EXECUTION VERSION

RED CLOUD WIND PSEUDO-TIE AGREEMENT

BETWEEN

DEPARTMENT OF WATER AND POWER

OF THE CITY OF LOS ANGELES,

PUBLIC SERVICE COMPANY

OF NEW MEXICO

AND

RED CLOUD WIND LLC

RED CLOUD WIND PSEUDO-TIE AGREEMENT

This Pseudo-Tie Agreement (this "Agreement") is made and entered into as of September 1, 2021 (the "Effective Date"), by and between the CITY OF LOS ANGELES ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER ("LADWP"); PUBLIC SERVICE COMPANY OF NEW MEXICO ("PNM"); and RED CLOUD WIND LLC ("Developer"). Each of LADWP, PNM, and Developer are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. WHEREAS, Developer is developing a wind farm, the Facility (as hereinafter defined), which is interconnected to the PNM transmission system. PNM is the Native BA (as hereinafter defined) for the Facility.

B. WHEREAS, the Southern California Public Power Authority ("SCPPA") and Developer are Parties to a Power Purchase Agreement (as hereinafter defined) under which Developer sells the Facility Energy (as hereinafter defined) of the Facility to SCPPA, and SCPPA and LADWP are parties to a power sales agreement under which SCPPA sells the Facility Energy to LADWP;

C. WHEREAS, pursuant to Section 5.6 of the Power Purchase Agreement, Developer and LADWP desire to Pseudo-Tie the Facility from the PNM Balancing Authority (as hereinafter defined) into the LADWP Balancing Authority;

D. WHEREAS, upon implementation of the Pseudo-Tie, LADWP BA will become the Attaining BA (as hereinafter defined) for the Facility;

E. WHEREAS, for the primary delivery path, Tucson Electric Power Company and Arizona Public Service Company are each an Intermediary BA (as hereinafter defined), and for the alternate delivery path, the Arizona Public Service Company and Western Area Power Administration are each an Intermediary BA;

F. WHEREAS, Developer is responsible for Scheduling (as hereinafter defined) the Facility Energy in accordance with the provisions of Section 4.4 of the Power Purchase Agreement and this Agreement;

G. WHEREAS, the Parties desire to formalize the Pseudo-Tie arrangements for the Facility;

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1. Definitions. As used in this Agreement, the following defined terms will have the respective meanings set forth below:

"Area Control Error," or "ACE," has the meaning given to such term in the NERC Glossary.

"Attaining Balancing Authority" or "Attaining BA" has the meaning given to such term in the NERC Glossary, as identified in Exhibit A with respect to the Facility Energy.

"Balancing Authority" has the meaning given to such term in the NERC Glossary. "

"Balancing Authority Area" has the meaning given to such term in the NERC Glossary.

"Business Day" means a day on which Federal Reserve member banks in New York City are open for business; and a Business Day will open at 0800 and close at 1700 PPT.

"Claim Notice" has the meaning set forth in Section 8.3.

"Contract Term" has the meaning set forth in Section 2.1.

"Defaulting Party" has the meaning set forth in Section 7.1.

"Developer" has the meaning set forth in the Preamble to this Agreement.

"DNP" has the same meaning given to such term in the Power Purchase Agreement.

"E-Tag" means an electronic record that contains the details of a transaction to transfer energy from a source point to a sink where the energy is scheduled for transmission across one or more Balancing Authority Area boundaries.

"Effective Date" has the meaning set forth in the Preamble to this Agreement.

"Emergency" has the meaning given to such term in the NERC Glossary.

"EMS" means Energy Management System.

"Event of Default" has the meaning set forth in Section 7.1.

"Facility" has the meaning set forth in the PPA.

"Facility Energy" has the meaning set forth in the PPA.

"FERC" means the Federal Energy Regulatory Commission, or any successor thereto.

"Generator Interconnection Agreement" has the same meaning given to such term in the Power Purchase Agreement.

"Generator Owner" has the meaning given to such term in the NERC Glossary.

"Generator Operator" has the meaning given to such term in the NERC Glossary.

"Governmental Authority" means any national, state, provincial or local government, any political subdivision thereof, or any other governmental, regulatory, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity or any arbitrator with authority to bind a Party at law; provided that LADWP will not be considered a Governmental Authority with respect to this Agreement.

"Governmental Rule" means any law, statute, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, directive, resolution, guideline, policy or similar form of decision, or any action repealing or modifying the same, of any Governmental Authority having the force and effect of law or regulation.

"ICCP" means inter-control center communications protocol, or successor protocol.

"Interchange Transaction" has the meaning given to such term in the NERC Glossary.

"Intermediary Balancing Authority" or "Intermediary BA" means a Balancing Authority on the scheduling path of an Interchange Transaction between the Native BA and the Attaining BA, as identified in Exhibit A with respect to the Facility Energy.

"LADWP" has the meaning set forth in the preamble to this Agreement.

"LADWP Balancing Authority" or "LADWP BA" means LADWP in its capacity as operator of the LADWP Balancing Authority Area and other NERC registered functions.

"LADWP Balancing Authority Area" or "LADWP BAA" means the Balancing Authority Area operated by LADWP.

"Last Hour Pseudo-Tie Value" has the meaning set forth in Exhibit B.

"Losses" means any claims, demands, suits, causes of action, liabilities, fines, penalties, judgments, settlements, damages, costs and expenses, including reasonable attorneys' fees and expenses and costs of investigation, litigation, settlement and judgment, and including any costs and expenses incurred by LADWP or PNM, as the Indemnitees as set forth in Article 8, as a result or arising out of any circumstance described in Article 8 herein, including those arising out of or in connection with any applicable Governmental Rule.

"MW" means megawatt.

"MWh" means megawatt hour.

"NAESB" means the North American Energy Standards Board or any successor thereto.

"Native Balancing Authority" or "Native BA" has the meaning given to such term in the NERC Glossary, as identified in Exhibit A with respect to the Facility Energy thereto.

"NERC" means the North American Electric Reliability Corporation, or any successor.

"NERC Glossary" means the Glossary of Terms Used in NERC Reliability Standards, as amended from time to time.

"NERC Operating Policies and Standards" means NERC's policies, standards, and requirements, along with regional variations applicable to WECC, for Balancing Authority Areas and other functional registrations relating to the operation of their bulk electric systems, as such policies, standards, and requirements may be amended from time to time by NERC or any Person to which NERC delegates authority to effect any such amendments.

"Net Actual Interchange" has the meaning given to such term in the NERC Glossary.

"Non-Defaulting Party" will in any instance be the Party other than the Defaulting Party.

"Person" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

"PNM" has the meaning set forth in the preamble to this Agreement.

"PNM Balancing Authority" or "PNM BA" means PNM in its capacity as operator of the PNM Balancing Authority Area and other NERC registered functions.

"PNM Balancing Authority Area" or "PNM BAA" means the Balancing Authority Area operated by PNM.

"Point of Delivery" has the same meaning given to such term in the Power Purchase Agreement.

"Point of Interconnection" has the same meaning given to such term in the Power Purchase Agreement.

"Power Purchase Agreement" or "PPA" means the contract(s) attached hereto as Exhibit E.

"PPT" means Pacific Prevailing Time, that is, the prevailing time applicable to the state of California.

"Prudent Utility Practices" means the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in the Western Interconnection during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practices is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, method, or acts generally accepted in the region. Prudent Utility Practices will include, but not be limited to, applicable law and regulatory requirements, and the criteria, rules and standards promulgated by NERC, WECC, an RC Service Provider, any Transmission Provider, the National Electric Safety Code, and Governmental Authority as they may be amended from time to time, including the rules and guidelines and criteria of any successor organizations.

"Pseudo-Tie" has the meaning given such term in the Power Purchase Agreement.

"Pseudo-Tie Implementation" means the process of implementing a Pseudo-Tie.

"Pseudo-Tie Maximum Limit" has the meaning set forth in Exhibit B.

"Pseudo-Tie Minimum Limit" has the meaning set forth in Exhibit B.

"Pseudo-Tie Point" has the same meaning given to such term in the Power Purchase Agreement.

"Pseudo-Tie Protocols" means the protocols set forth in Exhibit B, as may be amended by the Parties' operational representatives from time to time.

"Pseudo-Tie Request" has the meaning set forth in Exhibit B.

"Pseudo-Tie Standards" means (in each case as amended, modified or supplemented during the Contract Term) (a) the Pseudo-Tie Protocols, (b) Prudent Utility Practices, (c) any and all Governmental Rules applicable to pseudo-tie arrangements; (d) the rules, requirements, guidelines, standards, criteria, or policies applicable to pseudo-tie arrangements of FERC, NERC, WECC, an RC Service Provider, Transmission Provider, or any other agency or entity having legal jurisdiction over the Parties; and (e) any other rules, requirements, guidelines, standards, criteria or policies applicable to pseudo-tie arrangements agreed upon between the Parties.

"Pseudo-Tie Spinning Reserves Request" has the meaning set forth in Exhibit B.

"Pseudo-Tie Value" has the meaning set forth in Exhibit B.

"Reliability Coordinator Documents" means the policies, procedures, processes, methodologies and instructions published by an RC Service Provider for the safe and reliable operation of the Western Interconnection and the related bulk electric system.

"RC Service Provider" means an entity or entities which are registered for and fulfill the duties of a Reliability Coordinator, as defined by NERC, and which is the Reliability Coordinator for the Native BA or Attaining BA respectively.

"RTU" has the same meaning given to such term in the Power Purchase Agreement.

"SCADA" means Supervisory Control and Data Acquisition.

"Schedule," "Scheduled," or "Scheduling" means the acts of LADWP and Developer, or their designated representatives, including each such Person's Transmission Providers, if applicable, notifying, requesting and confirming to one another the quantity of energy to

be delivered at applicable intervals on any given day or days during the Contract Term at one or more specified delivery points. Unless the context clearly requires otherwise, references in this Agreement to "Scheduled" quantities of energy will mean the quantity of energy that is confirmed for interchange after entry into the LADWP EMS system following "Implementation" status in NAESB "E-Tag Specification 1.8.3 – ISO Requirements," as they may be amended from time to time and any successor E-Tag provision.

"Scope of this Agreement" means Developer's obligations to LADWP under this Agreement and any other agreement between Developer and LADWP now existing or hereafter executed that expressly contemplates the utilization of this Agreement.

"Spinning Reserves" has the meaning given such term in the NERC Glossary

"Standards" means the applicable Governmental Rule, NERC Operating Policies and Standards, Pseudo-Tie Standards, and Reliability Coordinator Documents.

"Taxes" means taxes, rates, levies, assessments, charges or duties, including real estate, property, sales, use, franchise, excise, capital, gross receipts and value added taxes, taxes measured on capital or assets used in a business, customs and import and export duties, taxes measured on income or on gains derived from dispositions of property, and taxes or other fees on the use of property or in-state facilities or natural resources (including the use of water for power generation), generating capacity, production, generation, manufacture, purchase, transmission, distribution, wholesale, sale, resale, or use of electricity or electrical energy, whether the tax is in the form of a property, sales and use, employment, gross receipts, revenue, income, franchise, excise, value-added, excess profits or any other tax, and regardless of how the tax is named or structure Term.

"Third Party Claims" means any demand, assertion, claim, causes of action or proceeding, judicial, governmental or otherwise, by any Person other than a Party.

"Transmission Provider" means the provider(s) of transmission service or ancillary services, if any, over the Transmission System associated with the Pseudo-Tie under this Agreement and listed in Exhibit A.

"Transmission Service Agreement" means any Developer transmission service agreement listed in Exhibit A.

"Transmission System" means the transmission facilities owned, operated or controlled by any Transmission Provider, including any modifications, additions, or upgrades to any of such facilities.

"WECC" means the Western Electricity Coordinating Council or any successor thereto.

"Western Interconnection" means the geographic area containing the synchronously operated electric transmission grid in the western part of North America, which includes parts of Montana, Nebraska, New Mexico, South Dakota, Texas, Wyoming, and Mexico and all of Arizona, California, Colorado, Idaho, Nevada, Oregon, Utah, Washington and the Canadian provinces of British Columbia and Alberta.

Section 1.2. Exhibits. The exhibits attached to this Agreement form an integral part of this Agreement, and any and all exhibits referenced to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

Section 1.3. Interpretation. In this Agreement, unless a clear contrary intention appears:

(a) the singular number includes the plural number and vice versa;

(b) reference to any Person includes such Person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individuality;

(c) reference to any gender includes each other gender;

(d) references to "or" will be deemed to be disjunctive but not necessarily exclusive (*i.e.*, unless the context dictates otherwise, "or" will be interpreted to mean "and/or" rather than "either/or");

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

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

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

(h) "including" (and with correlative meaning "include") means including without limitation on the generality of any description preceding such term, and will encompass within its meaning "including but not limited to;" and

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

ARTICLE 2.
TERM AND TERMINATION

Section 2.1. Contract Term. Subject to the provisions of Section 2.3, the term of this Agreement (the "Contract Term") will begin on the Effective Date and, unless earlier terminated in accordance with the terms and conditions of this Agreement, will terminate on the termination date of the PPA. This Agreement may be terminated upon mutual consent of the Parties.

Section 2.2. Termination Rights. No Party will have the right to terminate this Agreement except as specifically provided in this ARTICLE 2 and in ARTICLE 7.

Section 2.3. Survival. Except as otherwise set forth in this ARTICLE 2, effective as of the expiration or termination for any reason of this Agreement, the Parties will no longer be bound by the terms and conditions of this Agreement, except (a) to the extent necessary to enforce any rights and obligations of the Parties not discharged, including payment obligations, arising under this Agreement prior to expiration or termination of this Agreement, and (b) that the provisions of ARTICLE 8, ARTICLE 9 and ARTICLE 14 will survive the expiration or termination for any reason of this Agreement.

ARTICLE 3.
PSEUDO-TIE IMPLEMENTATION

Section 3.1. Pseudo-Tie; Personnel. During the Contract Term, Developer and LADWP will employ a Pseudo-Tie for the transfer of energy up to the Pseudo-Tie Maximum Limit in accordance with the provisions of this Agreement. Developer and LADWP will at all times implement the Pseudo-Tie in accordance with all of the Standards.

Section 3.2. Failure to Comply with Standards. Without limiting any other rights or remedies of the Parties under this Agreement, including, inter alia, the rights and remedies set out at Article 7, in the event of any material failure by Developer or LADWP to comply with the Standards, the complying Party will be permitted to immediately suspend the Pseudo-Tie consistent with Section 3 of Exhibit B and other performance under this Agreement until such time as such failure is remedied to the satisfaction of the complying Party.

Section 3.3. Reporting. In the event of any conflict between the contents of reports filed by the LADWP Balancing Authority under or in connection with this Agreement, on the one hand, and the contents of reports filed by any other Balancing Authority under or in connection with this Agreement, on the other hand, the contents of the LADWP Balancing Authority's reports will govern pending the good-faith attempts to resolve such discrepancy consistent with the Standards and the provisions of Article 12.

Section 3.4. Information to Be Provided. Developer has agreed in Section 4.4 of the PPA to make data available to LADWP, as Buyer's Agent (as defined in the Power Purchase Agreement), with respect to the Facility Energy. If a Party at any time during the Contract Term requests that Developer make available to it information reasonably required for the Pseudo-Tie, Developer shall provide such Party with the requested information.

Section 3.5. Developer Cooperation with LADWP. In addition to the obligations set forth in the PPA and the Generator Interconnection Agreement, Developer shall comply with the reasonable requirements imposed by the LADWP BA or the PNM BA upon Developer for purposes of satisfying the requirements of the Standards, and for reporting to the Reliability Coordinator as part of LADWP's BAA responsibilities.

Section 3.6. Order of Precedence of the Standards. In the event of a conflict among any of the Standards, the more stringent requirement will govern. Nothing in this Agreement will be deemed to amend any provision of the Power Purchase Agreement in any respect.

Section 3.7. Balancing Authority Certification and Parties' Compliance with Standards. Solely as it relates to the Scope of this Agreement, Developer shall be responsible for any failure by the Attaining Balancing Authority to (a) comply with the Standards and (b) maintain in full force and effect through the Contract Term recognition and certification of the Attaining Balancing Authority as a certified Balancing Authority, in each case solely to the extent Developer caused such failure by its fault or negligence.

LADWP will be responsible for compliance with the Standards applicable to the Attaining Balancing Authority, and PNM shall be responsible for compliance with the Standards applicable to the Native Balancing Authority.

Except as set forth in this Section 3.7 regarding the Attaining Balancing Authority's non-compliance due to Developer's actions or inactions, nothing in this Agreement will alter the obligation that each of the Parties is solely responsible for compliance with all applicable rules and regulations, including, without limitation, the Standards that are applicable to LADWP and PNM as Balancing Authorities and the Developer as Generator Owner and Generator Operator of the Facility.

Section 3.8. Pseudo-Tie Limited to Facility Energy. Developer shall not be permitted under this Agreement to use the Pseudo-Tie for any purpose other than Scheduling the Facility Energy, operating and maintaining the Facility and meeting its obligations under the PPA, the Generator Interconnection Agreement and any applicable Transmission Service Agreement.

ARTICLE 4.
ADDITIONAL RIGHTS AND OBLIGATIONS RELATING TO PSEUDO-TIE IMPLEMENTATION

Section 4.1. Ownership and Responsibility for Equipment.

(a) Identification of Equipment Ownership. Attached as Exhibit D is a diagram identifying the communications pathways from the Pseudo-Tie Point to LADWP's communication network associated with the Pseudo-Tie along with an identification of the equipment necessary to accomplish the communications, and ownership of the equipment. Exhibit D may be updated by the Parties from time to time by written consent of all Parties. Prior to termination of the Agreement, the Parties will document ownership of the equipment along with the responsibility for maintenance and operation of the equipment after termination of the Agreement.

(b) Modifications. Except as set forth in the Power Purchase Agreement, each Party is responsible for owning, operating, upgrading, and maintaining its own equipment to accomplish the Pseudo-Tie.

(c) Responsibility for Modification Costs. Except as set forth in the Power Purchase Agreement, each Party will bear its own costs for installing, owning, operating, upgrading, and maintaining its own equipment to accomplish the Pseudo-Tie.

(d) Metering and Communication Data. In the event that any metering or communications equipment fails to register or communicate any of the data required to be provided under this Agreement, such data will be determined from the best available alternative sources, as reasonably determined in each instance by LADWP.

(e) Metering Inaccuracy. For metering associated with this Agreement, a discrepancy outside the range of ninety-nine point five percent (99.5%) to one hundred and five tenths percent 100.5% will be considered a metering inaccuracy. Corrections consistent with an alternate data source(s), as agreed to by the Parties, will be trued-up and settled as energy transactions in accordance with the NERC Operating Polices and Standards.

(f) Common Point of Metering. The Native Balancing Authority and Attaining Balancing Authority will utilize a common meter to provide information necessary to calculate Area Control Error and determine hourly megawatt-hour values in accordance with Standards. The point of metering for this common source will be the Pseudo-Tie Point.

Section 4.2. Information and Record Keeping Obligations.

(a) Information Obligations. Each Party will provide the other Parties such information and data as a requesting Party may reasonably require to satisfy any reporting obligations that the requesting Party may have to NERC, WECC, an RC Service Provider, Transmission Provider, or other Governmental Authority. In the event of any such request for information and data, the Party to which the request is made will promptly provide, at the requesting Party's sole cost and expense, any such requested information and data that such Party (or its agents) has within its custody and control.

(b) Record-Keeping Obligations. To the extent each Party (or its agents) is obligated to do so, each Party will maintain such records as are required by NERC, WECC, an RC

Service Provider, any Transmission Provider, Governmental Authority, and this Agreement, and all data, documents, or other materials relating to or substantiating any charges, costs or expenses payable or reimbursable by the other Party under and in accordance with the requirements of this Agreement, for a period not less than such period as is required under the Standards, any applicable requirements of WECC, or any applicable requirements of any Transmission Provider; provided, however, that in no event will a Party retain such records, data, documents, or other materials for a period less than three years from and after the date on which the records are created or assembled for purposes of this Agreement. No Party will use the accounts or records of the other Parties without the express written consent of the other Party unless such use is permitted by this Agreement or required by Governmental Rule.

Section 4.3. Representatives. Each Party will designate one or more individuals to coordinate Scheduling and operational information to be transmitted on behalf of such Party to the other Parties under this Agreement. Each Party will provide notice of its Scheduling and operating representative to each other Party in writing, and each Party may change its Scheduling or operating representatives from time to time and at any time by notice to each other Party in accordance with the requirements of this Agreement. The initial Scheduling representative and operating representative are identified on Exhibit C.

Section 4.4. PNM BA Obligations. Except as otherwise provided by the terms of this Agreement, or unless mutually agreed between PNM and LADWP, PNM assumes no obligation to perform any BA services and/or functions on the generation side of the Pseudo-Tie Point of the Facility that is pseudo-tied out of the PNM BAA into the LADWP BAA.

Section 4.5. LADWP BA Obligations. Except as otherwise provided by the terms of this Agreement, or unless mutually agreed between PNM and LADWP, on and after the Effective Date LADWP assumes all obligation of performing any BA services and/or functions on the generation side of the Pseudo-Tie Point of the Facility that is pseudo-tied out of the PNM BAA into the LADWP BAA.

ARTICLE 5.
RESERVED.

ARTICLE 6.
REPRESENTATIONS AND WARRANTIES

Section 6.1. Representations and Warranties of the Parties. As a material inducement to the entry by the other Party into this Agreement, each Party, with respect to itself, hereby represents and warrants to the other Parties as follows:

(a) it is duly organized, validly existing and in good standing under the Governmental Rules of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement;

(b) the execution, delivery and performance of this Agreement are within its statutory and corporate powers, have been duly authorized by all necessary action and do not conflict with or result in a breach of or default (with or without notice or lapse of time or both) under any contract to which it is a party or Standards;

(c) this Agreement has been duly executed and delivered on its behalf by a duly authorized representative of such Party;

(d) it has all approvals, consents and regulatory authorizations necessary for it legally to perform its obligations under this Agreement;

(e) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or other Governmental Rules affecting creditors' rights generally, and with regard to equitable remedies, to equitable defenses and the discretion of the court before which proceedings to obtain such remedies may be pending;

(f) there are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it; and

(g) there are no suits, proceedings, judgments, rulings or orders by or before any Governmental Authority that materially adversely affect such Party's ability to perform this Agreement.

Section 6.2. Representations by Developer. Developer warrants and represents that the transactions to be completed by it and its agents pursuant to this Agreement are reasonable and legitimate business transactions and are not prohibited by any Governmental Authority.

Section 6.3. Continuing Representations and Warranties. The representations and warranties of the Parties set forth in this Agreement will be deemed to be made both as of the commencement of the Contract Term and on a continuing basis thereafter during the Contract Term.

Section 6.4. No Other Representations and Warranties. Each Party acknowledges that it has entered into this Agreement based solely upon the express representations and warranties set forth in this Agreement.

Section 6.5. Disclaimer of Warranties. Except as expressly set forth herein, each Party expressly negates any other representation or warranty, written or oral, express or implied, including any representation or warranty with respect to conformity to models or samples, merchantability, fitness for any particular purpose, or non-infringement.

ARTICLE 7.
EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default. An "Event of Default" means the occurrence of any of the following with respect to a Party (the "Defaulting Party"):

(a) any representation or warranty made by such Party in this Agreement will prove to have been false or misleading in any material respect when made, unless such failure and its consequences can be cured within thirty (30) days following notice of the same to the Defaulting Party;

(b) any failure by such Party to perform or comply with any material covenant set forth in this Agreement, if such failure is not cured within fourteen (14) days after notice thereof from the Non-Defaulting Parties to the Defaulting Party;

(c) any failure by such Party to comply with any material covenant set forth in this Agreement (whether the same covenant or different covenants) on more than three separate occasions, without regard to whether any or all such failures are cured in accordance with the requirements of this Section 7.1;

(d) [reserved];

(e) such Party will make an assignment (other than any assignment permitted pursuant to ARTICLE 10) or any general arrangement for the benefit of creditors;

(f) such Party will file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause of action under any bankruptcy or similar Governmental Rule for the protection of creditors, or have such petition filed against it, and such petition is not withdrawn or dismissed within 60 days after such filing, or any bankruptcy trustee for such Party will reject this Agreement;

(g) such Party will otherwise become bankrupt or insolvent (however evidenced); or

(h) such Party will be unable to pay its debts as they fall due.

Section 7.2. Remedies Upon an Event of Default. If an Event of Default occurs and is continuing at any time, the Non-Defaulting Parties may:

(a) effective immediately upon notice to the Defaulting Party, suspend the Pseudo-Tie and all performance by the Non-Defaulting Party of each and all of the obligations of the Non-Defaulting Party under or pursuant to this Agreement and trigger a fourteen (14) day cure period during which the Defaulting Party may cure the Event of Default to the satisfaction of the Non-Defaulting Party. In the event that after the expiration of the fourteen (14) day cure period the Event of Default is not cured or remedied to the satisfaction of the Non-Defaulting Party, the Non-Defaulting Party may initiate proceedings for the termination of (or, if permitted by Standards, terminate) this Agreement. Notwithstanding the foregoing, in the event that FERC, NERC, WECC, an RC Service Provider or another jurisdictional entity issues an order, decision, directive or a similar instruction that does not allow for the cure period contemplated herein, the Non-Defaulting Party may provide notice of such to the Defaulting Party and may initiate proceedings for the termination of this Agreement; and

(b) take whatever action at law or in equity, consistent with the provisions of this Agreement, as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants under this Agreement.

Section 7.3. Remedies Cumulative. Except as otherwise provided in ARTICLE 8 and ARTICLE 12, no remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

ARTICLE 8.
INDEMNIFICATION

Section 8.1. Indemnity. LADWP and PNM (the "Indemnitors") hereby agree to indemnify, defend and hold harmless each other and each of their board members, employees, agents, or representatives (collectively, the "Indemnitees") from and against any and all Losses which Indemnitees may sustain, suffer, or become subject to, to the extent resulting from, relating to or arising out of:

(a) The negligence, willful or intentional conduct of the Indemnitors or its agents acting on its behalf in connection with the Scope of this Agreement.

(b) The Indemnitors' or its agents' non-performance of this Agreement.

The obligation of the Indemnitors shall apply whether Losses are incurred by settlement or otherwise, and whether any such claims, demands, suits or causes of action are groundless, false or fraudulent, or threatened or filed during or after the expiration or termination of this Agreement.

Section 8.2. Waiver Under Workers' Compensation Laws. In furtherance of the foregoing indemnification and not by way of limitation thereof, the Indemnitor hereby waives any defense it otherwise might have under applicable workers' compensation laws.

Section 8.3. Survival. The indemnification obligations under this ARTICLE 8 shall extend to all costs and expenses incurred by the Indemnitees in any action or proceeding to enforce the provisions of this ARTICLE 8, but only if and to the extent the Indemnitees prevail in such action or proceeding. No Party's indemnity obligations hereunder shall be construed to negate, abridge or reduce other rights or obligations or indemnity which would otherwise exist at law or in equity. The obligations contained herein shall survive any termination, cancellation or suspension of this Agreement.

Section 8.4. Indemnification Procedures.

(a) In providing notice to the Indemnitors of any Third Party Claim (the "Claim Notice"), the Indemnitees shall provide prompt written notice to the Indemnitors with a copy of such Third Party Claim or other documents received and shall otherwise make available to the Indemnitors all relevant information material to the defense of such claim and within the Indemnitees' possession. Except as specifically provided below, the Indemnitors shall have the right, by notice given to the Indemnitees within 15 days after the date of the Claim Notice, to assume and control the defense of the Third Party Claim that is the subject of such Claim Notice, including the employment of counsel selected by the Indemnitors after advance notice to the Indemnitees, and the Indemnitors shall pay all expenses of, and the Indemnitees shall cooperate fully with the Indemnitors in connection with, the conduct of such defense. The Indemnitors shall have the right, without the Indemnitees' consent, to settle or compromise any such Third Party Claim for which it is providing indemnity so long as such settlement does not impose any obligations on the Indemnitees (except with respect to providing releases of the third party). The Indemnitors may assume and control, or bear the costs, of any such defense subject to its reservation of a right to contest the Indemnitees' right to indemnification hereunder, provided that it gives the Indemnitees notice of such reservation within 15 Business Days after the date of the Claim Notice.

(b) Notwithstanding the foregoing, an Indemnitee shall in all cases be entitled to control its defense in any action if it:

(i) may result in injunctions or other equitable remedies in respect of the Indemnitees which would affect its business or operations in any materially adverse manner;

(ii) may result in material liabilities which may not be fully indemnified hereunder;

(iii) may have a significant adverse impact on the business or the financial condition of the Indemnitees, including but not limited to ongoing business relationships of the Indemnitees even if the Indemnitees pay all indemnification amounts in full; or

(iv) involves any claim by or on behalf of NERC, WECC, an RC Service Provider, any Transmission Provider, or any other Person of any failure to comply with any of the Standards.

ARTICLE 9.
LIMITATION OF LIABILITY; MITIGATION OF DAMAGES

Section 9.1. Limitation of Liability.

(a) Except as expressly provided in this article 9, but without, in any way, limiting the liability of a party for any fines or penalties imposed by NERC, WECC, an RC Service Provider, any Transmission Provider, or any Governmental Authority, a Party will not be liable for consequential, incidental, special, punitive, exemplary or indirect damages (including damages for replacement power costs), lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision or otherwise, and the liability of each Party will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. 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.

(b) Notwithstanding the foregoing, in no event will the foregoing limitations of liability be applied to limit the extent of the liability of a Party to the other Parties for or with respect to any Third Party Claims, gross negligence or willful misconduct.

Section 9.2. Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of another Party's performance or non-performance of this Agreement; provided, however, that nothing in this Agreement will be construed to require a Party to settle any strike or labor dispute in which it may be involved.

ARTICLE 10.
ASSIGNMENT; BINDING EFFECT

Section 10.1. Assignment. No Party will assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the other Parties to this Agreement. Subject to the foregoing, all the provisions of this Agreement will be binding upon and will inure to the benefit of and be enforceable by the Parties to this Agreement and their respective successors and assigns. Developer may assign or transfer this Agreement in connection with an assignment or transfer of the Facility (or any of Developer's interests in the Facility) as permitted in the Power Purchase Agreement. Notwithstanding anything to the contrary herein, Developer may collaterally assign or pledge its interests in this Agreement in connection with the financing of the Facility without the consent of any other Party. Any purported assignment in violation of this provision will be null and void and of no force or effect.

Section 10.2. Binding Effect. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. No assignment or transfer permitted hereunder will, without the consent of the non-assigning or non-transferring Party (which consent may be granted or withheld in such other Party's sole discretion), relieve the assigning or transferring Party of any of its respective obligations or liabilities under this Agreement.

ARTICLE 11.
NOTICES

Section 11.1. Notices. All notices, requests, demands, consents, approvals, waivers and other communications which are required under this Agreement will be (a) in writing (unless the Parties have otherwise agreed under the terms of this Agreement), and (b) will be deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier or registered or certified mail, postage prepaid to the persons specified in Exhibit C hereto. In addition to the foregoing, the Parties may agree in

writing at any time to deliver notices, requests, demands, consents, approvals, waivers and other communications through alternate methods, such as electronic mail. A Party may change its address or the persons specified in Exhibit C by providing notice of the same in accordance herewith.

ARTICLE 12.
DISPUTE RESOLUTION

Section 12.1. Dispute Resolution Procedures. In the event a Party has a dispute, disagreement or claim arising out of or concerning this Agreement, such Party shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Each Party shall appoint a representative who shall be responsible for administering this Agreement on behalf of such Party and for representing the Party's interests in disagreements. Any dispute that is not resolved between the Parties' representatives within 10 Business Days of when the disagreement is first raised by written Notice of Dispute by one Party to the other Parties will be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event the senior management are unable to resolve the dispute within 20 Business Days (or such other period as the Parties may agree upon) of such referral, such claim or dispute may be submitted to FERC or any competent court or agency for resolution; provided, however, the Parties acknowledge that LADWP is a non-public utility under Section 201(f) of the Federal Power Act, 16 U.S.C. §824(f), and is subject to FERC jurisdiction only in limited circumstances pursuant to 16 U.S.C. §824j-1. Nothing in this Agreement is intended to expand or create any new or additional jurisdiction by FERC over any Party. Recognizing LADWP's non-public utility status under the Federal Power Act, nothing in this section will otherwise restrict the rights of the Parties to file a complaint with FERC under the relevant provisions of the Federal Power Act. All negotiations pursuant to these procedures for the resolution of disputes will be confidential and will be treated as compromise and settlement negotiations for purposes of the federal rules of evidence and state rules of evidence. Notwithstanding the foregoing, any dispute arising under the terms of the PPA shall be resolved under the dispute resolution procedures of the PPA rather than this Article 12.

ARTICLE 13.
CONTINUED PERFORMANCE

The Parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute including any dispute regarding the effectiveness or the purported termination of this Agreement.

ARTICLE 14.
DEVELOPER RIGHT TO APPOINT AGENT FOR PSEUDO-TIE AND IMPLEMENTATION

Section 14.1. Developer Permitted to Appoint Agent.

(a) Appointment of Agent. Developer will be permitted to appoint an agent to implement the Pseudo-Tie under this Agreement on behalf of Developer. Any such agent will be required to be reasonably acceptable to LADWP. If Developer proposes to appoint any agent to act on its behalf under and in connection with this Agreement, Developer shall notify LADWP of such proposed appointment not less than five Business Days in advance of the proposed effectiveness thereof using a form of notice acceptable to LADWP, in its sole discretion. Such notice will describe in reasonable detail the nature and scope of the authority of such proposed agent. Unless LADWP objects in writing to such proposed appointment within such five Business Days period, such appointment will be effective as and when proposed by Developer. If such appointment becomes effective in accordance with the terms of such notice, LADWP will be entitled to rely on all actions and communications of such agent that are reasonably within the scope of such agent's authority, as described to LADWP by Developer in such notice, as the actions and communications of Developer.

(b) Revocation or Revision of Agency Authority. Developer will be permitted, by written notice to LADWP in accordance with the requirements of this Agreement, to revoke or revise the scope of agent's authority to act on Developer's behalf under and in connection with this Agreement. Any such notice will be effective upon such date and time as are designated by Developer in such notice, provided however that no retroactive revision will be permitted unless accepted by LADWP at its sole discretion. Notwithstanding any such revocation or revision, LADWP will, until the effectiveness of such revocation or revision as set forth in this section, be entitled to rely on all actions and communications of such agent that are reasonably within the scope of such agent's authority, as described to LADWP by Developer in such notice, as the actions and communications of Developer.

(c) Developer to Remain Responsible. The appointment of any agent by Developer will not relieve Developer of any of its obligations under this Agreement. Developer shall be and remain fully responsible and liable for the acts or omissions of any agent it appoints or retains with respect to Developer's obligations solely as they relate to the Scope of this Agreement. Any obligation imposed by this Agreement upon Developer will, notwithstanding the appointment or retention of any agent, be binding upon Developer.

(d) No Third Party Beneficiary. No agent is intended to be or will be deemed a third party beneficiary of this Agreement in any respect.

ARTICLE 15.
MISCELLANEOUS

Section 15.1. Entire Agreement; Amendments. This Agreement (including all Exhibits) contains the entire understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, discussions or agreements between the Parties, or any of them, concerning that subject matter, whether written or oral, except as expressly provided for herein. Except for those provisions in this Agreement that reference provisions in the Power Purchase Agreement, which are hereby incorporated herein by this reference, this is a fully integrated document. Each Party acknowledges that no other party, representative or agent, has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement that induced the other Party to sign this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party. If there is inconsistency between the terms of this Agreement and the terms of the Power Purchase Agreement that are applicable to LADWP or Developer, the terms of the Power Purchase Agreement will govern.

Section 15.2. Governing Law. This agreement and the rights and duties of the parties hereunder will be governed by and construed, enforced and performed in accordance with the laws of the state of California, regardless of the laws that might otherwise govern under applicable principles of conflicts of law of such state.

Section 15.3. [Reserved].

Section 15.4. Non-Waiver. The failure of a Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, will not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same will be and remain at all times in full force and effect. Notwithstanding anything expressed or implied herein to the contrary, nothing contained herein will preclude a Party from seeking and obtaining any available remedies for breaches not rising to the level of a Default, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Developer acknowledges that money damages may not be an adequate remedy for violations of this

Agreement and that LADWP may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Developer hereby waives any objection to specific performance or injunctive relief. The rights granted herein are cumulative.

Section 15.5. Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, will be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby will remain in force and effect, provided that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

Section 15.6. Headings. The headings used for the sections and articles herein are for convenience and reference purposes only and will in no way affect the meaning or interpretation of the provisions of this Agreement.

Section 15.7. No Third Party Beneficiaries.

(a) Except as provided in ARTICLE 8, nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement will not be construed as a third party beneficiary contract.

(b) Unless otherwise agreed to in writing signed by Parties, no Party will have any authority to create or assume in the other Parties' name or on its behalf any obligation, express or implied, or to act or purport to act as the other Parties' agent or representative for any purpose whatsoever.

(c) No Party will be liable for any engagement, obligation, contract, representation or any negligent act or omission of a Party, except as expressly provided for herein.

Section 15.8. Relationship of the Parties. This Agreement will not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon such Party. None of the Parties will have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, another Party.

Section 15.9. Attorneys' Fees. The Parties hereto agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorneys' fees and costs. Each of the Parties to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement.

Section 15.10. Telephone Recordings. Except to the extent otherwise expressly provided in this Agreement, the Parties intend that telephonic communications between the Parties may be employed as a matter of normal course in the administration of the provisions of ARTICLE 3 and ARTICLE 4 of this Agreement. Each Party agrees that it will not contest or assert any defense (except a defense that the tapes or other recording device has been actively tampered with) to the validity or enforceability of such telephonic communications under laws relating to whether certain agreements are to be in writing or signed by the Party to be thereby bound or the authority of any employee of such Party to make such communication. Each Party consents to the recording of its representatives' telephone conversations without any further notice. All recordings or electronic communications may be introduced into evidence to prove oral agreements between the Parties, subsequent to the execution of this Agreement, with respect to matters arising under ARTICLE 3 and ARTICLE 4; provided, however, that in no event will any such oral agreement be construed as a modification of or amendment to this Agreement, including any of the terms and conditions set forth in ARTICLE 3 and ARTICLE 4, any such modification or amendment being required to be in writing and signed by both Parties. A Party with a recording of any telephone

conversation with another Party will, upon request of and at the expense of another Party, provide a copy of such recording to the other Party.

Section 15.11. Construction. This Agreement and any documents or instruments delivered pursuant hereto will be construed without regard to the identity of the Person who drafted the various provisions of the same. Each and every provision of this Agreement and such other documents and instruments will be construed as though the Parties participated equally in the drafting of the same. Consequently, the Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting Party will not be applicable either to this Agreement or such other documents and instruments.

Section 15.12. Counterparts; Execution by Facsimile. This Agreement may be executed in counterparts, and, upon execution by each signatory, each executed counterpart will have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages. A signed copy of this Agreement transmitted by facsimile, email or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act and Records Act, and California's Uniform Electronic Transactions Act.

Section 15.13. Warranty of Signatories. Each Party warrants that the individual executing this Agreement on behalf of a Party is authorized to execute this Agreement on behalf of said Party.

Section 15.14. Further Instruments; Further Assurances. Each Party shall promptly execute and deliver such further instruments, agreements and other documents, and take such further actions as may reasonably necessary to effectuate any of the provisions in this Agreement.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed on its behalf by its duly authorized representative, effective as of the Effective Date. This Agreement will not become effective as to the Parties unless and until executed by the Parties.

[Signature Page Follows]

DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES BY BOARD OF WATER AND POWER COMMISSIONERS OF THE CITY OF LOS ANGELES By: _____ MARTIN L. ADAMS GENERAL MANAGER AND CHIEF ENGINEER Date: _____ And: _____ YVETTE L. FURR Acting Board Secretary	PUBLIC SERVICE COMPANY OF NEW MEXICO Signature: _____ Name: Todd Fridley Title: Vice-President PNM New Mexico Operations Date signed: _____
RED CLOUD WIND LLC Signature: _____ Name: _____ Title: _____ Date signed: _____	

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

MAR 29 2021

BY Syndi Driscoll
SYNDI DRISCOLL
DEPUTY CITY ATTORNEY

DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES BY BOARD OF WATER AND POWER COMMISSIONERS OF THE CITY OF LOS ANGELES By: _____ MARTIN L. ADAMS GENERAL MANAGER AND CHIEF ENGINEER Date: _____ And: _____ YVETTE L. FURR Acting Board Secretary	PUBLIC SERVICE COMPANY OF NEW MEXICO Signature: Todd Fridley Name: Todd Fridley Title: Vice-President, New Mexico Operations Date signed: March 30, 2021
RED CLOUD WIND LLC Signature: _____ Name: _____ Title: _____ Date signed: _____	

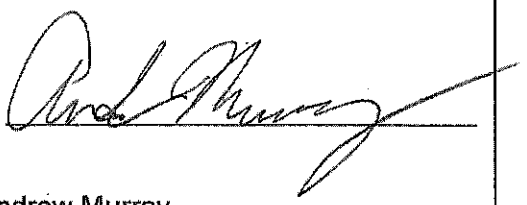
DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES BY BOARD OF WATER AND POWER COMMISSIONERS OF THE CITY OF LOS ANGELES By: _____ MARTIN L. ADAMS GENERAL MANAGER AND CHIEF ENGINEER Date: _____ And: _____ YVETTE L. FURR Acting Board Secretary	PUBLIC SERVICE COMPANY OF NEW MEXICO Signature: _____ Name: Todd Fridley Title: Vice-President PNM New Mexico Operations Date signed: _____
RED CLOUD WIND LLC Signature:  Name: Andrew Murray Title: Authorized Signatory Date signed: 3/25/21	

EXHIBIT A
to
Pseudo-Tie Agreement

POWER PURCHASE AGREEMENT

Power Purchase Agreement between SCPPA and Red Cloud Wind LLC dated as of November 12, 2020

NATIVE BALANCING AUTHORITY

Public Service Company of New Mexico (PNM)

INTERMEDIARY BALANCING AUTHORITIES

Tucson Electric Power Company (TEP)
Arizona Public Service Company (APS)
Western Area Power Administration (WAPA)

ATTAINING BALANCING AUTHORITY

Los Angeles Department of Water and Power (LADWP)

TRANSMISSION PROVIDER(S) & OPERATING AGENT/MANAGER: PRIMARY PATH

Entities	Transmission Customer	Type	Point of Receipt	Point of Delivery
PNM	Pattern	Firm point-to-point	Western Spirit 345 kV Switching Station	Four Corners 345 kV Switchyard
TEP	Pattern	Firm point-to-point	Four Corners 345 kV Switchyard	Navajo 500 kV Switchyard
APS[1]	LADWP	Firm point-to-point	Navajo 500 kV Switchyard	Attaining BA (Navajo 500 kV Switchyard)

[1] Pursuant to the Amended and Restated Navajo Southern Transmission System Operating Agreement, APS is the Operating Agent of the Navajo Southern Transmission System which is a component of the Navajo Project, of which LADWP is a participant and has firm transmission entitlement under the Amended and Restated Navajo Co-Tenancy Agreement.

TRANSMISSION PROVIDER(S) & OPERATING AGENT/MANAGER: ALTERNATE PATH

Entities	Transmission Customer	Type	Point of Receipt	Point of Delivery
PNM	Pattern	Firm point-to-point	Western Spirit 345 kV Switching Station	Four Corners 345 kV Switchyard
TEP	Pattern	Firm point-to-point	Four Corners 345 kV Switchyard	Westwing 500 kV Switchyard
APS[2]	LADWP	Firm point-to-point	Westwing 500 kV Switchyard	Mead 500 kV Switchyard
WAPA[3]	LADWP	Firm point-to-point	Mead 500 kV Switchyard	Attaining BA (Marketplace 500 kV Switchyard)

[2] The transmission line that connects the Westwing 500kV Switchyard to the Mead 500kV Switchyard is part of Path 49 and is located in APS's BAA. LADWP's firm transmission entitlement on this line is pursuant to LADWP's participation in the Mead-Phoenix Project (MPP) pursuant to the MPP Joint Ownership Agreement.

[3] Pursuant to the MPP Operation Agreement, WAPA is the Operation Manager of the MPP, of which LADWP is a participant and has firm transmission entitlement pursuant to the MPP Joint Ownership Agreement.

EXHIBIT B
to
Pseudo-Tie Agreement

PSEUDO-TIE PROTOCOLS

1 Transmission Arrangements; Scheduling

1.1 Developer shall be responsible for reserving and maintaining firm transmission service with dynamic capability from the Facility to the Point of Delivery for all energy that is the subject of the Pseudo-Tie under this Agreement. Developer shall identify the transmission service arrangements on Exhibit A.

1.2 LADWP will be responsible for reserving and maintaining firm transmissions service with dynamic capability from the Point of Delivery to LADWP's system for all energy that is the subject of the Pseudo-Tie under this Agreement. LADWP will identify the transmission service arrangements on Exhibit A.

1.3 Developer shall Schedule the Facility Energy in accordance with Standards. Developer shall ensure that each Intermediary BA is identified in each E-Tag.

2 Normal (Non-Contingency) Operations

2.1 Developer shall provide to the Attaining BA a Pseudo-Tie Request (as defined below) associated with the Facility Energy on a real time basis, every four seconds. The Attaining BA will accommodate the Pseudo-Tie Request and establish the Pseudo-Tie Value consistent therewith, except as required under the Standards. This Pseudo-Tie Request will comply with the following restrictions:

2.1.1 The Pseudo-Tie Request will change no less frequently than once every 4 seconds.

2.1.2 At all times, the Pseudo-Tie Request must be less than or equal to the Pseudo-Tie Maximum Limit (defined below).

2.1.3 At all times, the Pseudo-Tie Request must be greater than or equal to the Pseudo- Tie Minimum Limit (defined below).

2.2 The "Pseudo-Tie Maximum Limit" means 331 MW. The Attaining BA will not grant any requests to adjust the Pseudo-Tie Maximum Limit during normal operations.

2.3 The "Pseudo-Tie Minimum Limit" means 0 MW. The Attaining BA will not grant any requests to adjust the Pseudo-Tie Minimum Limit during normal operations.

2.4 The Pseudo-Tie will be implemented by the Attaining BA and Developer as follows:

2.4.1 The Attaining Balancing Authority and the Native Balancing Authority will exchange, by ICCP, the following data points:

a. Pseudo-Tie Minimum Limit (real-time limit).

b. Pseudo-Tie Maximum Limit (real-time limit).

c. "Pseudo-Tie Value," which is the instantaneous value for the Pseudo-Tie, after the Attaining BA approves, increases, or decreases Developer's Pseudo-Tie Request, that is used in LADWP's EMS.

d. "Last Hour Pseudo-Tie Value," which is the Pseudo-Tie Value for the last hour as calculated by LADWP after the hour is over.

f. "Spinning Reserves," which is the amount of spinning reserves available from the Facility Energy. "Spinning Reserves" may be removed when and if Standards no longer require Spinning Reserves.

g. "Heart Beat Value," which counts from 0 to 100 so that the Attaining Balancing Authority and Native Balancing Authority can determine if the ICCP sends are operating correctly.

h. "Pseudo-Tie Request," which is the value requested by Developer to be delivered from the Facility Energy to the Attaining Balancing Authority.

i. "Pseudo-Tie Spinning Reserves Request," which is the amount of Spinning Reserves requested by Developer to be delivered from the Facility Energy to the Attaining Balancing Authority.

2.5 Attaining BA shall transmit the Pseudo-Tie Value by ICCP to the Native Balancing Authority. Attaining BA shall also transmit, upon request by a Transmission Provider listed in the E-Tag for the Pseudo-Tie, the Pseudo-Tie Value by ICCP to the requesting Transmission Provider.

2.6 Developer shall submit the E-Tag for the Pseudo-Tie with the amount of the transmission allocation profile equal to the lesser of the Pseudo-Tie Maximum Limit under this Agreement and the maximum capacity available under any Transmission Service Agreement.

2.7 LADWP will calculate the Last Hour Pseudo-Tie Value for real-time balancing and energy accounting.

2.8 The Last Hour Pseudo-Tie Value will be integrated on an hourly basis by LADWP such that the same Last Hour Pseudo-Tie Value is used in the EMS by the Attaining Balancing Authority and the Transmission Provider(s) for energy accounting purposes. The Last Hour Pseudo-Tie Value will be a whole MWh using truncation to integer with carry-forward of truncated amount into next hour.

2.9 If the Native Balancing Authority or any Transmission Provider(s) dispute the Last Hour Pseudo-Tie Value, LADWP and the Native Balancing Authority may discuss the accuracy of

the Last Hour Pseudo-Tie Value; provided, however, that LADWP will determine the final Last Hour Pseudo-Tie Value and Developer shall use its best efforts to verify and provide support for such value, as determined by LADWP.

2.10 For purposes of hourly energy accounting checkout to be performed between the Attaining BA and the Transmission Provider(s), the following provisions will apply:

2.10.1 The Pseudo-Tie will always be the dynamic transfer of the cumulative Developer's Facility Energy from the Power Purchase Agreement as between the Native Balancing Authority and the Attaining Balancing Authority.

2.10.2 Hourly check-outs will be done at the end of each hour between the Attaining Balancing Authority, the Native Balancing Authority, and the Transmission Provider(s) Balancing Authority(ies) pursuant to Standards.

2.11 LADWP will include, the Pseudo-Tie Value as calculated by LADWP into the EMS on the Net Actual Interchange portion of its respective Area Control Error equations.

2.11.1 LADWP will include the Pseudo-Tie Value with a positive sign in the Net Actual Interchange portion of its Area Control Error equation.

2.11.2 PNM will include the Pseudo-Tie Value with a negative sign in the Net Actual Interchange portion of its Area Control Error equation.

2.12 Developer shall be responsible for ensuring that all communications equipment associated with the Facility and necessary for implementation of the Pseudo-Tie is available and operational to the Attaining Balancing Authority and the Native Balancing Authority.

2.13 All data transfer associated with the Pseudo-Tie will be provided by ICCP and an E-Tag in accordance with the Standards.

2.14 The Developer, through the RTU required by Section 4.4 of the PPA, shall provide LADWP, as Buyer's Agent (as defined in the Power Purchase Agreement), the capability to curtail the Facility Energy, including via DNP 3 communications in accordance with Section 6.7 of the PPA.

2.15 LADWP and PNM shall coordinate to establish an ICCP link between their respective BAs in order to measure the real-time output from the Facility and account for changes in Facility output in their respective Area Control Error equations.

3 Contingency Operations

3.1 If the data source for the Pseudo-Tie Request is unavailable or determined to be unreliable by LADWP, or any communications equipment necessary for the Pseudo-Tie becomes unavailable or is determined to be unreliable by LADWP, operation of the Pseudo-Tie will continue under the following procedure pending resolution of the communications errors, unless the Parties mutually agree to suspend operation of the Pseudo-Tie:

3.1.1 If the data source between LADWP and PNM for the Pseudo-Tie Request is unavailable or determined to be unreliable by LADWP, or any communications equipment between LADWP and PNM, which is necessary for the Pseudo-Tie, becomes unavailable or is determined to be unreliable by LADWP, LADWP will promptly notify PNM of the data or communications failure. Until the data source or communications link can be restored, LADWP will hold the last known Pseudo-Tie Value for the Pseudo-Tie until it is determined to be inaccurate or a more current Pseudo-Tie Value is available.

3.1.2 If the data source between LADWP and Developer for the Pseudo-Tie Request is unavailable or determined to be unreliable by LADWP, or any communications equipment between LADWP and Developer, which is necessary for the Pseudo-Tie, becomes unavailable or is determined to be unreliable by LADWP, LADWP will promptly notify Developer of the data or communications failure. Until the data source or communications link can be restored, LADWP will hold the last known Pseudo-Tie Value for the Pseudo-Tie until it is determined to be inaccurate or a more current Pseudo-Tie Value is available.

3.1.3 Developer shall not change the Pseudo-Tie Request more frequently than once per hour unless otherwise mutually agreed upon by the Parties. LADWP may adjust the Pseudo-Tie Value if it is less than the Pseudo-Tie Minimum Limit or greater than the Pseudo-Tie Maximum Limit.

3.1.4 The Parties will cooperate in the troubleshooting of the data or communications error to identify the point(s) of failure and the responsible Party(ies). A Party whose data source or communications equipment is unavailable or unreliable will provide to the other Parties a reasonable estimate of the anticipated time to restore the data source or communications equipment.

3.1.5 If the data source or communications equipment is not expected to be restored within 24 hours, the Parties must agree on a plan to diligently restore the data source or communications equipment for the Pseudo-Tie to continue. If the Parties cannot agree upon a restoration plan, the Pseudo-Tie Request and Pseudo-Tie Value will continue to be a static value until the Parties agree that the identified data or equipment problems have been corrected and the Parties are ready to resume Pseudo-Tie Implementation.

3.1.6 In the event of any failure: (a) to provide data required by the terms of this Agreement; or (b) of communications equipment required to implement the Pseudo-Tie, each Party will promptly notify the other Parties regarding such data or communications failure.

3.2 In the event of (a) a planned or unplanned transmission outage or (b) congestion management issues on transmission listed on the E-Tag between Developer's Facility and the Attaining Balancing Authority, that disrupts the ability of LADWP to continue Pseudo-Tie Implementation, the Parties shall take action to accommodate the Pseudo-Tie notwithstanding such event and, if necessary, suspend the use of the Pseudo-Tie as directed by LADWP or an RC Service Provider for the affected area. If suspended, Developer may not transmit any Facility Energy to the Attaining BA via the Pseudo-Tie until LADWP has determined, in its sole

discretion, that the use of the Pseudo-Tie may resume and the Facility Energy will resume being transmitted to the Attaining BA.

3.3 In the event of a planned or unplanned transmission outage that affects the Pseudo-Tie Maximum Limit or Pseudo-Tie Minimum Limit applicable to the Power Purchase Agreement, LADWP will, if necessary, provide a new Pseudo-Tie Maximum Limit and a new Pseudo-Tie Minimum Limit to Developer via ICCP.

3.4 If Pseudo-Tie Implementation is suspended due to an operational contingency by LADWP or an RC Service Provider, there will be no resumption of Facility Energy to the Attaining BA via the Pseudo-Tie until the Parties agree on a time when they will resume Pseudo-Tie Implementation.

3.5 During an Emergency, the Native Balancing Authority may request either an adjustment to the Pseudo-Tie Minimum Limit or Pseudo-Tie Maximum Limit. LADWP at its sole discretion will determine whether to adjust the Pseudo-Tie Minimum or Pseudo-Tie Maximum Limit based on its safety, equipment, regulatory or statutory requirements.

3.6 Developer shall curtail output of the Facility at the sole direction of LADWP as the Attaining BA, either via SCADA, or at LADWP's discretion, via an operating instruction, without penalty to LADWP in accordance with Section 6.7 of the PPA. Developer shall install and maintain the capability to curtail through SCADA and through operating instructions.

4 BA Responsibilities and Obligations

4.1 The table below describes and outlines the responsibilities and obligations associated with the application of Pseudo-Ties related to many of the topics addressed above. In practical application, however, both the Native Balancing Authority and Attaining Balancing Authority may agree to exchange the obligations from that shown in the table below.

Balancing Area Authority Obligation	Responsible Party
Generation planning and reporting and outage coordination	Attaining BA
CPS and DCS recovery/reporting and RMS	Attaining BA
Operational responsibility	Attaining BA
BA services (FERC OATT Schedules 3-6 and other ancillary services, as required)	Attaining BA
Ancillary services associated with transmission (FERC OATT Schedules 1-2 and other ancillary services, as Required)	Attaining BA

ACE Frequency Bias calc/setting	The Native BA and Attaining BA, shall adjust their frequency bias setting to account for the frequency bias characteristics of the loads and/or resources being assigned between BAs by the Pseudo-Tie.
Load forecasting and reporting	Attaining BA
Manual load shedding during an Energy Emergency Alert (EEA)	Attaining BA
Coordination with RC Service Provider for inclusion in congestion management	Attaining BA
RC Service Provider approval or acknowledgement of the Pseudo-Tie	Native BA and Attaining BA

EXHIBIT C
to
Pseudo-Tie Agreement

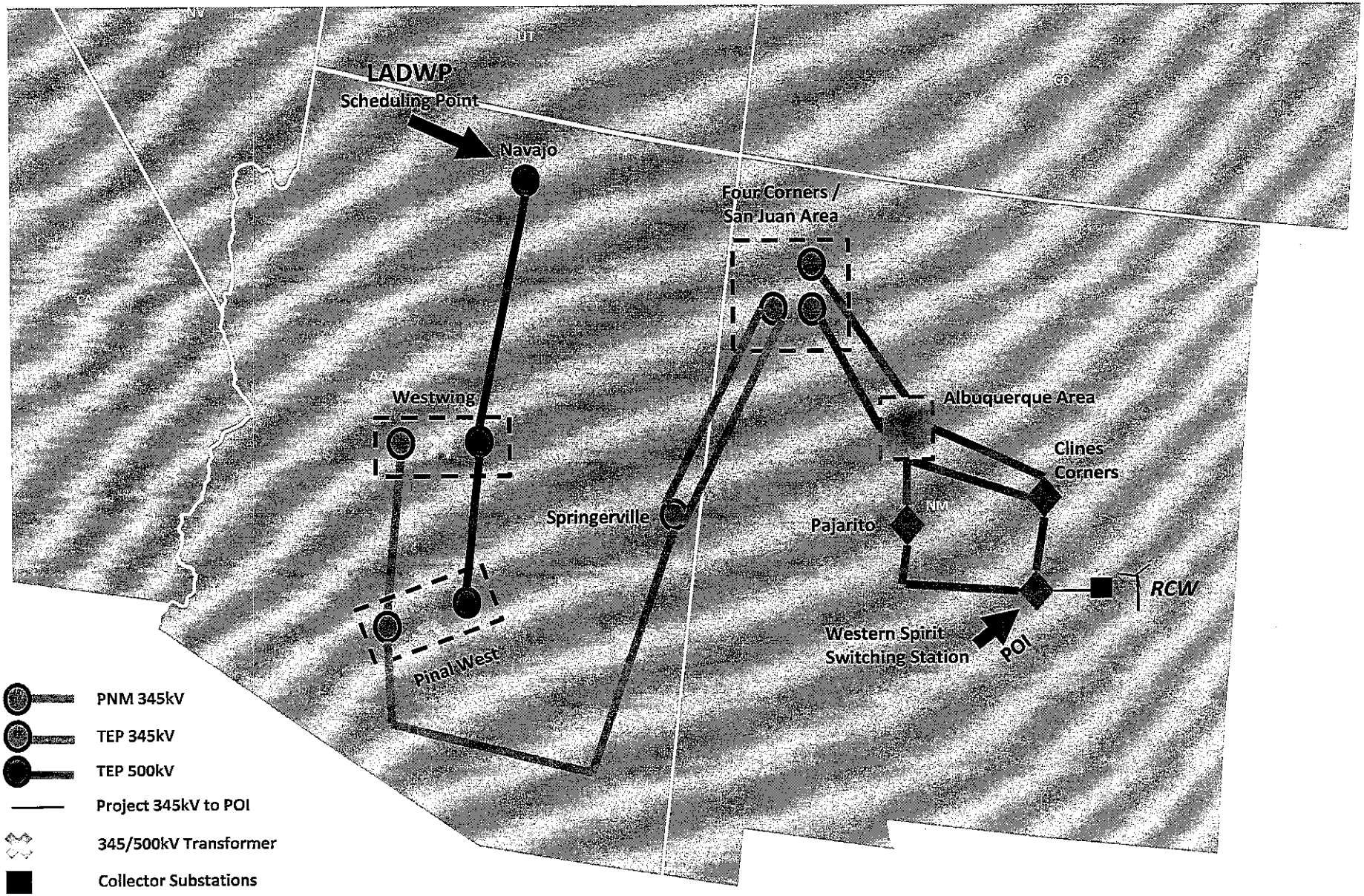
NOTICES AND REPRESENTATIVES

Party	All Notices	Scheduling	Operations
Los Angeles Department of Water and Power	Manager of Transmission Contracts 111 N. Hope St., JFB Room 1246 Los Angeles, CA 90012 (213) 367-3281 Sunaja.Lakshman@ladwp.com	Grid Operations Pre-Scheduling (818) 771-6730 Kyle.Figatner@ladwp.com	Manager of Grid Operations Energy Control Center (818) 771-6549 Robert.Kerrigan@ladwp.com
Public Service Company of New Mexico	Transmission Contracts Manager Mailstop Z220 2401 Aztec Rd. NE Albuquerque, NM 87107 (505) 241-4472 Wesley.Wilson@pnm.com	Transmission Services Coordinator (505) 241-2032 Felix.Sison@pnm.com	System Operations Manager (505) 241-2409 Don.Lacen@pnm.com
Red Cloud	Red Cloud Wind LLC 1088 Sansome Street San Francisco, CA 94111 Attn: General Counsel Facsimile No.: (415) 362-7900	Michael Heitmann Senior Manager, Power and Transmission Scheduling Main +1 713-308-4200 Direct +1 713-857-7627 Michael.Heitmann@patternenergy.com Sandy Armand Senior Real Time Power and Transmission Scheduler Mobile +1 281-660-2234 Sandy.Armand@patternenergy.com	Michael Heitmann Senior Manager, Power and Transmission Scheduling Main +1 713-308-4200 Direct +1 713-857-7627 Michael.Heitmann@patternenergy.com Chad Ringley Director, Energy Management Main +1 713-308-4200 Direct +1 713-308-4214 chad.ringley@patternenergy.com

EXHIBIT D
to
Pseudo-Tie Agreement

DIAGRAM ILLUSTRATING TRANSMISSION PATH AND EQUIPMENT OWNERSHIP

Transmission Paths for Red Cloud Wind LLC to LADWP



RCW – Red Cloud Wind LLC

APPENDIX M
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

METERING DIAGRAM

PATTERN DEVELOPMENT
1050 MW WESTERN SPIRIT WIND PROJECTS
SIMPLIFIED HV SINGLE LINE DIAGRAM WITH
PRELIMINARY REVENUE METERING LOCATIONS

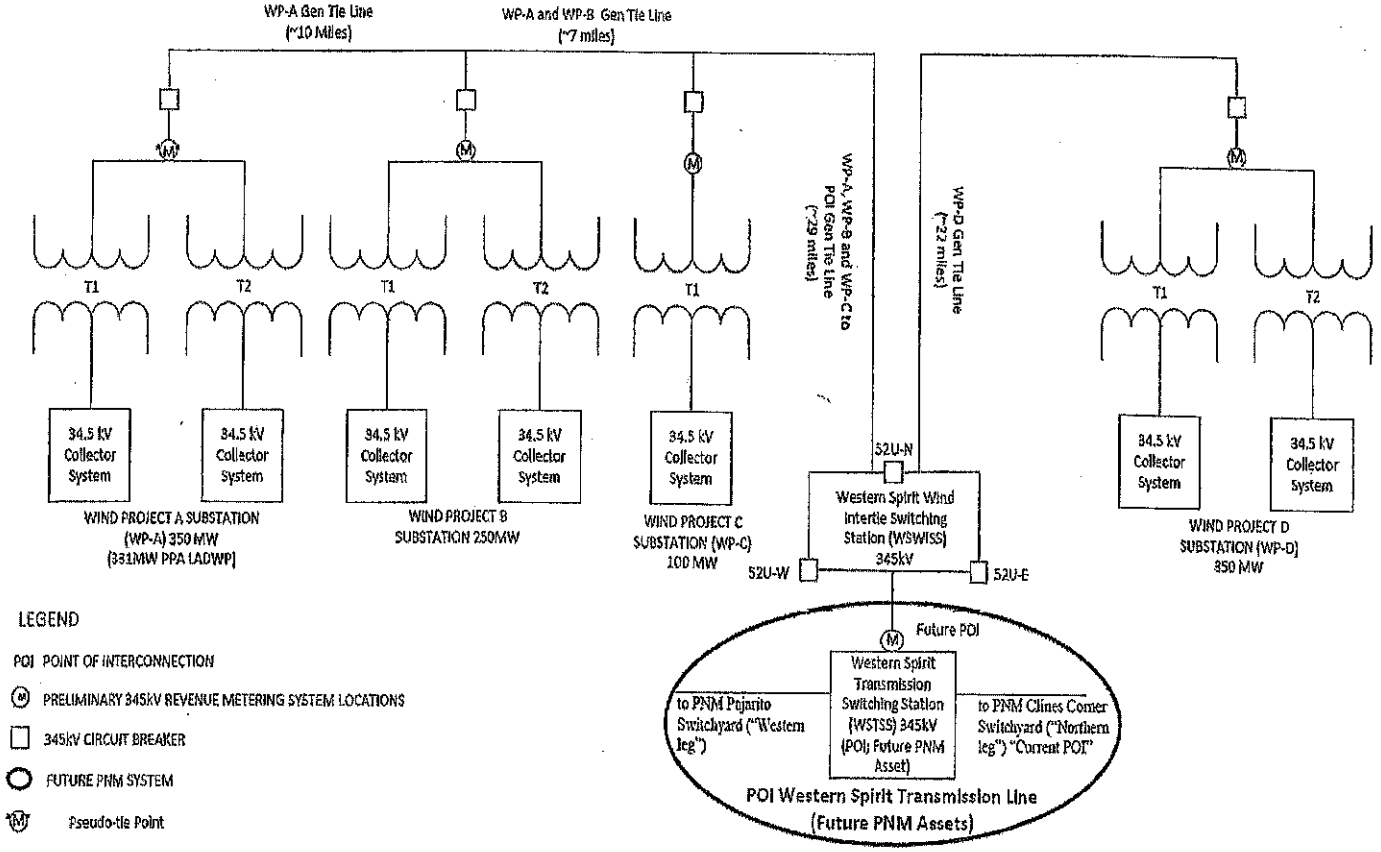


EXHIBIT E
to
Pseudo-Tie Agreement

POWER PURCHASE AGREEMENT BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY AND RED CLOUD WIND LLC

Execution Version

POWER PURCHASE AGREEMENT

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

RED CLOUD WIND LLC

DATED AS OF Nov. 12, 2020

(RED CLOUD WIND PROJECT)

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Appendices (continued)

POWER PURCHASE AGREEMENT

PARTIES

THIS POWER PURCHASE AGREEMENT ("***Agreement***"), which is dated for convenience as of this 12th day of April, 2020, is being entered into by and between the Southern California Public Power Authority, a public entity and joint powers authority formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Code Section 6500, et seq.) ("***Buyer***"), and Red Cloud Wind LLC ("***Seller***"), a limited liability company organized and existing under the laws of the State of Delaware. Each of Buyer and Seller is referred to individually in this Agreement as a "***Party***" and together they are referred to as the "***Parties***".

RECITALS

WHEREAS, Buyer's Members have adopted or are adopting policies to comply with the California Renewable Energy Resources Act that are designed to increase the amount of energy that they provide to their retail customers from eligible renewable energy resources; and

WHEREAS, on January 12, 2018, Buyer issued a request for proposals to acquire eligible renewable energy resources; and

WHEREAS, on March 28, 2018, Pattern Development responded on behalf of Seller to Buyer's request for proposals and, following negotiation, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase, certain renewable energy, capacity rights and associated environmental attributes; and

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

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and the mutual covenants and agreements herein set forth, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

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

"**193 MW COD Capacity Period**" has the meaning set forth in Section 3.6.

"**Acceptable Form of Performance Assurance**" means, at the option of Seller, either a letter of credit issued by a Qualified Issuer, substantially in the form attached hereto as Appendix E, or cash that shall be delivered in one installment to a custodian and held, for the benefit of

Buyer, pursuant to a cash escrow agreement in substantially the form attached hereto as Appendix O, which will guarantee Seller's obligations under this Agreement.

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

"**Affiliate**" means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

"**Agreement**" has the meaning set forth in the preamble of this Agreement and includes Appendices A through Y, attached hereto.

"**Agreement Term**" has the meaning set forth in Section 2.2.

"**Alternative Point of Delivery**" means the Westwing 500 Trading Hub or Westwing 500kV Switching Station.

"**Ancillary Documents**" means any agreement, instrument, certificate or other document required to be executed and delivered between Buyer or LADWP, on the one hand, and any Seller Party, on the other hand, in connection with this Agreement, including the Option Agreement.

"**ASCE**" means American Society of Civil Engineers and any successor thereto.

"**ASME**" means American Society of Mechanical Engineers and any successor thereto.

"**Assumed Daily Deliveries**" has the meaning set forth in Section 13.3(c).

"**ASTM**" means American Society for Testing and Materials and any successor thereto.

"**Attaining Balancing Authority Area**" means the Balancing Authority Area of LADWP.

"**Authorized Auditors**" means representatives of Buyer or Buyer's Agents who are authorized to conduct audits on behalf of Buyer.

"**Authorized Representative**" means, with respect to each Party, the Person designated in writing as such Party's authorized representative pursuant to Section 14.1.

"**AWS**" means American Welding Society and any successor thereto.

"**Balancing Authority**" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

"**Balancing Authority Area**" means the collection of generation, transmission, and loads within the metered boundaries of the area in which the Balancing Authority maintains load-resource balance within this area.

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

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute thereto.

"**Board of Commissioners**" means Board of Water and Power Commissioners of the City of Los Angeles created pursuant to Sections 600 and 670 of the Charter of the City of Los Angeles, as amended.

"**Brown Act**" has the meaning set forth in Section 14.20(d).

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

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

"**Buyer Instruction**" means an instruction of Buyer in connection with the operation of the Facility; provided that if Seller knows or reasonably should know that complying with an instruction of Buyer in connection with the operation of the Facility is reasonably likely to result in an Indemnified Liability, such instruction shall only be a "Buyer Instruction" if Seller uses reasonable efforts to inform Buyer of such potential Indemnified Liability prior to Seller following such instruction, and Buyer thereafter fails to timely revoke such instruction.

"**Buyer's Agent**" means any Person that Buyer may designate in writing from time to time to perform certain tasks acting as Buyer's agent, including, if designated, LADWP.

"**Buyer's Check Meters**" has the meaning set forth in Section 11.8(e).

"**Buyer's Members**" means any member of Buyer that has entered into the "Southern California Public Power Authority Joint Powers Agreement," dated as of November 1, 1980.

"**Buyer's Non-Compensable Curtailment Hours**" has the meaning set forth in Section 6.7(a).

"**CAISO**" means the California Independent System Operator Corporation.

"**Cal-OSHA**" means California Occupational Safety and Health Administration and any successor thereto.

"**CAMD**" means the Clean Air Markets Division of the EPA and any other state, regional or federal or intergovernmental entity or Person that is given authorization or jurisdiction or both

over a program involving the registration, validation, certification or transferability of Environmental Attributes.

"**Capacity Damages**" has the meaning set forth in Section 3.2.

"**Capacity Rights**" means the rights, whether in existence as of the Effective Date or arising thereafter during the Agreement Term, to capacity, resource adequacy, attributes associated with the foregoing, excluding Environmental Attributes, or reserves associated with the electric generating capability of the Facility, including the right to resell such rights.

"**CARB**" means California's Air Resources Board, and any successor agency thereto.

"**CEC**" means California's State Energy Resources Conservation and Development Commission, also known as the California Energy Commission, and any successor agency thereto.

"**CEC Certified**" or "**CEC Certification**" means that the CEC has certified that the Facility is an eligible renewable energy resource in accordance with Section 399.12(e) of the Public Utilities Code and the guidelines adopted by the CEC relating thereto.

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

"**Change in Control**" means the occurrence, whether voluntary or by operation of law and whether in a single transaction or in a series of related transactions, of any one or more of the following: (a) a merger or consolidation of Seller or any Parent Entity with or into any other Person or any other reorganization in which the members of Seller or any Parent Entity immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the equity ownership of the surviving entity or cease to have the power to control the management and policies of the surviving entity immediately after such consolidation, merger or reorganization, (b) any transaction or series of related transactions in which in excess of fifty percent (50%) of the equity ownership of Seller or any Parent Entity, or the power to control the management and policies of Seller or any Parent Entity, is transferred to another Person, (c) a sale, lease or other disposition of all or substantially all of the assets of Seller or any Parent Entity, or (d) any transaction or series of related transactions that has the substantial effect of any one or more of the foregoing; *provided, however,* that a Change in Control shall not include any transaction or series of transactions in which (i) an equity interest in or asset of Seller or any Parent Entity is issued or transferred to another Person solely for the purpose of a Tax Equity Financing, for the issuance of Facility Debt or in connection with any New Mexico Industrial Revenue Bond financing, or (ii) the membership interests in or assets of Seller or any Parent Entity are issued or transferred to any Qualified Affiliate or a Qualified Transferee.

"**Closing**" has the meaning set forth in the Option Agreement.

"**Closing Date**" has the meaning set forth in the Option Agreement.

"**Commercial Operation**" means that (a) Seller has demonstrated, and the Independent Engineer has confirmed in writing, that the conditions set forth in the Certificate of Independent Engineer attached hereto as Appendix P-1 have been met with respect to the Facility as a whole, and (b) Seller has reasonably demonstrated that any conditions on Appendix P not certified to by the Independent Engineer have been met with respect to the Facility as a whole and has delivered the certificate described in Appendix P.

"**Commercial Operation Date**" means the date on which Seller demonstrates that Commercial Operation has occurred, which date shall be set forth in the Seller certificate in accordance with Appendix P.

"**Compensable Curtailments**" has the meaning set forth in Section 6.7(a).

"**Confidential Information**" has the meaning set forth in Section 14.20(a).

"**Construction Commencement Milestone**" means the date on which Seller reasonably demonstrates that (a) Seller's general contractor has commenced installation and construction of the Facility pursuant to Seller's issuance of NTP, (b) all Permits listed in Section 8 of Appendix B have been obtained, are final and are in full force and effect and (c) the diagrams contained in Appendix U have been updated as necessary as determined by Seller.

"**Contract Capacity**" means 331 MW at the Pseudo-Tie Point (which includes an adjustment to reflect losses to the Point of Interconnection), subject to reduction in accordance with Section 3.2.

"**Contract Year**" means each of (i) the Initial Stub Year; (ii) each of the following nineteen (19) calendar years, beginning on the first day of January following the end of the Initial Stub Year and ending with the December 31 of such nineteenth (19th) calendar year; and (iii) the Final Stub Year.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies, or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

"**Corona Wind Complex**" means the up-to 2,200 MW wind energy generation site located in Lincoln, Torrance and Guadalupe Counties in New Mexico being developed as of the Effective Date by Seller and its Affiliates, including the Facility.

"**Costs**" has the meaning set forth in Section 13.3(f)(3).

"**Covid 19 Delay**" means disruptions or delays in the supply of goods, services, equipment, labor, or financing required for the development, construction, testing (including witnessing), commissioning, maintenance or operation of the Facility, or disruptions or delays in the receipt of Energy at the Point of Delivery, in each case as a result of the Covid 19 Pandemic as determined in accordance with Section 14.6(a).

"**Covid 19 Pandemic**" means the threat to public health and safety associated with Covid 19, as reflected in the national emergency declared by President Trump on March 13, 2020, and the related federal, state and local governmental actions arising directly in response thereto.

"**CPRA**" has the meaning set forth in Section 14.20(d).

"**CRO**" has the meaning set forth in Section 14.23(l).

"**Cure Period**" has the meaning set forth in Section 9.1.

"**Curtailment Election**" has the meaning set forth in Section 6.7(b).

"**Curtailment Option Price**" has the meaning set forth in Section 6.7(b).

"**Daily Delay Damages**" has the meaning set forth in Section 3.5.

"**Daily Delay Damages Cap**" has the meaning set forth in Section 3.5.

"**Day Ahead Schedule**" has the meaning set forth in Section 4.4(e).

"**Deemed Delivered Energy**" has the meaning set forth in Section 6.7(b).

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

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

"**Delivered Energy**" means the amount of Facility Energy, expressed in MWh, delivered by Seller at the Point of Delivery, which amount will not include Station Service or parasitic load, in conformance with the most-current edition of the guidebook promulgated by the CEC.

"**Delivery Term**" has the meaning set forth in Section 2.2.

"**Development Security**" has the meaning set forth in Section 5.4(a).

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

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

"**DNP**" has the meaning set forth in Section 4.4(j).

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

"**DVBE**" has the meaning set forth in Section 14.23(c).

"**Early Termination Date**" has the meaning set forth in Section 13.3(a).

"**e-tag**" has the meaning set forth in Section 7.1.

"**EBO**" has the meaning set forth in Section 14.23(k).

"**ECC**" means the LADWP Energy Control Center.

"**EEI**" means Edison Electric Institute and any successor thereto.

"**Effective Date**" has the meaning set forth in Section 2.1.

"**EIM**" means CAISO's western Energy Imbalance Market.

"**EIM Compliance Cost Cap**" has the meaning set forth in Section 8.7(b).

"**Election Notice**" means a written notice from Buyer to Seller at least ninety (90) days prior to the commencement of the applicable Contract Year.

"**Electric Metering Devices**" means all meters, metering equipment and data processing equipment conforming to the requirements set forth in Section 11.8(a) and Section 11.8(b) and used to measure, record or transmit data relating to the Energy output from the Facility. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

"**Energy**" means electrical energy.

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

"**Environmental Attributes**" means RECs, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated (A) that are at any time recognized or deemed of value (or both) by Buyer, applicable law, or any voluntary or mandatory program of any Governmental Authority or other Person and (B) that are attributable to (i) Facility Energy generation capability or generation during the Agreement Term or Replacement Energy delivered by Seller to Buyer during the Delivery Term and (ii) the emissions or other environmental characteristics of such Facility Energy generation or such Replacement Energy or its displacement of conventional or other types of Energy generation. Environmental Attributes include any of the aforementioned arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the "***UNFCCC***"), the Kyoto Protocol to the UNFCCC, the principles identified in the Paris Agreement of the UNFCCC that took effect in 2016, the Clean Power Plan promulgated by the United States Environmental Protection Agency, California's greenhouse gas legislation (including RPS Law and California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to that act, including any compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations of the

California Air Resources Board or any successor regulations thereto) or any similar international, federal, state or local program or crediting "early action" with a view thereto, laws or regulations involving or administered by the CAMD and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as renewable energy certificates of any kind. Environmental Attributes for purposes of this definition are separate from the Energy produced from the Facility. Notwithstanding any other provision in this definition, Environmental Attributes do not include (X) any production tax credits, investment tax credits or any other tax credits associated with the Facility or (Y) any grants or any similar benefits related to the Facility.

"**Environmental Laws**" means any federal, state or local laws (including common law), statutes, ordinances, rules, regulations, binding orders, injunctions or judgments pertaining to pollution, or the presence of or release of Hazardous Materials on, under or about the Site.

"**EPA**" means the United States Environmental Protection Agency and any successor agency.

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

"**EPS Law**" means Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, or any successor laws or regulations in the State of California.

"**Excess Energy**" means, subject to Section 9.3, the portion of the Delivered Energy and Deemed Delivered Energy for any Contract Year that is in excess of one hundred ten percent (110%) of the Expected Annual Generation.

"**Excess Energy Rate**" means the price per MWh ($/MWh) to be paid to Seller by Buyer for Excess Energy according to the provisions in Appendix A.

"**Expected Annual Generation**" means the MWh per year as set forth in Appendix T.

"**Facility**" means the separately-metered up-to 350 MW total nameplate capacity wind-powered electric generating facility located in Lincoln, Torrance and Guadalupe Counties, New Mexico, including all property interests and related transmission and other facilities, described in Appendix B.

"**Facility Assets**" means all or any portion of the Facility or related assets.

"**Facility Cost**" means, measured as of the applicable measurement date, the aggregate amount of all costs and expenses incurred by Seller for the development, design, engineering,

equipping, procuring, constructing, installing, starting up and testing the Facility, including (a) the cost of all labor, services, materials, supplies, equipment, tools, transportation, supervision, storage, training, demolition, site preparation, civil works, and remediation in connection therewith, (b) the cost of acquiring the leasehold interest and any other property, easement or other interest in the Site, (c) the cost of acquiring the Permits for the Facility and (d) the cost of establishing a spare parts inventory for the Facility, if any, net of revenue from Startup and Test Energy.

"**Facility Debt**" means, measured as of the applicable measurement date, any payment obligations of Seller in connection with borrowed money, including (a) principal of and premium on indebtedness, (b) fees, charges, expenses and penalties related to indebtedness, (c) swap or interest rate hedging breakage costs and (d) any claims or interest due with respect to any of the foregoing. Facility Debt does not include any Tax Equity Financing or the indebtedness of any Seller Affiliate for which Seller has no liability.

"**Facility Energy**" means Energy generated by the Facility as measured at the Pseudo-Tie Point (which measurement will include an adjustment for losses to the Point of Interconnection).

"**Facility Lender**" means any lender providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation, operation, leasing or ownership of the Facility or the Portfolio, including any equity or tax investor providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, or any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

"**Facility Study**" means the engineering study conducted by TEP to determine the required modifications to TEP's Transmission System, including the cost and scheduled completion date for such modifications, that will be required to provide the requested Transmission Service from TEP to Seller, or an Affiliate of Seller, for the incremental additional 138 MW of Transmission Service required to deliver the Contract Capacity to Buyer.

"**FERC**" means the Federal Energy Regulatory Commission or any successor agency thereto.

"**Final Stub Year**" means the period beginning on the first day of January following the nineteenth (19th) full calendar year after the Commercial Operation Date and ending at 24:00 hours on the date that, together with the number of days in the Initial Stub Year, would be equal to three hundred sixty-five (365) days.

"**Financing Agreement**" shall mean any credit agreement, loan agreement or similar agreement, to be executed between Seller and a Facility Lender.

"**Firm Transmission**" means transmission that cannot be curtailed within an operating hour for economic reasons or for higher priority transmission within the operating hour.

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

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

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

"**FTP**" has the meaning set forth in Section 4.4(a).

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

"**Gains**" has the meaning set forth in Section 13.3(f)(1).

"**Generator Interconnection Agreement**" means that certain large generator interconnection agreement and associated documents (or any successor agreement and associated documentation) by and between Seller and Transmission Provider governing the terms and conditions of Seller's interconnection with the Transmission System.

"**Governmental Authority**" means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, other governmental, regulatory or administrative agency, court, commission, administration, department, board, other governmental subdivision, legislature, rulemaking board, tribunal, other governmental authority or any Person acting as a delegate or agent of any Governmental Authority. For the purposes of this Agreement, neither Buyer nor LADWP will be considered a Governmental Authority.

"**Green Value**" consists of the market value of (a) avoided greenhouse gas emissions and/or credits associated with RPS Compliant Energy, and (b) all other Environmental Attributes and avoided-emissions-related attributes and benefits that would otherwise have been realized had Seller generated Facility Energy, and shall be calculated as an amount equal to the time-weighted average of the prices of greenhouse gases and other Environmental Attributes (as published in commercial indices related to California energy markets) that would have been realized for each MWh of the Shortfall Energy, *provided that,* if for any Contract Year there does not exist a liquid trading market that is mutually agreeable to the Parties to determine such Green Value, the Green Value will be equal to the lesser of the replacement cost for the attributes described in clauses (a) and (b) above, expressed in $/MWh, or $15/MWh.

"**Guaranteed Commercial Operation Date**" or "**GCOD**" means December 31, 2021, as such date may be extended as a result of Force Majeure or Buyer's failure to perform its obligations under this Agreement.

"**Guaranteed Delivered Energy**" means an amount of Delivered Energy equal to one hundred sixty percent (160%) of the Expected Annual Generation during any Measurement Period, as set forth in Appendix T.

"**Hazardous Materials**" means any hazardous substances, pollutants, contaminants, wastes, or materials (including petroleum (including crude oil or any fraction thereof), petroleum wastes, radioactive materials, hazardous wastes, toxic substances, or asbestos or any materials containing asbestos) designated, regulated, or defined under any Environmental Law.

"**ICCP**" has the meaning set forth in Section 11.8(b).

"**IEEE**" means Institute of Electrical and Electronics Engineers and any successor thereto.

"**Indemnified Liability**" has the meaning set forth in Section 14.18(a).

"**Indemnitee**" has the meaning set forth in Section 14.18(a).

"**Independent Engineer**" means DNV GL, or such other engineer as may be jointly selected by Seller and Buyer's Authorized Representative following a request by either Party.

"**Initial Stub Year**" means the period beginning on the Commercial Operation Date and ending at 24:00 hours on December 31 in the year during which the Commercial Operation Date occurs.

"**Installed Capacity**" means the actual net generating capacity of the Facility at the Pseudo-Tie Point, not to exceed the Contract Capacity, as evidenced by the certificate provided in accordance with Appendix P hereto.

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

"**Interest Rate**" has the meaning set forth in Section 11.5.

"**ISA**" means Instrument Society of America and any successor thereto.

"**Key Milestones**" means the Construction Commencement Milestone and the Guaranteed Commercial Operation Date.

"**Knowledge**" means the actual knowledge, after due inquiry, of any officer or any other agent, employee or representative of Seller responsible for the management of the operation or maintenance of the Facility.

"**LADWP**" means the Los Angeles Department of Water and Power.

"**Legal Opinion**" means an executed original of a written legal opinion of Winston & Strawn LLP, counsel for Seller, or other counsel reasonably acceptable to Buyer, addressed to Buyer and in form and substance reasonably acceptable to Buyer, concerning, among others, the enforceability and due authorization of this Agreement, and the other Ancillary Documents that are agreements between the Parties, dated as of the Effective Date, in form and substance reasonably similar to the form attached hereto as Appendix V.

"**Lessor**" means the lessor or landowner under any Real Property Agreement.

"**LGBTBEs**" has the meaning set forth in Section 14.23(c).

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

"**Losses**" has the meaning set forth in Section 13.3(f)(2).

"**Major Equipment Failure**" means the failure of one or more of the wind-powered electric generation facility assets (excluding any transmission assets that are downstream from the Pseudo-Tie Point) that materially reduces the generation capacity of the Facility and that, according to a certificate from an Independent Engineer delivered by Seller to Buyer, cannot be reasonably expected to be repaired using commercially reasonable efforts within four (4) months of its occurrence, but can be reasonably expected to be repaired using commercially reasonable efforts within twenty-four (24) months of its occurrence.

"**Major Maintenance Blockout**" has the meaning set forth in Section 4.4(k).

"**Market Price Index**" means the yearly average of the daily 24-hour weighted average of the "on-peak" and "off-peak" prices for each day, weighted by the number of hours in the on-peak and off-peak periods, and the expected monthly energy production values reflected in Table 2 of Appendix T, published by the Intercontinental Exchange ("ICE") for transactions at Palo Verde, plus $2.00 (Navajo Premium). In the event that there are no longer on-peak and off-peak market prices for Energy (not including Environmental Attributes) transactions at Palo Verde published by ICE, the Parties will mutually agree to a replacement market price index that most closely reflects Energy (not including Environmental Attributes) transactions at the geographic location of the Palo Verde market as of the Effective Date. If a market price index for Energy (not including Environmental Attributes) that would more accurately track the prevailing market price of the Delivered Energy at Navajo is created, the Parties may mutually agree to adopt such index as the Market Price Index at such time.

"**MBE**" has the meaning set forth in Section 14.23(c).

"**Measurement Period**" means a period of two (2) consecutive Contract Years. For the purposes of Article IX, (a) the Initial Stub Year shall, together with the first calendar year following the Initial Stub Year, be treated as a single Contract Year, and (b) the Final Stub Year shall, together with the nineteenth (19th) calendar year, be treated as a single Contract Year.

"**Milestone**" has the meaning set forth in Section 3.4.

"**Milestone Date**" has the meaning set forth in Section 3.4.

"**Monthly Report**" means the report required to be delivered by Seller pursuant to Section 4.6 in form and substance substantially similar to Appendix K.

"**MW**" means megawatt(AC).

"**MWh**" means megawatt-hour.

"**Native Balancing Authority Area**" means the Balancing Authority Area of Public Service Company of New Mexico.

"**NERC**" means the North American Electric Reliability Corporation and any successor thereto.

"**NERC Reliability Standards**" means the reliability standards developed by NERC or by any regional authority having jurisdiction, which are applicable to the owner or operator of the Facility or the Facility itself.

"**Net Worth**" means, measured as of the applicable measurement date, the sum in dollars of (a) the aggregate paid in capital (including additional paid in capital), (b) accumulated other comprehensive income or loss, (c) accumulated surplus or deficit, (d) minority interests and (e) any other account which constitutes owner's equity, of a Person, determined in accordance with GAAP, consistently applied.

"**New Resource Implementation**" means the process and requirements established by the Balancing Authority for the Attaining Balancing Authority Area similar in kind and cost to those as set forth by CAISO for interconnection projects to successfully complete resource implementation to the CAISO grid.

"**NMPRC**" has the meaning set forth in Section 12.5(h).

"**Non-Compensable Curtailments**" has the meaning set forth in Section 6.7(a).

"**Non-Consolidation Opinion**" means a reasoned opinion of Seller's legal counsel, a law firm on The American Lawyer's list of the one hundred highest-grossing law firms for the most recent year (Am Law 100), substantially in the form attached hereto as Appendix Y or in another form reasonably acceptable to Buyer, addressed to Buyer on a date that is no more than ten (10) Business Days after the Effective Date, as to the non-consolidation of Seller in a bankruptcy proceeding of Pattern SC Holdings LLC.

"**Non-Defaulting Party**" has the meaning set forth in Section 13.3(a).

"**Notice of Proposed Third Party Sale**" has the meaning set forth in Section 14.25(b).

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

"**NTP**" means a full notice to proceed issued by Seller to its general contractor for the commencement of installation and construction of the Facility pursuant to which such general contractor is obligated to commence the installation and construction of the Facility.

"**OATT**" means the applicable Person's then-effective Open Access Transmission Tariff.

"**OBE**" has the meaning set forth in Section 14.23(c).

"**Operation and Maintenance Plan**" has the meaning set forth in Section 4.3(a).

"**Option Agreement**" means that certain Option Agreement of even date herewith executed substantially in the form set forth in Appendix J, as such Option Agreement may be amended, supplemented or otherwise modified from time to time.

"**OSHA**" means Occupational Safety and Health Administration of the United States Department of Labor and any successor thereto.

"**Outside COD**" has the meaning set forth in Section 3.5.

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

"**Parent Entity**" or "**Parent Entities**" mean an entity (i) that has direct or indirect Control over Seller and (ii) the Net Worth of which is no greater than three (3) times the Net Worth of Seller.

"**Participating Member**" means the LADWP, the member of Buyer participating in this Agreement.

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

"**Performance Assurance**" means Development Security or Performance Security.

"**Performance Security**" has the meaning set forth in Section 5.4(b).

"**Permit**" means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, certifications, self-certifications, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described which are required to be filed, submitted, obtained or maintained by a Governmental Authority with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Facility, the production, sale and delivery of Facility Energy or Replacement Energy to Buyer, as applicable, Capacity Rights and Environmental Attributes or any other transactions or matters contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements), including those described in Appendix B.

"**Permitted Encumbrances**" means (i) any Lien approved by Buyer in a writing separate from this Agreement which expressly identifies the Lien as a Permitted Encumbrance; (ii) Liens for Taxes not yet due or for taxes being contested in good faith by appropriate proceedings, so long as such proceedings do not involve a material risk of the sale, forfeiture, loss or restriction on the use of the Facility or any part thereof; (iii) suppliers', vendors', mechanics', workman's, repairman's, employees' or other like Liens, or Liens incurred in connection with worker's compensation, unemployment insurance, social security and other Requirements of Law, arising in the ordinary course of business for work or service performed or materials furnished in connection with the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings so long as such proceedings do not involve a material risk of the sale, forfeiture, loss or restriction on the use of the Facility or any part thereof; (iv) leases, licenses, easements, rights of way (including easements, licenses and rights of way for utilities), use rights, exceptions, encroachments, reservations, restrictions,

conditions or limitations, and other minor non-monetary title defects and zoning, entitlement, building and other land use regulations imposed by Governmental Authorities, so long as they have been identified by Seller to Buyer in writing prior to the Effective Date or have been entered into in the ordinary course of business and, in each case, do not materially interfere with or impair the operation of the Facility as contemplated by this Agreement or Buyer's ability to purchase the Facility pursuant to the Option Agreement; (v) any Shared Facilities Agreement entered into in accordance with this Agreement and the Option Agreement; (vi) Liens securing (a) loans made by a Facility Lender providing construction or term financing for the Facility or providing letters of credit for the benefit of the Facility and any loan in replacement or substitution of any of the foregoing, (b) other indebtedness permitted under the terms of the loans described in item (vi)(a) of this definition, and (c) any other indebtedness (other than from a Facility Lender or an Affiliate of a Facility Lender) not to exceed Five Million Dollars ($5,000,000) in aggregate outstanding principal amount, in each such case, incurred for the purpose of working capital or operating reserves in connection with the construction and/or operation of the Facility, or for any other purpose not inconsistent with this Agreement; (vii) Liens to secure mandatory statutory obligations of performance of bids, tenders, Seller's obligations under this Agreement or any Real Property Agreement, or for purposes of like general nature in the ordinary course of business, so long as they do not materially interfere with or impair the operation of the Facility as contemplated by this Agreement or Buyer's ability to purchase the Facility pursuant to the Option Agreement; (viii) Liens arising out of any judgment or award so long as such judgment or award is subject to being contested and does not otherwise constitute a Default under Section 13.1; (ix) Liens created in accordance with the Option Agreement; (x) farm tenant leases which are legally or contractually subordinate to the applicable Real Property Agreements; (xi) Liens securing payment of premiums on insurance to be paid in accordance with Appendix F, provided, however, that the amount of such Lien shall not exceed the amount of the premium being financed at such time and related taxes, fees and assessments, and any recourse with respect to such Lien shall be limited to the insurance proceeds that are payable in respect of such insurance premium which is being financed; and (xiii) Liens granted pursuant to Section 5.4 of this Agreement on the Performance Security (as defined therein), any other cash collateral or cash equivalent collateral posted pursuant thereto and any interest thereon or proceeds thereof.

"**Permitted Transfer**" has the meaning set forth in Section 14.25.

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

"**Point of Delivery**" means the point where any Energy sold and purchased under this Agreement is required to be delivered by Seller to Buyer. The Point of Delivery means any of the Navajo 500kV switchyard, the Alternative Point of Delivery, or such other point of delivery as may mutually be agreed upon by the Parties.

"**Point of Interconnection**" means any of the interconnection points shown in Appendix M.

"**Portfolio**" means the electrical energy generating assets and related assets and entities, including the Facility (or the interests of Seller or the interests of its direct or indirect parent

companies), owned or leased by Seller or Qualified Affiliates, that are pledged as collateral security in connection with a Portfolio Financing.

"**Portfolio Financing**" means debt incurred by Seller or an Affiliate of Seller that is secured only by the Portfolio.

"**Post-Option O&M Plan**" has the meaning set forth in Section 4.5(a).

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

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

"**Production Tax Credit**" or "**PTC**" means the production tax credit for wind-powered electric generating facilities described in Section 45 of the Internal Revenue Code of 1986, as amended.

"**Project Purchase Option**" means the right, but not the obligation, of Buyer, in its sole discretion, to purchase the Purchased Assets and certain related assets from Seller in accordance with the provisions of the Option Agreement.

"**Project Substation**" has the meaning set forth in Section 11.8(a).

"**Proposed Purchase Notice**" has the meaning set forth in Section 14.25(a).

"**Proposed Sale Notice**" has the meaning set forth in Section 14.25(a).

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

"**Pseudo-Tie**" means a functionality by which the output of a generating unit physically interconnected to the electric grid in a Native Balancing Authority Area is telemetered to, and deemed to be produced in, an Attaining Balancing Authority Area that provides Balancing Authority services for and exercises Balancing Authority jurisdiction over the Pseudo-Tie generating unit.

"**Pseudo-Tie Agreements**" means those agreements and related documents that are required to be entered into or delivered by or among the Native Balancing Authority Area and the Attaining Balancing Authority Area to establish and maintain a Pseudo-Tie for the Facility as required hereunder.

"**Pseudo-Tie Point**" means the Electric Metering Devices installed, owned (or leased) and maintained by the Seller at the high side of the step-up transformer at the Facility substation and as depicted and labeled "Revenue Metering System" in the single-line diagram in Appendix U.

"**Public Sector Pension Investment Board**" means the Public Sector Pension Investment Board, a Canadian Crown corporation formed under the Public Sector Pension Investment Board Act (Canada), with its head office located in Ottawa, Ontario.

"**Public Utilities Code**" means the Public Utilities Code of the State of California, as amended from time to time, and any successor thereto.

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

"**PUC Performance Standard**" means, at any time, the greenhouse gas emission performance standard in effect at such time for baseload electric generation facilities owned or operated (or both) by load-serving entities and not local publicly-owned electric utilities, or for which a load-serving entity and not a local publicly owned electric utility has entered into a contractual agreement for the purchase of power from such facilities, as established by the PUC or other Governmental Authority under the EPS Law.

"**Purchased Assets**" means the Facility Assets that Buyer may purchase pursuant to the Option Agreement.

"**Q/A**" has the meaning set forth in Appendix H.

"**Q/C**" has the meaning set forth in Appendix H.

"**Qualified Affiliate**" means any Affiliate of Seller that is or directly or indirectly retains a Qualified Operator.

"**Qualified Issuer**" means a U.S. Issuer Bank that has a current long-term credit rating (corporate or long-term senior unsecured debt) of (1) "A2" or higher by Moody's Investors Service, Inc. and "A" or higher by Standard & Poor's, if rated by both rating agencies; or (2) "A2" or higher by Moody's Investors Service, Inc. or "A" or higher by Standard & Poor's, if rated by only one rating agency.

"**Qualified Operator**" means a Person that has at least four (4) years of operating experience within the eight (8) years prior to the date of determination, with types of generation facilities similar to the Facility that, in the aggregate, have a capacity in excess of 500 MW, at least one generation facility of which has a capacity greater than or equal to 100 MW.

"**Qualified Transferee**" means a Person (a) that is not engaged in a dispute with SCPPA or the Participating Member, which dispute involves at a minimum the institution of a formal

dispute resolution proceeding under a contract or a judicial process and involves claims that in the aggregate exceed One Hundred Thousand Dollars ($100,000), and (b) with a Net Worth equal to or greater than One Hundred Million Dollars ($100,000,000) and that is or directly or indirectly retains a Qualified Operator. Notwithstanding anything to the contrary, Pattern Energy Group Inc., the Public Sector Pension Investment Board, and their successors are Qualified Transferees.

"**Quality Assurance Program**" has the meaning set forth in Section 5.3.

"**Quality Plan**" has the meaning set forth in Appendix H.

"**Quarterly Certificate**" has the meaning set forth in Section 12.5(d).

"**Real Property Agreements**" means the real property agreements relating to the Site listed in Appendix L.

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

"**RECs**" or "**Renewable Energy Credits**" means a certificate of proof associated with the generation of electricity from an RPS Compliant eligible renewable energy resource, which certificate is issued through the accounting system established by the CEC pursuant to the RPS Law, evidencing that one (1) MWh of Energy was generated from such eligible renewable energy resource. Such certificate is a tradable environmental commodity (also known as a "green tag" or "renewable energy credit") for which the owner of the REC can prove that it has purchased renewable Energy.

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

"**Remedial Action Plan**" has the meaning set forth in Section 3.7.

"**Replacement Energy**" has the meaning set forth in Section 9.2.

"**Requirement of Law**" means federal, state and local laws, statutes, regulations, rules, codes, ordinances, resolutions, standards, directives, orders, judgments, decrees, rulings or determinations enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority (including those pertaining to electrical, building, zoning, Environmental Laws, and occupational safety and health requirements).

"**Right of First Offer**" or "**ROFO**" has the meaning set forth in Section 14.25.

"**RPS Compliance Cost Cap**" has the meaning set forth in Section 8.7(a).

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

"**RPS Law**" means the California Renewable Energy Resources Act (also known as Senate Bill or SB X1-2), the Clean Energy and Pollution Reduction Act of 2015 (also known as SB 350) and The 100 Percent Clean Energy Act of 2018 (also known as SB 100), including the California Renewables Portfolio Standard Program (Article 16, commencing with Section 399.11, of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code) along with the Renewable Energy Resources Program administered by the CEC and established pursuant to Chapter 8.6, commencing with Section 25740, of Division 15 of the Public Resources Code, and all policies established pursuant to Section 454.53 of the Public Utilities Code, any related regulations or guidebooks promulgated by the CEC, CARB, and, as applicable, the PUC, and as all of the foregoing may be promulgated, implemented or amended from time to time, and any successor or replacement laws or regulations.

"**RTU**" has the meaning set forth in Section 4.4(a).

"**Sales Price**" has the meaning set forth in Section 6.3.

"**SBE**" has the meaning set forth in Section 14.23(c).

"**SCADA**" has the meaning set forth in Section 4.4(a).

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

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

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

"**Scheduler**" means the Persons doing Scheduling for each Party.

"**Scheduling Procedures**" has the meaning set forth in Section 4.4(a).

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

"**Seller Party**" means Seller and each Affiliate of Seller that has entered into an Ancillary Document, which Seller Party shall be identified in Appendix X, as updated by Seller from time to time.

"**SFPO**" has the meaning set forth in Section 14.23(m).

"**Shared Facilities Agreement**" means an agreement between Seller and one or more Qualified Affiliates, and their permitted successors and assigns, and potentially an additional party to serve as a manager or operator, providing for the joint ownership or use of assets, in each case, on commercially reasonable terms, required for the interconnection, transmission, metering, transformation or operation of the Facility and the generating facilities of the other generating facility owners or lessees.

"**Shortfall**" has the meaning set forth in Section 9.1.

"**Shortfall Damages**" has the meaning set forth in Section 9.4.

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

"**Site**" means the real property (including all fixtures and appurtenances thereto), water, and related physical and intangible property generally identified in Appendix B as owned or leased by Seller where the Facility is located or will be located, and including any easements, rights-of-way or contractual rights held or to be held by Seller for transmission lines or roadways servicing such Site or the Facility located (or to be located) thereon.

"**Site Control**" means that Seller shall: (i) own the Site; (ii) be the grantee or licensee of one or more easements with respect to the Site, which, in each case, permit Seller to perform all of its obligations under this Agreement and, as applicable, the other Ancillary Documents; (iii) be the lessee under one or more leases with any Person not an Affiliate of Seller (or, if made with an Affiliate of Seller, such lease is (a) made on an arms-length basis on marketable terms and (b) does not interfere with Buyer's ability to purchase the Facility pursuant to the Option Agreement) with respect to the Site which permit Seller to perform all of its obligations under this Agreement and the Ancillary Documents; or (iv) have otherwise provided evidence satisfactory to Buyer of Seller's exclusive right to control the Site so as to permit Seller to perform all of its obligations under this Agreement and the Ancillary Documents to which it is a party, each of the foregoing clauses (i) through (iv), for the Agreement Term; or any combination of (i) through (iv).

"**Special Purpose Entity**" means a limited liability company which at all times prior to, on and after the date hereof:

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

(b) was, is and will be organized solely for the purpose of acquiring, developing, constructing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Facility, including entering into and performing its obligations under this Agreement with Buyer and taking other actions in connection with the foregoing;

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

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

(e) has held itself out and will hold itself out to the public as a legal entity separate and distinct from any other entity, and will make reasonable efforts to correct misunderstandings regarding the separate identity of such entity that could have a material adverse effect on its standing as a Special Purpose Entity;

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

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

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

(i) (1) has not made and will not make loans or advances to any Person, or hold evidence of indebtedness issued by any other Person (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity), unless such activities are done on commercially reasonable terms solely in furtherance of the development, construction, ownership, leasing, operation or maintenance of the Facility and would not reasonably be expected to have a material adverse effect on its standing as a Special Purpose Entity, and (2) has not made and will not make any unlawful gifts or fraudulent conveyances to any Person;

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

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

(l) has not had and will not have any obligation to indemnify, and has not indemnified and will not indemnify its officers, manager or members, as the case may be, other than its officers, manager or members in relation to their duties arising from the development, financing, construction, ownership, leasing, operation or maintenance of the Facility;

(m) does not and will not have any of its obligations guaranteed by any Affiliate and will not hold itself out as being responsible for the debts or obligations of any other Person, except in connection with the development, financing, construction, ownership, leasing, operation or maintenance of the Facility;

(n) has complied and will comply with all of the terms and provisions contained in its organizational documents at all times and has done or caused to be done and will do all things necessary to preserve its existence;

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

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

(q) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP;

(r) has paid and will pay its own liabilities and expenses out of its own funds and assets;

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

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

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

(v) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including but not limited to paying for shared space and services performed by any employee of an Affiliate;

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

(x) has not pledged and will not pledge its assets for the benefit of any other Person other than Facility Lender; *provided, however*, that this item will not restrict (i) pledges made in connection with indebtedness permitted under item (z) of this definition; (ii) pledges to secure mandatory statutory obligations or performance of bids, tenders, obligations under contractual agreements or leases or for purposes of like general nature in the ordinary course of business; (iii) to the extent any liens on deposits made in the ordinary course of business with an interconnection or Transmission Provider constitute a pledge, then such liens; or (iv) to the extent constituting a pledge, liens securing payment of premiums on insurance.

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

(z) has and will have no indebtedness for borrowed money other than (i) loans made by a Facility Lender providing construction or term financing for the Facility or providing letters of credit for the benefit of the Facility and any loan in replacement or substitution of any of the foregoing; (ii) other loans permitted under the terms of the loans described in item (i) of this subsection (z); and (iii) any other indebtedness (other than from a Facility Lender or an Affiliate of a Facility Lender) not to exceed Five Million Dollars ($5,000,000) in aggregate outstanding principal amount, in each such case, incurred for the purpose of working capital or operating reserves in connection with the construction and/or operation of the Facility, or for any other purpose not inconsistent with this Agreement; and

(aa) has had, now has, and will have articles of organization, a certificate of formation or an operating agreement, as applicable, that provides that it will not: (i) dissolve, liquidate or consolidate; (ii) amend its organizational documents with respect to the matters set forth in this definition; or (iii) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest, in each case of (i) or (iii) unless the value of the assets of Seller is less than the value of Seller's liabilities.

"**Startup and Test Energy**" means the amount of Delivered Energy, in MWh, that is delivered prior to the Commercial Operation Date.

"**Station Service**" has the meaning set forth in the guidebook promulgated by the CEC, as amended from time to time, or in other RPS Law, whichever is controlling.

"**System Emergency**" means, in the judgment of the Transmission Provider, (a) a condition or situation that (i) is imminently likely to endanger life or property, or (ii) is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security or reliability of, or damage to, the Facility, the Transmission System, Transmission Provider's interconnection facilities as defined in the Generator Interconnection Agreement, or the transmission systems of others to which the Transmission System is directly connected; or (b) an "Emergency Condition" as defined in the Transmission Provider's OATT.

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

"**Tax Equity Financing**" means, with respect to Seller or an upstream Affiliate of Seller, any transaction or series of transactions resulting in (i) tax attributes based upon energy production from or investment in the Facility being issued or otherwise provided to another Person (a "***Tax***

Equity Investor") in exchange for capital contributions to Seller or an upstream Affiliate of Seller, as applicable, and (ii) the Tax Equity Investor being allocated a necessary share of profits and losses of Seller or an upstream Affiliate of Seller, as applicable, to achieve the associated allocations of tax attributes to the Tax Equity Investor.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

"**TEP**" means the Tucson Electric Power Company and its successors.

"**TEP Required Upgrades**" means the installation and commissioning by Tucson Electric Power of (a) a 345/500 kV transformer at the Pinal West Substation, (b) a 345/500 kV transformer at the Westwing Substation, and (c) other upgrades and improvements described in the Facility Study.

"**Termination Notice**" has the meaning set forth in Section 13.3(a).

"**Termination Payment**" has the meaning set forth in Section 13.3(d).

"**Transmission Provider(s)**" means the Person(s) operating the Transmission System(s) providing Transmission Services to or from the Point of Delivery.

"**Transmission Services**" means the transmission and other services required to transmit Energy to or from the Point of Delivery.

"**Transmission Services Agreement**" an agreement for Transmission Services with a Transmission Provider.

"**Transmission System**" means the facilities utilized to provide Transmission Services.

"**Unexcused Cause**" has the meaning set forth in Section 14.6(b).

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

"**U.S. Issuer Bank**" means any issuer of a letter of credit that is organized under the laws of the United States or any state thereof.

"**WBE**" has the meaning set forth in Section 14.23(c).

"**WECC**" means the Western Electricity Coordinating Council and any successor entity thereto.

"**Western Spirit Transmission Line**" means the approximately one hundred fifty mile 345 kV transmission line to be constructed from the Public Service Company of New Mexico's Clines Corner Switching Station in Santa Fe County, New Mexico to the Public Service Company of New Mexico's Pajarito Switching Station to be constructed in Bernalillo County, New Mexico.

"**WREGIS**" means Western Renewable Energy Generation Information System, any successor thereto, including any replacement system required by the CEC, or any replacement system as determined by Buyer.

"**WREGIS Certificates**" has the meaning set forth in Section 8.4.

"**WREGIS Operating Rules**" means the rules describing the operations of WREGIS, as published by WREGIS and as may be amended from time to time.

"**WREGIS Withhold Amount**" has the meaning set forth in Section 11.4.

Other terms defined herein have the meanings so given them in this Agreement.

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

(a) the singular number includes the plural number and vice versa;

(b) reference to any Person includes such Person's successors and assigns but, in the case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(c) reference to any gender includes the other;

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

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

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

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

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

(i) reference to time shall always refer to Pacific Prevailing Time;

(j) reference to any "day" or "month" shall mean a calendar day or calendar month respectively, unless otherwise indicated, and assumes the use of Pacific Prevailing Time to determine the start and end of each referenced "day" or "month", unless otherwise indicated;

(k) the term "or" is not exclusive; and

(l) with respect to obligations, the terms "shall" and "will" shall have the same meaning and be of equal force and effect.

Section 1.3 Order of Precedence. In the event of any conflict or inconsistency between or among the terms and conditions of any of the body of this Agreement, the Appendices and Exhibits attached to the body of this Agreement and the Ancillary Documents, the following order of precedence, consistent with the controlling Requirements of Law, shall govern the interpretation of this Agreement: (i) the body of this Agreement, (ii) the Appendices and Exhibits attached to the body of this Agreement, (iii) the Option Agreement and (iv) the Ancillary Documents other than the Option Agreement.

ARTICLE II
EFFECTIVE DATE, TERM AND EARLY TERMINATION

Section 2.1 Effective Date. This Agreement shall be effective as of the "***Effective Date,***" which shall occur as of the date upon which Seller and Buyer have executed and delivered this Agreement and the Option Agreement. No more than five (5) Business Days after the Effective Date, Seller shall deliver to Buyer reasonably acceptable evidence of the Insurance. No more than ten (10) Business Days after the Effective Date, Seller shall deliver to Buyer (a) the Development Security, (b) the Legal Opinion and a certificate of the New Mexico Secretary of State, dated as of the date of the Legal Opinion and indicating that Seller is in good standing in the State of New Mexico, (c) the Non-Consolidation Opinion, (d) copies of all resolutions and other documents evidencing all limited liability company actions required to execute, deliver, and perform Seller's obligations under this Agreement and the Ancillary Documents, certified by an authorized representative of Seller as being true, correct and complete, and (e) an incumbency certificate signed by the secretary of Seller certifying as to the names and signatures of the authorized representatives of Seller. No more than thirty (30) days after the Effective Date, Seller shall deliver to Buyer (i) a copy of the CEC pre-certification application for the Facility in the name of Seller that has been filed with the CEC and (ii) evidence reasonably sufficient to establish that Seller continues to maintain Site Control.

Section 2.2 Agreement Term and Delivery Term. This Agreement shall have a delivery term (the "***Delivery Term***") commencing on the Commercial Operation Date and ending upon the conclusion of the Final Stub Year, unless sooner terminated in accordance with the terms of this Agreement. The term of this Agreement (the "***Agreement Term***") shall commence on the Effective Date and shall end upon the expiration of the Delivery Term or earlier termination of this Agreement in accordance with the terms hereof. The Parties may mutually agree to extend the Delivery Term for two additional periods of five years, in each case upon such terms and conditions as may be mutually agreed to by the Parties.

Section 2.3 Survivability. The provisions of this Article II, Article VIII, Section 14.19 and Section 14.21 shall survive for a period of one year following the termination of this Agreement. The provisions of Article XI shall survive for a period of four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article VI, Article IX, and Sections 5.4(g) and 8.7 shall continue in effect after termination to the extent necessary to provide for final billing, adjustments and deliveries related to any period prior to termination of this Agreement.

Section 2.4 Early Termination.

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

(b) **Early Termination for Default.** Upon the occurrence of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 13.3.

(c) **Early Termination for Business Policies.** Buyer, in its sole discretion, may terminate this Agreement for Seller's failure to comply with the provisions set forth in Section 14.23(j).

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

(e) **Exercise of Project Purchase Option.** In the event Buyer elects to exercise the Project Purchase Option, this Agreement shall terminate effective upon the Closing under the Option Agreement unless sooner terminated as otherwise herein provided.

(f) **Early Termination for Failure to Obtain CEC Certification.** Buyer may, in its sole discretion, terminate this Agreement effective upon notice to Seller if the Facility is not CEC Certified by the date that is six (6) months following the Commercial Operation Date; *provided that* such date shall be extended by Buyer so long as Seller demonstrates to Buyer's reasonable satisfaction that Seller is using commercially reasonable efforts to obtain such certification and that such delay in achieving CEC Certification for the Facility is not due to Seller's fault or negligence, but in no event more than twelve (12) months following the Commercial Operation Date.

(g) **Early Termination for Exercise of ROFO.** If Buyer accepts the Right of First Offer for the Facility or any interest in the Facility, this Agreement shall terminate effective upon the consummation of any such sale to Buyer pursuant to Section 14.25.

(h) **Early Termination for Failure to Achieve Key Milestones.** Buyer may, in its sole discretion, terminate this Agreement effective upon notice to Seller if Seller fails to achieve any Key Milestone by the associated Milestone Date (as such Milestone Date may be extended due to Force Majeure or Buyer's failure to perform its obligations under this Agreement), *provided, however*, that Buyer shall not terminate this Agreement pursuant to this Section 2.4(h) during any period that Seller is paying Daily Delay Damages.

(i) **Effect of Termination.** Any early termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of either Party for Defaults occurring prior to such termination.

Section 2.5 Termination Due to Failure to Obtain Financing. Following the Effective Date, if despite Seller's commercially reasonably efforts, Seller is unable to obtain third-party financing for the Facility (including construction or permanent debt financing or Tax-Equity Financing) on commercially reasonably terms by the Facility financing Milestone (as such Milestone may be extended by Force Majeure or Buyer's failure to perform its obligations under

this Agreement) solely as a result of (a) actual restrictions, limitations, or prohibitions on the ability to lend or provide financing implemented by one or more Governmental Authorities, such as any Federal Bank Regulatory Agency, that arise due to the Covid 19 Pandemic (as evidenced in accordance with Section 14.6(a)), or (b) the termination right provided in Section 8.7, which failure Seller is able to evidence with documentation that is reasonably acceptable to Buyer, Seller may terminate this Agreement upon notice to Buyer within ten (10) Business Days after the Facility financing Milestone, in which event Buyer shall be entitled to retain an amount equal to fifty percent (50%) of the original amount of the Development Security, Buyer shall promptly return the remainder of the Development Security to Seller, and neither Party shall have any further liability to the other Party in connection with this Agreement, other than liabilities arising in connection with a third party indemnity claim under Section 14.18(a) arising prior to such termination, or a breach of the provisions of Section 14.20.

ARTICLE III
DEVELOPMENT OF THE FACILITY

Section 3.1 In General.

(a) **Permitting.** Seller, at its expense, shall timely take all steps necessary to obtain all Permits required to construct, maintain or operate the Facility in accordance with the requirements of this Agreement and all applicable Requirements of Law, including the timely preparation of all environmental documents required to review the Facility under applicable federal and New Mexico law.

(b) **Facility Design.** Seller shall determine the proposed location, design, and configuration of the Facility as it deems appropriate, subject to the requirements of this Agreement and the Ancillary Documents and all applicable Requirements of Law, including the characteristics and other requirements for the Facility set forth in Appendix B.

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

(d) **Construction and Ownership of the Facility.** Seller shall site, develop, finance and construct the Facility. Except as otherwise permitted by this Agreement, the Facility shall be owned or leased by Seller during the Agreement Term. Seller shall develop, operate and maintain the Facility, at its sole risk and expense, and in compliance with the requirements of this Agreement, all applicable Requirements of Law, Prudent Utility Practices, and applicable manufacturer's and operator's specifications and recommended procedures; *provided, however*, meeting these requirements shall not relieve Seller of its other obligations under this Agreement. Other than in connection with any New Mexico Industrial Revenue Bond financing or as otherwise permitted by this Agreement, Seller shall not sell or otherwise dispose of, or create, incur, assume or permit to exist any Lien (other than Permitted Encumbrances) on, any portion of the Facility or any other property or assets which are necessary for the operation, maintenance and use of the Facility without the prior written approval of Buyer. The Facility shall be operated during the Delivery Term by the party listed as the operator on Appendix B or such other Qualified Operator.

(e) **Site Confirmation.** Seller represents and warrants that Seller's agents and representatives have visited, inspected and are familiar with the Site, in particular its surface physical condition relevant to the obligations of Seller pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, the presence, if any, of archaeological and cultural (including tribal) artifacts and topography, and solar radiation, air and water quality conditions; that Seller is familiar with all local and other conditions which may be material to Seller's performance of its obligations under this Agreement (including transportation, seasons and climate, access, weather, the presence, if any, of endangered species, handling and storage of materials and equipment and availability and quality of labor and utilities); and that based on the foregoing, the Site constitutes an acceptable and suitable site for the construction and operation of the Facility and the associated transmission line in accordance herewith. Any failure by Seller to take the actions described in this Section or inspect the physical condition of the Site, including any local or other conditions that may be material to Seller's performance of its obligation under this Agreement, shall not relieve Seller from any responsibility for estimating properly the difficulty and cost of successfully constructing, maintaining or operating the Facility in accordance with this Agreement or from proceeding to construct, maintain and operate the Facility successfully without any additional expense to Buyer.

(f) **Compliance with New Resource Implementation.** Seller shall, at its sole cost and expense (i) design and thereafter at all times maintain the Facility in compliance with the New Resource Implementation requirements (or the equivalent), and (ii) subject to the EIM Compliance Cost Cap, include in the design, construction and operation of the Facility any equipment or software that may be required to enable the Facility to participate in the EIM (or its equivalent). Seller shall register the Facility into the EIM.

Section 3.2 Commercial Operation Notices. Seller anticipates that the Commercial Operation Date will be December 31, 2021. Seller will provide updates to Buyer in Monthly Reports per Section 3.3. Seller may achieve the Commercial Operation Date earlier than September 1, 2021, *provided that* Seller provides Buyer no fewer than 365 days' prior notice, and *provided, further*, that in no event shall Seller achieve the Commercial Operation Date prior to January 1, 2021. Seller shall provide Buyer with an additional notice when Seller believes that all conditions precedent to Commercial Operation of the Facility have been satisfied. Buyer's Authorized Representative shall promptly in writing either accept or reject this notice in its reasonable discretion, and if Buyer's Authorized Representative rejects the notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate resolution of the Dispute in accordance with Section 14.3 in response to Buyer's rejection. The Commercial Operation Date shall occur as of the date upon which Seller certification of Commercial Operation of the Facility is accepted by Buyer, or, if applicable, the date upon which such date is determined to have occurred pursuant to such Dispute resolution process. Subject to Section 3.6, if, at Commercial Operation, less than one hundred percent (100%) but at least ninety percent (90%) of the Contract Capacity has been completed and is ready to produce and deliver Product to Buyer, Seller shall have twelve (12) months after the Commercial Operation Date to install additional facilities and equipment to increase the Installed Capacity to an amount not greater than the Contract Capacity. In the event that Seller fails to construct one hundred percent (100%) of the Contract Capacity by such date, Seller shall pay "***Capacity Damages***" to Buyer, in an amount equal to Fifty Thousand Dollars ($50,000) for each MW that the Contract Capacity exceeds the Installed Capacity, and the Contract Capacity, Expected Annual Generation, and other

applicable provisions of this Agreement shall be reduced accordingly based on the amount of the Installed Capacity.

Section 3.3 Other Information. Seller shall provide to Buyer such information regarding the permitting, engineering, construction or operations, of Seller, its subcontractors or the Facility, financial or otherwise, and other data concerning Seller, its subcontractors or the Facility as Buyer or Buyer's Authorized Representative may, from time to time, reasonably request; not to include Confidential Information that Seller reasonably determines is not necessary to be provided, and specifically including information related to the completion of the TEP upgrades. Until the Commercial Operation Date, Seller shall provide to Buyer monthly written reports describing permitting, development, construction, start-up, and testing activities in the previous month, including any significant developments or delays and Seller's estimated adjustments to the anticipated Commercial Operation Date, and Seller's anticipated progress and activities for the upcoming month. Buyer and Buyer's Authorized Representative shall be permitted to inspect the Facility from time to time upon reasonable notice to Seller and during reasonable business hours.

Section 3.4 Milestone Schedule. Seller has provided a milestone schedule with deadlines for the development of the Facility in Appendix I. Seller shall provide Buyer a monthly report setting forth the status of each milestone, including a description of any deadline that has been missed and any event that could reasonably cause a deadline to be missed. Seller shall achieve each milestone set forth in Appendix I (each, a "***Milestone***") by the date specified therefor, subject to day-for-day extensions for delays due to Force Majeure or for failure of Buyer to perform its obligations under this Agreement (each such date as so extended (if at all), a "***Milestone Date***"). Buyer's remedies for Seller's failure to achieve each Milestones by its respective Milestone Date are set forth in Appendix I.

Section 3.5 Performance Damages. If Seller fails to achieve a Key Milestone, as such date may be extended due to Force Majeure or Buyer's failure to perform its obligations under this Agreement, by its respective Milestone Date, Seller shall pay liquidated damages to Buyer in an amount equal to Seventy Thousand Dollars ($70,000) per day ("***Daily Delay Damages***") for each day intervening between the Milestone Date and the earlier of (i) the date such Key Milestone is achieved, and (ii) the date, if any, on which this Agreement is terminated by Buyer pursuant to Section 2.4, up to a maximum of Twelve Million Six Hundred Thousand Dollars ($12,600,000) for each Key Milestone not achieved (for each Key Milestone, a "***Daily Delay Damages Cap***"). The Parties agree that (x) it is impractical or extremely difficult to determine actual damages to which Buyer would be entitled in the foregoing circumstance, and (y) the liquidated damages provided for in this subsection are a fair and reasonable calculation of actual damages to Buyer and are not a penalty in such a circumstance. If more than one Key Milestone is missed on any given day, then Seller shall pay to Buyer the aggregate amount of such Daily Delay Damages for each missed Key Milestone. Buyer may draw from the Development Security the amount of any such Daily Delay Damages due and owing to Buyer and not paid within thirty (30) Business Days of notice therefor. Notwithstanding anything to the contrary set forth in this Agreement, in no event shall the Commercial Operation Date occur later than December 31, 2022 (the "***Outside COD***") and the failure to achieve the Commercial Operation Date by the Outside COD shall be a Default by Seller, in accordance with Section 13.1(m), *provided that* the Outside COD may be extended for up to six (6) months due to Force Majeure or Buyer's failure to perform its obligations

under this Agreement. The payment of Daily Delay Damages shall not limit Buyer's right to exercise any right or remedy available under this Agreement or at law or in equity for any other breach or default occurring concurrently with, before, or after Seller's delay in achieving the applicable Milestone by the Milestone Date therefor.

Section 3.6 Reduced Capacity due to TEP Upgrade Delay. The Parties agree that Seller may achieve Commercial Operation of the Facility notwithstanding that Seller is unable to deliver the Facility Energy to Buyer at the full Contract Capacity (as it may be reduced under Section 3.2, but in no event less than one hundred ninety-three (193) MW of capacity), *provided that* the inability of the Facility to deliver Energy at the Contract Capacity (as it may be reduced under Section 3.2) is due solely to the failure of TEP to timely complete the TEP Required Upgrades (as such timing is confirmed by Seller in periodic reports delivered under Section 3.3. If Seller declares Commercial Operation when only 193 MW of capacity is able to be delivered to Buyer, then the Expected Annual Generation for the period of time between the Commercial Operation Date and the date upon which the Contract Capacity is available (such period, the "***193 MW Capacity COD Period***") will be adjusted proportionately in writing by the Parties. Seller shall have up to twelve (12) months from the Commercial Operation Date to deliver Energy at the Contract Capacity; provided that such twelve (12) months may be extended by Seller on a month to month basis for up to an additional fifteen (15) months upon the payment to Buyer of $500,000 per month. Seller shall notify Buyer by no later than ninety (90) days prior to the Commercial Operation Date if the available Energy deliveries as of the Commercial Operation Date could be less than the Contract Capacity. Seller shall thereafter promptly notify Buyer following the completion of the TEP Required Upgrades and the date upon which the capacity of the Facility will increase delivery of Energy to the Contract Capacity, but in no event less than thirty (30) days prior to the commencement of delivery of Energy at the Contract Capacity. Notwithstanding anything herein to the contrary, during the 193 MW Capacity COD Period, Seller shall be permitted to sell Energy generated by the Facility in excess of 193 MW in any hour that cannot be delivered to Buyer at the Delivery Point due solely to the failure of TEP to timely complete the TEP Required Upgrades to any third party.

Section 3.7 Remedial Action Plan. In addition to the payment of Daily Delay Damages in accordance with Section 3.5 for failure to timely achieve a Key Milestone by the applicable Milestone Date, if Seller fails to achieve any Milestone by the Milestone Date therefor (or if Seller anticipates that it will not timely achieve a Milestone by the applicable Milestone Date), Seller shall immediately notify Buyer of such failure and, no more than ten (10) days following the failure to achieve such Milestone (or the date upon which Seller anticipates such a failure will occur), provide Buyer with a commercially reasonable, written action plan detailing how Seller will cure such failure (such plan, a "***Remedial Action Plan***"). The Remedial Action Plan shall specify in reasonable detail Seller's analysis of the causes of the missed Milestone Date (or anticipated missed Milestone Date), the commercially reasonable actions that Seller plans to take to correct such underperformance and to ensure that all future Milestones, including the Guaranteed Commercial Operation Date, will be achieved, and the time needed to complete such corrective actions. Seller shall complete any and all corrective action pursuant to the provisions of the Remedial Action Plan. Seller may (a) supplement the Remedial Action Plan, as may be reasonably required, or (b) provide Buyer with written notice of any deviations from the approved Remedial Action Plan; *provided that* in the case of (a) or (b), any supplements to, or deviations from, the Remedial Action Plan must be acceptable to Buyer.

Section 3.8 Decommissioning and Other Costs. Unless a Closing occurs pursuant to the exercise by Buyer of the Project Purchase Option or in connection with Buyer's exercise of its Right of First Offer, Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility without regard to the timing or cause of the decommissioning or demolition of the Facility.

Section 3.9 CEC Certification. Promptly, but in no event more than thirty (30) days following the Commercial Operation Date, Seller shall file with the CEC all materials and documents required to demonstrate that the Facility is a wind energy electric generating facility entitled to be CEC Certified. Seller shall promptly provide Buyer with copies of all submittals to the CEC and other correspondence between Seller and the CEC.

ARTICLE IV
OPERATION AND MAINTENANCE OF THE FACILITY

Section 4.1 Compliance with Electrical Service Requirements. Seller shall, at its sole expense, operate and maintain the Facility (i) in accordance with Prudent Utility Practices, the requirements of this Agreement, all applicable Requirements of Law and the requirements of applicable manufacturers' and operators' specifications, using commercially reasonable efforts to comply with any published recommendations of the manufacturers and suppliers of the major components of the Facility, (ii) with due regard for the safety, security and reliability of the interconnection facilities and the Transmission System, and (iii) in a manner that is reasonably likely to maximize the use of the Facility and result in a useful life for the Facility of not less than thirty (30) years.

Section 4.2 General Operational Requirements.

In addition to the requirements set forth in Section 4.1 and elsewhere in this Agreement, Seller shall, at all times:

(a) Employ, or engage through a Qualified Operator, qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer and Buyer's Agent. Seller shall ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term;

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

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

Section 4.3 Operation and Maintenance Plan after Commercial Operation.

Following the Commercial Operation Date, Seller shall:

(a) Devise, implement and maintain, or cause the Qualified Operator to devise, implement and maintain, a plan of inspection, maintenance and repair for the Facility and the

components thereof in order to maintain such equipment in accordance with Prudent Utility Practices (the "***Operation and Maintenance Plan***"), and shall keep records with respect to inspections, maintenance and repairs thereto. The aforementioned plan and all records of such activities shall be available for inspection by Buyer and Buyer's Authorized Representative during Seller's regular business hours upon reasonable notice.

(b) Provide to Buyer, on a monthly basis, any regularly prepared operation and maintenance status reports of the Facility provided to WECC pursuant to a Financing Agreement.

(c) In addition to the other required and preventive maintenance actions contained in this Agreement, provide notification to Buyer of its actions to: (i) conduct regular visual equipment inspections and log significant parameters; (ii) identify all preventive maintenance requirements for the following calendar year, including the performance of maintenance in accordance with Section 4.4(k); (iii) conduct periodic maintenance of various equipment, including a report about any findings, and provide a report about any findings to Buyer; (iv) conduct periodic Q/A and Q/C activities and inspections in accordance with Appendix H, including a report thereof; (v) hire subcontractors, as applicable, to meet the Facility's maintenance, betterment and improvement needs; and (vi) schedule and assign routine maintenance during operations and planned outages, as well as maintenance that can be conducted during a Forced Outage, or during an outage occurring as a result of curtailment notifications.

Section 4.4 Forecasting and Scheduling of Energy and Scheduled Outages.

(a) The Parties agree to the following scheduling procedures: (i) Seller shall make available to Buyer real-time availability data for the Facility, including in respect of each wind turbine, via a remote terminal unit ("***RTU***"); (ii) Seller shall make available to Buyer and Buyer's Agent, as a non-graphical display, the forecasted and actual output for the Facility in increments not to exceed five (5) minute averages, and as a graphical display, the forecasted and actual output for the Facility in increments not to exceed ten (10) minute averages via a web portal and secure client login, including secure file transfer protocol ("***FTP***"); (iii) Seller shall make available to Buyer and Buyer's Agent real-time data of actual output, which shall be automatically telemetered to Buyer's or Buyer's Agent's supervisory control and data acquisition ("***SCADA***") system; and (iv) either Buyer's Authorized Representative, Buyer's Agent or Buyer's Transmission Provider will have the right at its election, in accordance with Section 6.7, to directly curtail the Facility, or to contact Seller and require that Seller curtail the Facility (collectively, the "***Scheduling Procedures***"), which may be modified, from time to time, by written agreement between Seller's Authorized Representative and, with respect to Buyer, Buyer's Authorized Representative or Buyer's Agent, in order to comply with all applicable requirements, including those of the Transmission Provider, WECC or any balancing authority involved in the Scheduling of Energy under this Agreement. The Authorized Representatives shall promptly cooperate with respect to any reasonably necessary and appropriate modifications to Scheduling Procedures.

(b) Seller or Seller's designee shall be responsible for providing a forecast of Delivered Energy during the Delivery Term consistent with the Scheduling Procedures, as may be updated from time to time in accordance with Section 4.4(a). All generation Scheduling and Transmission Services shall be performed in accordance with the applicable NERC and WECC operating policies, criteria and any other applicable guidelines. This may include, but is not limited

to, dynamic adjustments to e-tags in order to reflect the previous hour's metered Energy output. Seller shall fulfill any contractual, metering and interconnection requirements so as to be able to deliver Energy to the Point of Delivery. Buyer will cooperate with Seller as reasonably necessary in connection with these requirements.

(c) No later than forty-five (45) days before the beginning of each Contract Year, Seller or Seller's designee shall provide, or cause to be provided, a non-binding forecast of each month's average daily deliveries of Energy, by hour, for the following eighteen (18) months.

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

(e) By 4:30 a.m. on the WECC pre-scheduling day immediately preceding the date of delivery of Energy during the Agreement Term, Seller or Seller's designee shall provide Buyer or Buyer's Agent with a copy of a non-binding hourly forecast of deliveries of Energy for each hour of the next date of delivery of Energy (the "***Day Ahead Schedule***"). If the WECC pre-scheduling day pertains to multiple dates of delivery, then this requirement shall apply to each of those dates. After 4:30 a.m. on such WECC pre-scheduling day, subject to Section 4.4(k), Seller or Seller's designee may contact Buyer or Buyer's Agent by telephone to provide any Scheduling updates or changes and the reason for such updates or changes. Acceptable reasons for such updates shall be with respect to current conditions (other than commercial considerations), including weather and applicable balancing authority rules.

(f) By 12:00 p.m. on the Business Day prior to each WECC pre-scheduling day, Seller shall provide Buyer, Buyer's Authorized Representative, Buyer's Agent, Buyer's real-time operators, Buyer's Scheduler and any other designated Scheduling representative of Buyer, via email, day-ahead pre-schedules for each of the succeeding twenty-four (24) hours in the form of an Excel spreadsheet or a format later mutually agreed to by the Parties. In order to allow Buyer or Buyer's Agent to make schedule changes in conformity with the CAISO Scheduling deadline, as applicable, Seller shall notify Buyer or Buyer's Agent via telephone of any hourly changes due to a change in unit availability or an outage no later than one-hundred five (105) minutes prior to the start of such Scheduling hour.

(g) Commencing on the first date on which Startup and Test Energy is received from the Facility, and continuing throughout the Delivery Term, Seller shall provide to Buyer and Buyer's Agent the following data on a real-time basis:

(1) Read-only access to meteorological measurements, the parameters of which are provided in Appendix R, MW capacity based upon the wind turbines, and any other Facility availability information;

(2) Read-only access to energy output information collected by the SCADA system for the Facility; *provided that* if Buyer or Buyer's Agent is unable to access the Facility's SCADA system, then upon written request from Buyer or Buyer's Agent, Seller shall provide energy output information and pyranometer and meteorological measurements to Buyer and Buyer's Agent in sixty (60) second intervals in the form of a one (1) hour flat file to Buyer

and Buyer's Agent through a FTP system with an email back up for each flat file submittal. Seller shall store such information for up to three (3) months after delivery thereof to Buyer and Buyer's Agent; and

(3) Read-only access to all Electric Metering Devices (other than meteorological data) installed, owned and operated by Seller at the Project Substation that are used to measure Delivered Energy.

(4) Regarding this subsection, all data points shall be provided through the Participating Member's distributed control system that is capable of interfacing with both a primary RTU for the Participating Member's automatic generation control and a secondary RTU for Participating Member's backup automatic generation control. The automatic generation control RTU shall have interface capability for a PI historian.

Seller shall have back-up plans in place consistent with Prudent Utility Practices that enable Seller to continue to provide real-time data to Buyer, to implement curtailments, and to adjust curtailment amounts in real-time in the event that Seller's primary communications means become unavailable at any point in time.

(h) Commencing on the first date on which Startup and Test Energy is received from the Facility, and continuing throughout the Delivery Term, Seller shall provide to Buyer NERC, WECC and FERC compliance reports regarding the Facility when they are issued.

(i) During the Agreement Term, if Seller or Seller's designee becomes aware of changes to the Day Ahead Schedule on the actual date of delivery of Energy due to current conditions, including weather or environmental conditions, an unscheduled outage or a Transmission Provider instruction that results in a change to the Facility's deliveries (whether in part or in whole), Seller or Seller's designee shall immediately notify Buyer of any and all changes to the Day Ahead Schedule and provide a revised schedule as soon as possible in an electronic format, either via an internet website accessible to Buyer, Buyer's Authorized Representative, Buyer's Agent, Buyer's real-time operators, Buyer's Scheduler and any other designated Scheduling representative of Buyer or via email in the form of an excel spreadsheet (or any combination thereof), but in no event later than two (2) hours prior to the first updated hour.

(j) Seller shall provide forecasts and data required under this Section 4.4 in accordance with Distributed Network Protocol ("***DNP***") 3.0 TCP/IP for primary communications between the Facility and Buyer.

(k) Buyer and Seller shall cooperate to minimize Scheduled Outages during certain consecutive or nonconsecutive weeks of each Contract Year (not to exceed twelve (12) weeks per Contract Year) specified by Buyer's Authorized Representative (the "***Major Maintenance Blockout***"), but in accordance with Prudent Utility Practices, *provided that* nothing herein will prevent Seller from undertaking Scheduled Outages in accordance with Prudent Utility Practices, including during periods of forecasted low generation during a Major Maintenance Blockout with reasonable advance notice provided to Buyer. No later than one hundred twenty (120) days prior to the Commercial Operation Date and the commencement of each Contract Year thereafter, Buyer's Authorized Representative shall provide Seller with Buyer's specified Major

Maintenance Blockout. Seller shall attempt to minimize its Scheduled Outages during the Major Maintenance Blockout consistent with Prudent Utility Practices. No later than sixty (60) days prior to the Commercial Operation Date, and no later than sixty (60) days prior to the commencement of each Contract Year thereafter, Seller shall provide Buyer or Buyer's Agent with its non-binding written projection of all Scheduled Outages for the succeeding three (3) years (the "***Scheduled Outage Projection***") reflecting a minimized schedule of scheduled maintenance during the Major Maintenance Blockout. In addition, Seller shall cooperate in good faith with Buyer's maintenance scheduling requests consistent with Prudent Utility Practices. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (i) the anticipated start and end dates of each Scheduled Outage; (ii) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (iii) the anticipated MW of operational capacity, if any, during the Scheduled Outage. Seller shall notify Buyer or Buyer's Agent of any change in the Scheduled Outage Projection as soon as practicable. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer or Buyer's Authorized Representative with respect to the timing of Scheduled Outages, and Seller shall, to the extent feasible and consistent with Prudent Utility Practices, arrange for Scheduled Outages to occur between October 1 and May 1 of each year and coincident with planned transmission outages, but not to overlap with the Major Maintenance Blockout.

(l) In the event of a Forced Outage affecting at least ten percent (10%) of the capacity of the Facility, to the extent practicable, Seller shall notify Buyer or Buyer's Agent within two (2) hours of the Forced Outage and provide detailed information concerning the Forced Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the maintenance or repair work to be performed during the Forced Outage; and (iv) the anticipated MW of operational capacity, if any, during the Forced Outage. Seller shall take all reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such outages.

(m) Consistent with Prudent Utility Practices, Seller shall at all times maintain the ability to continue to provide real-time data to Buyer, to implement curtailments, and to adjust curtailment amounts in real-time in the event that Seller's primary communications means become unavailable at any point in time.

Section 4.5 Post-Option O&M Plan. Following the provision by Buyer of a notice regarding its intent to exercise its Project Purchase Option, and until such time as the Closing occurs or Buyer declines to purchase the Facility in accordance with the Option Agreement, Seller shall, to the extent not already being performed pursuant to the Operator and Maintenance Plan:

(a) devise and implement, or cause the Qualified Operator to devise and implement, an operations and maintenance plan, or implement an existing plan that includes the status of the Facility and each of the major components thereof in order to maintain such equipment in accordance with Prudent Utility Practices (the "***Post-Option O&M Plan***"). Such Post-Option O&M Plan shall be consistent with the requirements of any Financing Agreement in place as of such date. Seller shall keep, or cause the Qualified Operator to keep, records with respect to inspections, maintenance, and repairs. The Post-Option O&M Plan and all records associated therewith shall be available for inspection by Buyer during Seller's regular business hours upon

reasonable notice; *provided that* Buyer shall at all times comply with Seller's or the Qualified Operator's written safety and security requirements when present at the Facility;

(b) provide Buyer, on a monthly basis, with a detailed description in the form of a written report, regarding the ongoing operations of the Facility during such quarter, setting forth the status of the operations of the Facility or any component thereof, including any equipment or other operational or maintenance failures, defects or other issues and any repairs, replacements, or other remediation provided or to be provided therefor in a form which is reasonably acceptable to Buyer; as of January 15 of each calendar year, update the Post-Option O&M Plan for the subsequent twelve (12) month calendar year period and submit the same to Buyer;

(c) perform routine and preventive maintenance actions in accordance with all applicable manufacturers' instructions, the Quality Assurance Program, Prudent Utility Practice, and the Post-Option O&M Plan, including to: (i) conduct regular visual equipment inspections and log significant parameters; (ii) identify all preventive maintenance requirements for a period of the following two (2) calendar years, including the performance of maintenance in accordance with Section 4.4(k); (iii) schedule and assign routine maintenance during operations, planned outages, and maintenance that can be conducted during a Forced Outage or during an outage occurring as a result of curtailment notifications; (iv) conduct periodic maintenance to various equipment, and provide a report about any findings to Buyer; (v) conduct periodic Q/A and Q/C activities and inspections in accordance with Appendix H and provide reports thereof to Buyer; and (vi) hire subcontractors, as applicable, to meet the Facility's maintenance, betterment, and improvement needs.

Section 4.6 Reporting and Information. Commencing on the date Startup and Test Energy is first delivered to Buyer, Seller shall provide to Buyer (a) Monthly Reports of the operation of the Facility on or before the fifteenth (15th) day of each month, which shall include (i) a performance summary of the month- and Contract Year-to-date MWh delivery of Facility Energy, capacity factor, availability (including actual availability vs. expected availability), (ii) reports of expected generation indicators of when a Shortfall may occur, (iii) any regularly prepared operations and maintenance status reports of the Facility provided to WECC or any Facility Lenders, (iv) reports regarding the ongoing operations of the Facility during such month, which set forth the status of the operation of the Facility or any component thereof, including any equipment or other operational or maintenance failures, defects or other issues and any repairs, replacements or other remediation provided or to be provided therefor, (v) descriptions of weather, reasons for any downtime, maintenance or repairs, and curtailment periods during the applicable month, and (vi) a safety and environmental summary, and (b) such other information regarding the permitting, engineering, construction or operations of the Facility as Buyer may, from time to time, reasonably request.

Section 4.7 Reporting and Information after Purchase Option Notice. Following the provision by Buyer of a notice regarding its intent to exercise the Project Purchase Option and until such time as the Closing occurs or Buyer declines to purchase the Facility in accordance with the Option Agreement, Seller shall:

(a) to the extent prepared in the ordinary course of business, provide Buyer with a draft budget for the Facility for the twelve (12) month period beginning on July 1 of the

applicable calendar year, which Buyer shall have the right to review and to provide comments for consideration by Seller; and

(b) perform the following and report information regarding the following to Buyer: (i) administrative and periodic reporting, including (A) on a monthly basis, safety records, including OSHA recordable and non-recordable incidents, and Site safety meeting information; (B) on a monthly and annual basis, operational reports on various aspects of the Facility, including performance, capacity factor, comparison of actual to expected service availability of the Facility, wind speed, weather, and generation data (including reasons for any downtime), to confirm that the requirements of this Agreement have been met, which reports shall be in forms reasonably acceptable to Buyer; (C) on an annual basis, Q/A and Q/C activities; (D) outage and curtailment (scheduled and unscheduled) notifications in accordance with Sections 4.4(k) and (l); and (E) work performed on the Facility following the completion of any such work; and (ii) monthly reporting of: (A) overall operation and maintenance of the Facility; (B) repairs and preventive and maintenance actions taken; (C) administrative and on-Site personnel support; (D) safety and health; (E) Q/A and Q/C activities; (F) work to be conducted during any planned outage; (G) Site safety and security measures in place; (H) usage of parts at the Facility; (I) maintenance; (J) on-going and planned maintenance activities; (K) planning documents; (L) work completion logs, checklists, explanations, and conformance documents; (M) productivity records; (N) environmental compliance; (O) training and qualification of personnel; (P) remote control and monitoring; (Q) information technology services; (R) spare parts and consumables for the Facility; (S) Permits and regulatory compliance documents; (T) NERC and FERC compliance; and (U) activities for betterment and improvement of the Facility to reduce long-term main component replacement expenses.

ARTICLE V
COMPLIANCE DURING CONSTRUCTION AND OPERATION PERIOD

Section 5.1 In General.

(a) **The Facility.** Seller shall perform, or cause to be performed, all engineering, design, development and construction of the Facility in a good and workmanlike manner and in accordance with applicable standards, Prudent Utility Practices, all applicable Requirements of Law, the Quality Assurance Program, the Milestones and all other requirements of this Agreement. Throughout the Delivery Term and at the time (if any) that Buyer exercises the Project Purchase Option, Seller shall ensure that (i) the Facility will be free and clear of all Liens other than Permitted Encumbrances and (ii) the Facility will comply in all respects with the requirements of this Agreement and all applicable Requirements of Law. Throughout the Agreement Term Seller will monitor the operation and maintenance of the Facility and ensure that said operation and maintenance is, and will be, in full compliance with all applicable standards, Prudent Utility Practices, Requirements of Law, the Quality Assurance Program and other provisions of this Agreement. Without limiting the foregoing, Seller shall promptly repair or replace, consistent with and as required by Prudent Utility Practices, any component of the Facility that may be damaged or destroyed or otherwise not operating properly and efficiently. Seller shall at all times exercise commercially reasonable efforts to undertake all Governmental Authority required updates or modifications to the Facility, its equipment and materials, including procedures, programming and software in a timely manner. Seller shall, at its expense, maintain

throughout the Agreement Term an inventory of spare parts for the Facility in a quantity that is consistent with applicable manufacturers' recommendations and Prudent Utility Practices.

(b) **Buyer's Right to Monitor in General.** Buyer shall have the right and Seller shall permit Buyer and its representatives, advisors, engineers and consultants to observe, inspect and monitor all operations and activities at the Site, including the performance of the contractor(s) under the construction contract(s) pertaining to the Facility, the design, engineering, procurement and installation of the equipment, start up and testing and commercial operation.

(c) **Compliance with Safety Requirements.** Buyer shall at all times comply with Seller's or the Qualified Operator's written safety and security requirements when present at the Facility.

(d) **Startup and Testing.** Prior to the Commercial Operation Date, Buyer shall have the right to (and Seller's engineering, procurement and construction subcontracts shall provide for Buyer's right to):

(1) review and monitor Seller's and Seller's subcontractors' performance and achievement of all initial performance tests and all other tests required under the Facility construction contracts that must be performed in order to achieve completion, with respect to which the construction contracts shall provide that at least ten (10) Business Days before such tests begin Seller or Seller's subcontractors shall deliver to Buyer a schedule for the performance of such tests;

(2) be present to witness such initial performance tests and review the results thereof; and

(3) perform such inspections as, in the reasonable judgment of Buyer or Buyer's Authorized Representative, are appropriate and advisable to determine that the turbines and all ancillary components of the Facility have been installed in accordance with this Agreement and the Facility construction contracts, all applicable standards, Prudent Utility Practices, Requirements of Law, the Quality Assurance Program and the Milestones.

Section 5.2 Compliance with Standards. Seller shall cause the Facility and all parts thereof to be designed, constructed, tested, operated and maintained to meet (i) all of the requirements of this Agreement, (ii) all applicable and binding standards and requirements of the latest revision of standards or requirements of the ASTM, ASME, ASCE, AWS, EPA, EEI, IEEE, ISA, National Electrical Code, National Electric Safety Code, OSHA, Cal-OSHA, Uniform Building Code, Uniform Plumbing Code, Underwriters Laboratory Standards and the applicable local County Fire Department Standards of the applicable county, and National Fire Protection Agency standards and requirements, or their successors, (iii) all FERC-approved NERC Reliability Standards, (iv) any other codes, standards and operations and maintenance requirements applicable to the services, equipment, and work as generally shown in this Agreement and (v) all applicable Requirements of Law not specifically mentioned in this Section 5.2. Seller shall use wind turbine generators manufactured by one of General Electric, Vestas, Siemens Gamesa, Nordex Acciona, or their successors.

Section 5.3 Quality Assurance Program. As a condition of, and no later than the occurrence of the Commercial Operation Date, Seller shall develop and initiate a written quality assurance policy ("***Quality Assurance Program***") in accordance with Appendix H. Seller shall maintain and comply with said Quality Assurance Program, and Seller shall cause all work performed on or in connection with the Facility to comply with said Quality Assurance Program.

Section 5.4 Security Provided by Seller.

(a) Seller shall, by no later than ten (10) Business Days following the Effective Date, execute and deliver to Buyer an Acceptable Form of Performance Assurance in the amount of Thirty Three Million One Hundred Thousand Dollars ($33,100,000), which Acceptable Form of Performance Assurance shall be subject to replenishment as set forth in Section 5.4(d) below and shall guarantee Seller's obligations under this Agreement and the Option Agreement prior to the Commercial Operation Date (the "***Development Security***"). Seller shall maintain the Development Security until Seller executes and delivers the Performance Security pursuant to Section 5.4(b) below, or until the requirement to maintain the Development Security ceases under Section 5.4(c) below.

(b) As a condition to Commercial Operation, Seller shall execute, deliver to Buyer and maintain an Acceptable Form of Performance Assurance in the amount of Forty-Nine Million Six Hundred Fifty Thousand Dollars ($49,650,000), which Acceptable Form of Performance Assurance shall guarantee Seller's obligations under this Agreement and the Option Agreement from and after the Commercial Operation Date (the "***Performance Security***"). Seller may elect to use the Development Security as a component of the Performance Security.

(c) If (i) upon the Commercial Operation Date, no damages or other amounts are due and owing to Buyer under this Agreement or the Option Agreement, and Seller does not elect to use the Development Security as a component of the Performance Security, or (ii) this Agreement terminates prior to the occurrence of the Commercial Operation Date while the Development Security is outstanding, then Seller is no longer required to maintain the Development Security.

(d) Buyer may draw on the Performance Assurance for any amount owed to Buyer due to Seller's obligations under this Agreement or the Option Agreement and unpaid within thirty (30) days of notice given, including any liquidated damages, Shortfall Damages, and Daily Delay Damages. Promptly, and in no event more than five (5) Business Days following any draw by Buyer on the Performance Assurance, Seller shall replenish the amount drawn on the Performance Assurance such that the amount of the Performance Assurance is restored to the full amount set forth in Section 5.4(a) or Section 5.4(b), as applicable.

(e) Seller shall, from time to time as requested by Buyer or Buyer's Authorized Representative, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the Performance Assurance contemplated by this Agreement and the Ancillary Documents and the rights, Liens and priorities of Buyer with respect to such credit support.

(f) Seller shall notify Buyer of the occurrence of a Downgrade Event with respect to an issuer of Performance Assurance, which notice shall be given by Seller within five (5) Business Days of obtaining knowledge of the occurrence of such event. If, at any time, (i) there shall occur a Downgrade Event with respect to an issuer of Performance Assurance or (ii) Buyer elects to terminate any relationship with such issuer pursuant to generally applicable and nondiscriminatory directives from any Governmental Authorities applicable to Buyer, LADWP, the City Council of Los Angeles, California, or the Board of Commissioners (but only if the termination of the relationship pursuant to any directive of such board is consistent with any directive by the City Council of Los Angeles, California, or Governmental Authorities applicable to Buyer or LADWP), then Buyer may require that Seller replace the Performance Assurance from the issuer that has suffered the Downgrade Event or with whom the relationship has been terminated by Buyer with Performance Assurance from a Qualified Issuer within thirty (30) days of notice from Buyer to Seller requesting such replacement Performance Assurance.

(g) Notwithstanding the other provisions of this Agreement, (i) the amount of the Development Security shall constitute Seller's maximum liability under this Agreement prior to the Facility achieving Commercial Operation, other than liabilities arising in connection with a third party indemnity claim under Section 14.18(a) arising prior to the Facility achieving Commercial Operation, or a breach of the provisions of Section 14.20, and (ii) the Performance Security constitutes security for, but is not a limitation of, Seller's obligations under this Agreement after the Facility achieves Commercial Operation.

Section 5.5 Effect of Review by Buyer. Any review by Buyer of the design, construction, engineering, operation or maintenance of the Facility, or witness of testing hereunder, is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review or observation with Seller, nor shall any such review or observation or the results thereof (whether or not the results are shared with Seller), nor any failure to conduct any such review or observation of testing, relieve Seller from any of its obligations under this Agreement. By making any such review or observation, Buyer makes no representation as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller shall in no way represent to any third party that any such review by Buyer of the Facility, including any review of the design, construction, operation or maintenance of the Facility by Buyer, or observation of testing is a representation by Buyer as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability thereof.

Section 5.6 Pseudo-Tie. Seller shall use commercially reasonable efforts to arrange for the Pseudo-Tie Agreements, and shall undertake commercially reasonable efforts to maintain and deliver all Facility Energy to Buyer via a Pseudo-Tie throughout the Delivery Term. If, for reasons other than the fault or negligence of Seller, Seller is unable to deliver Facility Energy to Buyer using a Pseudo-Tie, Seller may deliver Facility Energy to Buyer using dynamic or static schedules, or other mechanisms as may be available, so long as Seller can satisfy its other obligations under this Agreement, including providing Environmental Attributes pursuant to Article VIII. Buyer shall reasonably cooperate with Seller in connection with the establishment and maintenance of the Pseudo-Tie and with alternative delivery arrangements as may reasonably be necessary.

ARTICLE VI
PURCHASE AND SALE OF POWER

Section 6.1 Purchases by Buyer.

(a) No earlier than one hundred eighty (180) days before the Commercial Operation Date, Seller shall sell and deliver, and Buyer shall receive and purchase, all Startup and Test Energy for the price set forth in paragraph 1 of Appendix A, except as described in Section 6.7.

(b) On and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall receive and purchase, all Delivered Energy for the price set forth in paragraphs 2 through 4 of Appendix A, except as described in Section 6.7.

(c) Notwithstanding the foregoing, in no event shall Buyer be required to purchase and receive at the Point of Delivery a quantity of Delivered Energy in any hour that exceeds the quantity of Delivered Energy that the Facility is capable of producing when operating at one hundred ninety-three (193) MW of capacity if reduced pursuant to Section 3.6 or the full Contract Capacity, as applicable, unless Buyer agrees otherwise in its sole discretion. Seller shall not be obligated to sell and deliver an amount of Energy that exceeds one hundred ninety-three (193) MW of capacity if reduced pursuant to Section 3.6 or the full Contract Capacity, as applicable, and may reduce the output of the Facility as required to comply with this Agreement and the requirements set forth in the Interconnection Agreement or a Transmission Services Agreement (which Interconnection Agreement or Transmission Services Agreement requirements may also be reflected in any Shared Facilities Agreement).

Section 6.2 Point of Delivery. Seller shall deliver all Delivered Energy to Buyer. Seller shall deliver all such Facility Energy to the Point of Delivery. Buyer, or its designee, shall receive all such Delivered Energy from Seller under this Agreement at the Point of Delivery.

Section 6.3 Buyer's Failure. Unless excused by Force Majeure, a curtailment required by Buyer under Section 6.7, or Seller's failure to perform, if Buyer fails to receive at the Point of Delivery all or any part of any Energy required to be received by Buyer under this Article VI, Article VIII or Article IX, Buyer shall pay Seller, on the date payment would otherwise be due to Seller, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the price per MWh which would have been payable by Buyer for the Energy not received by Seller. Seller shall also receive credit for each MWh of such deficiency towards the Guaranteed Delivered Energy requirement, if applicable. "***Sales Price***" means the price at which Seller, acting in a commercially reasonable manner, resells the Energy or, absent a resale, the market price reasonably calculated by Seller for the quantity of Energy not received by Buyer (adjusted for transmission difference, if any) plus the value of any lost Production Tax Credit. Seller shall provide Buyer prompt written notice of the Sales Price together with back-up documentation. The Parties agree that (x) it is impractical or extremely difficult to determine actual damages to which Buyer would be entitled in the foregoing circumstance, and (y) the liquidated damages provided for in this subsection are a fair and reasonable calculation of actual damages to Buyer and are not a penalty in such a circumstance.

Section 6.4 Nature of Remedies. The remedy set forth in Section 6.3 is the sole and exclusive remedy of Seller for any failure by Buyer to receive Energy as and when required by this Agreement, and all other remedies and damages for any such failure are hereby waived by Seller.

Section 6.5 Energy to Come Exclusively from Facility. Except as provided in Article IX, in no event shall Seller have the right to procure energy from sources other than the Facility for sale and delivery pursuant to this Agreement.

Section 6.6 Sales to Third Parties. Seller may sell to Persons any Facility Energy, Replacement Energy, RECs, Environmental Attributes, or other products that Seller is required to deliver to Buyer, during periods in which Buyer fails to receive such products at the Point of Delivery, including any curtailment under Section 6.7. Except as provided in the preceding sentence, Seller shall not sell or otherwise transfer any Facility Energy, Replacement Energy required to be delivered to Buyer under this Agreement, Capacity Rights or Environmental Attributes to any Person other than Buyer during the Agreement Term. Any purported sale or transfer in violation of this provision shall be null and void at inception and of no force or effect.

Section 6.7 Curtailment Requested by Buyer.

(a) Subject to Seller's rights to sell to third parties under Section 6.6, Buyer, Buyer's Agent or Buyer's Transmission Provider may require Seller to reduce deliveries of all or any portion of the Facility Energy, and Seller shall comply with any such requirement of Buyer, Buyer's Agent or Buyer's Transmission Provider, at any time and for the duration specified by Buyer, Buyer's Agent or Buyer's Transmission Provider in a notice to Seller, including for curtailments required (i) during periods prior to Commercial Operation, including for testing or commissioning of the transmission substation, as defined in the sole discretion of whichever representative of Buyer provided the applicable notice, or due to (ii) a System Emergency; (iii) an event of Force Majeure on Buyer's side after the Point of Delivery that precludes Buyer from receiving Facility Energy at the Point of Delivery (curtailments under preceding clauses (i), (ii) or (iii), "***Non-Compensable Curtailments***"); (iv) system improvements, scheduled or unscheduled repairs or maintenance on Buyer's side of the Point of Delivery (other than due a Force Majeure event as described in (iii) above), as defined in the sole discretion of whichever representative of Buyer provided the applicable notice; (v) Buyer's failure or inability to Schedule the Delivered Energy from the Point of Delivery (other than due to a Force Majeure event as described in (iii) above); and (vi) for any other reason in the sole discretion of whichever representative of Buyer provided the applicable notice (curtailments under preceding clauses (iv), (v) or (vi), "***Compensable Curtailments***"). Curtailments shall be measured in five (5) minute increments and in a manner that is consistent with the Scheduling Procedures. Seller shall be excused from delivering the reduced deliveries of Facility Energy described in the notice described in this subsection. Subject to Section 6.7(b), Buyer shall be excused from receiving the reduced deliveries of Facility Energy described in the notice described in this subsection.

(b) Buyer shall not pay Seller for any Non-Compensable Curtailments. Notwithstanding the foregoing, commencing as of the Contract Year that is eleven (11) years after the Commercial Operation Date, Buyer may elect, via an Election Notice, that, for the following Contract Year, Buyer shall only pay Seller for Deemed Delivered Energy during Compensable

Curtailments occurring during such Contract Year that are in excess of four percent (4%) of the Expected Annual Generation in such Contract Year (a "***Curtailment Election***"). Notwithstanding anything herein to the contrary, during a Contract Year subject to a Curtailment Election, the Compensable Curtailments that are up to and not in excess of four percent (4%) of the Expected Annual Generation in such Contract Year shall be considered and treated as Non-Compensable Curtailments. If Buyer makes a Curtailment Election, then Buyer shall pay to Seller the price set forth in paragraph 4 of Appendix A ("***Curtailment Option Price***") or the Excess Energy price set forth in paragraph 3 of Appendix A, as applicable, for all Delivered Energy during such Contract Year. The Compensable Curtailments less than or equal to four percent (4%) of the Expected Annual Generation in such Contract Year are "Buyer's Non-Compensable Curtailment Hours". For the avoidance of doubt, any Curtailment occurring prior to the occurrence of the Commercial Operation Date shall be a Non-Compensable Curtailment. During the Delivery Term, Seller shall reasonably calculate the Energy, expressed in MWh, that the Facility would have produced and delivered to the Point of Delivery, but that is not produced by the Facility and delivered to the Point of Delivery during a Compensable Curtailment ("***Deemed Delivered Energy***"), which amount shall be equal to the result of an equation that Seller shall provide to Buyer and update on an ongoing basis to reflect the potential generation of the Facility as a function of wind speed, wind direction, ambient temperature, and atmospheric pressure, and using relevant Facility availability, weather and other pertinent data for the period of time during the Compensable Curtailment less the amount of Delivered Energy delivered to the Point of Delivery during the Compensable Curtailment period; *provided that* if the applicable difference calculated pursuant to (a) or (b) above is negative, the Deemed Delivered Energy shall be zero (0). Deemed Delivered Energy shall count toward the Guaranteed Delivered Energy.

(c) Buyer shall pay for Compensable Curtailments as follows: (i) Deemed Delivered Energy that is not Excess Energy for the price set forth in paragraph 2 or paragraph 4, as applicable, of Appendix A plus, to the extent generation from the Facility is eligible to receive Production Tax Credit, any lost Production Tax Credit on an after-tax basis, and (ii) Deemed Delivered Energy that is Excess Energy for the price set forth in paragraph 3 of Appendix A plus, to the extent generation from the Facility is eligible to receive Production Tax Credit, any lost Production Tax Credit on an after-tax basis. For the avoidance of doubt, Buyer shall not pay Seller for any Deemed Delivered Energy calculated during Buyer's Non-Compensable Curtailment Hours, during any Non-Compensable Curtailments or during any period before the Commercial Operation Date and Buyer shall not pay for any lost Production Tax Credit to the extent that Seller generates Facility Energy that is not received by Buyer.

(d) Seller shall provide Buyer with the ability to implement curtailments and adjusted curtailment amounts in real time by means of setpoints received from Buyer's SCADA system. Seller shall install sufficient measuring equipment at the Facility to collect data necessary to reasonably determine the amount of curtailed Facility Energy, including any Deemed Delivered Energy.

(e) Seller shall use commercially reasonable efforts to sell Facility Energy during any Compensable Curtailments, including the Environmental Attributes associated therewith, to third parties, *provided that* Seller shall not be required to sell Facility Energy to third parties to the extent such sale would require Seller to incur any costs of Transmission Services beyond the Point of Delivery that are necessary to effectuate such sales. To the extent Seller makes

sales of curtailed Facility Energy during any Compensable Curtailment, Seller shall remit to Buyer the product of (i) the quantity of such sales, in MWh, and (ii) the amount, not to exceed the Contract Price, equal to the price that Seller receives for such sales, less any incremental costs that Seller incurs in connection with the Compensable Curtailment of such sales, in $/MWh.

ARTICLE VII
TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

Section 7.1 In General. Seller shall arrange and be responsible for any Transmission Services required to deliver Facility Energy or Replacement Energy to the Point of Delivery. Seller shall Schedule or arrange for Scheduling services with its Transmission Providers to deliver the Facility Energy to Buyer at the Point of Delivery. Buyer shall arrange and be responsible for Transmission Services at and from the Point of Delivery, and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive Delivered Energy or Replacement Energy at the Point of Delivery. This includes creation by Seller and, as needed, revisions of electronic tags ("***e-tags***") associated with such Energy schedules. Seller shall provide additional information as reasonably requested by Buyer on e-tags or as reasonably necessary to facilitate Buyer's reporting requirements under RPS Law. Each Party shall designate an authorized Scheduler to effect the Scheduling of all Delivered Energy or Replacement Energy, as applicable. The contact information for Buyer's Scheduler and Seller's Scheduler as of the Effective Date shall be set forth in Appendix C and shall be revised by the Authorized Representative of the respective Party, as needed.

Section 7.2 Costs. Seller shall be responsible for any costs or charges imposed on or associated with the delivery of Facility Energy up to the Point of Delivery, including related to control area services, inadvertent energy flows, transmission losses and charges relating to the transmission of Facility Energy, and costs associated with transmission outages, congestion or curtailment, including Schedules 1, 2 and 7 of any applicable OATTs. Subject to Section 6.6, Buyer shall be responsible for any costs, expenses or charges imposed on or associated with the delivery of Facility Energy at and from the Point of Delivery, including charges related to control area services, inadvertent energy flows, transmission losses and charges relating to the transmission of Facility Energy and costs associated with transmission outages, congestion and curtailment.

Section 7.3 Title; Risk of Loss. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Facility Energy prior to and at the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Delivered Energy from the Point of Delivery. Seller shall deliver all Delivered Energy, Replacement Energy, Capacity Rights, and associated Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to and risk of loss as to all Delivered Energy, Replacement Energy, Capacity Rights and associated Environmental Attributes shall pass from Seller to Buyer at the Point of Delivery.

Section 7.4 Participating Resource. The Facility shall be designated as an LADWP participating resource for purposes of the EIM, and Seller shall undertake commercially reasonable

efforts to ensure that the Facility shall not be designated as a participating resource for purposes of the EIM for the Public Service Company of New Mexico.

ARTICLE VIII
ENVIRONMENTAL ATTRIBUTES; EPS AND RPS COMPLIANCE

Section 8.1 Transfer of Environmental Attributes. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by and between Buyer and Seller to purchase and sell Delivered Energy on the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Environmental Attributes, free and clear of all Liens, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term, for all Facility Energy and Replacement Energy received and purchased by Buyer hereunder. Seller agrees to transfer and make available to Buyer such Environmental Attributes to the fullest extent allowed by applicable law immediately upon Seller's production or acquisition of the Environmental Attributes. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and will not in the future assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Environmental Attributes. Buyer and Seller acknowledge and agree that the consideration for the transfer of Environmental Attributes is contained within the relevant prices for Delivered Energy under Article VI, Article IX and Appendix A. If at any time Seller becomes obligated to obtain pollution or environmental credits or offsets in order to own, operate or maintain the Facility in compliance with the Requirements of Law, Seller shall ensure that such credits or offsets are obtained in Seller's own name and at Seller's sole cost and expense. In no event shall Seller use any Environmental Attributes to satisfy the foregoing obligation. Seller shall be responsible for the following:

(a) matching, in accordance with all current WREGIS Operating Rules, all available and applicable NERC e-Tags pertaining to the corresponding REC before such REC is transferred to Buyer in WREGIS per the terms of this Agreement; and

(b) matching all available and applicable NERC e-Tags to the Pseudo-Tie Point meter data on an hourly basis. Seller shall provide the data to Buyer at the time of REC transfer in the same format as the CEC-RPS-Hourly Form, or any successor, as specified in the CEC RES Eligibility Guidebook.

For each month of the Delivery Period, Seller shall deliver and convey such quantity of RECs associated with the Energy delivered to Buyer and for which Seller has received payment from Buyer, within fifteen (15) Business Days after the end of the month in which the WREGIS Certificates for such RECs have been created by the proper transfer of such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, to Buyer into Buyer's WREGIS account, such that all right, title and interest in and to such WREGIS Certificates transfer from Seller to Buyer.

Section 8.2 Reporting of Ownership of Environmental Attributes. During the Agreement Term, Seller shall not report to any Person that the Environmental Attributes granted

hereunder to Buyer belong to any Person other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

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

Section 8.4 Use of Accounting System to Transfer Environmental Attributes. In furtherance and not in limitation of Section 8.3, Seller shall use WREGIS to evidence the transfer of any Environmental Attributes under applicable laws or any voluntary program ("***WREGIS Certificates***") associated with Facility Energy or Replacement Energy in accordance with WREGIS reporting protocols and shall register the Facility with WREGIS. On or before the date that is thirty (30) days before the Commercial Operation Date, Seller shall deliver sufficient evidence to Buyer that it has prepared and registered all required documents and has taken all necessary steps for final WREGIS approval, including the notice of substantial completion or Commercial Operation Date to WREGIS, as appropriate. Seller shall deliver to Buyer sufficient evidence that substantial completion of the Facility is verified with WREGIS, and that Seller has provided WREGIS with notice of the Commercial Operation Date. After the Facility is registered with WREGIS, at the option of Buyer's Authorized Representative, Seller shall transfer WREGIS Certificates using the Forward Certificate Transfer method, as described in WREGIS Operating Rules, from Seller's WREGIS account to up to three WREGIS accounts, as designated by Buyer's Authorized Representative. Seller shall be responsible for the WREGIS expenses associated with registering the Facility, maintaining its account, WREGIS Certificate issuance fees and transferring WREGIS Certificates to Buyer or Buyer's Agent, or any other designees, and Buyer shall be responsible for the WREGIS expenses associated with maintaining its account, or the accounts of its designees, if any, and subsequent transferring or retiring by it of WREGIS Certificates. Buyer is not a QRE as defined by the WREGIS Operating Rules for Seller; Seller shall serve, or shall retain a qualified third party to serve, as the QRE for the Facility. Forward Certificate Transfers shall occur monthly based on the certificate creation timeline established by the WREGIS Operating Rules. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each month. In the event that WREGIS is not in operation, or WREGIS does not track Seller's transfer of WREGIS Certificates to Buyer, Buyer's Agent or Buyer's designees for purposes of any Environmental Attributes attributed, accrued, realized, generated, produced, recognized or validated relative to the Facility Energy or Replacement Energy, or Buyer chooses not to use WREGIS for any reason, Seller shall document the production and transfer of Environmental Attributes under this Agreement by delivering to Buyer an attestation for the Environmental Attributes produced by the Facility, or Replacement Energy, measured in whole MWh, or by such other reasonable method as Buyer or Buyer's Authorized Representative shall designate. If any of the foregoing is or becomes inconsistent with the WREGIS Operating Rules, the Parties shall reasonably cooperate to amend the foregoing procedures in a manner reasonably requested by Buyer consistent with the then effective WREGIS Operating Rules.

Section 8.5 Further Actions Regarding Environmental Attributes. If WREGIS (or any successor thereto) is no longer available to provide the services described in Section 8.4, Seller shall, until such time as a substitute provider reasonably acceptable to both Parties is available to provide such services, continue to document the production of Environmental Attributes by delivering with each invoice to Buyer an attestation for Environmental Attributes (i) produced by the Facility or (ii) included with Replacement Energy delivered to Buyer for the preceding month. The form of attestation in the case of Energy generated by the Facility is set forth as Appendix D-1. The form of attestation in the case of Energy generated by another facility is set forth as Appendix D-2. At the request of Buyer or Buyer's Authorized Representative, the Parties shall execute all such documents and instruments and take such other action in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer and to maximize the attribution, accrual, realization, generation, production, recognition and validation of the Environmental Attributes. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement shall not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

Section 8.6 RPS and EPS Compliance. Upon the achievement of the Commercial Operation Date and at all times thereafter to and including the Closing Date (if it occurs), Seller shall ensure that the Facility will be both RPS Compliant and EPS Compliant. From time to time and at any time requested by Buyer or Buyer's Authorized Representative, Seller will furnish to Buyer, Governmental Authorities or other Persons designated by Buyer, all certificates and other documentation reasonably requested by Buyer or Buyer's Authorized Representative in order to establish compliance with the preceding sentence.

Section 8.7 Change in Law.

(a) In the event of a change in RPS Law during the Delivery Term that impacts the ability of the Facility to remain RPS Compliant or EPS Compliant, Seller will take all commercially reasonable actions to continue to satisfy Seller's warranty and guarantee under Section 8.6, including incurring costs in an amount up to five million dollars ($5,000,000) (the "***RPS Compliance Cost Cap***") to ensure the Facility is once again RPS and/or EPS Compliant. If (i) Seller reasonably determines that it will not be able to ensure the Facility will be RPS Compliant and/or EPS compliant without exceeding the RPS Compliance Cost Cap, and neither Buyer nor Seller are willing to pay the incremental costs above the RPS Compliance Cost Cap, or (ii) it is impossible for Seller to ensure the Facility will be RPS Compliant and/or EPS Compliant regardless of cost, then each of Seller and Buyer shall have the right, in their sole discretion, to terminate this Agreement. Upon such termination, Buyer will release any Performance Assurance to Seller. Such termination pursuant to this Section 8.7 will be without further liability to either Party.

(b) In the event of a change in a Requirement of Law or Transmission Provider or Balancing Authority OATT that impacts the ability of the Facility to participate in the EIM, Seller will take all commercially reasonable actions to continue to satisfy Seller obligations under Section 3.1(f)(ii) or otherwise in connection with participation in the EIM, including incurring costs in an amount up to two million dollars ($2,000,000) (the "***EIM Compliance Cost Cap***"). If

(i) Seller reasonably determines that it will not be able to ensure the Facility will be able to participate in the EIM without exceeding the EIM Compliance Cost Cap, and neither Buyer nor Seller are willing to pay the incremental costs above the EIM Compliance Cost Cap, or (ii) it is impossible for Seller to ensure the Facility will be able to participate in the EIM, then Seller shall be excused from its obligations under Section 3.1(f)(ii) or otherwise in connection with participation in the EIM.

Section 8.8 Change in Market Structure. In the event a regionalization or other major change to the market structure of the WECC occurs during the Agreement Term (other than a change in law as addressed in Section 8.7 above), then the Parties agree to negotiate such modifications to this Agreement as may be necessary to enable the Parties to continue to perform their respective obligations under this Agreement, while preserving, to the maximum extent possible, the existing benefits, burdens and obligations set forth herein. Such negotiations shall commence promptly following the delivery by one Party to the other Party of a notice requesting negotiations pursuant to this Section 8.8.

ARTICLE IX
MAKEUP OF SHORTFALL ENERGY

Section 9.1 Makeup of Shortfall. Unless excused by (a) Force Majeure, (b) a System Emergency, (c) Buyer's failure to receive energy at the Point of Delivery, (d) a Non-Compensable Curtailment or a Compensable Curtailment, or (e) failure or limitation of the Pseudo-Tie not caused by the fault of negligence of Seller or any Affiliate of Seller, if in any Measurement Period the amount of Delivered Energy is less than the Guaranteed Delivered Energy for such Measurement Period (such failure, a "***Shortfall***"), then Seller shall make up any such shortfall of Delivered Energy ("***Shortfall Energy***"), subject to Section 9.4, by (i) applying the Delivered Energy and Deemed Delivered Energy in the Contract Year following the Measurement Period in which the Shortfall occurred ("***Cure Period***") that is in excess of an amount equal to eighty percent (80%) of the Expected Annual Generation for the then-current Contract Year, or (ii) supplying Replacement Energy as provided in Section 9.2.

Section 9.2 Replacement Energy. Seller may elect to make up any or all Shortfall Energy by providing Buyer with Energy produced by another wind-powered facility at the Corona Wind Complex that, at the time delivered to Buyer, (a) is both RPS Compliant and EPS Compliant, and (b) includes Environmental Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Environmental Attributes, if any, as the Environmental Attributes that would have been generated by the Facility on the day and at the time for which such Energy is being provided ("***Replacement Energy***"). If providing Replacement Energy from the Corona Wind Complex, (i) Seller shall notify Buyer prior to delivering the Replacement Energy, (ii) Seller shall deliver a form of attestation with respect to the Replacement Energy as set forth in Appendix D-2, (iii) Buyer and Seller shall enter into such agreements or provide such documentation or certifications as may be necessary to ensure that such Replacement Energy is both RPS Compliant and EPS Compliant and (iv) Seller shall Schedule or arrange for Scheduling services with its Transmission Providers to deliver the Replacement Energy to the Point of Delivery; *provided that* the Replacement Energy shall be delivered to Buyer on a delivery schedule reasonably similar to the Facility's historic deliveries. Buyer shall pay Seller for all

delivered Replacement Energy at the price set forth in paragraph 2 or 4 of Appendix A, as applicable to the then-current Contract Year.

Section 9.3 No Excess Energy During Shortfall Periods. During any Measurement Period in which there is Shortfall Energy owed to Buyer, all Delivered Energy or Deemed Delivered Energy that would otherwise be designated as Excess Energy during the Cure Period shall be applied to make up the Shortfall Energy until all Shortfall Energy is provided to Buyer. All such Delivered Energy shall be paid for at the price specified in paragraph 2 of Appendix A or the price specified in paragraph 4 of Appendix A, as applicable for the then-current Contract Year, and there will be no payment of the Excess Energy Rate for this Energy until the Shortfall Energy has been fully made up.

Section 9.4 Shortfall Damages. If Seller fails to make up the full amount of any Shortfall Energy by the end of the Cure Period, or if the last year of the Measurement Period during which the Shortfall occurred was the last year of a compliance period under RPS Law, Seller shall pay to Buyer an amount for each MWh of Shortfall Energy that has not been made up as allowed in Section 9.1 or Section 9.2 equal to the sum of the (a) Market Price Index for such Energy and (b) Green Value associated therewith (collectively, the "***Shortfall Damages***"); such amount, if undisputed, Seller shall pay to Buyer within sixty (60) days of notice from Buyer of the calculated Shortfall Damages amount. The payment of Shortfall Damages shall not limit Buyer's rights to (A) exercise any right or remedy available under this Agreement or at law or in equity for any other breach or default occurring concurrently with, before or after the failure to meet the Guaranteed Delivered Energy, including a Default under Section 13.1(c), or (B) recover any damages not directly attributable to the failure to deliver the Shortfall Energy.

Section 9.5 Application of Shortfall Energy or Replacement Energy. In the event of shortfalls in multiple Measurement Periods, any Shortfall Energy or Replacement Energy delivered by Seller shall be applied in priority to the earliest outstanding shortfalls hereunder until all shortfalls are satisfied.

ARTICLE X
CAPACITY RIGHTS

Section 10.1 Purchase and Sale of Capacity Rights. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by and between Buyer and Seller to purchase and sell Facility Energy and Environmental Attributes on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of the Capacity Rights. Buyer and Seller acknowledge and agree that the consideration for the transfer of Capacity Rights is contained within the relevant prices for Delivered Energy. In no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of Buyer's ownership of the Capacity Rights or otherwise.

Section 10.2 Representation Regarding Ownership of Capacity Rights. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and will not in the future assign, transfer, convey, encumber, sell or otherwise dispose of any of the Capacity Rights to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Capacity Rights. Seller shall not report to any

Person that any of the Capacity Rights belong to any Person other than Buyer. Buyer may, at its own risk and expense, report to any Person that the Capacity Rights belong to it.

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

Section 10.4 Buyer Acknowledgement Regarding Capacity Rights. Buyer acknowledges that it may not be able to utilize the Capacity Rights to meet resource adequacy or similar requirements, and that it may be required to take certain actions or obtain certain other rights in order to realize value associated with the Capacity Rights. Seller makes no representation or warranty that Buyer may utilize or obtain value for the Capacity Rights transferred to Buyer hereunder.

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

Section 11.1 Billing and Payment. Billing and payment for the Energy purchases by Buyer under this Agreement and for any other amounts due and payable by Buyer hereunder shall be as follows:

(a) On or before the tenth (10th) day of the month following a month in which transactions occur hereunder, Seller shall render an invoice (including the name of the Facility, Seller's address and the contact information of the preparer) to Buyer showing the following for the preceding month, as applicable:

(1) Startup and Test Energy billed pursuant to Appendix A, if any.

(2) An amount equal to the total amount of Delivered Energy during such month.

(3) An accounting of the amount of the Guaranteed Delivered Energy delivered as of such date for the applicable Contract Year, an accounting of new or made-up Shortfall Energy and/or Replacement Energy, if applicable, and a confirmation as to whether Seller met or exceeded the Guaranteed Delivered Energy, if applicable.

(4) Excess Energy billed pursuant to Appendix A.

(5) The amount of Buyer's Non-Compensable Curtailment Hours incurred during such period in accordance with Section 6.7, including the cumulative total of Buyer's Non-Compensable Curtailment Hours incurred during the current Contract Year and the prior Contract Year, including the current billing period, and consistent with the Scheduling Procedures.

(6) Seller's reasonable calculation of the amount of Deemed Delivered Energy and amounts owed by Buyer in accordance with Section 6.7(c).

(7) The amount of money received by Seller, if any, associated with the sale of any curtailed Facility Energy under Section 6.7(a).

(8) The total quantity of WREGIS Certificates confirmed to have been uploaded by Seller to the WREGIS system.

(b) Any WREGIS Withhold Amount withheld during such month or released to Seller in accordance with Section 11.4. Monthly invoices, to the extent applicable, shall be based on meter readings as described in Section 11.8.

(c) Monthly invoices, to the extent applicable, shall be based on meter readings as described in Section 11.8.

(d) Monthly invoices shall be sent to the address set forth in Appendix C or such other address as is provided by Buyer in writing.

(e) Attestations of Environmental Attribute transfers to Buyer pursuant to Section 8.1 shall accompany all monthly invoices.

(f) Confirmation of Seller's compliance with the terms and conditions of this Agreement shall accompany monthly invoices.

Section 11.2 Calculation of Energy Delivered; Payment. For each month during the Agreement Term, commencing with the first month in which Energy is delivered by Seller to Buyer under this Agreement, Seller shall calculate the amount of Energy so delivered during such month as determined (i) in the case of Delivered Energy, from recordings produced by Seller's Electric Metering Devices maintained pursuant to Section 11.8, at or near midnight on the last day of the month in question, and (ii) in the case of Replacement Energy actually supplied to Buyer pursuant to Section 9.2, from recordings produced by metering equipment approved by Buyer's Authorized Representative in his sole discretion.

Section 11.3 Payment. Subject to the provisions of Section 11.4, Buyer shall pay the amounts set forth in each monthly invoice by wire transfer to the accounts designated on the invoice rendered by Seller on or before the thirtieth (30th) day after receipt by Buyer of the applicable invoice. Bills or portions of bills which are not paid by the due date shall thereafter accrue interest at the Interest Rate, from and including the date payment was due until the date such payment is made. Seller shall pay to Buyer any amount owed to Buyer as set forth in Section 11.1(a)(5) and Section 11.1(a)(6) with respect to any month at the time Seller submits its next monthly invoice to Buyer, but in no event more than thirty (30) days after the date of the invoice showing any amount is owed to Buyer.

Section 11.4 WREGIS Withholding. Commencing as of the third (3rd) month following the Commercial Operation Date, and in any monthly invoice thereafter, Buyer shall have the right to withhold from payment to Seller an amount equal to fifteen dollars ($15) per MWh (such amount, the "***WREGIS Withhold Amount***") for each MWh of Delivered Energy under Section 6.1 until such time as the WREGIS Certificates associated with such Delivered Energy have been accurately credited to Buyer's WREGIS account as set forth in Section 8.4. Buyer shall release the WREGIS Withhold Amount for each MWh for which a WREGIS Certificate has been

accurately credited to Buyer's WREGIS account. If at any time during the Agreement Term, Buyer is no longer timely and accurately receiving into Buyer's WREGIS account a WREGIS Certificate that corresponds to the amount of Delivered Energy from the month that is three (3) month's prior to the month of the invoice, Buyer shall have the right to withhold from any payment to Seller the WREGIS Withhold Amount for each WREGIS Certificate not received until such time as Buyer again timely and accurately receives such WREGIS Certificates.

Section 11.5 Disputed Invoices. In the event any portion of any invoice is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the dispute. Disputes shall be discussed by the Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve the disputes, and any failure to agree shall be subject to resolution in accordance with Section 14.3. Upon resolution of any dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 11.5, "***Interest Rate***" shall mean the lesser of (i) 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 hundred (200) basis points, or (ii) the maximum rate permitted by applicable Requirements of Law. Buyer or Buyer's Authorized Representative may dispute an invoice at any time, *provided that* Buyer or Buyer's Authorized Representative provides Seller with a notification of such dispute, setting forth the details of such dispute in reasonable specificity.

Section 11.6 Right of Setoff. In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, either Party shall have the right at any time or from time to time, without notice to the other Party or to any other Person, any such notice being hereby expressly waived, to set off against any amount due from the other Party under this Agreement or otherwise any amount due from the other Party under this Agreement or otherwise, including any amounts due because of breach of this Agreement or any other obligation and any costs payable by the other Party under Section 7.2 if and to the extent applicable; *provided that* neither Party may set off against any amount due from the other Party under this Agreement or otherwise any amount due as liquidated damages, Daily Delay Damages, or Shortfall Damages under this Agreement. A Termination Payment due under Section 13.3 shall not be construed as liquidated damages for the purposes of this Section 11.6.

Section 11.7 Records and Audits. Seller shall maintain, and shall cause Seller's subcontractors and suppliers as applicable to maintain, all records pertaining to the management of this Agreement, related subcontracts and performance of services pursuant to this Agreement (including all billings, costs, metering, and Environmental Attributes), in their original form, including reports, documents, deliverables, employee time sheets, accounting procedures and practices, records of financial transactions and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect all costs claimed to have been incurred and services performed pursuant to this Agreement. If Seller, Seller's subcontractors or suppliers are required to submit cost or pricing data in connection with this Agreement, Seller shall maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Buyer and the Authorized

Auditors shall have the right to discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested. All records shall be retained, and shall be subject to examination and audit by the Authorized Auditors, for a period of not less than five (5) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. Seller shall make said records or, to the extent accepted by the Authorized Auditors, photographs, micro-photographs, etc. or other authentic reproductions thereof, available to the Authorized Auditors at Seller's offices located at all reasonable times and without charge. The Authorized Auditors shall have the right to reproduce, photocopy, download, transcribe and the like any such records. Any information provided by Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. Seller shall not, however, be required to furnish the Authorized Auditors with commonly available software. Seller, and Seller's subcontractors and suppliers, as applicable to the services provided under this Agreement, shall be subject at any time with fourteen (14) days' prior written notice to audits or examinations by Authorized Auditors, relating to all billings and to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation and documentation. Examinations and audits shall be performed using generally accepted auditing practices and principles and applicable Governmental Authority audit standards. If Seller utilizes or is subject to Federal Acquisition Regulation, Part 30 and 31, et seq. accounting procedures, or a portion thereof, examinations and audits shall utilize such information. To the extent that an Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective. Consistent with standard auditing procedures, Seller shall be provided fifteen (15) days to review an Authorized Auditor's examination results or audit and respond to Buyer's Authorized Representative prior to the examination's or audit's finalization and public release. If an Authorized Auditor's examination or audit indicates Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by Seller to Buyer within fifteen (15) days of notice to Seller of the identified overpayment. Notwithstanding the foregoing, if the audit reveals that Buyer overpayment to Seller is more than five percent (5.0%) of the billings reviewed, Seller shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit. Such examination or audit expenses and costs shall be paid by Seller to Buyer within fifteen (15) days of notice to Seller of such costs and expenses.

Section 11.8 Electric Metering Devices.

(a) Delivered Energy shall be measured using Electric Metering Devices installed, owned (or leased) and maintained by Seller at the high side of the step-up transformer at the Facility substation (the "***Project Substation***") and as depicted and labeled "Revenue Metering System" in the single-line diagram attached to this Agreement in Appendix U, the metering diagram attached to this Agreement in Appendix M, which diagrams shall be updated as necessary as determined by Seller as a condition precedent to the achievement of the Construction Commencement Milestone. All Electric Metering Devices used to provide data for the computation of payments shall be sealed, and Seller or its designee shall only break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Section 11.8. Seller or its designee shall specify the number, type and location of such Electric Metering Devices. Seller shall provide Buyer and LADWP a live data connection to such

Electronic Metering Devices that may be accessed using the Inter-Control Center Communications Protocol, as defined by the International Electrotechnical Commission, which connection will enable the exchange of real-time and historical power system monitoring and control data, including measured values and accounting data.

(b) The Electric Metering Devices shall be capable of: (i) measuring back-feed kilowatts and generation kilowatts at revenue quality to provide telemetering to the ECC from the Project Substation, (ii) accurately metering back-feed load when generation output goes to zero, (iii) conforming to the DNP 3.0 protocol and meeting N-1 redundancy (which dictates that if any one meter fails, the Electric Metering Devices will allow the missing telemetry data to be alternately sourced or calculated), and (iv) a live data metering connection accessible using the Inter-Control Center Communications Protocol ("***ICCP***") (as defined by the International Electrotechnical Commission) to enable the exchange of real-time and historical power system monitoring and control data, including measured values and accounting data. Examples of N-1 redundancy compliant architecture include placing backup meters at the same point of metering or installing one meter at each branch (*i.e.*, gross, aux and net) so the missing telemetry data may be calculated as a difference. Notwithstanding such required capabilities, the Electric Metering Devices shall function in compliance with the guidebook promulgated by the CEC, as amended from time to time, or in compliance with other RPS Law, whichever is controlling.

(c) Seller or its designee, at no expense to Buyer, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections and tests. Upon request by Buyer, Seller or its designee shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of Buyer to inspect or witness the testing of any Electric Metering Device. The actual expense of any such requested additional inspection or testing shall be borne by Buyer, unless such tests reveal that the meters were more than 1% inaccurate. Seller shall provide copies of any inspection or testing reports to Buyer.

(d) If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment amount and period shall be determined by reference to Buyer's Check Meters for the Facility, if any, or as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer's Authorized Representative. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-third of the time elapsed since the preceding test of the Electric Metering Devices. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Section 11.8 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer or Buyer's Authorized Representative, may take the form of an offset to payments due to Seller from Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) days after

the owing Party receives notice of the amount due, unless Buyer or Buyer's Authorized Representative elects payment via an offset.

(e) At Buyer's or Buyer's Agent's option, Buyer may install, own and operate Electric Metering Devices at the Project Substation ("***Buyer's Check Meters***"). Seller shall, and shall cause each of its subcontractors to, grant to Buyer and Buyer's Agent rights of access to Buyer's Check Meters upon reasonable notice to Seller and during reasonable business hours. Buyer and Buyer's Agent will ensure that there is no interference with Seller's operations. Commencing on the first date on which Startup and Test Energy is received from the Facility, and continuing throughout the Delivery Term, Buyer shall provide to Seller on a real-time basis read only access to Buyer's Check Meters. Buyer's Check Meters shall be for check purposes only and shall not be used for the measurement of Delivered Energy, except as provided in Section 11.8(d) above. The installation, operation and maintenance of Buyer's Check Meters shall be performed entirely by Buyer or Buyer's Agent at Buyer's sole cost and expense.

Section 11.9 Taxes. Seller shall be responsible for and shall pay, before the due dates therefor, any and all federal, state and local Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to the Facility, the Site, or any other assets of Seller, the sale Facility Energy, Capacity Rights and Environmental Attributes and all Taxes related to Seller's income. If Buyer is required under any Requirement of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller hereunder; if Buyer elects not to deduct such amounts from payments to Seller, Seller shall promptly reimburse Buyer for such amounts promptly upon request. Further, if the Facility is exempt from one or more Taxes at any time and for any reason, and that exemption is lost at any time during the Agreement Term, Seller shall be responsible for any additional Taxes incurred as a result of the loss of that exemption.

ARTICLE XII
REPRESENTATIONS AND WARRANTIES; COVENANTS OF SELLER

Section 12.1 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as of the Effective Date that:

(a) Buyer is a validly existing joint powers authority under the laws of the State of California and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and each Ancillary Document to which it is a party and carry out the transactions contemplated hereby and thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and all such Ancillary Documents.

(b) The execution, delivery and performance by Buyer of this Agreement and each Ancillary Document to which Buyer is a party have been duly authorized by all necessary action, and do not and will not require any consent or approval of Buyer's Board of Directors or Buyer's Members, other than that which has been obtained; *provided that* further authorizations will be required for Buyer to exercise the Project Purchase Option or the Right of First Offer.

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

Section 12.2 Representations and Warranties of Seller. Seller represents and warrants to Buyer that:

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

(b) The execution, delivery and performance by the Seller Parties of this Agreement and all Ancillary Documents, the consummation of the transactions contemplated hereby and thereby and the fulfilment of and compliance with the provisions of this Agreement and the Ancillary Documents, have been duly authorized by all necessary corporate action, and do not and will not require any consent or approval other than those which have already been obtained or which will be obtained in the ordinary course.

(c) The execution and delivery of this Agreement and all Ancillary Documents, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and the Ancillary Documents, do not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which any Seller Party is a party or by which it or any of its property is bound, result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of any Seller Party (except as contemplated hereby), and each Seller Party has obtained or will obtain in the ordinary course, at no expense to Buyer, all Permits, including, to the extent required, any FERC authorization, required for the performance of its obligations hereunder and thereunder and operation of the Facility in accordance with Prudent Utility Practices, the requirements of this Agreement, the Ancillary Documents and all applicable Requirements of Law.

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

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

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

(g) The organizational structure and ownership of Seller and each Parent Entity, including a list of each of such entity's Principals, is as set forth in Appendix Q. Appendix Q may be updated from time to time by agreement of Buyer and Seller to account for a Change in Control that has been consented to by Buyer in accordance with this Agreement.

(h) Seller has always been a Special Purpose Entity.

(i) The Seller Parties have (i) not entered into this Agreement or any Ancillary Document with the actual intent to hinder, delay or defraud any creditor, and (ii) received reasonably equivalent value in exchange for their respective obligations under this Agreement and the Ancillary Documents. No petition in bankruptcy has been filed against any of the Seller Parties, and none of the Seller Parties nor any of their respective constituent Persons have ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(j) All of the assumptions made in the Non-Consolidation Opinion, including but not limited to any exhibits attached thereto, are true and correct. Seller has complied with all of the assumptions made with respect to Seller in the Non-Consolidation Opinion.

(k) None of the Seller Parties has any reason to believe that any of the Permits required to construct, maintain or operate the Facility in accordance with the requirements of this Agreement and all applicable Requirements of Law will not be timely obtained in the ordinary course of business.

(l) All Tax returns and reports of each Seller Party required to be filed by it have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all assessments, fees and other governmental charges upon the Seller Parties and upon its properties, assets, income, business and franchises that are due and payable have been paid when due and payable. None of the Seller Parties knowns of any proposed Tax assessment against any of the Seller Parties that is not being actively contested by it in good faith and by appropriate proceeding.

(m) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of any Facility Energy, Environmental Attributes, or Capacity Rights-related benefits except as provided herein, not to include the value of Production Tax Credits or other tax credits or incentives.

(n) Seller owns or possesses, or reasonably expects to obtain in the ordinary course of business or possess in a timely manner, all patents, rights to patents, trademarks,

copyrights and licenses necessary for the performance by Seller of this Agreement and the Ancillary Documents and the transactions contemplated thereby, without any conflict with the rights of others, and Seller's use thereof does not infringe on the intellectual property rights of third parties.

(o) To Seller's Knowledge, there are no investigations, inquiries, orders, hearings, actions or other proceedings by or before any Governmental Authority that are pending or, to the best of Seller's Knowledge, threatened in connection with any Permit or Environmental Laws with respect to the Facility or the Site. Neither Seller, nor to Seller's Knowledge, any third party has used, released, generated, manufactured, produced, or stored in, on, under or about the Site any Hazardous Materials that could reasonably be expected to subject Seller or Buyer to liability under any Environmental Laws. To Seller's Knowledge, with the exception of those Hazardous Materials used and stored in accordance with Environmental Laws and pursuant to any applicable Permit, there are no Hazardous Materials used, stored or present at, in, on or under the Site that could reasonably be expected to subject Seller or Buyer to liability under any Environmental Laws.

(p) Seller has Site Control for the Agreement Term.

Section 12.3 Covenants of Seller Related to Real Property Agreements.

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

(b) Subject to Seller's rights under Section 12.3(c): (i) Seller shall at all times prevent the imposition of any Liens or encumbrances, other than Permitted Encumbrances, on Seller's interest in the real property that is subject to the Real Property Agreements; and (ii) in the event a Lien or encumbrance other than a Permitted Encumbrance is imposed on Seller's interest in any property subject to a Real Property Agreement, Seller shall promptly give Buyer notice thereof and shall promptly take action to release such Lien or encumbrance.

(c) Seller may from time to time prior to the Commercial Operation Date supplement the list of Real Property Agreements in Appendix L to reflect any additional, transferred, or terminated Real Property Agreements, and may include in Appendix L any additional easements, rights of way and other Real Property Agreements as may be required by Seller to perform its obligations under this Agreement. Seller shall provide Buyer with written notice of such additional, transferred or terminated Real Property Agreements occurring prior to the Commercial Operation Date, and the Parties shall revise Appendix B and Appendix L to reflect any such additions, transfers, or terminations. Any terminated or transferred Real Property Agreements shall no longer constitute Real Property Agreements following such termination or transfer. Any additional Real Property Agreements shall be subject to the terms and conditions of

this Section 12.3. Following the Commercial Operation Date, Seller may not remove any portions of or rights or interests in the Site under the Real Property Agreements or amend or terminate any of the Real Property Agreements, or otherwise alter, diminish, or otherwise impact any obligation of Seller under this Agreement in respect of the Real Property Agreements, unless Buyer has provided prior written consent to Seller, such consent to be provided if Seller demonstrates, as determined by Buyer in Buyer's reasonable discretion, that the requested change will not reasonably be expected to have a material adverse impact on Seller's performance under this Agreement.

(d) Seller shall not modify, subordinate or amend any Real Property Agreement in any respect following the Commercial Operation Date, either orally or in writing, if such modification, subordination, or amendment would reasonably be expected to have a material adverse effect on Seller or on the Facility, and Seller shall not terminate, cancel, sever or surrender, or permit or suffer the modification, subordination, amendment, termination, cancellation, severance or surrender of any Real Property Agreement and shall not waive, excuse, condone or in any way release or discharge the Lessor of or from the obligations, covenants, conditions and agreements by the Lessor to be kept, performed, observed or complied with thereunder in each such case if such action would reasonably be expected to have a material adverse effect on Seller or on the Facility, and any such action taken by Seller without the prior written consent of Buyer shall be void at inception and of no force and effect.

(e) Seller shall give Buyer prompt notice of (i) any default or of any event which, with the giving of notice or passage of time, or both, would become a default under any Real Property Agreement or of the receipt by Seller of any notice from the Lessor thereof, or (ii) the commencement of any action or proceeding or arbitration pertaining to any Real Property Agreement. Subject to the provisions of the Real Property Agreements, Buyer, at its option, may take any action (but shall not be obligated to take any action) from time to time necessary to cure, in whole or in part, any default by Seller under any Real Property Agreement; *provided, however*, Buyer shall provide notice to Facility Lender at least thirty (30) days prior to taking such action, and will not take any action if Facility Lender, within thirty (30) days after Buyer's notice, commences cure or provides notice to Buyer that Lender reasonably expects to cure and will commence to cure as soon as reasonably practicable under the circumstances if commencement is not reasonably practical within such thirty (30) days. Seller shall deliver to Buyer, promptly upon service or delivery thereof on, to or by Seller, a copy of each petition, summons, complaint, notice of motion, order to show cause and other pleading or paper, however designated, which shall be served or delivered in connection with any such action, proceeding or arbitration.

(f) Upon any payment by Buyer under any Real Property Agreement to cure any default of Seller or the Lessor thereunder and thereby prevent termination of the Real Property Agreement or the exercise of any other remedy of the other party or parties thereunder arising out of such default, Seller, as such lessee, within ten (10) days following receipt of notice from Buyer that it made such payment, shall pay the amount of such payment to Buyer plus interest accruing thereon at the Interest Rate, from and including the date of the payment by Buyer to cure such default to but excluding the date of such payment by Seller. Buyer shall be entitled to offset amounts otherwise due Seller by the amount of such cure payment or remedy cost until Buyer has been fully repaid.

(g) Subject to the rights of Facility Lender, in the event of the termination, rejection, or disaffirmance by Lessor (or by any receiver, trustee, custodian, or other party that succeeds to the rights of the Lessor) under any Real Property Agreement pursuant to the Bankruptcy Code, Seller shall cooperate in good faith with Buyer to exercise Seller's rights under Section 365 of the Bankruptcy Code (including the election available pursuant to Section 365(h) of the Bankruptcy Code and any successor provision) or applicable non-bankruptcy law and in a manner consistent with and in furtherance of the purpose of the Agreement and Buyer's interests in the applicable Real Property Agreement (by which Seller acknowledges the importance of such Real Property Agreement), and Seller shall provide Buyer with reasonable advance notice of its intended election, as applicable; *provided that* if Seller provides notice to Buyer of Seller's intent to terminate the Real Property Agreement or the leasehold estate created thereby, Buyer shall have the right, but not the obligation, to direct Seller to not terminate the Real Property Agreement and Seller shall take such steps necessary to retain the Real Property Agreement and remain in possession of the property, in which case Seller shall comply with Buyer's direction and Buyer will fully bear all costs, including any costs associated with any cure of prior defaults by Seller, incurred by either Party in connection with the actions required of Seller to retain such Real Property Agreement.

(h) Subject to the rights of Facility Lender, in the event there is a termination, rejection, or disaffirmance by the Lessor (whether as debtor in possession or otherwise) or by any trustee or successor in interest of the Lessor pursuant to the Bankruptcy Code or otherwise and Buyer elects to have Seller remain in possession under any legal right Seller may have to occupy the property pursuant to the affected Real Property Agreement, then Seller shall remain in such possession and shall perform all commercially reasonable acts necessary for Seller to retain its right to remain in such possession, whether such acts are required under the then existing terms and provisions of such Real Property Agreement, the Bankruptcy Code, including, without limitation, Section 365(h) thereof, or otherwise. Buyer will fully bear all costs, including any costs associated with any cure of prior defaults by Seller, incurred by either Party in connection with the actions required of Seller to retain such Real Property Agreement.

(i) Subject to the rights of Facility Lender, in the event that a petition under the Bankruptcy Code shall be filed by or against Seller and Seller or any trustee of Seller shall decide to reject or disaffirm a Real Property Agreement pursuant to the Bankruptcy Code or otherwise (or allow same), Seller shall give Buyer at least ten (10) days' prior notice of the date on which application shall be made to the court for authority to reject or disaffirm such Real Property Agreement or such Real Property Agreement will be otherwise rejected. As allowed by law and subject to the rights of Facility Lender, Buyer shall have the right, but not the obligation, to serve upon Seller or such trustee within such ten (10) day period a notice stating that (i) Buyer demands that Seller (whether as debtor in possession or otherwise) or such trustee assume and assign such Real Property Agreement to Buyer pursuant to the Bankruptcy Code, and (ii) Buyer covenants to cure, or to provide adequate assurance of prompt cure of, all defaults (except defaults of the type specified in Section 365(b)(2) of the Bankruptcy Code or otherwise and any successor provision) and to provide adequate assurance of future performance, including all future lease payments, under such Real Property Agreement. In the event that Buyer serves any such notice as provided above, Seller (whether as debtor in possession or otherwise) shall not seek to reject or disaffirm such Real Property Agreement, and Seller (whether as debtor in possession or otherwise) shall comply with such demand within thirty (30) days after such notice shall have been given, subject

to Buyer's performance of such covenant. Buyer will fully bear all costs, including any costs associated with any cure of prior defaults by Seller, incurred by either Party in connection with the actions required by Seller to assume and assign such Real Property Agreement.

Section 12.4 Covenants of Seller Related to Mergers, Change in Control, Tax Equity Financing.

(a) Except as prohibited by law or confidentiality agreements, Seller shall provide Buyer with at least sixty (60) days' prior written notice of the reasonably likely occurrence of any consolidation, merger, or reorganization or other similar transaction, or series of similar transactions, involving Seller or any Parent Entities, including any Change in Control. Such notice shall include a description of the Change in Control, including relevant information about the potential assignee. Such notice shall be in addition to, and not in lieu of, any notice required under Section 14.7.

(b) Seller shall provide Buyer with at least sixty (60) days' prior written notice of the consummation of a Tax Equity Financing, which notice shall include (i) a description of the Tax Equity Investors, including their corporate name, key personnel, material affiliates, financial wherewithal and principal lines of business; such information is provided for Buyer's information only and Buyer shall not directly contact the Tax Equity Investors regarding the Facility's Tax Equity Financing without Seller's prior consent; (ii) a summary of the provisions related to, and the structure surrounding, the power to Control the management and policies of Seller, and any entity that is jointly-owned by any Parent Entity and such Tax Equity Investor arising in connection with the Tax Equity Financing; and (iii) a statement of the circumstances under which such provisions and structure could be modified by such Tax Equity Investor. Such notice shall be in addition to, and not in lieu of, any notice required under Section 14.7.

Section 12.5 Additional Covenants of Seller.

(a) Seller shall be a Special Purpose Entity at all times during the Agreement Term. Notwithstanding the foregoing, nothing in this Agreement shall limit Seller's ability to (i) establish or own a separate company with the specific purpose of purchasing or owning New Mexico Industrial Revenue Bonds and entering into customary New Mexico Industrial Revenue Bond related contracts with such company or transactions participants, (ii) own or operate certain Facility Assets as undivided co-tenants in interest with Qualified Affiliates in the Corona Wind Complex, or any successor thereto that (1) has entered into one or more Shared Facilities Agreements, (2) is financially capable of performing its obligations under such Shared Facilities Agreements, and (3) that is or directly or indirectly retains a Qualified Operator, or (iii) participate in Portfolio Financing arrangements with Affiliates.

(b) Seller shall not cause or permit the stock or equity ownership interest in Seller to be pledged or assigned as collateral, except in connection with the financing or refinancing of the Facility including a Portfolio Financing.

(c) Seller shall not, at any time following the Commercial Operation Date, incur or permit Facility Debt in an amount that, in the aggregate as of the date it is incurred, exceeds seventy percent (70%) of the Facility Cost.

(d) Seller shall provide to Buyer within thirty (30) days after the end of each of calendar quarter during the Agreement Term, a certificate of an authorized officer of Seller substantially in the form attached hereto as Appendix S (each, a "***Quarterly Certificate***"), (i) certifying that there exists no Default or any event that, after notice or with the passage of time or both, would constitute a Default, or that a Default exists or may exist after notice or with the passage of time or both; (ii) certifying that the representations and warranties set forth in this Agreement remain true and correct as of the date of such certificate or explaining which representations and warranties are no longer true and correct; and (iii) attesting to the Facility Debt after the Commercial Operation Date as being equal to or less than seventy percent (70%) of the Facility Cost as of such date, which certificate shall be accompanied by supporting documentation in reasonable detail, including Seller's most recent annual and quarterly financial statements and a statement of the Facility's then-current Facility Debt and Facility Cost values. If a Default or any event that, after notice or with the passage of time or both, would constitute a Default as of such date, Seller shall list, in detail, the nature of the event, the period during which it has existed and the actions that Seller has taken, is taking, or proposes to take with respect to such event.

(e) Seller shall inform all investors in Seller of the existence of this Agreement and all Ancillary Documents on or before the date of such investment in Seller.

(f) If an Affiliate of Seller that is not listed on Appendix X enters into an Ancillary Document, Seller shall, within five (5) Business Days following the execution and delivery of such Ancillary Document, deliver to Buyer a revised version of Appendix X listing such Affiliate as a Seller Party, and the revised version shall automatically be incorporated into this Agreement as an amended Appendix X. Notwithstanding the foregoing, if an Affiliate of Seller that is not listed on Appendix X enters into an Ancillary Document, upon such Person's execution of such Ancillary Document, such Person shall be automatically, without any further action of the Parties, deemed to be a Seller Party.

(g) Upon not more than thirty (30) days' prior written notice to Seller, Buyer or its agent shall have the right, at reasonable times during business hours and at its own expense, but no more often than once per Contract Year, to audit the books and records of Seller to the extent necessary to verify Seller's solvency; provided, however, Buyer or its agent shall have the immediate right to audit the books and records of Seller in the event Seller (i) has taken any action contrary to subsection (aa) of the definition of Special Purpose Entity; or (ii) has made any written disclosure showing that it may be insolvent. For the purposes of this Section 12.5(g) only, Seller's insolvency shall be established when Seller (A) is unable, or admits inability, to pay its debts as they fall due; (B) is, under applicable law, deemed or declared to be unable to pay its debts; (C) suspends or threatens to suspend making payments on any of its debts (unless in connection with a good faith dispute related thereto); or (D) by reason of actual or anticipated inability to pay its debts, commences formal negotiations with one or more of its creditors with respect to amounts due to such creditor(s).

(h) By no later than the achievement of the Construction Commencement Milestone, Seller shall ensure that the New Mexico Public Regulation Commission (***"NMPRC"***), as the lead agency conducting the review of the Facility as required under the environmental and other applicable laws of the State of New Mexico, shall have required and caused to be submitted to it a final environmental impact report or equivalent environmental document for the Facility, as

required for approval by the NMPRC, and, on the basis of that report, issued a final approval for the Facility, finding that the Facility meets all applicable air and water pollution control standards and regulations and that the Facility transmission lines will not unduly impair important environmental values,. In addition, by no later than the achievement of the Construction Commencement Milestone, Seller shall ensure that a final environmental document for the Facility has been prepared by the appropriate federal agency or agencies, to the extent required by law, and that any and all applicable federal National Environmental Policy Act requirements for the Facility have been satisfied.

Section 12.6 Storage Technology. In recognition of emerging technologies and opportunities that will continue to evolve during the Agreement Term, Seller shall have the right to incorporate the use of storage technologies into the Facility only upon receipt of Buyer's written consent, which shall not be unreasonably withheld.

ARTICLE XIII
DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

Section 13.1 Default. Each of the following events or circumstances shall constitute a "***Default***" by the responsible Party (the "***Defaulting Party***"):

(a) *Payment Default.* Failure by either Party to pay any amount when and as due under this Agreement which is not cured within thirty (30) days after receiving written notice thereof from the other Party.

(b) *Buyer Performance Default.* Failure by Buyer to perform any of its duties or obligations under this Agreement or any of the Ancillary Documents (except for Buyer's obligations to receive Energy as and when required by this Agreement, the exclusive remedy for which is provided in Section 6.3, and other than any failure described in Sections 13.1(a), 13.1(d), and 13.1(e), when and as due which is not cured within thirty (30) calendar days after receipt of notice thereof from Seller.

(c) *Seller Performance Default.* Failure by Seller to perform any of its other duties or obligations under this Agreement or any of the Ancillary Documents when and as due (other than (i) any failure described in Section 13.1(a) or Section 13.1(f) through Section 13.1(o), and (ii) any failure described in this Agreement or any Ancillary Document as to which an express remedy is herein provided), which is not cured within thirty (30) calendar days after receipt of notice thereof from Buyer.

(d) *Buyer Breach of Representation and Warranty.* Inaccuracy in any material respect as of the Effective Date of any representation, warranty, certification or other statement made by Buyer herein or in any Ancillary Document that, if capable of being cured, is not cured within thirty (30) days after receipt of notice thereof or in any Ancillary Document that, if capable of being cured, is not cured within thirty (30) days after receipt of notice thereof.

(e) *Buyer Bankruptcy.* Bankruptcy of Buyer.

(f) *Seller Bankruptcy.* Bankruptcy of Seller.

(g) *Performance Assurance Failure.* Failure by Seller, not cured within five (5) calendar days after Seller's actual knowledge of an event giving rise to a breach under this Section 13.1(g), to (i) either obtain or maintain the Performance Assurance in compliance with Section 2.1, and Section 5.4, or (ii) replenish the Performance Security within the periods provided under Section 5.4(d), or (iii) replace such Performance Assurance within the applicable time period set forth in Section 5.4(f) and, in any event, at least thirty (30) days prior to its expiration, unless alternative Performance Assurance that complies with the requirements of Section 5.4 is provided within ten (10) Business Days after notice sent by Buyer of any such failure; or, with respect to any obligor providing the Performance Assurance for the benefit of Buyer:

(1) the failure of such obligor to honor a drawing or make a payment thereunder;

(2) such obligor fails to be a Qualified Issuer;

(3) the Performance Assurance issued by such obligor shall fail to be in full force and effect in accordance with the terms of this Agreement prior to the satisfaction of all obligations of Seller under this Agreement and each of the Ancillary Documents; or

(4) such obligor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of its Performance Assurance and in any such event, Seller fails to provide replacement Performance Assurance.

(h) *Real Property Agreement Default.* Any required and material Real Property Agreement fails to be in effect and is not replaced with a commercially reasonable alternative within one hundred eighty (180) days of such failure.

(i) *Insurance Default.* The failure of Seller to maintain and provide acceptable evidence of the Insurance for the required period of coverage as set forth in Appendix F, which is not cured within ten (10) calendar days after receipt of notice thereof from Buyer.

(j) *Fundamental Change of Seller.* Except as permitted by Section 14.7, (i) Seller makes an assignment of its rights or delegation of its obligations under this Agreement or any Ancillary Documents, including the Option Agreement and any Real Property Agreement, or (ii) a Change in Control occurs.

(k) *Noncompliance with Buyer's Business Policies.* The failure of Seller to comply with the provisions set forth in Section 14.23(j).

(l) *Failure to Provide Real-Time Data.* The failure of Seller to provide any of the real-time data required to be delivered under Section 4.4(g), which failure is not cured within twenty-four (24) hours after receipt of written email notice thereof from Buyer; *provided, however*, Seller shall have up to thirty (30) calendar days to cure so long as (i) such cure is not reasonably possible within twenty-four (24) hours and Seller is using continuous and diligent efforts to resolve the failure, and (ii) Seller is otherwise providing data about the Facility to Buyer.

(m) *Key Milestone Default.* Failure by Seller to achieve (i) a Key Milestone by the date that Daily Delay Damages for any Key Milestone accrue in an aggregate amount equal to

the Daily Delay Damages Cap or Seller fails to pay such Daily Delay Damages when due, or (ii) the Commercial Operation Date by the Outside COD.

(n) *Significant Shortfall Default.* Unless excused by (a) Force Majeure, (b) a System Emergency, (c) Buyer's failure to receive energy at the Point of Delivery, (d) a Non-Compensable Curtailment or a Compensable Curtailment, or (e) failure or limitation of the Pseudo-Tie not caused by the fault of negligence of Seller, failure by Seller to deliver at least an average of sixty percent (60%) of the Expected Annual Generation over two consecutive Contract Years; *provided, however*, in the event that Seller fails to deliver an average of sixty percent (60%) or more of the Expected Annual Generation over two consecutive Contract Years solely due to the occurrence of a Major Equipment Failure, Seller shall not be in default under this Section 13.1(n) so long as (i) Seller is using continuous commercially reasonable efforts to resolve the impacts of the Major Equipment Failure, and (ii) the impacts of the Major Equipment Failure do not extend beyond twenty four (24) months after the date of the occurrence of such Major Equipment Failure, and (iii) Seller has notified Buyer within thirty (30) days after the initial occurrence thereof including the steps that Seller is taking to remediate the Major Equipment Failure and thereafter keeps Buyer apprised, on a monthly basis, of Seller's progress towards resolving such Major Equipment Failure.

(o) *Contract Capacity Default.* Failure by Seller to achieve a Facility nameplate capacity equal to or greater than the Contract Capacity, as may be reduced subject to Section 3.2, within twelve (12) months of the Commercial Operation Date.

(p) *Judgment Default.* Any judgment, writ, warrant of attachment or execution, or similar process, is issued or levied against any property of Seller in excess of $100,000, which is not released, vacated or fully bonded, or appealed or challenged without an obligation to bond, within sixty (60) days after its issue or levy.

Section 13.2 Default Remedy.

(a) If Buyer is in Default for nonpayment, subject to any duty or obligation under this Agreement, Seller may continue to provide services pursuant to its obligations under this Agreement; *provided that* nothing in this Section 13.2(a) shall affect Seller's rights and remedies set forth in this Section 13.2. Seller's continued service to Buyer shall not act to relieve Buyer of any of its duties or obligations under this Agreement.

(b) Notwithstanding any other provision herein, if any Default has occurred and is continuing, the affected Party may, whether or not the dispute resolution procedure set forth in Section 14.3 has been invoked or completed, bring an action in any court of competent jurisdiction as set forth in Section 14.13 seeking injunctive relief in accordance with applicable rules of civil procedure.

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Buyer is the Defaulting Party, Seller may without further notice exercise any rights and remedies provided herein or otherwise available at law or in equity, including termination of this Agreement pursuant to Section 13.3. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor

shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Performance Assurance against any amounts then payable by Seller to Buyer under this Agreement, (ii) termination of this Agreement pursuant to Section 13.3, and (iii) exercise of the Project Purchase Option. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

Section 13.3 Termination for Default.

(a) If a Default occurs, the Party that is not the Defaulting Party (the "***Non-Defaulting Party***") may, for so long as the Default is continuing and without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice (***"Termination Notice"***) sent to the Defaulting Party, (i) establish a date (which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such notice) (***"Early Termination Date"***) on which this Agreement shall terminate and (ii) withhold any payments due in respect of this Agreement; *provided that* upon the occurrence of any Default of the type described in Section 13.1(e) and Section 13.1(f), this Agreement shall automatically terminate, without notice or other action by either Party as if an Early Termination Date had been declared immediately prior to such event.

(b) If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate in a commercially reasonable manner its Gains, Losses and Costs resulting from the termination of this Agreement and the resulting Termination Payment. The Gains, Losses and Costs relating to the Energy and associated Environmental Attributes and Capacity rights that would have been required to be delivered under this Agreement had it not been terminated shall be determined by comparing the amounts Buyer (if the Non-Defaulting Party) would have paid or Seller (if the Non -Defaulting Party) would have received therefor under this Agreement to the equivalent quantities and relevant market prices either quoted by a bona fide third party offer or which are reasonably expected by Buyer (if the Non -Defaulting Party) or by Seller (if the Non - Defaulting Party) to be available in the market under a replacement contract for this Agreement covering the same products and having a term equal to the Remaining Term at the date of the Termination Notice adjusted to account for differences in transmission, if any. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into any such replacement contract in order to determine its Gains, Losses and Costs or the Termination Payment. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from dealers in energy contracts and bona fide third party offers.

(c) For purposes of the Non-Defaulting Party's determination of its Gains, Losses and Costs and the Termination Payment, it shall be assumed, regardless of the facts, that Seller would have sold, and Buyer would have purchased, each day during the Remaining Term

(i) Facility Energy in an amount equal to the Assumed Daily Deliveries, (ii) the Environmental Attributes associated therewith and (iii) all Capacity Rights associated therewith. The ***"Assumed Daily Deliveries"*** is an amount equal to the greater of (x) the quotient of the Guaranteed Delivered Energy divided by 365, and (y) the average daily deliveries of Delivered Energy and Deemed Delivered Energy during the Delivery Term, if any.

(d) The Non-Defaulting Party shall aggregate its Gains, Losses and Costs as so determined into a single net amount (the ***"Termination Payment"***) and notify the Defaulting Party thereof. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party will, within ten (10) Business Days of receipt of such notice, pay the net amount to the Non-Defaulting Party, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the amount of the Termination Payment shall be zero. Notwithstanding the foregoing, the Non-Defaulting Party shall be responsible for paying for any performance by the Defaulting Party under this Agreement prior to termination.

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal non-binding dispute resolution as provided in Section 14.3. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party as and when required by this Agreement, subject to the Non-Defaulting Party refunding, with interest at the Interest Rate, any amounts determined to have been overpaid.

(f) For purposes of this Agreement:

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

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

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

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

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

(g) Notwithstanding the foregoing, any Termination Payment owed by Seller to Buyer prior to Commercial Operation of the Facility shall (i) be subject to the limitations set forth Section 5.4(g), and (ii) not exceed the difference between the amount of the Development Security and any damages paid by Seller to Buyer prior to such termination, including as Daily Delay Damages.

(h) At the time for payment of any amount due under this Section, each Party shall pay to the other Party all additional amounts, if any, payable by it under this Agreement.

ARTICLE XIV
MISCELLANEOUS

Section 14.1 Authorized Representative. Each Party hereto shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an "***Authorized Representative***"), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternate if designated, and shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement. Prior to the Commercial Operation Date, the Authorized Representative of each Party will meet periodically to discuss issues related to the sharing of information on the development, construction, design and operation and maintenance of the Facility. To the extent that an Authorized Representative's contact information is not provided in Appendix C, at the time a Party designates such Authorized Representative, such Party shall concurrently provide written notice to the other Party of such Authorized Representative's contact information.

Section 14.2 Notices. With the exception of billing invoices pursuant to Section 11.1(c) hereof, all notices, requests, demands, consents, approvals, waivers and other communications which are required under this Agreement shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing), and (b) shall be deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier or registered or certified mail, postage prepaid to the persons specified in Appendix C. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests, demands, consents, approvals, waivers and other communications through alternate methods, such as electronic mail.

Section 14.3 Dispute Resolution.

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

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

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 14.3(a) and 14.3(b) by the expiration of the thirty (30) day period set forth in Section 14.3(a), then either Party may pursue any legal remedy available to it in accordance with the provisions of Section 14.12 of this Agreement.

(d) As stated in Section 14.12, this Agreement shall be governed by, interpreted and enforced in accordance with laws of the State of California, without regard to the conflict of laws principles thereof. In addition to the dispute resolution process set forth in this section, parties to this Agreement must comply with California law governing claims against public entities and presentment of such claims.

Section 14.4 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take all further actions not inconsistent with the provisions of this Agreement, which are reasonable and necessary to effectuate the purposes and intent of this Agreement.

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

Section 14.6 Force Majeure.

(a) A Party shall not be considered to be in default in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate, provided the affected Party has given a written detailed description of the full particulars of the Force Majeure to the other Party (which notice shall include information with respect to the nature, cause and date and time of commencement of such event and the anticipated scope and duration of the delay) reasonably promptly after becoming aware thereof and in any event within (i) fourteen (14) days after the initial occurrence of the claimed Force Majeure, or (ii) solely in the case of a delay due to the Covid 19 Pandemic, no more than five (5) days after reasonably determining that a Covid 19 Delay is reasonably likely to occur (a notice under either (i) or (ii), a "***Force Majeure Notice***"). Upon receipt of a Force Majeure Notice asserting a Force Majeure constituting a Covid 19 Delay, the receiving Party shall have ten (10) Business Days to accept or dispute, by written notice to the affected Party, the particulars of such Force Majeure Notice. In any such dispute notice, the receiving Party shall set forth the basis for its dispute (which may include that the Force Majeure Notice lacked sufficient information for the receiving

Party to evaluate the Force Majeure claim) providing as much detail as possible. If the receiving Party fails to provide a dispute notice within ten (10) Business Days following receipt of a Force Majeure Notice, such Party shall be deemed to have accepted the Force Majeure Notice. If the receiving Party timely disputes the Force Majeure Notice, the claiming Party may attempt to cure any defect in the Force Majeure Notice by providing additional information to the receiving Party and/or may appeal to an independent third party with material expertise in the area(s) of dispute, which independent third party shall be reasonably acceptable to the receiving Party, to resolve any dispute. Each Party shall have the opportunity to provide additional information in writing to such independent third party within ten (10) days following the appointment thereof, and such independent third party shall be asked to resolve the dispute within fourteen (14) days following such independent third party's appointment. The Parties shall share equally the costs of such independent third party and the determination of such independent third party as to the particulars of the Force Majeure Notice shall be binding upon the Parties for all purposes hereof. The Party providing the Force Majeure Notice and, in the case of a Covid19 Delay, the other Party, shall be excused from fulfilling its obligations under this Agreement until such time as the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time each Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. If Seller is unable to deliver, or Buyer is unable to receive, Energy due to a Force Majeure, Buyer shall have no obligation to pay Seller for the Energy not delivered or received by reason thereof. The foregoing provisions shall not excuse any existing obligation to correct a Shortfall as provided under Article IX. In no event shall Buyer be obligated to compensate Seller or any other Person for any losses, expenses or liabilities that Seller or such other Person may sustain as a consequence of any Force Majeure.

(b) The term "***Force Majeure***" means any Covid 19 Delay, act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, (i) which prevents one Party from performing any of its obligations under this Agreement, (ii) which is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iii) which by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; *provided,* nothing in this clause (iii) shall be construed so as to require either Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each an ***"Unexcused Cause"***): (1) any requirement to comply with a RPS Law or any change (whether voluntary or mandatory) in any renewable portfolio standard that may affect the value of the Energy purchased hereunder; (2) events arising from the failure by Seller to construct, operate or maintain the Facilities in accordance with this Agreement; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing, other than to the extent such delay or inability constitutes a Covid 19 Delay, or other economic hardship of any kind; (5) Seller's ability to sell

any Energy at a price in excess of those provided in this Agreement; (6) curtailment or other interruption of any Transmission Service except as otherwise expressly provided in Section 14.6(c); (7) failure of third parties to provide goods or services essential to a Party's performance unless caused by an event that would otherwise qualify as Force Majeure; (8) Facility or equipment failure of any kind unless caused by an event that would otherwise qualify as Force Majeure; (9) any changes in the financial condition of Buyer, Seller, the Facility Lender or any subcontractor or supplier affecting the affected Party's ability to perform its obligations under this Agreement; or (10) Seller's inability to obtain sufficient fuel, including due to lack of wind, sun or other fuel source of an inherently intermittent nature, or power to operate the Facility.

(c) Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment or other interruption of Transmission Service for any Energy at any time unless (A) in the case of Seller, (i) Seller has contracted for Firm Transmission at the time, and (ii) the curtailment or interruption is not due to the fault or negligence of Seller; or (B) in the case of Buyer, the curtailment or interruption is due to "force majeure" or "uncontrollable force" on Buyer's Transmission System; *provided that* in either (A) or (B) above, the existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 14.6(b) has occurred.

(d) For purposes of this Agreement, a Force Majeure shall be deemed to prevent and excuse Buyer from receiving Energy at the Point of Delivery if such Force Majeure prevents Buyer or, if different, the Transmission Provider, from receiving Energy at the Point of Delivery.

(e) If based on a Force Majeure Notice, the unaffected Party reasonably concludes that a Force Majeure and its impact on the affected Party or the Facility will continue for a period of three hundred sixty five days (365) days for a Covid 19 Delay or one hundred eighty (180) consecutive calendar days for all other Force Majeure events (*provided that* such period may be extended by the affected Party up to an additional one hundred eighty (180) calendar days for a Covid 19 Delay or three hundred sixty five (365) consecutive calendar days for all other Force Majeure events if the affected Party provides a certificate from an Independent Engineer that cure is not reasonably possible within three hundred sixty five (365) or one hundred eighty (180) days, as applicable, but the impact of the Force Majeure on the affected Party or Facility can reasonably be expected to be resolved within five hundred forty five (545) days of its occurrence and the affected Party uses commercially reasonable efforts to resolve the impact during that time), then the unaffected Party shall have the right to terminate this Agreement effective upon notice to the affected Party, *provided however*, that in the case of a Force Majeure that extends a Milestone Date in accordance with Section 3.4: (i) Buyer shall not have a termination right under this Section 14.6(e) arising out of such Force Majeure; (ii) the duration of any Milestone extension permitted under Section 3.4 shall be limited to the applicable time period set forth in this Section 14.6(e); and (iii) in any event, Milestone extensions shall be subject to the provisions of Section 3.5.

Section 14.7 Assignment of Agreement; Change in Control.

(a) Buyer may assign this Agreement or the Ancillary Documents, without the consent of Seller to the Participating Member, so long as, at the time of such assignment, such assignee has, and is reasonably forecasted to maintain, an investment grade rating from either

Moody's of at least "Baa3" or Standard & Poor's of at least "BBB-", or the equivalent ratings by any other credit rating agency of national standing, and so long as such credit rating is not on negative watch. Except as otherwise set forth in this Section 14.7(a), Buyer shall not assign any of its rights, or delegate any obligations, under this Agreement without the prior written consent of Seller. Assignee shall enter into a commercially reasonable assignment and assumption agreement under which the assignee shall assume all obligations of Buyer. Upon any such assignment and delegation of obligations by such an assignee, Buyer shall be relieved of and fully discharged from all its obligations hereunder, whether such obligations arose before or after the date of such assignment and delegation.

(b) Except as set forth in this Section 14.7, Seller shall not assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect. Any Change in Control (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of Buyer, which consent shall not be unreasonably withheld. Seller shall provide Buyer with prior written notice of any proposed Change in Control in accordance with Section 12.4(a). Concurrently with any reorganization or financing transaction or transactions constituting any Change in Control the successor entity to Seller shall acknowledge the continuing obligations of Seller under this Agreement and the Ancillary Documents. For any Change in Control pursuant to which Seller merges or consolidates with any other Person and ceases to exist, the successor entity to Seller shall execute a written assumption agreement in favor of Buyer pursuant to which any such successor entity shall assume all of the obligations of Seller under this Agreement and the Ancillary Documents and agree to be bound by all the terms and conditions of this Agreement and Ancillary Documents, as applicable. Seller may, without Buyer's consent, assign this Agreement to a Qualified Affiliate (but Seller shall provide prior written notice thereof to Buyer).

(c) Seller shall not sell or transfer all or any portion of the Facility or the Facility Assets, to any Person other than a Person to whom Seller assigns this Agreement and the Ancillary Documents in accordance with this Section 14.7, without the prior written consent of Buyer, *provided that* any such sale or transfer shall be subject to compliance with the Right of First Offer set forth in Section 14.25; *provided, further,* that Seller may sell, lease or transfer possession of Facility Assets without the consent of Buyer, and without being subject to the Right of First Offer set forth in Section 14.25: (i) in association with New Mexico Industrial Revenue Bond financing and any corresponding sale-leaseback arrangement, or (ii) to Qualified Affiliates or other third parties that are or directly or indirectly retain a Qualified Operator, in connection with the development, ownership, leasing, or operation of a wind project at the Corona Wind Complex so long as such sale, lease or transfer does not have a material adverse effect on (A) Seller's ownership (or lease) or operation of the Facility, or (B) Buyer's ability to exercise its option to purchase the Facility Assets, and (C) to the extent that any Facility Assets are shared between Seller and a transferee, Seller and such transferee shall enter into a commercially reasonable Shared Facilities Agreement. Seller shall provide notice to Buyer of any transfer of Facility Assets that occur in accordance with this Section 14.7(c).

(d) Any purported sale or transfer in violation of Section 14.7 shall be null and void and of no force or effect.

(e) Buyer's consent shall not be required (i) in connection with the collateral assignment or pledge of this Agreement or the Option Agreement to any Facility Lender or the exercise of remedies by any Facility Lender, or (ii) in connection with the pledge, directly or indirectly, of all or a portion of the membership interests in or assets of Seller to any Facility Lender; *provided, however*, that (1) the terms of any financing or refinancing, and the documentation relating thereto do not require any amendments or modifications to the Agreement, and (2) in connection with any such assignment or pledge and the foreclosure or similar exercise of remedies by any Facility Lender that results in a transfer of the Facility to the Facility Lender or its designee, the Facility Lender acknowledges and agrees to be bound by the requirement that the Facility be operated and maintained by a Qualified Operator. Seller shall provide Buyer with at least ninety (90) days' prior notice of any such collateral assignment or pledge. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Energy, Environmental Attributes or Capacity Rights (not including the proceeds thereof) to any Facility Lender.

(f) To facilitate Seller's obtaining of financing to construct and operate the Facility, Buyer shall provide such consents to assignment in substantially the form attached hereto as Appendix W, together with such other provisions as are customary and may be reasonably requested by Seller or any Facility Lender in connection with the financing of the Facility, including in connection with the acquisition of equity for the development, construction and operation of the Facility; *provided, however,* that the terms of such financing and the documentation relating thereto shall not conflict with the applicable terms and conditions of this Agreement.

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

(h) Any collateral assignment in connection with a financing or refinancing that causes Facility Debt as of the date it is incurred after the Commercial Operation Date to exceed seventy percent (70%) of the Facility Cost is prohibited.

(i) Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the incremental direct expenses incurred by Buyer in the preparation, negotiation,

execution or delivery of any documents requested by Seller or the Facility Lender, and provided by Buyer, pursuant to this Section 14.7.

(j) There will be no amendments to this Agreement in connection with a request for Buyer's consent to a Change in Control unless both Parties mutually agree to any such amendments, and Buyer shall have the right in its sole and absolute discretion to determine whether an amendment to this Agreement, as opposed to a clarifying change, has been proposed.

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

Section 14.9 Attorneys' Fees and Costs. Both Parties hereto agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorneys' fees and costs. Each of the Parties to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement. Notwithstanding the foregoing, to the extent Buyer incurs legal costs in order to facilitate a collateral assignment or pledge of this Agreement under Section 14.7, Seller shall bear Buyer's reasonable and documented legal costs therefor.

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

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

Section 14.12 Governing Law. This Agreement shall be governed by, interpreted and enforced in accordance with and construed under the laws of the State of California without regard to conflict of law principles.

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

Section 14.14 Execution in Counterparts. This Agreement may be executed in counterparts, and, upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages. A signed copy of this Agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act and Records Act, and California's Uniform Electronic Transactions Act.

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

Section 14.16 Waiver. The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Notwithstanding anything expressed or implied herein to the contrary, nothing contained herein shall preclude either Party from seeking and obtaining any available remedies for breaches not rising to the level of a Default, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Seller acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that Buyer may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Seller hereby waives any objection to specific performance or injunctive relief. The rights granted herein are cumulative.

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

Section 14.18 Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability.

(a) **Indemnification.** Seller undertakes and agrees to indemnify and hold harmless Buyer, the Participating Member, the Board of Commissioners, the City of Los Angeles, and Buyer's Board of Directors, and all of their officers and employees, agents, employees, advisors, and Authorized Representatives, and each of the foregoing assigns and successors in interest (collectively, "***Indemnitees***"), and, at the option of Buyer, defend such Indemnitees from and against any and all Indemnified Liabilities. "***Indemnified Liabilities***" means all suits and causes of action (including proceedings before FERC), claims, charges, damages (including indirect, consequential, or incidental), demands, judgments, costs, expenses, civil fines and

penalties, other monetary remedies or losses of any kind or nature whatsoever, including reasonable attorney's fees or other monetary remedies and costs of litigation, obligation or liability of any kind or nature whatsoever, in any manner arising by reason of, or incident to, claims by third parties resulting from the performance (other than performance that is solely to comply with a Buyer Instruction or a business policy of the City of Los Angeles under Section 14.23 that is not required by any other federal, state or other authority), non-performance or breach of this Agreement, or from any other wrongful or negligent act, error or omission or willful misconduct by or of Seller or Seller's officers, employees, agents, subcontractors of any tier, including any such performance (other than performance that is solely to comply with a Buyer Instruction or a business policy of the City of Los Angeles under Section 14.23 that is not required by any other federal, state or other authority) non-performance, breach, act, error or omission or willful misconduct that results in intellectual property infringement or leads to death, bodily injury or personal injury to any person, including Seller's employees and agents or third persons, or damage or destruction to any property of any kind or nature whatsoever, of either party or third person, or loss of use, except to the extent caused by the gross negligence or willful misconduct of any such Indemnitee. The provisions of this paragraph shall be in addition to, and not exclusive of, any other rights or remedies which Indemnitees have at law, in equity, under this Agreement or otherwise. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this subsection may be unenforceable in whole or in part because they are violative of any law or public policy, Seller shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

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

(c) **Insurance.** Seller shall obtain and maintain the Insurance coverages listed in Appendix F.

(d) **Condemnation or Other Taking.** Throughout the Agreement Term, Seller shall immediately notify Buyer of the institution of any proceeding for the condemnation or other taking of the Facility, the Purchased Assets or any portion thereof.

(e) **Limitation of Liability.** EXCEPT TO THE EXTENT INCLUDED IN (I) DAILY DELAY DAMAGES, SHORTFALL DAMAGES, OR ANY LIQUIDATED DAMAGES, (II) INDEMNIFICATION OBLIGATIONS BY SELLER TO THIRD PARTIES, AND (III) ANY OTHER SPECIFIC CHARGES EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY HEREUNDER SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF A PARTY'S PERFORMANCE OR NON PERFORMANCE UNDER THIS AGREEMENT,

WHETHER BASED ON OR CLAIMED UNDER CONTRACT, TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE) OR ANY OTHER THEORY AT LAW OR IN EQUITY, *PROVIDED, HOWEVER*, THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER, OR ANY OF SELLER'S OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER.

Section 14.19 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided that* the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

Section 14.20 Confidentiality.

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by law, all documents, data, drawings, studies, projections, plans and other written information that relate to economic benefits to or amounts payable by either Party under this Agreement and documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("***Confidential Information***"). The provisions of this Section 14.20 shall survive and shall continue to be binding upon the Parties for a period of three (3) years following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Either Party may, without violating this Section 14.20, disclose matters that are made confidential by this Agreement, so long as Parties make reasonable efforts to ensure that receiving Parties keep disclosed information confidential:

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

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

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

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

(d) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer, as a California joint powers authority, is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250 et seq. ("***CPRA***") and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 et seq. ("***Brown Act***"). Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA or Brown Act. Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement and the Ancillary Documents and the rights, Liens and priorities of Buyer with respect to such credit support.

(e) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer or Buyer's Authorized Representative determines that such Confidential Information is subject to disclosure under CPRA, then Buyer shall notify Seller of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless the Indemnitees from and against all suits, claims, and causes of action brought against any Indemnitees for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by any Indemnitees, and specifically includes costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against any Indemnitees, through and including any appellate proceedings. Seller's obligations to all Indemnitees under this indemnification provision shall be due and payable on a monthly, ongoing basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by all Indemnitees, as well as all damages or liability of any nature.

(f) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party

or their Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity, subject to the limitations set forth in Section 14.20(e).

Section 14.21 Mobile-Sierra. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arm's-length negotiations between the Parties. Further, the Parties believe that, to the extent the sale of Energy under this Agreement is subject to Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e, the rates, terms and conditions of this Agreement are just and reasonable within the meanings of Sections 205 and 206 of the Federal Power Act, and that the rates, terms and conditions of this Agreement will remain so during the Agreement Term.

(a) Notwithstanding any provision of this Agreement, the Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the Agreement Term, under Sections 205 and 206 of the Federal Power Act, and to request the FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree not to seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of this Agreement through application or complaint to FERC or any other state or federal agency, board, court or tribunal, related in any manner as to whether such rates, terms or conditions are just and reasonable or in the public interest under the Federal Power Act, absent prior written agreement of the Parties.

(b) The Parties also agree that, absent prior agreement in writing by both Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any provision of this Section is unenforceable or ineffective as to such Party), a non-Party or the FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review that requires FERC to find an "unequivocal public necessity" or "extraordinary circumstances where the public will be severely harmed" to modify a contract, as set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 at 550-51 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Comm'n*, 558 U.S. 165 (2010).

Section 14.22 Service Contract. The Parties intend that this Agreement will qualify as a "Service Contract" as such term is used in Section 7701(e) of the United States Internal Revenue Code of 1986. Time is of the essence for the performance of each of the terms and provisions of this Agreement.

Section 14.23 LADWP Business Policies.

(a) **Recycling Policy.**

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

(2) To the extent feasible, Seller shall submit all written documents on paper with a minimum of thirty percent (30%) post-consumer recycled content. Existing company/corporate letterhead or stationery that accompanies these documents is exempt from this requirement. Documents of two (2) or more pages in length shall be duplex copied (double sided pages). Neon or fluorescent paper shall not be used in any written documents submitted to Buyer.

(b) **Non-Discrimination.** Unless otherwise exempt, this Agreement is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. Seller shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the City of Los Angeles. In performing this Agreement, Seller shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by Seller relating to this Agreement, to the extent allowed hereunder, shall include a like provision for work to be performed under this Agreement.

Failure of Seller to comply with these obligations or to obtain the compliance of its subcontractors with such obligations shall subject Seller to the imposition of any and all sanctions allowed by law, including termination of this Agreement.

(c) **Small Business Enterprises ("*SBEs*") / Disabled Veteran Business Enterprises ("*DVBEs*") Participation Program.** It is the policy of LADWP to provide SBEs, DVBEs, Emerging Business Enterprises, Women-Owned Business Enterprises (WBEs), Minority-Owned Business Enterprises (MBEs), Disadvantaged Business Enterprises (DBEs), Lesbian, Gay, Bisexual, or Transgender Business Enterprises (LGBTBEs) and Other Business Enterprises (OBEs) an equal opportunity to participate in the performance of all LADWP contracts.

Buyer's goals for SBE/DVBE participation in performance of its contracts are twenty percent (20%) for SBEs and three percent (3%) for DVBEs. Seller shall assist Buyer in implementing this policy by taking all commercially reasonable steps to ensure that all available business enterprises, including small business enterprises and disabled veteran business enterprises, have an equal opportunity to compete for and participate in the work being requested by this Agreement.

Achievement of the overall small business enterprises and disabled veteran business enterprises participation commitment requirement will be tracked as an aggregate of work performed under the Agreement. Participation shall be measured by small business enterprises

and disabled veteran business enterprises work completion and compensation. Therefore, during the term of the Agreement, Seller shall utilize each listed subcontractor in Appendix G and track the amounts paid to each listed subcontractor. Upon request by Buyer's Authorized Representative, Seller shall provide Buyer with documentation of the small business enterprises and disabled veteran business enterprises work completion and compensation to date.

(d) **Equal Employment Practices.** Unless otherwise exempt, this Agreement is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

(1) During the performance of this Agreement, Seller agrees and represents that it will provide equal employment practices and Seller and each subcontractor hereunder will ensure that in its employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

A. This provision applies to work or service performed or materials manufactured or assembled in the United States.

B. Nothing in this subsection shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

C. Seller agrees to post a copy of subdivision (1) hereof in conspicuous places at its place of business available to employees and applicants for employment.

(2) Seller will, in all solicitations or advertisements for employees placed by or on behalf of Seller, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

(3) As part of Buyer's supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, Seller shall certify in the specified format that it has not discriminated in the performance of City of Los Angeles contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

(4) Seller shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of City of Los Angeles contracts. On their or either of their request Seller shall provide evidence that he or she has complied or will comply therewith.

(5) The failure of Seller to comply with the Equal Employment Practices provisions of this Agreement may be deemed to be a material breach of this Agreement.

Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Seller.

(6) Upon a finding duly made that Seller has failed to comply with the Equal Employment Practices provisions of this Agreement, the Agreement may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that Seller is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, Seller shall be disqualified from being awarded a contract with Buyer and the City of Los Angeles for a period of two years, or until Seller shall establish and carry out a program in conformance with the provisions hereof.

(7) Notwithstanding any other provision of this Agreement, Buyer shall have any and all other remedies at law or in equity for any breach hereof.

(8) The Board of Public Works shall promulgate rules and regulations through the Office of Contract Compliance, and provide necessary forms and required language to the awarding authorities to be included in City of Los Angeles Request for Bids or Request for Proposal packages or in supplier registration requirements for the implementation of the Equal Employment Practices provisions of this contract, and such rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive orders. No other rules, regulations or forms may be used by an awarding authority of the City of Los Angeles to accomplish the contract compliance program.

(9) Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.

(10) At the time Seller registers to do business with the City of Los Angeles, or when an individual bid or proposal is submitted, Seller shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of City of Los Angeles contracts.

(11) Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

A. Hiring practices;

B. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;

C. Training and promotional opportunities; and

D. Reasonable accommodations for persons with disabilities.

(12) Seller shall include a like provision in all subcontracts awarded for work to be performed under the contract with Buyer and shall impose the same obligations, including filing and reporting obligations, on the subcontractors as are applicable to Seller. Failure of Seller to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject Seller to the imposition of any and all sanctions allowed by law, including termination of Seller's contract with Buyer.

(e) **Affirmative Action Program.** Unless otherwise exempt, this Agreement is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

(1) During the performance of this contract, Seller certifies and represents that Seller and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

A. This provision applies to work or services performed or materials manufactured or assembled in the United States.

B. Nothing in this subsection shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

C. C. Seller shall post a copy of subdivision (1) hereof in conspicuous places at its place of business available to employees and applicants for employment.

(2) Seller will, in all solicitations or advertisements for employees placed by or on behalf of Seller, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

(3) As part of Buyer's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, Seller shall certify on an electronic or hard copy form to be supplied, that Seller has not discriminated in the performance of City of Los Angeles contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

(4) Seller shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City of Los Angeles contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

(5) The failure of Seller to comply with the Affirmative Action Program provisions of this Agreement may be deemed to be a material breach of this Agreement. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to Seller.

(6) Upon a finding duly made that Seller has breached the Affirmative Action Program provisions of this Agreement, the Agreement may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that Seller is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, Seller shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

(7) In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that Seller has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City of Los Angeles contract, there may be deducted from the amount payable to Seller by the City of Los Angeles under the contract, a penalty of ten dollars ($10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City of Los Angeles contract.

(8) Notwithstanding any other provisions of this Agreement, Buyer shall have any and all other remedies at law or in equity for any breach hereof.

(9) The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City of Los Angeles contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City of Los Angeles to accomplish this contract compliance program.

(10) Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.

(11) Seller shall submit an Affirmative Action Plan which shall meet the requirements of Chapter 1 of Division 10 of the Los Angeles Administrative Code at the time it submits its bid or proposal or at the time it registers to do business with the City of Los Angeles. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require Seller to take part in a pre-registration, pre-bid, pre-proposal or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this subsection shall

be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, Seller may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, Seller must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

A. Every contract of $5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

B. Seller may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

(12) The Office of Contract Compliance shall annually supply the awarding authorities of the City of Los Angeles with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and Seller.

(13) The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

A. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;

B. Classroom preparation for the job when not apprenticeable;

C. Pre-apprenticeship education and preparation;

D. Upgrading training and opportunities;

E. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, *provided, however,* that any contract subject to this subsection shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices

generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

F. The entry of qualified women, minority and all other journeymen into the industry; and

G. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.

(14) Any adjustments which may be made in Seller's work force to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

(15) Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by Seller at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.

(16) This subsection shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.

(17) Seller shall include a like provision in all subcontracts awarded for work to be performed under the contract with Buyer and shall impose the same obligations, including filing and reporting obligations, on the subcontractors as are applicable to Seller. Failure of Seller to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject Seller to the imposition of any and all sanctions allowed by law, including termination of Seller's contract with Buyer.

(f) **Child Support Policy.** Seller and all of its subcontractor(s) (if any) must fully comply with all applicable state and federal employment reporting requirements for Seller's and any of Seller's subcontractor(s)' employees. Seller and its subcontractor(s) must fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with the California Family Code. Seller and its subcontractor(s) must certify that the principal owner(s) thereof (any person who owns an interest of ten percent (10%) or more) are in compliance with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally. Seller and its subcontractor(s) must certify that such compliance will be maintained throughout the term of this Agreement. Failure of Seller or its subcontractor(s) to fully comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owner(s) to comply

with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute a default under this Agreement. Failure of Seller or its subcontractor(s) or principal owner(s) thereof to cure the default within ninety (90) days of notice of such default by Buyer shall subject this Agreement to termination.

(g) **Iran Contracting Act of 2010.** In accordance with California Public Contract Code Sections 2200-2208, all bidders submitting proposals for, entering into or renewing contracts with the City of Los Angeles for goods and services estimated at one million dollars ($1,000,000) or more are required to complete, sign and submit the "Iran Contracting Act of 2010 Compliance Affidavit". Seller shall comply with this Section 14.23(g), as applicable.

(h) **Current Los Angeles City Business Tax Registration Certificate Required. Seller** shall obtain and keep in full force and effect during the term of this Agreement all Business Tax Registration Certificates required by the City of Los Angeles Business Tax Ordinance, Chapter II, Article 1, Section 21.00 and following, of the Los Angeles Municipal Code. Seller's Vendor Registration Number must be shown on all invoices submitted for payment. Failure to do so may delay payment. For additional information regarding applicability of the City Business Tax Registration, contact the City of Los Angeles Office of Finance at (213) 473-5901.

(i) **Taxpayer Identification Number (TIN).** Seller declares that its authorized TIN is 37-1844617. No payment will be made to Seller under this Agreement without a valid TIN number.

(j) **Compliance with Los Angeles City Charter Section 470(c)(12).** Seller (as contractor), any subcontractors and its and their principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the contract is valued at one hundred thousand dollars ($100,000) or more and requires approval of a City elected official. Additionally, Seller is required to provide and update certain information to the City as specified by law. Any contractor subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subcontractor expected to receive at least one hundred thousand dollars ($100,000) for performance under this Agreement:

> Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions:
>
> As provided in Charter Section 470(c)(12) and related ordinances, you are subcontractor on City of Los Angeles contract #_____. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Subcontractor is required to provide to contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12-month time period. Subcontractor's information included must be provided to contractor within 5 Business Days. Failure to comply may result in termination of contract or any other available legal remedies including fines. Information about the restrictions may be found at the

City Ethics Commission's website at http://ethics.lacity.org/ or by calling (213) 978-1960.

Seller, Seller's subcontractors and its and their principals shall comply with these requirements and limitations. Violation of this provision shall entitle Buyer to terminate this Agreement and pursue any and all legal remedies that may be available.

(k) **Equal Benefits Ordinance.** Seller agrees to comply with the requirements of the Equal Benefits Ordinance ("***EBO***"), codified at Los Angeles Administrative Code §10.8.2.1, as amended from time to time, and sign any required certifications related to such ordinance.

(1) During the performance of the Agreement, Seller certifies and represents that Seller will comply with the EBO.

(2) The failure of Seller to comply with the EBO will be deemed to be a material breach of this Agreement by Buyer.

(3) If Seller fails to comply with the EBO, Buyer may cancel, terminate or suspend this Agreement, in whole or in part, and all monies due or to become due under this Agreement may be retained by Buyer. Buyer may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the EBO may be used as evidence against Seller in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., as amended from time to time, Contractor Responsibility Ordinance.

(5) If Buyer's Designated Administrative Agency determines that Seller has set up or used its contracting entity for the purpose of evading the intent of the EBO, Buyer may terminate the Agreement. Violation of this provision may be used as evidence against Seller in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., as amended from time to time, Contractor Responsibility Ordinance.

(6) Seller shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

> "During the performance of a contract with the City of Los Angeles, the contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-1922."

(l) **Contractor Responsibility Ordinance.** Seller agrees to comply with the requirements of the Contractor Responsibility Ordinance ("***CRO***"), codified at Los Angeles Administrative Code § 10.40 et seq., as amended from time to time, and sign any required certifications related to such ordinance, including a Pledge of Compliance.

In accordance with the provisions of the CRO, by signing this Agreement, Seller pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Agreement, including laws regarding health and safety, labor and employment, wages and hours and licensing laws which affect employees. Seller further agrees to: (1) notify Buyer within thirty (30) calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that Seller is not in compliance with all applicable federal, state and local laws in performance of this Agreement; (2) notify Buyer within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that Seller has violated the provisions of Section 10.40.3(a) of the CRO; (3) unless exempt, ensure that its subcontractor(s), as defined in the CRO, submit a Pledge of Compliance to Buyer; and (4) unless exempt, ensure that its subcontractor(s), as defined in the CRO, comply with the requirements of the Pledge of Compliance and the requirement to notify Buyer within thirty (30) calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the CRO in performance of the subcontract.

(m) **Sweat-Free Procurement Ordinance.** Seller agrees to comply with the requirements of the Sweat-Free Procurement Ordinance (***"SFPO"***), codified at Los Angeles Administrative Code § 10.43 et seq., as amended from time to time, and sign any required certifications and comply with the City's Contractor Code of Conduct, thereby promising the following:

(1) Seller shall comply with all applicable wage, health, labor, environmental and safety laws, legal guarantees of freedom of association, building and fire codes and laws and ordinances relating to workplace discrimination.

(2) Seller shall comply with all human and labor rights and labor obligations that are imposed by treaty or law on the country in which the equipment, supplies, goods or materials are made or assembled, including abusive forms of child labor, slave labor, convict or forced labor, or sweatshop labor.

(3) Seller shall take good faith measures to ensure, to the best of Seller's knowledge that Seller's subcontractors also comply with the City's Contractor Code of Conduct.

(4) Seller shall pay a procurement living wage to employees working on contracts for garments, uniforms, foot apparel and related accessories, meaning for domestic manufacturers a base hourly wage adjusted annually to the amount required to produce, for two thousand ninety (2,090) hours worked, an annual income equal to or greater than the U.S. Department of Health and Human Services most recent poverty guideline for a family of three plus an additional twenty percent (20%) of the wage level paid either as hourly wages or health benefits. For manufacturing operations in countries other than the United States, a procurement living wage shall be comparable to the wage for domestic manufacturers as defined above, adjusted to reflect the country's level of economic development by using the World Bank's Gross National Income Per Capita Purchasing Power Index.

(n) **Prevailing Wage.** Seller and Seller's agents, employees and contractors shall, in connection with their performance of this Agreement or their work in respect of the

Facility, comply with all applicable provisions of the labor and employment laws and all other Requirements of Law of the state(s) and municipality(ies) in which they operate, including requirements affecting the hours of work, wages and other compensation of employees, nondiscrimination and other conduct of the work. Workers at the Facility shall be paid not less than prevailing wages required under New Mexico labor and employment laws, if applicable. To access the most current information on effective determination rates for California employees, Seller may contact: Department of Industrial Relations, Division of Labor Statistics and Research, PO Box 420603, San Francisco, CA 94142-0603; Telephone (Division Office): (415) 703-4780; Telephone (Prevailing Wage Unit): (415) 703-4774.

(o) Seller shall fully and truthfully complete all applicable forms, including any certifications related thereto, contained in Appendix N. As required by the provisions of this Section or any Requirement of Law, Seller shall fully and truthfully update any applicable forms, including any certifications related thereto, contained in Appendix N or fully and truthfully complete any forms replacing those contained in Appendix N, including any certifications related thereto, and replacements thereof; Seller shall provide Buyer with a copy of any such updated or replacement forms within thirty (30) days of Seller's completion of the same, but such provision shall not substitute for compliance with any provisions of this Section or any Requirement of Law.

Section 14.24 Time is of the Essence. Time is of the essence for the performance or each of the term and provisions of this Agreement.

Section 14.25 Right of First Offer. Buyer shall have a "Right of First Offer" ("***ROFO***") for any proposed sale of all or any portion of the Facility, the Facility Assets or any interests held by Seller in the Facility, *provided that* this ROFO shall not apply to sales of any interests of Seller in connection with (a) a Tax Equity Financing, (b) sales of Seller's interests to Pattern Energy Group Inc. or any Qualified Affiliate, (c) the Public Sector Pension Investment Board or (d) the governmental entity(ies) that participate in any New Mexico Industrial Revenue Bond financing for the Facility as set forth below (a "***Permitted Transfer***").

(a) Prior to Seller consummating a sale of all or any portion of the Facility or the Facility Assets (other than in connection with a Permitted Transfer) Seller shall provide notice to Buyer of Seller's proposed transaction, including the proposed purchase price and basic terms and conditions associated therewith (a "***Proposed Sale Notice***"). Upon receipt of a Proposed Sale Notice, Buyer shall have forty-five (45) days in which to notify Seller that Buyer may purchase the Facility Assets from Seller (a "***Proposed Purchase Notice***"). If Buyer provides Seller with a Proposed Purchase Notice (which notice shall include Buyer's proposed purchase price for the Facility Assets), then the Parties shall undertake for a period of up to ninety (90) days from the date of Buyer's Proposed Purchase Notice to reach an agreement on the terms and conditions of a sale of the Facility Assets to Buyer.

(b) With respect to a sale subject to the ROFO, if (i) Buyer does not provide a Proposed Purchase Notice to Seller, or (ii) the Parties are unable to agree upon the terms and conditions of a sale of the Facility Assets to Buyer within the ninety (90) day period set forth in Section 14.25(a), then Seller shall be free to negotiate the sale of the Facility Assets or interests to any third party; *provided, however*, that (A) any sale of the Facility Assets or interests to a third party shall include the assignment of this Agreement and Seller's rights under the Ancillary

Documents (in accordance with Section 14.7), and (B) prior to consummating any such sale, Seller shall provide Buyer with a concise summary of the commercial terms negotiated by Seller with the third party (a "***Notice of Proposed Third Party Sale***").

(c) If Seller fails to present a Notice of Proposed Third Party Sale within six (6) months after the expiration of the ninety (90) day period set forth in Section 14.25(a), then Seller shall provide another Proposed Sale Notice hereunder (and go through the ROFO process) hereunder before commencing or continuing negotiations with any third party or consummating a sale of the Facility Assets or interests.

(d) The ROFO shall not (i) apply to any sale by any Facility Lender in connection with the exercise of Facility Lender remedies under any Financing Agreement, nor (ii) limit Buyer's rights to exercise the Project Purchase Option.

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IN WITNESS WHEREOF, each Party was represented by legal counsel during the negotiation and execution of this Agreement and the Parties hereto have executed this Agreement as of the dates set forth below.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

Date: Nov. 12, 2020

By: _____
[redacted] Thomas A. Miller
President

Attest: _____
Michael S. Webster
Assistant Secretary

Approved as to legal form and content:

By: _____
Richard J. Morillo
General Counsel

RED CLOUD WIND LLC

Date: 6/4/20

By: _____
Name: Andrew Murray
Title: Authorized Signatory

APPENDIX A
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

CONTRACT PRICE AND PAYMENT SCHEDULE

1. **Payment for Startup and Test Energy**. The price for Startup and Test Energy and associated Environmental Attributes and Capacity Rights shall be equal to $32.25 per MWh.

2. **Payment for Delivered Energy**. The price for all Delivered Energy (other than Startup and Test Energy and Excess Energy), Environmental Attributes and Capacity Rights shall be equal to $43.00 per MWh, as may be adjusted in accordance with the terms of this Agreement.

3. **Payment for Excess Energy**. The price for all Excess Energy and associated Environmental Attributes and Capacity Rights shall be equal to forty percent (40%) of the then-applicable price per MWh for Delivered Energy as set forth in Sections 2 or 4 of this Appendix A, as such price may be adjusted in accordance with this Agreement.

4. **Payment for a Curtailment Election**. The Curtailment Option Price following the exercise of a Curtailment Election by Buyer shall be equal to $44.45 per MWh of Delivered Energy and of Deemed Delivered Energy that is curtailed pursuant to the Curtailment Election.

In the event that the Facility is able to qualify for one hundred percent of the value of the Production Tax Credit applicable to a wind-powered electricity generating facility that began construction during the year 2016 and that was placed in service during the year 2020, each within the meaning of Section 45 of the Internal Revenue Code of 1986, as amended, the price in each of Sections 1, 2, 3 and 4 above shall be reduced by $2.00 per MWh.

APPENDIX B
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

FACILITY DESCRIPTION

1.	Name of Facility:		Red Cloud Wind
2.	Site:		Lincoln, Torrance and Guadalupe Counties, New Mexico 34°16'31.19"N 105°20'41.99"W
3.	Generator Owner/Lessor:		Red Cloud Wind LLC
4.	Generator Operator:		Red Cloud Wind LLC or Qualified Operator
5.	Equipment:		
	(a)	Type of Facility:	Wind Generation
	(b)	Nameplate capacity:	Up to 350 MW
	(c)	Contract Capacity:	331 MW at the Pseudo-Tie Point (which includes an adjustment to reflect losses to the Point of Interconnection)
6.	Planned Commercial Operation Date:		December 1, 2021
7.	Other included facilities:		Facility shall connect into future PNM Western Spirit Switching Station via approximately 40 miles of 345kV generation tie line.

8. Pre-Construction Permits:

Permitting Item	Status	Date Completed / Expected
EA for BLM Minerals	Complete	
FONSI for BLM Minerals	Complete	
NM PRC Locational Control Permit (Wind Farm)	Complete	Oct-18
NM PRC Locational Control Permit and ROW Width (Gen-Ties)	Complete	Oct-18
Torrance County Special Use District Permit (SUD)	Complete	Nov-18
Lincoln Wind Energy Conversion System Permit (WECS)	Complete	May-19
FAA Locations Filed	Complete	Sep-19
Update to County SUD	In Process	Q2 2020
Update to NM PRC Locational Control Permit (Wind Farm and Gen-Ties)	In Process	Q2 2020
Torrance, Lincoln, and Guadalupe County Road & Crossing Agreements	Form in process	Q2 2020
Receive FAA Determination of No Hazards	In Process	Q2 2020
Contracts for BLM Minerals	Prior to Construction	Q3 2020
National Pollution Emission Discharge System, General Permit	Prior to Construction	Q3 2020
Air Quality Standard Permit for Concrete Batch Plants, NM Env. Dept.	Prior to Construction	Q3 2020
State Highway Crossings, New Mexico Department of Transportation	Prior to Construction	Q3 2020
NM Water Well use permits, New Mexico Office of State Engineer	Prior to Construction	Q3 2020
NM Building, Construction & Electrical, NM Construction Industries Div.	Prior to Construction	Q3 2020

9. Post-Construction Permits:

- RPS Pre-Certification, California Energy Commission
- Registration as generator owner and Generator Operator, NERC

APPENDIX C
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

BUYER AND SELLER BILLING, NOTIFICATION AND SCHEDULING CONTACT INFORMATION

1. Correspondence for the purpose of designating an Authorized Representative or alternate pursuant to Section 14.1 shall be transmitted to the following addresses:

   1.1. If to Buyer:

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

   With a copy to:
   Los Angeles Department of Water and Power
   RE: Red Cloud Wind Project
   111 N. Hope Street, Room 1263
   Los Angeles, California 90012
   Attention: External Resources Management Group – Theodore Zeiss

   Or, if sent electronically, under Section 4.5, Section 4.6 or Section 4.7 send to all the emails listed below:

   RPSOPS@ladwp.com
   Theodore.Zeiss@ladwp.com
   Jan.Lukjaniec@ladwp.com

   1.2. If to Seller:

   Red Cloud Wind LLC
   Attn: General Counsel
   1088 Sansome St.
   San Francisco, CA 94111

   Or facsimile: 415-362-7900
   For information only, telephone: 415-283-4000

2. Billings and payments pursuant to Section 11.1 and Appendix A be transmitted to the following addresses:

2.1 If Billing to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Attention: Finance and Accounting,
Email: projectinvoices@scppa.org
and to: projects@scppa.org

With a copy to:

Los Angeles Department of Water and Power
SCPPA Accounting Section
Re: Red Cloud Wind Project
Yolanda Pantig
111 N. Hope St., Room 462
Los Angeles, California 90012

Or, if sent electronically, Section 4.5, Section 4.6 or Section 4.7 send to all the emails listed below:

Yolanda.Pantig@ladwp.com
Atif.HajiDatoo@ladwp.com

2.2 If Payment to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Attention: Finance and Accounting, projectinvoices@scppa.org

With a copy to:

Los Angeles Department of Water and Power
SCPPA Accounting Section
Re: Red Cloud Wind Project
Yolanda Pantig
111 N. Hope St., Room 462
Los Angeles, California 90012

Or, if sent electronically, under Section 4.5 or Section 4.6 send to all the emails listed below:

Yolanda.Pantig@ladwp.com
Atif.HajiDatoo@ladwp.com

2.3 If Billing to Seller:

Red Cloud Wind LLC
Attn: Treasurer
1088 Sansome St.
San Francisco, CA 94111

Or facsimile: 415-362-7900
For information only, telephone: 415-283-4000

2.4 If Payment to Seller:

Red Cloud Wind LLC
Attn: Treasurer
1088 Sansome St.
San Francisco, CA 94111

Or facsimile: 415-362-7900
For information only, telephone: 415-283-4000

3. All notices (other than Scheduling notices) required under this Agreement shall be sent pursuant to Section 14.2 to the address specified below.

If to Buyer:

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

With a copy to:

Los Angeles Department of Water and Power
RE: Red Cloud Wind Project
111 N. Hope Street, Room 1263
Los Angeles, California 90012
Attention: External Resources Management Group – Theodore Zeiss

Or, if sent electronically, Section 4.5, Section 4.6 or Section 4.7 send to all the emails listed below:

RPSOPS@ladwp.com
Theodore.Zeiss@ladwp.com
Jan.Lukjaniec@ladwp.com

And, if prior to the achievement of Commercial Operation, with a copy to:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Attention: Randy Krager, rkrager@scppa.org
Email: projects@scppa.org

If to Seller:

Red Cloud Wind LLC
Attn: General Counsel
1088 Sansome St.
San Francisco, CA 94111

Or facsimile: 415-362-7900
For information only, telephone: 415-283-4000

4. Following the achievement of Commercial Operation, and throughout the Delivery Term, all notices related to scheduling of the Facility shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Facsimile: 626-793-9461
Attention: Director of Asset Management
Email: projects@scppa.org

With a copy to:

Los Angeles Department of Water and Power
RE: Red Cloud Wind Project
111 N. Hope Street, Room 1263
Los Angeles, California 90012
Attention: External Resources Management Group – Theodore Zeiss
Telephone: 213-367-2382

And electronically to the emails listed below:

RPSOPS@ladwp.com
Lawmarketing.lawmarketing@ladwp.com

If to Seller:

24/7 Operations Control Center
Attn: Manager
1600 Smith Street, Suite 4025
Houston, TX 77002

Or facsimile: 281-694-2848
Email: patternocc@patternenergy.com
For information only, telephone: 713-308-4242

APPENDIX D-1
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

FORM OF ATTESTATION - ENERGY

(Seller) Environmental Attribute Attestation and Bill of Sale

_____ ("Seller") hereby sells, transfers and delivers to Southern California Public Power Authority ("Buyer") the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below:

Facility Name:
Facility Location:
Fuel Type:
Capacity (MW): Commercial Operation Date:

As applicable:
CEC-RPS-ID no. _____ Energy Admin. ID no. _____ WREGIS Generating Unit no. _____
Qualifying Facility (18 C.F.R. Sec. 292.101(b)(1)) ID no. _____

Vintage (Year/Month)	MWhrs generated (up to four (4) decimal points to account for kWhrs)
_____	_____
_____	_____
_____	_____

in the amount of one Environmental Attribute or its equivalent for each megawatt hour generated and delivered, up to four decimal points to account for kWhrs.

Seller further attests, warrants and represents as follows:

i) the information provided herein is true and correct;

ii) its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;

iii) the Facility generated and delivered to the grid the Energy in the amount indicated as undifferentiated Energy; and

iv) Seller owns or leases the Facility, and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Energy for delivery to the grid have been generated and sold by the Facility.

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

Contact Person: _____ tel:

APPENDIX D-2
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

FORM OF ATTESTATION – REPLACEMENT ENERGY

_____(Seller)_____ Environmental Attribute Attestation and Bill of Sale

_____("Seller") hereby sells, transfers and delivers to Southern California Public Power Authority ("Buyer") the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below:

Facility Name:
Facility Location:
Fuel Type:
Capacity (MW):
Commercial Operation Date:
WREGIS Account Holder:
Contact Information:

As applicable:
CEC-RPS-ID no._____Energy Admin. ID no._____WREGIS Generating Unit no. _____
Qualifying Facility (18 C.F.R. Sec. 292.101(b)(1)) ID no. _____

Delivery Date(s)	MWhrs generated (up to four (4) decimal points to account for kWhrs)

in the amount of one Environmental Attribute or its equivalent for each megawatt hour generated and delivered, up to four decimal points to account for kWhrs.

Seller to provide the following:

1) Tag data for delivered energy including:
   a. Market path from Generator to Load
   b. Physical path from Generator to Load
   c. RPS ID inserted into the correct Tag Token Field as defined by WREGIS
2) A copy of California CEC RPS Certification

Seller further attests, warrants and represents as follows:

i) The information provided herein is true and correct;

ii) Its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;

iii) The Facility generated and delivered to the grid the Energy in the amount indicated as undifferentiated Energy; and

iv) Seller owns or leases the Facility, and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Energy for delivery to the grid have been generated and sold by the Facility.

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

Contact Person: _____

tel: _____

APPENDIX E
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

FORM OF LETTER OF CREDIT

IRREVOCABLE AND UNCONDITIONAL DOCUMENTARY LETTER OF CREDIT NO.

Applicant:

_____

Beneficiary:

Southern California Public Power Authority
1160 Nicole Court
Glendora, California 91740
Telephone: (626) 793-9364
Facsimile: (626) 793-9461

Amount: [_____]
Expiration Date: [_____][1]
Expiration Place: [_____]:

Ladies and Gentlemen:

We hereby issue our Irrevocable and Unconditional Documentary Letter of Credit ("Letter of Credit") in favor of the Beneficiary by order and for the account of the applicant which is available at sight for USD $XX,XXX,XXX by sight payment upon presentation to us at our office at *[bank's address]* of: (i) Beneficiary's written demand for payment containing the text of Exhibit I and (ii) Beneficiary's signed statement containing the text of Exhibit II.

Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the amount specified above.

Upon presentation to us in conformity with the foregoing on any business day, we will, on or before the third (3rd) business day thereafter, irrevocably and without reserve or condition: (a) if the office set forth above for presentation is in Glendora, California, pay to Beneficiary's order in the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you, or (b) if the office set forth above for

[1] Note: To be one year after issuance, subject to automatic renewals.

presentation is not Glendora, California, issue payment instructions to the Federal Reserve wire transfer system in proper form to transfer to the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you in Glendora, California. We agree that if, on the expiration date of this Letter of Credit, the office specified above is not open for business by virtue of an interruption of the nature described in the 2007 Revision of the Uniform Customs and Practices for Documentary Credits, International Chamber of Commerce Publication No. 600 (***"UCP 600"***), in Article 36, this Letter of Credit will be duly honored if the specified statements are presented by you within thirty (30) days after such office is reopened for business.

Payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from the Applicant or any other person except Beneficiary, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the documents presented by you, but excluding solely an effective written order issued otherwise than at our instance by a court of competent jurisdiction which order is legally binding upon us and specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment. We agree that we will not take any action to cause the issuance of an order described in clause (a) of the preceding sentence. We agree that the time set forth herein for payment of any demand(s) for payment is sufficient to enable us to examine such demand(s) and the related documents(s) referred to above with care so as to ascertain that on their face they appear to comply with the terms of this credit and that if such demand(s) and document(s) on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s) and this credit.

The stated amount of this Letter of Credit may be increased or decreased, and the expiration date of this Letter of Credit may be extended, by an amendment to this Letter of Credit in the form of Exhibit III. Any such amendment shall become effective only upon acceptance by your signature on a hard copy amendment.

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

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

> "The undersigned does hereby certify that ____[drawer]____ is the successor by operation of law to Southern California Public Power Authority, the Beneficiary named in [name of Bank] Letter of Credit No. _____."

[name and title]

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the UCP 600. As to matters not governed by the Uniform Customs, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York. Any litigation arising out of, or relating to this Letter of Credit, shall be brought in the Southern District of New York. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of New York.

All parties to this Letter of Credit are advised that the U.S. Government has in place certain sanctions against certain countries, individuals, entities, and vessels. [*Bank company*] entities, including branches and, in certain circumstances, subsidiaries, are/will be prohibited from engaging in transactions or other activities within the scope of applicable sanctions.

Yours faithfully,

(name of issuing bank)

By_____
Title_____

EXHIBIT I
DEMAND FOR PAYMENT

Re: Irrevocable and Unconditional Documentary Letter of Credit

No. _____ Dated _____, 20__

[Insert Bank Address]

To Whom It May Concern:

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

DATED: _____, 20__.

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By _____
Name:
Title:

Date:

Attest: _____
Name:
Title:

EXHIBIT II
STATEMENT

Re: Your Irrevocable and Unconditional Documentary Letter of Credit

No. _____ Dated _____, 20_____

[Insert Bank Address]

To Whom It May Concern:

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

We hereby certify to you that $_____ is due and owing to us by the Applicant.

DATED: _____, 20__.

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By _____
Name:
Title:

Date:

Attest: _____
Name:
Title:

EXHIBIT III
AMENDMENT

Re: Irrevocable and Unconditional Documentary Letter of Credit
No. _____ Dated _____, 20__

Beneficiary: Applicant:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740

To Whom It May Concern:

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

This amendment is effective only when accepted by Southern California Public Power Authority, which acceptance may only be valid by a signature of an authorized representative.

Dated: _____

Yours faithfully,

(name of issuing bank)

By_____
Title_____

ACCEPTED

Southern California Public Power Authority

By_____
Title_____
Date_____

APPENDIX F
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

INSURANCE

I. GENERAL REQUIREMENTS

Seller shall furnish Buyer evidence of coverage from insurers acceptable to Buyer and in a form acceptable to Buyer's Risk Management Section in accordance with Section II. Such insurance shall be maintained by Seller at Seller's sole cost and expense. Such insurance shall not limit or qualify the liabilities and obligations of Seller assumed under this Agreement. Buyer shall not, by reason of its inclusion under these policies, incur liability to the insurance carrier for payment of premium for these policies.

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

Said evidence of insurance shall endeavor to contain a provision that the policy cannot be canceled or reduced in coverage or amount without first giving thirty (30) days' prior notice thereof (ten (10) days for non-payment of premium) by registered mail or email to Buyer, addressed as follows: Southern California Public Power Authority, 1160 Nicole Court, Glendora, CA 91740, or by email to RiskManagement.risky@ladwp.com.

Should any portion of the required insurance be on a "Claims Made" policy, Seller shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with a retroactive date back to the policy in effect as of the Effective Date with the same limits, terms and conditions of the expiring policy.

As provided in Section 13.1(i), failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, which if not cured within ten (10) calendar days after receipt of notice thereof from Buyer, Buyer may terminate or suspend the Agreement. Seller shall be responsible for all subcontractors' compliance with the insurance requirements.

II. SPECIFIC COVERAGES REQUIRED

A. Commercial Automobile Liability

Seller shall provide Commercial Automobile Liability insurance, which shall include coverages for liability arising out of the use of owned (if any), non-owned and hired vehicles for performance of the work as required to be licensed under the California, or

any other applicable state, vehicle code. The Commercial Automobile Liability insurance shall have not less than one million dollars ($1,000,000.00) combined single limit per occurrence and shall apply to all operations of Seller.

The Commercial Automobile Liability policy shall include Buyer, Board of Commissioners, its members, and their officers, agents, and employees as additional insureds with Seller and shall insure against liability for death, bodily injury or property damage resulting from the performance of this Agreement. The form of evidence of insurance shall be a Buyer Additional Insured Endorsement or a standard form endorsement attached to the policy acceptable to Buyer's Risk Management Section.

B. Commercial General Liability

Seller shall provide Commercial General Liability insurance with Blanket Contractual Liability, Broad Form Property Damage, Premises and Operations, Products and Completed Operations, fire Legal Liability and Personal Injury coverages included. Such insurance shall provide coverage for total limits actually arranged by Seller, but not less than ten million dollars ($10,000,000.00) each occurrence and annual aggregate. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be on Buyer's Additional Insured Endorsement form or on a standard endorsement attached to the policy acceptable to Buyer's Risk Management Section and shall provide for the following:

1. Include Buyer and its officers, agents, and employees as additional insureds for the activities and operations under this Agreement.

2. Include Severability-of-Interest or Cross-Liability Clause such as: "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company's liability."

C. Excess Liability

Seller may use an Umbrella or Excess Liability Coverage to meet coverage limits specified in this Agreement. Seller shall require the carrier for Excess Liability to properly schedule and to identify the underlying policies as provided for Buyer on Buyer Additional Insured Endorsement Form, or on a standard endorsement attached to the policy acceptable to Buyer's Risk Management Section. Such policy shall include, as appropriate, coverage for Commercial General Liability, Commercial Automobile Liability, Employer's Liability or other applicable insurance coverages.

D. Workers' Compensation/Employer's Liability Insurance

To the extent exposure exists, Seller shall provide Workers' Compensation insurance covering all of Seller's employees in accordance with the laws of any state in which the work of the Agreement is to be performed and including Employer's Liability insurance, where possible, and a Waiver of Subrogation in favor of Buyer. The limit for Employer's Liability coverage shall be not less than one million dollars ($1,000,000.00) each accident

and shall be a separate policy if not included with Workers' Compensation coverage. Evidence of such insurance shall be in the form of a Buyer Special Endorsement of insurance or on a standard endorsement attached to the policy acceptable to Buyer's Risk Management Section. Workers' Compensation/Employer's Liability exposure may be self-insured, *provided that* Buyer is furnished with a copy of the certificate issued by the state authorizing Seller to self-insure. Seller shall notify Buyer's Risk Management Section by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

E. Builders' Risk

Builder's Risk insurance shall be of the "all risk" type and shall protect Seller and Buyer against risks of damage to buildings, structures and materials and equipment whether on site or in transit from any location worldwide. The amount of such insurance shall be not less than the insurable value of the work at completion. Buyer shall be a named additional insured on the policy. The Builder's Risk insurance shall provide for losses to be payable to Seller and the aforementioned named additional insured, as their interests may appear, however, all Parties shall recognize financing parties' interest as first loss payee. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against Buyer. The Builder's Risk policy shall insure against all risks of direct physical loss or damage to property from any cause, including testing, ensuing loss, commissioning, earthquake and flood. The perils for wind, hail, flood, or Earth movement may be subject to limits available on a commercially reasonable basis at the time coverage is placed. Seller shall maintain such Builder's Risk insurance policy in full force and effect from the later of the Effective Date or the date of commencement of construction of the Facility through the Commercial Operation Date. Evidence of this coverage shall be provided by Seller to Buyer by the later of the Effective Date or the date thirty (30) days prior to commencement of construction of the Facility.

F. Property All Risk Insurance

Seller shall procure and maintain an All Risk Physical Damage policy to insure the full replacement value of the property located at the Facility as described in this Agreement. The policy shall include coverage for expediting expense, extra expense, Business Interruption, ensuing loss from faulty workmanship, faulty materials or faulty design. This policy need not be in full force and effect until the date of expiration of the Builder's Risk policy described in Paragraph II.E. This policy shall have the same insureds, and all losses shall be payable in the same manner, as provided for the Builders' Risk policy in Paragraph II.E.

APPENDIX G
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

LIST OF SUBCONTRACTORS

None.

APPENDIX H
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

QUALITY ASSURANCE PROGRAM

Seller shall implement a Quality Assurance ("*Q/A*") Program to ensure that the performance of the development, design and construction of the Facility fulfills the requirements of this Agreement. The Q/A Program shall provide assurance that design, purchasing, manufacturing, shipping, storage, construction, testing and examination of all equipment, materials, services and maintenance of the Facility will comply with the requirements of this Agreement, all applicable Requirements of Law and the manufacturers' and/or suppliers' requirements for successful operation of the Facility.

Quality at Seller

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

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

The Quality Management Process

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

Seller's project management team is responsible for proactively planning and directing the quality of the work process, services, and deliverables. Seller's project management team will target six (6) areas to monitor quality:

1) A written Quality Plan (as defined below).

2) Detailed review of the Facility design at the planning and conceptual design phase.

3) Detailed review of Facility final design prior to construction.

4) A quality control program during construction to verify implementation is in compliance with design documents and document any changes.

5) Independent engineering review of the entire process, from design review through Commercial Operation.

6) A written maintenance manual for the Facility for the duration of the Commercial Operation that complies with the maintenance manuals of the manufacturers and suppliers from whom Seller has purchased equipment and/or material and best industry practices.

Seller's Quality Plan

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

Seller's Q/A Program shall be documented in a written work plan (the "***Quality Plan***"). The form and the format of the Quality Plan shall be developed by Seller, and the content of the Quality Plan shall provide written descriptions of policies, procedures and methodology to accomplish a quality project. Seller shall submit three (3) copies of the Quality Plan within ninety (90) days after the Effective Date to Buyer or Buyer's Authorized Representative. The Quality Plan shall be kept current by Seller throughout the Agreement Term through the submittal of revisions, as appropriate, by Seller to Buyer or Buyer's Authorized Representative.

The Seller's Quality Plan shall also provide the plan for detailed review of Facility conceptual design and final design, hold points, and methodology for document control and comment. Furthermore, it shall provide the plan and strategy for quality control and review during the construction of the Facility and for maintenance and operations during Commercial Operation. The Quality Plan shall strive, at a minimum, to define control procedures or methods to assure the following:

(a) The design documents, drawings, specifications, Q/A procedures, records, inspection procedures and purchase documents are maintained to be current, accurate and in compliance with all applicable law.

(b) The purchased materials, equipment and services comply with the requirements of this Agreement and all applicable Requirements of Law.

(c) The materials received at the site are inspected for compliance with specifications.

(d) The subcontracted work is adequately inspected by Seller or third parties.

(e) Proper methods are employed for the qualification of personnel who are performing work for the development, design and construction of the Facility.

(f) Proper documentation, control and disposition of nonconforming equipment and materials is maintained.

(g) Proper records are kept and available following project completion to ensure accurate documentation of as-built conditions.

(h) Detailed and complete plan for maintenance and operation during Commercial Operations consistent with manufacturers' and suppliers' recommendations and best industry practices.

Conceptual Design Review

Seller shall have a team of professionals who develop and review the Facility layout and Facility conceptual design. The team shall consist of specialists in land-use and planning, permitting, meteorology, engineering, construction, project management, and finance. A preliminary site plan is developed and meetings are held to assess optimization of the resource, constructability, minimization of cultural and biological impacts, land use restrictions, and landowner requirements. Preliminary road design will also be started and access to the Site will be reviewed in detail. When this plan is ready for review, a formal plan and map shall be created and a final internal review is conducted. Following that shall be detailed studies for biological, cultural and other types of impacts completed by various third parties. The Site plan will be reviewed, modified as necessary, and then used to begin the permitting and public review process. The Site plan shall be further modified based on comments in that process. At that point, the Site plan can be issued for construction, and final engineering can commence.

In parallel with this process, preliminary conceptual design will start for the major areas of the Facility, including the substation, transmission line, and communications system; and road and grading done to develop construction estimates as well as materials specifications. All of these areas of conceptual designs shall be used to check and verify the assumptions used for development of the site plan.

Final Engineering Design

Following finalization of the site plan, the detailed design will be done for the roads and grading, transmission line, and substation by third party engineers licensed to practice in the State of New Mexico. Each firm shall have its own quality assurance and checking procedures, however, Seller shall review the final work products in detail to check with conformance with this Agreement and provide comments as a second round of quality assurance. When Seller's comments have been incorporated, the design of each area will be considered final, and that design will then be submitted to an independent engineer for review and comment. This ensures that another entity, in addition to Seller, has done a comprehensive review of all areas of the Facility and details to ensure conformance with this Agreement.

In parallel with final design and checking activities, final geotechnical studies will be conducted at the Site, and a final resource assessment will be performed with the issued-for-construction Facility layout. If existing subsurface conditions are different from what is expected, the racking locations could be slightly modified. Any changes of this nature would be documented in as-built design drawings and approved of in advance by Seller.

Seller shall inform Buyer of, and invite Buyer to participate in, the final engineering design review process.

Quality Assurance at the Construction Site

Seller will hire a third party general contractor to construct the project. This contractor will be required to have its own quality assurance program in place using its own staff, as well as third party inspectors. The two primary areas of focus at the Site are assuring conformance of construction to design drawings, and conformance of materials to specifications. The general contractor will be required to provide third party inspectors and testing for materials, including concrete slump testing, rebar and concrete placement, cable trenching and soil compaction testing. The general contractor will also be required to maintain a set of red-line drawings during the course of construction to document any changes to the design documents. Proposed project changes would be reviewed and approved in the field by Seller construction management team prior to implementation.

Quality assurance of turbine erection is achieved through a combination of procedures and processes. The general contractor will provide rigorous inspection of its installation crew. The turbine supplier will have technical advisors on Site to inspect and sign off on turbine components received, oversee and monitor turbine erection and approve mechanical completion. In addition, Seller will have its own construction management team on Site, consisting of a construction manager and quality inspectors who will observe performance of all areas of the work and ensure compliance with design documents. A team consisting of the turbine supplier, Seller and the general contractor will walk down each turbine at mechanical completion to develop a comprehensive punchlist of any unfinished or incorrect work. This punchlist is maintained by the contractor, and is signed off by Seller upon completion of the punchlist items. Lastly, the Independent Engineer performs periodic audits during construction to oversee critical items, spot checks individual turbines, confirms construction progress, reports on any perceived issues and provides independent reporting and assessments to the project stakeholders.

Following completion of the project, the general contractor will be required to provide all as-built design drawings and records of all materials testing conducted at the site. This documentation will be maintained at the project site during operations of the Facility.

Quality Assurance and Quality Control ("*Q/C*") Activities After Commercial Operation

Throughout the Agreement Term, Seller shall perform Q/A and Q/C activities on all materials and equipment associated with the Facility, including all wind power generation equipment, on a periodic basic, and at a minimum once every six (6) months. At the completion of such Q/A and Q/C activities, Seller shall provide Buyer a detailed report identifying all areas of inspections performed, a detailed checklist, results found, remedial actions taken, if any, and follow up for any corrective actions.

Seller shall provide Buyer with a schedule for performance actions needed as result of Q/A and Q/C activities. Buyer shall review the schedule and provide comments to Seller.

APPENDIX I
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

MILESTONE SCHEDULE

Note: An "" designates a Key Milestone.*

	Milestone Date	Milestone Description	Buyer Remedy
1.	No later than ten (10) days following the Effective Date	Seller shall deliver the Development Security	N/A
2.	Commercial Operation Date	Seller shall deliver the Performance Security	N/A
3.	January 31, 2017	Seller shall achieve Site Control in accordance with this Agreement.	Mitigation plan to complete
4.	July 1, 2019	Seller shall deliver a fully executed Transmission Services Agreement with the Public Service Company of New Mexico	Mitigation plan to complete
5.	July 1, 2019	Seller shall deliver a fully executed Transmission Services Agreement with Tucson Electric Power	Mitigation plan to complete
6.	December 1, 2020	Seller shall deliver a fully executed copy of the Generator Interconnection Agreement to Buyer.	Mitigation plan to complete
7.	December 1, 2020	Seller or an Affiliate of Seller shall have commenced construction (i.e. issuance of a notice to proceed) of the Western Sprit Transmission Line.	Mitigation plan to complete
8.	December 1, 2020	Seller shall have secured all requisite financing for the Facility	Mitigation plan to complete
9.	December 1, 2020	The Construction Commencement Milestone has been achieved and	$70,000, for up to 180 days

	Milestone Date	Milestone Description	Buyer Remedy
		evidence thereof has been delivered to Buyer.*	
10.	October 1, 2021	Seller shall have completed construction of all interconnection facilities	Mitigation plan to complete
11.	October 31, 2021	Seller or an Affiliate of Seller shall have substantially completed construction of the Western Spirit Transmission Line	Mitigation plan to complete
12.	On or before the GCOD	The Commercial Operation Date has occurred.*	$70,000, for up to 180 days
13.	Within six (6) months of the Commercial Operation Date	Seller shall furnish proof reasonably acceptable to Buyer that the Facility is CEC Certified.	
14.	March 31, 2022	Verification of WREGIS Registration (pre-COD Seller shall provide sufficient evidence to Buyer that it has prepared and registered all required documents and have taken all necessary steps for final WREGIS approval, including the Notice of Substantial Completion or COD notice to WREGIS, as appropriate. Post-COD Seller shall provide sufficient evidence to Buyer that substantial completion of the Facility is verified, and it has provided WREGIS with the notice of COD and are only waiting for WREGIS to approve the unit so that RECs can be created.	

APPENDIX J
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

OPTION AGREEMENT

PURCHASE OPTION AGREEMENT
(Red Cloud Wind)

This Purchase Option Agreement (this "**Agreement**") is made as of _____, 2020 (the "**Effective Date**"), by and between Red Cloud Wind LLC, a limited liability company organized and existing under the laws of the State of Delaware ("**Seller**"), and the Southern California Public Power Authority ("**SCPPA**"), a public entity and joint powers authority formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Code Section 6500, et seq.). Seller and SCPPA are sometimes hereinafter individually or collectively called a "**Party**" or the "**Parties**".

WHEREAS, Seller and SCPPA are party to that certain Power Purchase Agreement, dated as of _____, 2020 (the "**PPA**"). Capitalized terms used but not defined herein shall have the respective meanings given in the PPA.

WHEREAS, pursuant to the PPA, Seller is developing an independently-metered up-to 350 MW total nameplate capacity wind-powered electric generating facility to be located at the Site (the "**Facility**"), and SCPPA will purchase the energy, capacity rights and environmental attributes from the Facility.

WHEREAS, Seller has agreed to offer SCPPA the option to purchase the Facility on the terms provided herein, and SCPPA has agreed to accept such option to purchase.

WHEREAS, pursuant to the PPA, the Parties have agreed to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by reference, the covenants and agreements contained herein and under the PPA, and other good and valuable consideration (the receipt and adequacy of which is hereby acknowledged by the Parties), the Parties, intending to be legally bound, agree as follows:

1. Option To Purchase Facility.

1.1 Grant of Purchase Option. Seller hereby grants SCPPA an irrevocable right and option, to be exercised in its sole discretion, to purchase all (and not less than all) of the Seller's right, title, and interest in and to the Facility Assets as defined in Section 1.4(a) below on the terms set forth herein (the "**Purchase Option**"), such purchase to be consummated at the closing of the purchase and sale of the

Facility Assets (the "**Closing**"). So long as the PPA has not been terminated before any Purchase Option Date (as defined below) and no Default by SCPPA has occurred and is continuing under the PPA, and subject to the terms set forth herein, SCPPA may exercise the Purchase Option, with the transfer of the Facility Assets to occur only on either (a) the thirteenth (13th) anniversary of the Commercial Operation Date, or (b) at the expiration of the Agreement Term (each, a "**Purchase Option Date**"). Seller acknowledges that SCPPA has no obligation to exercise the Purchase Option and that SCPPA may decline to exercise the Purchase Option for any or no reason, as SCPPA deems appropriate in its sole discretion.

1.2 Determination of Purchase Price.

(a) *Fair Market Value.* SCPPA may, on or at any time within twenty-four (24) months before but no later than eighteen (18) months before each Purchase Option Date (the "**Purchase Price Notice Date**"), request a determination of the purchase price pursuant to the Purchase Option. The Purchase Price shall be the fair market value of the Facility Assets determined in accordance with this Section 1.2 (the "**Purchase Price**"). The "**Fair Market Value**" of the Facility Assets shall be calculated by Seller within thirty (30) days of the Purchase Price Notice Date as the amount a willing buyer would pay for the Facility Assets, including all rights, title and interests associated therewith, in an arm's-length transaction, to a willing seller under no compulsion to sell, on the applicable Closing Date (as defined below), taking into account all relevant facts and circumstances relating to the Facility Assets (including impacts to the value of any other generating facility assets owned by Seller or any Seller Affiliate that owns generating facility assets at the Corona Wind Complex, that result from the sale of the Facility Assets, including impacts relating to the value of shared facilities, shared contractual arrangements, transmission sharing, shared financings, or otherwise), and assuming (a) delivery of the Expected Annual Generation for the then-remaining Term at the prices and subject to the terms set forth in the PPA, and (b) after the expiration of the Term that the Facility is able to continue to generate revenue for the remaining useful life of the Facility at a price per MWh equal to the projected fair market price for Energy, Capacity Rights, and Environmental Attributes (discounted to the then-present value), as may be adjusted due to any material casualty or other loss event, real or threatened condemnation proceeding, or other material adverse event affecting all or any portion of the Facility prior to the Closing Date. If SCPPA disagrees with Seller's calculation of the Fair Market Value, the Parties may, within thirty (30) days following receipt of a notice from SCPPA therefor, meet and attempt to agree on a Fair Market Value.

(b) *Independent Appraiser.* If the Parties are unable to agree on the Fair Market Value within thirty (30) days following Seller's calculation of the Fair Market Value, the Parties shall jointly retain an independent appraiser mutually agreeable to both Parties to determine such Fair Market Value (the "**Independent Appraiser**"). The Parties shall equally bear the costs of the Independent Appraiser. The Independent Appraiser shall be an individual who is a member of a national accounting, engineering or energy consulting firm, qualified by education, experience, and training to determine the value of generating facilities of the size and age and with the operational characteristics of the Facility, and who specifically has prior experience valuing wind energy generating facilities. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (and shall not, within three (3) years before his or her appointment, have been) a director, officer, or an employee of, or directly or indirectly retained as consultant or adviser to, either of the Parties or, with respect to Seller, its Affiliates, or, with respect to SCPPA, its members. The Independent Appraiser shall make a determination of the Fair Market Value within thirty (30) days after appointment by the Parties (the "**Fair Market Value**

Determination"). Upon making the Fair Market Value Determination, the Independent Appraiser shall provide a written notice thereof to both Seller and SCPPA, including all supporting documentation detailing the method of calculation of the Fair Market Value. Except in the event of fraud or manifest error, the Fair Market Value Determination shall be a final and binding determination of the Fair Market Value of the Facility.

(c) *Additional Appraisers.* If the Parties are unable to agree upon an Independent Appraiser within thirty (30) days after SCPPA submits a request for a determination of the Fair Market Value under this Section 1.2, then each of Seller and SCPPA shall select and retain its own independent appraiser meeting the requirements for an Independent Appraiser set forth in this Section 1.2 and shall cause its appraiser to make a determination of the Fair Market Value within thirty (30) days after being retained. Upon completion of the two appraisals, each of SCPPA and Seller shall deliver the results to the other Party. If the Fair Market Value determinations of the two independent appraisers vary by less than ten percent (10%), the Fair Market Value Determination shall be the simple average of the Fair Market Value determinations of the two appraisals. If the variance is greater than ten percent (10%), the two independent appraisers shall either select a third independent appraiser meeting the requirements for an Independent Appraiser set forth in this Section 1.2, or, if the first two appraisers fail to agree upon a third appraiser within fifteen (15) days following delivery of the second appraisal, a third independent appraiser shall be appointed by the American Arbitration Association ("**AAA**") upon application by either Party in accordance with the applicable rules and regulations of the AAA for such selection. The third appraiser shall select one of the appraisals generated by the first two appraisers within thirty (30) days of retention and the resulting price shall be the Fair Market Value Determination. If the third appraiser selects the appraisal originally generated by SCPPA's appraiser, Seller shall pay the fees and costs of the third appraiser. If the third appraiser selects the appraisal originally prepared by Seller, SCPPA shall pay the fees of the third appraiser.

1.3 Exercise of Purchase Option. If, following the Fair Market Value Determination, SCPPA wishes to exercise the Purchase Option at the Purchase Price determined in accordance with Section 1.2, it shall deliver an exercise notice to Seller at least one (1) year prior to the applicable Purchase Option Date (the "**Exercise Notice**"). Any such Exercise Notice shall be irrevocable once delivered, subject to SCPPA's rights to not consummate the Closing under Section 4. In the event that the Purchase Price has not been determined in accordance with Section 1.2 by the date that is thirteen (13) months prior to the applicable Purchase Option Date, SCPPA shall have an additional thirty (30) days after determination of the Purchase Price during which it may exercise the Purchase Option by notice to Seller; provided that if SCPPA has failed to exercise the Purchase Option (whether or not the Purchase Price has yet been determined) by the date that is six (6) months prior to the applicable Purchase Option Date, SCPPA will be deemed to have irrevocably declined to exercise the Purchase Option.

1.4 Terms and Date of Facility Purchase. Subject to Regulatory Approval as defined and as provided in Section 6.3, if SCPPA has delivered an Exercise Notice in accordance with Section 1.3 and the Parties have mutually agreed on the terms of the transaction documents described in this Section 1.4 and obtained all third party consents required to consummate the transaction, the Parties shall consummate the sale of the Facility Assets to SCPPA by the applicable Purchase Option Date. On the effective date of such sale (the "**Closing Date**") (a) Seller shall surrender, assign and transfer to SCPPA all of Seller's right, title, and interest in and to the "**Facility Assets**", which are defined as all assets, properties, rights and interests of every kind, nature and description (whether real, personal or mixed, whether tangible or intangible, and wherever situated), operated, owned or leased by, or allocated to,

Seller for or in connection with the Facility and its intended purpose, operation, and function, other than any assets that are listed in Exhibit B and any assets that SCPPA and Seller have mutually agreed to exclude from the transfer and sale (such assets together with the assets listed in Exhibit B, collectively, the "**Excluded Assets**"), and Seller shall retain all liabilities arising from or relating to the Facility Assets prior to the Closing Date in accordance with Section 1.5; (b) SCPPA shall pay the Purchase Price to Seller in readily available funds, and shall assume all liabilities arising from or relating to the Facility on and after the Closing Date in accordance with Section 1.5; (c) SCPPA shall pay all amounts due and payable by SCPPA to Seller under the PPA as of the Closing Date, including amounts for performance by Seller prior to the Closing Date that would not normally be invoiced under the PPA prior to the Closing Date, net of any amounts owed by Seller to SCPPA thereunder; (d) both Seller and SCPPA shall (i) execute and deliver a bill of sale, an assignment of contract rights, and an assumption of Assumed Liabilities (as defined below), together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the Facility in SCPPA, and (ii) deliver such ancillary documents, including releases, indemnifications, resolutions, certificates, third-party consents and approvals, and such similar documents as may be reasonably necessary to complete and conclude the sale of the Facility to SCPPA on customary and commercially reasonable terms; and (e) the PPA shall automatically terminate. In connection with such purchase and sale, each party shall make commercially reasonable and customary representations and warranties, including as to Seller with respect to title, authority, and liens. Seller shall, prior to the Closing Date, provide disclosures with specificity and in good faith, regarding any actions, suits, arbitrations, procedures, and/or claims pending or, to the knowledge of Seller, threatened against Seller or the Facility, which if adversely determined, could adversely affect the Facility or result in a material liability to SCPPA. Seller shall, to the extent reasonably possible, transfer or assign to SCPPA all then-valid manufacturer and third-party warranties with respect to the Facility or any part thereof, and will use commercially reasonable efforts to obtain all third party consents required to consummate the transaction.

(a) Upon SCPPA's election, the Facility Assets shall include any bond (an "**Industrial Revenue Bond**") issued solely with respect to the Facility under either (i) the New Mexico County Industrial Revenue Bond Act or (ii) the New Mexico Municipal Industrial Revenue Bond Act. SCPPA may at any time prior to the Closing Date elect to have Seller cause any Industrial Revenue Bonds to be retired and/or redeemed and any related leases, or subleases and other agreements to be terminated, at Seller's cost and expense, and the Closing Date shall be extended up to sixty (60) additional days to complete such retirement and termination.

(b) In the event that SCPPA elects to have any Industrial Revenue Bonds transferred as part of the Facility Assets, SCPPA and Seller shall cooperate in relation to such transfer on the following basis: (i) the transfer shall not impose any material liability on Seller from and after the Closing Date in relation to the Industrial Revenue Bonds, (ii) the Industrial Revenue Bonds shall be paid down to a reasonably acceptable minimum amount, currently estimated to be ten thousand dollars ($10,000), and the outstanding bond amount shall be credited against the Purchase Price, and (iii) to the extent that any opinions or other transfer documents required by counsel to the issuer of the Industrial Revenue Bonds in connection with a transfer thereof pursuant hereto cannot be delivered after commercially reasonable efforts of SCPPA and Seller, in compliance with the provisions and requirements of this Agreement, then Seller may elect to cause the Industrial Revenue Bonds to be retired and/or redeemed and any related leases, or subleases and other agreements to be terminated, at Seller's cost and expense, and the Closing Date shall be extended up to sixty (60) additional days to complete such retirement and termination. The provisions of this Section 1.4(b) shall apply notwithstanding any other provision of

this Agreement. For the avoidance of doubt, if SCPPA elects not to have the Industrial Revenue Bonds transferred to it as part of the transferred assets, Seller shall have the right to cause such Industrial Revenue Bonds to be retired and/or redeemed and any related leases, or subleases and other agreements to be terminated.

1.5 Allocation of Liabilities. At the Closing, SCPPA shall assume and agree to pay for, perform, fulfill and discharge after the Closing, the liabilities and obligations relating to the Facility that are required to be performed after the Closing or arising or occurring after the Closing, other than the Excluded Liabilities (collectively, the "**Assumed Liabilities**"). The Assumed Liabilities shall include all liabilities and obligations under contracts which are assumed by SCPPA at the Closing arising before the Closing Date and becoming due after Closing Date; provided that the Assumed Liabilities shall not include any liabilities arising out of a breach or default thereof by Seller prior to the Closing Date. To the extent any of the Assumed Liabilities were supported by credit support provided by or on behalf of Seller prior to the Closing Date, SCPPA shall procure the return or cancellation of such credit support prior to and as a condition to the Closing Date. SCPPA shall not assume, and shall not be deemed to have assumed, and shall have no liability with respect to (whether asserted before or after the Closing and regardless of whether the same or the basis therefor may have been disclosed to SCPPA by Seller or otherwise be known to SCPPA), any liabilities or obligations of any nature, fixed or contingent or known or unknown related to the Facility arising and becoming due before the Closing Date (with all such unassumed liabilities and obligations referred to in this Agreement as the "**Excluded Liabilities**"). Without limiting the generality of the preceding sentence, SCPPA shall have no liability with respect to any of the following liabilities or obligations (whether asserted before or after the Closing and regardless whether the same or the basis therefor may have been disclosed to SCPPA by Seller or otherwise be known to SCPPA), all of which are included in the Excluded Liabilities:

(a) Any liability, claim, loss, damage or obligation of Seller in respect of taxes attributable to the Facility for taxable periods ending prior to the Closing Date, including any supplemental tax liability related to the Facility before the Closing Date that arises on or after the Closing Date;

(b) Any liability, claims, loss, damage or obligation of Seller relating to the Facility, including arising out of Seller's ownership and operation of the Facility, arising or occurring prior to the Closing;

(c) Any liability or obligation arising from or associated with any of the Excluded Assets;

(d) Any liability or obligation of Seller or its Affiliates to a third party arising from any indemnification claim, injury to or death of any person or damage to or destruction of any property, whether based on negligence, breach of warranty, strict liability, enterprise liability or any other legal or equitable theory arising from actions by, for or on behalf of Seller or its Affiliates arising prior to the Closing; and

(e) Any liability or obligation of Seller or its Affiliates arising solely in connection with the Facility secured by a Lien of a Facility Lender or Liens or encumbrances other than those permitted in writing by SCPPA at the Closing.

1.6 **Shared Facilities.** The Parties acknowledge that certain Facility Assets will be shared by Seller and one or more owners of generating facility assets other than the Facility Assets, pursuant to Shared Facilities Agreements to be negotiated following the Effective Date. Prior to and effective as of the Closing Date, Seller, SCPPA and, if necessary, any applicable owners of generating facility assets will enter into agreements providing for the assignment of Seller's rights under such Shared Facility Agreements to SCPPA as of the Closing Date, the assumption by SCPPA of Seller's obligations under such Shared Facilities Agreements as of the Closing Date, and the indemnification by Seller and SCPPA of each other for any damages arising out of Seller's and SCPPA's performance under the Shared Facilities Agreements before (in the case of indemnification by Seller) or on and after (in the case of indemnification by SCPPA) the Closing Date, provided, however that SCPPA shall not indemnify Seller for any liabilities or obligations under such Shared Facilities Agreements that are Excluded Liabilities.

1.7 **Memorandum of Purchase Option.** On or prior to the Effective Date, SCPPA and Seller have executed and delivered a memorandum of purchase option in substantially the form attached hereto as Exhibit A (the "**Memorandum**"), and have recorded the Memorandum in the Official Records of Lincoln, Torrance and Guadalupe Counties, New Mexico (to the extent that the Facility is located, in whole or in part, in such counties). In the event that, from time to time, Seller modifies the Real Property Agreements under and as defined in the PPA such that the Real Property listed in Exhibit A to the Memorandum is no longer accurate, SCPPA and Seller shall execute and have recorded amendments to the Memorandum or revised Memoranda that accurately depict the Real Property.

2. Access and Due Diligence. Between the date SCPPA delivers the Exercise Notice and the Closing Date (such period, the "**Applicable Diligence Period**"), following receipt of reasonable advance notice (but not less than twenty-four (24) hours), Seller shall (a) provide SCPPA and its representatives (and the Independent Appraiser, if applicable) with reasonable access during normal business hours to the Facility for the purpose of inspecting the Facility, conducting necessary and reasonable performance tests or physical inspections or otherwise, and to Seller's personnel subject to applicable site regulations, provided that such access does not interfere with the operations of the Facility or Seller's ability to perform its obligations under the PPA, any and all contracts, leases, easements, permits, books and records, design schematics or other similar documents, and any other relevant documents and data pertaining to the Facility Assets but excluding those pertaining to Excluded Assets (provided that SCPPA shall observe, and shall cause its representatives to observe, all of Seller's written security protocols while on the property of Seller or any Affiliate), (b) furnish SCPPA and SCPPA's representatives (and the Independent Appraiser, if applicable) with copies of all such documents and data related to the Facility Assets as SCPPA or the Independent Appraiser, if applicable, may reasonably request in connection with the purchase of the Facility Assets (subject to applicable confidentiality restrictions), and (c) furnish SCPPA and its representatives (and the Independent Appraiser, if applicable) with such additional financial, operating, and other data and information related to the Facility Assets in Seller's possession or to which Seller has access as SCPPA and its representatives (and the Independent Appraiser) may reasonably request in connection with the purchase of the Facility Assets (subject to applicable confidentiality restrictions).

3. Operation of the Facility; Conduct of Business. During the Applicable Diligence Period, Seller will conduct its business with respect to the Facility in accordance with the ordinary course of business consistent with Prudent Utility Practices. During the Applicable Diligence Period, Seller shall not (a) sell or otherwise dispose of or encumber any of the Facility Assets or any other property or assets which are primarily related to the operation, maintenance and use of the Facility (other than sales, leases,

transfers, encumbrances, or dispositions in the ordinary course of business and consistent with Prudent Utility Practices), or (b) except as may be required by their terms, and except in the ordinary course of business or so long as doing so would not have a materially adverse effect on the operation of the Facility or either Party's interests in it, amend, modify, subordinate, terminate, cancel, sever or surrender, or permit or suffer the amendment, modification, subordination, termination, cancellation, severance or surrender of any contract, permit or warranty without the prior written approval of SCPPA.

4. Notification. During the Applicable Diligence Period, Seller shall give prompt notice (each notice, a "**Change Notice**") to SCPPA of the occurrence or non-occurrence of any event, change, effect or development of any kind which could be reasonably expected to result in a: (a) material adverse effect on the Facility, or (b) breach of any of Seller's representations and warranties or covenants under this Agreement. If SCPPA so elects, the Purchase Price may be adjusted by an amount (as determined by the Parties in good faith, or absent their mutual agreement, by an Independent Appraiser using the same methodology as set forth in Section 1.2) to take into account any event described in a Change Notice, provided, however that if the Purchase Price has been reduced by the Independent Appraiser pursuant to this Section 4, and Seller could take actions within 12 months that would reasonably be expected to result in the reversal of such reduction ("**Remediation**"), Seller shall notify Buyer of its desire to perform Remediation and following Seller's completion of such Remediation (as verified by an independent engineer), the Parties shall determine the Purchase Price in good faith, or absent their mutual agreement, select an Independent Appraiser using the same methodology as set forth in Section 1.2 to determine the Purchase Price, and the Closing Date shall be extended as mutually agreed by the Parties. At any time following Seller's delivery to SCPPA of a Change Notice, SCPPA shall have the right, but not the obligation, to (i) terminate the Purchase Option with respect to the applicable Purchase Option Date and elect not to purchase the Facility at such time; provided, however, that such termination shall not affect SCPPA's right to exercise a Purchase Option with respect to a future Purchase Option Date, or (ii) proceed with the Closing despite the existence of the Change Notice and pay the Purchase Price, as such Purchase Price may be adjusted pursuant to this Section 4.

5. AS-IS, WHERE-IS. SELLER'S SALE OF THE FACILITY FOLLOWING THE EXERCISE OF THE PROJECT PURCHASE OPTION IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL BE ON AN "AS-IS, WHERE-IS" BASIS. OTHER THAN THE REPRESENTATIONS AND WARRANTIES EXPLICITLY SET FORTH IN THIS AGREEMENT OR EXPLICITLY SET FORTH IN ANY DOCUMENT DELIVERED ON THE CLOSING DATE, NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, HAVE BEEN GIVEN, SHALL BE GIVEN OR DEEMED GIVEN BY EITHER PARTY OR ANY OF THEIR RESPECTIVE AFFILIATES, STOCKHOLDERS, TRUSTEES, MEMBERS, FIDUCIARIES OR REPRESENTATIVES AS TO THE FACILITY, FACILITY ASSETS, EXCLUDED ASSETS, ASSUMED LIABILITIES, THIS AGREEMENT, THE OPERATIVE DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY. THE PARTIES EXPRESSLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE SET FORTH EXPLICITLY IN THIS AGREEMENT, OR THAT MAY BE SET FORTH EXPLICITLY IN ANY DOCUMENT DELIVERED ON THE CLOSING DATE.

6. Miscellaneous.

6.1 **Representations and Warranties of SCPPA.**

(a) SCPPA is a validly existing California joint powers authority, and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by SCPPA of this Agreement (i) have been duly authorized by all necessary action, and does not and will not require any consent or approval of such SCPPA's regulatory or governing bodies, other than that which has been obtained; provided that further authorizations from such SCPPA's regulatory or governing bodies will be required for SCPPA to exercise the Purchase Option and consummate the Closing; and (ii) does not violate any federal, state, and local law, including the California Government Code and similar laws.

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

6.2 **Representations and Warranties of Seller.**

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of its respective state of organization and is qualified to do business in the State of California or the State of New Mexico, and has the legal power and authority to own or lease its properties, to carry on its business as now being conducted and (in the case of Seller) to enter into this Agreement, and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

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

(c) The execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary organizational action, and do not require any consent or approval other than those which have already been obtained.

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

6.3 **Regulatory Approval.** Following SCPPA's delivery of the Exercise Notice, and no later than one hundred twenty (120) days before the applicable Purchase Option Date, each Party shall file such notices and applications for approval of the transaction contemplated herein as required by law to consummate the transaction, including approval under the Federal Power Act and, for the transfer of all necessary permits from Seller to SCPPA effective on the Closing Date (the filing of such notices, and the receipt of such approvals and permit transfers, "**Regulatory Approval**"). Each Party will use commercially reasonable efforts to obtain Regulatory Approval as soon as practicable and in any event not later than thirty (30) days before the applicable Purchase Option Date. In the event that Regulatory Approval has not been achieved by the applicable Purchase Option Date, the Party that is not responsible for obtaining such Regulatory Approval (and with respect to those Regulatory Approvals for which the Parties have joint responsibility for obtaining it, then both Parties) shall have the right to terminate the Purchase Option as to that Purchase Option Date upon written notice, with no liability or obligation to either Party.

6.4 Survival. The rights of SCPPA under this Agreement and the Purchase Option shall be prior and superior to the rights of any Facility Lender and prior to and superior to the rights of any other person or entity that subsequently acquires any interest in Seller or the Facility. Any person or entity acquiring Seller or the Facility, or any interest therein of any nature (including, without limitation, via foreclosure or deed-in-lieu of foreclosure by any Facility Lender) shall take the Facility subject to the rights of SCPPA to acquire the Facility Assets in accordance with the PPA and this Agreement. Section 6.18 and 6.20 shall survive the termination of this Agreement for a period of two years after such termination.

6.5 Waiver of Consequential Damages. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE FACILITY OR THIS TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

6.6 Assignment. Neither Party shall have the right to assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided that consent of the other Party is not required for a Party to assign this Agreement in connection with a Party's assignment of its rights and obligations under the PPA to a permitted assignee pursuant to Section 14.7 of the PPA. To facilitate Seller's obtaining of financing to construct and operate the Facility, SCPPA shall provide such consents to assignment together with such other provisions as are customary and may be reasonably requested by Seller or any Facility Lender in connection with the financing of the Facility, including the acquisition of equity for the development, construction and operation of the Facility; provided, however, that the terms of such financing and the documentation relating thereto shall not conflict with the applicable terms and conditions of this Agreement.

6.7 Modifications. No modification of this Agreement shall be effective unless set forth in writing and signed by both Parties.

6.8 Governing Law and Venue. This Agreement and the Exhibits attached hereto shall be governed by and construed under the laws of the State of California. Venue for any action brought to

enforce the terms of this Agreement shall be in the applicable courts in the County of Los Angeles in the State of California and the Parties hereby submit to the jurisdiction of such courts.

6.9 Entire Agreement. The terms of this Agreement and the PPA constitute the entire agreement between the Parties pertaining to the subject matter hereof. All prior or contemporaneous agreements, representations, negotiations and understandings of the Parties concerning the subject matter hereof, whether oral or written, are hereby superseded and merged herein.

6.10 Notices. All notices, consents, waivers, demands, requests or other instruments or communications to be given by one Party to the other Party shall be given in accordance with the requirements set forth in the PPA.

6.11 PPA Termination. If the PPA expires or is terminated for any reason whatsoever, then the Purchase Option and this Agreement shall automatically terminate and be of no further force or effect.

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

6.13 Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument.

6.14 No Partnership. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

6.15 Further Assurances. Upon the reasonable request of the other Party, the applicable Party shall execute and deliver such further documents, instruments or conveyances and take, or cause to be taken, all appropriate action of any kind (subject to applicable Requirements of Law) as may be reasonably necessary or advisable to carry out any of the provisions hereof and to otherwise consummate and effectuate the transactions contemplated by this Agreement, all at the sole cost and expense of the requesting Party. Upon SCPPA's request and without further consideration, Seller or its Affiliates, as applicable, shall promptly do, execute, acknowledge and deliver all such further acts, assurances and instruments of sale, transfer, conveyance, assignment and confirmation as are reasonably required, and take all such other action as SCPPA may reasonably request in order to (a) transfer, convey and assign the Facility Assets to SCPPA in accordance with the provisions set forth in this Agreement, (b) to the full extent permitted by applicable Requirements of Law, put SCPPA in actual possession of and confirm SCPPA's title to, all of Seller's right, title and interest in and to any assets related to the Facility in accordance with the provisions set forth in this Agreement, and (c) include within the Facility Assets, and transfer, convey and assign to Seller in accordance with the provisions set forth in this Agreement, free and clear of all Liens other than Liens customarily permitted in agreements providing for the purchase and sale of energy assets and mutually agreed by the Parties at the closing of the sale of the

Facility Assets, any assets necessary for the ownership, operation and maintenance of the Facility that are held or owned by Seller or an Affiliate of Seller on or before the Closing.

6.16 **Equitable Remedies.** Money damages may not be an adequate remedy for violations of this Agreement by Seller. SCPPA may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other equitable relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. The Parties hereby waive any objection to specific performance or injunctive or other equitable relief.

6.17 **Transfer Taxes and Fees.** SCPPA shall be responsible for paying all recording, documentary and transfer Taxes and any sales, use or other Taxes imposed on SCPPA or Seller by reason of the transfer of the Facility Assets to SCPPA as provided hereunder ("**Transfer Taxes**"), provided that Seller alone shall be responsible for taxes imposed on or measured by the net income or profits of Seller, and any deficiency, interest or penalty asserted with respect thereto, under applicable Laws. SCPPA shall provide Seller with reasonably satisfactory evidence that such Transfer Taxes have been timely paid by SCPPA.

6.18 **Indemnification.** From and after the Closing Date:

(a) SCPPA undertakes and agrees to indemnify and hold harmless Seller, its Affiliates, its Board of Directors, and all of the officers and employees of each, agents, representatives, advisors, assigns and successors in interest (collectively, "**Seller Indemnitees**") and, at the option of Seller, defend Seller, and any Seller Indemnitees, from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever (collectively, "**Losses**") for (i) the breach of any of SCPPA's representations, warranties, agreements or covenants contained in this Agreement or any agreement to be delivered by SCPPA on the Closing Date, (ii) any Assumed Liability or Assumed Asset, (iii) any Losses arising, or attributable to the period, on or after the Closing Date, or (iv) third party claims with respect to injury or death, or loss or damage to, or loss of use or property of such third party caused by negligent acts, errors, omissions or willful misconduct on the part of SCPPA, or any of SCPPA's or SCPPA's members' officers, agents, employees, or subcontractors of any tier, including any loss arising from SCPPA's activities related to performing investigations as described in Section 2 or performing due diligence with respect to the Facility, except to the extent caused by the gross negligence, fraud or willful misconduct of Seller or its Affiliates' directors, officers, agents, or employees.

(b) Seller undertakes and agrees to indemnify and hold harmless SCPPA, its Board of Directors, and all of the officers and employees of each, SCPPA's members, and all of their respective commissioners, officers, agents, employees, advisors and representatives (collectively, the "**SCPPA Indemnitees**") and, at the option of SCPPA, to defend SCPPA, and any and all SCPPA Indemnitees from and against any and all Losses incurred by any of them that arise out of or result from (i) the breach of any of Seller's representations, warranties, agreements or covenants contained in this Agreement or any agreement to be delivered by Seller on the Closing Date, (ii) any Excluded Liability (including any Excluded Asset), (iii) any Losses arising, or attributable to the period, prior to the Closing Date or (iv) third party claims with respect to injury or death, or loss or damage to, or loss of use or property of such third party caused by negligent acts, errors, omissions or willful misconduct on the part of Seller, or any of Seller's or Seller's Affiliates' officers, agents, employees, or subcontractors of any tier, except to the extent caused by the gross negligence, fraud or willful misconduct of SCPPA or its Affiliates' directors, officers, agents, or employees.

6.19 **Termination of Option.** The Purchase Option and this Agreement shall terminate, and be of no further force or effect, effective immediately upon the occurrence of any of the following: (i) SCPPA fails to timely request a determination of the Purchase Price pursuant to Section 1.2(a) for the last available Purchase Option Date; (ii) following the Price Determination, SCPPA fails to timely deliver an Exercise Notice to Seller pursuant to Section 1.3; (iii) following SCPPA's delivery to Seller of the Exercise Notice, Regulatory Approval is not fully achieved by fifteen (15) days prior to the last available Purchase Option Date (as such date may be extended by the mutual agreement of the Parties).

6.20 **Confidentiality.** During the term of this Agreement and until the earlier of (a) two (2) years following the date of termination of this Agreement, or (b) the Closing Date (if any), neither SCPPA nor any SCPPA employee, officer, or representative shall (i) disclose any appraisals of the Facility made pursuant to this Agreement, or any confidential information that SCPPA discovers or that Seller discloses to SCPPA or any SCPPA employee, officer, or representative in the course of SCPPA's investigations and diligence prior to Closing ("**Confidential Information**"), other than to SCPPA's representatives, Participating Member, and prospective investors, lenders, and assignees (each a "**SCPPA Party**"), in each case, only for the purposes contemplated in this Agreement and on a confidential and "need-to-know" basis; or (ii) use any Confidential Information except for the purpose of determining (or assisting SCPPA in determining, as applicable) whether to acquire the Facility Assets. SCCPA shall cause each SCPPA Party to whom SCPPA discloses any Confidential Information under this Section 6.20 either (i) to enter into a separate confidentiality agreement with Seller on terms and conditions comparable to those set forth in this Section 6.20, or (ii) to comply with the provisions of this Section 6.20. Notwithstanding anything in this Agreement to the contrary, Seller acknowledges that SCPPA, as a California joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the Act and the Joint Powers Agreement, is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250 et seq. ("**CPRA**") and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 et seq. ("**Brown Act**"). Upon receipt thereof, any Confidential information shall become the property of SCPPA, and Seller acknowledges that SCPPA shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise resulting from or arising out of SCPPA copying or releasing to a third party any of the Confidential Information pursuant to CPRA or Brown Act. If SCPPA receives a CPRA request for Confidential Information, SCPPA shall give notice to Seller prior to making any disclosure as to whether such information is exempt from disclosure under the CPRA, and SCPPA will consider Seller's positions thereupon in good faith. If SCPPA determines after notifying Seller that such Confidential Information is subject to disclosure under CPRA, then SCPPA shall thereafter notify Seller as soon as practicable of its intent to disclose such Confidential Information. SCPPA, as required by CPRA, shall release such Confidential Information unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of such Confidential Information pursuant to a CPRA request then Seller undertakes and agrees to defend, indemnify and hold harmless SCPPA and any SCPPA Party from and against all suits, claims, and causes of action brought against SCPPA or any SCPPA Party for SCPPA's refusal to disclose Confidential Information to any person or entity making a request pursuant to CPRA. Seller's indemnity obligations hereunder shall include, but are not limited to, all actual costs incurred by SCPPA and any SCPPA Party, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against SCPPA or any SCPPA Party, through and including any appellate proceedings.

6.21 **Time of Essence.** With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

[Signature Page Follows]

7. IN WITNESS WHEREOF, the Parties have executed and delivered this Purchase Option Agreement as of the Effective Date.

RED CLOUD WIND LLC

By: _____
Name:
Title:

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
Name:
Title:

EXHIBIT A

MEMORANDUM OF PURCHASE OPTION

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740

APNs: _____

MEMORANDUM OF PURCHASE OPTION AGREEMENT

This Memorandum of Purchase Option Agreement (this "**Memorandum**") is entered into as of the date of execution set forth below in the notary blocks, by and between Red Cloud Wind LLC, a Delaware limited liability company ("**Seller**"), and the Southern California Public Power Authority ("**Buyer**"), a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500, et. seq., (the "**Act**"), and that certain Southern California Public Power Authority Joint Powers Agreement entered into pursuant to the provisions of the Act among SCPPA and SCPPA's members, dated as of November 1, 1980.

RECITALS:

A. Seller has a lease to certain real property more particularly described on **Exhibit A** attached hereto and incorporated herein (the "**Real Property**"), pursuant to certain land lease and wind easement agreements.

B. Buyer and Seller have entered into a Power Purchase Agreement dated [_____], 2020 (the "**PPA**") that relates to Buyer's purchase of electric energy through Seller. Pursuant to the PPA and subject to the terms thereof, the Seller is obligated to cause the construction of a wind energy power generating facility on the Real Property. The Real Property, the wind energy power generating facility (including all fixtures and appurtenances thereto) and related physical and intangible property as owned or leased by Seller where such facility is located or will be located, and including any easements, rights-of-way or contractual rights held or to be held by Seller for transmission lines or roadways servicing the Real Property or such facility located (or to be located) thereon are collectively referred to as the "**Facility**."

C. Buyer and Seller have entered into that certain Purchase Option Agreement dated as of [_____], 2020 (the "**Purchase Option Agreement**"), which is incorporated herein by reference as though fully set forth herein, to provide Buyer with an option to purchase the Facility, including, but not limited to, Seller's rights with respect to the Real Property, subject to the terms of the Purchase Option Agreement (the "**Option**").

D. The Option extends through and may be exercised until the earlier of (i) twenty (20) years after the Commercial Operation Date; or (ii) upon any closing under the Purchase Option Agreement. The Commercial Operation Date is required to occur on or before December 31, 2021, subject to extension as provided in the PPA so the latest date on which the Option may be exercised is December 31, 2041, subject to extension in accordance with the PPA. Upon an exercise of the Option, the closing of a sale of the Facility to Buyer pursuant to the Purchase Option Agreement is scheduled to occur on the date that is one year after the delivery of an exercise notice by Buyer, so that the Option can encumber the Real Property and the Facility through December 31, 2042, as such date could be extended in accordance with the PPA.

E. Buyer and Seller desire to enter into this Memorandum which is to be recorded in order that third parties may have notice of the interests of Buyer in the Facility, including but not limited to, the Real Property and of the existence of the Purchase Option Agreement.

NOW, THEREFORE, in consideration of the payments and covenants provided in the Purchase Option Agreement and the PPA to be paid and performed by Buyer:

1. Seller hereby grants to Buyer an option to purchase the Facility on the terms and conditions set forth in the Purchase Option Agreement and the PPA. All of the terms, conditions, provisions and covenants of the Purchase Option Agreement and PPA are hereby incorporated into this Memorandum by reference as though fully set forth herein, and the Purchase Option Agreement and this Memorandum shall be deemed to constitute a single instrument or document.

2. All capitalized terms used but not defined herein shall have the meanings assigned to them in the Purchase Option Agreement.

3. This Memorandum is intended for recording purposes only and does not modify, supersede, diminish, add to or change all or any of the terms of the Purchase Option Agreement in any respect. To the extent that the terms hereof are inconsistent with the terms of the Purchase Option Agreement, the terms of the Purchase Option Agreement shall control.

4. This Memorandum may be executed in any number of counterparts, each of which when executed and delivered shall be an original, and each such counterpart shall, when combined with all other such counterparts, constitute one agreement binding the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date set forth above.

BUYER:

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____

Its: _____

SELLER:

RED CLOUD WIND LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____

COUNTY OF _____

On _____, 2020, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____

Signature of the Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____

COUNTY OF _____

On _____, 2020, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____

Signature of the Notary Public

Exhibit A
to
EXHIBIT A (MEMORANDUM OF PURCHASE OPTION)

DESCRIPTION OF REAL PROPERTY

EXHIBIT B

EXCLUDED ASSETS

1. Transmission credits to the extent they extend beyond the term of the PPA.
2. Tax refunds for any period arising prior to the Closing that are not separately factored into the determination of the Fair Market Value.
3. Payments due from insurers or other debtors of Seller arising prior to Closing that are not separately factored into the determination of the Fair Market Value.
4. [Other accounts receivable associated with Seller's ownership or operation of the Facility prior to Closing that Seller reasonably demonstrates were not separately factored into the determination of the Fair Market Value].

APPENDIX K
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

FORM OF REPORT

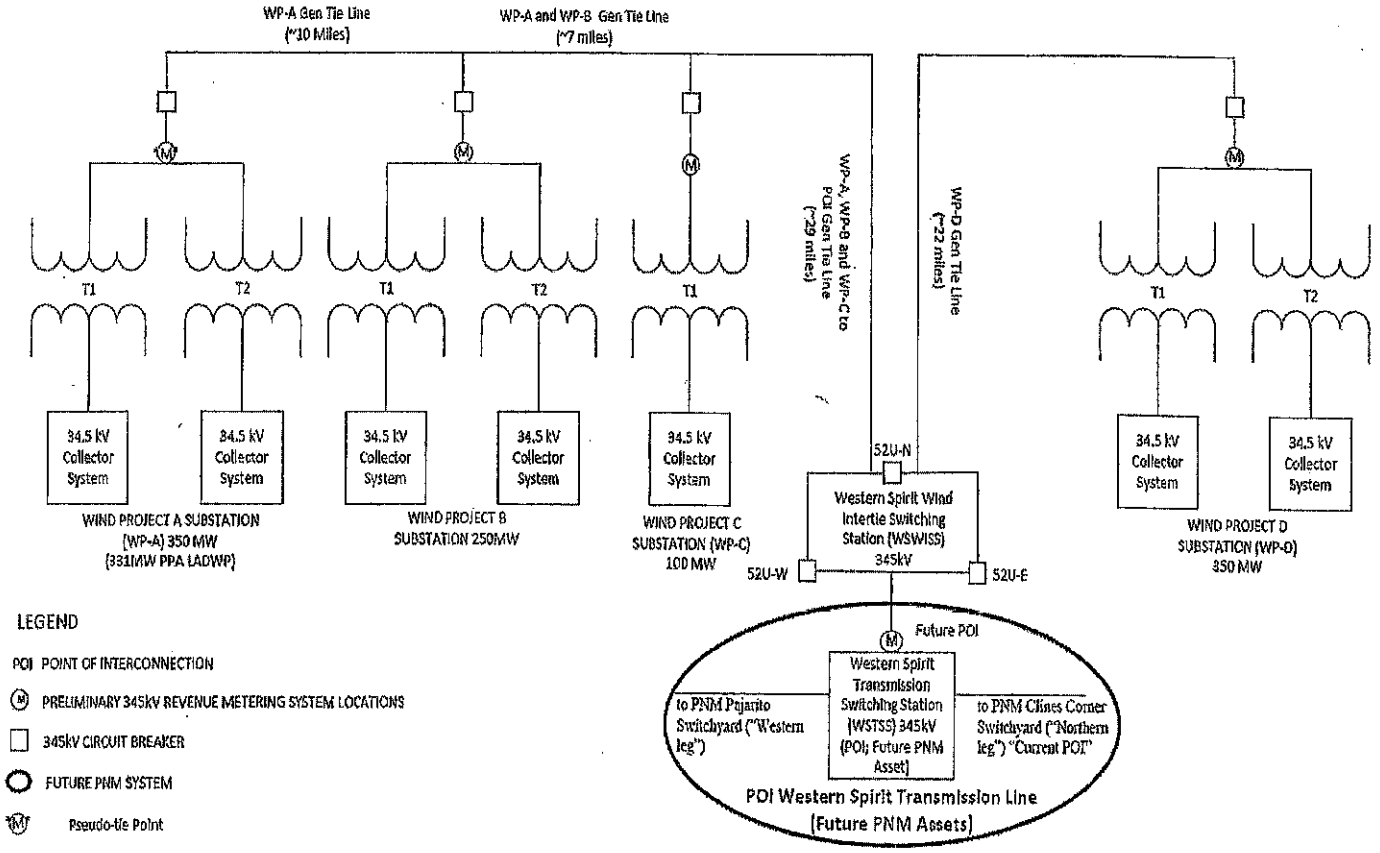
APPENDIX L
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

REAL PROPERTY AGREEMENTS

APPENDIX M
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

METERING DIAGRAM

PATTERN DEVELOPMENT
1050 MW WESTERN SPIRIT WIND PROJECTS
SIMPLIFIED HV SINGLE LINE DIAGRAM WITH
PRELIMINARY REVENUE METERING LOCATIONS



APPENDIX N
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

BUSINESS POLICIES FORMS

APPENDIX O
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

FORM OF CASH ESCROW AGREEMENT

ESCROW AGREEMENT

Pursuant to this Escrow Agreement, dated _____, [XXXX] (the "Depositor") hereby establishes an escrow account (the "Account") with U.S. Bank National Association (the "Agent"), to be maintained and administered for the benefit of Southern California Public Power Authority (the "Beneficiary") as described in Schedule II attached hereto in accordance with the following terms and conditions:

This Agreement is the Escrow Agreement that was contemplated in that certain Power Purchase Agreement dated as of [DATE] by and between the Depositor and the Beneficiary. The funds and/or property described on Schedule I attached hereto and incorporated herein will be deposited in the Account upon delivery thereof to the Agent in the manner and at the time(s) specified in Schedule I. The Agent is hereby authorized and directed by the Depositor, as its escrow agent, to hold, deal with and dispose of all amounts deposited in the Account by Depositor, as well as any investment or interest income thereon (collectively the "Account Funds"), as provided in the Instructions set forth in Schedule II attached hereto and incorporated herein; subject, however, to the terms and conditions set forth below, which in all events, shall govern and control over any contrary or inconsistent provisions contained in Schedules I or II attached hereto.

1. **Agent's Duties.** Agent's duties and responsibilities shall be limited to those expressly set forth in this Agreement, and Agent shall not be subject to, or obliged to recognize, any other agreement between any or all of the parties or any other persons even though reference thereto may be made herein; *provided, however,* this Agreement may be amended at any time or times by an instrument in writing signed by all the parties hereto. Agent shall not be subject to or obligated to recognize any notice, direction or instruction of any or all of the parties hereto or of any other person, except as expressly provided for and authorized in Schedule II, and in performing any duties under this Agreement, Agent shall not be liable to any party for consequential damages (including, without limitation, lost profits), losses, or expenses, except for gross negligence or willful misconduct on the part of the Agent.

2. **Court Orders or Process.** If any controversy arises between the parties to this Agreement, or with any other party, concerning the subject matter of this Agreement, or its terms or conditions, Agent will not be required to determine the controversy or to take any action regarding it. Agent may hold all documents and funds and may wait for settlement of any such controversy by final

appropriate legal proceedings or other means as, in Agent's discretion, Agent may require, despite what may be set forth elsewhere in this Agreement. In such event, Agent will not be liable for interest or damages. Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Account, the Account Funds or this Agreement, without determination by the Agent of such court's jurisdiction in the matter. If any Account Funds are at any time attached, garnished, or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then in any of such events Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it; and if Agent complies with any such order writ, judgment or decree, it shall not be liable to the Depositor or to any other person, firm or corporation by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

3. **Agent's Actions and Reliance.** Agent shall not be personally liable for any act taken or omitted by it hereunder if taken or omitted by it in good faith and in the exercise of its own best judgment. Agent shall also be fully protected in relying upon any written notice, instruction, direction, certificate or document which in good faith it believes to be genuine, including written instructions from Depositor or Beneficiary in the form of the attached Schedule(s), if any.

4. **Collections.** Agent shall proceed as soon as practicable to collect any checks, interest due, matured principal or other collection items with respect to Account Funds at any time deposited in the Account. All such collections shall be subject to the usual collection procedures regarding items received by Agent for deposit or collection. Agent shall not be responsible for any collections with respect to Account Funds if Agent is not registered as record owner thereof or otherwise is not entitled to request or receive payment thereof as a matter of legal or contractual right. All collection payments or receipts shall be deposited to the Account. Agent shall not be required or have a duty to notify anyone of any payment or maturity under the terms of any instrument, security or obligation deposited in the Account, nor to take any legal action to enforce payment of any check, instrument or other security deposited in the Account.

5. **Agent Responsibility.** Agent shall not be responsible or liable for the sufficiency or accuracy of the form, execution, validity or genuineness of documents, instruments or securities now or hereafter deposited in the Account, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein. Agent may maintain all Account Funds in a Federal Reserve Bank or in any registered clearing agency as Agent may select, and may register such deposited funds in the name of Agent or its agent or nominee on the records of such Federal Reserve Bank or such registered clearing agency or a nominee of either. Agent shall not be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such document, security or endorsement or this Agreement.

6. **Investments.** All Account Funds shall be invested by Agent in the (i) direct obligations of the United States, or of any agency of the United States, or obligations guaranteed as to principal and interest by the United States or any agency of the United States, maturing not more than 90 days

from the date of acquisition, (ii) money market mutual funds investing solely in obligations maturing within 365 days, including funds for which the [Bank] or an affiliate provides investment advice or other services, or (iii) certificates of deposit issued by a United States commercial bank or a foreign bank with a United States branch, which United States commercial bank or United States branch has at the applicable time a Credit Rating of (a) A- or better from Standard & Poor's Rating Services and (b) "A3" or better from Moody's Investors Service, Inc. So long as the funds and/or property available to the Beneficiary hereunder are not diminished, accrued interest shall be distributed to the Depositor on an annual basis. All entities entitled to receive interest from the Account will provide Agent with a W-9 or W-8 IRS tax form prior to the disbursement of interest. A statement of citizenship will be provided if requested by Agent. The Agent shall not be liable for losses, penalties or charges incurred upon any sale or purchase of any such investment.

7. **Notices/Directions to Agent.** Notices and directions to Agent from Depositor or Beneficiary, as expressly set forth in Schedule II, shall be in writing and signed by an authorized representative as identified pursuant to Schedules III and IV (each, an "Authorized Representative"), and shall not be deemed to be given until actually received by Agent's employee or officer who administers the Account. Agent shall not be responsible or liable for the authenticity or accuracy of notices or directions properly given hereunder if the written form and execution thereof on its face purports to satisfy the requirements applicable thereto as set forth in Schedule II, as determined by Agent in good faith without additional confirmation or investigation.

8. **Books and Records.** Agent shall maintain books and records regarding its administration of the Account, and the deposit, investment, collections and disbursement or transfer of Account Funds, shall retain copies of all written notices and directions sent or received by it in the performance of its duties hereunder and shall afford the Depositor and Beneficiary periodic statements for the Account and reasonable electronic access to it.

9. **Disputes Among Depositor and Third Parties.** In the event Agent is notified of any dispute, disagreement or legal action between or among the Depositor and any third parties, relating to or arising in connection with the Account, the Account Funds or the performance of the Agent's duties under this Agreement, the Agent shall be authorized and entitled, subject to Section 2 hereof, to suspend further performance hereunder, to retain and hold the Account Funds and take no further action with respect thereto until the matter has been fully resolved, as evidenced by written notification signed by the Depositor and any other parties to such dispute, disagreement or legal action.

10. **Notice by Agent.** Any notices which Agent is required or desires to give hereunder to the Depositor or Beneficiary shall be in writing and may be given by sending the same to the address indicated in Schedule II for the Depositor or Beneficiary (or to such other address as may have been substituted by written notification to Agent), by United States certified or registered mail, overnight courier service or confirmed facsimile transmission. Any notice sent by Agent to Depositor must also be sent to Beneficiary. Whenever under the terms hereof the time for Agent's giving a notice or performing an act falls upon a Saturday, Sunday or banking holiday, such time shall be extended to the next business day.

11. **Legal Counsel.** If Agent believes it to be reasonably necessary to consult with counsel concerning any of its duties in connection with the Account or this Agreement, or in case Agent becomes involved in litigation on account of being escrow agent hereunder or on account of having received property subject hereto, then, in either case, its costs, expenses and reasonable attorney's fees shall be paid by Depositor.

12. **Agent Compensation.** Agent shall be paid a fee for its services as set forth on Schedule V attached hereto and incorporated herein, which shall be subject to increase upon notice sent to Depositor, and reimbursed for its reasonable costs and expenses incurred. The Depositor shall pay and reimburse Agent's fees and reasonable costs and expenses. The Depositor and its successors and assigns agree to indemnify and hold Agent harmless against any and all losses, claims, damages, liabilities and expenses, including reasonable costs of investigation, counsel fees, including allocated costs of in-house counsel, and disbursements that may be imposed on Agent or incurred by Agent in connection with the performance of its duties under this Agreement, including any litigation arising from this Agreement or involving its subject matter.

13. **Agent Resignation.** Agent may resign by giving at least forty-five (45) days' advance written notice of its resignation to the Depositor and the Beneficiary. Within forty-five (45) days after receiving the aforesaid notice, the Depositor and the Beneficiary agree to appoint a successor escrow agent, to which Agent shall transfer the Account Funds then held in the Account, less its unpaid fees, costs and expenses. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of the 45-day period, Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the costs, expenses and reasonable attorney's fees which Agent incurs in connection with such a proceeding shall be paid by Depositor.

14. **Escrow Termination.** Unless previously terminated as provided in Schedule II, this Agreement shall terminate on [DATE] at which time the Account Funds then held in the Account, less Agent's unpaid fees, costs and expenses, shall be distributed as provided in Schedule II.

15. **Governing Law.** This Agreement shall be construed, interpreted, enforced, and administered in accordance with the laws of the State of California, without regard to conflict of law principles. All litigation arising out of, or relating to, this Agreement shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Depositor and the Agent irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens.*

16. **Automatic Succession.** Any company into which the Agent may be merged or with which it may be consolidated, or any company to whom Agent may transfer a substantial amount of its escrow business, shall be the successor to the Agent without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding.

17. **Brokerage Confirmations.** The Depositor and the Beneficiary acknowledge that, to the extent regulations of the Comptroller of Currency or other applicable regulatory entity grant a right to receive brokerage confirmations of security transactions of the escrow, the Depositor and the

Beneficiary waive receipt of such confirmations, to the extent permitted by law. The Agent shall furnish a statement of security transactions on its regular monthly reports.

18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

19. **Assignment, Binding Effect.** No party shall assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the other parties to this Agreement. Subject to the foregoing, all the provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the parties to this Agreement and their respective successors and assigns. Any purported assignment in violation of this provision shall be null and void and of no force or effect.

20. **Further Assurances.** Each party shall execute and deliver such additional documents or take such additional actions if such requested document or action is reasonably necessary to effect the transactions described in this Agreement.

21. **Miscellaneous.** This Agreement represents the complete and final agreement among the Depositor, the Agent and the Beneficiary and supersedes all prior agreements, written or oral, on the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of such parties. There are no unwritten oral agreements between or among the Depositor, the Agent and the Beneficiary. Time is of the essence for the performance of each of the terms and provisions of this Agreement.

The undersigned Agent hereby agrees to hold, manage and dispose of the Account Funds at any time deposited to the Account in accordance with the foregoing Agreement.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have affixed their signatures and hereby adopt as part of this instrument Schedules I through V which are incorporated by reference.

DEPOSITOR:

_____	_____
By: _____	By: _____
Its: _____	Its: _____

BENEFICIARY:

_____

By: _____

Its: _____

AGENT: _____

By: _____

Its: _____

SCHEDULE I

DEPOSITS:

Deposits will be the following:

1. An initial deposit in the amount of [xxx] Dollars United States Currency ($xxx.xx) (the "Escrow Deposit") to be delivered by the Depositor [on/before specified date, if any]. Depositor shall restore the Account to [$xxx.xx] after any drawing on the account by the Beneficiary, within seven days after notice by the Beneficiary of such drawing, up to a maximum aggregate deposit obligation (including the initial deposit) of [xxx] Dollars ($xxx.xx).

SCHEDULE II

INSTRUCTIONS OF DEPOSITOR

1. All amounts deposited in the Account by Depositor, as well as any investment or interest income thereon (collectively the "Account Funds"), shall be invested during the term of this Escrow Agreement as set forth in Section 6 above.

2. Funds to be deposited into the Account shall be delivered by wire over the Federal Funds Wire System as follows:

U.S. National Bank Association
ABA # 091000022
U.S. Bank Trust N.A.
Account #[ ]
Remark: [Escrow Deposit pursuant to the Escrow Agreement dated xxx with XXXX]

3. Any notices to be delivered shall be in writing and shall be sent by United States certified or registered mail, overnight courier service or confirmed facsimile transmission. For all purposes hereof, any notice so sent shall be effectual as though served upon the person to whom it was sent at the time of confirmation by confirmed facsimile, the business day following the time it was sent by overnight courier service or three business days following the day it was sent by certified or registered mail.

The address and facsimile for the Agent are as follows, unless updated by the Agent at any time in writing:

U.S. National Bank Association
60 Livingston Avenue
St. Paul, MN 55107-2292
Attn: [ ]
Phone: [ ]
Fax: [ ]

With a fax copy to:
Linda McConkey
Fax: 503-275-5738

The address and facsimile for the Beneficiary are as follows, unless updated by the Beneficiary at any time in writing:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740

The address and facsimile for the Depositor are as follows, unless updated by the Depositor at any time in writing:

[XXXX]

4. Agent shall hold the Account Funds and shall dispose of them only in accordance with the following provisions:

a) Agent shall deliver the Account Funds to the Depositor upon receipt of a written certification by the Beneficiary's Chief Financial Officer or his designee that the obligations of the Depositor under the [agreement dated xxxx] have been satisfied in full.

b) Agent shall deliver the Account Funds to the Depositor or the Beneficiary as designated by an instruction letter jointly executed by both the Depositor and the Beneficiary; *provided, however,* that if Agent delivers any notice of resignation pursuant to Section 13 within the period specified in such instruction letter for delivery of Account Funds, Agent shall deliver such funds on the date of such resignation notice.

c) Agent shall deliver the requested portion of the Account Funds to the Beneficiary by wire transfer within three (3) business days of the receipt by the Agent of a written, notarized certification in the form attached as Exhibit A hereto by a Beneficiary Authorized Representative; *provided, however,* that if Agent delivers any notice of resignation pursuant to Section 13 within such three (3) business day period, Agent shall deliver such funds on the date of such resignation notice.

d) In the event the Agent has resigned pursuant to Section 13 of this Agreement, the Agent shall transfer the Account Funds to any successor agent appointed pursuant to Section 13.

5. This Agreement shall terminate upon the delivery of all the Account Funds in the manner provided by Section 4 of this Schedule II, or upon written agreement by all parties to this Agreement. Upon such termination of this Agreement, all undelivered Account Funds shall be returned to the Depositor in accordance with the wiring instructions to be provided by the Depositor, and the Agent shall be relieved of its duties hereunder without any liability thereafter to any party whatsoever.

EXHIBIT A TO SCHEDULE II

U.S. Bank National Association
60 Livingston Avenue
St. Paul, MN 55107-2292
Attn: [ ]
Phone:
Fax:

Dear Sir or Madam:

This letter is a request for disbursement to Beneficiary in the amount of $____ on deposit in the escrow account [#] maintained as specified in Schedule II of that certain Escrow Agreement dated [, 20___] between [XXXX], U.S. Bank National Association, and Beneficiary. The undersigned certifies that we are entitled to these funds under that certain [agreement dated xxxx] (the "Agreement") because [XXXX] is in default of its obligations under the Agreement due to the following reason(s):

You are hereby instructed to deliver the funds by federal funds wire in accordance with the wire instructions below:

[insert wiring instructions]

Sincerely,

Beneficiary Authorized Representative

Name:
Title:

Subscribed and sworn to be before me this ____ day of _____, 20__.

_____
Notary Public

My Commission Expires: _____

SCHEDULE III

DEPOSITOR AUTHORIZED REPRESENTATIVES

Each of the following individuals is designated as a "Depositor Authorized Representative," and is authorized to act on behalf of the Depositor under this Agreement. The Depositor may add, change or delete such Authorized Representative upon written and notarized notice to the Agent.

Depositor Authorized Representatives:

Specimen Signature: _____

Name/Title: _____

Specimen Signature: _____

Name/Title: _____

Subscribed and sworn to be before me this ____ day of _____, 20__.

_____
Notary Public

My Commission Expires: _____

SCHEDULE IV

BENEFICIARY AUTHORIZED REPRESENTATIVES

Each of the following individuals is designated as a "Beneficiary Authorized Representative," and is authorized to act on behalf of the Beneficiary under this Agreement. The Beneficiary may add, change or delete such Authorized Representative upon written and notarized notice to the Agent.

Beneficiary Authorized Representatives:

Specimen Signature: _____

Name/Title: _____

Specimen Signature: _____

Name/Title: _____

Subscribed and sworn to be before me this ____ day of _____, 20__.

_____
Notary Public

My Commission Expires: _____

SCHEDULE V

SCHEDULE OF FEES FOR SERVICES AS ESCROW AGENT

FOR _____
BILLED ANNUALLY

01010	**Acceptance Fee** The acceptance fee includes the administrative review of documents, initial set-up of the account, and other reasonably required services up to and including the closing. This is a one-time fee, payable at closing. _____ reserves the right to refer any or all escrow documents for legal review before execution. Legal fees (billed on an hourly basis) and expenses for this service will be billed to, and paid by, the customer. If appropriate and upon request by the customer, _____ will provide advance estimates of these legal fees.	TBD
04460	**Escrow Agent** Annual administration fee for performance of the routine duties of the escrow agent associated with the management of the account. Administration fees are payable in advance.	TBD

Direct Out of Pocket Expenses

Reimbursement of expenses associated with the performance of our duties, publications, legal counsel after the initial close, travel expenses and filing fees.	At Cost

Extraordinary Services

Extraordinary services are duties or responsibilities of an unusual nature, including termination, but not provided for in the governing documents or otherwise set forth in this schedule. A reasonable charge will be assessed based on the nature of the service and the responsibility involved. At our option, these charges will be billed at a flat fee or at our hourly rate then in effect.

Dated: _____

APPENDIX P
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

CERTIFICATE OF COMMERCIAL OPERATION; INDEPENDENT ENGINEER

In accordance with the terms of that certain Power Purchase Agreement dated as of [____], 2020 ("***Agreement***") by and between Southern California Public Power Authority ("***Buyer***") and Red Cloud Wind LLC ("***Seller***"), in order to determine achievement of Commercial Operation of the Facility, Seller shall demonstrate to Buyer that the Facility is operating and able to produce and deliver Facility Energy to Buyer in accordance with the terms of the Agreement by delivery of a Certificate of Commercial Operation (the "***Certificate***"), signed by an authorized representative of Seller as to all of the items below, and which shall include a certificate in the form attached hereto of an Independent Engineer, executed on its behalf by an engineer licensed in the State of New Mexico, regarding the Facility's ability to deliver Facility Energy and confirming the items set forth therein. Any term used but not defined in the Certificate shall have the meaning set forth in the Agreement. The Certificate shall be submitted by Seller, along with reasonable documentation as may be requested by Buyer, and shall certify as to the following:

(a) Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement, and the Facility possesses all the required characteristics, and satisfies all of the requirements, set forth for Commercial Operation of the Facility in this Agreement;

(b) The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to be completed prior to full commercial operation;

(c) Seller has delivered to Buyer a certificate of an Independent Engineer substantially in the form attached hereto as Appendix P-1;

(d) Seller has obtained all Permits required for the construction, operation and maintenance of the Facility in accordance with this Agreement (including those identified in Appendix B), and all such Permits are final and non-appealable;

(e) The Facility is both authorized and able to operate and deliver Energy in accordance with Prudent Utility Practices, the requirements of this Agreement and all Requirements of Law; and

(f) Seller has obtained Insurance coverage for the Facility as required by Appendix F.

(g) Seller has executed and provided to Buyer the Performance Security.

(h) Seller has provided to Buyer proof of registration with NERC for all applicable Function Types in the NERC Compliance Registry in accordance with the currently effective NERC Rules of Procedure, including Seller's registration as both Generator Owner and Generator Operator.

(i) Seller has provided to Buyer mapping of NERC registered Function Types in accordance with the currently effective WECC Entity Function Mapping Procedures.

(j) Buyer's Authorized Representative has received and approved Seller's Quality Assurance Program found in Appendix H.

(k) Copies of any documentation provided by the manufacturer of the turbines and other major equipment of the Facility that such turbines and other equipment have been manufactured in accordance with such manufacturer's specifications have been delivered to Buyer.

APPENDIX P-1
CERTIFICATE OF INDEPENDENT ENGINEER

The undersigned, a duly authorized representative of _____, in its capacity as independent engineer ("Independent Engineer") hereby provides this Independent Engineer's certificate ("Certificate") pursuant to that certain Power Purchase Agreement dated as of [ ] __, 2020 ("***Agreement***") by and between Southern California Public Power Authority ("***Buyer***") and Red Cloud Wind LLC ("***Seller***"), in order to determine achievement of Commercial Operation of the Facility.

The Independent Engineer has visited the Facility [_____] times throughout the course of construction in support of construction monitoring activities, most recently on [_____], 2020. On the basis of these site visits, which included review of the progress of construction of the Facility, review of quality control documentation and interviews with contractors, equipment suppliers and Facility personnel, and on the understanding and assumption that we have been provided true, correct and complete information from the Seller and Seller's representatives, Independent Engineer hereby certifies (provided that, with respect to the confirmations contained herein, such confirmations apply only to the technical aspects of the statements in such paragraphs and for clarity, do not include any confirmations regarding legal opinions, permitting requirements, or work outside of the Independent Engineer scope) that:

1. The technical aspects of the Facility have been completed in all material respects in accordance with the requirements of the Agreement (with the exception of punch list items that do not materially and adversely affect the ability of the Facility to operate as intended by the Agreement).

2. Construction of the Facility has been performed in all material respects in accordance with the technical terms and conditions of the Agreement (with the exception of punch list items that do not materially and adversely affect the ability of the Facility to operate as intended by the Agreement).

3. Seller's Facility is functional and capable of delivering energy.

4. The Facility is operational and interconnected at the Point of Interconnection, and capable of delivering the Delivered Energy.

5. The Facility has successfully completed all testing required by Prudent Utility Practices to be completed prior to commercial operation, including operating the Facility (but, for the avoidance of doubt, not necessarily each wind turbine at the Facility) for a period of not less than three (3) consecutive days and delivering Facility Energy during such period to the Point of Delivery.

6. The Facility has demonstrated it has successfully installed at least ninety percent (90%) of the full Contract Capacity and has delivered not less than one-hundred ninety-three (193) MW.

[Signature Page to Follow]

The undersigned is a Licensed Professional Engineer in the State of New Mexico.

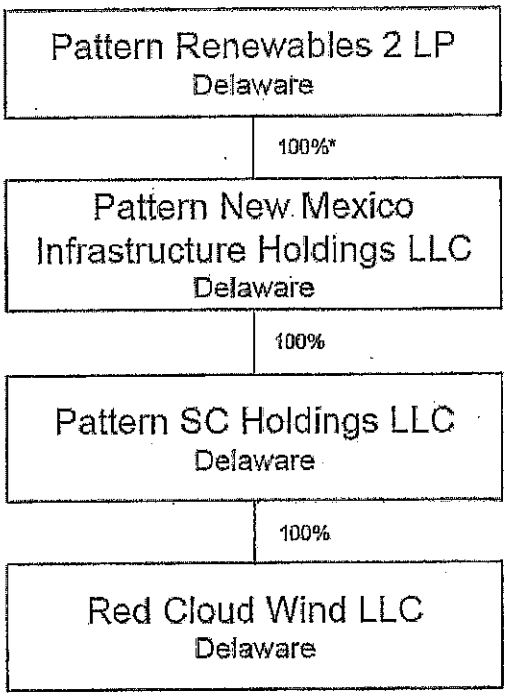
Signed,

_____

Name:
Title:
Date:

APPENDIX Q
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

ORGANIZATIONAL STRUCTURE AND OWNERSHIP OF SELLER AND PARENT ENTIT(IES)



* 100% of all interests with management rights

APPENDIX R
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

METEOROLOGICAL MEASUREMENTS

Monitored Meteorological Data Points:

1. Ambient air temperature
2. Rainfall quantity (rate and running thirty (30) day total)
3. Wind speed
4. Wind direction
5. Relative humidity
6. Barometric pressure

APPENDIX S
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

FORM OF QUARTERLY CERTIFICATE

QUARTERLY CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES THAT:

(1) I am the duly elected [Officer's title] of [Seller name], [description] ("**Seller**");

(2) I have reviewed the terms of that certain Power Purchase Agreement dated as of [Power Purchase Agreement Date], as amended, supplemented or otherwise modified to the date hereof (said Power Purchase Agreement, as so amended, supplemented or otherwise modified, being the "**Power Purchase Agreement**", the terms defined therein and not otherwise defined in this Certificate (including Attachment No. 1 annexed hereto and made a part hereof) being used in this Certificate as therein defined), by and between Seller and Southern California Public Power Authority, and the terms of the other Ancillary Documents, and I have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and condition of Seller during the accounting period covered by the attached financial statements; and

(3) The examination described in paragraph (2) above did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes a Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate [, except as set forth below].

[Set forth below are all exceptions to paragraph (3) above listing, in detail, the nature of the condition or event, the period during which it has existed and the action which Seller has taken, is taking or proposes to take with respect to each such condition or event:

_____].

The foregoing certifications, together with the computations set forth in Attachment No. 1 annexed hereto and made a part hereof and the financial statements delivered with this Certificate in support hereof, are made and delivered this [_____] day of [_____, ____] pursuant to the Power Purchase Agreement.

[Seller Name]

By: _____
Title: _____

ATTACHMENT NO. 1
TO QUARTERLY CERTIFICATE

This Attachment No. 1 is attached to and made a part of a Quarterly Certificate dated as of [_____, ____] and pertains to the period from [_____, ____] to [_____, ____].

A. Facility Debt:

1. Principal of and premium on indebtedness: $ [_____]
2. Fees, charges, expenses and penalties related to indebtedness: $ [_____]
3. Swap or interest rate hedging breakage costs: $ [_____]
4. Any claims or interest due with respect to any of the foregoing: $ [_____]
5. Other payment obligations of Seller in connection with borrowed money: $ [_____]
6. Total Facility Debt (Add A.1-6): $ [_____]

B. Facility Cost:

1. Cost of all labor, services, materials, supplies, equipment, tools, transportation, supervision, storage, training, demolition, site preparation, civil works, and remediation in connection with the development, design, engineering, equipping, procuring, constructing, installing, starting up and testing the Facility: $ [_____]
2. Cost of acquiring the leasehold interest and any other property, easement or other interest in the Site: $ [_____]
3. Cost of acquiring the Permits for the Facility: $ [_____]
4. Cost of establishing a spare parts inventory for the Facility: $ [_____]
5. Other costs and expenses incurred by Seller for the development, design, engineering, equipping, procuring, constructing, installing, starting up and testing the Facility: $ [_____]
6. Total Facility Cost (Add B.1-5): $ [_____]

C. Facility Debt to Facility Cost Ratio:

1. Facility Debt (A.8 above): $ [_____]
2. Facility Cost (B.6 above): $ [_____]
3. Facility Debt to Facility Cost Ratio: C(1):(2): [___]:1.00

4. Maximum Facility Debt to Facility Cost Ratio permitted: 70%

D. Seller's Net Worth:

1. Aggregate paid in capital (including additional paid in capital): $ [_____]
2. Accumulated other comprehensive income or loss: $ [_____]
3. Accumulated surplus or deficit: $ [_____]
4. Minority interests: $ [_____]
5. Any other account which constitutes owner's equity of Seller: $ [_____]
6. Total Seller's Net Worth (Add D.1-5): $ [_____]

APPENDIX T
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC
EXPECTED ANNUAL GENERATION AND GUARANTEED DELIVERED ENERGY

TABLE 1

Contract Year	Expected Annual Generation
Initial Stub Year	See note (1)
1	1,333,745
2	1,333,745
3	1,333,745
4	1,333,745
5	1,333,745
6	1,333,745
7	1,333,745
8	1,333,745
9	1,333,745
10	1,333,745
11	1,333,745
12	1,333,745
13	1,333,745
14	1,333,745
15	1,333,745
16	1,333,745
17	1,333,745
18	1,333,745
19	1,333,745
Final Stub Year	See note (2)

(1) The Expected Annual Generation for the Initial Stub Year equals 1,333,745 MWh multiplied by the sum of the percentages (from the Expected Energy Monthly Production Table below) of Energy generated by the Facility during the months between the Commercial Operation Date and the end of the Initial Stub Year. For example, if the Commercial Operation Date is achieved on November 1, 2021, the Expected Annual Generation in the Initial Stub Year would be 1,333,745 MWh x 17.7% (November through December).

(2) The Expected Annual Generation for the Final Stub Year equals 1,333,745 MWh multiplied by the sum of the percentages (from the Expected Energy Monthly Production

Table below) of Energy generated by the Facility during the months from January 1 of the Final Stub Year to the end of the Final Stub Year. For example, if the Delivery Term ends on October 31, 2041, the Expected Annual Generation in the Final Stub Year would be 1,333,745 MWh x 82.4% (January through October).

(3) For reference only, the amount of Guaranteed Delivered Energy in any given Measurement Period (for example, Contract Year 1 and Contract Year 2) shall be equal to 2,667,490 MWh, except for any Measurement Period that includes the Initial Stub Year or Final Stub Year. The amount of Guaranteed Delivered Energy shall be reduced during a Measurement Period for (a) Force Majeure, (b) a System Emergency, (c) Buyer's failure to receive energy at the Point of Delivery, (d) a Non-Compensable Curtailment or a Compensable Curtailment, or (e) failure or limitation of the Pseudo-Tie not caused by the fault of negligence of Seller or any Affiliate of Seller.

TABLE 2

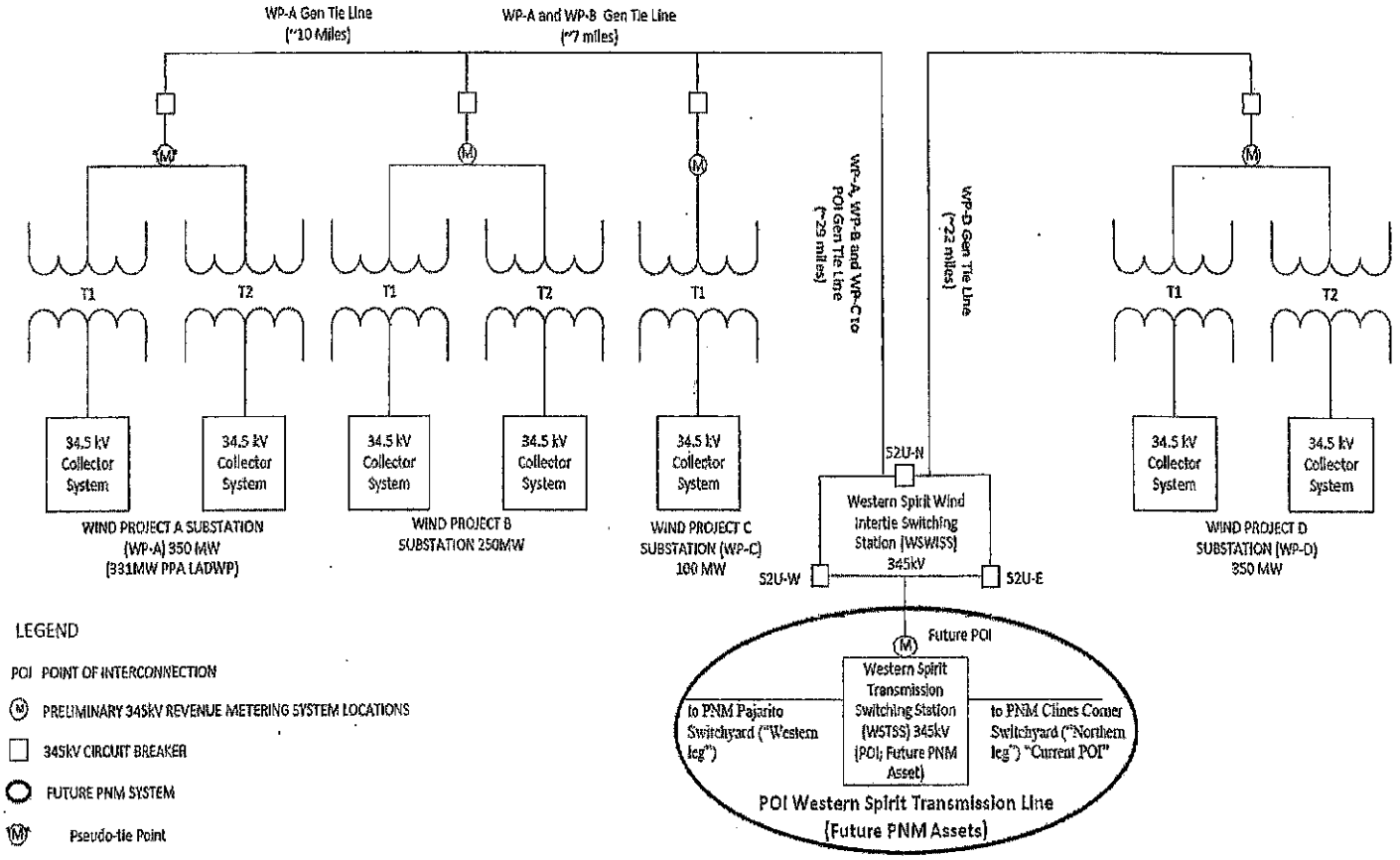
EXPECTED ENERGY MONTHLY PRODUCTION TABLE

The following table shows the percentage of generation by the Facility per calendar month for purposes of calculating the Expected Annual Generation and the Guaranteed Delivered Energy for the Initial Stub Year and the Final Stub Year.

Month	Percent	Month	Percent
Jan	10.4%	Jul	5.5%
Feb	9.5%	Aug	4.8%
Mar	10.6%	Sep	5.6%
Apr	10.5%	Oct	8.1%
May	9.6%	Nov	9.1%
Jun	7.8%	Dec	8.6%
		Total	100%

APPENDIX U
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

PATTERN DEVELOPMENT
1050 MW WESTERN SPIRIT WIND PROJECTS
SIMPLIFIED HV SINGLE LINE DIAGRAM WITH
PRELIMINARY REVENUE METERING LOCATIONS



APPENDIX V
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

FORM OF LEGAL OPINION

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740

Re: Red Cloud Wind LLC

Ladies and Gentlemen:

We have acted as special California counsel to Red Cloud Wind LLC, a Delaware limited liability company ("Seller"), in connection with the transactions contemplated under that certain Power Purchase Agreement, dated as of [DATE OF PPA] (the "PPA"), between Seller, as seller, and Southern California Public Power Authority, a joint powers agency and a public entity organized under the laws of the State of California ("SCPPA"). This opinion letter is delivered to you at our client's request pursuant to Section 2.1 of the PPA. Unless otherwise indicated, capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed thereto in the PPA.

In rendering the opinions set forth herein, we have examined the following:

the PPA;

the Purchase Option Agreement dated as of the date of the PPA between Seller and SCPPA;

Seller's certificate of formation and limited liability company agreement, each as amended through the date hereof;

the certificate of the Delaware Secretary of State, dated [ ], indicating that Seller is in good standing in the State of Delaware (the "DE Good Standing Certificate"); and

all corporate resolutions by Pattern SC Holdings LLC ("Parent Company") or Seller pertinent to the PPA.

We have also reviewed such other agreements, instruments and documents, and such questions of law as we have deemed necessary or appropriate to enable us to render the opinions expressed below. In addition, we have examined originals or copies, certified to our satisfaction, of such certificates of public officials and of officers and representatives of Seller and we have made such

inquiries of officers and representatives of Seller as we have deemed relevant or necessary to establish the basis for the opinions set forth herein. The items identified in clauses (i) and (ii) above are collectively hereinafter referred to as the "Transaction Documents". We further advise you that we have relied upon the Officer's Certificate, a form of which is attached as Exhibit A hereto, as to certain matters of fact stated therein without independent investigation or verification.

In rendering the opinions expressed below, we have assumed the legal capacity of all natural persons executing documents, that the signatures of persons signing all documents in connection with which this opinion letter is rendered are genuine, that all documents submitted to us as originals or duplicate originals are authentic and that all documents submitted to us as copies, whether certified or not, conform to authentic original documents. Additionally, we have assumed and relied upon the following:

the accuracy and completeness of all certificates and other statements, documents, records, financial statements, and papers reviewed by us, and the accuracy and completeness of all representations, warranties, schedules and exhibits contained in the Transaction Documents with respect to the factual matters set forth therein;

except to the extent expressly set forth in paragraphs 1 and 2 below with respect to Seller, that all parties to the documents reviewed by us are duly organized, validly existing and in good standing under the laws of their respective jurisdictions of incorporation or formation and qualified under the laws of all jurisdictions where they are conducting their businesses or otherwise required to be so qualified and, except to the extent expressly set forth in paragraphs 1 and 2 below with respect to Seller, that (i) all parties to the documents reviewed by us have full power and authority to execute, deliver and perform their obligations under such documents, and (ii) all such documents have been duly authorized, executed and delivered by such parties;

that each of the Transaction Documents constitutes the valid and binding obligation of each party thereto (other than Seller), enforceable against such party in accordance with its terms;

that each of the conditions precedent to the effectiveness of the PPA (separate from delivery of this opinion) has been satisfied or effectively waived;

that there has not been any mutual mistake of fact or misunderstanding, fraud, duress or undue influence; and

that all terms and conditions of, or relating to, the transactions contemplated by the Transaction Documents are fully, correctly and completely set forth therein, and no additional agreements (whether oral or written) exist between Seller and its representatives, on the one hand, and SCPPA, on the other hand, with respect to the subject matter of the Transaction Documents.

Whenever our opinion with respect to the existence or absence of facts is indicated to be based on our knowledge or awareness, we are referring to the actual present knowledge of the particular Winston & Strawn LLP attorneys who have represented Seller in connection with the Transaction Documents. Except as expressly set forth herein, we have not undertaken any independent investigation, examination or inquiry to determine the existence or absence of any facts (and have not reviewed any court file or indices other than the litigation searches referenced in opinion

paragraph 5(c) below) and no inference as to our knowledge concerning any facts should be drawn as a result of the limited representation undertaken by us.

Based upon the foregoing and subject to the assumptions, qualifications, limitations and comments stated herein, we are of the opinion that:

Seller is a limited liability company, validly existing under the laws of the State of Delaware. Seller is in good standing in the State of Delaware. Seller has the limited liability company power and authority to execute, deliver and perform its obligations under the Transaction Documents.

The execution and delivery by Seller of, and the performance by Seller of its obligations under, each of the Transaction Documents have been duly authorized by all necessary limited liability company action on the part of Seller. Seller has duly executed each of the Transaction Documents.

Each of the Transaction Documents constitutes the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

The execution and delivery by Seller of each of the Transaction Documents do not (a) violate any statutory law or regulation of the State of California or the United States of America applicable to Seller; (b) violate any provision of the Seller's certificate of formation or limited liability company agreement; (c) violate any judgment, order, writ, injunction or decree that is binding on Seller and set forth in the litigation searches attached as Exhibit B hereto; or (d) require any consent or approval of, or any filing or registration with, any governmental body, agency or authority of the State of California, the State of Delaware (solely with respect to the Limited Liability Company Act of the State of Delaware (the "Delaware Corporate Law")) or the United States of America, other than (i) those that have been obtained, (ii) any consents, approvals or filings that may be required in connection with the exercise by SCPPA of remedies under the Transaction Documents, (iii) consents, approvals or filings required in connection with the ordinary course of conduct by Seller of its business and ownership or operation by Seller of its assets in the ordinary course of business (as to which we express no opinion), and (iv) consents, approvals or filings that may be required by any regulatory statutes to which you may be subject (as to which we express no opinion).

For purposes of the opinions expressed in this paragraph 4, we have assumed that Seller will not take in the future any discretionary action (including a decision not to act) not required by the Transaction Documents that would cause the performance of the Transaction Documents to violate the Delaware Corporate Law or any California or federal statute, rule or regulation, or require the consent or approval of, or any filing or registration with, any governmental body, agency or authority of the State of California, the State of Delaware (solely with respect to the Delaware Corporate Law) or the United States.

The opinions expressed herein are subject to the following qualifications, limitations and comments:

the enforceability of the Transaction Documents, the obligations of Seller thereunder and the availability of certain rights and remedial provisions provided for therein are

subject to: (i) judicial action giving effect to foreign governmental actions or foreign laws, in either case, affecting creditor's rights; (ii) the effect of bankruptcy, fraudulent conveyance or transfer, insolvency, reorganization, receivership, arrangement, liquidation, conservatorship, and moratorium laws; (iii) limitations imposed by other laws and judicial decisions relating to or affecting the rights of creditors or secured creditors generally; and (iv) general principles of equity (regardless of whether enforcement is considered in proceedings at law or in equity) upon the availability of injunctive relief or other equitable remedies, including, without limitation, where (1) the breach of covenants or provisions imposes restrictions or burdens upon a party and it cannot be demonstrated that the enforcement of such remedies, restrictions or burdens is reasonably necessary for the protection of a party; (2) a party's enforcement of such remedies, covenants or provisions under the circumstances, or the manner of such enforcement, would violate such party's implied covenant of good faith and fair dealing, or would be commercially unreasonable; (3) a court having jurisdiction finds that such remedies, covenants or provisions were, at the time made, or are in application, unconscionable as a matter of law or contrary to public policy; or (4) self-help or automatic or summary remedies are exercised without notice or opportunity for hearing or correction or disclaiming liability or responsibility in connection with the exercise of remedies;

we express no opinion as to the enforceability of cumulative remedies to the extent such cumulative remedies purport to or would have the effect of compensating the party entitled to the benefits thereof in amounts in excess of the actual loss suffered by such party;

we express no opinion as to the enforceability of any provisions that provide for liquidated damages if a court determines that such provisions were unreasonable under the circumstances at the time the applicable Transaction Document was made;

we express no opinion as to the enforceability of provisions purporting to require the award of attorneys' fees, expenses, or costs, where such provisions do not satisfy the requirements of Sections 1717 et seq. of the California Civil Code and judicial decisions thereunder or otherwise violate public policy;

we advise you that, to the extent that any provision of a Transaction Document is deemed to impose the payment of interest on interest, such provision may be unenforceable, void or voidable under California law;

we express no opinion as to the validity, binding effect or enforceability of any indemnification or contribution provisions of the Transaction Documents to the extent such provisions violate the public policy underlying any law, rule or regulation or purport to provide for the indemnification of a person for its own negligence, willful misconduct or illegal conduct;

we express no opinion as to the enforceability of provisions that provide for penalties, late charges, additional interest after a default, or fees or costs related to such charges, in light of the factual determinations required under Section 1671 of the California Civil Code;

requirements in the Transaction Documents specifying that provisions thereof may only be waived in writing may not be valid, binding or enforceable to the extent that an oral agreement or an implied agreement by trade practice or course of conduct has been created modifying any provision of such documents;

we express no opinion with respect to any provision of the Transaction Documents to the extent that such provision permits set off to be made without notice;

we express no opinion with respect to the validity, binding effect or enforceability of any purported waiver, release or disclaimer under any of the Transaction Documents relating to (i) statutory or equitable rights and defenses of Seller that are not subject to waiver, release or disclaimer, or (ii) rights or claims of, or duties owing to, Seller to the extent limited by California law, or to the extent such rights, claims and duties otherwise exist as a matter of law except to the extent Seller has effectively so waived, released or disclaimed such rights, claims or duties in accordance with California law;

we express no opinion as to the severability of any provision of the Transaction Documents;

we express no opinion as to any schedules, exhibits or attachments that are incorporated by reference into the Transaction Documents that consist of form agreements, form consents or form instruments that are not executed and delivered as of the date hereof;

we express no opinion with respect to the effect of any federal law related to copyrights, patents, trademarks, service marks or other intellectual property on the opinions expressed herein or the applicability or effect of federal or state anti-trust, unfair competition, tax, pension, employee benefit, commodities, securities, usury or "blue sky" laws or Federal Reserve Board margin regulations on the transactions contemplated by the Transaction Documents;

we express no opinion with respect to the validity, binding effect or enforceability of any provision of the Transaction Documents purporting to establish evidentiary standards or fix the measure of quantum of proof, consenting to jurisdiction and venue, or waiving service of process or demand or notice and hearing or constitutional rights (including a jury trial) or statute of limitations or purporting to eliminate any obligation to marshal assets; without limiting the foregoing, we call your attention to *Grafton Partners L.P. v. Superior Court of Alameda County*, No. S123344, 2005 WL 1831995 (Cal. Aug. 4, 2005) with respect to the unenforceability of pre-dispute contractual jury trial waivers under California law;

we express no opinion with respect to the validity, binding effect or enforceability of any provision of the Transaction Documents relating to mediation or arbitration;

we express no opinion with respect to any provisions of the Transaction Documents purporting to appoint any person as attorney in fact or agent for another or purporting to authorize any person to sign or file documents without the signature of any other person;

we express no opinion as to whether failure to exercise or delay in exercising rights or remedies will not operate as a waiver of any such right or remedy or the enforceability of "time is of the essence" or other provisions relating to a delay or failure to exercise any right, remedy or option;

we express no opinion as to the enforceability of any provisions that constitute or include an "agreement to agree";

we express no opinion as to the accuracy or sufficiency of any technical provisions, such as mathematical formulas or calculations, of any of the Transaction Documents or compliance with such technical provisions;

we express no opinion as to the enforceability of any provisions relating to waiver or disclaimers of implied or express warranties or of the right to reject or repudiate the acceptance of goods contained in the Transaction Documents;

we express no opinion as to the effect of the legal or regulatory status or the nature of the business of any party to the Transaction Documents;

we express no opinion as to any law that might be violated by any misrepresentation or omission or a fraudulent act; and

our opinion expressed in paragraph 1 hereof as to the existence and good standing of Seller is given solely on the basis of the DE Good Standing Certificate and such opinion speaks only as of the date of such certificate and not as of the date hereof.

The opinions expressed herein are based upon and are limited to (a) the laws of the State of California, (b) solely with respect to our opinions in paragraphs 1, 2, 4(b) and 4(d) above, subject to the limitations set forth therein, the Delaware Corporate Law, and (c) the laws of the United States of America, and we express no opinion with respect to the laws of any other state, jurisdiction or political subdivision. The opinions expressed herein based on the laws of the State of California, the Delaware Corporate Law and the laws of the United States of America are limited to the laws that a California lawyer, exercising customary professional diligence, would reasonably be expected to recognize as being applicable to the transactions of the type contemplated by the Transaction Documents.

Our opinions set forth in this letter are based upon the facts in existence and laws in effect on the date hereof and we expressly disclaim any obligation to update our opinions herein, regardless of whether changes in such facts or laws come to our attention after the delivery hereof.

This opinion letter is solely for the benefit of the addressee hereof in connection with the execution and delivery of the PPA. No attorney-client relationship exists or has existed by reason of our preparation, execution and delivery of this opinion letter to any addressee hereof or other person or entity except for Seller. In permitting reliance hereon by any person or entity other than Seller, we are not acting as counsel for such other person or entity and have not assumed and are not assuming any responsibility to advise such other person or entity with respect to the adequacy of this opinion letter for its purposes. This opinion letter may not be relied upon in any manner by any other person and may not be disclosed, quoted, filed with a governmental agency (other than the addressee) or otherwise referred to without our prior written consent.

Very truly yours,

EXHIBIT A

FORM OF
OFFICER'S CERTIFICATE

[XX], 2020

I, Andrew Murray, certify that I am a Vice President of Pattern SC Holdings LLC, a Delaware limited liability company ("Parent Company"), the sole member of Red Cloud Wind LLC, a Delaware limited liability company ("Seller"). In such capacity, I hereby certify to Winston & Strawn LLP ("Firm"), as of the date first set forth above, with the understanding that Firm will rely upon the certifications given herein in connection with its delivery of its opinion letter (the "Opinion") to be delivered to the addresses referenced therein on or about the date hereof, as follows (initially-capitalized terms used without definition herein have the respective meanings ascribed thereto in the Opinion):

1. Due inquiry has been made of all persons deemed necessary or appropriate to verify or confirm the statements contained herein.

2. To my knowledge, no dissolution or liquidation proceedings have commenced by or against Seller or Parent Company as of the date hereof.

3. Attached hereto as Exhibit A is a true and complete copy of the Certificate of Formation of Seller and all amendments thereto, if any, as in effect on the date hereof. Such Certificate of Formation has not been otherwise amended, modified, superseded, rescinded or revoked, and remain in full force and effect on the date hereof.

4. Attached hereto as Exhibit B is a true and complete copy of the Limited Liability Company Agreement of Seller and all amendments thereto, if any, as in effect on the date hereof. Such Limited Liability Company Agreement has not been otherwise amended, modified, superseded, rescinded or revoked, and remains in full force and effect on the date hereof.

5. Attached hereto as Exhibit C is a true and complete copy of the Certificate of Formation of Parent Company and all amendments thereto, if any, as in effect on the date hereof. Such Certificate of Formation has not been otherwise amended, modified, superseded, rescinded or revoked, and remain in full force and effect on the date hereof.

6. Attached hereto as Exhibit D is a true and complete copy of the Limited Liability Company Agreement of Parent Company and all amendments thereto, if any, as in effect on the date hereof. Such Limited Liability Company Agreement has not been otherwise amended, modified, superseded, rescinded or revoked, and remains in full force and effect on the date hereof.

7. Attached hereto as Exhibit E is a true and complete copy of the consent of Parent Company, as sole Member of Seller, approving the execution, delivery and performance of the PPA by Seller. Such consent is in full force and effect and has not been amended, modified, superseded, rescinded or revoked as of the date hereof.

8. The representations and warranties of Seller contained in the PPA are accurate on and as of the date hereof as though made on and as of such date.

9. Seller is not bound by any judgment, order, writ, injunction or decree.

Name: Andrew Murray

Title: Vice President

The undersigned, in the capacity as indicated below, does hereby certify that Andrew Murray is a duly appointed Vice President of Parent Company, that he occupies such office as of the date hereof and that the signature above is his true and correct signature.

Name: Joni Barrett

Title: Secretary of Parent Company

Exhibit A

Certificate of Formation of Seller and all amendments thereto

See Attached.

Exhibit B

Limited Liability Company Agreement of Seller and all amendments thereto

See Attached.

Exhibit C

Certificate of Formation of Parent Company and all amendments thereto

See Attached.

Exhibit D

Limited Liability Company Agreement of Parent Company and all amendments thereto

See Attached.

Exhibit E

Consent of Parent Company

See Attached.

APPENDIX W

TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
RED CLOUD WIND LLC

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (this "Consent"), dated as of _____, 20__, by and among Southern California Public Power Authority ("Buyer"), [_____] (in its capacity as collateral agent for the Facility Lenders under the Financing Agreement, as defined below, "Lender"), Red Cloud Wind LLC, a Delaware limited liability company ("Seller") and [_____] (each in its capacity as [Tax Equity Investor][2] under the [_____ Agreement], as defined below, collectively, the "Tax Equity Investors"). Each of Buyer, Seller, Lender and Tax Equity Investor is referred to under this Agreement as a "Party" and together they are referred to as the "Parties"; provided, that in no event shall the term "Buyer" refer to any of the members of Buyer. Capitalized terms used but not defined herein shall have the meanings set forth in the PPA (as defined below).

RECITALS

A. [_____] ("Borrower"), an indirect owner of Seller, entered into a Financing Agreement with Lender, as administrative agent and collateral agent and certain other lenders party thereto, dated as of _____, 20__ (the "Financing Agreement"), under which Seller will finance the construction of an up to 331 MW wind-powered electric generating facility (the "Facility", as further described in the PPA). Seller and Lender have also entered into a Guarantee and Security Agreement (the "Security Agreement") under which Seller collaterally assigned its interest under the PPA to Lender as collateral for the credit facilities under the Financing Agreement, and a deed of trust or mortgage under which Seller has granted to Lender a lien on the Facility to be recorded in [•] County, New Mexico (the "Financing Deed of Trust", and, together with the Security Agreement, the "Lender Collateral Documents").[3]

B. [The Tax Equity Investors have agreed to make a tax equity investment in the Borrower or one of its subsidiaries relating to the Facility.]

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[2] **Note to Draft:** To be determined by Seller whether Tax Equity Investors will be party hereto.

[3] **Note to Draft:** Description to be updated to reflect actual financing structure, which may include an initial credit facility during construction that is replaced with an operational phase credit facility (in which case the initial Consent may need to be replaced with a new Consent).

C. Buyer and Seller entered into that certain Power Purchase Agreement, dated as of [_____] (as may be amended, supplemented, or modified from time to time, the "PPA"), pursuant to which Seller will develop, finance, construct, own, and operate the Facility, and will, except as otherwise provided in the PPA, sell the Energy to Buyer.

D. Buyer and Seller entered into that certain Purchase Option Agreement, dated as of [_____] (as may be amended, supplemented, or modified from time to time, the "Option Agreement"), pursuant to which Seller granted Buyer an irrevocable right and option to purchase the Facility Assets (as defined in the Option Agreement) in accordance with the terms and conditions more fully described therein. A memorandum of the Option Agreement was recorded with the relevant County Clerk on [_____] as Document No. [_____].

E. Pursuant to Section 14.7(f) of the PPA, Seller has requested Buyer's consent to the assignment, pursuant to the Security Agreement, by Seller to Lender of Seller's interest under the PPA.

AGREEMENT

1. Assignment and Agreement.

1.1 Consent to Assignment. Seller hereby gives notice of, and Buyer hereby consents to, the collateral assignment to Lender pursuant to the Security Agreement of Seller's rights, title and interest in, to and under the PPA (including, without limitation, the right to receive payment thereunder), the granting of Liens on all property of Seller pursuant to the Lender Collateral Documents and the pledge of Seller's membership interests to Lender as security for Borrower's obligations under the Financing Agreement, and Buyer acknowledges that Lender is a "Facility Lender" for purposes of the PPA. Subject to the terms and conditions of this Consent, Buyer agrees that in exercising its remedies, Lender may exercise Seller's rights under the PPA.

1.2 Notices; Right to Cure by Lender. Upon the occurrence of a Default (as defined under the PPA) by Seller under the PPA, Buyer shall give concurrent notice of such Default to Seller, Lender and the Tax Equity Investors. Upon receipt of notice from Lender, Buyer agrees to accept the exercise and cure by Lender if in compliance with the PPA and this Consent. Buyer shall not terminate or suspend its performance under the PPA until Lender has been given the following opportunities, at its sole option, to exercise its rights and cure such Default: (a) if such Default is a monetary Default, thirty (30) days after the later of (i) the expiration of all cure periods available to Seller under the PPA and (ii) receipt of such notice to cure a monetary Default or, (b) if such Default is a nonmonetary Default, sixty (60) days after the later of (i) the expiration of all cure periods available to Seller under the PPA and (ii) receipt of such notice (or up to thirty (30) additional days, so long as Lender reasonably demonstrates to Buyer that it is diligently pursuing appropriate action to cure and is making sufficient progress toward curing such Default); provided, however, that (x) if possession of the Facility is necessary to cure any such nonmonetary Default and Lender has commenced foreclosure proceedings within thirty (30) days after Lender's receipt of notice of Default from Buyer and is diligently pursuing such foreclosure proceedings, Lender will be allowed a reasonable additional period of time, not to exceed ninety (90) days after receipt of such notice of Default from Buyer, to complete such proceedings and cure such Default, and (y) if Lender is prohibited from curing any such Default by any process, stay or injunction issued

by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Seller, then the time periods specified herein for curing a Default shall be extended for the period of such prohibition, so long as Lender has diligently pursued removal of such process, stay or injunction, but in no event more than two hundred thirty (230) days. Failure of Buyer to provide such notice to Lender shall not constitute a breach of the PPA or this Consent by Buyer and Lender agrees that Buyer shall have no liability to Lender for such failure whatsoever; provided that no claim of Default or termination of the PPA by Buyer shall be binding without such notice and the lapsing of the applicable periods set forth above. If Lender fails to cure a Default within the applicable period, Buyer shall have all its rights and remedies with respect to such Default as set forth in the PPA.

1.3 Subsequent Owner. Subject to the terms and conditions of this Consent, the Parties agree that the Lender shall, in accordance with Section 1.5, notify Buyer of the pendency of any foreclosure or transfer of the Facility and the PPA (a "Foreclosure Sale") and, in addition, Lender shall subsequently notify Buyer following any transfer pursuant to such foreclosure. If Lender notifies Buyer in writing that it has completed foreclosure on the Facility and PPA pursuant to the Lender Collateral Documents, taken a "deed in lieu of foreclosure" with respect to the Facility and PPA, or otherwise transferred the Facility and PPA, Lender or its permitted successor or assign, or any other purchaser of the Facility (each such Person, a "Subsequent Owner"), shall be recognized as a party substituting for Seller under the PPA so long as such Subsequent Owner meets the qualifications for a Qualified Transferee and expressly assumes Seller's obligations under the PPA and the Option Agreement, and the terms and conditions of the PPA as in effect on such date of transfer or foreclosure shall continue to apply to such Subsequent Owner.

1.4 Buyer Cure Rights under the Financing Agreement. The Lender hereby agrees not to transfer the Facility or the PPA pursuant to an exercise of remedies due to a default under the Financing Agreement or any related collateral documents: (a) if such default thereunder is a monetary default, for a period of thirty (30) days after the expiration of all cure periods available to Seller under the Financing Agreement, or (b) if such default thereunder is a nonmonetary default, for a period of sixty (60) days after the expiration of all cure periods available to Seller under the Financing Agreement, so long as Buyer reasonably demonstrates that it is diligently pursuing appropriate action to cure and is making sufficient progress toward curing such default; and the effect of any such cure by Buyer shall be as if Seller had cured the applicable default within the cure period afforded Seller under the Financing Agreement, including cessation of exercise of remedies by the Lender. Upon any payment or cure by Buyer relating to such a default by Seller, the amounts expended by Buyer to provide such cure, including any defaulted payment and interest thereon at the Interest Rate, and all other payments made and expenses incurred by Buyer in providing such cure shall be (a) applied either (i) in reduction of the price for the Delivered Energy payable by Buyer as provided under Section 6.1 and Appendix A of the PPA, or (ii) in the event of the purchase of the Facility by Buyer under Section 1.5 hereof, the purchase price shall be reduced by such amounts expended to provide such cure, or (b) if the application in clause (a) is insufficient to reimburse Buyer for such amounts that have been expended, then such amount shall be reimbursed by Seller (or a Subsequent Owner in respect of such amounts that have been expended following the foreclosure by Lender on the Facility and Subsequent Owner's substitution for Seller under the PPA pursuant to Section 1.3 above) within thirty (30) days following such substitution to Buyer.

1.5 Buyer's Purchase in Lieu of Foreclosure; Survival Upon a Foreclosure Sale. Lender shall, concurrent with any statutory notice required to be delivered to Seller, give notice in writing to Buyer not less than ninety (90) days prior to the date of any Foreclosure Sale in the form of Exhibit A hereto containing the information specified therein (the "Foreclosure Notice"). Upon the receipt of a Foreclosure Notice, Buyer shall not be permitted to exercise the purchase option under the Option Agreement while Lender is diligently proceeding to negotiate, litigate or exercise a power of sale in relation to a Foreclosure Sale or until the default giving rise to the Lender's Foreclosure Sale right is cured, as the rights pursuant to this Section 1.5 shall be in lieu of the purchase option, *vis-à-vis*, the Lender during such pendency of a Foreclosure Sale. As between Lender and Buyer and without limiting Seller's cure rights under the Financing Agreement and any related collateral documents:

(a) Upon receipt by Buyer of a Foreclosure Notice, Buyer shall have the right, at its option, to purchase the Facility in lieu of foreclosure as set forth in this Section 1.5. In the event that, within thirty (30) days following Buyer's receipt of such Foreclosure Notice, Buyer furnishes written notice to Lender that it will (concurrent with and subject to the closing of a bond financing by Buyer) exercise its option to purchase the Facility, which notice shall be in the form of, and containing the information specified in, Exhibit B hereto (the "Purchase Notice"), including setting forth the date of such purchase (which shall be within ninety (90) days following the date of Buyer's notice to Lender in the form of Exhibit B, which date may be reasonably extended by Buyer for up to an additional fifteen (15) days in order to close the bond financing), Buyer shall purchase the Facility from Seller as hereinafter provided.. The purchase price of the Facility shall be paid by the Buyer to the account designated by the Lender and shall be equal to the amount, measured as of the applicable measurement date, of the Facility Debt. In consideration of such payment, Lender shall, upon the closing therefor, release of record all of the liens and security interests under the Lender Collateral Documents, and transfer the Facility pursuant to Foreclosure Sale by quitclaim (or equivalent) deed to Buyer.

(b) If Buyer believes that the purchase of the Facility will not take place within such ninety (90) day period, and, prior to the end of such ninety (90) day period provides notice to Lender in the form of Exhibit C, then the Foreclosure Sale (or, as applicable, the taking of a deed in lieu of foreclosure) shall not be held and Buyer shall, within ten (10) days after the end of such ninety (90) day period, purchase from the Lender all of their right, title and interest in, to and under the Financing Agreement and the Lender Collateral Documents, free and clear of all Lender liens, claims and encumbrances. Upon such a purchase by Buyer, Lender agrees to cause the transfer, sale and assignment of all of the right, title and interest of the Lender in, to and under the Financing Agreement, related promissory notes, and the Lender Collateral Documents to be made to Buyer (or, if and to the extent designated by Buyer, to a member of Buyer that is a purchaser from Buyer of Energy produced by the Facility (a "Member")) upon the payment by Buyer or such Member to Lender of the amount of the Facility Debt.[4]

(c) If Buyer has not provided Lender a notice in the form of Exhibit C prior to the end of such ninety (90) day period after the Foreclosure Notice, then the Lender may

[4] **Note to Draft:** subject to update given that Lender, who is only an agent, cannot convey rights of all Facility Lenders.

effect the Foreclosure Sale or take a deed in lieu of foreclosure at any time after the end of such ninety (90) day period.

1.6 Foreclosure Sale. In the event Buyer does not exercise its option or rights as provided under Section 1.5 above, and a Foreclosure Sale under the Lender Collateral Documents shall take place, Buyer or any Member shall have the right to bid at such Foreclosure Sale for the purchase of the Facility. Lender may sell the Assigned Interests pursuant to such Foreclosure Sale, free of any rights of Buyer under Sections 1.4 or 1.5.

1.7 Third Party Beneficiary. No action of Buyer taken pursuant to the exercise of its rights as provided in this Consent shall be deemed to be a waiver of any right accruing to Buyer on account of the occurrence of any matter which constitutes a default or a breach of Seller's obligations under the Financing Agreement.

1.8 Assignment of PPA by Lender. In connection with an exercise of remedies under the Financing Agreement or any related collateral documents, the Lender shall not assign the PPA without also assigning the Option Agreement therewith.

1.9 No Assignment. Buyer agrees that it shall not, without the prior written joint consent of Seller and Lender (such consent to not be unreasonably withheld, conditioned or delayed) sell, assign or transfer any of its rights under (a) the PPA other than in accordance with Section 14.7 of the PPA and (b) the Option Agreement other than in accordance with Section 6.6 of the Option Agreement. Lender shall be deemed to have consented to such sale, assignment or transfer should it fail to respond within forty-five (45) days after the date of the notice from Buyer.

1.10 Limitation of Liability.

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

(b) In the event of any Foreclosure Sale, or the taking of any deed in lieu of foreclosure, in connection with an exercise of remedies under any Lender Collateral Documents, Lender shall, if performance of the PPA is reasonably possible, cause the Subsequent Owner to assume in writing and agree to be bound by the covenants and agreements of Seller in the PPA and the Option Agreement, *provided, however*, that until the Subsequent Owner executes and delivers to Buyer a written assumption of Seller's obligations under the PPA in form and substance reasonably acceptable to Buyer, such Person will not be entitled to any of the benefits of the PPA. Lender agrees that in no event shall Buyer be liable to Lender or any Subsequent Owner for any claims, losses, expenses or damages whatsoever under the PPA other than liability Buyer may have to Seller under the PPA. In the event a Subsequent Owner elects to perform Seller's obligations under the PPA in accordance with Section 1.3 hereof, the recourse of Buyer in seeking the enforcement of such obligations shall be limited to any Development Security, or the Performance Security, as applicable, provided pursuant to the PPA and the value (taking into account indebtedness secured by the Facility, including indebtedness arising in connection with such

Development Security or the Performance Security, as applicable) of the Subsequent Owner's interest in the Facility, and in such event, Buyer's rights under the Option Agreement shall survive any Foreclosure Sale. A Subsequent Owner shall assume both the PPA and the Option Agreement, or neither, and may not assume only the PPA without assuming the Option Agreement.

1.11 Reinstatement. In the event that the PPA is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, and if, within forty-five (45) calendar days after such rejection, Lender shall so request, Buyer will execute and deliver to Lender a new power purchase agreement, which power purchase agreement shall be on the same terms and conditions as the original PPA for the remaining term of the original PPA before giving effect to such rejection, and which shall require Lender to cure any defaults then existing under the original PPA other than the default under the original PPA attributed to the bankruptcy or insolvency of Seller.

2. Payments under the PPA. Without limiting the rights of Buyer under the PPA, Buyer shall pay any amounts owed in the manner and when required under the PPA directly to the accounts specified below or otherwise designated by Lender to Buyer in writing. From and after such time as an entity qualifies as a Subsequent Owner, Buyer shall pay all such amounts owed directly to or at the written direction of such Subsequent Owner. Seller hereby directs Buyer, and Buyer agrees, to make all payments and amounts Buyer is obligated to pay to Seller under the PPA, which payments shall satisfy any such payment obligations of Buyer to Seller in full and complete satisfaction of Buyer's obligations to Seller under the PPA, to the following account:

Bank Name: _____
Account Number: _____
ABA Number: _____
Account Name: [_____]

Lender and Seller agree that any change in payment notification shall become effective within thirty (30) days after receipt by Buyer of written notice thereof in accordance with this Consent. Buyer shall have no liability to Seller or Lender (or their successors and assigns) for making payments due or to become due under the PPA to Lender or for failure to direct such payments to Lender rather than Seller.

3. Acknowledgements; Representations and Warranties.

(a) Seller and Lender acknowledge that Buyer has not made and hereby makes no representation or warranty, expressed or implied, that Seller has any right, title or interest in the collateral secured by the Lender Collateral Documents (the "Collateral") and Lender acknowledges that it has not relied upon any such representations of Buyer. Lender acknowledges that it is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Collateral.

(b) Except as otherwise expressly provided herein, Lender acknowledges that Buyer shall not have any contractual obligations to Lender, and Lender acknowledges that it has not relied upon any representations of Buyer in connection with its lending arrangements with Seller.

(c) Except with respect to performance of the agreements contained herein, Seller and Lender acknowledge that Buyer shall have no liability to Seller or Lender resulting from or related to this Consent, or for consenting to any future assignments of the Collateral or any interest of Seller or Lender therein.

(d) Seller and Lender each agree that Buyer shall at all times have (and Buyer hereby expressly reserves) the right to set off or deduct from payments due to Seller under the PPA amounts owing to Buyer by Seller under the PPA, in each case solely in accordance with Section 11.6 of the PPA.

(e) Lender represents and warrants that it is duly authorized, on behalf of the Facility Lenders and other secured parties it represents, to enter into and perform its obligations under this Consent.

(f) Buyer agrees that any foreclosure by Lender on the membership interests in Seller or any parent entity of Seller upon the occurrence of a default by Borrower under the Financing Agreement shall not constitute a breach under the PPA if the Facility is operated and maintained by a Qualified Operator following any such foreclosure. Lender shall obtain Buyer's consent (such consent not to be unreasonably withheld) prior to any transfer by Lender of the membership interests in Borrower upon the occurrence of a default by Borrower under the Financing Agreement to an entity other than a Qualified Transferee.

4. Miscellaneous.

4.1 Governing Law; Submission to Jurisdiction.

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

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

4.2 Conflicts. This Consent does not modify or alter any of the terms of the PPA. To the extent the terms and conditions herein conflict with those in the PPA, the terms and conditions of the PPA shall control. Except as set forth herein, Buyer shall have no obligation or liability to Lender with respect to the PPA or any Ancillary Document. For purposes of this provision, Seller and Buyer agree that the acknowledgments and consents provided in Section 1.1, the extended cure periods provided in Section 1.2, the rights of a Subsequent Owner in Section 1.3, the restriction on assignment in Section 1.9, the payments pursuant to Article 2, and the agreement regarding change in control in Section 3(f) do not conflict with the PPA.

4.3 Counterparts. This Consent may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which, when so executed and delivered, shall be an original, but all of which shall together constitute one and the same instrument.

4.4 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by Buyer and Lender, and after the initial funding by any Tax Equity Investor, such Tax Equity Investor.

4.5 Successors and Assigns. This Consent shall bind and benefit Buyer, Lender, each Tax Equity Investor and their respective successors and permitted assigns.

4.6 Attorneys' Fees. Seller shall reimburse Buyer for all actual and documented costs and expenses incurred by Buyer in connection with the facilitation of Seller's collateral assignment or pledge of the PPA, or any other action taken in connection with the transactions contemplated in this Consent, or otherwise pursuant to any request made by Seller or any Lender.

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

4.8 Estoppel Certificate. Buyer agrees to deliver to the Tax Equity Investors and the Lender a customary estoppel certificate substantially in the form of Exhibit D on the date of delivery of this Consent, in connection with the initial funding by the Tax Equity Investors and in connection with the achievement of Commercial Operation of the Facility following receipt of a written request therefor from Seller.

4.9 Notices. Any communications between the Parties or notices provided herein to be given shall be given to the following addresses:

If to Seller:

Red Cloud Wind LLC
Attn: General Counsel
1088 Sansome St.
San Francisco, CA 94111

If to Buyer:

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

If to Lender:
[_____]

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, or (d) if sent by prepaid telegram or by facsimile. Any Party may change its address for notice hereunder by giving written notice of such change to the other Parties.

4.10 Termination of Collateral Documents and Consent. Upon the termination of the Lender Collateral Documents in accordance with the terms thereof (as notified in writing to Buyer

by Lender), any rights, duties or obligations of Lender arising hereunder shall terminate and no longer be applicable. As among Seller, Buyer and the Tax Equity Investor, Sections 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.9, 4.10, and 4.11 shall survive the termination of the Lender Collateral Documents.

4.11 [Tax Equity Investor Accession. Each of Buyer, Lender, Seller [and the Tax Equity Investors] hereby agree as follows:

(a) Effective as of the earlier to occur of (1) the final funding by the Tax Equity Investors and (2) Commercial Operation of the Facility; provided that clause 4.11(a)(i) below shall not be applicable until the termination of the Lender Collateral Documents in accordance with the terms thereof, as notified in writing to Buyer by Lender:

i. The rights of the Lender under Section 1 hereof and the payment direction in Section 2 hereof will terminate.

ii. Buyer will not terminate the PPA or suspend performance of its services under the PPA on account of any Default (as defined under the PPA) of Seller thereunder, without written notice to the Tax Equity Investors and first providing to the Tax Equity Investors (i) ten (10) Business Days from the date notice of Default is delivered to the Tax Equity Investors to cure such Default if such Default is the failure to pay amounts to Buyer which are due and payable by Seller under the PPA, or (ii) forty-five (45) days from receipt of such notice, to cure such Default if the Default cannot be cured by the payment of money to Buyer.

(b) The address of the Tax Equity Investor for purposes of all notices and other communications is:

[_____]

and

[_____]

With copies to:

[_____]

and

[_____]

and

[_____]]

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Consent and Agreement to be duly executed and delivered as of the date first above written.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
[_____]
President
Date: _____
Attest: _____
[_____]
Assistant Secretary

RED CLOUD WIND LLC

By: _____
Name: [_____]
Title: [_____]

[TAX EQUITY INVESTOR]

By: _____
Name: [_____]
Title: [_____]

EXHIBIT A
to Consent and Agreement
FORM OF FORECLOSURE NOTICE
[Letterhead of Lender]

Via Certified Mail, Return Receipt Requested
Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Attn: Executive Director

Re: Red Cloud Wind Project

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement ("Consent") dated as of _____, 20__, among Southern California Public Power Authority ("Buyer"), _____, as collateral agent ("Lender") and Red Cloud Wind LLC ("Seller"). This is a Foreclosure Notice, as defined in the Consent. Capitalized terms used herein and not defined herein have the respective meanings given in the Consent. As of the date hereof, the following amounts are due and owing by Seller under the Financing Agreement:

Principal amount of loans:
Accrued Interest:
Reimbursable Amounts
Fees:

As of the date hereof, interest is accruing at the rate of % per annum [Insert if applicable: and fees are accruing at the rate of % per annum]. This interest rate will apply until [insert date which is end of current interest period], from which time the interest rate may be higher or lower. A default rate of interest equal to 2% above the otherwise applicable rate [does/does not] currently apply [If does not currently apply, add: but may be applied at any time]. [If applicable, state: The principal amount of loans shown above does not reflect the entire loan commitment under the Financing Agreement. Additional loans may be made, with or without the Seller's consent, and such additional loans will accrue interest as provided in the Financing Agreement.]

An Event of Default, as defined in the Financing Agreement, has occurred and is continuing. The Lender intends to foreclose upon the Facility or take a deed in lieu of foreclosure on a date estimated to be [insert day no less than ninety (90) days from the date of notice]. Such date may be modified as permitted by law, but will in no event be prior to ninety (90) days after the date hereof.

Very truly yours,

EXHIBIT B
to Consent and Agreement

FORM OF PURCHASE NOTICE

[Letterhead of SCPPA]

[Insert date]

Via Certified Mail, Return Receipt Requested
[_____]
[Address]
[City, State ZIP]
Attn: [_____]

Re: Red Cloud Wind Project

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement ("Consent"), dated as of _____, 20__, among Southern California Public Power Authority ("Buyer"), _____, as collateral agent ("Lender") and Red Cloud Wind LLC ("Seller"). This is a Purchase Notice, as defined in the Consent. Capitalized terms used and not defined herein have the respective meanings given in the Consent.

We have received your foreclosure Notice, dated [insert date of Foreclosure Notice]. By this Purchase Notice, we hereby notify Lender that we will exercise our option and purchase the Facility pursuant to our rights under Section 14.25 of the PPA no later than ninety (90) days from the date of the Foreclosure Notice, and upon consummation of such purchase, pay to Lender, for the account of the Lender, the Facility Debt.

Very truly yours,

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By:
[_____]
President

Date:

Attest:
[_____]
Assistant Secretary

EXHIBIT C
to Consent and Agreement
FORM OF PURCHASE NOTICE
[Letterhead of SCPPA]

[Insert date]

Via Certified Mail, Return Receipt Requested
[_____]
[Address]
[City, State ZIP]
Attn: [_____]

Re: Red Cloud Wind Project

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement ("Consent"), dated as of _____, 20__, among Southern California Public Power Authority ("Buyer"), _____, as collateral agent ("Lender") and Red Cloud Wind LLC ("Seller"). Capitalized terms used herein and not defined herein have the respective meanings given in the Consent.

We have received your Foreclosure Notice, dated [insert date of Foreclosure Notice]. By this notice, we hereby notify Lender that we believe that the purchase of the Facility pursuant to Section 1.5(c) of the Consent will not take place within the ninety (90) day period following our receipt of such Foreclosure Notice. We will, within ten (10) days after the end of such ninety (90) day period, purchase from the Lender all of its right, title and interest in, to and under the Financing Agreement, related promissory notes, and Lender Collateral Documents, for a price equal to the Facility Debt.

Very truly yours,

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By:
[_____]
President
Date:
Attest:
[_____]
Assistant Secretary

EXHIBIT D
to Consent and Agreement
[FORM OF] PPA ESTOPPEL CERTIFICATE
[Date][5]

Reference is made to that certain Power Purchase Agreement (the "Power Purchase Agreement") dated as of [_____] (the "PPA"), by and between the Southern California Public Power Authority, a public entity and joint powers agency formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Code Section 6500, *et seq.*) ("Buyer"; provided, that in no event shall the term "Buyer" refer to any of the members of Buyer, and the term "Buyer's knowledge" as used herein shall refer only to the knowledge of persons at SCPPA, and not to the knowledge of anyone at any of the members of Buyer) and Red Cloud Wind LLC, a Delaware limited liability company ("Seller"). Terms used herein but not defined herein have the same meanings as in the PPA.

Buyer hereby confirms and agrees as of the date hereof as follows:

1. The copy of the PPA, as amended, attached as Exhibit A, constitutes a true and complete copy of the PPA.

2. The PPA is in full force and effect and has not been modified or amended in any way [since [_____, 20_]], and constitutes the only agreement between Buyer and Seller other than that certain Consent and Agreement dated as of [_____, 20__] and that certain Option Agreement dated as of [_____, 20__].

3. Buyer has not transferred or assigned its interest in the PPA.

4. Buyer is not in default under the PPA nor has Buyer breached any of its representations, warranties, agreements or covenants under the PPA and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Buyer under the PPA or that would give Seller the right to terminate the PPA. To Buyer's knowledge, Seller is not in default under the PPA nor, to Buyer's knowledge, has Seller breached any of its representations, warranties, agreements or covenants under the PPA and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Seller under the PPA or that would allow Buyer to terminate the PPA.

5. All representations made by Buyer in the PPA were true and correct as of the effective date of the PPA and continue to be true and correct.

6. To Buyer's knowledge, no event, act, circumstance or condition constituting an event of Force Majeure under the PPA has occurred and is continuing.

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[5] To be delivered on the date of delivery of the Consent and, upon the initial funding and upon the final funding under the Tax Equity transaction commensurate with COD.

7. Seller has not claimed any amounts under the indemnification obligation of Buyer set forth in the PPA.

8. To Buyer's knowledge, Buyer has no existing counterclaims, offsets or defenses against Seller under the PPA. Buyer has no present knowledge of any facts entitling Buyer to any material claim, counterclaim or offset against Seller in respect of the PPA.

9. All payments due, if any, under the PPA by Buyer have been paid in full through the period ending on the date hereof.

10. [The Commercial Operation Date of the Facility occurred on [____], 20__].

11. The Contract Capacity of the Project as of the Commercial Operation Date is [ ] MW.][6]

IN WITNESS WHEREOF, Buyer has caused this Certificate to be duly executed by its officer thereunto duly authorized as of the date first set forth above.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
Name:
Title:

[6] Bracketed language in 10 and 11 to be included in the Estoppel Certificate delivered at the final funding under the Tax Equity Transaction commensurate with COD.

APPENDIX X
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

SELLER PARTIES

None.

APPENDIX Y
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
and
RED CLOUD WIND LLC

FORM OF NON-CONSOLIDATION OPINION

_____, 2020

To Each of the Addressees Listed on
Schedule A Attached Hereto

Ladies and Gentlemen:

We have acted as special counsel to (a) Pattern SC Holdings LLC, a Delaware limited liability company ("*Parent*"), and (b) Red Cloud Wind LLC, a Delaware limited liability company ("*Seller*"), in connection with a Power Purchase Agreement, dated as of [Execution Date] ("*Purchase Agreement*"), between Southern California Public Power Authority, a joint powers agency and a public entity organized under the laws of the State of California ("*Buyer*"), and Seller. Buyer has requested that we deliver this opinion letter to you, and we understand that you will rely on this opinion letter in connection with the transactions contemplated by the Purchase Agreement. Parent and its affiliates other than Seller are each referred to herein as a "*Seller Affiliate*" and collectively as "*Seller Affiliates*". Capitalized terms not otherwise defined herein have the respective meanings assigned such terms in the Purchase Agreement.

You have requested our opinion as to whether, under present reported decisional authority and statutes applicable to bankruptcy cases, should Parent become a debtor in a case under the United States Bankruptcy Code (Title 11, U.S.C.) (the "*Bankruptcy Code*"), and if the matter were properly briefed and presented to a federal court exercising bankruptcy jurisdiction, the court, exercising reasonable judgment after full consideration of all relevant facts and law, would disregard the separate existence of Seller so as to order the substantive consolidation of the assets and liabilities of Parent with those of Seller based on any legal precedent currently applied by federal courts exercising bankruptcy jurisdiction.

In connection with this opinion, we have reviewed each of the following (collectively, the "*Transaction Documents*"):

1. The Purchase Agreement, and

2. The Purchase Option Agreement between Seller and Buyer dated as of **[Execution Date]**.

We have also reviewed each of the charter documents, by-laws, if applicable, operating agreements and other organizational documents of Seller (collectively, the "*Charter Documents*") and certain resolutions and certifications of Seller, as well as the certificates attached hereto as Exhibits A through C ("*Factual Certificates*") (all of the foregoing, together with the Transaction Documents, being collectively the

"*Documents*"). We have relied on the Factual Certificates and the representations and warranties contained in the Documents without investigation as to factual matters. This opinion is based solely upon our review of such Documents, the factual assumptions set forth herein and our examination of such matters of law as we deemed necessary for purposes of rendering the opinion set forth herein. We have also assumed (i) the due authorization, execution and delivery of the Documents by all parties thereto; (ii) all relevant parties have the legal power to act in the capacities in which they are to act under the Documents; (iii) the authenticity of all Documents submitted to us as originals; (iv) the conformity to the original Documents submitted to us as copies; (v) the genuineness of all signatures on all Documents submitted to us; and (vi) no fraud, mistake or illegality on the part of any party to any of the Documents or otherwise in connection with the transactions contemplated by the Documents.

FACTS

In rendering this opinion, we have assumed, with your permission without independent investigation, (i) that the facts outlined below and upon which we rely, have been, are now, and will remain at all relevant times, accurate in all material respects, (ii) that there exist no material facts or documents inconsistent with such assumed facts of which we have not been made aware, and (iii) except as noted below, the assumed facts will remain in effect notwithstanding that the Documents may permit transactions hereafter that may be inconsistent with the assumed facts.

1. Pursuant to the Transaction Documents, the purpose and business of Seller has been limited to developing, constructing, owning, financing and managing the Facility and related property and selling certain renewable energy and associated environmental attributes under the Purchase Agreement (the "*Property*"). Seller is a Delaware limited liability company. Seller has been a direct wholly-owned subsidiary of Parent.

2. No Seller Affiliate has asserted any interest in the Facility or related property or other assets or business of Buyer.

3. Seller has observed in all material respects the procedures required by, and has complied in all material respects with, its Charter Documents and the Transaction Documents and the laws of its state of organization insofar as they concern the separateness of Seller and the factual assumptions set forth herein. Seller and Parent each has maintained its legal entity existence and good standing under the laws of its state of organization as set forth in the introductory paragraph to this opinion letter.

4. Seller has not commingled its assets with the assets of any Seller Affiliate. Any bank accounts and funds of Seller have been maintained separately from those of each Seller Affiliate, and have been maintained in its own name. All actions of (i) Seller have been properly authorized to the extent required by its Charter Documents and applicable law, and (ii) Parent and Seller with respect to the transactions contemplated by the Transaction Documents have been properly authorized to the extent required by their respective organizational documents and applicable law. Parent and Seller each has maintained its own separate minutes of such actions. Seller has maintained separate and full legal entity and financial records for itself only.

5. [Intentionally Omitted]

6. The financial records and accounts of Seller have been prepared and maintained in accordance with generally accepted accounting principles and are susceptible to audit.

7. Seller has conducted its business solely in its own name and has used separate stationery, business forms, invoices and checks bearing its own name. Seller has acted through authorized

representatives that have shared office space with Parent, in its capacity as the sole member of Seller, and Seller has not had any employees. Seller has concluded that its authorized representatives, acting in such capacity, and such shared office facilities are sufficient physical facilities and staffing to manage its limited affairs.

8. Seller has paid its own expenses and liabilities from its own funds to the extent it has adequate finances to do so and has not permitted any other person to pay its expenses and liabilities. From time to time Parent has paid certain predevelopment expenses on behalf of Seller, but such amounts have been properly accounted for as capital contributions by Parent to Seller, and Parent has not held itself out as being responsible for payment of such obligations and has not been liable for such obligations. Invoices and other statements of account from creditors of Seller have been addressed and mailed directly to Seller. The capitalization of Seller is and is intended to remain adequate in light of its proposed business and purpose. Such capital has been fully paid in.

9. Seller has not been liable for the payment of any liability of any Seller Affiliate. No Seller Affiliate has been liable for the payment of any liability of Seller. Neither the assets nor the creditworthiness of Seller have been held out as being available for the payment of any liability of any Seller Affiliate. Neither the assets nor the creditworthiness of any Seller Affiliate have been held out as being available for the payment of any liability of Seller.

10. Seller has held itself out as a separate legal entity and not as a division or department of any Seller Affiliate. Seller has not permitted any Seller Affiliate to describe Seller as a division or department of itself. Each Seller Affiliate has substantial business operations that do not involve Seller.

11. Seller has maintained an arm's-length relationship with each Seller Affiliate. No transaction between Seller and any Seller Affiliate has been on terms more favorable than in a similar transaction involving an unrelated third party. Assets have not been transferred between Seller and any Seller Affiliate without fair consideration and reasonably equivalent value or with the intent to hinder, delay or defraud creditors or equity holders No loans have been made between Seller and any Seller Affiliate.

12. The existence of Seller has not been become dependent on any Seller Affiliate being one of its owners, and the business of Seller now and in the future could be maintained even if no Seller Affiliate were one of its members or managers.

13. Certain of the authorized representatives of Seller may also be officers, directors, managers or employees of a Seller Affiliate ("*Common Representatives*"). Seller has ensured that unaffiliated parties dealing with Common Representatives are able to distinguish the particular entities that each such person is representing at any particular time. To the extent that a Common Representative has a fiduciary duty to Seller and also has a fiduciary duty to any Seller Affiliate, such person has acted in the interests of each entity to which such person has a fiduciary duty and not contrary to the interests of Seller at the direction, or for the benefit, of any Seller Affiliate, or contrary to the interests of any Seller Affiliate at the direction, or for the benefit, of Seller.

14. The representations and warranties contained in the Factual Certificates and Transaction Documents are true and correct on the date hereof in all material respects. Each of the Transaction Documents has been and shall continue to be complied with and have not and shall not be modified in any material respect.

15. Neither Parent nor Seller is insolvent nor does either of them expect to become insolvent as a result of the transactions contemplated by the Transaction Documents. Neither Parent nor

Seller engages or expects to engage in a business for which its remaining property represents an unreasonably small capitalization. Neither Parent nor Seller has incurred or intends or believes that it will incur indebtedness that it will not be able to repay at its maturity.

16. Neither Parent nor Seller has entered into, or caused the other to enter into, the Documents, nor has Seller issued any equity interests, in either case except in good faith and without the intent to hinder, delay, or defraud creditors or equity holders of Seller or any Seller Affiliate. The equity interests held by Parent in Seller were validly issued and obtained for fair consideration and reasonably equivalent value.

17. Seller will issue separate financial statements for itself in accordance with generally accepted accounting principles, and Seller has not been included in the financial statements of any Seller Affiliate except in connection with the preparation of consolidated financial statements of Parent. Seller has filed its own tax returns, and has not been included in any tax return filed by any Seller Affiliate provided, however, that if Seller is a disregarded entity for tax purposes it may be included in a consolidated tax return filed by Parent as long as such returns have not been made available to existing or potential investors with or creditors of any Seller Affiliate without informing them in writing in each instance of the separateness of Seller from the Seller Affiliates and that the assets of Seller are not available to pay or satisfy the claims of any such investors or creditors

18. No Seller Affiliate has received any loan or other extension of credit from a creditor who believes that such Seller Affiliate owns the Facility or any other asset of Seller.

19. The Transaction Documents are and will continue to be valid, legal and binding on the parties thereto.

20. Seller will hold good and marketable fee or leasehold title to the Facility and related property, and such title are not subject to avoidance under principles of fraudulent conveyance or transfer. There are not any agreements, written or oral, between Seller and any Seller Affiliate pursuant to which such Seller Affiliate is obligated to purchase the Facility or any related property from Seller or to make any contribution of capital to Seller. Seller is not required by law or any agreement to pay dividends or otherwise make distributions to Parent. No Seller Affiliate has any right to compel Seller to sell the Facility or any related property to it pursuant to a written or oral agreement or otherwise.

21. In any involuntary bankruptcy case filed against Seller or in any other case or motion filed under federal or state law against Seller seeking the appointment of a receiver, trustee, liquidator or similar official, or seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, assignment for the benefit of creditors or similar relief with respect to Seller or the Facility (or related property), Seller will actively oppose, and assert on a timely basis all defenses to, such relief that could be asserted in good faith.

22. All transactions between Seller and each Seller Affiliate have been, in all instances, made in good faith and without intent to hinder, delay or defraud creditors or equity holders of Seller or any Seller Affiliate.

23. For accounting and tax reporting purposes and for any applicable regulatory accounting purposes, Seller has been treated as the owner of the fee or leasehold interests in the Facility and related property.

24. Seller has conducted its business so as to avoid or correct any misunderstanding on the part of creditors or equity holders as to its separate identity. No representations have been made by

Seller that the assets or creditworthiness of any Seller Affiliate have been or will be available for the payment of its liabilities. Seller has not permitted any representations to be made by any Seller Affiliate that its assets or creditworthiness are or will be available for the payment of the liabilities of such Seller Affiliate. Seller has satisfied the criteria to be a Special Purpose Entity and has complied with all of its obligations of separateness contained in the Transaction Documents, including those contained in Section 12.2(h) of the Purchase Agreement.

25. Seller has not incurred any debt other than liabilities incurred in the ordinary course of its business that are related to the ownership of the Facility and related property and not otherwise prohibited by the Purchase Agreement.

26. Seller's administrative and other overhead, including the performance of duties for separate affiliated entities by common officers or employees and the cost of shared office space, have been properly and fairly allocated to Seller so that Seller does not bear a disproportionate share thereof.

27. Seller's only material assets have been the Facility and related property, including the revenues derived therefrom and cash obtained by Seller from proceeds under the Purchase Agreement or by way of capital contribution by Parent.

28. Buyer reasonably relied on the ownership of the Facility and related property by Seller and the separateness of Seller from Parent and the Seller Affiliates in entering into the transactions contemplated by the Transaction Documents; Buyer will be prejudiced by substantive consolidation of Seller with the Parent or any Seller Affiliate; and Buyer will have standing to and will object to any attempt to substantively consolidate Seller with Parent or any Seller Affiliate.

DISCUSSION OF APPLICABLE LAW

Substantive consolidation results in "the assets and liabilities of separate and distinct legal entities [being] combined in a single pool and treated as if they belong to one entity." *Clyde Bergemann, Inc. v. Babcock & Wilcox Co. (In re Babcock & Wilcox Co.)*, 250 F.3d 955, 959 (5th Cir. 2001). The primary purpose of substantive consolidation is ensuring the "equitable treatment of all creditors." *In re Bonham*, 229 F.3d 750, 764 (9th Cir. 2000). There are no Bankruptcy Code provisions that expressly address substantive consolidation. Instead, the law is all judge-made, an exercise of the bankruptcy courts' equitable powers.[1] As a result, it has been said that "substantive consolidation cases are to a great degree *sui generis*." *In re Tureaud*, 59 B.R. 973, 975 (N.D. Okla. 1986) (quoting 5 *Collier on Bankruptcy* ¶ 1100.06 at 1100-33 (15th ed. 1984)). Another court stated the matter more bluntly: "as to substantive consolidation, precedents are of little value, thereby making each analysis on a case-by-case basis." *In re Crown Mach.*

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[1] *While courts generally recognize a bankruptcy court's equitable power to substantively consolidate debtor corporations, there is a split of authority over whether the court also has the authority to consolidate a debtor and a non-debtor. Most courts order such consolidations, relying on the authority granted by Bankruptcy Code Section 105 to "issue any order, process, or judgment that is necessary or appropriate to carry out the provision of this title." 11 U.S.C. § 105(a);* see, e.g., In re Bonham, *229 F.3d at 764-65;* Union Sav. Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.), *860 F.2d 515, 518 (2d Cir. 1988);* In re Logistics Info. Sys., Inc., *432 B.R. 1, 11-12 (Bankr. D. Mass. 2010);* Simon v. New Ctr. Hosp. (In re New Ctr. Hosp.), *187 B.R. 560, 567 (E.D. Mich. 1995). However, other courts reject this argument, holding that Section 105 does not provide "unfettered power."* In re Pearlman, *462 B.R. 849, 854). According to this line of reasoning, permitting substantive consolidation of a non-debtor "circumvents the stringent procedures and protections relating to involuntary bankruptcy cases imposed by [Section] 303 of the Bankruptcy Code."* In re Pearlman, *462 B.R. at 854-55. For a list of additional cases that have found substantive consolidation both proper and improper in this context,* see In re Bonham, *226 B.R. 56, 83-93 (Bankr. D. Ala. 1998).*

& Welding, 100 B.R. 25, 27-28 (Bankr. D. Mont. 1989). Furthermore, the case law has not evolved in an entirely consistent manner.

Early cases involving substantive consolidation applied a test that resembled the test for piercing the corporate veil or determining whether one corporation was the alter ego of another. A leading case in this regard is *Fish v. East*, in which the court set forth the "instrumentality" rule. *Fish v. East*, 114 F.2d 177 (10th Cir. 1940). The court held that the assets of a subsidiary organized by its parent corporation to raise money from the public for the parent should be consolidated with the parent because, based on an analysis of the facts, the two corporations were actually one enterprise with the subsidiary operating as a mere instrumentality of the parent. *See Id.* at 189-99. In so holding, the court identified ten factors as supporting a decision to consolidate:

(1) The parent corporation owns all or a majority of the capital stock of the subsidiary.

(2) The parent and subsidiary corporation have common directors or officers.

(3) The parent corporation finances the subsidiary.

(4) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation.

(5) The subsidiary has grossly inadequate capital.

(6) The parent corporation pays the salaries or expenses or losses of the subsidiary.

(7) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to it by the parent corporation.

(8) In the papers of the parent corporation and in the statements of its officers "the subsidiary" is referred to as such or as a department or division.

(9) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take direction from the parent corporation.

(10) The formal legal requirements of the subsidiary as a separate and independent corporation are not observed.

Id. at 191.

Courts frequently relied on the factors set forth in *Fish v. East* to analyze facts and determine whether a subsidiary and its parent should be consolidated. *See, e.g., FDIC v. Hogan (In re Gulfco Inv. Corp.)*, 593 F.2d 921, 928-29 (10th Cir. 1979); *Anaconda Bldg. Materials Co. v. Newland*, 336 F.2d 625, 629 (9th Cir. 1964); *Fisser v. Int'l Bank*, 282 F.2d 231, 238 (2d Cir. 1960); *Maule Indus. v. Gerstel*, 232 F.2d 294, 297 (5th Cir. 1956).

Under this approach, courts did not generally permit consolidation without a showing that organization of the subsidiary resulted in some blatant abuse, even in cases where one or more of the above factors were present. As noted by one court:

> Few questions of law are better settled than that a corporation is ordinarily a wholly separate entity from its stockholders, whether they be one or more

> .... But notwithstanding such situation and such intimacy of relation, the corporation will be regarded as a legal entity, as a general rule, and the courts will ignore the fiction of corporate entity only with caution, and when the circumstances justify it, and when it is used as a subterfuge to defeat public convenience, justify wrong, or perpetuate a fraud.

Commerce Trust Co. v. Woodbury, 77 F.2d 478, 487 (8th Cir. 1935). Thus, it was observed that "[t]he reported cases have generally been easily decided because the courts could point to blatant abuses of the separate corporate entities in the enterprise structure." Jonathan M. Landers, *A Unified Approach to Parent, Subsidiary, and Affiliate Questions in Bankruptcy*, 42 U. CHI. L. REV. 589, 635 (1975). It has been noted that "[i]n the older cases, the application of substantive consolidation was limited to extreme cases involving fraud or neglect of corporate formalities and accounting procedures." *In re Standard Brands Paint Co.*, 154 B.R. 563, 568 (Bankr. C.D. Cal. 1993).

More recently, beginning with *In re Vecco Constr. Indus.*, the courts have focused on a revised series of factors to be considered in determining whether to substantively consolidate affiliated debtor corporations:

(1) The degree of difficulty in segregating and ascertaining individual assets and liabilities.

(2) The presence or absence of consolidated financial statements.

(3) The profitability of consolidation at a single physical location.

(4) The commingling of assets and business functions.

(5) The unity of interests and ownership between the various corporate entities.

(6) The existence of parent and inter-corporate guarantees on loans.

(7) The transfer of assets without observance of corporate formalities.

In re Vecco Constr. Indus., 4 B.R. 407, 410 (Bankr. E.D. Va. 1980) (1898 Act) (hereinafter "*Vecco Construction*").

While courts have considered the various factors listed above, the same courts have stated that the existence of these factors is not dispositive. "Rather, they should be evaluated within the larger context of balancing the prejudice resulting from the proposed order of consolidation with the prejudice movant alleges it suffers from debtor's separateness." *In re DRW Prop. Co. 82*, 54 B.R. 489, 495 (Bankr. N.D. Tex. 1985) (citing *In re Donut Queen, Ltd.*, 41 B.R. 706, 709-10 (Bankr. E.D.N.Y. 1984). In weighing the relative costs and benefits, the courts have considered the costs of identifying separate assets where the books and records of the two identities are mixed (*DRW Prop.*, 54 B.R. at 495-96); the reliance, or lack thereof, by creditors of one corporation on the assets of the related entity (*First Nat'l Bank of Barnesville v. Rafoth (In re Baker & Getty Fin. Servs.)*, 78 B.R. 139, 142-43 (Bankr. N.D. Ohio 1987); *In re Stop & Go of Am., Inc.*, 49 B.R. 743, 748-49 (Bankr. D. Mass. 1985)[8]; *Donut Queen*, 41 B.R. at 710-11); and whether

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[8] *In* In re Stop & Go of Am., Inc., *the assets of a non-debtor franchisee were substantively consolidated with those of its transferor affiliate, a bankruptcy debtor, over the objection of the franchisor, at whose instance the franchisee entity had been formed. This case should be distinguishable inasmuch as the court's decision was based on the facts that the franchisee had no business activities or employees, the transferor affiliate had represented to its general creditors that the subject franchise belonged to it, and the transferor affiliate had no other assets with which to respond to creditor claims.* Stop & Go, *49 B.R. at 744-47.*

creditors who dealt with one corporation knew of its relationships with the affiliated entity (*In re Snider Bros.*, 18 B.R. 230, 235-36 (Bankr. D. Mass. 1982)). The courts recognized, however, that "[t]here is no one set of elements which, if established, will mandate consolidation in every instance." *Id.* at 234.

After the decision in *Vecco Construction*, the focus began to shift from the application of long lists of factors to weighing the benefits of substantive consolidation in a particular case against the harms produced in the case by consolidation. "As time progressed, case law evolved from looking at entanglement/bad acts as the justification for substantive consolidation to analyzing substantive consolidation in terms of balancing the benefits that substantive consolidation would bring against the harm that substantive consolidation would cause." *Standard Brands*, 154 B.R. at 568.

There now appear to be three competing methods of balancing the benefits and harms of substantive consolidation, represented by the decisions in *Union Sav. Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.)*, 860 F.2d 515 (2d Cir. 1988) (hereinafter *Augie/Restivo*), *Eastgroup Props. v. S. Motel Ass'n, Ltd.*, 935 F.2d 245 (11th Cir. 1991) (hereinafter *Eastgroup Properties*), and *In re Owens Corning*, 419 F.3d 195 (3d Cir. 2005) (hereinafter *Owens Corning*).[2]

In *Augie/Restivo*, the Second Circuit concluded that while "[n]umerous considerations have been mentioned as relevant" in deciding whether two entities should be substantively consolidated, a close analysis

> reveals that [the] considerations are merely variants on two critical factors: (i) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit [citations omitted] or (ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors [citations omitted].

Augie/Restivo, 860 F.2d at 518. Only one of the factors in this test needs be satisfied. *In re Bonham*, 229 F. 3d at 766 ("[t]he presence of either factor is a sufficient basis to order substantive consolidation"); *Reider v. Fed. Deposit Ins. Corp. (In re Reider)*, 31 F.3d 1102, 1108 (11th Cir. 1994) ("presence of either factor justifies substantive consolidation"); *Standard Brands*, 154 B.R. at 572 ("[t]he two prongs of the *Augie/Restivo* test are in the alternative").

In establishing its two-prong, alternative test, the *Augie/Restivo* court further held that it was impermissible for the bankruptcy court to substantively consolidate the two entities solely on the basis that substantive consolidation would benefit the creditors of both debtors: "a proposed reorganization plan alone can[not] justify substantive consolidation." *Augie/Restivo* 860 F.2d at 520.

The Second Circuit noted that:

> With regard to the first factor, creditors who make loans on the basis of the financial status of a separate entity expect to be able to look to the assets of their particular borrower for satisfaction of that loan. Such

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[2] *The Fourth Circuit has yet to adopt any of the three tests. In* In re Gordon Properties, *a bankruptcy court granted a motion for substantive consolidation of two corporations based on the* Augie/Restivo *test. On appeal, however, the district court remanded the case due to the bankruptcy court's failure to "fully evaluate equitable considerations" pursuant to the binding Fourth Circuit precedent established in* Stone v. Eacho, *127 F.2d 284 (4th Cir. 1942).* In re Gordon Properties, LLC, *No. 1:12cv394 (LMB/TRJ), 2012 WL 3866506 (E.D. Va. Sept. 5, 2012). The district court provided little guidance on how to conduct this fairness analysis, stating that while there was no "specific test for substantive consolidation,"* Stone *required courts to focus on the equity to creditors and look past corporate forms where necessary.* Id. *at *5-6.*

> lenders structure their loans according to their expectations regarding that borrower and do not anticipate either having the assets of a more sound company available in the case of insolvency or having the creditors of a less sound debtor compete for the borrower's assets. Such expectations create significant equities. Moreover, lenders' expectations are central to the calculation of interest rates and other terms of loans, and fulfilling those expectations is therefore important to the efficiency of credit markets. Such efficiency will be undermined by imposing substantive consolidation in circumstances in which creditors believed they were dealing with separate entities.

Id. at 518-19

With respect to the second factor, the court held that:

> Commingling, therefore, can justify substantive consolidation only where the time and expense necessary even to attempt to unscramble them is so substantial as to threaten the realization of any net assets for all the creditors [citations omitted], or where no accurate identification and allocation of assets is possible. In such circumstances, all creditors are better off with substantive consolidation.

Id. at 519. The 9th Circuit has adopted this test. *In re Bonham*, 229 F.3d at 766.[10]

In *Eastgroup Properties*, the Eleventh Circuit held that substantive consolidation is appropriate if the proponent of consolidation shows that "(1) there is substantial identity between the entities to be consolidated; and (2) consolidation is necessary to avoid some harm or to realize some benefit." *Eastgroup Properties*, 935 F.2d at 249. Unlike the *Augie/Restivo* test, both elements are required. Once the proponent has established that both elements are present, the burden shifts to the objecting creditor to show that (a) it has reasonably relied on the separate credit of one of the entities to be consolidated, and (b) it will be prejudiced by consolidation. *Id.* If the creditor makes its required showing, the court can order consolidation "only if it determines that the demonstrated benefits of consolidation heavily outweigh the harm." *Id.* The Eleventh Circuit drew this test from the decision in *In re Auto-Train Corp., Inc.*, 810 F.2d 270, 276 (D.C. Cir. 1987) (stating that if a creditor shows that "it relied on the separate credit of one of the entities [to be consolidated] and that it will be prejudiced by the consolidation . . . the court may order consolidation only if it determines that the demonstrated benefits of consolidation 'heavily' outweigh the harm"). The Eleventh Circuit noted that the *Vecco Construction* factors may, but not necessarily will, be relevant in determining whether a proponent has made out a prima facie case for consolidation. *Eastgroup Properties*, 935 F.2d at 250. The court also indicated that its standard for substantive consolidation was intended to be more "liberal" than the older tests. *Id.* at 248-49.

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[10] *However, a recent bankruptcy court decision held that it was not mandatory for a party seeking substantive consolidation to establish either of the* Bonham *factors to successfully motion for substantive consolidation.* In re Bashas' Inc., *437 B.R. 874, 929 (Bankr. D. Ariz. 2010) ("[*Bonham*] did not require bankruptcy courts to look only to the two [factors]."). Instead, the court focused on whether consolidation was "reasonable under the circumstances" based on a balancing of equities.* Id. *The court granted the debtors' request for substantive consolidation because the creditors had failed to show that consolidation would cause them any prejudice, even though "the reason for the consolidation request [was] purely for convenience."* Id. *at 928-29.*

The United States Court of Appeals for the Eighth Circuit adopted a similar test in *In re Giller*, 962 F.2d 796, 799 (8th Cir. 1992) (stating that "[f]actors to consider when deciding whether substantive consolidation is appropriate include 1) the necessity of consolidation due to the interrelationship among the debtors; 2) whether the benefits of consolidation outweigh the harm to creditors; and 3) prejudice resulting from not consolidating the debtors").[11]

In *Owens Corning*, the Third Circuit reviewed substantive consolidation in the context of a motion to deem various related estates substantively consolidated in anticipation of a plan of reorganization. The court noted that it favored the *Augie/Restivo* test over the test laid out in *Auto-Train*, but felt that the *Augie/Restivo* test relied too much on factors rather than principles, resulting in a "resort to ad hoc balancing without a steady eye on the . . . [principles] to be advanced." *Owens Corning*, 419 F.3d at 211. The court indicated that the principles to be advanced when considering substantive consolidation are as follows:

> 1. Limiting the cross-creep of liability by respecting entity separateness . . . absent compelling circumstances calling equity (and even then only possibly substantive consolidation) into play.
>
> 2. The harms substantive consolidation addresses are nearly always those caused by the *debtors* (and the entities they control) who disregard separateness.
>
> 3. Mere benefit to the administration of the case (for example, allowing a court to simplify a case by avoiding other issues or to make postpetition accounting more convenient) is hardly a harm calling substantive consolidation into play.
>
> 4. Indeed, because substantive consolidation is extreme (it may affect profoundly creditors' rights and recoveries) and imprecise, this "rough justice" remedy should be rare and, in any event, one of last resort after considering and rejecting other remedies (for example, the possibility of more precise remedies conferred by the Bankruptcy Code).
>
> 5. While substantive consolidation may be used defensively to remedy the identifiable harms caused by entangled affairs, it may not be used offensively (for example, having a primary purpose to disadvantage tactically a group of creditors in the plan process or to alter creditor rights).

Id.

Under the *Owens Corning* test, in addition to taking into account considerations from the principles above, it must be proven with respect to the entities for whom substantive consolidation is sought that either "(i) prepetition they disregarded separateness so significantly their creditors relied on the breakdown of entity borders and treated them as one legal entity, or (ii) postpetition their assets and

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[11] *In* In re Petters Co., Inc., *the bankruptcy court held that "...where the standards overlap,* Giller's *non-exhaustive list of factors may be informed and supplemented by the* Auto-Train *progeny...[i]n contrast, the approaches in* Augie/Restivo *and* Owens Corning *do not coordinate with* Giller's *express articulation [, which] makes them less than relevant to the framework that must be used in light of* Giller's *precedential status—to the extent they are relevant at all."* In re Petters, *506 B.R. 784, 799-800 (Bankr. D. Minn. 2013). The court found that the principles used in* Auto-Train *and* Eastgroup *logically fit within the framework of* Giller's *analysis, and therefore, those principles should guide the application of* Giller's *analysis.*

liabilities are so scrambled that separating them is prohibitive and hurts all creditors." *Id.* Regarding creditor reliance on the breakdown of entity borders, the court notes that creditor proponents of substantive consolidation must show "in their prepetition course of dealing, they actually and reasonably relied on debtors' supposed unity." *Id.* at 212. Creditor opponents, however, need merely to show "they are adversely affected and actually relied on debtors' separate existence" in order to defeat a *prima facie* showing. *Id.*

While the bulk of the cases cited above involved the proposed consolidation of corporations, the same principles have been applied in the few reported cases involving the proposed consolidation of a partnership with its general partner. *See e.g., Fed. Deposit Ins. Corp. v. Colonial Realty Co.*, 966 F.2d 57 (2d Cir. 1992) (collecting cases and holding that *Augie/Restivo* should be applied to consolidation of general partnership with its partners); *Holywell Corp. v. Bank of N.Y.*, 59 B.R. 340, 346-48 (S.D. Fla. 1986) (applying *Vecco Construction* factors to consolidation of limited partnership with its general partners and other affiliated entities).

ANALYSIS

In our view, based on the assumed facts, a court should not be persuaded to grant an order substantively consolidating the assets and liabilities of Seller with those of Parent or any Seller Affiliate under any of the tests described above.

1. There has been no fraud or neglect of corporate formalities and accounting procedures. Seller is operated as a separate entity, owns its own assets, does not commingle its property or functions with those of any Seller Affiliate, has adequate capital, keeps separate books and records and adheres to the formal legal requirements for maintaining a separate organizational identity.

2. There is no entanglement of Seller with any Seller Affiliate, none of the Seller Affiliates and Seller holds itself out as a single economic unit, and therefore creditors of Parent and Seller should not be harmed in the absence of substantive consolidation.

3. As assumed in Paragraph 28 under the heading "Facts" herein, Buyer reasonably relied upon the separate existence of Seller from Parent and the Seller Affiliates in making entering into the transactions contemplated by the Transaction Documents, and Buyer will be prejudiced by substantive consolidation.

Substantive consolidation is an equitable doctrine, and under these circumstances a court should not conclude that any benefits of substantive consolidation heavily outweigh the harm of such consolidation.

We acknowledge, however, that adverse factors listed in *Vecco Construction* are present here to a certain degree: consolidated financial statements, unity of interests and ownership, and limited payment of Seller's obligations by Parent.

With respect to consolidated financial statements, we believe that the court in *Vecco Construction* was concerned that the issuance of consolidated financial statements would make it impossible for those creditors who read such statements to ascertain which assets were owned by the individual subsidiaries within a consolidated group. We note that the requirement that a parent entity prepare consolidated financial statements to include its majority-owned subsidiaries did not exist when *Vecco Construction* was decided. As noted in Paragraph 17 under the heading "Facts" herein, Seller has issued and will continue to issue separate financial statements for itself in accordance with generally accepted accounting principles, and Seller has not been and will not be included in the financial statements of any Seller Affiliate except in connection with the preparation of consolidated financial statements of any

direct or indirect owner of Seller In addition, as noted in Paragraphs 23 and 24 under the heading "Facts" herein, for accounting and tax reporting purposes and for any applicable regulatory accounting purposes, Seller has been and shall continue to be treated as the owner of the fee or leasehold interests in the Facility and related property . In addition, Seller has conducted and shall continue to conduct its business so as to avoid or correct any misunderstanding on the part of creditors or equity holders as to its separate identity

With respect to unity of interests and ownership, there is common ownership of Seller and Seller Affiliates as well as certain Common Representatives. While the absence of an independent manager might be viewed as a negative fact in assessing the substantive consolidation issue, in our view such absence would not necessitate substantive consolidation. As assumed in Paragraph 13 under the heading "Facts" herein, all corporate formalities have been be observed, and each person that has a fiduciary duty to Seller and also has a fiduciary duty to any Seller Affiliate has acted and will act in the interests of each entity to which such person has a fiduciary duty and is not expected to act contrary to the interests of Seller at the direction, or for the benefit, of any Seller Affiliate, or to act contrary to the interests of any Seller Affiliate at the direction, or for the benefit, of Seller.

Under *Vecco Construction*, the Seller's lack of separate physical facilities or employees might be viewed as a negative fact in assessing the substantive consolidation issue. As assumed in Paragraph 7 under the heading "Facts" herein, the Seller has concluded that its shared office facilities, and the officers of its managing member, are sufficient physical facilities and staffing to manage its business. As assumed in Paragraph 12 under the heading "Facts" herein, the business of Seller could be maintained even if no Seller Affiliate were one of its members or managers, and the Seller's administrative and other overhead, including the performance of duties by Common Representatives, have been properly allocated to the Seller so that it does not bear a disproportionate share thereof. And finally, as assumed in Paragraph 28 under the heading "Facts" herein, the Buyer has reasonably relied on the separateness of the Seller from the Seller Affiliates in entering into the transactions contemplated by the Transaction Documents. Under these circumstances, we do not believe an entity that otherwise has the necessary facilities and staffing should be required to have more to validate its separateness.

With respect to the payment of obligations of Seller, from time to time Parent has paid certain predevelopment expenses on behalf of Seller but such amounts have been properly accounted for as capital contributions by Parent to Seller, and Parent has not held itself out as being responsible for payment of such obligations and has not been liable for such obligations.

Accordingly, we do not believe the foregoing factors, absent other material factors, should warrant the exercise of a court's equitable power to order substantive consolidation.

OPINION

Based on and subject to the foregoing, as well as the further qualification that there is no definitive judicial authority confirming the correctness of the analysis and the matter is not free from doubt, we are of the opinion that, under present reported decisional authority and statutes applicable to bankruptcy cases, if as the date hereof Parent should become a debtor in a case under the Bankruptcy Code, and if the matter were properly briefed and presented to a federal court exercising bankruptcy jurisdiction, the court, exercising reasonable judgment after full consideration of all relevant facts and law, would not disregard the separate existence of Seller so as to order the substantive consolidation of the assets and liabilities of Seller with those of Parent based on any legal precedent currently applied by federal courts exercising bankruptcy jurisdiction.

LIMITATIONS

The foregoing opinion is qualified in the following respects.

We express no opinion herein other than as set forth under the heading "Opinion" above. We do not express herein any opinion as to any matter governed by any law other than the Bankruptcy Code, and thus we express no opinion as to the law of any state, territory, country or other jurisdiction, including, without limitation, state law theories of alter ego, piercing the corporate veil, enterprise or instrumentality. We note that the question of whether the assets and liabilities of Seller will be substantively consolidated with those of any Seller Affiliate will depend on the future actions of Seller and the Seller Affiliates. We cannot opine as to what action a court will take in the future when reviewing actions that have not occurred as of the date hereof. We express no opinion as to the substantive consolidation of the assets and liabilities of Seller with those of any Seller Affiliate or Parent if such consolidation is done in a manner so as to not adversely affect any rights of Buyer or is incorporated in a plan of reorganization accepted by the class of claims of which Buyer is a part. We express no opinion as to the effect of a bankruptcy case of an entity affiliated with Seller other than Parent.

If a bankruptcy court were incorrectly to decide an issue in respect of which an opinion has been given, the doctrine of mootness may as a practical matter preclude the effective appellate review of the bankruptcy court's ruling (unless the adversely affected party obtains a stay, which may require the posting of a substantial bond). We express no opinion as to whether a bankruptcy court's ruling with respect to the subject matter of this opinion would be seen as a final order for the purpose of appeal or whether an appellate court would exercise its discretion to grant leave to appeal. Furthermore, a bankruptcy court's ruling on substantive consolidation might not be reviewed on a de novo basis by an appellate court; in such event, the bankruptcy court's ruling would be overturned only for an abuse of its discretion, and such discretion is broad. Also, a bankruptcy court's findings of fact might not be reviewed on a de novo basis by an appellate court; in such event, the bankruptcy court's findings of fact would be accepted on appeal unless clearly erroneous. Accordingly, a bankruptcy court might reach a conclusion that is different than ours based on factual findings that are inaccurate but not revised under a "clearly erroneous" standard of review.

In addition, our opinion speaks only as to the ultimate outcome of issues as a legal matter and does not address temporary restraining orders, preliminary injunctions or similar orders pending determination on the merits. Accordingly, we express no opinion as to whether a court, in the exercise of its equitable powers, may temporarily restrain or otherwise delay payment or other actions under the Documents.

We wish to note in connection with our opinion above that there is no reported controlling precedent clearly on point. Judicial analysis of the substantive consolidation issue has typically proceeded on a case by case basis, and determinations are usually made based on an analysis of the facts and circumstances of the particular cases, rather than the application of well-developed legal doctrines. Reported court decisions do not conclusively establish the relative weight to be accorded to the individual factors present and do not establish consistently applied general principles or guidelines with which to analyze such factors. There are also facts and circumstances present that we believe to be relevant to our conclusions, but which, because of the particular facts at issue in the reported cases, are not generally discussed in the reported cases as being material factors.

This opinion letter addresses the legal consequences of only the facts existing and assumed as of the date hereof. This opinion letter does not address facts or circumstances which may have occurred or existed prior to the date hereof, but which no longer exist today or are not assumed. The opinion expressed herein is based on an analysis of existing laws and court decisions and covers certain matters not

directly addressed by such authorities. Such opinion may be affected by actions taken or omitted, events occurring, or changes in the relevant facts or applicable law, after the date hereof. We express no opinion as to circumstances or events that may occur subsequent to the date hereof. We have not undertaken to determine, or to inform any person of, the occurrence or non-occurrence of any such actions, events or changes.

The opinion expressed herein is not a guaranty as to what any particular court would actually hold, but an opinion as to the decision a court would reach if the issues are properly briefed and presented to it and the court followed existing precedent as to legal and equitable principles applicable in bankruptcy cases. In this regard, we note that legal opinions on bankruptcy law matters unavoidably have inherent limitations that generally do not exist in respect of other issues on which opinions to third parties are typically given. These inherent limitations exist primarily because of the pervasive equity powers of bankruptcy courts, the overriding goal of reorganization to which other legal rights and policies may be subordinated, the potential relevance to the exercise of judicial discretion of future arising facts and circumstances, and the nature of the bankruptcy process. The recipients of this opinion should take these limitations into account in analyzing the bankruptcy risks associated with the transactions described herein. This opinion letter should be interpreted in accordance with the Special Report by the TriBar Opinion Committee, *Opinions in the Bankruptcy Context: Rating Agency, Structured Financing and Chapter 11 Transactions*, 46 Bus. Law. 717 (1991).

This opinion letter is given solely for the benefit of, and may be relied upon solely by, the Buyer and the additional Addressees listed on Schedule A hereto in connection with the execution and delivery of the Transaction Documents and the transactions contemplated thereby. At your request, we hereby consent to reliance hereon by any future assignee of any interest of an addressee hereof pursuant to an assignment that is made in accordance with the express provisions of Section 14.7 of the Purchase Agreement, on the condition and understanding that (i) this letter speaks only as of the date hereof; (ii) we have no responsibility or obligation to update this letter, to consider its applicability or correctness to anyone other than its addressees, or to take into account changes in law, facts or any other developments of which we may later become aware; (iii) any such reliance by a future assignee must be actual and reasonable under the circumstances existing at the time of assignment, including any changes in law, facts or any other developments known to or reasonably knowable by the assignee at such time; and (iv) in furtherance and not in limitation of the foregoing, our consent to such reliance shall in no event constitute a reissuance of the opinion expressed herein or otherwise extend any statute of limitation period applicable hereto on the date hereof.

No attorney-client relationship exists or has existed by reason of our preparation, execution and delivery of this opinion letter between our firm and any addressee hereof or other person or entity, except for Seller and Parent. In permitting reliance hereon by any person or entity other than Seller and Parent, we are not acting as counsel for such other person or entity and have not assumed and are not assuming any responsibility to advise such other person or entity with respect to the adequacy of this opinion letter for its purposes. In addition, we do not undertake or assume any responsibility with respect to financial statements of any Seller Affiliate, and to the extent that this opinion letter may be relevant to the determination of the appropriate accounting treatment for the Transactions, we are not advising in any respect as to such accounting treatment. The determination of the proper accounting treatment is the responsibility of the entities required to account for the Transactions and their accountants.

Other than as provided above, this opinion letter may not be relied upon in any manner by any other person or entity for any purpose without our prior written consent. In addition, this opinion letter may not be disclosed, quoted, filed with a governmental agency, or otherwise referred to without our prior written consent, except that you may furnish copies of this opinion letter: (i) to your accountants, advisors and counsel; (ii) to bank or other regulatory examiners; (iii) to any liquidity provider; (iv) to any nationally

recognized statistical rating organization; (v) to governmental agencies, if required; and (vi) pursuant to judicial process or government order or requirement. In authorizing you to make copies of this opinion letter available for your accountants or for your regulators, it being understood that in each case such disclosure is for the purpose of verifying the existence of this opinion letter and by permitting such disclosure we are not authorizing such auditors or regulators to rely hereon nor establishing any attorney client relationship with such accountants or regulators.

Very truly yours,

SCHEDULE A
TO
WINSTON & STRAWN LLP OPINION

Southern California Public Power Authority
Attn: General Counsel
1160 Nicole Court
Glendora, CA 91740

EXHIBIT A

CERTIFICATE OF SELLER

In connection with the non-consolidation opinion dated _____, 2020 (the "Opinion") to be delivered by Winston & Strawn LLP in connection with the Power Purchase Agreement and Purchase Option Agreement dated as of [**Execution Date**] between Southern California Public Power Authority and Red Cloud Wind LLC, Seller hereby certifies that, to the best of Seller's knowledge after due inquiry and review of the Opinion:

1. Seller understands that Winston & Strawn LLP is relying on this Certificate in connection with the execution and delivery of the Opinion.

2. The facts and assumptions contained in the section of the Opinion entitled "Facts" insofar as they pertain to Seller are true and correct as of the date hereof.

3. Seller has no reason to believe that any statement or fact expressed in the Opinion is untrue, inaccurate or incomplete.

4. The undersigned has been duly authorized to execute this Certificate on behalf of Seller.

Dated: _____, 2020

RED CLOUD WIND LLC

By: _____
Name:
Title:

EXHIBIT B

CERTIFICATE OF PARENT

In connection with the non-consolidation opinion dated _____, 2020 (the "Opinion") to be delivered by Winston & Strawn LLP in connection with the Power Purchase Agreement and Purchase Option Agreement dated as of [**Execution Date**] between Southern California Public Power Authority and Red Cloud Wind LLC, Parent hereby certifies that, to the best of its knowledge after due inquiry and review of the Opinion:

1. Parent understands that Winston & Strawn LLP is relying on this Certificate in connection with the execution and delivery of the Opinion.

2. The facts and assumptions contained in the section of the Opinion entitled "Facts" insofar as they pertain to each Seller Affiliate are true and correct as of the date hereof.

3. Parent has no reason to believe that any statement or fact expressed in the Opinion is untrue, inaccurate or incomplete.

4. The undersigned has been duly authorized to execute this Certificate on behalf of Parent.

Dated: _____, 2020

PATTERN SC HOLDINGS LLC

By: _____
Name:
Title:

DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES BY BOARD OF WATER AND POWER COMMISSIONERS OF THE CITY OF LOS ANGELES By: _____ MARTIN L. ADAMS GENERAL MANAGER AND CHIEF ENGINEER Date: _____ And: _____ YVETTE L. FURR Acting Board Secretary	PUBLIC SERVICE COMPANY OF NEW MEXICO Signature:  Name: Todd Fridley Title: Vice-President, New Mexico Operations Date signed: March 30, 2021
RED CLOUD WIND LLC Signature: _____ Name: _____ Title: _____ Date signed: _____	

DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES BY BOARD OF WATER AND POWER COMMISSIONERS OF THE CITY OF LOS ANGELES By: _____ MARTIN L. ADAMS GENERAL MANAGER AND CHIEF ENGINEER Date: _____ And: _____ YVETTE L. FURR Acting Board Secretary	PUBLIC SERVICE COMPANY OF NEW MEXICO Signature: _____ Name: Todd Fridley Title: Vice-President PNM New Mexico Operations Date signed: _____
RED CLOUD WIND LLC Signature: _____ Name: Andrew Murray Title: Authorized Signatory Date signed: 3/25/21	