



## Town Council Agenda Report

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Date: July 9, 2019 Item No. 10A

To: Honorable Mayor and Town Council

Subject: APPROVE ENTERING INTO A LONG-TERM RENEWABLE ENERGY CONTRACT WITH MOUNTAIN VIEW III, LLC

From: Douglas Robertson, Town Manager

Submitted by: Sydnie Harris, Director of Finance  
Finance Department

Budgeted Item:  Yes  No  N/A

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### RECOMMENDED ACTION:

Approve entering into a long-term renewable energy contract with Mountain View III, LLC for Apple Valley Choice Energy.

### SUMMARY:

Apple Valley Choice Energy (“AVCE”) is required by Senate Bill 350 to enter into long-term contracts for a certain portion of its state mandated renewable energy. This agreement is the first of several that will be brought to the Town Council for approval for AVCE to be compliant with this requirement.

### BACKGROUND:

In October 2015, the State of California enacted Senate Bill 350, also known as The Clean Energy and Pollution Reduction Act of 2015 (the “Act”). The Act established new clean energy, clean air, and greenhouse gas reduction goals for the state. Specifically, the Act requires that all load serving entities, including Community Choice Aggregators (“CCAs”) enter into long-term renewable energy contracts with energy delivery to begin by the 2021 – 2024 compliance period.

In order to meet this requirement, California Choice Energy Authority (“CalChoice”), on behalf of AVCE and its other member agency CCAs, issued a Request for Proposals for Renewable Energy Projects in December 2018. CalChoice received over 100 proposals. CalChoice held a workshop in January with AVCE and other member agencies in

attendance to review and short-list proposals based on cost, location, and portfolio diversity. Several wind, solar, and small hydro-electric projects were short-listed.

CalChoice with its legal and technical team spent several months negotiating and finalizing commercial and contract terms on behalf of its member agencies with Avangrid Renewables for its Mountain View III wind project. The Mountain View III wind project is a 22 MW project located in North Palm Springs, with a commercial delivery date of January 2021. AVCE will receive 22% of the wind project's generation.

As a condition of the contract, Mountain View III, LLC recognizes and accepts the secured deposit account in the name of AVCE as credit and collateral, and no other security or credit backing by the town will be required. Mountain View III, LLC, upon execution of the contract, will execute a joinder to the Intercreditor and Collateral Agency Agreement, ensuring protection of the town's general fund.

The contract volume will fulfill approximately 25% of AVCE's long-term requirements as mandated by the Act. As such, staff will be returning in upcoming months with additional contract approval requests.

**FISCAL IMPACT:**

\$ 731,500 annually for ten years. There will be sufficient revenues generated by AVCE to cover operating expenses, including power procurement, and to fund reserves to provide financial and rate stability to the program.

**ATTACHMENTS:**

Agreement between the Town of Apple Valley and Mountain View III,

Cost Confidentiality Policy

**CONFIDENTIAL**  
**AVCE DRAFT**  
**26 JUNE 2019**  
**NOT APPROVED BY EITHER PARTY**

**RENEWABLE POWER PURCHASE AND SALE AGREEMENT**  
**COVER SHEET**

**Seller:** Mountain View Power Partners III, LLC, an Oregon limited liability company

**Buyer:** Town of Apple Valley, California, d/b/a Apple Valley Choice Energy

**Description of Facility:** The Mountain View III wind project, located in Riverside County, California.

**Delivery Term Start Date:** January 1, 2021

**Guaranteed Capacity:** 22.44 MW AC

**Delivery Term:** Ten (10) Contract Years

**Delivery Term Expected Energy:**

Contract Year	Expected Energy (MWh)
1 – 10	70,000 per Contract Year times Buyer's Share

**Contract Price:**

Contract Year	Contract Price (\$/MWh)
1 – 10	[REDACTED]

**Product:** Buyer's Share of:

- Energy
- Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - Portfolio Content Category 1
  - Portfolio Content Category 2
  - Portfolio Content Category 3
- Capacity Attributes
  - Full Capacity Deliverability Status

**Scheduling Coordinator:** Seller/Seller Third-Party

**Security, Damage Payment, and Guarantor**

Development Security: [REDACTED]

Performance Security: [REDACTED]

Damage Payment: [REDACTED]

Guarantor: [REDACTED]

**Notice Addresses:**

**Seller:**

Mountain View Power Partners III, LLC  
Attn: Alex Telegin, Asset Manager  
1125 NW Couch St., Ste. 700  
Portland, OR 97209  
E-mail: Alex.Telegin@avangrid.com

With a copy to:

Mountain View Power Partners III, LLC  
Attn: Contracts Administration  
1125 NW Couch St., Ste. 700  
Portland, OR 97209  
E-mail: contract.admin@avangrid.com

Scheduling:

\_\_\_\_\_  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Buyer:**

Town of Apple Valley  
Attn: Doug Robertson, Town Manager  
14955 Dale Evans Parkway  
Apple Valley, CA 92307  
E-mail: drobertson@applevalley.org

With a copy to:

Hall Energy Law PC  
Attn: Stephen Hall  
P.O. Box 10406  
Portland, Oregon 97296  
Email: [steve@hallenergylaw.com](mailto:steve@hallenergylaw.com)

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## RENEWABLE POWER PURCHASE AND SALE AGREEMENT

This Renewable Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of July \_\_, 2019 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties.**”

### RECITALS

**WHEREAS**, Seller owns and operates the wind energy electric generating facility located in Riverside County, California in the location identified in Exhibit A, having a Guaranteed Capacity to Buyer of twenty-two point four-four MW (22.44) MW AC (the “**Facility**”); and

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

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

### ARTICLE 1 DEFINITIONS

1.1 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.13.

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**After Tax Basis**” means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment (“**Base Payment**”) supplemented by a further payment (“**Additional Payment**”) to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the

assumption that the recipient is subject to federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

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

“**Approved Meter**” means a CAISO approved revenue quality meter or meters, or if a CAISO approved meter is not available consistent with PTO requirements, then a PTO approved meter, together with a CAISO or PTO, as the case may be, approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility net of Electrical Losses and Station Use.

“**Available Capacity**” means the capacity from the Facility, expressed in whole MWs, that is available to generate Energy.

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

“**Bid**” has the meaning set forth in the CAISO Tariff.

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

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

“**Buyer Failure**” means a failure by Buyer to take the Product made available at the Delivery Point during any period and such failure to take is not excused by a Seller Default or a Force Majeure Event.

“**Buyer Lockbox Arrangement**” has the meaning set forth in Section 8.11.

“**Buyer’s Share**” means Town of Apple Valley: Twenty-two percent (22%).

“**Buyer’s WREGIS Account**” has the meaning set forth in Section 4.8(a).

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

“**CAISO Grid**” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“**CAISO Operating Order**” means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.

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

“**California Renewables Portfolio Standard**” or “**RPS**” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), and 350 (2015), codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

“**Capacity Damages**” has the meaning set forth in Exhibit B.

“**Catastrophic Failure**” means the failure of the Facility’s main power transformer, medium voltage switchgear, or the main circuit breaker.

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

“**CEC Certification**” means that the CEC has certified that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

“**Change of Control**” in the case of Seller, means any circumstance in which Seller’s Ultimate Parent ceases to be the ultimate parent, or to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by its Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards the Ultimate Parent’s ownership interest in Seller unless the Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender

(including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“**Collateral Agent**” has the meaning in the Security Agreement.

“**Collateral Assignment Agreement**” has the meaning set forth in Section 14.2.

“**Compliance Actions**” has the meaning set forth in Section 3.13.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.13.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Contract Price**” has the meaning set forth on the Cover Sheet.

“**Contract Term**” has the meaning set forth in Section 2.1.

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Delivery Term Start Date and each subsequent Contract Year shall commence on the anniversary of the Delivery Term Start Date.

“**Costs**” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“**Cover Sheet**” means the cover sheet to this Agreement, which is incorporated into this Agreement.

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

“**Credit Rating**” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“**Curtailment Order**” means any of the following:

(a) the CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Energy from the Facility for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but

not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

**"Curtailment Period"** means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.

**"Damage Payment"** means the dollar amount that equals the amount of the Development Security as set forth on the Cover Sheet.

**"Day-Ahead LMP"** has the meaning set forth in the CAISO Tariff.

**"Day-Ahead Forecast"** has the meaning set forth in Section 4.4(c).

**"Day-Ahead Market"** has the meaning set forth in the CAISO Tariff.

**"Deemed Delivered Energy"** means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point as a result of a Buyer Failure, which amount shall be reasonably calculated and provided by Seller to reflect the potential generation of the Facility as a function of Available Capacity, and wind speed and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Failure, in either case less the amount of Metered Energy delivered to the Delivery Point during the Buyer Failure; provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

**"Defaulting Party"** has the meaning set forth in Section 11.1(a).

**"Deficient Month"** has the meaning set forth in Section 4.8(e).

**"Delivered Energy"** means Buyer's Share of Energy produced from the Facility and delivered to the Delivery Point as measured in MWh at the Approved Meter, net of all Electrical Losses (other than Electrical Losses that are reflected in the meter readings) and Station Use.

**"Delivered Energy Holdback"** has the meaning set forth in Section 4.8(e).

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

“**Delivery Term**” shall mean the period of ten (10) Contract Years beginning on the Delivery Term Start Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“**Development Security**” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

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

“**Economic Bid**” has the meaning set forth in the CAISO Tariff.

“**Effective Date**” has the meaning set forth on the Preamble.

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point, other than losses that are financially settled by Seller.

“**Eligible Intermittent Resource Protocol**” or “**EIRP**” has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

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

“**Energy**” means electrical energy, measured in MWh.

“**Event of Default**” has the meaning set forth in Section 11.1.

“**Expected Energy**” means the quantity of Energy (with associated Product) that Seller expects to be able to deliver to Buyer at the Delivery Point during each Contract Year in the quantity specified on the Cover Sheet.

“**Facility**” means the energy generating facility described on the Cover Sheet and in Exhibit A.

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

“**FMM**” means the CAISO’s Fifteen Minute Market as set forth in the CAISO Tariff.

“**FMM Schedule**” has the meaning set forth in the CAISO Tariff.

“**Force Majeure Event**” has the meaning set forth in Section 10.1.

“**Forced Facility Outage**” means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

**“Full Capacity Deliverability Status”** has the meaning set forth in the CAISO Tariff.

**“Future Environmental Attributes”** shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by a wind generation facility as opposed to from a conventional generation resource.

**“Gains”** means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes.

**“Governmental Authority”** means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and WREGIS; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy generated by the Facility. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion



of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

“**Guaranteed Capacity**” has the meaning set forth in Exhibit A.

“**Guaranteed Energy Production**” has the meaning set forth in Section 4.7.

“**Guarantor**” means, any Person that (a) is an Affiliate of the posting Party, or other third party reasonably acceptable to the non-posting Party, that (b) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, or (c) with respect to Seller, Avangrid, Inc.

“**Guaranty**” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or as reasonably acceptable to Buyer.

“**Imbalance Energy**” means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

“**Indemnified Party**” has the meaning set forth in Section 16.1(a).

“**Indemnifying Party**” has the meaning set forth in Section 16.1(a).

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

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in order to meet the terms and conditions of this Agreement.

“**Intercreditor and Collateral Agency Agreement**” means that certain Intercreditor and Collateral Agency Agreement, dated as of January 30, 2017, by and among Wilmington Trust, National Association as Collateral Agent, the PPA Providers from time to time party thereto, and Buyer, or any successor agreement generally available to Buyer’s creditors.

“**Interest Rate**” has the meaning set forth in Section 8.2.

“**Joinder**” has the meaning set forth in the Intercreditor and Collateral Agency Agreement.

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

“**Lender**” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit (a) issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, and (b) in a form substantially similar to the letter of credit set forth in [Exhibit K](#) or as otherwise reasonably acceptable to the Party that is the beneficiary of the Letter of Credit.

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

“**Lockbox Account**” has the meaning set forth in the Security Agreement.

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“**Lost Output**” has the meaning set forth in [Exhibit G](#).

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts measured in alternating current.

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

“**Negative LMP**” means, in any Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars (\$0).

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

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

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

“**Other Buyers**” means the Buyers under and as defined in the Other Power Purchase Agreements.

“**Other Power Purchase Agreements**” means the Renewable Power Purchase and Sale Agreements entered into as of the same date as this Agreement between Seller and City of Lancaster and City of Rancho Mirage.

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

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

“**Parties**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” has the meaning set forth in Section 4.7.

“**Performance Security**” means (i) cash escrow or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth on the Cover Sheet.

“**Permitted Transferee**” means an entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

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

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

“**Portfolio Content Category 1**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1) and California Public Utilities Commission Decision No. 11-12-052, and other applicable statutes, regulations, and regulatory orders, as may be amended from time to time or as further defined or supplemented by Law.

“**Product**” has the meaning set forth on the Cover Sheet.

“**Production Tax Credits**” or “**PTCs**” means the tax credits applicable to electricity produced from certain renewable resources pursuant to Section 45 of the Code (as amended from time to time), or such substantially equivalent federal tax benefit that provides Seller with a tax credit based on Energy from any portion of the Facility.

“**Prudent Operating Practice**” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“**PTC Compensation Amount**” means an amount equal to the Production Tax Credit calculated on an After Tax Basis associated with Deemed Delivered Energy.

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

“**Real-Time Market**” has the meaning set forth in the CAISO Tariff.

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

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

“**Resource Adequacy Benefits**” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in CPUC

Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“**S&P**” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

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

“**Scheduled Energy**” means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, including Section 4.3, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

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

“**Secured Creditor**” means each PPA Provider or other party that is a Secured Creditor under the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

“**Security Agreement**” means the Security Agreement, dated as of January 30, 2017, between Buyer and Collateral Agent, as collateral agent for the benefit of the Secured Creditors, or any successor agreement generally available to Buyer’s creditors.

“**Security Interest**” has the meaning set forth in Section 8.10.

“**Self-Schedule**” has the meaning set forth in the CAISO Tariff.

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

“**Seller Economic Curtailment**” has the meaning set out in Section 4.5(a).

“**Seller Security Agreement**” has the meaning set forth in Section 8.11(g).

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.8(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

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

**“Site”** means the real property on which the Facility is or will be located, as further described in Exhibit A.

**“Site Control”** means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

**“Station Use”** means:

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

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

**“System Emergency”** means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

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

**“Terminated Transaction”** has the meaning set forth in Section 11.2(a).

**“Termination Payment”** has the meaning set forth in Section 11.3.

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

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

**“Variable Energy Resource”** or **“VER”** has the meaning set forth in the CAISO Tariff.

“**VER Forecast**” means the forecast prepared by CAISO, or its consultant, for Variable Energy Resources as part of the EIRP, or a successor established in accordance with Section 4.5(e).

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

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

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.8(e).

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

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

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

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

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

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

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

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

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

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

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

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

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

## ARTICLE 2 TERM; CONDITIONS PRECEDENT

### 2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (“**Contract Term**”).

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes the following condition:

(a) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8.



**ARTICLE 3  
PURCHASE AND SALE**

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Contract Price, the Product produced by the Facility. Buyer shall re-sell all Delivered Energy delivered by Seller hereunder and, at its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the remainder of the Product delivered by Seller hereunder. Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes attributable to the Delivered Energy produced by the Facility.

3.3 **Compensation.**

[REDACTED]

[REDACTED]

[REDACTED]

(d) If during any Settlement Interval, Seller generates Product amounts in excess of the Installed Capacity, then the price applicable to Buyer's Share of all such excess MWh in such Settlement Interval shall be zero dollars (\$0) ("**Negative LMP Costs**").

(e) Seller shall receive no compensation from Buyer for Delivered Energy or Deemed Delivered Energy during any Curtailment Period.

[REDACTED]

3.4 **Imbalance Energy.** Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. Seller shall be responsible for all instructed and uninstructed imbalance energy charges associated with delivery of Energy to CAISO during the Delivery Term.

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

3.6 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.6(a), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for Buyer's Share of such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim Buyer's Share of such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or its operations unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Reserved.**

3.8 **Capacity Attributes.**

(a) As of the Effective Date, the Facility has achieved Full Capacity Deliverability Status. Throughout the Delivery Term, subject to the Compliance Expenditure Cap, Seller shall be responsible for maintaining Full Capacity Deliverability Status with the CAISO for the full Contract Capacity and shall cooperate with Buyer to ensure that the full qualifying capacity of the Facility is eligible for Buyer's use in satisfying Buyer's resource adequacy obligations.

(b) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer Buyer's Share of all of the Capacity Attributes from the Facility.

(c) Throughout the Delivery Term, Seller shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy

Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer Buyer's Share of all Resource Adequacy Benefits to Buyer.

(d) For the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.9 **[Reserved]**

3.10 **CEC Certification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to maintain CEC Certification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor).

3.11 **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.12 **California Renewables Portfolio Standard.** Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.13 **Compliance Expenditure Cap.** If a change in Law occurring after the Effective Date has increased Seller's costs to comply with Seller's obligations under this Agreement in excess of Seller's known or reasonably expected costs with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed below (the "**Compliance Actions**") the maximum amount of out-of-pocket costs and expenses ("**Compliance Costs**") under this Agreement shall be capped at twenty-five thousand dollars (\$25,000.00) per MW of Guaranteed Capacity times Buyer's Share in the aggregate over the Delivery Term ("**Compliance Expenditure Cap**"):

- (a) CEC Certification;
- (b) Green Attributes;
- (c) WREGIS; and
- (d) Capacity Attributes.

Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product are excluded from the Compliance

Expenditure Cap. If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer and the Other Buyers of such anticipated Compliance Costs.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.13 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice and Seller shall have no further obligations to take, and no liability for a failure to take, these Compliance Actions for the remainder of the Term.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by Buyer (together with any similar compliance actions and costs agreed upon by the Other Buyers, if applicable) and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within thirty (30) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

#### **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

##### **4.1 Delivery.**

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis. The Energy generated by the Facility shall be Scheduled with the CAISO by Seller (or Seller’s designated Scheduling Coordinator).

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Delivered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys Buyer’s Share of all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

##### **4.2 Title and Risk of Loss.**

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

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer at the Delivery Point.

#### 4.3 **Scheduling Coordinator Responsibilities.**

(a) **Seller as Scheduling Coordinator for the Facility.** Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility. Seller or its designee shall submit Economic Bids to the CAISO Day-Ahead Market in accordance with this Agreement and the applicable CAISO Tariff and protocols (including the EIRP, if applicable). Seller shall have the right in its sole discretion to determine the Economic Bid price it submits to CAISO (including entering a negative Economic Bid), and Buyer shall have no obligation to pay Seller for any such curtailment of deliveries of Energy from the Facility which result from Seller's Economic Bid ("**Seller Economic Curtailment**"). Seller Economic Curtailment hours shall be included in the calculation of Lost Output.

#### (b) **CAISO Costs and Revenues.**

(i) All credits and other payments received as a result of energy from the Facility delivered to CAISO, including revenues associated with CAISO dispatches, associated with the CAISO Credit, will be reflected as a credit on Buyer's invoice. Costs associated with any energy that was delivered during a Negative LMP will be retained by Seller (and will be zeroed out on the invoice from Seller to Buyer). Seller shall be responsible for all CAISO charges including, but not limited to, charges associated with Resource Adequacy Capacity (as defined by the CAISO) from the Facility (including Non-Availability Charges (as defined by the CAISO)), if applicable, and instructed and uninstructed imbalance energy charges and credits associated with delivery of energy from the Facility to CAISO during the Delivery Term.

(ii) Seller shall be responsible for all CAISO costs (including scheduling and forecasting fees, penalties and other charges), associated with (i) the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), and (ii) any other failure by Seller to abide by the CAISO Tariff. The Parties agree that any Availability Incentive Payments, as defined in the CAISO Tariff, are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges, as defined in the CAISO Tariff, are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.

(c) **CAISO Settlements.** Seller or its designee shall be responsible for all settlement functions with the CAISO related to the Facility.

4.4 **Forecasting.** Seller shall provide the following non-binding Delivered Energy forecasts described below. Seller shall use commercially reasonable efforts to forecast the Delivered Energy of the Facility accurately and to transmit such information via email or in another format reasonably agreed to by the Parties. Unless otherwise agreed, Seller shall Schedule the Facility with CAISO in accordance with the CAISO EIRP forecast into the CAISO Day-Ahead and Real-Time Market.

(a) Annual Forecast of Delivered Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Delivered Energy. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Delivered Energy for each day of the following month in a form reasonably acceptable to Buyer.

(c) Day-Ahead Forecast of Delivered Energy. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Facility's Delivered Energy for each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's expected Delivered Energy. Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule.

4.5 Dispatch Down/Curtailment. Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order.

4.6 Reduction in Delivery Obligation. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance. Seller shall not during the months of June through September inclusive schedule any non-emergency maintenance that reduces the Energy generation capability of the Facility by more than fifteen percent (15%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties have agreed otherwise in writing.

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

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 Guaranteed Energy Production. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in each two (2) Contract Year block (as opposed to rolling) period during the Delivery Term ("Performance Measurement Period"). "Guaranteed Energy Production" means an amount of Product, as measured in MWh, equal to [REDACTED]

[REDACTED] The calculation will be performed once each Performance Measurement Period, beginning with the second anniversary of the Delivery Term Start Date. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer's failure to perform, or Curtailment Periods. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.8 WREGIS. Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) through (g) below. In addition:

(a) Seller shall maintain the Project's registration and account in WREGIS ("Seller's WREGIS Account") until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall transfer WREGIS Certificates to Buyer's WREGIS Account on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Handling of fractional MWh amounts shall be conducted in accordance with the WREGIS Operating Rules and applicable WREGIS practices. Seller shall transfer any WREGIS Certificates created as a result of fractional MWh amounts to Buyer as soon as practicable upon creation of such certificates in WREGIS.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates in accordance with Section 4.2(b).

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month (“**Deficient Month**”). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, and is not remedied within twenty (20) Business Days, then for purposes of calculating Buyer’s payment to Seller under Article 8, the amount of Delivered Energy in the Deficient Month shall be temporarily reduced by the amount of the WREGIS Certificate Deficit (the “**Delivered Energy Holdback**”) until such time the Seller delivers the deficient WREGIS Certificates to Buyer. Upon remedy of any WREGIS Certificate Deficit for a given calendar month, Buyer shall promptly send payment to Seller for the Delivered Energy Holdback. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

(g) Seller warrants that, subject to the timelines established by WREGIS, all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the contract.

## ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to the Delivery Point. Buyer shall pay or cause to be paid Buyer’s Share of all Taxes on or with respect to the delivery to and purchase by Buyer of Buyer Share of the Product that are imposed on Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.



5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however,* that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

## ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury in accordance with Law and Prudent Operating Practice. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

## ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Delivered Energy produced by the Facility using an Approved Meter. The Approved Meter is installed on the low voltage side of the Seller's transformer, is appropriately calculated to reflect the loss between the high and low voltage sides of the transformer, and maintained at Seller's cost. If the Approved Meter is inaccurate, Seller will cause such meter to be promptly corrected in accordance with Prudent Operating Practices and CAISO or PTO, as applicable, requirements. Seller will be responsible for any costs, fines or penalties, including imbalance charges as a result of the inaccurate meter. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO or the PTO the meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Customer Market Results Interface and/or directly from the CAISO meter(s) at the Facility, as applicable.

7.2 **Meter Verification.** Every two years, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more



[REDACTED]

8.2 **Payment.** Buyer shall make payment to Seller for the Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts in accordance with (a) the monthly distribution date under the Buyer Lockbox Arrangement, if existing, of the month in which the invoice was received, provided that such invoice was received by the fifteenth (15<sup>th</sup>) day of the month, otherwise the invoice will be paid on the next month's monthly distribution date, or (b) if the Buyer Lockbox Arrangement is no longer existing, then on the later of (i) the twentieth (20<sup>th</sup>) day of the month or (ii) ten (10) days from receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, there is determined to have been a meter inaccuracy sufficient to require a payment adjustment, or if CAISO recalculates amounts due or owing in respect of prior periods. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof.

8.5 **Billing Disputes.** Buyer or Seller may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other

claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived if the other party is not notified in accordance with this Section 8.5 within twenty-four (24) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge undisputed mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect; provided that Seller shall have no obligation to replenish such Development Security. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Delivery Term Start Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting); provided that Seller shall have no obligation to replenish such Performance Security. Following the occurrence of both events, Buyer shall return to Seller the unused portion of the Performance Security within ten (10) Business Days.

8.9 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor

(including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied. Seller shall be deemed to have satisfied the foregoing financial statement delivery requirement if unaudited and audited (as applicable) financial statements of the Guarantor are publicly available on the SEC EDGAR information retrieval system or on an Internet page maintained by such entity for those fiscal periods that such entity is required to prepare such statements under applicable law and exchange requirements. In any event, Buyer shall provide to Seller unaudited quarterly financial statements on or before December 1 of each year and audited annual financial statements on or before April 15 of each year, in each case including a balance sheet and statements of income and cash flows, all prepared in accordance with generally accepted accounting principles in the United States, consistently applied, from the Effective Date until Buyer obtains a credit rating reasonably satisfactory to Seller.

8.10 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“**Security Interest**”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.10):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8.12 **No Additional Credit Support.**

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth herein, neither Party has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of this Agreement; and all implied rights relating to financial assurances arising from

Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

## **ARTICLE 9 NOTICES**

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

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## **ARTICLE 10 FORCE MAJEURE**

### 10.1 **Definition.**

(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; turbine serial defect, Catastrophic Failures; pursuant to environmental guidance or applicable law; an act of public enemy; war;

blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy generated by the Facility at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; or (vii) any equipment failure (other than Catastrophic Failures) except if such equipment failure is caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Party claiming Force Majeure Event, save and except for those obligations specified in Section 2.1(b).



**ARTICLE 11**  
**DEFAULTS; REMEDIES; TERMINATION**

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2(b), as appropriate; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(vii) with respect to any Guaranty provided for the benefit of a Party, the failure by the posting Party to provide for the benefit of the other Party either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after the posting Party receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(viii) with respect to any outstanding Letter of Credit provided for the benefit of a Party that is not then required under this Agreement to be canceled or returned, the failure by the Posting Party to provide for the benefit of the other Party either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after the posting Party receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated by the Facility;

(ii) the failure by Seller to begin deliveries of Product by the Delivery Term Start Date;

[REDACTED]

[REDACTED]

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8.

(c) with respect to Buyer as the Defaulting Party, the occurrence of any of the following:

[REDACTED]

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages either (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Delivery Term Start Date) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. In no event shall the Non-Defaulting Party owe any Termination Payment to the Defaulting Party. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this Section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this Section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

11.6 **Rights And Remedies Are Cumulative.** Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 **Mitigation.** Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

**ARTICLE 12  
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.2 **Waiver and Exclusion of Other Damages.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.9, 4.6, 4.7, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING

THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

**ARTICLE 13  
REPRESENTATIONS AND WARRANTIES; AUTHORITY**

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Reserved.

(b) Buyer is an entity duly organized, validly existing and in good standing under the applicable laws of the jurisdiction in which it was formed.

(c) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(d) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(e) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(f) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

13.4 **Prevailing Wage.** Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws.

**ARTICLE 14  
ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys' fees. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement.

14.2 **Permitted Assignment; Change of Control.**

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (i) an Affiliate of Seller; or (ii) subject to Section 14.3, a Lender as collateral. Any direct or indirect Change of Control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Article 14 and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld.

(b) Reserved.

14.3 **Collateral Assignment.** Subject to the provisions of this Section 14.3, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility.

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, and must include, among others, the following provisions; provided that Buyer shall not be required to consent to any additional terms or conditions beyond those set forth below:

[REDACTED]







**ARTICLE 15  
DISPUTE RESOLUTION**

15.1 **Governing Law.** This agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

15.2 **Dispute Resolution.** Each of Seller or Buyer shall appoint a representative to coordinate with the other Party the implementation of this Agreement (each a “**Representative**” and collectively the “**Representatives**”). If any dispute arises with respect to any Party’s performance hereunder, the Representatives shall meet to attempt to resolve such dispute, either in person or by telephone, within five (5) Business Days after the written request of either Representative. If the Representatives are unable to resolve such dispute within thirty (30) Days after their initial meeting (in person or by telephone), senior officers or executives of Buyer and senior officers or executives of Seller shall meet, either in person or by telephone, within ten (10) Business Days after either Representative provides written notice that the Representatives have been unable to resolve such dispute. If such senior officers or executives are unable to resolve such dispute within thirty (30) Days after their initial meeting (in person or by telephone), either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

**ARTICLE 16  
INDEMNIFICATION**

16.1 **Indemnification.**

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These

indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however,* that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## ARTICLE 17 INSURANCE

### 17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars (\$5,000,000) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Employer's Liability Insurance.** Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) **Workers Compensation Insurance.** Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(f) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(g) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "Confidential Information," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by the Buyer, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not

include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce or implement this Agreement (including in connection with transactions involving the Other Buyers under the Other Power Purchase Agreement). If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. Each party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Records Act (Government Code Section 6250 et seq.).

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lender or Investors.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender (including any existing or potential tax equity investor) or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound to confidentiality provisions substantially similar to this Article 19.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

**ARTICLE 19  
MISCELLANEOUS**

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto, constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support, any third party seeking to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the

“public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Facsimile or Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

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

19.10 **Lockbox Account**. For so long as the Buyer Lockbox Arrangement exists, Seller agrees that Buyer’s obligations to make payments with respect to this Agreement are to be made solely from the Buyer Lockbox Arrangement as set forth in the applicable Security Agreement. Buyer’s obligations to make payments with respect to this Agreement do not constitute any kind of indebtedness of Buyer or create any kind of lien on, or security interest in, any property or revenues of Buyer.

19.11 **Change in Electric Market Design**. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, and such change is not subject to the Compliance Expenditure Cap as set out in Section 3.13, then any Party may request that Buyer 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, Buyer and Seller shall engage in such negotiations in good faith. If Buyer 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 Article 16. Notwithstanding the foregoing, (i) 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 Event, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.12 **Forward Contract**. The Parties acknowledge and agree that the transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the Bankruptcy Code and that each Party is a “forward contract merchant” within the meaning of the Bankruptcy Code. Accordingly, the Parties acknowledge and agree that, pursuant to Section

362(b)(6) of the Bankruptcy Code, a set-off made in connection with this Agreement is not enjoined or otherwise precluded by the automatic stay imposed by the Bankruptcy Code. Further, the Parties acknowledge and agree that, pursuant to Section 546(e) of the Bankruptcy Code, transfers made in connection with this Agreement are not subject to avoidance.

*[Signatures on following page]*



IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

**MOUNTAIN VIEW POWER PARTNERS  
III, LLC, an Oregon limited liability  
company**

**TOWN OF APPLE VALLEY,  
CALIFORNIA (d/b/a Apple Valley Choice  
Energy)**

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

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

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

**EXHIBIT A**  
**FACILITY DESCRIPTION**

**Site Name:** Mountain View Power Partners III, LLC

**Site includes all or some of the following APNs:**

668342014	668320013	668332011	668341001	668342005
668250023-4	668320009	668331002	668342013	668342009
668250022	668320018	668332002	668342002	668342006
668260055	668320004	668332010	668342012	668341004
668260054	668320012	668332007	668342003	668342008
668260053	668320006	668332003	668341002	668342007
668260050	668320007	668331003	668342011	
668320016	668320010	668332004	668342004	
668320015	668332009	668332008	668341003	
668320017	668331001	668342001	668342010	

**County:** Riverside County (North Palm Springs)

**Guaranteed Capacity:** 22.44 MW

**Delivery Point:** SCE Devers Substation

**Settlement Point:** SCE Devers Substation

**PNode:** Devers\_2\_B2

**Participating Transmission Owner:** Southern California Edison

Exhibit A - 1



**EXHIBIT B**  
**RESERVED**

Exhibit B - 1

**EXHIBIT C**

**CONTRACT PRICE**

The Contract Price of the Product shall be:

<b>Contract Year</b>	<b>Contract Price</b>
1 – 10	[REDACTED]

Exhibit C - 1

**EXHIBIT D**  
**RESERVED**

Exhibit D - 1

EXHIBIT E



Exhibit E - 1

**EXHIBIT F**  
**AVERAGE EXPECTED ENERGY**

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
JAN																									
FEB																									
MAR																									
APR																									
MAY																									
JUN																									
JUL																									
AUG																									
SEP																									
OCT																									
NOV																									
DEC																									

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Exhibit F - 1



**EXHIBIT G**

**GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION**

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum

D = the Contract Price for the Performance Measurement Period, in \$/MWh

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period.

**Additional Definitions:**

“**Adjusted Energy Production**” shall mean the sum of the following: Delivered Energy + Lost Output.

“**Lost Output**” means the sum of electric energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Failure, Seller Economic Curtailment or Curtailment Order. The additional MWh shall be calculated using the equation provided by Seller to reflect the potential generation of the Facility as a function of Available Capacity, wind speed, and wind direction and using relevant Facility availability, weather and other pertinent data for the period of time during the period in which the Force Majeure Event, Buyer Failure, Seller Economic Curtailment or Curtailment Order occurred.

“**Replacement Green Attributes**” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Product and of the same timeframe for retirement as the

Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided. The value of the Replacement Green Attributes may be discerned by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants to be agreed upon by both Parties, for Renewable Energy Credits of the same Portfolio Content Category as the Product during the Performance Measurement Period.

Exhibit G - 2

**EXHIBIT H**  
**RESERVED**

Exhibit H - 1

**EXHIBIT I  
RESERVED**

Exhibit I - 1

**EXHIBIT J**  
**RESERVED**

Exhibit J - 1

**EXHIBIT K**  
**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

[Date]

Irrevocable Standby Letter of Credit No.

**Beneficiary:**

Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, CA 92307  
Attn: Doug Robertson, Town Manager

**Applicant:**

Avangrid, Inc. on behalf of Mountain View Power Partners III, LLC  
1125 NW Couch Street, Suite 700  
Portland, OR 97209  
Attn: Credit Department

Dear Madam or Sir:

We [insert bank name and address] (“Issuer”, “we”, “our” or “us”) hereby establish for the account of Mountain View Power Partners III, LLC (the “Account Party”), our irrevocable standby letter of credit (the “Letter of Credit”) in your favor for an amount of USD \$[ ] ([*Amt in words* ] Dollars United States currency) (the “Available Amount”). Account Party has advised us that this Letter of Credit is issued in connection with that certain Exclusivity Agreement dated as of March 19, 2019 , between Account Party and California Choice Energy Authority, as amended and as may be further amended, supplemented or otherwise modified (the “Agreement”). This Letter of Credit shall become effective immediately for the term of one (1) year and shall expire on [ ] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Exhibit K - 1

Funds under this Letter of Credit shall be made available to Beneficiary by valid presentation on or before 5:00 p.m. New York time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXXX] and all amendments accompanied by certificates in the form of Annex 1 and Annex 2 hereto, appropriately completed and purportedly signed by a duly authorized representative of Beneficiary.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. If we receive your presentation at such office on any Business Day, in conformity with the terms and conditions of this Letter of Credit, we will honor the same by making payment in accordance with your payment instructions on or before the third (3<sup>rd</sup>) succeeding Business Day after such presentation.

Partial and multiple 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. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

This Letter of Credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Annex 3 hereto signed by an authorized officer of Beneficiary, accompanied by this Letter of Credit for cancellation, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the preceding Business Day. This Letter of Credit shall be surrendered to us by you upon the earlier of presentation or expiration.

It is a condition of the Letter of Credit that it shall be deemed to be automatically extended without amendment for one-year periods, beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least sixty (60) days prior to the Expiration Date we send you notice by registered mail, return receipt requested or courier service or hand delivery at the above address that we hereby elect not to consider this Letter of Credit extended for such additional period, in which case it will expire on its then current Expiration Date.

This Letter of Credit shall be governed by, and construed in accordance with, the terms of the International Standby Practices, ISP98, International Chamber of Commerce Publication No. 590), or revision currently in effect (the "ISP"), to the extent that such terms are not inconsistent with this Letter of Credit. As to matters not governed by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

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 Annexes 1, 2 and 3 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 5.

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. [XXXXXXXX].

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Town of Apple Valley (d/b/a Apple Valley Choice Energy), Attention: Doug Robertson, Town Manager, 14955 Dale Evans Parkway, Apple Valley, CA 92307. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

Very truly yours,

[Bank Name]

\_\_\_\_\_  
[Insert officer name]

[Insert officer title]

Exhibit K - 3



ANNEX 1  
TO LETTER OF CREDIT NO. \_\_\_\_\_

Draft under Letter of Credit No. \_\_\_\_\_

[ Month, Day , Year ]

On [*third business day next succeeding date of presentation*]

Pay to [            ]            U.S. \$ \_\_\_\_\_ [not to exceed the Available Amount]

[Address 1]

[Address 2]

[*insert any wire instructions*]

For value received and charge to account of Letter of Credit No. \_\_\_\_\_ .

By: \_\_\_\_\_

Title: \_\_\_\_\_

ANNEX 2

TO LETTER OF CREDIT NO. \_\_\_\_\_

Drawing under Letter of Credit No. \_\_\_\_\_

The undersigned, a duly authorized representative of Town of Apple Valley (d/b/a Apple Valley Choice Energy) located in Lancaster, California, ("Beneficiary"), hereby certifies on behalf of Beneficiary with reference to irrevocable standby Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") issued for the account of Mountain View Power Partners III, LLC, that:

- 1) [pursuant to that certain Exclusivity Agreement between California Choice Energy Authority and Mountain View Power Partners III, LLC dated as of March 19, 2019, the Shortlist Deposit as defined in said Agreement has been forfeited and as a result, the Beneficiary is entitled to payment of an amount equal to \_\_\_\_\_ Dollars (\$) from this Letter of Credit;]

--or--

[(i) Beneficiary has received notice from the Issuing Bank pursuant to Section 3 of the Letter of Credit, and (ii) the Letter of Credit will expire in fewer than thirty (30) Days from the date hereof. As such, as of the date hereof Beneficiary is entitled to draw under the Letter of Credit as specified in the accompanying sight draft.]

- 2) by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of \$ \_\_\_\_\_, as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft;
- 3) the amount specified on the sight draft accompanying this certificate does not exceed the Available Amount to which Beneficiary is entitled to draft under said [*agreement*] as of the date hereof.

In witness whereof, Beneficiary has caused this certificate to be duly executed and delivered by its duly authorized representative as of the date and year written below.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

ANNEX 3

TO LETTER OF CREDIT NO. \_\_\_\_\_

Notice of surrender of Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_

Attention: Letter of Credit Department

Re: Letter of Credit No. \_\_\_\_\_ issued for the account of [*Avangrid account party*]

Ladies and Gentlemen:

We refer to your above-mentioned irrevocable standby Letter of Credit (the "Letter of Credit"). The undersigned hereby surrenders the Letter of Credit to you for cancellation as of the date hereof. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

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## EXHIBIT L

### FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [\_\_\_\_\_] (the “Effective Date”) by and between [\_\_\_\_\_] a [\_\_\_\_\_] (“Guarantor”), and Town of Apple Valley (d/b/a Apple Valley Choice Energy) (together with its successors and permitted assigns, “Buyer”).

#### Recitals

- A. Buyer and [SELLER ENTITY], a [STATE OF FORMATION] [TYPE OF ENTITY] (“Seller”), entered into that certain Power Purchase and Sale Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [\_\_\_\_\_] 201\_.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

#### Agreement

**1. Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed \$75/kW of Guaranteed Capacity times Buyer’s Share. The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

**2. Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and

Exhibit L - 1

may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within fifteen (15) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

**3. Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Buyer shall return this original executed document to Guarantor within twenty (20) days of termination of this Guaranty. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

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(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

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

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

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

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

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

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

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

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

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

If delivered to Buyer, to it at   
Attn:   
Fax:

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

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of New York, excluding choice of law rules.

9. **Limitation on Liability.** Except as specifically provided in this Guaranty, Buyer shall have no claim, remedy or right to proceed against Guarantor or against any past, present or future stockholder, partner, member, director or officer thereof for the payment of any of the Obligations, as the case may be, or any claim arising out of any agreement, certificate, representation, covenant or warranty made by Seller in the PPA.

10. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, such consent shall not be unreasonably withheld, conditioned, or delayed. A change of control of Guarantor shall not be considered an assignment. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to

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the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

**11. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.**

(a) SPECIAL DAMAGES WAIVER. NEITHER GUARANTOR NOR BUYER, INCLUDING THEIR REPRESENTATIVES, SHALL BE LIABLE TO THE OTHER PARTY OR ITS REPRESENTATIVES FOR ANY SPECIAL, INDIRECT, NON-COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY TYPE, INCLUDING LOST OR PROSPECTIVE PROFITS, LOSS OF BUSINESS OPPORTUNITY, OR BUSINESS INTERRUPTIONS, WHETHER ARISING IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT, OR STRICT LIABILITY, BUT EXCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT), OR OTHERWISE, ARISING UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT THIS PROVISION IS NOT INTENDED TO AFFECT THE RIGHT OF EITHER PARTY TO PAYMENT OF LIQUIDATED AMOUNTS, INCLUDING THE DAMAGE PAYMENT, EXPRESSLY SET FORTH IN THE PPA .

(b) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(c) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY)(EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

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- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.
- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

*[Signature on next page]*

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

GUARANTOR:

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

BUYER:

TOWN OF APPLE VALLEY (d/b/a Apple Valley  
Choice Energy)

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**EXHIBIT M**

**FORM OF REPLACEMENT RA NOTICE**

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Town of Apple Valley (d/b/a Apple Valley Choice Energy) (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section [3.7] [3.9(b)] of the Agreement, Seller hereby provides the below Replacement RA product information:

**Unit Information<sup>1</sup>**

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

<sup>1</sup> To be repeated for each unit if more than one.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

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**EXHIBIT N**

**NOTICES**

<i>[SELLER'S NAME]</i> ("Seller")	<b>TOWN OF APPLE VALLEY (d/b/a Apple Valley Choice Energy)</b> ("Buyer")
<b>All Notices:</b>  Street: City: Attn:  Phone: Facsimile: Email:	<b>All Notices:</b>  Town of Apple Valley Attn: Doug Robertson 14955 Dale Evans Parkway Apple Valley, CA 92307  Facsimile: 760-961-6240 Phone: E-mail: drobertson@applevalley.org
<b>Reference Numbers:</b> Duns: Federal Tax ID Number:	<b>Reference Numbers:</b> Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
<b>Invoices:</b> Attn: Phone: Facsimile:	<b>Invoices:</b> Attn: Apple Valley Choice Energy - Finance Phone: 760-240-7700 Facsimile:
<b>Scheduling:</b> Attn: Phone: Facsimile: Email:	<b>Scheduling:</b> Attn: Phone: E-mail:
<b>Confirmations:</b> Attn: Phone: Facsimile: Email:	<b>Confirmations:</b> Attn: Phone: Email:
<b>Payments:</b> Attn: Phone: Facsimile: E-mail:	<b>Payments:</b> Attn: Phone: Facsimile:
<b>Wire Transfer:</b> BNK: ABA: ACCT:	<b>Wire Transfer:</b> BNK: ABA: ACCT:

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<i>[SELLER'S NAME]</i> ("Seller")	<b>TOWN OF APPLE VALLEY (d/b/a Apple Valley Choice Energy)</b> ("Buyer")
<b>Credit and Collections:</b> Attn: Phone: Facsimile: E-Mail:	<b>Credit and Collections:</b> Attn: Phone:
<b>With additional Notices of an Event of Default to:</b>  Attn: Phone: Facsimile: E-Mail:	<b>With additional Notices of an Event of Default to:</b>  Hall Energy Law PC Attn: Stephen Hall P.O. Box 10406 Portland, Oregon 97296 Phone: (503) 477-9354 Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a>
<b>Emergency Contact:</b> Attn: Phone: E-mail:	<b>Emergency Contact:</b> Attn: Phone: E-mail:

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**Town of Apple Valley  
Administrative Policy**

Subject		Effective Date <b>July 9, 2019</b>	
<b>COST CONFIDENTIALITY</b>			
Index: Apple Valley Choice Energy	Supersedes	Staff Contact	Pages
Policy Number: 1	N/A	Sydney Harris	2

1.0 Purpose

To protect the market sensitive data of Apple Valley Choice Energy, a Community Choice Aggregation.

2.0 Organizations Affected

2.1 Town of Apple Valley as related to, and limited to Apple Valley Choice Energy (AVCE)

3.0 References

3.1 California Public Records Act Government Code Section 6255

4.0 Definition of Terms

4.1 Market Sensitive Data - Data that reveals the cost or volume of energy and energy products contracted under a certain agreement

4.2 Agency – Town of Apple Valley

4.3 Customer – Apple Valley Choice Energy customer

4.4 Energy Service Provider – A vendor of energy from conventional or renewable sources

4.5 Redacted Contracts - Contracts that have market sensitive and/or utility usage data blacked out

5.0 Background

5.1 In determining if a contract contains market sensitive data, the Agency weighs the interest of its customers against the public's right to receive precise pricing information. The Agency's ability to get the most favorable pricing would be impacted if other energy service providers had full knowledge of what the Agency pays for energy.

Disclosure of specific details would impact the Agency's flexibility in negotiation of future contracts. If the Agency did not keep market sensitive data confidential, its ability to negotiate the most favorable pricing would be hampered and the Agency would not be able to secure the most favorable rates for its Customers.

6.0 Policy

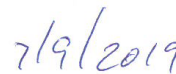
- 6.1 It is the policy of the Agency to maintain the confidentiality of all market sensitive data in order to ensure that customers are not disadvantaged relative to other market participants. In accordance with Government Code Section 6255, the Agency may justify withholding any record by demonstrating the public interest in nondisclosure outweighs the public interest in disclosure.

7.0 Procedure

- 7.1 The Town Clerk will receive all contracts with market sensitive data redacted. All Contracts submitted to the Town Clerk will have a cover sheet indicating redacted or non-redacted (see Exhibits B and C for examples). Redacted contracts are available to the public.
- 7.2 The Contract with non-redacted market sensitive data is made available to the public either 3 years after contract execution for those contracts with terms 5 years or greater, or 1 year after contract termination for those contracts with terms of less than 5 years.
- 7.3 All requests for redacted Contracts will have a response letter issued to them stating the reason for non-disclosure (see Exhibit A for example).



\_\_\_\_\_  
Douglas B. Robertson, Town Manager



\_\_\_\_\_  
Date



Exhibit A

**Sample Letter**

Dear \_\_\_\_\_,

In response to your request dated \_\_\_\_\_, the Town of Apple Valley has determined that the information requested contains market sensitive data. In accordance with Policy No. \_\_\_\_\_, copies of executed contracts are available to the public with the market sensitive data redacted.

In determining if an agreement contains market sensitive data, the Town of Apple Valley weighs the interests of its customers against the public's right to receive precise pricing information. The Town of Apple Valley believes it is necessary to protect sensitive market data to secure the most favorable pricing, and therefore the most favorable rates for Apple Valley Choice Energy customers.

Therefore, the Town of Apple Valley is providing redacted copies of the agreements requested.

\_\_\_\_\_  
Town Clerk  
Town of Apple Valley

Exhibit B

CONTRACT: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PER POLICY # \_\_\_\_\_

REDACTED COPY

FOR PUBLIC DISCLOSURE

Exhibit C

CONTRACT: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PER POLICY # \_\_\_\_\_

NON-REDACTED COPY

NOT FOR PUBLIC DISCLOSURE  
UNTIL \_\_\_\_\_