination shall not be unreasonably withheld.
- 14.3 Restrictions on Disposition of Purchaser's Entire System. Purchaser shall not sell, lease or otherwise dispose of all or substantially all of its electric system to any Person ("Acquiring Entity") unless the Acquiring Entity shall assume and agree to fully perform and discharge the Project Rights and Obligations under this Agreement, and such Acquiring Entity has a corporate or long-term senior unsecured credit rating not less than investment grade.
- 14.4 Successors and Assigns. Subject in all respects to Sections 11, 14 and 15 hereof, the Project Rights and Obligations under this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the Parties to this Agreement.

15. EFFECTIVE DATE, TERM AND EXPIRATION.

- 15.1 Effective Date; Execution in Counterparts. This Agreement shall become effective on the first Day when each and all of the following shall have

occurred: (i) this Agreement shall have been duly executed and delivered by SCPPA and Purchaser, and (ii) the Power Purchase Agreement shall have been duly executed and delivered by SCPPA and the Power Purchase Provider. Once the Power Purchase Agreement has been executed and delivered as set forth above, SCPPA shall deliver a copy of the same to Purchaser. This Agreement may be executed in any number of counterparts, each of which shall constitute an original.

- 15.2 Termination Conditions. This Agreement shall be effective upon satisfaction of the conditions set forth in Section 15.1 and shall extend for the term specified in Section 15.3 unless earlier terminated pursuant to an express provision of this Agreement; provided, however, that any obligation to make payments by Purchaser or by SCPPA or any outstanding liability of Purchaser or SCPPA hereunder which either exists or may exist as of the date of termination of this Agreement, or which comes into existence at any future time as a result of any activity or transaction carried forth under this Agreement, shall survive such termination.
- 15.3 Expiration. The term of this Agreement shall begin on the Day this Agreement becomes effective pursuant to Section 15.1 hereof. Unless terminated earlier pursuant to Section 16, the term of this Agreement shall expire on the date on which the Power Purchase Agreement is terminated and all obligation(s) of the parties under the Power Purchase Agreement have been fully satisfied or otherwise adequate provision for satisfaction of such obligation(s) have been made and no other such obligation(s) under the Power Purchase Agreement is outstanding; provided, however, that in no event, except as set forth in Section 15.4, shall the term of this Agreement expire so long as the Power Purchase Agreement is of any force or effect.
- 15.4 Termination of Agreement before Expiration Date. Notwithstanding the expiration date set forth in Section 15.3 hereof, this Agreement shall terminate on the date, if any, by which each and all of the following have occurred:
- 15.4.1 This Agreement is superseded as a result of Purchaser having (i) succeeded to SCPPA's rights through another agreement or agreements, or (ii) entered into a replacement power sales agreement or other agreement with SCPPA. The purchase price and consideration to be paid to SCPPA by Purchaser with respect to any such superseding arrangement shall consist of the payments and satisfaction of all obligations by Purchaser under and pursuant to this Agreement prior to the effective date of the superseding arrangement plus any remaining costs or obligations incurred by SCPPA in connection with the Facility; and
- 15.4.2 The Power Purchase Agreement shall no longer be of any force or effect.

15.5 Final Distribution of Reserve Fund. Following the expiration or earlier termination of this Agreement, and upon payment and satisfaction of any and all liabilities and obligations to make payments of the SCPPA Participating Members under this Agreement and upon satisfaction of all remaining costs and obligations of SCPPA under this Agreement and in connection with the Facility, any amounts then remaining in the Reserve Fund shall be paid to the SCPPA Participating Member pro rata in accordance with their respective SCPPA Participant Entitlement Share .

16. **CONDITIONS TO TERMINATION OR AMENDMENT.** No power sales agreements which have been executed by SCPPA Participating Members for the Project may be terminated as to any SCPPA Participating Member, or be amended as to any SCPPA Participating Member so as to provide terms and conditions materially different from those contained therein, or subject to the provisions of the applicable power sales agreement of a SCPPA Participating Member for the Project, upon written notice to and written consent or waiver by the other SCPPA Participating Members, and upon similar amendment, if appropriate, being made to the power sales agreement of the other SCPPA Participating Members.
17. **SEVERABILITY.** In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the Parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein unless a court holds that the provisions are not separable from all other provisions of this Agreement.
18. **REPRESENTATION AND GOVERNING LAW.** The Parties acknowledge that each Party was represented by counsel in the negotiation and execution of this Agreement. This Agreement was made and entered into in the County of Los Angeles, California, and shall be governed by, interpreted and enforced in accordance with the laws of the State of California. 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, 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*.
19. **ARBITRATION AND ATTORNEYS' FEES.** If a dispute arises between the Parties which the Coordinating Committee or Board of Directors is unable to resolve, the Parties may by mutual agreement submit the dispute to mediation or non-binding arbitration. With respect to any such dispute the Parties agree that each Party shall bear its own attorneys' fees and costs. Notwithstanding the foregoing, Purchaser and SCPPA recognize and agree that SCPPA's attorneys' fees associated with any matter relating to the Project or this Agreement, including any dispute relating thereto, shall constitute a Project cost which shall be allocated and billed as set forth in Sections 4 and 7 of this Agreement.
20. **PURCHASER'S CONTRACT ADMINISTRATOR.** Purchaser's contract administrator for this Agreement shall be the person so designated by the individual authorized to receive notices on behalf of Purchaser pursuant to Section 21 herein, and Purchaser's contract administrator shall have the authority to administer this Agreement on behalf of Purchaser. Notwithstanding the foregoing, Purchaser's contract

administrator shall have no authority to amend this Agreement on behalf of the Purchaser.

21. **NOTICES.** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Southern California Public Power Authority
Attention: Executive Director
1160 Nicole Court
Glendora, CA 91740

Los Angeles Department of Water and Power
Attention: General Manager
RE: Power System Contracts
111 N. Hope Street, Room 921
Los Angeles, California 90012

22. **AMENDMENTS.** The Parties acknowledge and agree that any amendment to this Agreement shall be in writing and duly executed by the Parties.

[SIGNATURE PAGE FOLLOWS]

RECEIVED
MAY 13 1998
LOS ANGELES DEPARTMENT OF WATER AND POWER
111 N. HOPE STREET, ROOM 921
LOS ANGELES, CALIFORNIA 90012

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed on the date first written above.

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

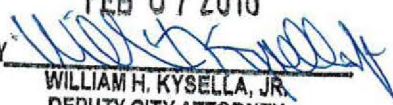
Dated: _____ By: _____
Michael S. Webster, Executive Director

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES BY BOARD OF
WATER AND POWER COMMISSIONERS

Dated: _____ By: _____
David H. Wright
General Manager

And: _____
Secretary

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

FEB 07 2018
BY 
WILLIAM H. KYSELLA, JR.
DEPUTY CITY ATTORNEY

APPENDIX A

DEFINITIONS

The following terms, whether in the singular or the plural, and initially capitalized, shall have the meanings specified below:

1. Act. All of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500 et seq., as amended from time to time.
2. Ancillary Documents. "Ancillary Documents" shall have the definition set forth in the Power Purchase Agreement.
3. Annual Budget. The budget adopted by SCPPA pursuant to Section 5.4.1 of this Agreement not less than thirty (30) Days nor more than sixty (60) Days prior to the beginning of each Power Supply Year, including any amendments thereto, which shall show a detailed estimate of the Total Power Costs under this Agreement and all credits, charges, revenues, income, or other funds to be applied to such costs, for and applicable to such Power Supply Year.
4. Billing Statement. The written statement prepared or caused to be prepared each Month by, or on behalf of, SCPPA which shall be based upon certain of the information in the Annual Budget and shall show for such Month the amount to be paid to SCPPA by Purchaser in accordance with the provisions of Section 7 of this Agreement.
5. Board of Directors. The Board of Directors of the Southern California Public Power Authority.
6. Buyers. "Buyers" shall mean SCPPA, the Sacramento Municipal Utility District, the Modesto Irrigation District and the Turlock Irrigation District.
7. Buyers' Agent. "Buyers' Agent" shall have the definition set forth in the Power Purchase Agreement.
8. Buyers Joint Project Agreement. The Buyers Joint Project Agreement by and among Southern California Public Power Authority, the Sacramento Municipal Utility District, the Modesto Irrigation District and the Turlock Irrigation District, dated as of October 19, 2017, attached hereto as Appendix D, as the same may be amended from time to time.
9. Capacity. The ability or potential to generate, produce or transfer electricity, expressed in kilowatts ("kW") or megawatts ("MW"), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
10. Capacity Rights. "Capacity Rights" means the rights, whether in existence as of the Effective Date or arising thereafter during the term of this Agreement, to Capacity, resource adequacy, associated attributes and/or reserves or any of the foregoing associated with the electric generating capability of the Facility.

11. Commercial Operation. "Commercial Operation" shall have the definition set forth in the Power Purchase Agreement.
12. Compliance. Following a Payment Default, the Defaulting Purchaser shall be in compliance with its payment obligations under this Agreement if it (i) no later than the last Day of the Cure Period fully pays all amounts owed as reflected in any Default Invoice; (ii) pays any monthly Billing Statement which comes due during the Cure Period; and (iii) replenishes any reduction made to the applicable operating reserve account or the other Reserve Fund as a result of any Payment Default.
13. Consent Agreements. All consents to assignments and all agreements relating thereto entered into with any lender, financial institution or other Person for the purpose of consenting to the assignment of the rights or securing the obligations of the Power Purchase Provider under the Power Purchase Agreement.
14. Cure Period. That period of time beginning on the date of a Payment Default and concluding thirty (30) Days thereafter.
15. Cured Payment Default. A Payment Default which has been cured in accordance with Section 11.3 of this Agreement. If at any time during the Cure Period the Defaulting Purchaser is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPPA and the Cure Period shall expire.
16. Daily Delay Damages. Daily Delay Damages shall have the definition set forth in the Power Purchase Agreement.
17. Day. "Day" means calendar Day unless otherwise specified herein.
18. Default Invoice. An invoice during the Payment Default Period and the Cure Period issued to the Defaulting Purchaser pursuant to Section 11 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Cure Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
19. Defaulting Purchaser. "Defaulting Purchaser" means Purchaser, where Purchaser has caused a Payment Default under Section 11.1 of this Agreement that has not been remedied or cured.
20. Defaulting SCPPA Participating Member. A SCPPA Participating Member (not including Purchaser) that causes a Payment Default under its Power Sales Agreement that has not been remedied and where the Defaulting SCPPA Participating Member has not been remedied or cured.
21. Delivery Output cost component. "Delivery Output cost component" is defined in Section 4.4.1.
22. Delivery Term of the Power Purchase Agreement. The time period for the delivery of Energy pursuant to the Power Purchase Agreement as set forth therein.

23. Dynamic Scheduling. "Dynamic Scheduling" shall mean the automated scheduling of Energy from the Point of Delivery to Purchaser's control area or electric system, provided that said dynamic schedules adjust at four second intervals, or other intervals as specified by WECC, to match the amount of Energy actually delivered to the Point of Delivery from the Facility.
24. Energy. "Energy" shall have the meaning provided in the Power Purchase Agreement.
25. Environmental Attributes. "Environmental Attributes" shall have the definition set forth in the Power Purchase Agreement.
26. Facility. "Facility" shall have the meaning provided in the Power Purchase Agreement.
27. Facility Output. All output, rights, and other tangible or intangible benefits derived from the Facility, whatsoever, including without limitation all Energy, Capacity Rights and Environmental Attributes, whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement.
28. Fiscal Year. The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:01 a.m. on the following July 1, or such other time frame as determined by the Board of Directors.
29. Force Majeure. "Force Majeure" shall have the definition set forth in the Power Purchase Agreement.
30. Generator Interconnection Agreement. "Generation Interconnection Agreement" shall have the definition set forth in the Power Purchase Agreement.
31. Initial Payment Default Date. The earlier of (i) the end of the fifth Day following the first Payment Default for which no remedy in payment has occurred and been received by SCPPA, or (ii) the last Day of the Month in which the first Payment Default has occurred for which no remedy in payment has occurred and been received by SCPPA.
32. Interconnection Contracts. The contracts providing for the interconnections and associated facilities which interconnect the Facility with the Transmission System and substations and provide for the delivery of Facility Output. Interconnection Contracts shall include, without limitation the Generator Interconnection Agreement as well as any other contracts related to interconnection of the Facility with the Transmission System.
33. Joint Powers Agreement. The "Southern California Public Power Authority Joint Powers Agreement" dated as of November 1, 1980, as amended or modified from time to time, entered into pursuant to the provisions of the Act, among SCPPA and its members.
34. LADWP. The City of Los Angeles, acting by and through the Department of Water and Power.
35. Month. A calendar month.
36. Monthly Costs. "Monthly Costs" is defined in Section 4.5.

37. Moody's. "Moody's" shall mean Moody's Investor Services, Inc.
38. Operating Budget. The operating budget approved by the Board of Directors which shall show a detailed estimate of Total Power Costs for a Power Supply Year and all revenues, income or other funds to be applied to Total Power Costs for and applicable to such Power Supply Year.
39. Payment Default. A failure by the Purchaser to pay when due all of its Billing Statement for any Month.
40. Payment Default Period. That period of time beginning on the initial date of a Payment Default and ending thirty (30) Days following a notice of default as provided in accordance with Section 11.2 hereof.
41. Performance Security. "Performance Security" shall have the definition set forth in the Power Purchase Agreement.
42. Permit. "Permit" shall have the definition set forth in the Power Purchase Agreement.
43. Person. "Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.
44. Point(s) of Delivery. Point(s) of Delivery shall have the definition set forth in the Power Purchase Agreement.
45. Power Purchase Agreement. The Power Purchase Agreement by and among Southern California Public Power Authority, Sacramento Municipal Utility District, the Modesto Irrigation District and the Turlock Irrigation District, and ARP-Loyalton Biomass, LLC, dated as of October 19, 2017, attached hereto as Appendix C, as the same may be amended from time to time.
46. Power Purchase Agreement General and Administrative cost component. "Power Purchase Agreement General and Administrative cost component" is defined in Section 4.4.2.
47. Power Purchase Provider. ARP-Loyalton Biomass, LLC, as the counterparty to SCPPA under the Power Purchase Agreement, and any other entity named under any applicable operating agreement to operate or otherwise run or manage the Facility, along with each of their successors, or any successors or assigns to the rights of these entities.
48. Power Supply Year. The Fiscal Year, except that the first Power Supply Year shall begin on the first to occur of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date upon which SCPPA first incurs or accrues costs associated with the issuance of the Bonds, (iii) 90 Days before the scheduled date for issuance of the Bonds, (iv) the date of Commercial Operation of the Facility, or (v) the date of the first delivery of Energy to Purchaser pursuant to this Agreement. The first Power Supply Year shall end on the last Day of the then current Fiscal Year.
49. Project. The term "Project" means the SCPPA Percentage of Facility Output and shall be broadly construed to entail the aggregate of rights, liabilities, interests and obligations of

SCPPA pursuant to the Power Purchase Agreement and the other Project Agreements, including but not limited to all associated rights, liabilities, interests and obligations. The term Project shall also include those rights, liabilities, interests or obligations necessary or appropriate to carry out the functions specified in Section 6 and to utilize or deliver the Energy of the Facility as specified in Section 9.

50. Project Agreements. Any project management agreement, Power Sales Agreements, the Power Purchase Agreement, the Interconnection Contracts, the Ancillary Documents or any other contracts for the purchase, procurement, delivery or transmission of Facility Output, or any other agreements for scheduling, dispatching, exchanging, tagging, movement or transmission of Facility Output, or agreements to which SCPPA is a party relating to the administration or management of the Project.
51. Project Determination. "Project Determination" means any matter involving a question pertinent to the studying, investigating, planning, financing, developing, acquiring, constructing, reconstructing, operating, maintaining, administering, managing, improving, enlarging, or bettering of the Project.
52. Project Manager. SCPPA in its capacity as Project Manager or a designee or designees appointed by SCPPA to carry out SCPPA's responsibilities as Project Manager under this Agreement.
53. Project Rights. All rights and privileges of the Purchaser under this Agreement, including but not limited to its right to receive its SCPPA Entitlement Share under this Agreement.
54. Project Rights and Obligations. The Purchaser's Project Rights and obligations under the terms of this Agreement.
55. Prudent Utility Practices. "Prudent Utility Practices" shall have the meaning provided in the Power Purchase Agreement.
56. Reserve Fund cost component. "Reserve Fund cost component" is defined in Section 4.4.4.
57. Reserve Fund(s). Those reserve accounts deemed appropriate to afford a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.
58. S & P. "S&P" shall mean Standard & Poor's Financial Services LLC.
59. SCPPA Participant Entitlement Share. With respect to a particular SCPPA Participating Member and during each Power Supply Year, the percentage entitlement, as set forth for such SCPPA Participating Member in Appendix B of this Agreement, of the SCPPA Percentage of Facility Output delivered at the Point of Delivery.
60. SCPPA Participating Member(s). Those entities executing Power Sales Agreements, together in each case with each entity's successors or assigns, identified as "SCPPA Participating Members" in Appendix B of this Agreement.

61. Supplementary Services. Those services in connection with the delivery of Energy involving additional transmission, interconnection arrangements, energy management, firming, shaping, energy balancing, dispatching, tagging, scheduling, Dynamic Scheduling, transmitting, interconnecting, swapping, exchanging or other services associated with the transmission, use or disposition of Facility Output to be utilized by the Purchaser under this Agreement, and to otherwise provide for delivery and facilitate the disposition, movement, taking, receiving, accounting for, transferring and crediting the transfer of Facility Output from the Point of Delivery to any other points or destinations, as determined by the Purchaser. Supplementary Services include but are not limited to delivery point swaps, stranded energy/transmission curtailments, tiepoint liquidity improvement, transmission loss savings, tiepoint price spread optimization, on-peak/off-peak exchanges, peak shifting exchanges, seasonal exchanges, and both simultaneous or non simultaneous green energy exchanges.
62. Supplementary Services cost component. "Supplementary Services cost component" is defined in Section 4.4.3.
63. Total Power Costs. "Total Power Costs" has the meaning described in Section 4.4.
64. Transmission System. "Transmission System" shall have the meaning set forth in the Power Purchase Agreement.
65. Uncontrollable Forces. Any Force Majeure event and any cause beyond the control of any Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Power Purchase Agreement, as defined therein.
66. WECC. The Western Electricity Coordinating Council, or its successor.

APPENDIX B¹

SCHEDULE OF SCPA PARTICIPATING MEMBERS,
SCPA CAPACITY AMOUNTS,
SCPA PARTICIPANT ENTITLEMENT SHARES,

SCPA PARTICIPATING MEMBERS	SCPA CAPACITY AMOUNTS (MW)	SCPA PARTICIPANT ENTITLEMENT SHARES
City of Anaheim	0.806 MW	6.728%
Imperial Irrigation District	1.491 MW	12.447%
LADWP	8.876 MW	74.097%
City of Riverside	0.806 MW	6.728%
TOTAL	11.979	100%

¹ Appendix B may be revised in accordance with the provisions of Section 10.2 of this Agreement.

APPENDIX C
POWER PURCHASE AGREEMENT

APPENDIX D
BUYERS JOINT PROJECT AGREEMENT

POWER PURCHASE AGREEMENT

AMONG

ARP-LOYALTON COGEN LLC
(as "Seller")

AND

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

SACRAMENTO MUNICIPAL UTILITY DISTRICT

AND

MODESTO IRRIGATION DISTRICT

AND

TURLOCK IRRIGATION DISTRICT
(together, as "Buyers")

Dated as of October 19, 2017

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POWER PURCHASE AGREEMENT

PARTIES

THIS POWER PURCHASE AGREEMENT (this "*Agreement*"), dated as of this 19th day of October, 2017, is being entered into by and among the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the Act and the Joint Powers Agreement (each as defined below), ("*SCPPA*"), the SACRAMENTO MUNICIPAL UTILITY DISTRICT, a California municipal utility district ("*SMUD*"), the Modesto Irrigation District, an irrigation district organized and existing under the laws of the State of California ("*MID*"), the TURLOCK IRRIGATION DISTRICT, an irrigation district organized and existing under the laws of the State of California ("*TID*"), and ARP-LOYALTON COGEN LLC, a limited liability company organized and existing under the laws of the State of California ("*Seller*"). SCPPA, SMUD, MID, and TID are each referred to herein as a "*Buyer*," and together as "*Buyers*." Each Buyer and Seller is referred to individually in this Agreement as a "*Party*" and together as the "*Parties*."

RECITALS

WHEREAS, on March 13, 2017, SCPPA issued a request for proposals ("*RFP*") to purchase energy, capacity, and environmental attributes complying with the mandate imposed by Senate Bill 859 that was approved by the Governor of California on September 14, 2016, for the procurement of biomass resources ("*SB 859*"); and

WHEREAS, Seller responded to SCPPA's RFP, and, following negotiation, Seller has agreed to sell to Buyers, and Buyers have agreed to purchase from Seller, certain renewable energy and associated capacity rights and environmental attributes for the purchase price set forth herein; 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:

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

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or, as is appropriate given the context, is a director or officer of such Person or of an Affiliate of such Person. As used in this Agreement, "control" means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies or activities of such Person, whether through ownership of voting securities, its capacity as a sole or managing member, its capacity as a general partner, by contract or otherwise.

"Aggregate True-Up Period" has the meaning set forth in Section 7.7(e).

"Agreement" has the meaning set forth in the preamble of this Agreement, and includes the Appendices and Schedules attached hereto.

"Agreement Term" has the meaning set forth in Section 2.1(a).

"Ancillary Documents" means the Site Control Documents and all material agreements entered into by and between Seller and any of its Affiliates or between Seller or any Seller Affiliate and any Buyer, in each case, related to the Facility or the Site.

"Applicable MW Share" means the amount, measured in MW, of Facility output allocated to SCPPA's Participating Members, SMUD, MID, and TID, as set forth in Appendix F, as may be adjusted pursuant to Section 2.3(h).

"ASME" means American Society of Mechanical Engineers.

"ASTM" means American Society for Testing and Materials.

"Authorized Auditors" means representatives of any Buyer or a Buyer's Authorized Representative who are authorized to conduct audits on behalf such Buyer.

"Authorized Representative" has the meaning set forth in Section 13.1.

"Bankruptcy" means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case, action 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.

"Brown Act" has the meaning set forth in Section 13.21(c).

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

"Buyers' Agent" means the agent appointed by Buyers pursuant to the Buyers Joint Project Agreement to administer this Agreement on behalf of Buyers and, in the case of SCPPA as a Buyer, the Participating Members, which appointment may be changed from time to time, subject to the representation, warranty and covenant in Section 11.1(d), by written agreement among Buyers with notice thereof to Seller. Notice information for Buyers' Agent shall be as set forth on Appendix E. As of the Effective Date, Buyers' Agent shall be SCPPA.

"Buyers Joint Project Agreement" means the Buyers Joint Project Agreement entered into by and among Buyers, dated as of the Effective Date.

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

"CAISO" means the California Independent System Operator.

"CAISO Costs" means (a) all current and future costs, expenses, fees, charges, credits and other amounts assessed by the CAISO to Seller or to Buyers in connection with the Facility and (b) any and all costs, expenses, fees, charges and other amounts incurred by Seller and Buyers in connection with performing Scheduling services; settlement services and serving as or arranging for the Scheduling Coordinator. For the avoidance of doubt, CAISO Costs include any and all fees, costs and charges that come into existence for integration of the Facility into the CAISO grid and any imbalance costs, expenses and charges.

"CAISO Tariff" means the CAISO FERC Electric Tariff, Fifth Replacement Volume, including the rules, protocols, procedures and standards attached thereto and any replacement thereof or successor thereto in effect.

"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, whether in existence as of the Effective Date or arising thereafter during the Agreement Term, to capacity, Resource Adequacy Attributes, Local Capacity Requirement Attributes, associated attributes or reserves, or any of the foregoing as may in the future be defined by the CAISO, or any other balancing authority, reliability entity or Governmental Authority associated with the electric generating capability (based on the Contract Capacity) 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, as amended from time to time, and any successor statute.

"CEC Performance Standard" means, at any time, the applicable greenhouse gas emissions performance standard in effect at such time for baseload electric generation facilities that are owned or operated (or both) by local publicly owned electric utilities, or for which a local

publicly owned electric utility has entered into a contractual agreement for the purchase of power from such facilities, as established by the CEC or other Governmental Authority having jurisdiction over any Buyer.

“Change in Control” means the occurrence, whether voluntary or by operation of law and whether in a single transaction or in a series of related transactions, of any one or more of the following: (a) a merger or consolidation of Seller or any upstream equity owner of Seller at any level below the Ultimate Parent Entity (any such entity, an *“Upstream Equity Owner”*) with or into any other Person or any other reorganization in which the equity owners of Seller or such Upstream Equity Owner immediately prior to such consolidation, merger, or reorganization, own fifty percent (50%) or less of the equity ownership of the surviving entity or cease to have the power to control the management and policies of the surviving entity after such consolidation, merger, or reorganization, (b) any transaction or series of related transactions following which the Ultimate Parent Entity, directly or indirectly, no longer (1) remains the owner of more than fifty percent (50%) of the equity ownership of Seller or any Upstream Equity Owner or (2) retains the power to control the management and policies of Seller or any Upstream Equity Owner, (c) a sale, lease, or other disposition of all or substantially all of the assets of Seller or any Upstream Equity Owner, (d) the dissolution or liquidation of Seller or any Upstream Equity Owner, or (e) any transaction or series of related transactions that has the substantial effect of any one or more of the foregoing.

“Change in Law” means a change occurring after the Effective Date to any WREGIS standards, rules, or requirements, or a change occurring after the Effective Date to 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.

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

(a) Servicing of the Facility’s generator has been completed in accordance with the terms and conditions of this Agreement, and the Facility (including the Facility Energy and associated Environmental Attributes) is RPS Compliant and EPS Compliant and possesses all of the characteristics and satisfies all of the requirements set forth for the Facility in this Agreement and for delivery of Facility Energy to the Point of Delivery;

(b) The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to recommence operation of the Facility and has demonstrated the sustained operation of the Facility and the delivery of Facility Energy equal to at least ninety percent (90%) of the Contract Capacity during a period of 24 consecutive hours;

(c) Seller has obtained all Permits required for the operation and maintenance of the Facility in accordance with this Agreement, including the Permits identified on Appendix A-1, and all such Permits are final and non-appealable;

(d) Each Buyer has received the Performance Security as provided in Section 5.6 in a form reasonably acceptable to Buyers;

(e) 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;

(f) Seller has entered into interconnection agreements with Transmission Providers pursuant to which it has obtained the interconnection rights necessary to deliver Facility Energy to the Point of Delivery;

(g) Seller has obtained Insurance coverage for the Facility as required by Appendix D, and Seller has provided reasonable evidence to Buyers that the Insurance is in full force and effect;

(h) Seller has delivered to Buyer, and Buyer has approved, the Quality Assurance Program;

(i) Seller has delivered to Buyer, and Buyer has approved, the Non-Consolidation Opinion;

(j) Seller has obtained certification from the CEC that the Facility is CEC Certified or a recertification from the CEC that the Facility remains CEC Certified, if required pursuant to CEC regulations applicable to the Facility and has delivered to Buyers evidence that the Facility has been CEC Certified; and

(k) Seller has provided reasonable evidence to Buyers that Seller has secured full Site Control and ownership of the Facility.

“Commercial Operation Date” means the date on which Commercial Operation of the Facility occurs, as determined pursuant to Section 3.3.

“Confidential Information” has the meaning set forth in Section 13.21(a).

“Contract Capacity” means 18 MW, as adjusted pursuant to Section 2.3(h).

“Contract Price” means \$97.50 per MWh of Facility Energy.

“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 fifth (5th) Contract Years, the applicable calendar year, and (c) with respect to the sixth (6th) 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 12.3(g)(iii).

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

“CPRA” has the meaning set forth in Section 13.21(c).

“CRO” has the meaning set forth in Section 13.25(g).

“**Curtailment Period**” means a period of time during the Delivery Term during which the generation of Facility Energy is required to be curtailed or reduced (in whole or part) as a result of an order, direction, alert, request, notice, instruction or directive from a Transmission Provider, the CAISO, WECC, NERC, or any other reliability entity due to (a) a System Emergency, (b) system improvements, curtailments, or scheduled and unscheduled repairs or maintenance at or downstream from the Point of Delivery, (c) an event of Force Majeure at or downstream from the Point of Delivery, or (d) over-generation or any other reason adversely affecting the normal function and operation of the CAISO grid or a Transmission Provider’s system, as may from time to time be identified by the CAISO, the Transmission Provider, WECC, NERC, or any other reliability entity. For the avoidance of doubt, the term “Curtailment Period” shall not include curtailments directed by CAISO for economic reasons.

“**Daily Delay Damages**” has the meaning set forth in Section 3.4(b).

“**DBE**” has the meaning set forth in Section 13.25(c)(i).

“**Deemed Generated Energy**” has the meaning set forth in Section 7.4(c).

“**Default**” has the meaning set forth in Section 12.1.

“**Defaulting Party**” has the meaning set forth in Section 12.1.

“**Delivery Term**” has the meaning set forth in Section 2.1(b).

“**Dispute**” has the meaning set forth in Section 13.3(a).

“**Dispute Notice**” has the meaning set forth in Section 13.3(a).

“**Downgrade Event**” means, with respect to a financial institution, or a provider of a letter of credit or Escrow Account hereunder, any event that results in (a) the failure of such financial institution to maintain the credit rating or organizational status of a Qualified Issuer, as applicable, or (b) the commencement by such a financial institution 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), or (c) any Buyer electing to terminate any relationship with such Person pursuant to directives from any Governmental Authorities applicable to such Buyer or, in the case of SCPPA, any Participating Member.

“**DVBE**” has the meaning set forth in Section 13.25(c).

“**Early Termination Date**” has the meaning set forth in Section 12.3(a).

“**EBO**” has the meaning set forth in Section 13.25(f).

"EEI" means Edison Electric Institute.

"Effective Date" means the date on which the last Party to execute this Agreement executed this Agreement, as specified on the signature pages hereto. If any Buyer or Seller fails to set forth a date of execution with its signature, such Buyer or Seller hereby authorizes SCPPA, as Buyer's Agent, to insert, as the date of execution, the date on which such signature was received by SCPPA.

"Electric Metering Devices" means all meters, metering equipment, and data processing equipment conforming to the requirements set forth in Section 10.6 and 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.

"Energy" means electrical energy.

"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 (Title 42, United States Code § 13385) or any other current or future international, federal, state or local law, regulation or bill, or otherwise.

"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 any 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, and (ii) the emissions or other environmental characteristics of such generation 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 without limitation 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 successor regulations thereto), 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 (1) 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, (2) 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 (3) cash grants or other financial incentives from any local, state or federal government available to Seller with respect to the Facility.

“EPA” means the United States Environmental Protection Agency.

“EPS Compliance” or “EPS Compliant” when used with respect to the Facility, means that the Facility complies with EPS Law and 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.

“Escrow Account” has the meaning set forth in Section 5.6(a).

“Exiting Buyer” has the meaning set forth in Section 2.3(h).

“Expected Daily Deliveries” has the meaning set forth in Section 12.3(d).

“Facility” means the 19.9 MW biomass power generating facility located at 100 South Railroad Ave, Loyalton, CA, as further described in Appendix A-1 and depicted on Appendix A-2, including all property interests and related transmission and other facilities.

“Facility Cost” means Twenty Million Dollars (\$20,000,000.00).

“Facility Debt” means, measured as of any date, the 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 the lesser of (a) the Energy generated by the Facility based on the Contract Capacity, as measured by Electric Metering Devices installed at the Facility pursuant to Section 10.6, or (b) the Energy that the Scheduling Coordinator Schedules for delivery to the Point of Delivery.

“Facility Lender” means any financing party providing Facility Debt in connection with the purchase, completion, or operation of the Facility, including 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 13.7(d).

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

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure” has the meaning set forth in Section 13.6(b).

“Force Majeure Notice” has the meaning set forth in Section 13.6(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 12.3(g)(i).

“Generator Interconnection Agreement” means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, NV Energy, and the CAISO governing the terms and conditions of Seller’s interconnection with the CAISO grid, including any description of the plan for interconnecting to the CAISO grid.

“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 any Party.

“Guaranteed Commercial Operation Date” means the later of (a) January 1, 2018, and (b) the date that is 30 days after the Effective Date.

“High Hazard Requirement” has the meaning set forth in Section 11.3.

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

“Indemnitees” has the meaning set forth in Section 13.19(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: (a) a member, stockholder, equity holder, 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; (b) 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), (c) a Person controlling or under common control with any such stockholder, equity holder, partner, manager, customer, supplier or other like Person, or (d) a member of the immediate family of any such member, stockholder, equity holder, director, officer, employee, manager, partner, customer, supplier or other like Person.

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

“Interest Rate” has the meaning set forth in Section 10.3.

“ISA” means the Instrument Society of America.

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

“LAAC” has the meaning set forth in Section 13.25(b)(i).

“LADWP” means the City of Los Angeles, acting by and through the Department of Water and Power.

“LGBTBE” has the meaning set forth in Section 13.25(c)(i).

“Licensed Professional Engineer” means an independent, professional engineer reasonably acceptable to Buyers’ Agent, 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.

“Local Capacity Requirement Attributes” means the benefits or attributes now or existing in the future based on the procurement obligations of Buyers with respect to local resource capacity requirements as prescribed by the PUC, the CAISO or other regional entity, and that are associated with the electric generating capability of the Facility.

“Locational Marginal Price” or “LMP” has the meaning set forth in Appendix C of the CAISO Tariff.

“Losses” has the meaning set forth in Section 12.3(g)(ii).

“MBE” has the meaning set forth in Section 13.25(c)(i).

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

"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-Consolidation Opinion" means a reasoned opinion of Seller's legal counsel, (such counsel to be reasonably acceptable to the Buyers), in form and substance acceptable to each Buyer, as to the non-consolidation of Seller in a Bankruptcy proceeding of any Upstream Equity Owner, addressed and delivered to the Buyers on or before the Commercial Operation Date.

"Non-Defaulting Party" has the meaning set forth in Section 12.3(a).

"Non-SB 859 Compliant Products" has the meaning set forth in Section 7.7(f).

"Notifying Party" has the meaning set forth in Section 13.3(a).

"NV Energy" means NV Energy, Inc., a Nevada corporation.

"OBE" has the meaning set forth in Section 13.25(c)(i).

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

"Outside Commercial Operation Date" means the date that is 90 days after the Guaranteed Commercial Operation Date, which date shall not be subject to extension of any kind (except as provided in Section 3.4(c)).

"Pacific Prevailing Time" means the local time in the State of California.

"Participating Members" means the City of Anaheim, Imperial Irrigation District, LADWP, and the City of Riverside.

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

"Percentage of Facility Output" means, with respect to a Buyer, the percentage of Facility output allocated to such Buyer as set forth in Appendix F, as may be adjusted pursuant to Section 2.3(h).

"Performance Security" has the meaning set forth in Section 5.6(a).

"Permits" means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, certifications, self-certifications, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described that are required

to be filed, submitted, obtained, or maintained by any Person with respect to the ownership, possession, testing, operation or maintenance of the Facility, the production, sale, and delivery of Products from the Facility, 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 Permits described in Appendix A-1.

“Permitted Encumbrances” means (a) the Lien in favor of the Facility Lender, (b) any Lien approved by Buyers’ Agent in a writing separate from this Agreement that expressly identifies the Lien as a Permitted Encumbrance, and (c) other Liens secured by, or encumbrances on, the Facility that (i) at any time do not, in the aggregate, exceed 50% of the Facility Cost, and (ii) satisfy one or more of the following criteria: (A) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, (B) 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, (C) Liens of any judgment, if such judgment shall not have remained undischarged or unstayed on appeal for more than three (3) months, (D) 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, (E) rights arising under the Site Control Documents, or (F) 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. Notwithstanding anything to the contrary contained herein, a “Permitted Encumbrance” shall not be construed as a waiver of any condition or requirement contained in Section 11.4 or Section 13.7 of this Agreement.

“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 CAISO Summit 120 kV.

“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.

“Principals” means any board chair, president, chief executive officer, chief operating officer, and other individual who serves in the functional equivalent of one or more of those positions, as well as any individual who holds an ownership interest in Seller or any Upstream Equity Owner of at least twenty percent (20%), and any employee of Seller who is authorized by Seller to represent Seller before the City of Los Angeles.

"Products" means any and all Facility 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 Contract Capacity of the Facility, whether now attainable or established in the future, including delivered energy, renewable attributes, and renewable energy credits. The Products shall meet the standard of "Portfolio Content Category 1" as defined by RPS Law.

"Prudent Utility Practices" means those practices, methods, and acts, that are commonly used by a significant portion of the biomass-powered electric generation industry in prudent engineering and operations to design and operate electric equipment (including biomass-powered facilities) lawfully and with safety, dependability, reliability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of the CAISO, FERC, NERC, WECC, as each may be amended from time to time, 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, as may be amended from time to time.

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

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

"QRE" has the meaning set forth in Section 8.4.

"Qualified Buyer Assignee" means a Participating Member, any other non-participating member of SCPA or a third party Person that is rated (a) "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 (b) "Aa3" or higher by Moody's or "AA-" or higher by S&P if such Person is rated only by either S&P or Moody's, or (c) equivalent ratings by any other credit rating agency of recognized national standing.

"Qualified Issuer" means a Person reasonably acceptable to Buyers' Agent that maintains a United States domestic branch, and a current long-term credit rating (corporate or long-term senior unsecured debt) of (a) "A2" 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 (b) "Aa2" or higher by Moody's, or "AA" or higher by S&P if such Person is rated only by either S&P or Moody's.

"Qualified Transferee" means a Person that (a) has a current long-term credit rating (corporate or long-term senior unsecured debt) of (i) "A2" 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 (ii) "Aa2" or higher by Moody's, or "AA" or higher by S&P if such Person is rated only by either S&P or Moody's, (b) executes a written assumption agreement in favor of Buyers pursuant to which such Person shall assume all of the obligations of Seller under this Agreement and the Ancillary Documents, and (c) is reasonably acceptable to Buyers.

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

"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, used or approved 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" or "renewable energy certificate") for which the owner of the REC can prove that it has purchased Energy that is CEC Certified.

"Recipient Party" has the meaning set forth in Section 13.3(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.

"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, or Uniform Plumbing Code applicable to 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, RPS Law, SB 859, and the UCC), 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.

"Resource Adequacy Attributes" means the benefits or attributes, if any, now or existing in the future based on the procurement obligations of Buyers with respect to Resource Adequacy as prescribed by the PUC, the CAISO or any other regional entity, and that are associated with the electric generating capability of the Facility.

"RFP" has the meaning set forth in the recitals to this Agreement.

"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 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, any related regulations or guidebooks promulgated by the CEC or, as applicable, the PUC.

"SB 859" has the meaning set forth in the recitals to this Agreement.

"SB 859 Compliance" or "SB 859 Compliant" means, when used with respect to the Facility, that the Facility qualifies as a biomass resource from which Buyer is required to purchase capacity under SB 859.

"SB 859 Feedstock Requirements" has the meaning set forth in Section 11.3.

"SB 859 Withholding" has the meaning set forth in Section 7.7(e).

"SBE" has the meaning set forth in Section 13.25(c).

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

"Schedule" or "Scheduling" means the actions of Seller, its Authorized Representative, the Scheduling Coordinator, and their Transmission Providers, if applicable, of notifying, requesting and confirming to the CAISO the amounts of Facility Energy expected to be delivered consistent with the Scheduling interval at the Point of Delivery on any given date during the Delivery Term, all in the manner contemplated by the CAISO Tariff.

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

"Scheduled Outage Projection" has the meaning set forth in Section 4.3.

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

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

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

"Seller Parties" means Seller and any Affiliate of Seller that is a party to an Ancillary Document.

"Settlement Statement" has the meaning set forth in the CAISO Tariff.

"SFPO" has the meaning set forth in Section 13.25(h).

"Site" means the Facility Site and the Transmission and Roadway Site.

"Site Control" means that Seller has demonstrable exclusive right to control the Facility Site as lessee or fee owner 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 they are a party.

"Site Control Documents" means the real property leases and easements for the Site that together establish Site Control.

"S&P" means Standard & Poor's Financial Services LLC.

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

"Special Purpose Entity" means a limited liability company that at all times prior to, on and after the Effective Date:

(a) did not, does not, and will not (i) engage in any dissolution, liquidation, 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, owning, holding, selling, financing, leasing, transferring, exchanging, managing and operating the Facility, entering into this Agreement and the Ancillary Documents 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, 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 otherwise not required to file separate tax returns under applicable law);

(g) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name 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 (provided that Seller may be identified as an Affiliate of another 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 for borrowed money issued by any other Person other than cash, deposit accounts 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) has not had and will not have any obligation to indemnify, and has not indemnified and will not indemnify its managers, members, and officers, as the case may be, other than the Independent Manager in connection with the Independent Manager's actions related to the performance of this Agreement;

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

(n) does not and will not have any of its obligations guaranteed by any Affiliate and does not and will not hold itself out as being responsible for the debt for borrowed money obligations of any other Person;

(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 at all times, 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) will hold its assets in its own name and has 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 (to the extent Seller has any employees), out of its own funds and assets and will maintain a sufficient number of employees or independent contractors or contractors 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;

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

(y) has not pledged and will not, except as permitted under Section 13.7(d), pledge its assets for the benefit of any other Person;

(z) as of the Effective Date, will have articles of organization, a certificate of formation or an operating agreement, as applicable, that includes the requirement that there be an Independent Manager and provides that it will not, without the affirmative vote of its Independent Manager: (i) dissolve, merge, liquidate or consolidate; (ii) sell, transfer, lease or otherwise convey all or substantially all of its assets; (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 will or have 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) Facility Debt and any indebtedness in replacement or substitution thereof, (ii) Taxes and Insurance premiums, (iii) liabilities incurred in the ordinary course of business and not evidenced by a note relating to its ownership 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 Fifty Thousand Dollars (\$50,000) in the aggregate, and (iv) other liabilities that are expressly permitted pursuant to this Agreement.

"Subcontract" means any agreement or contract entered into on or after the Effective Date by Seller and a Person other than any Buyer or Buyers' Agent, 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.

"Sustainable Forest Management Requirement" has the meaning set forth in Section 11.3.

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

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

"Termination Notice" has the meaning set forth in Section 12.3(a).

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

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

"Transmission and Roadway Site" means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix A-1 and Appendix A-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.

"True-Up Period" has the meaning set forth in Section 7.7(e).

"True-Up Report" has the meaning set forth in Section 7.7(e).

"Ultimate Parent Entity" of Seller means, (a) as of the Effective Date, American Renewable Power LLC, and (b) from and after any Change in Control where the Ultimate Parent Entity changes, the entity specified by the Parties on Schedule 11.2(h) as being the "Ultimate Parent Entity".

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

"WBE" has the meaning set forth in Section 13.25(c)(i).

"WECC" means the Western Electricity Coordinating Council.

"WECC Prescheduling Day" means a Prescheduling Day, as defined by WECC.

"WREGIS" means Western Renewable Energy Generation Information System.

"WREGIS Certificates" has the meaning set forth in the WREGIS Operating Rules.

"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 (regardless of whether such Person's successors and assigns are expressly referenced in the provision) 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, act, statute, law, instrument, tariff or Requirement means such agreement, document, act, statute, law, 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, regardless of whether the reference to the agreement, document, act, statute, law, instrument, tariff, or Requirement expressly refers to amendments, modifications, replacements, or successors;
- (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 unless otherwise indicated;
- (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, regardless of whether words such as "without limitation" are expressly included in the applicable provision;

(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) unless otherwise indicated, 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, regardless of whether "and/or" is used in the applicable provision.

ARTICLE II EFFECTIVE DATE, TERM, AND EARLY TERMINATION

Section 2.1 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 Commercial Operation Date and ending at 11:59 pm on the day before the fifth (5th) anniversary of the Commercial Operation Date, unless sooner terminated in accordance with the terms of this Agreement.

Section 2.2 Survivability. The provisions of this Article II, Section 10.3, Article XI, Article XII, Section 13.19 and Section 13.21 shall survive for a period of one year following the termination of this Agreement. The provisions of Article X (other than Section 10.3) shall survive for a period of four (4) years following final payment made by Buyers hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, and Article VIII shall continue in effect after termination to the extent necessary to provide for final billing and adjustments related to any period prior to termination of this Agreement.

Section 2.3 Early Termination.

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

(b) **Early Termination for Failure to Provide Performance Security.** Any Buyer may, in its sole discretion, without penalty to such Buyer, withdraw from this Agreement, and Buyers may collectively, in their sole discretion, terminate this Agreement, in either case, effective upon notice to Seller, if Seller fails to deliver the Performance Security within ten (10) days after the Effective Date.

(c) **Early Termination for Default.** Upon the occurrence of a Default, the Non-Defaulting Party, or Non-Defaulting Parties, as the case may be, may terminate this Agreement as set forth in Section 12.3.

(d) **Early Termination for Failure to Achieve Commercial Operation Date.** Any Buyer may, in its sole discretion and without penalty to such Buyer, withdraw from this Agreement, and Buyers may collectively, in their sole discretion and without penalty to Buyers, terminate this Agreement, in either case, effective upon notice to Seller, if Seller fails to achieve the Commercial Operation Date on or before the Outside Commercial Operation Date, except as set forth in Section 3.3.

(e) **Early Termination for Failure to Maintain EPS, RPS, and SB 859 Compliance.** Any Buyer may, in its sole discretion and without penalty to such Buyer, withdraw from this Agreement, and Buyers may collectively, in their sole discretion and without penalty to Buyers, terminate this Agreement, in either case, effective upon notice to Seller, if (i) at any time the Facility does not satisfy all requirements to be RPS Compliant, EPS Compliant, and SB 859 Compliant, or (ii) Seller does not satisfy the SB 859 Feedstock Requirements for a Contract Year.

(f) **Early Termination for Force Majeure.** This Agreement may be terminated pursuant to Section 13.6(c).

(g) **Early Termination for Business Policies.** SCPPA may, in its sole discretion and without penalty to SCPPA, withdraw from this Agreement without penalty to SCPPA, effective upon notice to Seller for Seller's failure to comply with the provisions set forth in Section 13.25:

(h) **Effect of Withdrawal.** Any withdrawal from, or early termination of, this Agreement under this Section 2.3 shall be without prejudice to the rights and remedies of a Party for Defaults under Section 12.1. If a Buyer withdraws from this Agreement or this Agreement is terminated with respect to a Buyer (such Buyer, the "Exiting Buyer") as provided in this Section 2.3, then:

(i) Each remaining Buyer shall have the right to take over all or a portion of the Exiting Buyer's Percentage of Facility Output by notice to the other Parties within ninety (90) days after such withdrawal or termination and to assume the Exiting Buyer's obligations under this Agreement with respect thereto.

(ii) From the effective date of the withdrawal or termination with respect to the Exiting Buyer until any remaining Buyer elects to take over the Exiting Buyer's Percentage of Facility Output (if ever), (A) the Contract Capacity shall be reduced by an amount equal to the product of the Exiting Buyer's Percentage of Facility Output and the then-current Contract Capacity, (B) each remaining Buyer's and SCPPA Participating Member's Applicable MW Share shall remain unchanged, and (C) each remaining Buyer's Percentage of Facility Output (and the corresponding percentages of total capacity set forth next to each Participating Member on Appendix F) shall be adjusted to equal the percentage equivalent of a fraction, the numerator of which is equal to such Buyer's Applicable MW Share, and the denominator of which is equal to the Contract Capacity, as reduced pursuant to clause (A) of this Section 2.3(h)(ii).

(iii) At such time as any remaining Buyer elects in writing to take over all or a portion of the Exiting Buyer's Percentage of Facility Output as provided in Section 2.3(h)(i):

(A) Such remaining Buyer's Applicable MW Share and the Contract Capacity (as reduced pursuant to Section 2.3(h)(ii)) shall be increased in MW by an amount equal to the Exiting Buyer's Applicable MW Share that such remaining Buyer is taking over; and

(B) Each remaining Buyer's Percentage of Facility Output shall be adjusted to equal the percentage equivalent of a fraction, the numerator of which is equal to such Buyer's Applicable MW Share (or, in the case of SCPPA, the sum of the Applicable MW Shares of all of SCPPA's Participating Members), as adjusted pursuant to Section 2.3(h)(iii)(A) (if applicable), and the denominator of which is equal to the Contract Capacity, as adjusted pursuant to Section 2.3(h)(iii)(A).

ARTICLE III PREPARATION OF THE FACILITY

Section 3.1 General.

(a) **Permitting.** Seller, at its expense, shall timely take all steps necessary to obtain all Permits required to maintain and operate the Facility in accordance with the Requirements and for the performance of Seller's obligations hereunder. Seller shall provide to any Buyer any information requested by such Buyer related to such Permits, including information concerning any conditions or requirements set forth in such Permits or any mitigation plans or monitoring programs required by such Permits.

(b) **Meetings with Governmental Authorities.** Seller shall represent the Facility as necessary in all meetings with and proceedings before all Governmental Authorities.

(c) **Other Information.** In addition to the reports required to be delivered under this Agreement, Seller shall provide to Buyers' Agent such other information regarding the operations of Seller, its Subcontractors or the Facility, financial or otherwise, and other data concerning the Seller, its Subcontractors or the Facility as Buyers' Agent may, from time to time, reasonably request.

Section 3.2 Subcontracts. Seller shall cause provisions to be included in each Subcontract that provide: (a) Buyers' Agent 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 the right to inspect, make notes about, and review all documents and information as Buyers' Agent may reasonably request, subject to redaction of confidential or proprietary information; and (b) that the personnel of, and consultants to, the applicable contractor and Seller shall be available to Buyers' Agent and its agents, representatives and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility or the exercise of Buyers' rights under Section 5.2.

Section 3.3 Certification of Commercial Operation Date. Seller shall provide Buyers' Agent with notice in accordance with Section 13.2 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. Buyers' Agent shall either accept the notice, or reject the notice if reasonable cause exists, *provided* that Buyers' Agent shall not unreasonably

withhold, delay or condition any acceptance of such notice, and in any event shall provide in reasonable detail a written description of the reasons for any rejection. Buyers' Agent shall in all cases respond to any such notice within twenty (20) days after receipt thereof by Buyers' Agent, and Buyers shall be deemed to have accepted such notice if Buyers' Agent fails to respond in such time. If Buyers' Agent rejects the notice, Seller shall promptly correct any defects or deficiencies and resubmit the notice. The Commercial Operation Date shall be deemed to have occurred as of the date of any Seller notice of Commercial Operation that is accepted (or deemed accepted) by Buyers. So long as Seller provides, in good faith, notice to Buyers' Agent of the achievement of Commercial Operation prior to the Outside Commercial Operation Date, no Buyer may withdraw from this Agreement, and Buyers may not collectively terminate this Agreement under Section 2.3(d) for failure to achieve the Commercial Operation Date under Section 3.4, so long as (a) Buyers' Agent either (i) accepts such notice or (ii) rejects such 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 Buyers' Agent. In no event shall any extension of the Outside Commercial Operation Date under this Section 3.3 affect the amount of the Contract Price, notwithstanding any tax benefits lost as a result of the delay of the Commercial Operation Date.

Section 3.4 Commercial Operation Date.

(a) Seller shall achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date. The Guaranteed Commercial Operation Date shall be extended, on a day-for-day basis to the extent Seller is actually, demonstrably and unavoidably delayed in achieving the Commercial Operation Date due to (i) the failure by any Buyer to perform any covenant or obligation under this Agreement, or (ii) Force Majeure.

(b) If Seller fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 3.4(a)), Seller shall pay to each Buyer liquidated damages in an amount equal to such Buyer's proportionate share, based on each Buyer's Percentage of Facility Output, of the aggregate amount payable to Buyers. The amount of liquidated damages shall be calculated as (i) the number of days between the Guaranteed Commercial Operation Date and the date upon which either (A) the Commercial Operation Date is achieved, (B) the applicable Buyer withdraws (without penalty to such Buyer) from this Agreement pursuant to Section 2.3, or (C) this Agreement is terminated by Buyers pursuant to Section 2.3, as applicable, multiplied by (ii) Five Hundred Dollars (\$500) (the "*Daily Delay Damages*"). Daily Delay Damages shall be due and payable in weekly installments for the amounts thereof accrued during the previous week, beginning on the 7th day following the first day after the Guaranteed Commercial Operation Date. Seller shall continue to make such payments of Daily Delay Damages until the Commercial Operation Date is achieved, at which time Seller shall pay all previously accrued and unpaid Daily Delay Damages.

(c) In no event shall the Commercial Operation Date be extended beyond the Outside Commercial Operation Date, which date shall not be subject to extension except by mutual agreement of the Parties.

(d) The damages that Buyers would incur due to Seller's failure to timely achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date 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 Buyers' sole right and remedy, other than withdrawal without penalty from, or termination of, this Agreement, for Seller's failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date therefor. Notwithstanding the foregoing, the Daily Delay Damages shall not limit any 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, before or after Seller's delay in achievement of the Commercial Operation Date, or in connection with any termination for failure to achieve the Commercial Operation by the Outside Commercial Operation Date.

Section 3.5 Decommissioning and Other Costs. No Buyer shall 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 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 in accordance with the Requirements and with due regard for the safety, security and reliability of the interconnected facilities and Transmission System;

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

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

Section 4.2 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.

Section 4.3 Outages.

(a) On the Effective Date and, for each calendar year thereafter, no later than one hundred twenty (120) days prior to the deadline for providing the CAISO Resource Adequacy filings and proposed maintenance outages for the following year as described in the CAISO Tariff, Seller shall provide Buyers' Agent with its non-binding written projection of all Scheduled Outages for the succeeding calendar year (the "*Scheduled Outage Projection*"). The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during

such period, including (i) the anticipated start and end dates of each Scheduled Outage; (ii) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (iii) the anticipated MW of operational capacity, if any, during the Scheduled Outage. Seller shall use commercially reasonable efforts to notify Buyers' Agent of any change in the Scheduled Outage Projection fifty-five (55) days prior to the first day of the month of the originally scheduled date of the Scheduled Outage, but in no event later than forty-five (45) days prior to the first day of the month of the originally-scheduled date of the Scheduled Outage.

(b) In addition to reporting outages to Buyers' Agent within any applicable time period for reporting outages under the CAISO Tariff and applicable rules and regulations of the CAISO, immediately upon identification of a situation likely to result in a Forced Outage occurring within a twenty-four (24) hour period that is likely to cause or require removal of the Facility from service, or a reduction in the maximum output capability of the Facility by one (1) MW or more from the value most recently recorded in the generation outage reporting system for the CAISO, Seller shall notify Buyers' Agent. For all other Forced Outages, Seller shall provide Buyers' Agent with as much advance notice as practicably possible, but in all cases, shall notify Buyers' Agent within thirty (30) minutes after the commencement of the Forced Outage. Seller shall provide detailed information concerning each 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.

ARTICLE V COMPLIANCE DURING OPERATIONS; GUARANTEES

Section 5.1 Guarantees. Seller warrants that, at the Commercial Operation Date, the Facility shall be free from material defects caused by errors or omissions in design, engineering and construction or repaired as set forth below. Seller further warrants that, throughout the Delivery Term: (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 Delivery Term, it will monitor the operation and maintenance of the Facility and that said operation and maintenance is, and will be, in full compliance with all Requirements applicable to the Facility as of the Effective Date. Without limiting the foregoing, Seller shall promptly repair and/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 Buyers' Rights to Monitor in General. Upon receipt by Seller of reasonable notice, each Buyer shall have the right, and Seller shall permit each Buyer and its Authorized Representative, advisors, engineers and consultants, to observe, inspect, and monitor the operations and activities of the Facility, including for the purpose of ensuring that Seller's fuel supply complies with SB 859. Seller shall cause its personnel, consultants, and contractors to be available to, and cooperate in all reasonable respects with, each Buyer and its Authorized

Representative, advisors, engineers, and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility and each Buyer's exercise of its rights under this Section 5.2.

Section 5.3 Effect of Review by Buyers. Any review by a Buyer or a Buyer's Authorized Representative of the operation or maintenance of the Facility, or observation of any testing, is solely for the information of such Buyer. Buyers shall have no obligation to share the results of any such review or observations 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, nor any observation of testing or failure to observe testing, relieve Seller from any of its obligations under this Agreement. By making any such review or observing any such testing, no Buyer makes any 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 a Buyer or a Buyer's Authorized Representative of the Facility thereof, including, but not limited to, any review of the operation or maintenance, is a representation by any 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*") to be delivered by Seller and approved by Buyers prior to the Commercial Operation Date, 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 written approval of Buyers' Agent.

Section 5.6 Performance Security.

(a) Within ten (10) days after the Effective Date, Seller shall furnish to each Buyer (i) one or more letters of credit issued by Qualified Issuers in the form attached hereto as Appendix C, or (ii) cash (to be held in an escrow account pursuant to an escrow agreement with a Qualified Issuer in form and substance satisfactory to Buyers (an "*Escrow Account*")), or a combination of the two, and in the aggregate amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00), and delivered to each Buyer in an amount equal to such Buyer's proportionate share of such aggregate amount based on such Buyer's Percentage of Facility Output, which, in each case, shall guarantee Seller's obligations under this Agreement ("*Performance Security*"), and which Seller shall maintain in full force and effect until the end of the Delivery Term or until Buyers are required to return the Performance Security to Seller as set forth in Section 5.6(b) below.

(b) Each Buyer shall return its proportionate share of the unused portion of the Performance Security, if any, to Seller promptly after: (i) the Agreement Term has ended and

(ii) all obligations of Seller arising under this Agreement are paid (whether directly or indirectly such as through set-off or netting) or performed in full.

(c) Each Buyer may draw on its proportionate share of the Performance Security (i) at any time following Seller's failure to timely pay Daily Delay Damages when due hereunder in the amount of such Daily Delay Damages, (ii) upon Seller's failure to make any other payment due to Buyers hereunder in the amount of such unpaid payment, including any Termination Payment, or (iii) if the amount of an invoice is less than the amount of an SB 859 Withholding as set forth in Section 7.7(e), *provided*, that, in the case of a draw under clause (ii), any such amount shall have been invoiced to Seller, or Seller shall have otherwise been notified thereof. Each Buyer may draw all or any part of such amounts due to such Buyer from any form of security under this Section 5.6, and in any sequence such Buyer may elect, in its sole discretion. Any failure of, or delay by, a Buyer in electing to draw any amount from the Performance Security shall in no way prejudice Buyer's rights to subsequently recover such amounts from the Performance Security or in any other manner. Within seven (7) days following any draw by any Buyer on its proportionate share of the Performance Security, Seller shall replenish the amount drawn such that the Performance Security is restored to the applicable amount set forth in Section 5.6(a).

(d) Seller shall notify each Buyer of the occurrence of a Downgrade Event within seven (7) days after obtaining knowledge of the occurrence of such event. If a Downgrade Event occurs at any time, Seller shall replace, in accordance with this Section 5.6, the Performance Security from the Person that has suffered the Downgrade Event within five (5) days of Seller's knowledge of such Downgrade Event. Such replacement security shall meet the requirements of this Section 5.6. If the replacement Performance Security is not provided by Seller, each Buyer shall have the right to demand payment of the full amount of its proportionate share of such Performance Security, and each Buyer shall retain such amount in order to secure Seller's obligations under this Agreement; *provided* that if and to the extent such amount exceeds payment and performance in full of all of Seller's obligations under this Agreement, each Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement have been paid or performed in full.

(e) If any Performance Security is in the form of a letter of credit, then Seller shall provide, or cause to be provided, a replacement letter of credit from a Qualified Issuer or cash (to be held in an Escrow Account), in the amount required under this Section 5.6 within five (5) days of notice from any Buyer to Seller requesting such replacement Performance Security after the occurrence of any one of the following events: (i) the failure of the issuer of the letter of credit, by at least 60 days prior to the expiration of the letter credit, to extend such letter of credit; (ii) the failure of the issuer of the letter of credit to immediately honor any Buyer's properly documented request to draw on such letter of credit; or (iii) the issuer of the letter of credit becomes bankrupt. If the replacement Performance Security is not delivered in accordance with this Section 5.6(e), each Buyer shall have the right to demand payment of its proportionate share of such Performance Security, and each Buyer shall retain such amount in order to secure Seller's obligations under this Agreement; *provided* that, if and to the extent such retained amount exceeds payment and performance in full of all of Seller's obligations under this Agreement, each Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement shall have been paid or performed in full.

(f) Seller shall, from time to time as requested by any Buyer or Buyers' Agent, 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 Buyers with respect to such Performance Security.

(g) 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 Buyers' 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 Purchase by Buyers. On and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and each Buyer shall purchase and receive at the Point of Delivery, its Percentage of Facility Output of the Products associated with Facility Energy at the applicable Contract Price, except that in no event shall (a) Buyers be obligated to purchase or receive more than 18 MWh in the aggregate in any hour or more than 18 MW in the aggregate in any instant, nor (b) any individual Buyer be obligated to purchase or receive, in any hour, more than the percentage of 18 MWh corresponding to its Percentage of Facility Output or, in any instant, more than the percentage of 18 MW corresponding to its Percentage of Facility Output.

Section 6.2 Seller's Failure. Seller shall neither (a) procure Energy from sources other than the Facility for sale and delivery pursuant to this Agreement, nor (b) unless excused by Force Majeure or a Buyer's failure to perform, sell to a third party all or any part of the Products required to be delivered by Seller under this Article VI, Article VII, Article VIII or Article IX.

Section 6.3 Buyers' Failure. Unless excused by Force Majeure or Seller's failure to perform, and except during any Curtailment Period, if any Buyer fails to receive at the Point of Delivery all or any part of the Facility Energy required to be received by Buyers under this Article VI, Article VIII, or Article IX, such Buyer shall, on the date payment would otherwise be due to Seller, pay Seller Cover Damages; *provided* that Seller shall use commercially reasonable efforts to resell any Facility Energy and Environmental Attributes not able to be received by such Buyer. "*Cover Damages*" means the positive difference, if any, obtained by subtracting (i) the amount for which Seller, acting in a commercially reasonable manner, resells any such Facility Energy and, if applicable, Environmental Attributes (or, absent any such sales despite using commercially reasonable efforts to procure such sales, zero dollars (\$0)) from (ii) the applicable prices that would have been payable by SMUD, MID, TID, or SCPPA's Participating Members, as applicable, for the applicable portion of Facility Energy, and, if applicable, Environmental Attributes not received by such Buyer. Seller shall provide any Buyer that fails to receive all or any part of its portion of the Facility Energy with prompt written 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 Buyers would incur as a result of Seller's failure as described in Section 6.2 or that Seller would incur as a result of any 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 any 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 the sole and exclusive remedy of Seller for any failure by any Buyer to receive the Product as and when required by this Agreement, and all other remedies and damages for any such failure are hereby waived by Seller.

ARTICLE VII TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

Section 7.1 In General.

(a) Seller shall arrange for, and shall bear all risks and benefits associated with, delivery of all Facility Energy to the Point of Delivery, including the arrangement of and payment for the interconnection of the Facility to the CAISO grid and any Transmission Services required to deliver Facility Energy to the Point of Delivery at the CAISO grid, including charges related to control area services, export capability fees, inadvertent energy flows, interconnection costs, transmission losses to the Point of Delivery, the transmission of Facility Energy, and transformer crossover fees associated with the transmission of Energy from the on-site substation to the Point of Delivery.

(b) Each Buyer shall be obligated to pay for its proportionate share of all Facility Energy delivered to the Point of Delivery, and each Buyer shall arrange for, and shall bear all risks associated with, acceptance of its proportionate share of Facility Energy from the Point of Delivery.

Section 7.2 Scheduling Coordinator; CAISO Cost Allocation.

(a) Buyers shall designate the Scheduling Coordinator to cause the Scheduling of Facility Energy to and at the Point of Delivery.

(b) Seller shall be responsible for and shall pay for all CAISO Costs, except that, notwithstanding the foregoing, each Buyer shall be obligated to either pay to the CAISO or reimburse Seller for any and all costs or charges under a Settlement Statement incurred by Seller because of such Buyer's failure to perform any covenant or obligation set forth in this Agreement to the extent such costs or charges are not already included in Cover Damages or in the Contract Price. Notwithstanding anything to the contrary contained herein, for the purposes of this Section 7.2(b), CAISO Costs does not include revenues associated with the delivery of Energy to the CAISO.

Section 7.3 Forecasting and Scheduling of Energy.

(a) Except upon the occurrence of a curtailment under Section 7.4, Buyers shall cause the Scheduling Coordinator to Schedule all Facility Energy in a reasonable and prudent manner in accordance with the CAISO Tariff, NERC and WECC operating policies and criteria, and any other applicable guidelines, and the Scheduling procedures provided in or developed under this Section 7.3. Seller, at its own cost, shall install metering, telemetry and control equipment so as to be able to provide Facility Energy to the Point of Delivery and respond to CAISO, Transmission Provider, or reliability coordinator's dispatch orders. If, during any hour, the amount of Energy Scheduled on behalf of Seller for delivery into the CAISO at the Point of Delivery is greater than the amount of Facility Energy that is actually delivered to the Point of Delivery during such hour, then Buyers shall pay Seller any amounts (or collect any amounts paid due to negative pricing) that Buyers receive from or pays to the CAISO for any Energy delivered to the Point of Delivery that is not Facility Energy.

(b) Seller shall provide, or shall cause its designee to provide, to Buyers and the Scheduling Coordinator the following non-binding forecasts, any updates to such forecasts, and any other forecasts or updates required by WECC, based on the most current forecast of Facility Energy:

(i) At least one-hundred twenty (120) days before (a) the scheduled Commercial Operation Date and (b) the beginning of each Contract Year for the Facility, a non-binding forecast of each Month's average-day deliveries of Facility Energy from the Facility, for the following eighteen (18) Months.

(ii) No later than sixty (60) days before the beginning of each Month during the Delivery Term, a non-binding forecast of each day's average hourly deliveries of Facility Energy for such Month.

(iii) No later than fourteen (14) days before the beginning of each Month during the Delivery Term, a non-binding forecast of each day's average hourly deliveries of Facility Energy for the following Month.

(iv) On the first Business Day of each calendar week during the Delivery Term, a non-binding forecast of each day's average deliveries of Facility Energy, by hour, for the following fourteen (14) days.

(v) By 5:30 a.m. Pacific Prevailing Time on the Business Day immediately preceding each day of delivery of Facility Energy during the Delivery Term, a copy of a non-binding hourly forecast of deliveries of Facility Energy for each hour of the immediately succeeding day. Any forecast provided on a day prior to any non-Business Day shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller shall, by 9:00 a.m. Pacific Prevailing Time, provide a copy of any updates to such forecast indicating a change in forecasted Facility Energy from the then-current forecast.

(vi) Prior to 12:00 p.m. Pacific Prevailing Time of the Business Day immediately preceding each WECC Prescheduling Day for each hour of the Delivery Day (as defined by WECC) in MW or MWh units (as applicable), in the format reasonably designated by

the Scheduling Coordinator, a non-binding preschedule forecast of Facility Energy via email. The pre-scheduled amounts of Facility Energy shall be the good faith estimate of Seller or Seller's designee of the anticipated delivery of Facility Energy at the time. A forecast provided a day prior to any non-Business Day shall include forecasts for the next day, each succeeding non-Business Day and the next Business Day. Seller or Seller's designee shall provide a copy of any and all updates to the forecast of the Facility's availability from the then-current forecast. Except for Forced Outages, Seller shall operate the Facility with the objective that, for each hour scheduled, the actual Facility availability shall be maintained in accordance with the preschedule plan submitted to the Scheduling Coordinator.

(c) Seller shall notify the Scheduling Coordinator via email, telephone, or other mutually acceptable method, of any outage no later than one-hundred five (105) minutes prior to the start of such Scheduling hour, or such other limit as specified in the CAISO Tariff. Seller shall notify the Scheduling Coordinator of other unanticipated changes in availability by email or telephone as promptly as reasonably possible. Any notice delivered under this Section 7.3(c) shall include the reason for the outage and an estimated duration of the outage. Once the outage has ended, Seller shall notify the Scheduling Coordinator that the outage has ended, the cause of the outage, and the actions taken to resolve the outage in order for the CAISO outage report to be updated accordingly.

(d) Throughout the Delivery Term, Seller shall provide to each Buyer and Participating Member the following data on a real-time basis, and in a format that reasonably allows such Buyer and Participating Member, as applicable, to copy, paste or otherwise use such data:

(i) Read-only access to megawatt capacity and any other Facility availability information required in accordance with CAISO requirements;

(ii) Read-only access via secure login credentials to Energy output information collected by the SCADA system for the Facility; *provided* that if any Buyer is unable to access the Facility's SCADA system, then upon written request from such Buyer, Seller shall provide Energy output information and meteorological measurements through such other format as may be mutually acceptable to Seller and such Buyer, all as may be updated from time to time based on advancements in technology in accordance with Prudent Utility Practices; and

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

Section 7.4 Curtailment.

(a) Seller shall reduce deliveries of Facility Energy to the Point of Delivery immediately upon notice from Buyers' Agent, the CAISO, a Transmission Provider, or any balancing authority or reliability entity during Curtailment Periods affecting any Buyer. Any reduction pursuant to such a notice under this Section 7.4(a) shall be made ratably between the Buyers. Any Buyer affected by such a reduction shall not be obligated to pay Seller for the amount of reduced Facility Energy arising during a curtailment under this Section 7.4(a). If required by Buyers' Agent, the CAISO, a Transmission Provider, or any balancing authority or reliability entity, 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 Seller. Any such reduction of deliveries of Facility Energy shall be allocated on a pro-rata basis among any affected Buyers in accordance with such Buyer's Percentage of Facility Output.

(b) In addition to the curtailments described in Section 7.4(a), each Buyer may curtail deliveries of the Applicable MW Share of itself or, in the case of SCPA, the Participating Members, as applicable, at any time and for the duration specified by such Buyer. Each Buyer shall provide a minimum of ten (10) minutes' notice to Seller of a request for curtailment under this Section 7.4(b), and Seller shall comply with such request in accordance with Prudent Utility Practices. In its curtailment notice to Seller, such Buyer shall indicate the duration of the curtailment period, which shall be for a minimum of fifteen (15) minutes, and the time at which such Buyer requests Seller to resume delivery of the Facility Energy to such Buyer, in accordance with the Applicable MW Share of its respective Buyers or SCPA's Participating Members, as applicable. To the extent a Buyer requests any change in the duration of the requested curtailment period, Seller shall effectuate any such change no later than ten (10) minutes following notice from such Buyer's notification to Seller of the proposed change to curtailment. Seller shall respond to any Buyer's curtailment notices (including the end of such curtailment periods) in accordance with Prudent Utility Practices. Each applicable Buyer shall pay Seller for any Deemed Generated Energy during any curtailment under this Section 7.4(b) in an amount equal to the Contract Price; *provided, however*, (i) Seller shall use commercially reasonable efforts to sell any such Deemed Generated Energy to third parties at a positive price to the extent permitted under the CAISO Tariff, and (ii) each Buyer shall only be obligated to pay for Deemed Generated Energy during any curtailment under this Section 7.4(b) to the extent the aggregate Deemed Generated Energy under this Section 7.4(b) attributable to such Buyer during any Contract Year exceeds 50 MWh. To the extent such Deemed Generated Energy is sold to a third party, (i) the obligation to pay the amounts set forth above for a curtailment by a Buyer under this Section 7.4(b) shall be reduced accordingly by an amount equal to the net proceeds Seller receives from such sales of Deemed Generated Energy (after subtracting any Scheduling fees, wheeling charges, and other associated costs, fees, and any other reasonable expenses incurred by Seller in connection with such sales), and (ii) any Environmental Attributes not sold with such Deemed Generated Energy shall be delivered in proportion with the Applicable MW Share, at no additional cost to such Buyers.

(c) "*Deemed Generated Energy*" means the amount of Energy, expressed in MWh, that the Facility would have produced and delivered to the Point of Delivery, but for a curtailment event arising under this Section 7.4, which amount shall be equal to (i) the amount of MWh provided for in Seller's most recently delivered forecast applicable to the curtailment event, less (ii) the amount of Facility Energy delivered to the Point of Delivery during the curtailment event, if any, or, if there is no forecast available, (A) an amount of MWh calculated based on an equation that incorporates relevant Facility and feedstock availability, weather and other pertinent data for the period of time during the curtailment event in order to approximate the amount of Facility Energy that would have been delivered, less (B) the amount of Facility Energy delivered to the Point of Delivery during the curtailment event, if any; *provided that*, (1) if the applicable difference calculated pursuant to either of the formulas provided above is negative, the Deemed Generated Energy shall be zero (0), and (2) in no event shall Deemed Generated Energy be greater than 18 MWh in the aggregate for any hour. The equation in (A) and (B) shall be subject to review and approval by Buyers' Agent.

Section 7.5 No Payment. No Buyer shall be obligated to pay Seller for any Facility Energy that is not or cannot be delivered to the Point of Delivery for any reason (including Force Majeure), except as otherwise stated in Section 7.4.

Section 7.6 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 and at the Point of Delivery, and each Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby), of its proportionate share of the Energy after the Point of Delivery. Seller warrants that it will deliver Product to Buyers free and clear of all Liens created by any Person other than Buyers subject to the Requirements of Law. Title to and risk of loss as to all Energy and all of the associated Products shall pass from Seller to Buyers at the Point of Delivery.

Section 7.7 RPS, EPS, and SB 859 Compliance.

(a) Seller warrants and guarantees that, throughout the Delivery Term, the Facility (including the Facility Energy and the associated Environmental Attributes) shall be CEC Certified, RPS Compliant, EPS Compliant, and SB 859 Compliant.

(b) Notwithstanding Section 7.7(a), if a Change in Law occurs that causes the Facility to cease to be CEC Certified, RPS Compliant, EPS Compliant, or SB 859 Compliant, Seller shall use commercially reasonable efforts to comply with such Change in Law, and cause the Facility to be CEC Certified, RPS Compliant, EPS Compliant, and SB 859 Compliant.

(c) If the CEC or any other Governmental Authority promulgates regulations relating to biomass procurement obligations under SB 859 that require amendments to this Agreement, then Buyers and Seller shall negotiate in good faith to amend the terms of this Agreement to the extent required to bring the Agreement into compliance with such procurement obligations.

(d) From time to time and at any time requested by any Buyer or any of its Authorized Representatives, Seller will furnish to each Buyer, Governmental Authorities, or other Persons designated by any Buyer, all certificates and other documentation reasonably requested by any Buyer or such Authorized Representatives in order to demonstrate that the Facility, the Facility Energy, and the associated Environmental Attributes were or are RPS Compliant, EPS Compliant, and SB 859 Compliant.

(e) Seller shall include in each Monthly invoice delivered pursuant to Section 10.2(a) a report stating the volumes and type of feedstock used at the Facility to generate Energy for the period covered by such invoice (including sufficient information to determine the extent to which such feedstock complies with the SB 859 Feedstock Requirements for such period), and Seller shall update the report with such additional information as Buyers may reasonably require to confirm that Seller is on track to comply with SB 859 for the applicable Contract Year. In addition, commencing in July of each Contract Year and during each calendar month remaining in such Contract Year and in January of the following Contract Year, Seller shall deliver with each Monthly invoice a report demonstrating that it has met the SB 859 Feedstock Requirements during the time period covered by such report (as described in the next sentence, a

"True-Up Period") and during the time period from the first day of the applicable Contract Year until the end of such True-Up Period (each such aggregate time period up to the last day of the applicable Contract Year, an "Aggregate True-Up Period," and each such report, a "True-Up Report"). The True-Up Period for the first True-Up Report delivered in a Contract Year shall be from January 1 until June 30, and the True-Up Period for each successive True-Up Report during each Contract Year and January of the following Contract Year shall be the Month preceding the delivery of such True-Up Report. If any True-Up Report demonstrates that Seller did not meet the SB 859 Feedstock Requirements for both the applicable True-Up Period and the applicable Aggregate True-Up Period, each Buyer shall be entitled to withhold from the invoice for such Month as security an amount equal to such Buyer's proportionate share, based on such Buyer's Percentage of Facility Output, of \$8,580 multiplied by the greater of (i) the percentage points by which Seller failed to meet the Sustainable Forest Management Requirement during the applicable True-Up Period or (ii) the percentage points by which Seller failed to meet the High Hazard Requirement during such True-Up Period, each as stated in the applicable True-Up Report (the "SB 859 Withholding"). By way of example only, if Seller delivered 50% of the required feedstock with respect to the Sustainable Forest Management Requirement during a True-Up Period (30 percentage points less than the 80% required) and 40% of the required feedstock with respect to the High Hazard Requirement during such True-Up Period (20 percentage points less than the 60% required), and Seller has not met the SB 859 Feedstock Requirements for the applicable Aggregate True-Up Period, then Buyers will collectively be entitled to withhold \$257,400 ($\$8,580 * 30 = \$257,400$). If an SB 859 Withholding to which a Buyer is entitled is greater than the amount owed by such Buyer under the associated invoice, such Buyer may apply such excess SB 859 Withholdings to future Monthly invoices received from Seller or draw on its share of the Performance Security as provided in Section 5.6(e). If a subsequent True-Up Report demonstrates that Seller has met the SB 859 Feedstock Requirements for the Aggregate True-Up Period covered by such True-Up Report, each Buyer shall pay any applicable SB 859 Withholding retained or drawn in such Contract Year upon payment of the associated subsequent invoice.

(f) If the Aggregate True-Up Report delivered in January following any Contract Year indicates that Seller failed to maintain SB 859 Compliance of the Facility or failed to meet the SB 859 Feedstock Requirements for such Contract Year, then in addition to the other rights and remedies provided herein, Seller shall, within 30 days after receipt of an invoice therefor, reimburse each Buyer an amount equal to (i) the total amount that such Buyer paid Seller for Products delivered during such Contract Year (excluding SB 859 Withholdings), minus (ii) the total amount that such Buyer would have paid for the same quantity of Products not intended to meet the requirements of SB 859, but meeting the standards of "Portfolio Content Category 1" as defined by RPS Law ("Non-SB 859 Compliant Products"), determined based on the average of quotes for the price of Non-SB 859 Compliant Products on the last day of such Contract Year from three nationally recognized and mutually acceptable brokers. If the Parties do not agree on brokers required by this Section within five days after Buyers' request for such quotes, the Buyers shall designate one broker, Seller shall designate one broker, and the two designated brokers shall designate the third broker. For the avoidance of doubt, nothing in Section 7.7(e) or this Section 7.7(f) limits in any way a Buyer's right to withdraw from this Agreement under Section 2.3(e).

ARTICLE VIII ENVIRONMENTAL ATTRIBUTES

Section 8.1 Transfer of Environmental Attributes. For and in consideration of Buyers entering into this Agreement, and in addition to the agreement by and among Buyers and Seller to purchase and sell Facility Energy on the terms and conditions set forth herein, Seller shall transfer to each Buyer, and each Buyer shall receive from Seller, proportionately in accordance with such Buyer's Percentage of Facility Output, 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. Seller agrees to transfer and make such Environmental Attributes available to Buyers immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold, or otherwise disposed of and shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyers or attempt to do any of the foregoing with respect to any of the Environmental Attributes, except as otherwise set forth herein. The Parties acknowledge that 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 Buyers belong to any Person other than Buyers, and Buyers may report under any program that such Environmental Attributes purchased hereunder belong to them.

Section 8.3 Environmental Attributes. Upon request by any Buyer's Authorized Representative, 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 WREGIS. In furtherance and not in limitation of Section 8.3, prior to Seller's first delivery of Facility Energy hereunder, Seller shall (a) register for an account with WREGIS to evidence the creation, crediting, and transfer of WREGIS Certificates in accordance with WREGIS reporting protocols and WREGIS Operating Rules and (b) register the Facility with WREGIS. After the Facility is registered with WREGIS, Seller shall transfer WREGIS Certificates using the Forward Certificate Transfer method as described in WREGIS Operating Rules from Seller's WREGIS account to each Buyer's WREGIS accounts, as designated by each Buyer's Authorized Representative, proportionately in accordance with such Buyer's Percentage of Facility Output. 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 Qualified Reporting Entity ("*QRE*") and any applicable QRE agreements, and transferring WREGIS Certificates to each Buyer, each such Buyer's Authorized Representatives, or any other designees. Each Buyer shall be responsible for its WREGIS expenses associated with maintaining its own 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 any Buyer. Forward Certificate Transfers shall occur monthly based on the certificate creation timeline established by the WREGIS Operating Rules. Seller shall be responsible for, at its

expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each Month. In the event that WREGIS is not in operation, or WREGIS does not track Seller's transfer of WREGIS Certificates to any 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 any Buyer chooses not to use WREGIS for any reason, Seller shall document the production and transfer of RECs under this Agreement to such Buyer by delivering to such Buyer an attestation in substantially the form attached as Appendix B for the RECs associated with such Buyer's Percentage of Facility Output, measured in whole MWh, or by such other method as such 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 Buyers an attestation for the amount of such Environmental Attributes associated with Facility Energy for the preceding Month in the form of the attestation set forth as Appendix B. At Buyers' Agent'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 Buyers 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 CAPACITY RIGHTS

Section 9.1 Capacity Rights. For and in consideration of each Buyer entering into this Agreement, and in addition to the agreement by Buyers and Seller to purchase and sell Facility Energy and Environmental Attributes on the terms and conditions set forth herein, Seller hereby transfers to each Buyer, and each Buyer hereby accepts from Seller, all of Seller's rights, title and interest in and to the Capacity Rights, proportionately in accordance with such Buyer's Percentage of Facility Output. The consideration for the transfer of Capacity Rights, if any, is contained within the applicable Contract Price. No Buyer shall have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of any Buyer's ownership of the Capacity Rights or otherwise.

Section 9.2 Resource Adequacy Standards. Except to the extent Seller is exempt from the Resource Adequacy standards set forth in the CAISO Tariff, Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from such Resource Adequacy standards, if applicable.

Section 9.3 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 Buyers 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 Buyers. Each Buyer may, at each Buyer's own risk and expense, report to any Person that such Buyer's proportionate share of the Capacity Rights belongs to it. Seller makes no representations, warranties or covenants to Buyers, either expressed or implied, regarding the current or future characterization or treatment of the Capacity Rights under any Requirement of Law.

Section 9.4 Further Assurances. Seller shall, at its sole cost and expense, execute and deliver such documents and instruments and take such other action as required by the CAISO and as any Buyers' Authorized Representative may reasonably request to effect recognition and transfer of the Capacity Rights to Buyers.

ARTICLE X BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES

Section 10.1 Billing and Payment. Billing and payment for all Products shall be as set forth in this Article X.

Section 10.2 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 Buyers under this Agreement, Seller shall deliver to each Buyer a proper invoice showing the amount due for the preceding Month from each Buyer to Seller for Facility Energy, Capacity Rights and Environmental Attributes (subject to Section 10.2(b)) based on such Buyer's Percentage of Facility Output, WREGIS Certificates that have been created, credited, and transferred to such Buyer's account in accordance with Section 8.4, and any amounts owed by such Buyer to Seller under Section 7.2(b). Seller shall calculate the amount of Facility Energy from meter readings at the Electric Metering Devices maintained pursuant to Section 10.6. 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 E or such other address as each Buyer may provide to Seller. Seller shall separately provide in such invoice (i) evidence supporting the total amount of Facility Energy generated during such period, (ii) Seller's computation of any Deemed Generated Energy calculated during the preceding Month (including any supporting documentation associated therewith) and (iii) any other amounts due to Seller, including amounts due under Section 6.3 or Section 7.4. Seller shall also provide each Buyer with a summary of the calculations pursuant to Section 6.2. Any electronic information delivered by Seller under this Article X shall be in a format such as Microsoft Excel (or its equivalent) that allows each Buyer to cut, paste or otherwise readily use and work with such information or documentation or as otherwise mutually agreed by the Parties.

(i) Each invoice shall contain the most recent attestations delivered subject to Section 8.2, Section 8.5 and Section 11.6.

(ii) Concurrently with the delivery of each monthly invoice and except as otherwise provided in Section 7.7, Seller shall deliver information regarding the WREGIS

Certificates, including the WREGIS Certificates created in the prior month, vintage, and serial numbers.

(b) Subject to Section 10.2(c) and Section 10.2(e) and Section 10.3, not later than the thirtieth (30th) day after receipt by a Buyer of Seller's Monthly invoice (or the next succeeding Business Day, if the thirtieth (30th) day is not a Business Day), each 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 by such Buyer in such Monthly invoice, except that if any WREGIS Certificates for any Facility Energy included on a Monthly invoice have not been received in a Buyer's account prior to such date, such Buyer shall be entitled to withhold payment of \$60 from the Contract Price for each MWh of Facility Energy delivered to such Buyer until ten (10) days after receipt of such WREGIS Certificates, which amount (i) will not accrue interest if paid by such deadline and (ii) has been determined by the Parties to be a fair allocation of the portion of the Contract Price attributable to the Environmental Attributes included in the Product.

(c) With respect to Deemed Generated Energy, within thirty (30) days after receipt of an invoice from Seller, if any Buyer believes that it has insufficient information to verify the amount of Deemed Generated Energy calculated by Seller in the invoice, or if such Buyer requires additional time to verify such information, such Buyer shall notify Seller and the other Buyers thereof. Within thirty (30) days after receipt by such Buyer of additional information regarding such Deemed Generated Energy calculation, or on the date mutually agreed to by the Parties pursuant to such Buyer's request for additional time to verify the information provided by Seller, such Buyer shall notify Seller of any discrepancies with respect to its calculation of the Deemed Generated Energy, in which event such invoice shall be subject to the provisions of Section 10.3.

(d) Seller shall, in the invoice immediately following the receipt of such adjustment, reconciliation, or final settlement, adjust previously invoiced amounts to reflect adjustments, reconciliations or final settlements with the CAISO or WREGIS occurring after the date of the initial invoice, or any other adjustments agreed to by the Parties (other than adjustments resulting from the resolution of invoice disputes, which are addressed in Section 10.3), which shall be without interest of any kind, *provided* that Buyers shall not be required to make such invoice payments if the adjusted invoice is received more than six (6) Months after the billing period.

(e) No Buyer shall be required to make invoice payments if the invoice is received more than six (6) Months after the applicable Monthly billing period except with respect to any disputed amounts for which an invoice was provided within six (6) Months after the applicable Monthly billing period and for which such Buyer's liability is established and for any corrections or adjustments resulting in amounts owing by such Buyer pursuant to Section 10.6(a).

Section 10.3 Disputed Invoices. If any portion of any invoice is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Parties of the basis for the dispute, setting forth the details of such dispute in reasonable specificity. Disputes shall 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 13.3. 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 10.3, "*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. This Section does not apply to adjustments, reconciliations, or final settlements with the CAISO or WREGIS, which are addressed in Section 10.2(d).

Section 10.4 Buyers' 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, each 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 such Buyer under this Agreement or otherwise any amount due such Buyer from Seller under this Agreement or otherwise, including any amounts due as a result of any Default of this Agreement or any other obligation if and to the extent paid in the first instance by such Buyer.

Section 10.5 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. Buyers' Agent 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 six (6) years following final payment made by a Buyer hereunder as it relates to a particular payment obligation; 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 Buyers' Agent 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 written 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 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 Buyers' Agent 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 Buyers within fifteen (15) days after notice to Seller of the identified overpayment. If an Authorized Auditor's examination or audit reveals that Buyers' 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 Buyers within fifteen (15) days after notice to Seller. Seller shall contractually require all Subcontractors performing services under this Agreement to comply with the provisions of this Section 10.5 by inserting this Section 10.5 into each Subcontract.

Section 10.6 Electric Metering Devices.

(a) Facility Energy shall be measured using an NV Energy-approved settlement-quality Electric Metering Device at the Facility that complies with the CAISO Tariff and relevant protocols and is dedicated exclusively to the Facility. Seller shall arrange and bear all costs associated with the installation of the Electric Metering Devices needed for the registration, recording and transmission of information regarding the Energy generated at the Facility. Seller shall provide, or cause to be provided, to Buyers' Agent a mutually agreed set of meter data, which data shall be accessible to, and usable by, Buyers. In addition to providing Buyers' Agent with its meter data, Seller shall use commercially reasonable efforts to support any efforts by Buyers' Agent to obtain NV Energy meter data applicable to the Facility and all inspection, testing and calibration data and reports from the NV Energy. If NV Energy makes any adjustment to any meter data for a given time period, Seller agrees that it shall submit revised Monthly invoices, pursuant to this Article X covering the entire applicable time period in order to fully conform such adjustments to the meter data. Seller shall submit any revised invoices no later than thirty (30) days after the date on which NV Energy provides Seller with binding adjustments to the meter data. To the extent consistent with the requirements of NV Energy and the CAISO, all Electric Metering Devices used to provide data for the computation of payments shall be sealed and Seller or its designee shall only break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Section 10.6. Seller or its designee shall specify the number, type, and location of such Electric Metering Devices.

(b) Seller or its Authorized Representative, at no expense to Buyers, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Seller or its Affiliates shall provide Buyer annual certified test reports for each Electric Metering Device thereafter throughout the duration of the Delivery Term. Seller shall provide Buyers' Agent

with reasonable advance notice of, and permit representatives of Buyers and Buyers' Agent to witness and verify, such inspections and tests. Upon request by Buyers' Agent, Seller or its Authorized Representative shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of any Buyer to inspect or witness the testing of any Electric Metering Device. The actual expense of any such requested additional inspection or testing shall be borne by Seller. Seller shall provide copies of any inspection or testing reports to Buyers' Agent.

(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 one percent (+/- 1.0%); an adjustment shall be made to correct all measurements made by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined by reference to Seller's check-meters, if any, or as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyers. If the period of the inaccuracy cannot be reasonably ascertained, any such adjustment shall be for a period equal to one-third of the time elapsed since the preceding test of the applicable Electric Metering Devices. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyers, Buyers' Agent shall use the corrected measurements as determined in accordance with this Section 10.6 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyers for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Buyers to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyers, or at the direction of Buyers' Agent, may take the form of an offset to payments due to Seller from Buyers. Payment of such difference by the owing Party or Parties, as applicable, shall be made not later than thirty (30) days after the owing Party or Parties, as applicable, receives notice of the amount due, unless Buyers elect payment via an offset. Seller shall work with Buyers to establish direct access by the Buyers to interval meter data for purposes of Buyer reconciliation of invoices.

Section 10.7 Taxes. Seller shall be responsible for and shall pay, before the due date therefor, any and all federal, state, and local Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to the Facility, the Site, or any other assets of Seller, the Products or the transaction arising before or at the Point of Delivery. Each Buyer shall pay or cause to be paid its proportionate share of all Taxes on or with respect to the Products or the transaction after (and excluding) the Point of Delivery to such Buyer. If Seller is required by a Requirement of Law to remit or pay Taxes that are the responsibility of any Buyer hereunder, such Buyer shall promptly reimburse Seller for such Taxes. If any Buyer is required by Requirement of Law to remit or pay Taxes that are Seller's responsibility hereunder, such Buyer may deduct such amounts from payments to Seller hereunder; if such Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse such 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 XI
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 11.1 Representations and Warranties. Each Buyer makes the following representations and warranties to Seller as of the Effective Date:

(a) Such Buyer is, (i) with respect to SCPPA, a validly existing California joint powers authority, (ii) with respect to each of MID and TID, a validly existing irrigation district organized under the laws of the State of California, and (iii) with respect to SMUD, a validly existing California municipal utility district, and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement, and 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 such Buyer of this Agreement (i) have been duly authorized by all necessary action, and does not and will not require any consent or approval of such Buyer's (or, in the case of SCPPA, SCPPA's Participating Members') regulatory or governing bodies, other than that which has been obtained; and (ii) does not violate any federal, state, and local law, including the California Government Code and similar laws.

(c) This Agreement constitutes the legal, valid and binding obligation of such 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) Buyers' Agent has been appointed as the agent for Buyers pursuant to the Buyers Joint Project Agreement, a true and correct copy of which has been furnished to Seller, for the purposes of administering this Agreement, and Buyers' Agent has the power and authority to take such actions, grant such consents, and bind Buyers with respect to the matters provided for in this Agreement in a manner consistent with the term and conditions set forth in this Agreement.

(e) Such Buyer is (i) an "eligible contract participant" as defined in the Commodity Exchange Act, as amended, 7 U.S.C. Section 1a(18); (ii) a producer, processor, or commercial user of, or a merchant handling, the commodity that is the subject of this Agreement, or the products or byproducts thereof; and (iii) entering into this Agreement solely for purposes related to its business as such.

Section 11.2 Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyers as of the Effective Date:

(a) Each of the Seller Parties 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 or lease its properties, to carry on its business as now being conducted and to enter into this Agreement and the Ancillary Documents to which it is a party, 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 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 Buyers (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 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 and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which any Seller Party is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of any Seller Party (except as contemplated hereby), and each Seller Party has obtained or shall use commercially reasonable efforts to timely obtain (and expects to obtain in due course) all Permits required for the performance of its obligations hereunder and operation of the Facility in accordance with the Requirements.

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

(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.

(h) (i) Seller is a Special Purpose Entity and (ii) the corporate organizational structure and ownership of Seller, the Upstream Equity Owner(s) up to the Ultimate Parent Entity, and a list of the Principals of Seller, each Upstream Equity Owner and the Ultimate Parent Entity, as of the Effective Date, is set forth on Schedule 11.2(h) and as of the date of each update to Schedule 11.2(h) (as provided in Section 11.6), Schedule 11.2(h) (as then updated) sets forth the corporate organizational structure and ownership of Seller and each Upstream Equity Owner, and the Principals of Seller, each Upstream Equity Owner and the Ultimate Parent Entity.

(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 (other than petitions that have been dismissed within 60 days after filing), 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) The Permits required to maintain or operate the Facility in accordance with the Requirements have been or are reasonably expected to be timely obtained in the ordinary course of business, and Seller is in compliance with any mitigation plans, monitoring programs, or other requirements associated with any such Permits.

(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 will acquire 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 as provided herein.

(n) All of the assumptions made in the Non-Consolidation Opinion, including any exhibits attached thereto, are true and correct, and Seller has complied or will comply after the date hereof with all of the assumptions made with respect to Seller in the Non-Consolidation Opinion.

(o) Seller's or its Affiliate's agents and representatives have visited, inspected and become familiar with the Site and its physical condition relevant to the obligations of Seller pursuant to this Agreement, including roads, utilities, air and water quality conditions. 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).

Seller has determined that the Site constitutes an acceptable and suitable site for operation of the Facility in accordance herewith. At all times after the Effective Date, Seller shall have Site Control. Seller shall provide Buyer with prompt notice of any change in the status of Seller's Site Control. Seller shall not take any action or permit any action to be taken at or with respect to the Site that has a material adverse effect upon the Facility or the generating capability of the Facility.

(p) Seller is (i) an "eligible contract participant" as defined in the Commodity Exchange Act, as amended, 7 U.S.C. Section 1a(18); (ii) a producer, processor, or commercial user of, or a merchant handling, the commodity that is the subject of this Agreement, or the products or byproducts thereof; and (iii) entering into this Agreement solely for purposes related to its business as such.

Section 11.3 Covenants Related to Fuel Sources. Seller shall ensure that on an annual basis, (a) at least 80% of the feedstock shall be a byproduct of sustainable forest management, which includes removal of dead and dying trees from Tier 1 high hazard zones and Tier 2 high hazard zones (as defined in SB 859) and is not from lands that have been clear-cut (whether on an annual basis or for a lesser period as provided in Section 7.7(e), the "Sustainable Forest Management Requirement"), and (b) at least 60% of the feedstock shall be from Tier 1 high hazard zones and Tier 2 high hazard zones (as defined in SB 859) (whether on an annual basis or for a lesser period as provided in Section 7.7(e), the "High Hazard Requirement," and together with the Sustainable Forest Management Requirement, the "SB 859 Feedstock Requirements").

Section 11.4 Covenants of Seller Related to Site Control Documents.

(a) Seller shall (i) maintain Site Control at all times, and (iii) provide Buyers' Agent with prompt notice of any change in the status of Seller's Site Control.

(b) 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 counterparty to Seller thereunder to terminate a Site Control Document.

(c) 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.

(d) Seller shall give Buyers' Agent 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 the receipt by Seller of any notice from any counterparty to Seller thereto, or (ii) the commencement or threat of any action or proceeding or arbitration pertaining to any Site Control Document. Seller shall deliver to Buyers' Agent, 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.

(e) 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 any Site Control Document in a way that could, individually or in the aggregate, reasonably be expected to have a material adverse effect on any Buyer, the Facility, or Seller's performance of its obligations under this Agreement, without the prior written consent of Buyers' Agent. Notwithstanding the foregoing, Buyers' Agent's consent shall not be required to terminate a Site Control Document if the real property rights arising under such Site Control Document are not reasonably necessary for the possession of the Facility, the generation of Energy at the Facility, or the transmission of Energy from the Facility to the Point of Delivery.

Section 11.5 Covenants of Seller Related to Material Adverse Effects. 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, Seller shall promptly thereafter notify Buyers' Agent, and Seller shall, within thirty (30) days after providing such notice, provide Buyers' Agent with a plan or report, including the report (at Seller's sole cost and expense) of a Licensed Professional Engineer with respect to any operational problem related to the Facility if reasonably requested by Buyers' Agent that demonstrates in detail reasonably acceptable to Buyers' Agent, that the material adverse effect or event of default by Seller 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 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 actions set forth under such plan or report, will be deemed a failure by Seller to perform under Section 12.1(b).

Section 11.6 Covenants of Seller to Provide Quarterly Attestations. Seller shall provide to Buyers' Agent on January 1, April 1, July 1 and October 1 of each Contract Year a certificate executed by an authorized officer of Seller certifying that the representations and warranties set forth in Section 11.2 of this Agreement remain true and correct as of the date of such certificate, and that there exists no event of default by Seller or any event that, after notice or with the passage of time or both, would constitute a Default hereunder; *provided*, that (i) with respect to any attestation with respect to the representation and warranty set forth in Section 11.2(f), Seller may include a disclosure schedule with any such attestation in order to make such representation true and (ii) with respect to any attestation as to any representation and warranty set forth in Section 11.2(h), Seller may update such attestation and Section 11.2(h) in order to account for any mergers, transfers, consolidations, assignments, restructurings, or similar transactions to the extent that such transactions either (A) do not constitute a Change of Control or (B) have been consented to by Buyers.

Section 11.7 Covenants of Seller Related to Intellectual Property. 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.

Section 11.8 Covenants of Seller Related to Status as Special Purpose Entity. Seller shall continue to comply with all of the assumptions made with respect to Seller in the Non-Consolidation Option and shall remain at all times throughout the Agreement Term a Special Purpose Entity.

Section 11.9 Covenants of Seller Related to Facility Debt. Seller shall not permit Facility Debt in an amount that, in the aggregate exceeds fifty percent (50%) 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 Facility Debt as being equal to or less than fifty percent (50%) of the Facility Cost as of such date, which certificate shall be accompanied by supporting documentation in reasonable detail, including a statement of the Facility's then-current Facility Debt value.

ARTICLE XII

DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

Section 12.1 Default. Each of the following events or circumstances shall constitute a "Default" by the responsible Party (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 12.1) 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 reasonable commercial efforts and is not a failure to make a payment when due, and such Party expeditiously commences to cure such breach following its receipt of notice and continues to diligently proceed with such cure within such longer period of time, then such Party shall have up to sixty (60) additional days to cure.

(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, or in the case of Seller, made in a quarterly certification delivered pursuant to Section 11.6, is 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 another Party, and further provided that if such falsity or inaccuracy cannot be cured within such thirty (30) day period despite reasonable commercial efforts, and such Party expeditiously commences to cure such breach following its receipt of notice and continues to diligently proceed with such cure within such longer period of time, then such Party shall have up to sixty (60) additional days to cure.

(d) **Bankruptcy.** Bankruptcy of any Buyer (which shall only be a Default with respect to such Bankrupt Buyer) or Seller.

(e) **Performance Security Failure.** (i) The failure of Seller to furnish Performance Security by the time set forth in Section 5.6, or the failure of Seller to maintain or replace the Performance Security in compliance with Section 5.6, (ii) the failure of any of the Performance Security to be in full force and effect in accordance with Section 5.6 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 5.6.

(f) **Insurance Default.** The failure of Seller to (i) maintain and provide acceptable evidence of the required Insurance for the required period of coverage as set forth in Appendix D that is not cured within five (5) days after receipt of notice of such failure from Buyer or (ii) provide acceptable evidence of Insurance that is in full force and effect, which failure is not remedied by both (A) the provision to Buyer of electronic evidence of such Insurance within four (4) days after receipt of notice of such failure from Buyer and (B) the provision of other evidence acceptable to Buyer within fifteen (15) days after receipt of notice of such failure from Buyer.

(g) **Fundamental Change.** Except as permitted by Section 13.7, (i) a Party makes an assignment of its rights or delegation of its obligations under this Agreement, or (ii) a Change in Control occurs (whether voluntary or by operation of law).

(h) **Site Control Document Default.** Seller breaches any of its obligations under Section 11.4, which breach is not cured within ten (10) days after receipt of notice thereof from Buyers' Agent; other than a breach of Seller's obligations under Section 11.4(a), which shall immediately trigger a Default hereunder.

(i) **Commercial Operation Date.** Seller fails to achieve Commercial Operation on or before the Outside Commercial Operation Date.

Section 12.2 Default Remedy.

(a) If any Buyer is in Default for nonpayment, subject to any duty or obligation under this Agreement, Seller may continue to provide services to such Defaulting Buyer, and shall continue to provide services with respect to the non-Defaulting Buyers, pursuant to its obligations under this Agreement; *provided* that nothing in this Section 12.2(a) shall affect Seller's rights and remedies set forth in this Section 12.2. Seller's continued service to a Defaulting Buyer shall not act to relieve such Defaulting 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 13.3 has been invoked or completed, bring an action in any court of competent jurisdiction as set forth in Section 13.13 seeking injunctive relief in accordance with applicable rules of civil procedure.

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and a 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 with respect to such Buyer, including a partial termination of this Agreement with respect to the Defaulting Buyer pursuant to Section 12.3; *provided* that the non-Defaulting Buyer (or Buyers, as applicable), shall have the opportunity, upon the termination of this Agreement with respect to such Defaulting Buyer or Buyers, to take over such Defaulting Buyer's or Buyers' Percentage of Facility Output as provided in Section 2.3(h). 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, each 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 Buyers under this Agreement, and (ii) withdrawal from or termination of this Agreement pursuant to Section 12.3. No failure of any 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 any Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power by such Buyer.

Section 12.3 Termination for Default.

(a) In the event of a Default by any Buyer, each Party that is not a Defaulting Party, as the context requires (each, a "*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 each Non-Defaulting Party under this Agreement, by notice from any Non-Defaulting Party to the Defaulting Party (a "*Termination Notice*") (i) establish a date, which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such notice ("*Early Termination Date*") on which this Agreement shall terminate with respect to such Buyer, and (ii) Seller may withhold any payments due to such Defaulting Buyer in respect of this Agreement.

(b) In the event of a Default by Seller, each Buyer, as a 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 each Non-Defaulting Party under this Agreement, (i) establish by delivery of a Termination Notice an Early Termination Date (which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such Termination Notice) on which such Non-Defaulting Buyer may withdraw, without penalty to such Non-Defaulting Buyer, from this Agreement or, upon the mutual agreement of Buyers, this Agreement shall terminate, and (ii) withhold any payments due Seller in respect of this Agreement; *provided*, that upon the occurrence of any Default of the type described in Section 12.1(h) (but only arising due to a breach under Section 11.4(c)), this Agreement shall automatically terminate, without notice or other action by any Party as if an Early Termination Date had been declared immediately prior to such event.

(c) If an Early Termination Date has been designated, each 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 each Buyer would have paid for the Products under this Agreement to the equivalent quantities and relevant market prices, either quoted by one or more bona fide third party offers, or which are reasonably expected by each 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. To ascertain the market prices of a replacement contract, each Non-Defaulting Party may consider, among other valuations, quotations from dealers in Energy contracts and bona fide third party offers. Each 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.

(d) For purposes of each Non-Defaulting Party's determination of its Gains, Losses and Costs and the Termination Payment, it shall be presumed, regardless of the facts, that Seller would have sold, and each Buyer would have purchased, each day during the Remaining Term (i) Facility Energy in an amount equal to the Expected Daily Deliveries, (ii) the Environmental Attributes associated therewith, and (iii) all other components of the Products. The "*Expected Daily Deliveries*" shall be an amount in the aggregate equal to the greater of (A) 384 MWh, and (B) the average daily amount of Facility Energy during the Delivery Term, if any.

(e) Each 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. If the Termination Payment is a positive number, the Defaulting Party shall, within fourteen (14) days after receipt of such notice, pay the Termination Payment to each Non-Defaulting Party, together with interest accrued at the Interest Rate from the Early Termination Date until paid. The Non-Defaulting Party shall not be obligated to pay a Termination Payment in any amount to the Defaulting Party under any circumstances.

(f) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation of the Termination Payment shall be submitted to the dispute resolution process provided in Section 13.3. Following resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment (if any) as 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.

(g) For purposes of this Agreement:

(i) "*Gains*" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of its rights and obligations under this Agreement, determined in a commercially reasonable manner. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, or settlement prices for a comparable transaction at liquid trading platforms, all of which should be calculated for the remaining Delivery Term to determine the present value of the Products;

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

reasonable manner. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, or settlement prices for a comparable transaction at liquid trading platforms, all of which should be calculated for the remaining Delivery Term to determine the present value of the Products; if the Non-Defaulting Party is the Seller, then "Losses" shall exclude any federal or state tax credits, grants, or benefits related to the Facility or generation therefrom.

(iii) "*Costs*" means, with respect to the Non-Defaulting Party, (A) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace this Agreement, and (B) all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of 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 any 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.

(h) At the time for payment of any amount due under this Section 12.3, each Party shall pay to any other Party, as applicable, all additional amounts, if any, payable by it under this Agreement (including any amounts withheld pursuant to Section 12.3(a)(i) above).

ARTICLE XIII MISCELLANEOUS

Section 13.1 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. To the extent that an Authorized Representative's contact information is not provided in Appendix E, at the time a Party designates such Authorized Representative, such Party shall concurrently provide written notice to the other Party of such Authorized Representative's contact information.

Section 13.2 Notices. With the exception of billing invoices pursuant to Section 10.2(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 in 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 E, 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 delivery in person, by reliable overnight courier, or by 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.

Section 13.3. 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 13.3) (a "*Dispute*"), any Party (the "*Notifying Party*") may deliver to the other Parties (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 seven (7) 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 13.3(a) and Section 13.3(b) by the expiration of the thirty (30) day period set forth in Section 13.3(a), then a Party may pursue any legal remedy available to it in accordance with the provisions of Section 13.12 and Section 13.13 of this Agreement.

(d) In addition to the Dispute Resolution process set forth in this Section 13.3, the Parties shall comply with California law governing claims against public entities and presentment of such claims.

Section 13.4. Further Assurances; Change in Electric Market Design.

(a) 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.

(b) If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyers' Agent and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting

to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyers' Agent and Seller shall engage in such negotiations in good faith. If Buyers' Agent and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Section 13.3. Notwithstanding the foregoing, a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure.

Section 13.5 No Dedication of Facilities. Any undertaking by one Party to the other Parties under any provisions of this Agreement shall not constitute the dedication of the Facility or any portion thereof of any Party to the public or to the other Party or any other Person, and it is understood and agreed that any such undertaking by any Party shall cease upon the termination of such Party's obligations under this Agreement.

Section 13.6 Force Majeure.

(a) A Party shall not be considered to be in Default in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate, *provided* the Party has given a written detailed description of the full particulars of the Force Majeure to the other Party reasonably promptly after becoming aware thereof (and in any event within fourteen (14) days after the initial occurrence of the claimed Force Majeure 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 such Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. If Seller is unable to deliver, or any Buyer is unable to receive, Facility Energy due to a Force Majeure, then such Buyer shall have no obligation to pay Seller for Facility Energy not delivered or received by reason thereof. In no event shall any Buyer be obligated to compensate Seller or any other Person for any losses, expenses or liabilities that Seller or such other Person may sustain as a consequence of any Force Majeure.

(b) The term "*Force Majeure*" means any act of God (including fire, flood, earthquake, extremely severe storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor disturbance, strike or lockout of a national scope, act of the public enemy, war, 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 a 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: (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 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; (9) any changes in the financial condition of any Buyer, Seller, the Facility Lender, or any subcontractor or supplier affecting the affected Party's ability to perform its obligations under this Agreement; or (10) Seller's inability to obtain sufficient fuel or power to operate the Facility.

(c) Any Buyer may withdraw from 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 damaged and thereby rendered inoperable and an independent engineer that is mutually acceptable to the 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 withdrawal from or termination of this Agreement under Section 13.6(c) shall be "no-fault" and no Party shall have any liability or obligation to any other Parties arising out of such withdrawal or termination. Notwithstanding the foregoing, upon any such withdrawal or termination, as applicable, Seller shall pay each withdrawing or terminating Buyer for any and all amounts hereunder that may be owing, including for any outstanding payments due in the ordinary course that occurred prior to the termination. Each withdrawing or terminating Buyer shall return to Seller its portion of the Performance Security (less any amounts drawn by such Buyer in accordance with this Agreement). The exercise by a Buyer of its right to withdraw from or terminate the Agreement shall not render such withdrawing or terminating Buyer liable for any losses or damages incurred by Seller whatsoever.

Section 13.7 Assignment of Agreement.

(a) Except as set forth in this Section 13.7, no Party may assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of the other Parties, such consent not to be unreasonably withheld, conditioned or delayed (taking into account Buyers' and Participating Members' approval processes). Any Change in Control (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of Buyers' Agent, which consent shall not be unreasonably withheld, conditioned or delayed (taking into account Buyers' and Participating Members' approval

processes). Concurrently with any reorganization, financing transaction, or other transactions constituting any Change in Control (whether voluntary or by operation of law) in which Seller merges, consolidates or takes any other action with any Person and ceases to exist, the successor entity to Seller shall execute a written assumption agreement in favor of Buyers 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. In connection with any Change in Control in which Seller remains party to this Agreement, at Buyers' request, Seller shall deliver an estoppel certificate to Buyers' Agent confirming that this Agreement remains in full force and effect. Seller shall (i) use commercially reasonable efforts to provide Buyers' Agent with not less than ninety (90) days' prior written notice, but shall in no event provide less than forty five (45) days' prior written notice (other than a Change in Control that is involuntary or by operation of law, for which Seller shall provide as much advance notice as possible, but for which no advance notice is required hereunder), of (x) any proposed transaction which would constitute a Change in Control, and (y) Bankruptcy of any Seller Party, and (ii) provide written notice to Buyers' Agent of any other transaction or series of transactions with respect to the sale, transfer or disposition of Ultimate 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 Upstream Equity Owner.

(b) Any Buyer may assign this Agreement without the consent of Seller or the other Buyers to a Qualified Buyer Assignee. Notwithstanding the foregoing, in connection with any such assignment, such Qualified Buyer Assignee shall execute a written assumption agreement in favor of Seller pursuant to which any such Qualified Buyer Assignee shall assume all the obligations of such Buyer under this Agreement and agree to be bound by all the terms and conditions of this Agreement, thereby relieving the assignor Buyer from its duties and obligations hereunder. Any modifications or amendments to this Agreement to accommodate the technical requirements of such Qualified Buyer Assignee (including as they relate to transmission and scheduling) shall require the consent of Seller, which consent shall not be unreasonably withheld.

(c) Except for a sale or transfer of the Facility by a Facility Lender to a Qualified Transferee as contemplated by Section 13.7(d), Seller shall not sell or transfer the Facility to any Person other than a Person to whom Seller assigns this Agreement in accordance with this Section 13.7, without the prior written consent of Buyers. Any purported sale or transfer in violation of this Section 13.7(c) shall be null and void and of no force or effect.

(d) Buyers' consent shall not be required in connection with the collateral assignment of this Agreement or a pledge of the membership interests in Seller to any Facility Lender for the sole purpose of financing exclusively this Facility; provided, however, that the terms of such financing and the documentation relating thereto shall not conflict with the applicable terms and conditions of this Agreement. Seller shall provide Buyer with ninety (90) days' prior notice of any such collateral assignment or pledge. If a Facility Lender, any designee of the Facility Lender, or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance in lieu of foreclosure takes possession of or title to the Facility, such Facility Lender, designee, purchaser or grantee shall agree to be bound by the covenants and agreements of Seller in this Agreement; provided, however, that until the Person who acquires title to the Facility executes and delivers to Buyer a written assumption of Seller's obligations under this Agreement in form and substance acceptable to Buyer, such Person shall

not be entitled to any of the benefits of this Agreement. Any sale or transfer of the Facility by any Facility Lender in connection with any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage or Lien on the Facility shall be made only to an entity that is a Qualified Transferee. In connection with any financing or refinancing of the Facility, each Buyer shall execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Appendix H, except that Buyers shall have no obligation to amend the terms and conditions of this Agreement (such consent, the "*Facility Lender Consent*").

(e) 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.

(f) No Buyer will be liable to any Facility Lender for any claims, losses, expenses or damages whatsoever other than liability a Buyer may have to Seller under this Agreement. Seller shall reimburse, or shall cause the Facility Lender to reimburse, each Buyer for the incremental direct expenses reasonably incurred and documented by such Buyer in the preparation, negotiation, execution or delivery of the Facility Lender Consent and any other documents requested by Seller, the Facility Lender, or any Tax Equity Investor and provided by such Buyer, pursuant to this Agreement.

(g) Seller shall pay Buyers the reasonable costs and expenses incurred by Buyers in connection with any dispositions, assignments or Changes in Control (including reasonable attorneys' fees and expenses) hereunder pursuant to a transaction or related series of transactions.

Section 13.8. 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 a 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 13.9 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 13.10 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.

Section 13.11 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 13.12 Governing Law. This Agreement was made and entered into in the County of Los Angeles, California and shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

Section 13.13 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 13.14 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 13.15 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 13.16 Waiver; Available Remedies. The failure of any 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 any 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 13.17 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership among the Parties hereto or to impose any partnership obligation or liability upon such Party. No 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 Parties.

Section 13.18 Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, this Agreement shall not be construed to create rights in, or to grant remedies to, any

third party as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

Section 13.19 Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability.

(a) **Indemnification.** Seller undertakes and agrees to indemnify and hold harmless each Buyer, SCPPA's Participating Members, and each Buyer's respective commissioners, officers, agents, employees, advisors, members, and Authorized Representatives and assigns and successors in interest (collectively, "*Indemnitees*") and, at the option of Buyers' Agent, to defend such Indemnitees from and against any and all suits and causes of action (including proceedings before FERC), claims, charges, damages, demands, judgments, civil fines and penalties, other monetary remedies, or losses of any kind or nature whatsoever, (i) 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 a 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 of Seller to be true in all 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, or (ii) arising out of the failure of the Facility to be SB 859 Compliant at any time during the Agreement Term.

(b) **Damage or Destruction.** Subject to Section 13.6, 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 the same general condition and use as existed prior to such damage or destruction, unless a different condition or use is approved by Buyers' Agent. 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) **Insurance.** Seller shall obtain and maintain the Insurance coverages listed in Appendix D.

(d) **Condemnation or Other Taking.** Throughout the Agreement Term, Seller shall immediately notify Buyers' Agent of the institution of any proceeding for the condemnation or other taking of the Facility or any portion thereof, including the occurrence of any hearing associated therewith. Buyers' Agent may participate in any such proceeding and Seller shall deliver to Buyers' Agent all instruments necessary or required by Buyers' Agent to permit such participation. Without Buyers' Agent's prior written 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. Upon any condemnation of the Facility or any part thereof, Seller shall diligently repair, replace, or reconstruct the Facility or portion thereof so condemned. 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.

(e) **Limitation of Liability.** EXCEPT FOR LOSSES OR DAMAGE DIRECTLY OR INDIRECTLY INCLUDED IN THE LIQUIDATED DAMAGES, COVERED BY INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT RELATED TO THIRD PARTY CLAIMS, ASSESSED BY GOVERNMENTAL AUTHORITIES AS A RESULT OF THE FACILITY FAILING TO BE SB 859 COMPLIANT, OR OTHER SPECIFIC CHARGES EXPRESSLY PROVIDED FOR HEREIN, IN NO EVENT SHALL EITHER PARTY OR, IN THE CASE OF BUYER, ITS 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 OF 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. 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 JOINT, CONTRIBUTORY, CONCURRENT, OR ACTIVE OR PASSIVE.

(f) 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.

(g) The obligations of Buyers hereunder are several and not joint, and no Buyer shall be liable for the acts or omissions of any other Buyer. If any Participating Member withdraws from participation in this Agreement, then (i) neither the other Participating Members nor the other Buyers shall have any obligation to take over the withdrawing Participating Member's Applicable MW Share, (ii) effective upon such withdrawal, the Contract Capacity shall be reduced by the withdrawing Participating Member's Applicable MW Share, and (iii) each Buyer's Percentage of Facility Output shall be adjusted to equal the percentage equivalent of a fraction, the numerator of which is equal to such Buyer's Applicable MW Share (or, in the case of SCPA, the sum of the Applicable MW Shares of all remaining Participating Members), and the denominator of which is equal to the Contract Capacity, as adjusted by clause (ii) of this Section 13.19(g).

Section 13.20 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 13.21 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 Article VII or otherwise pursuant to this

Agreement), drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, any 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 13.21 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 written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Either Party may, without violating this Section 13.21, 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 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 a 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; and

(iv) with respect to SCPPA, to any of its members from time to time, including in a public distribution of the agenda of SCPPA or any Participating Member.

(c) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that each Buyer 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 any Buyer pursuant to this Agreement shall become the property of such Buyer, and Seller acknowledges that such 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 such Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA or Brown Act.

(d) Notwithstanding the foregoing or any other provision of this Agreement, any 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 Buyers with respect to such credit support.

(e) 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 written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure. If any Buyer receives a CPRA request for Confidential Information of Seller, and such Buyer determines that such Confidential Information is subject to disclosure under CPRA, then such Buyer shall notify the other Buyers and Seller of the request and its intent to disclose the documents. Such 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 such Buyer and the Indemnitees from and against all suits, claims, and causes of action brought against such Buyer or any Indemnitees for such Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by such 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 such Buyer or any Indemnitees, through and including any appellate proceedings. Seller's obligations to Buyers 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 Buyers' invoices for all fees and costs incurred by any Buyer and all Indemnitees, as well as all damages or liability of any nature.

(f) 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 13.19(e).

Section 13.22 Mobile-Sierra. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arm's-length negotiations between the Parties. Further, the Parties believe that, to the extent the sale of Energy under this Agreement is subject to Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e, the rates, terms and conditions of this Agreement are just and reasonable within the meanings of Sections 205 and 206 of the Federal Power Act, and that the rates, terms and conditions of this Agreement will remain so during the Agreement Term. Notwithstanding any provision of this Agreement, the Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the Agreement Term, under Sections 205 and 206 of the Federal Power Act, and to

request the FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree not to seek, nor support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of this Agreement through application or complaint to FERC or any other state or federal agency, board, court or tribunal, related in any manner as to whether such rates, terms or conditions are just and reasonable or in the public interest under the Federal Power Act, absent prior written agreement of the Parties. The Parties also agree that, absent prior agreement in writing by the Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any provision of this Section is unenforceable or ineffective as to such Party), a non-party or the FERC acting *sua sponte* shall be the "public interest" application of the "just and reasonable" standard of review that requires FERC to find an "unequivocal public necessity" or "extraordinary circumstances where the public will be severely harmed" to modify a contract, as 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 at 550-51 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Comm'n*, 558 U.S. 165 (2010).

Section 13.23 Taxpayer Identification Number (TIN). Seller declares that its authorized TIN is 81-5022540. No payment will be made under this Agreement without a valid TIN.

Section 13.24 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 13.25 LADWP Business Policies.

(a) Recycling Policy.

(i) SCPPA 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 and/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 Buyers.

(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 similar 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 ("*LAAC*") 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 nondiscrimination provisions shall be included and effective in all subcontracts for the duration of this Agreement.

(iii) Seller agrees to adhere to the Equal Employment Practices and Affirmative Action provisions set forth in the Los Angeles Administrative Code Sections 10.8.3 and 10.8.4, respectively.

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

(i) It is the policy of SCPPA to provide *SBEs*, *DVBEs*, Disadvantaged Business Enterprises ("*DBEs*"), Women Business Enterprises ("*WBEs*"), Minority Business Enterprises ("*MBEs*"), Lesbian, Gay, Bisexual, or Transgender Business Enterprise ("*LGBTBE's*"), and all Other Business Enterprises ("*OBES*") an equal opportunity to participate in the performance of all SCPPA contracts. SCPPA's goals for *SBE/DVBE* participation in performance of its contracts are twenty percent (25%) for *SBEs* and three percent (3%) for *DVBEs*. Seller shall assist SCPPA in implementing this policy by taking all commercially 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 SCPPA if Seller is a certified *SBE*, *DVBE*, *DBE*, *WBE*, *MBE*, or *LGBTBE*. Seller shall provide to SCPPA (A) the company name, contact person, address, and telephone number of each proposed Subcontractor that qualifies as an *SBE*, *DVBE*, *DBE*, *WBE*, *MBE*, or *LGBTBE* and (B) copies of all certifications of such Subcontractor as an *SBE*, *DVBE*, *DBE*, *WBE*, *MBE*, or *LGBTBE* as applicable.

(d) **Child Support Policy.** Seller and any of its Subcontractors 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 Subcontractor(s) shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with the California Family Code, to the extent applicable. 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 term of this Agreement. Failure of Seller and/or any of 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 and/or any of its Subcontractors or principal owners

thereof to cure the Default within ninety (90) days of notice of such Default by a Buyer shall subject this Agreement to termination. Seller agrees to complete the forms attached to Appendix G related to the Child Support Policy and any certifications attached thereto.

(e) **Current Los Angeles City Business Tax Registration Certificate Required.** Seller shall obtain and keep in full force and effect during the term of this Agreement 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. Seller's Vendor Registration Number 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.

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

(g) **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 G related to the CRO and any certifications attached thereto.

(h) **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 G 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 Buyers for the City of Los Angeles, Buyers will reasonably accommodate changes and/or substitutions in the requirements of the form as necessary to accomplish the purpose of the SFPO.

(i) **Los Angeles Municipal Lobbying Ordinance.** Seller agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if Seller qualifies as a lobbying entity under Los Angeles Municipal Code Section 48.02.

(j) **Iran Contracting Act of 2010.** Seller agrees to comply with the requirements of the Iran Contracting Act of 2010, codified in the California Public Contracts Code Section 2200 et seq., and sign the "Iran Contracting Act of 2010 Compliance Affidavit" attached to Appendix G.

[Remainder of Page Intentionally Left Blank]

Each Buyer and Seller were 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.

BUYERS:

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By: _____
Its: _____

Date: _____
Attest: _____

SACRAMENTO MUNICIPAL UTILITY
DISTRICT

By: _____
Its: _____

Date: _____
Attest: _____

MODESTO IRRIGATION DISTRICT

By: _____
Its: _____

Date: _____
Attest: _____

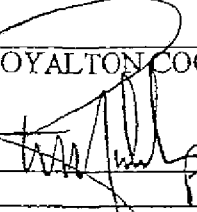
TURLOCK IRRIGATION DISTRICT

By: _____
Its: _____

Date: _____
Attest: _____

SELLER:

ARP-LOYALTON COGEN LLC

By:  _____
Its: President _____

Date: 19 October 2017 _____

APPENDIX A-1
 TO POWER PURCHASE AGREEMENT,
 DATED AS OF OCTOBER 19, 2017
 BETWEEN BUYERS
 AND
 ARP-LOYALTON COGEN LLC
FACILITY, PERMITS AND OPERATOR

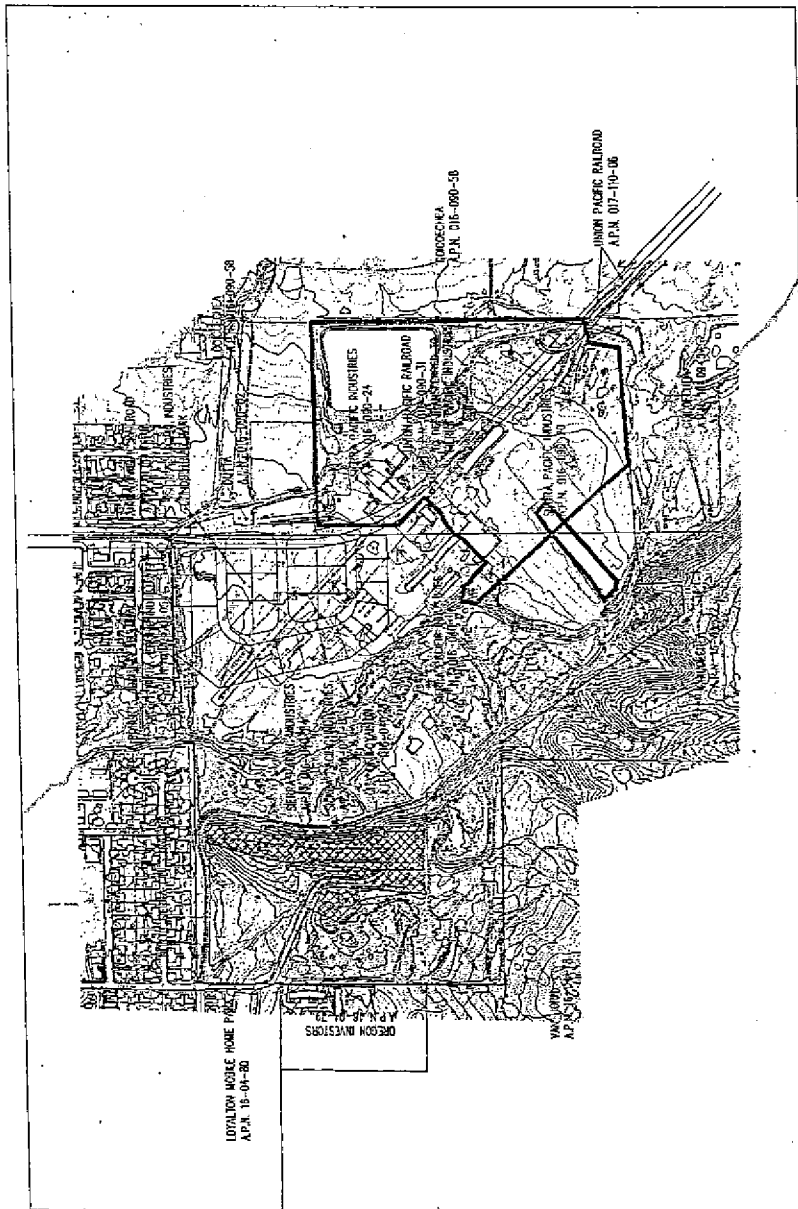
1. Name of Facility: Loyalton Biomass Plant
2. Owner: ARP-Loyalton Cogen LLC
3. Type of Facility: Biomass
4. Contract Capacity: 18 MW
5. Site: 100 South Railroad Ave., Loyalton, California 96118.
6. Location, design and configuration of Facility: See map attached on page Appendix B-2.
7. Permits:

1	SWRCB General Industrial Storm Water Discharge Permit No. 5S461000246
2	Spill Plan (SPCCP)
3	Above-Ground Storage Tanks (AGST)
4	Ammonia Risk Management Plan
5	Acutely Hazardous Materials Risk Management Plan
6	Cal EPA Hazardous Waste Generator ID#
7	California Accidental Release Prevention Plan
8	Hazardous Materials Business Plan
9	RWQCB Waste Discharge Requirements/ Monitoring & Reporting Program No. R5-2002-0174
10	NSAQMD Permit to Operate No. 88-19-01
11	Title V Permit No. NSAQMD-SPI-L
12	EPA PSD Permit No. SAC 87-01-A
13	SWRCB Water Rights/Diversion
14	Plumas County Superior Court Water Rights Adjudication
15	Groundwater
16	Water Rights Agreement
17	Pressure Vessels Boiler Air Compressors
18	City of Loyalton water line inspection
19	Airgas Specialty Products – Ammonia Tanks

20	Sierra County Business Permit
21	Seller's Permit State Board of Equalization
22	Special Facilities Agreement – NV Energy
23	Weights and Measures – Scales Certification
24	US Forest Service Yard Agreement
25	US Forest Service Special Use Permit
26	SPI Borrow Pit Mine ID: 91-46-0013
27	CEC Facility Agreement
28	Source Test AQMB
29	Weighmaster License
30	Source Test/ Drift Test with AQMB for new CEMS

APPENDIX A-2
TO POWER PURCHASE AGREEMENT,
DATED AS OF OCTOBER 19, 2017
BETWEEN BUYERS
AND
ARP-LOYALTON COGEN LLC

MAP OF THE FACILITY



APPENDIX B
 TO POWER PURCHASE AGREEMENT,
 DATED AS OF OCTOBER 19, 2017
 BETWEEN BUYERS
 AND
 ARP-LOYALTON COGEN LLC
FORM OF ATTESTATION

_____ (Seller) Environmental Attribute Attestation and Bill of Sale

_____ (“*Seller*”) hereby sells, transfers and delivers to the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act (“the *Act*”), California Government Code section 6500 et seq. (“*SCPPA*”), the SACRAMENTO MUNICIPAL UTILITY DISTRICT, a California municipal utility district (“*SMUD*”); the Modesto Irrigation District, an irrigation district organized and existing under the laws of the State of California (“*MID*”), and the Turlock Irrigation District, an irrigation district organized and existing under the laws of the State of California (“*TID*,” together with *SCPPA*, *SMUD*, and *MID*, “*Buyers*”) 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 Buyers 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 Buyers 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 C
TO POWER PURCHASE AGREEMENT,
DATED AS OF OCTOBER 19, 2017
BETWEEN BUYERS
AND
ARP-LOYALTON COGEN LLC
FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

Issue Date

Applicant:

[_____]

ADVISING AND CONFIRMING BANK:

U.S. BANK NATIONAL ASSOCIATION

INTERNATIONAL DEPT.

555 SW OAK STREET, SUITE 400-P

PD-OR-P4CE

PORTLAND, OREGON 97204

Beneficiary:

[SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

1160 Nicole Court

Glendora, CA 91740

Attention: Executive Director

Telephone: (626) 793-9364

Facsimile: (626) 704-9461]

[SACRAMENTO MUNICIPAL UTILITY DISTRICT

Attention: Power Contracts Administration

P.O. Box 15830

Sacramento, CA 95852-1830

Telephone: (916) 732-6244

Facsimile: (916) 732-6002

Email: PowerContractsAdmin@smud.org]

[MODESTO IRRIGATION DISTRICT
1231 11th Street
Modesto, CA 95354]

[TURLOCK IRRIGATION DISTRICT
If via USPS:

Turlock Irrigation District
Attention: Willie Manuel
P.O. Box 949
Turlock, CA 95381-0949

If via non-USPS:

Turlock Irrigation District
Attention: Willie Manuel
333 East Canal Drive
Turlock, CA 95380

Telephone: (209) 883-8348
Facsimile: (209) 656-2147
Email: wgmanuel@tid.org]

Available Amount:

Expiration Date:

Expiration Place: U.S. Bank National Association's above address

Ladies and Gentlemen:

At the request of and on behalf of (Applicant's Name), we hereby issue our Irrevocable, Standby Letter of Credit No. xxxxxxxx ("Letter of Credit") in favor of [the Southern California Public Power Authority][Sacramento Municipal Utility District][Modesto Irrigation District][Turlock Irrigation District] for a sum not exceeding USD \$XX,XXX,XXX (U.S. amount in wordings) available with ourselves by payment against your presentation of demand(s) at sight drawn on U.S. Bank National Association at 555 SW Oak Street, Suite 400-P, Portland, OR 97204, when accompanied by the following documents ("Documents"):

1. Beneficiary's statement and written demand for payment purportedly signed by an authorized signer of Beneficiary containing the text of Exhibit I, and
2. This original Standby Letter of Credit and all original amendment(s) if any

Drawings may be presented to U.S. Bank National Association via fax to 503-464-4125. To the extent a presentation is made by fax transmission, you must provide telephone notification thereof to U.S. Bank National Association (503-464-3720 or 503-464-3700) prior to or simultaneously with the sending of such fax transmission, except that Beneficiary's failure to provide such telephone notification shall not invalidate the facsimile drawing. If you present a fax drawing under this letter of credit, you do not need to present the original of any drawing documents, and if we receive any such original drawing, the drawing documents will not be examined by us. In the event of a full or final drawing, 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 Confirming Bank of your Documents in conformity with the foregoing, the Confirming Bank 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 by deposit to your account at the bank designated by you in the demand in immediately available funds. If on the Expiration Date, Confirming Bank's office specified above is not open for business by virtue of an interruption of the nature described in the "Uniform Customs and Practices for Documentary Credits," (2007 Revision) of the International Chamber of Commerce Publication No. 600 (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 Confirming Bank's 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 of competent jurisdiction, which order is legally binding upon us and specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment. We agree that we will not take any action to cause the issuance of an order described in clause (a) of the preceding sentence.

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

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

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for additional one (1) year periods from the Expiration Date hereof, or any future expiration date, unless at least sixty (60) calendar days prior to the Expiration Date (or any future

expiration date), we send you through U.S. Bank National Association a written 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 extend this Letter of Credit 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 II signed by us. Any such amendment for decrease shall become effective only upon acceptance by your signature on a hard copy amendment.

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

We hereby engage with you that above documents presented hereunder, including your demand(s) for payment in conformity with the terms and conditions of this Letter of Credit will be duly honored if presented to Confirming Bank's office at 555 SW Oak Street, Suite 400-P, Portland, Oregon 97204, Attn: International Dept. on or before the expiry date indicated above or any extended expiry date.

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:

"The undersigned does hereby certify that [drawer] is the successor by operation of law to [SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY][SACRAMENTO MUNICIPAL UTILITY DISTRICT][MODESTO IRRIGATION DISTRICT][TURLOCK IRRIGATION DISTRICT], as 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 Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600. 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 [_____] 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 Exhibits I, II, and III 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 _____
Name _____
Title _____

ALL TERMS AND CONDITIONS HEREIN ACCEPTED BY:

AUTHORIZED SIGNATURE(S)

EXHIBIT I

DEMAND FOR PAYMENT

Re: Irrevocable Standby Letter of Credit

No. _____ Dated _____, 20__

U.S. Bank National Association
International Dept.
555 SW Oak Street, Suite 400-P
PD-OR-P4CE
Portland, Oregon 97204

To Whom It May Concern:

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

DATED: _____, 20__.

[_____]

By _____

Title _____

EXHIBIT II

AMENDMENT

Re: Irrevocable Documentary Letter of Credit

No. _____ Dated _____, 20__

Beneficiary:

Applicant:

[Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Attention: Executive Director
Telephone: (626) 793-9364
Facsimile: (626) 704-9461]

[Sacramento Municipal Utility District
Attention: Power Contracts Administration
P.O. Box 15830
Sacramento, CA 95852-1830
Telephone: (916) 732-6244
Facsimile: (916) 732-6002
Email: PowerContractsAdmin@smud.org]

[Modesto Irrigation District
1231 11th Street
Modesto, CA 95354]

[Turlock Irrigation District
If via USPS:
Turlock Irrigation District
Attention: Willie Manuel
P.O. Box 949
Turlock, CA 95381-0949

If via non-USPS:
Turlock Irrigation District
Attention: Willie Manuel
333 East Canal Drive
Turlock, CA 95380
Telephone: (209) 883-8348
Facsimile: (209) 656-2147
Email: wgmanuel@tid.org]

To Whom It May Concern:

The above referenced Irrevocable Standby Letter of Credit is hereby amended as follows:
by [increasing] or [decreasing] the stated amount by \$ _____ to a new stated amount of

\$ _____ [and]/or[by extending the expiration date to _____ from _____]. All other terms and conditions of the Letter of Credit remain unchanged.

This amendment is effective only when accepted by [SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY][SACRAMENTO MUNICIPAL UTILITY DISTRICT][MODESTO IRRIGATION DISTRICT][TURLOCK IRRIGATION DISTRICT], which acceptance may only be valid by a signature of an authorized representative.

Dated: _____

Yours faithfully,

(name of issuing bank)

By _____
Title _____

ACCEPTED

[_____]

By _____
Title _____
Date _____

EXHIBIT III

SURRENDER

Re: Irrevocable Standby Letter of Credit

No. _____ Dated _____, 20__

[Insert Bank Name and Address]

Notice of Surrender of Letter of Credit

Date: _____

Attention: Letter of Credit Department

Ladies and Gentlemen:

We refer to your above-mentioned Irrevocable Standby Letter of Credit (the "Letter of Credit"). The undersigned, an authorized signer of [SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY][SACRAMENTO MUNICIPAL UTILITY DISTRICT][MODESTO IRRIGATION DISTRICT][TURLOCK IRRIGATION DISTRICT], 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,

[_____]

By _____

Title _____

APPENDIX D
TO POWER PURCHASE AGREEMENT,
DATED AS OF OCTOBER 19, 2017
BETWEEN BUYERS
AND
ARP-LOYALTON COGEN LLC

INSURANCE

I. GENERAL REQUIREMENTS

As a condition to the Effective Date, Seller shall furnish Buyers' Agent evidence of coverage from insurers acceptable to Buyers' Agent and in a form acceptable to the risk management section of the project manager for each Buyer or acceptable to Buyers' 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. Buyers 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 any 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 pre-paid first-class mail to Buyers' Agent: Executive Director, Southern California Public Power Authority, 1160 Nicole Court, Glendora, CA 91740.

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

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 each Buyer, 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 Independent Contractors, Broad Form Property Damage, Premises and Operations, Products and Completed Operations, fire, Legal Liability and Personal Injury coverages included and a Contractual Liability Endorsement. 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 in a form acceptable to each Buyer's risk management agent, and shall provide for the following:

1. Include each 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 each

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 each 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 Buyers' Agent is furnished with a copy of the certificate issued by the state authorizing Seller to self-insure. Seller shall notify Buyers' Agent by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

APPENDIX E
TO POWER PURCHASE AGREEMENT,
DATED AS OF OCTOBER 19, 2017
BETWEEN BUYERS
AND
ARP-LOYALTON COGEN LLC

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

1. Authorized Representative. The initial Authorized Representatives of Buyers and Seller pursuant to Section 13.1 are as follows:

If to Buyers:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Attention: Executive Director
Telephone: (626) 793-9364
Facsimile: (626) 704-9461
Email: mwebster@scppa.org

Sacramento Municipal Utility District
Attention: Power Contracts Administration
P.O. Box 15830
Sacramento, CA 95852-1830
Telephone: (916) 732-6244
Facsimile: (916) 732-6002
Email: PowerContractsAdmin@smud.org

Modesto Irrigation District
Attn: Power Scheduling Supervisor
Street: 1231 11th Street
City: Modesto, CA 95354
Phone: 209-557-1544
Facsimile: 209-557-1590
Email: amyb@mid.org

Turlock Irrigation District

If via USPS:

Turlock Irrigation District
Attention: Willie Manuel
P.O. Box 949
Turlock, CA 95381-0949

If via non-USPS:

Turlock Irrigation District
Attention: Willie Manuel
333 East Canal Drive
Turlock, CA 95380

Telephone: (209) 883-8348

Facsimile: (209) 656-2147

Email: wgmanuel@tid.org

If to Seller:

ARP-Loyalton Cogen LLC
Attention: Steven Mueller, President
100 South Railroad Avenue
Loyalton, CA 96118
Office Telephone: (530) 993-4867
Cell: (530) 708-1776

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

2.1 If Billing to Buyers:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Attention: Accounts Payable
Telephone: (626) 793-9364
Facsimile: (626) 704-9461
Email: projectinvoices@scppa.org

Sacramento Municipal Utility District
Attention: Power Contracts Administration
P.O. Box 15830
Sacramento, CA 95852-1830
Telephone: (916) 732-6244
Facsimile: (916) 732-6002
Email: PowerContractsAdmin@smud.org

Modesto Irrigation District
Attn: Power Scheduling
Street: 1231 11th Street
City: Modesto, CA 95354
Phone: 209-557-1544
Facsimile: 209-557-1590
Email: atf@mid.org

Turlock Irrigation District
If via USPS:

Turlock Irrigation District
Attention: Energy Strategy Dept.
P.O. Box 949
Turlock, CA 95381-0949

If via non-USPS:

Turlock Irrigation District
Attention: Energy Strategy Dept.
333 East Canal Drive
Turlock, CA 95380

Telephone: (209) 883-8387
Facsimile: (209) 656-2147
Email: tid_settlements@tid.org and lhbucheli@tid.org

2.2 If Payment to Buyers:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Attention: Accounts Payable
Telephone: (626) 793-9364
Facsimile: (626) 704-9461
Email: projectinvoices@scppa.org

Sacramento Municipal Utility District
Attention: Power Contracts Administration
P.O. Box 15830
Sacramento, CA 95852-1830
Telephone: (916) 732-6244
Facsimile: (916) 732-6002
Email: PowerContractsAdmin@smud.org

Modesto Irrigation District
Attn: Accounts Payable
Street: 1231 11th Street
City: Modesto, CA 95354
Phone: 209-526-7489 or 209-526-7479
Facsimile: 209-526-7574
Reconciliation Email: atf@mid.org
Payment Email: accounting@mid.org

Turlock Irrigation District
If via USPS:

Turlock Irrigation District
Attention: Leslie Bucheli
P.O. Box 949
Turlock, CA 95381-0949

If via non-USPS:

Turlock Irrigation District
Attention: Leslie Bucheli
333 East Canal Drive
Turlock, CA 95380

Telephone: (209) 883-8387

Facsimile: (209) 656-2147

Email: tid_settlements@tid.org and lhbucheli@tid.org

2.3 If Payment or Billing to Seller:

ARP-Loyalton Cogen LLC
Attention: Steven Mueller, President
100 South Railroad Avenue
Loyalton, CA 96118
Office Telephone: (530) 993-4867
Cell: (530) 708-1776]

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

If to Buyers:

Southern California Public Power Authority
c/o Executive Director
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Facsimile: 626-793-9461
Email: rkrager@scppa.org, kellis@scppa.org, mwebster@scppa.org

If to Seller:

ARP-Loyalton Cogen LLC
Attention: Steven Mueller, President
100 South Railroad Avenue
Loyalton, CA 96118
Office Telephone: (530) 993-4867
Cell: (530) 708-1776

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

If to Buyers:

Southern California Public Power Authority
c/o Executive Director
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Facsimile: 626-793-9461
Email: rkrager@scppa.org, kellis@scppa.org, mwebster@scppa.org

Sacramento Municipal Utility District
Attention: Power Contracts Administration
P.O. Box 15830
Sacramento, CA 95852-1830
Telephone: (916) 732-6244
Facsimile: (916) 732-6002
Email: PowerContractsAdmin@smud.org

Modesto Irrigation District
Attn: Power Scheduling
Street: 1231 11th Street
City: Modesto, CA 95354
Phone: Phone: 209-527-8001
Facsimile: 209-557-1590
Email: schedulers@mid.org
realtimeschedulers@mid.org

Turlock Irrigation District
Telephone: (209) 883-8508
Facsimile: (209) 656-2159
Email: scheduling@tid.org

If to Seller:

ARP-Loyalton Cogen LLC
Attention: Steven Mueller, President
100 South Railroad Avenue
Loyalton, CA 96118
Office Telephone: (530) 993-4867
Cell: (530) 708-1776

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

If to Buyers:

Southern California Public Power Authority
c/o Executive Director
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Facsimile: 626-793-9461
Email: rkrager@scppa.org, kellis@scppa.org, mwebster@scppa.org

Sacramento Municipal Utility District
Attention: Power Contracts Administration
P.O. Box 15830
Sacramento, CA 95852-1830
Telephone: (916) 732-6244
Facsimile: (916) 732-6002
Email: PowerContractsAdmin@smud.org

Modesto Irrigation District
Attn: Power Scheduling
Street: 1231 11th Street
City: Modesto, CA 95354
Phone: 209-527-8001
Facsimile: 209-557-1590
Email: atf@mid.org

Turlock Irrigation District
Attention: Jody Melo
P.O. Box 949
Turlock, CA 95381-0949
Telephone: (209) 883-8324
Facsimile: (209) 656-2147
Email: jpmelo@tid.org

If to Seller:

ARP-Loyalton Cogen LLC
Attention: Steven Mueller, President
100 South Railroad Avenue
Loyalton, CA 96118
Office Telephone: (530) 993-4867
Cell: (530) 708-1776

6. **Buyers' Agent.** Buyers' Agent is:

Southern California Public Power Authority
c/o Executive Director
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Facsimile: 626-793-9461
Email: rkrager@scppa.org, kellis@scppa.org, mwebster@scppa.org

7. **Scheduling Coordinator.** Scheduling Coordinator is:

City of Riverside
Attn: Assistant General Manager – ROSA
3435 14th Street
Riverside, CA 92501
Telephone: 951-826-8526
Fax: 951-715-3563
Email: degarcia@riversideca.gov

APPENDIX F
 TO POWER PURCHASE AGREEMENT,
 DATED AS OF OCTOBER 19, 2017
 BETWEEN BUYERS
 AND
 ARP-LOYALTON COGEN LLC

PERCENTAGE OF FACILITY OUTPUT;
APPLICABLE MW SHARE

Percentage of Facility Output

Buyer	Capacity (MW)	Percentage of Facility Output
SCPPA	11.979 MW	66.55%
SMUD	4.221 MW	23.45%
MID	0.994 MW	5.52%
TID	0.806 MW	4.48%
Total	18.00 MW	100.00%

Applicable MW Share

	Capacity (MW)	% of Total Capacity
City of Anaheim	0.806 MW	4.48%
Imperial Irrigation District	1.491 MW	8.28%
LADWP	8.876 MW	49.31%
City of Riverside	0.806 MW	4.48%
SMUD	4.221 MW	23.45%
MID	0.994 MW	5.52%
TID	0.806 MW	4.48%
Total	18.00 MW	100.00%

APPENDIX G
TO POWER PURCHASE AGREEMENT,
DATED AS OF OCTOBER 19, 2017
BETWEEN BUYERS

AND
ARP-LOYALTON COGEN LLC

BUSINESS POLICY FORMS

See attached.

City of Los Angeles
Department of Water and Power

**CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT
OBLIGATIONS**

This document must be returned with the Proposal/Bid Response

The Undersigned hereby agrees that _____ will:
Name of Business

1. Fully comply with all applicable State and Federal employment reporting requirements for its employees.
2. Fully comply with and implement all lawfully served Wages and Earnings Assignment Orders and Notices of Assignment.
3. Certify that the principal owner(s) of the business are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally.
"Principal owner" means any person who owns an interest of 10 percent or more of the business or of a subcontractor assigned to City work. If there are no principal owners, please so indicate with an X here: _____ (no principal owners)
4. Certify that the business will maintain compliance with Child Support Obligations Ordinance provisions.

I declare under penalty of perjury that the foregoing is true and was executed at:

City/County/State

Date

Please check if company has already submitted to DWP certification relative to Child Support Obligations Ordinance.

Name of Business

Address

Signature of Authorized Officer or Representative

Print Name

Title

Telephone Number

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.eeoe@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. I will notify the City's Designated Administrative Agency if any changes are made that will affect our 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

EIN/TIN

CITY OF LOS ANGELES
PLEDGE OF COMPLIANCE WITH CONTRACTOR RESPONSIBILITY ORDINANCE

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 services and for purchasing goods and products that involve a value in excess of twenty-five thousand dollars (\$25,000) and a term in excess of three months are covered by this Article; 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

Contract Number

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

**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. INFORMATION

Bid Number and Project Title _____

BIDDER/CONTRACTOR INFORMATION

Bidder/Proposer Business Name _____

Contractor's License Number _____

Street Address _____

City _____

State _____

Zip _____

Contact Person, Title _____

Phone _____

Fax _____

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 herein and 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.

The Questionnaire being submitted is: (check one)

- An initial submission of a completed Questionnaire.
- An update of a prior Questionnaire dated ____/____/____. A copy of the prior Questionnaire and newly updated information are attached.
- No change. There has been no change to any of the responses since the last Responsibility Questionnaire dated ____/____/____ was submitted. A copy of the last Responsibility Questionnaire is attached.

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.

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

SERVICE

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.

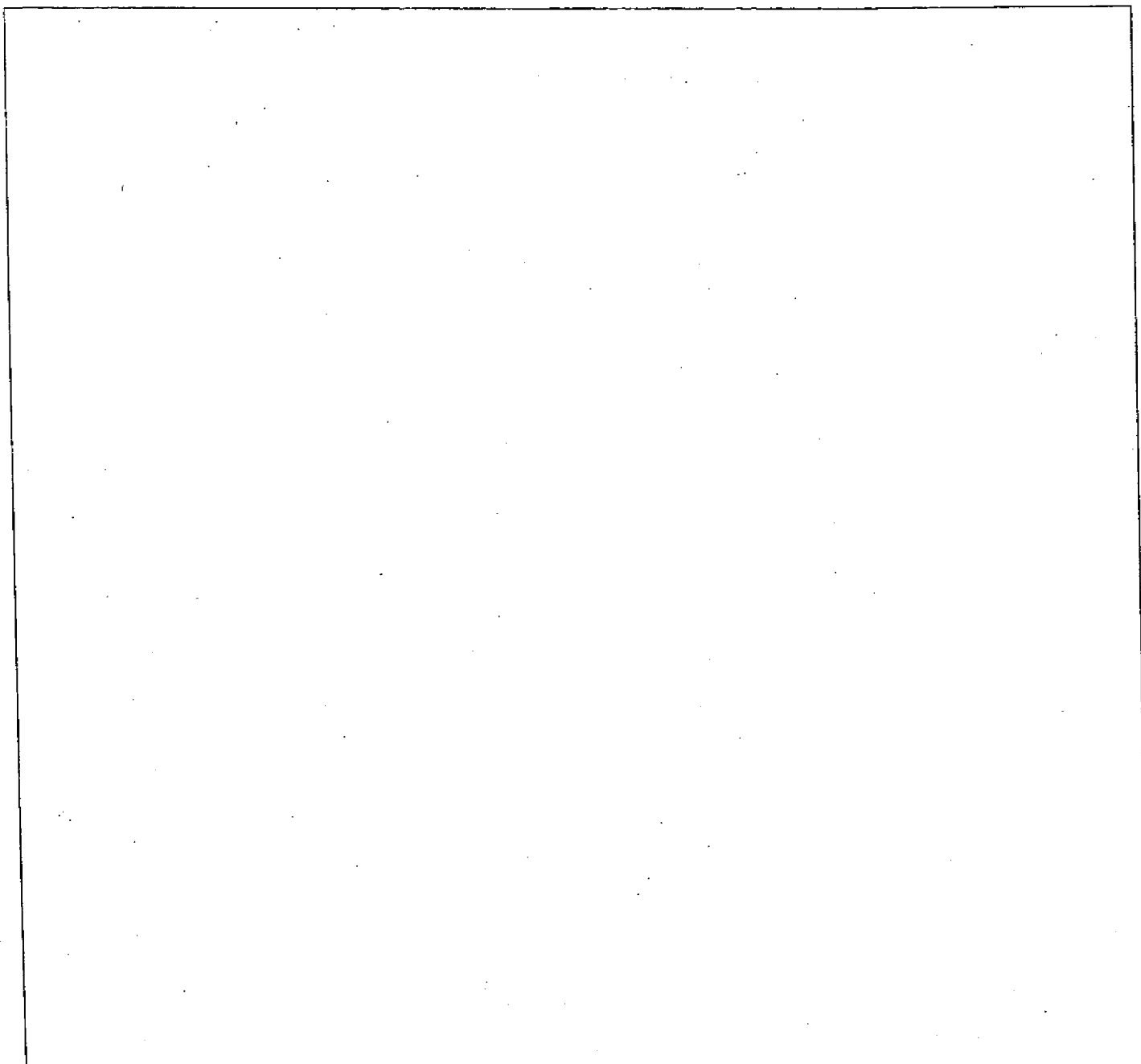
Yes No

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

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 bidders 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 bidder who "engages in investment activities in Iran" is defined as either:

1. A bidder 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
2. A bidder 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 bidder shall certify that at the time of submitting a bid 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 bidder 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 bidder 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 bidder or financial institution identified below, and that the bidder 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 DGS list of persons engaged in investment activities in Iran.

Name of Bidder/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 bidder 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 bidder or financial institution identified below has obtained an exemption from the certification requirement under the Iran Contracting Act of 2010, the bidder or financial institution shall complete and sign below and attach documentation demonstrating the exemption approval.

Name of Bidder/Financial Institution (Printed): _____

Signed by: _____ (Authorized Signature)

(Printed Name)

(Title of Person Signing)

APPENDIX H
TO POWER PURCHASE AGREEMENT,
DATED AS OF OCTOBER 19, 2017
BETWEEN BUYERS
AND
ARP-LOYALTON COGEN LLC
FACILITY LENDER CONSENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT, dated as of [____], 20__ (“Consent”), by and among Southern California Public Power Authority (“SCPPA”), the Sacramento Municipal Utility District (“SMUD”), the Modesto Irrigation District (“MID”), the Turlock Irrigation District (“TID,” and each of SCPPA, SMUD, MID, and TID, a “Buyer,” and collectively, the “Buyers”), [____], in its capacity as collateral agent for the Facility Lenders (as defined below) under the Financing Documents referred to below (together with its successors and assignees in such capacity, “Agent”), and ARP-Loyalton Cogen LLC, a California limited liability company (“Seller,” and together with Buyers and Agent, the “Parties” and each a “Party”). Capitalized terms used but not defined herein shall have the meanings set forth in the Power Purchase Agreement (as defined below).

RECITALS

A. WHEREAS, Seller proposes to develop and own a 19.9 MW biomass power facility to be located in [____] (the “Project”);

B. WHEREAS, Buyers and Seller have entered into that certain Power Purchase Agreement, dated as of [____] (as amended, modified, supplemented or restated from time to time, the “Power Purchase Agreement”);

C. WHEREAS, (i) Seller has entered into a Credit Agreement, dated as of [____], with Agent, the financial institutions-party thereto as lenders (the “Facility Lenders”) and certain other parties thereto (as amended, modified, supplemented or restated from time to time, the “Financing Agreement”), pursuant to which Seller will finance the [repowering, operation, and maintenance] of the Project; [(ii) Seller and Agent intend to enter into certain guarantees, security agreements and deeds of trust or mortgages pursuant to which Seller will collaterally assign its interests in the Power Purchase Agreement with Buyers to Agent and grant to Agent a lien on the Project to be recorded in [____] (the “Seller Security Agreements”), to secure Seller’s obligations under the Financing Agreement; and (iii) American Renewable Power LLC, the parent of Seller (“Parent”) and Agent intend to enter into certain guarantees and security and pledge agreements pursuant to which Parent will pledge to Agent all of the membership interests in Seller to secure Seller’s obligations under the Financing Agreement (the “Parent Pledge Agreement”, and collectively with the Seller Security Agreements, the Financing Agreement and related security and financing documents, the “Financing Documents”). *[To be updated based on final Financing Documents.]* True and correct copies of the Financing Documents have been furnished to Buyers.

D. WHEREAS, pursuant to Section 13.7 of the Power Purchase Agreement, Seller has requested Buyers’ consent to the collateral assignment, pursuant to the Financing Documents, by Seller to Agent of Seller’s interest in the Power Purchase Agreement.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

AGREEMENT

I. Assignment and Agreement.

1.1 Consent to Assignment. Buyers hereby consent to the collateral assignment to Agent pursuant to the Financing Documents, of [(a) Seller's rights to and under the Power Purchase Agreement and in the Project and (b) Parent's membership interests in Seller (the "Assigned Interests") as security for Seller's obligations under the Financing Agreement]. *[To be updated based on final structure of financing.]* Subject to the terms and conditions of this Consent, Buyers agree that in exercising its remedies, Agent may exercise Seller's rights under the Power Purchase Agreement. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, (i) neither Seller, Agent, nor any Subsequent Owner (as defined below) shall assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Energy, Capacity Rights or Environmental Attributes (not including the proceeds thereof) to any Person other than Buyers, including any Facility Lender, and (ii) Agent agrees that its exercise of remedies under the Financing Documents shall be consistent with the terms and conditions of the Power Purchase Agreement and this Consent.

1.2 Notices; Right to Cure by Agent. Upon the occurrence of a Default by Seller under the Power Purchase Agreement, Buyers shall not terminate or suspend their performance under the Power Purchase Agreement until a Buyer first gives a written notice of such Default to Agent. Such notice shall provide Agent and the Facility Lenders with rights to cure such Default, provided that such cure rights shall be performed consistent with the requirements and within any applicable cure period or periods for such cure that are applicable to Seller under the Power Purchase Agreement. Failure to provide such notice to Agent shall not constitute a breach of the Power Purchase Agreement or this Consent by Buyers, and Agent and Seller agree that Buyers shall have no liability to Agent or Seller for such failure whatsoever; provided that no claim of rescission or termination of the Power Purchase Agreement by Buyers shall be binding without such notice and the lapsing of any applicable cure period. If Agent and the Facility Lenders fail to cure such a Default under the Power Purchase Agreement within any applicable cure period, Buyers shall have all its rights and remedies with respect to such Default, including their rights of withdrawal or termination, as set forth in the Power Purchase Agreement.

1.3 Notices; Right to Cure by Buyers. Seller and Agent agree that Buyers shall have the right to cure a default by Seller under the Financing Documents. Agent, on behalf of the Facility Lenders, shall provide Buyers with written notice of any default of Seller under the Financing Documents concurrently with the notice provided to Seller under the Financing Documents and Buyers shall have the right to cure such default, provided such cure shall be consistent with the requirements of the Financing Documents and shall be completed within ninety (90) days after the expiration of all cure periods available to Seller under the Financing Documents. The effect of any such cure by Buyers shall be as if Seller had cured the applicable default within the cure period afforded Seller under the Financing Documents, including cessation of exercise of remedies by Agent and the Facility Lenders. Upon any payment or cure by any Buyer relating to such a default by Seller, the amounts expended by such Buyer to provide such cure, including any defaulted payment and interest thereon, and all other payments made and expenses incurred by such Buyer in providing such cure shall be recovered by such Buyer, at such Buyer's election in its sole discretion, (a) by reducing amounts paid to Seller under the Power Purchase Agreement, (b) by drawing on the Performance Security, or (c) by reimbursement by Seller.

1.4 Subsequent Owner. The Parties agree that no foreclosure or delivery of a deed in lieu of foreclosure with respect to the Facilities pursuant to the Financing Documents shall take place or become effective, unless and until (a) Agent or its successor or permitted assignee, or the purchaser purchasing the Facilities (Agent or such successor or permitted assignee, or purchaser, each, a "Subsequent Owner") is substituted for Seller and has assumed Seller's obligations under the Power Purchase Agreement, (b) the Subsequent Owner meets the qualifications for a Qualified Transferee, and (c) the Subsequent Owner confirms to Buyers that the Performance Security remains in effect or provides replacement Performance Security meeting the requirements of the Power Purchase Agreement. In the event of any foreclosure, whether judicial or nonjudicial, or delivery of any deed in lieu of foreclosure under the Financing Documents, in connection with any deed of trust, mortgage, or other similar Lien, Agent or Subsequent Owner, and its respective successors in interest and permitted assigns, shall execute and deliver a written assumption of Seller's obligations under the Power Purchase Agreement in form and substance reasonably acceptable to Buyers and shall be bound by the covenants and agreements of Seller in the Power Purchase Agreement; provided, however, that until the Person who acquires title to the Facilities executes and delivers to Buyers a written assumption of Seller's obligations under the Power Purchase Agreement in form and substance reasonably acceptable to Buyers, such Person will not be entitled to any of the benefits of the Power Purchase Agreement.

1.5 No Assignment. Except for an assignment to a Qualified Buyer Assignee, which shall not require the prior consent of Seller or Agent, each Buyer agrees that it shall not, without the prior written consent of Agent (such consent to not be unreasonably withheld, conditioned or delayed, and Agent shall be deemed to have consented after 45 days of receiving notice from Buyers if Agent does not indicate otherwise), sell, assign or transfer any of its rights under the Power Purchase Agreement other than as permitted by and in accordance with the Power Purchase Agreement.

1.6 Limitation on Liability.

(a) Seller agrees that it shall indemnify and hold Buyers harmless from any third-party claims, losses, liabilities, damages, costs or expenses (including, without limitation, any direct, indirect or consequential claims, losses, liabilities, damages, costs or expenses, including legal fees) in connection with or arising out of any of the transaction documents related to the Financing Documents or this Consent.

(b) Agent agrees that in no event shall Buyers be liable to Agent or any Subsequent Owner for any claims, losses, expenses or damages whatsoever other than liability Buyers may have to Seller under the Power Purchase Agreement. In the event of the performance by Agent or a Subsequent Owner of Seller's obligations under the Power Purchase Agreement, the recourse of Buyers in seeking the enforcement of such obligations shall include all rights and remedies available to Buyers pursuant to the Power Purchase Agreement and the value (taking into account indebtedness secured by the Facility, including indebtedness arising in connection with the Performance Security) of Agent's or Subsequent Owner's, as applicable, interest in the Facility.

2. Payments under the Power Purchase Agreement.

2.1 Without limiting the rights of Buyers under the Power Purchase Agreement, upon sixty (60) days' prior written notice (in the form of Exhibit A hereto) delivered by Agent to Buyers, Buyers shall pay all amounts that they are obligated to pay to Seller under the Power Purchase

Agreement to Agent for deposit into the account specified below or otherwise designated by Agent to Buyers in writing no later than sixty (60) days prior to the date any such payments are due, in the manner and when required under the Power Purchase Agreement directly, and all such payments to such accounts shall be deemed to satisfy the payment obligations of Buyers under the Power Purchase Agreement.

Bank Name: []
Account Number: []
ABA Number: []
For Credit to: []
Attn: []

2.2 From and after such time as an entity qualifies as a Subsequent Owner, Buyers shall pay all such amounts owed directly to or at the written direction of such Subsequent Owner in the form of Exhibit A hereto. Seller acknowledges and consents to Buyers making such payments directly to Agent and Subsequent Owner, as applicable, and acknowledges and agrees that performance by Buyers under this Section shall not release Seller from any of its obligations under the Power Purchase Agreement. Agent and Seller agree that any further change in payment notification shall become effective within sixty (60) days after receipt by Buyers of written notice thereof in accordance with this Consent. Buyers shall have no liability to Seller or Agent (or their successors or permitted assigns) for making payments due or to become due under the Power Purchase Agreement to Agent or for failure to direct such payments to Agent rather than Seller.

3. Representations and Warranties.

3.1 Buyers. Each Buyer hereby represents and warrants to Agent as of the date of this Consent as follows:

(a) Such Buyer is a validly existing (i) California joint powers authority (in the case of SCPA), (ii) [] (in the case of SMUD), (iii) [] (in the case of MID), and (iv) [] (in the case of TID).

(b) Such Buyer has the legal power and authority to own its properties, to carry on its business as now being conducted, to enter into the Power Purchase Agreement and to carry out the covenants and obligations on its part to be performed under and pursuant to the Power Purchase Agreement.

(c) The execution, delivery and performance by such Buyer of the Power Purchase Agreement have been duly authorized by all necessary action and do not violate any federal, state, or local law, including the California Government Code and similar laws.

(d) To such Buyer's knowledge, no Default (as defined in the Power Purchase Agreement) with respect to such Buyer or Seller, has occurred and is continuing, and the Power Purchase Agreement has not been amended, modified or supplemented in any manner, except as set forth herein.

(e) To such Buyer's knowledge, such Buyer has no notice of, and has not consented to, any previous assignment of all or any part of Seller's rights under the Power Purchase Agreement.

3.2 Agent and Seller. Each of Agent and Seller hereby represents and warrants to Buyers as of the date of this Consent as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the State of [_____], and has the legal power and authority to own its properties to carry on its business as now being conducted, to enter into this Consent and to carry out the covenants and obligations on its part to be performed under and pursuant to the Consent.

(b) The execution, delivery and performance of this Consent is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law applicable to it.

(c) This Consent constitutes a legally valid and binding obligation enforceable against Agent and Seller in accordance with its terms.

(d) The Financing Documents comply with the applicable terms and provisions of the Power Purchase Agreement and this Consent.

(e) The rights of Buyers to exercise their rights and remedies hereunder, and their rights and remedies under the Power Purchase Agreement, do not and will not conflict with the Financing Documents, and are permitted by the Financing Documents and any related agreements and documents securing Seller's performance under the Financing Agreement.

3.3 Acknowledgements and Agreements.

(a) Seller and Agent acknowledge that Buyers have not made and do not hereby make any representation or warranty, expressed or implied, that Seller has any right, title or interest in the collateral secured by the Financing Documents (the "Collateral"). Agent acknowledges that it is responsible for satisfying itself as to the existence and extent of Seller's right, title and interest in the Collateral and that it has not relied upon any representations of Buyers in connection with lending arrangements with Seller.

(b) Seller and Agent acknowledge that Buyers shall have no liability to Seller or Agent resulting from or relating to this Consent, or for consenting to any future assignments of the Collateral or any interest of Seller or Agent therein.

4. Miscellaneous.

4.1 Governing Law, Submission to Jurisdiction.

(a) This Consent shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

(b) All litigation arising out of, or relating to this Consent, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts and waive any defense of forum non conveniens.

4.2 Counterparts. This Consent 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 Consent may be detached from any counterpart of this Consent without impairing the legal effect

of any signature thereon, and may be attached to another counterpart of this Consent identical in form hereto by having attached to it one or more signature pages.

4.3 Amendment Waiver. This Consent may be amended or modified only by an instrument in writing signed by each Party.

4.4 Successors and Assigns. This Consent shall bind and benefit Buyers, Agent, Seller and their respective successors and permitted assigns.

4.5 Attorneys' Fees. Seller shall reimburse Buyers for all reasonable costs and expenses incurred by Buyers in connection with the facilitation of Seller's collateral assignment or pledge of the Power Purchase Agreement, or any other action taken in connection with the transactions contemplated in this Consent, or otherwise pursuant to any request made by Seller, Agent or any Facility Lender.

4.6 Representation by Counsel. Each of the Parties hereto was represented by its respective legal counsel during the negotiation and execution of this Consent.

4.7 Notices. Any communications between the Parties hereto or notices provided herein to be given may be given to the following addresses:

If to Buyers:

Southern California Public Power Authority
Attention: Executive Director
1160 Nicole Court
Glendora, CA 91740
Telephone: (626) 793-9364
Fax: (626) 793-9461
Email: []@[]

Sacramento Municipal Utility District
Attention: []
[]
[]
Telephone: [() -]
Facsimile: [() -]
Email: []@[]

Modesto Irrigation District
Attention: []
[]
[]
Telephone: [() -]
Facsimile: [() -]
Email: []@[]

Turlock Irrigation District
Attention: []
[]
[]
Telephone: [() -]
Facsimile: [() -]
Email: []@[]

If to Seller: ARP-Loyalton Cogen, LLC

Attention: []

[]

[]

Telephone: [() -]

Facsimile: [() -]

Email: []@[]

If to Agent:

[]

Attention: []

[]

[]

Telephone: [() -]

Facsimile: [() -]

Email: []@[]

All notices or other communications required or permitted to be given hereunder 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 applicable Party, 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 delivery in person, by reliable overnight courier, or by registered or certified mail. Any Party may change its address for notice hereunder by giving of notice to the other Parties.

Buyers, Seller and Agent have each caused this Consent and Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

BUYERS:

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By: _____

Its: _____

Date: _____

Attest: _____

SACRAMENTO MUNICIPAL UTILITY
DISTRICT

By: _____

Its: _____

Date: _____

Attest: _____

MODESTO IRRIGATION DISTRICT

By: _____

Its: _____

Date: _____

Attest: _____

TURLOCK IRRIGATION DISTRICT

By: _____

Its: _____

Date: _____

Attest: _____

[Signature Page to Consent – Power Purchase Agreement]

SELLER:

ARP-LOYALTON COGEN LLC

By: _____

Its: _____

Date: _____

AGENT:

[]

By: _____

Its: _____

Date: _____

Exhibit A
to
Consent and Agreement
dated [____], 20[____]
between
Buyers,
ARP-Loyalton Cogen LLC
and
Agent

Payment Instructions

(see attached)

[Insert date]

Via Certified Mail, Return Receipt Requested

Southern California Public Power Authority
Attention: Executive Director
1160 Nicole Court
Glendora, CA 91740

Sacramento Municipal Utility District
Attention: []
[]
[]

Modesto Irrigation District
Attention: []
[]
[]

Turlock Irrigation District
Attention: []
[]
[]

Re: [] Project

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement ("Consent") dated as of _____ 20_, among Southern California Public Power Authority ("SCPPA"), Sacramento Municipal Utility District ("SMUD"), the Modesto Irrigation District ("MID"), the Turlock Irrigation District ("TID," and each of SCPPA, SMUD, MID, and TID, a "Buyer," and together, the "Buyers"), [Lender] ("Lender") and [] ("Seller"). Commencing on the date that is sixty (60) days following the date of this notice, any and all amounts owed to Seller shall be paid to the following account:

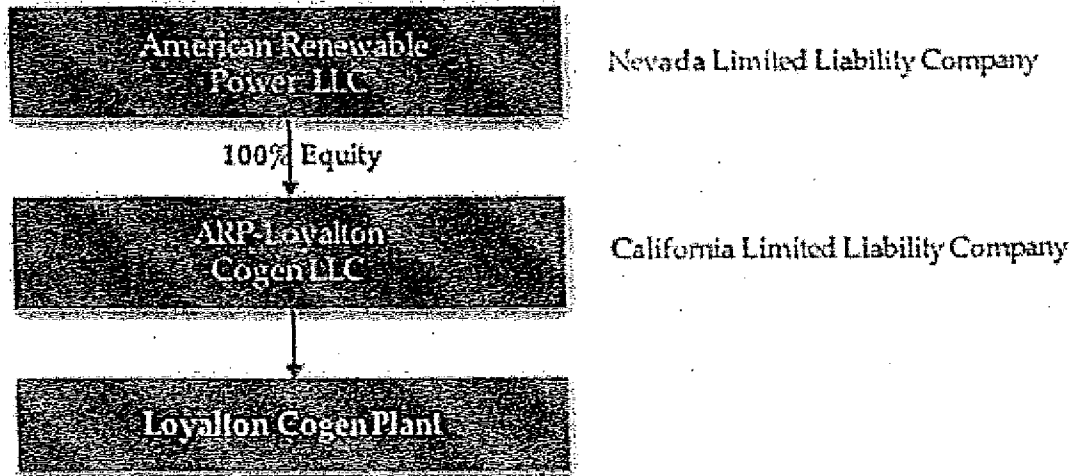
Bank Name: []
Account Number: []
ABA Number: []
For Credit to: []
Attn: []

Very truly yours,

[Subsequent Owner]

SCHEDULE 11.2(h)
TO POWER PURCHASE AGREEMENT,
DATED AS OF OCTOBER 19, 2017
BETWEEN BUYERS
AND
ARP-LOYALTON COGEN LLC

STRUCTURE OF PARENT ENTITIES



9973289_26

APPENDIX D

BUYERS JOINT PROJECT AGREEMENT

Execution Copy

ARP-LOYALTON BIOMASS PROJECT

BUYERS JOINT PROJECT AGREEMENT

BY AND AMONG

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY,

AND

SACRAMENTO MUNICIPAL UTILITY DISTRICT

AND

MODESTO IRRIGATION DISTRICT

AND

TURLOCK IRRIGATION DISTRICT

Dated as of October 19, 2017

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Appendix A-- Joint Committee Vote Percentages

ARP-LOYALTON BIOMASS PROJECT
BUYERS JOINT PROJECT AGREEMENT

PARTIES

This Buyers Joint Project Agreement (this "*Agreement*") dated as of the 19th day of October, 2017 by and among the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California ("*SCPPA*"), the SACRAMENTO MUNICIPAL UTILITY DISTRICT, a California municipal utility district ("*SMUD*"), the MODESTO IRRIGATION DISTRICT, an irrigation district organized and existing under the laws of the State of California ("*MID*"), the TURLOCK IRRIGATION DISTRICT, an irrigation district organized and existing under the laws of the State of California ("*TID*"). SCPPA, SMUD, MID AND TID are each sometimes referred to as a "*Buyer*" or a "*Party*," and collectively as "*Buyers*" or "*Parties*."

RECITALS

In response to the mandate imposed on them by the State of California in 2016 by passage of Senate Bill 859 (Stats.2016, c. 368, eff. Sept. 14, 2016, hereinafter "*SB 859*") to procure a specified amount of electric generation capacity from biomass-fueled resources, the Buyers, following a Request for Proposals issued by SCPPA on March 13, 2017, have identified a potential biomass generation resource owned and operated by ARP-Loyalton Biomass LLC ("*Seller*").

The Buyers have participated in negotiations for and are entering into a Power Purchase Agreement, dated October 19, 2017 with Seller (the "*Power Purchase Agreement*") for the

purchase and sale of 18 MW of capacity, energy and associated environmental attributes from Seller's biomass facility located in Sierra County, California (the "*ARP-Loyalton Biomass Plant*").

The Power Purchase Agreement includes provisions for a Buyers' Agent to receive notifications from Seller and to administer the Power Purchase Agreement and take action on behalf of the Buyers in certain circumstances, and each of the Buyers intends by this Agreement to provide the manner and means to coordinate the exercise of certain of the Buyers' rights and activities with respect to the ARP-Loyalton Biomass Project and to authorize Buyers' Agent to provide such approvals, determinations, responses and other actions under the Power Purchase Agreement on behalf of the Buyers in order to carry out the applicable terms thereof and realize the related benefits thereunder.

The Power Purchase Agreement provides that, as of its Effective Date, SCPPA shall be the Buyers' Agent, and each of the Parties intends by this Agreement to acknowledge and confirm that appointment. Where the context requires, the term "Buyers' Agent" as used in this Agreement shall be deemed to refer to SCPPA acting in that capacity.

1. AGREEMENT

For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, it is agreed by and among the Parties as hereinafter set forth. This Agreement shall take effect on the date when all Buyers and Seller have executed Power Purchase Agreements.

2. DEFINITIONS

The meaning of capitalized terms in this Agreement not otherwise defined in context shall be as defined in Section 1.1 of the Power Purchase Agreement, which is incorporated herein by this reference.

3. APPOINTMENT OF SCPPA AS BUYERS' AGENT

3.1 In accordance with the terms and conditions of this Agreement, SMUD, MID and TID hereby appoint and authorize SCPPA to act as the Buyers' Agent for the limited purpose of carrying out the duties and responsibilities of the Buyers' Agent under the Power Purchase Agreement, as provided in Section 5 and pursuant to Section 7 of this Agreement, and SCPPA hereby accepts such appointment. In so doing, the Parties acknowledge and agree that SCPPA, as a Buyer under the Power Purchase Agreement on behalf of certain of its Members (namely, the Los Angeles Department of Water and Power, the Imperial Irrigation District, the City of Anaheim and the City of Riverside, each hereinafter a "*SCPPA Participating Member*"), shall act for its own account as well as on behalf of SMUD, MID and TID. Unless replaced by unanimous agreement among the Buyers, SCPPA shall serve as Buyers' Agent under the Power Purchase Agreement as provided in this Agreement throughout the Agreement Term.

3.2 In carrying out its responsibilities under the Power Purchase Agreement pursuant to the terms of this Agreement, SCPPA, as Buyers' Agent, shall observe all applicable laws, rules and regulations.

4. ESTABLISHMENT AND AUTHORIZATION OF BUYERS' JOINT PROJECT COMMITTEE

4.1 The Buyers' Joint Project Committee is hereby established and authorized to act on behalf of each of the Buyers for the purposes of (a) providing coordination among the Buyers in carrying out certain collective actions as set forth in this Section 4, and (b) providing the manner and means for achieving agreement among the Buyers with respect to such collective actions.

4.2 The Buyers' Joint Project Committee shall consist of representatives (each a "*Joint Committee Representative*") as follows: (a) a Joint Committee Representative from SMUD, (b) a Joint Committee Representative from MID, (c) a Joint Committee Representative from TID, (d) a Joint Committee Representative from each SCPPA Participating Member, and (g) a non-voting Joint Committee Representative from SCPPA. Each such Joint Committee Representative shall be entitled to cast a vote (a "*Joint Committee Vote*") as follows:

- (i) The Joint Committee Representative from SMUD shall be entitled to cast its Joint Committee Vote equal to the Buyers' Percentage of Facility Output for SMUD as set forth in Appendix A;
- (ii) The Joint Committee Representative from MID shall be entitled to cast its Joint Committee Vote equal to the Buyers' Percentage of Facility Output for MID as set forth in Appendix A;

- (iii) The Joint Committee Representative from TID shall be entitled to cast its Joint Committee Vote equal to the Buyers' Percentage of Facility Output for TID as set forth in Appendix A; and
- (iv) Each SCPPA Participating Member shall be entitled to cast a Joint Committee Vote which shall be equal to the Percentage of Total Capacity for such SCPPA Participating Member as set forth in Appendix A.

- 4.3 SCPPA's non-voting Joint Committee Representative shall be the chairperson ("*Chairperson*") of the Buyers' Joint Project Committee.
- 4.4 Each of the Buyers and each of the SCPPA Participating Members (through SCPPA) shall, within 30 days after the Parties have entered into this Agreement, give notice, each to the other, of its Joint Committee Representative on the Buyers' Joint Project Committee. An alternate Joint Committee Representative may be appointed to act on behalf of any Joint Committee Representative by similar written notice in the absence of the regular Joint Committee Representative. An alternate Joint Committee Representative may attend all meetings of the Buyers' Joint Project Committee but may vote only if the Joint Committee Representative entitled to vote and for whom she/he serves as an alternate is absent. Upon any SCPPA Participating Member providing its written proxy to SCPPA, SCPPA's Joint Committee Representative serving as Chairperson shall be authorized in the absence of such SCPPA Participating Member to vote by proxy for such SCPPA Participating Member on the Buyers' Joint

Project Committee. Such a proxy shall be valid only for the meeting or meetings for which it is given.

- 4.5 The Chairperson shall be responsible for calling and presiding over meetings of the Buyers' Joint Project Committee. The Chairperson shall promptly call a meeting of the Buyers' Joint Project Committee at the request of any Joint Committee Representative in a manner and to the extent permitted by law, and upon not less than three (3) days' written notice to the Buyers unless otherwise agreement among all Joint Committee Representatives. For the purpose of conducting meetings, a quorum shall exist so long as the Chairperson, together with the Joint Committee Representatives entitled to cast Joint Committee Votes (including any SCPPA vote by proxy) aggregating at least 70% of the of Joint Committee Votes shall be present. The conducting of Buyers' Joint Project Committee meetings, including voting at such meetings, may be by assembled meeting or by telephone or video conferencing, or by any combination thereof, to the extent permitted by law.
- 4.6 Unless all of the Buyers shall determine otherwise, the actions of the Buyers' Joint Project Committee shall require the votes by or on behalf of at least five (5) Joint Committee Representatives having Joint Committee Votes (including any SCPPA vote by proxy), aggregating at least seventy per cent (70 %) of the total of the Joint Committee Votes.

5. **RESPONSIBILITIES OF BUYERS' JOINT PROJECT COMMITTEE**

5.1 The Buyers' Joint Project Committee shall be responsible for determining by a vote of its Joint Committee Votes as provided in Section 4.6 of this Agreement and directing the action to be taken or not taken by the Buyers' Agent with respect to the following matters under the Power Purchase Agreement:

- (i) Approval of any Lien (other than Permitted Encumbrances) on any portion of the Facility or any related property or assets under Section 5.5 of the Power Purchase Agreement.
- (ii) Consenting to any Change in Control pursuant to Section 13.7(a) of the Power Purchase Agreement.
- (iii) Providing administrative services relating to Buyers' rights or obligations under the Power Purchase Agreement.
- (iv) Any issue involving Seller's performance under the Power Purchase Agreement, including without limitation whether such performance is consistent with the requirements of SB 859.
- (v) Any claim of Force Majeure asserted by Seller or Buyers under section 13.6 of the Power Purchase Agreement, including direction to assert such a claim on behalf of Buyers.
- (vi) Entering into an agreement for services of a scheduling coordinator on behalf of Buyers and SCPPA Participating Members.
- (vii) Providing accounting and/or administrative services to Buyers and the SCPPA Participating Members with respect to Renewable

Energy Credits and WREGIS Certificates associated with the Project, or entering into an agreement with a qualified firm for such services.

- (viii) Any other matter or matters with respect to which action is to be taken or not taken by Buyers' Agent pursuant to the Power Purchase Agreement or that the Buyers and the SCPPA Participating Members determine should be considered by the Buyers' Joint Project Committee for purposes of giving direction to Buyers' Agent.

5.2 Each of the Buyers agrees that the decision of the Buyers' Joint Project Committee with respect to each of the matters under Section 5.1 of this Agreement shall be determinative as to such matter and shall constitute the decision of the Buyers as to such matter for purposes of the Power Purchase Agreement.

6. BUYERS JOINT ACTION

- 6.1 Except as otherwise provided in Section 5.1 of this Agreement, any action provided for under the Power Purchase Agreement or this Agreement to be taken or agreed to by the Buyers collectively, including without limitation, the termination of the Power Purchase Agreement, shall be agreed to by each Buyer pursuant to a separate authorization for such action by each Buyer.

7. RESPONSIBILITIES OF BUYERS' AGENT; PAYMENT OF COSTS

7.1. Buyers' Agent shall have and carry out the following duties and responsibilities under this Agreement:

- (i) Buyers' Agent shall comply with the decision of the Buyers' Joint Project Committee with respect to each matter as provided under Section 5 of this Agreement and shall take or not take such action, as applicable, under the Power Purchase Agreement with respect to such matter in accordance with such decision of the Buyers' Joint Project Committee.
- (ii) Except as provided otherwise under Section 7.1(i) of this Agreement, Buyers' Agent shall, in accordance with a determination by Buyers' Agent as to compliance with Prudent Utility Practices, take (or not take) such actions as are reposed in Buyers' Agent pursuant to the Power Purchase Agreement.
- (iii) Buyers' Agent shall promptly provide the Buyers' Joint Project Committee and each of the Joint Committee Representatives and their designated alternates with any information that may materially affect or which shall have materially affected the matters referred to in Section 5 or in this Section 7 of this Agreement, and shall provide the Parties with copies of material notices, studies, reports, and other materials received by Buyers' Agent from the Seller pursuant to the Power Purchase Agreement. Buyers' Agent shall provide the Parties with copies of all such

notices, studies, reports, and other materials upon reasonable request of a Party.

- (iv) Buyers' Agent shall arrange for and provide to the Buyers' Joint Project Committee any available studies, supplies or services as requested by the Buyers' Joint Project Committee in connection with its consideration of any of the matters referred to in Section 5 of this Agreement.
- (v) Buyers' Agent, in performing its activities under this Agreement and the Power Purchase Agreement may use its own employees, equipment and facilities or arrange and reasonably contract for the performance thereof by other entities; provided that Buyer's Agent shall inform any contractor so engaged of the existence of this Agreement and the limitations of the scope of Buyers' Agent's, and consequently contractor's, authority under this Agreement and under the Power Purchase Agreement.
- (vi) Buyers' Agent shall prepare and submit to the Buyers' Joint Project Committee its estimates of costs to be incurred in connection with its performance of activities as Buyers' Agent as provided in Section 5 or pursuant to this Section 7 of this Agreement and under the Power Purchase Agreement.
- (vii) Buyers' Agent shall furnish upon request by the Buyers' Joint Project Committee or any Joint Committee Representative any other reasonable assistance or services and any information

reasonably available pertaining to the matters to be considered by the Buyers' Joint Project Committee.

(viii) In performing its activities and responsibilities as provided in Section 5 or pursuant to this Section 7 of this Agreement and under the Power Purchase, Buyers' Agent shall comply with any and all applicable laws and regulations.

7.2 From time to time, Buyers' Agent may submit to each Buyer a bill for payment by such Buyer of its proportionate share equal to its Percentage of Facility Output of costs and expenses incurred, by the Buyers' Agent, except that each Buyer's proportionate share of such costs and expenses will be proportionately adjusted to the extent such costs and expenses are incurred by Buyer's agent in connection with the purchase of Energy in which any Buyer did not participate to the full extent permitted under the Power Purchase Agreement because of such Buyer's election to curtail delivery thereof under the Power Purchase Agreement.. Buyer's Agent shall bill each Buyer by the fifth (5th) day of a month for any costs and expenses that may have been incurred in the preceding month, but may include other costs and expenses incurred within the preceding ninety (90) days that have not previously been billed to Buyers. Each Buyer shall pay or cause to be paid the amount of such bill within 30 days after receipt thereof.

7.3 Buyer's Agent shall, within 30 days after Buyer's Agent's receipt thereof, pay each Buyer such Buyer's proportionate share, equal to its Percentage

of Facility Output, of all revenues actually received by Buyer's Agent acting on behalf of the Buyers under the Power Purchase Agreement and hereunder, including any amounts received by Buyer's Agent from a scheduling coordinator, except that each Buyer's proportionate share of such revenues will be proportionately adjusted to the extent such revenues result from the sale of Energy in which any Buyer did not participate to the full extent permitted under the Power Purchase Agreement because of such Buyer's election to curtail delivery thereof under the Power Purchase Agreement.

- 7.4 If a Party fails to pay any amount when due hereunder, interest shall accrue, to the extent permitted by law, at a rate equal to the Interest Rate as defined in the Power Purchase Agreement until payment is made.
- 7.5 At such reasonable times as shall be requested by a Buyer or Buyers, the books and records of the Buyers' Agent relevant to the costs and expenses incurred by Buyer's Agent and the revenues received by Buyer's Agent, in each case acting on Buyers' behalf under the Power Purchase Agreement and hereunder, shall be subject to audit by or on behalf of such Buyer or Buyers, at such Buyer or Buyers' sole cost and expense.
- 7.6 Buyers' Agent shall not receive any compensation for performance of activities under this Agreement, the Power Purchase Agreement, except that Buyers' Agent shall be permitted to recoup any reasonable costs and expenses associated with the performance of such activities under the

Power Purchase Agreement and hereunder, without mark up unless approved in writing by the Buyers Joint Project Committee.

8. LIABILITY

8.1 The Parties agree that Buyer and Buyers' Agent, and any of their respective past, present or future directors, officers, employees, board members, agents, attorneys or advisors (collectively, the "*Released Parties*"), shall be not liable to any other of the Released Parties for any claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, fines, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity, under this Agreement, the Power Purchase Agreement or otherwise (hereinafter "*Claim*" or "*Claims*") suffered by any Released Party as a result of the action or inaction, or performance or non-performance, by any of the other Released Parties under this Agreement or the Power Purchase Agreement, except to the extent a Claim is attributable to the gross negligence or willful misconduct of a Released Party, to be determined and established by a court of competent jurisdiction in a final, nonappealable order (except as may otherwise be agreed by all of the Parties, in writing). Notwithstanding the anything in the foregoing to the contrary, nothing contained in this Agreement shall be deemed to release any Party from its respective obligations under this Agreement or the Power Purchase Agreement, including such Party's obligation to make

payments required under this Agreement or the Power Purchase Agreement. In no event shall the provisions of this Section 8.1 be construed so as to relieve SCPPA, as the Buyers' Agent, from any obligation it may have as a Buyer under this Agreement or the Power Purchase Agreement. It is also hereby recognized and agreed that no officers, employees, board members, agents, attorneys or advisors of any of the Released Parties shall be individually liable in respect of any undertakings by any of the Released Parties under this Agreement or the Power Purchase Agreement.

8.2 The exculpation provision set forth in Section 8.1 hereof shall apply to all types of Claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, a Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligation or duty of any other Party, and Buyers' Agent may enforce by any legal means its right to payment for its costs in accordance with the terms of this Agreement.

9. RELATIONSHIP OF THE PARTIES

9.1 The covenants, obligations and liabilities of the Parties are intended to be several and not joint or collective and nothing herein contained shall ever be construed to create an association, joint venture, trust, partnership or other legal entity, or to impose a trust or partnership covenant, obligation or liability on or with regard to any of the Parties. Each Party shall be

individually responsible for its own covenants, obligations and liabilities under this Agreement.

9.2 This Agreement is for the benefit of the Parties and the SCPPA Participating Members. Each SCPPA Participating Member is an express and intended third-party beneficiary of this Agreement and may enforce its provisions as if the SCPPA Participating Member were a Party to the Agreement.

10. INDEMNITY AND RELATED MATTERS

10.1 SCPPA in its capacity as Buyers' Agent under this Agreement shall be entitled to indemnification from the Buyers as set forth herein. To the extent permitted by law, each Buyer shall, proportionately in accordance with its Buyers' Percentage of Facility Output, defend, indemnify and hold harmless the Buyers' Agent and its officers, employees, agents, attorneys and advisors, past, present or future, when acting for the Buyers' Agent (collectively, "*Buyers' Agent Indemnitees*"), from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (collectively, "*Claims*") arising by reason of any actions, inactions, errors or omissions of Buyers' Agent incident to the performance of this Agreement, except the extent of any Claim is attributable to the gross negligence or willful misconduct of Buyers'

Agent or any of Buyers' Agent Indemnitees, as determined and established by a court of competent jurisdiction in a final, nonappealable order). If one or more Buyers, with the Buyers' Agent's consent, shall defend any Buyers' Agent Indemnitee, the Buyers' Agent shall approve the selection of counsel, and the Buyers' Agent shall further approve any settlement or disposition, such approval not to be unreasonably withheld. For the avoidance of doubt, all payments as and for indemnification by the Buyers under this Section 10.1, together with any other amount payable by the Buyers under this Section 10.1, shall constitute the individual costs of the Buyers under this Agreement.

10.2 For purposes of this Agreement, the rights, entitlements, obligations and liabilities of SCPPA, as Buyers' Agent under this Agreement shall not apply to or otherwise be affected by, and shall be deemed and interpreted to be legally separate from, the rights, entitlements, obligations, and liabilities of SCPPA as a Buyer under this Agreement and the Power Purchase Agreement.

11. DISPUTES

11.1 Dispute or Claim. Any action, claim or dispute which any Party may have against another Party or Parties arising out of or relating to this Agreement or the transactions contemplated hereunder, or the breach, termination or validity thereof (a "Dispute") shall be submitted in writing to the other Parties. The written submission of any Dispute shall include a concise

statement of the question or issue in dispute together with a statement listing the relevant facts and documentation that support the claim.

- 11.2 Good Faith Resolution. The Parties agree to cooperate in good faith to attempt to achieve an expeditious resolution of a Dispute. Pending resolution of a Dispute, unless otherwise provided for under this Agreement, the Parties shall proceed diligently with the performance of their respective obligations pursuant to the terms of this Agreement.
- 11.3 Informal Negotiation. The disputing Parties shall first attempt in good faith to resolve any Dispute through informal negotiations by the Joint Committee Representatives.
- 11.4 Arbitration. In the event the disputing Parties are unable to resolve the Dispute through informal negotiations as described above, the disputing Parties may elect to pursue the mediation of the Dispute by a mutually agreeable mediator. If the disputing Parties so choose the Parties may elect to voluntarily pursue arbitration pursuant to the rules of the Judicial Arbitration and Mediation Service (JAMS) or American Arbitration Association (AAA), or any other method chosen by the disputing Parties, subject to the express prior written agreement of each of the disputing Parties. Such written agreement may include the guidelines agreed upon by the disputing Parties to be followed by such Parties in such arbitration or dispute resolution prior to the commencement of such arbitration. No Party shall be obligated to pursue arbitration over any other method of dispute resolution.

11.5 Litigation Rights. In the event the disputing Parties are unable to satisfactorily resolve the Dispute within 30 days from the receipt of notice of the Dispute, subject to any extensions of time as may be mutually agreed upon in writing, or any arbitration or other agreement, any Party to the Dispute may initiate litigation in a court of law with jurisdiction located in Los Angeles County, California, which shall be the exclusive venue to litigate Disputes.

11.6 No Attorneys Fees. In the event any action is brought at law or in equity in any court or through any alternative dispute resolution process to enforce any provision of this Agreement, or for damages by reason of any alleged breach of this Agreement, the Parties mutually agree that each Party to this Agreement shall bear its own attorneys fees and costs.

12. GOVERNING LAW

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

13. REPRESENTATION AND NOTICES

13.1 The Parties acknowledge that each Party was represented by counsel in the negotiation and execution of this Agreement, and any uncertainty or ambiguity in this Agreement shall not be interpreted against a Party on the basis that the Party drafted the language, but shall be interpreted according to the application of the rules on interpretation of contracts.

13.2 Any notice, demand, requisition or request shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by overnight delivery service, by registered or certified mail, postage prepaid, or by electronic mail, to the persons specified below:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Attention: Executive Director
Telephone: (626) 793-9364
Email: mwebster@scppa.org

Sacramento Municipal Utility District
Attention: Power Contracts Administration
P.O. Box 15830
Sacramento, CA 95852-1830
Telephone: (916) 732-6244
Email: PowerContractsAdmin@smud.org

Modesto Irrigation District
Attn: Power Scheduling Supervisor
Street: 1231 11th Street
City: Modesto, CA 95354
Phone: 209-557-1544
Email: amyb@mid.org

Turlock Irrigation District
If via USPS:
Turlock Irrigation District
Attention: Willie Manuel
P.O. Box 949
Turlock, CA 95381-0949

If via non-USPS:
Turlock Irrigation District
Attention: Willie Manuel
333 East Canal Drive
Turlock, CA 95380
Telephone: (209) 883-8348
Email: wgmanuel@tid.org

14. SEVERABILITY.

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

15. AMENDMENTS

The Parties acknowledge and agree that any amendment to this Agreement shall be in writing and duly executed by the Parties.

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

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

Dated: _____

By: _____

SACRAMENTO MUNICIPAL UTILITY DISTRICT

Dated: _____

By: _____

MODESTO IRRIGATION DISTRICT

Dated: _____

By: _____

TURLOCK IRRIGATION DISTRICT

Dated: _____

By: _____

Appendix A*
Joint Committee Vote Percentages

BUYERS' PERCENTAGE OF FACILITY OUTPUT;
APPLICABLE MW SHARE

Buyers' Percentage of Facility Output

Buyer	Capacity (MW)	Buyers' Percentage of Facility Output
SCPPA	11.979 MW	66.55%
SMUD	4.221 MW	23.45%
MID	0.994 MW	5.52%
TID	0.806 MW	4.48%
Total	18.00 MW	100.00%

Applicable MW Share

	Capacity (MW)	Percentage of Total Capacity
City of Anaheim	0.806 MW	4.48%
Imperial Irrigation District	1.491 MW	8.28%
LADWP	8.876 MW	49.31%
City of Riverside	0.806 MW	4.48%
SMUD	4.221 MW	23.45%
MID	0.994 MW	5.52%
TID	0.806 MW	4.48%
Total	18.00 MW	100.00%