

RENEWABLE ENERGY CREDITS AGREEMENT

This **Renewable Energy Credits Agreement** ("**Agreement**"), is entered into by and between the Sonoma County Water Agency, a public agency with its principal office located at Santa Rosa, California ("**Seller**"), and the Power & Water Resources Pooling Authority, with its principal office located at Tracy, California ("**Buyer**"). Seller and Buyer are sometimes referred to in this Agreement together as the "**Parties**" and individually as a "**Party**."

WHEREAS, the Parties desire to buy and sell Renewable Energy Credits (as defined hereunder) on terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements set forth herein, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1 – DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings specified below or the meanings first associated with such capitalized term (as designated by underscoring and quotation marks).

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Pacific Prevailing Time.

"**Buyer's WREGIS Account**" means the account held by Buyer in WREGIS.

"**California RPS Program**" means the "California Renewables Portfolio Standard" or "RPS" established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), and X-1 2 (2011), 350 (2015) and 100 (2018), codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

"**CEC**" means the California Energy Resources Conservation and Development Commission.

"**Contract Amount**" means the RECs and Green Attributes associated with the energy generated from the Project during the Delivery Period.

"**CPUC**" means the California Public Utilities Commission.

"**Delivery Period**" means the period during which the RECs sold under this Agreement are generated, beginning July 1, 2018 through December 31, 2025, inclusive.

"**Designated Facility**" means each of the following: (a) Sonoma Valley Treatment Photovoltaic Facility, 930 kW AC, CEC-RPS-ID 63861, WREGIS ID W6991; (b) 404 Aviation Boulevard Photovoltaic Facility, 422 kW AC, WREGIS ID W1269; and (c) Airport Larkfield Wikiup Sanitation Zone Treatment Plant Photovoltaic Facility, 500 kW AC, WREGIS ID W1270. Each Designated Facility shall be referred to herein as the "**Project**."

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ and (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of energy from the Project.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“Product” means California RPS Program-eligible RECs and Green Attributes associated with the Contract Amount from the Project during the Delivery Period, as evidenced by WREGIS Certificates.

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

“Project” means the Designated Facility after it has been certified as an Eligible Renewable Energy Resource, from which Seller was entitled to, shall provide and sell RECs generated during the Delivery Period.

“Purchase Price” means \$1.00 per one (1) REC delivered to Buyer hereunder.

“Renewable Energy Credits” or “RECs” has the meaning set forth in California Public Utilities Code Section 399.12(h) and the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities (tit. 20, Div. 2, Chapter 13 of the California Code of Regulations) as may be modified from time to time or as further defined or supplemented by law, is evidenced by a WREGIS Certificate, and is equivalent to one (1) MWh of energy generated from the Project.

“Seller’s WREGIS Account” means the WREGIS account of Seller.

“WREGIS” means the Western Renewable Energy Generation Information System, or its successor organization recognized under the California RPS Program for the registration or recordation of delivery, ownership and transfer of RECs.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS operating rules.

ARTICLE 2 – TERM

- 2.1. **Effective Date.** The “Effective Date” shall be the date on which both Parties have executed this Agreement.
- 2.2. **Term.** The “Term” of this Agreement shall commence on the Effective Date and shall, unless earlier terminated in accordance with Article 9, continue until the satisfaction of all obligations of the Parties under this Agreement, including but not necessarily limited to the extended obligation with respect to conformance to the California RPS Program, as further described in Section 9.1.

ARTICLE 3 – PURCHASE AND SALE

- 3.1. **Purchase and Sale Obligation.** Subject to the terms and conditions of this Agreement, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, the Product.
- 3.2. **Contract Amount and Purchase Price.** Seller shall sell and Buyer shall purchase the Product in a quantity equal to the Contract Amount and at the Purchase Price, both of which as defined in Article 1.
- 3.3. **Title.** Title to the Product shall pass from Seller to Buyer upon generation of the associated energy from the Project, and the Product shall be held in trust by Seller for Buyer until the transfer of the RECs to Buyer’s WREGIS Account.
- 3.4. **Delivery.** Seller shall cause delivery of the Product in accordance with the applicable rules and procedures relating to WREGIS and the California RPS Program. Without limiting the

generality of the foregoing, for WREGIS Certificates for the energy generated by the Sonoma Valley Treatment Photovoltaic Facility on or prior to the Effective Date, which shall be no less than one thousand one hundred three (1103) RECs, Seller shall deliver the Product within fifteen Business Days of the Effective Date.

- 3.5. **Administrative Costs.** Seller and Buyer are each responsible for their own costs associated with establishing and administering their respective WREGIS account.

**ARTICLE 4 – CONDITIONS PRECEDENT
NOT APPLICABLE**

ARTICLE 5 – REPRESENTATIONS AND WARRANTIES

- 5.1. **Conformance to the California RPS Program Requirements.** Seller, and if applicable its successor(s), represents and warrants that the Product delivered to Buyer conforms to the California RPS Program requirements applicable to Renewable Energy Credits. To the extent a change in law occurs after the Effective Date that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.
- 5.2. **Eligibility.** Seller, and, if applicable, its successor(s), represents and warrants that the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource for the California RPS Program.
- 5.3. **Continuing Representations and Warranties.** In addition to the foregoing, Seller, and, if applicable, its successor(s), represents and warrants that:
- (a) Seller has the sole and exclusive legal right to sell and deliver the Product, and upon the delivery of the Product to Buyer, all right, title and interest in and to the Product shall be conveyed to Buyer free and clear of any liens or other encumbrances or title defects;
 - (b) the RECs associated with the Product will, upon delivery of the Product to Buyer, vest in Buyer, and Buyer will (i) have the exclusive rights to make all claims as to such RECs and (ii) have the right to report with WREGIS Buyer's exclusive ownership of such RECs;
 - (c) the energy generated from the Project that is associated with the Contract Amount was not and will not be separately sold, marketed, or otherwise represented by Seller as renewable energy, clean energy, zero-emission energy, or in any similar manner; and
 - (d) all necessary steps to allow the RECs transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement.

5.4. Other Representations and Warranties. Each Party represents and warrants as of the Effective Date:

- (a) it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation; it has the legal capacity, authority and power to execute this Agreement and to perform its obligations under this Agreement; it has taken all necessary action to authorize such execution and performance; the execution and performance of this Agreement are within its powers and do not violate or conflict with its governing documents, any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it, or any contract to which it is a party;
- (b) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law);
- (c) no Event of Default (as defined in Article 8) with respect to it, or event which with notice and/or lapse of time would constitute such an Event of Default, has occurred and is continuing and no such event or circumstance would occur because of its entering into or performing its obligations under this Agreement;
- (d) there are no proceedings by or before any court or other agency of government now pending or, to the knowledge of such Party, threatened, that if adversely determined could have a material adverse effect on such Party's ability to perform the Party's obligations under this Agreement;
- (e) it is not relying upon any representations of the other Party other than those expressly set forth in this Agreement, and it has entered into this Agreement with a full understanding of, and the ability to assume, the material terms and risks of this Agreement, and has made its decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the other Party.

ARTICLE 6 – BILLING AND PAYMENT

- 6.1. Billing Statement.** As soon as practicable after the Product has been delivered to Buyer, as evidenced by a WREGIS Certificate delivered to Buyer's WREGIS Account and as further described in Section 3.4, Seller shall deliver to Buyer an invoice for that portion of the Contract Amount delivered.
- 6.2. Payment.** Buyer shall pay Seller within five (5) Business Days after receipt of the invoice from Seller. The payment shall equal (a) the portion of the Contract Amount delivered in such period times (b) the Purchase Price. The payment shall be made by electronic funds transfer by Buyer to Seller into Seller's designated account, which will be identified on the invoice provided by

Seller. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

- 6.3. **Disputes and Adjustments of Invoices.** Buyer may, in good faith, dispute the correctness of any invoice, or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to Seller. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid.

- 6.4. **Taxes.** Each Party shall pay any taxes lawfully levied upon it by a governmental authority.

ARTICLE 7 – ASSURANCES

- 7.1. **Performance Assurance.** Should a Party's creditworthiness, financial responsibility, or performance viability change such that the other Party ("First Party") has reasonable grounds to believe that other Party's ("Second Party") creditworthiness or performance under this Agreement has become unsatisfactory, the First Party may require the Second Party to provide performance assurance in a dollar amount determined by the First Party in a commercially reasonable manner. If the Second Party fails to provide such Performance Assurance within seven (7) Business Days of demand therefore, such failure shall be an Event of Default under Article 8 and the First Party shall have the right to exercise any of the remedies provided for under Article 9.
- 7.2. **Records.** Seller shall maintain or cause to be maintained adequate records of the Product, including but not necessarily limited to records to assist Buyer in meeting any reporting or registration requirements associated with the Product, including metering records. Seller shall provide such records upon reasonable notice from Buyer. Seller hereby consents to Buyer's use of any such information for the purpose of documenting Buyer's interest in the Product. Without limiting the generality of the foregoing, each Party agrees to provide copies of its records to the extent reasonably necessary for WREGIS to perform its functions and to verify the accuracy of any fact, statement, charge or computation made in documents submitted to WREGIS.
- 7.3. **Cooperation and Continuing Obligations with Respect to a Subsequent Transaction.** The Parties acknowledge that Buyer may transfer or otherwise resell the Product, or any part thereof; provided, however, Buyer shall remain primarily liable for payment and performance of its obligations under this Agreement notwithstanding any such sale or transfer. The Parties shall cooperate in taking such actions as are necessary and commercially reasonable to cause the transfer of the Product to any such subsequent buyer of the Product. Notwithstanding the foregoing, the obligations set forth in this Agreement, including the continuing representations

and warranties of Seller, shall terminate on the earlier of the day on which all RECs under this Agreement have been retired in Buyer's WREGIS Account and thirty-six (36) months of the initial date of generation of the energy associated with the Product, as further described in Section 9.2.

- 7.4. **Additional Assurances.** Each Party, upon the reasonable request of the other Party, will perform any further acts and execute and deliver documents that may be necessary to carry out the intent and purpose hereof.

ARTICLE 8 – EVENTS OF DEFAULT

A Party is in default ("Default") hereunder if that Party (the "Defaulting Party") does any of the following (each an "Event of Default"):

- (a) fails to make, when due, any payment required under this Agreement, if such failure is not remedied within three (3) Business Days after written notice of such failure is given to the Defaulting Party;
- (b) fails to cure any representation or warranty made by the Defaulting Party in this Agreement that has been shown to have been false or misleading in any material respect when made, if such failure is not cured within five (5) Business Days of written notice of such failure from the other Party;
- (c) fails to perform any material covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered as a separate Event of Default), to the extent not excused by Force Majeure, if such failure is not cured within five (5) Business Days after written notice of such failure is given to the Defaulting Party;
- (d) the Defaulting Party:
 - (i) makes an assignment or any general arrangement for the benefit of creditors;
 - (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors;
 - (iii) has a petition in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors filed against it involuntarily and such proceeding remains undismissed for thirty (30) days; or
 - (iv) otherwise becomes bankrupt or insolvent (however evidenced).

ARTICLE 9 - REMEDIES

- 9.1. **General.** If either Party is in Default as set forth in Article 8 at any time during the Term ("Affected Party"), the other Party ("Notifying Party") may (a) upon two (2) Business Days' prior written notice to the Affected Party terminate this Agreement, (b) withhold any payments due in respect of this Agreement to the extent of its damages, and (c) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement, including an action for damages (except as limited below); provided, however, upon the occurrence of any Default listed in Section 8(d) (bankruptcy) as it may apply to any Party, this Agreement shall automatically terminate, without notice, immediately prior to such default.
- 9.2. **Breach of California RPS Program Warranty.** Notwithstanding anything to the contrary herein, if the representation and warranty set forth in Section 4.1 is false such that the Product, in whole or in part, does not conform to the California RPS Program requirements and as a result Buyer is unable to use the Product, in whole or in part, for compliance with the California RPS Program, then, at the election of Buyer exercised by providing written notice to Seller, and without limiting the right of Buyer to collect a termination payment under Section 9.4 for that portion of the Product that does not conform to the California RPS Program, (a) Seller shall repurchase the Product from Buyer at an amount equal to 110 percent of the Purchase Price (it being understood and agreed that 10 percent of the Purchase Price is a reasonable approximation of the administrative cost borne by Buyer and is not a penalty) and (b) the Parties shall cooperate in order to cause title to the Product to be re-transferred from Buyer to Seller. Seller hereby acknowledges that, under Public Utilities Code Section 399.21(a)(7), Buyer may retire the RECs in WREGIS within thirty-six (36) months of the initial date of generation of the associated energy, and therefore the representations and warranties with respect to conformance to the California RPS Program and the associated remedies for an Event of Default shall continue in effect during such period of time.
- 9.3. **Termination Payment - Buyer.** Upon an Event of a Default by Buyer, and if Seller elects to terminate this Agreement (or an automatic termination occurs pursuant to Section 8.1(d)), then Buyer shall be obligated to pay Seller termination damages equal to the sum of: (a) the price for any RECs delivered to Buyer for which Seller has not received payment, if any, plus (b) the positive difference, if any, between (i) the Purchase Price times all remaining RECs to be delivered under this Agreement minus (ii) the aggregate market price as of the date of termination by Seller, to be determined based upon the average of price quotes by two independent third party brokerage services, dealers or industry participants reasonably selected by Seller, for all such remaining RECs, plus (c) any brokerage fees and other costs reasonably incurred by Seller in entering into any replacement transactions. The Parties acknowledge that these damages constitute a reasonable approximation of the actual harm or loss caused by the termination of this Agreement due to a Default, and are not a penalty. The provisions of Article 6 shall apply to the issuance, payment and resolution of disputes with respect to the termination amount described in this section.
- 9.4. **Termination Payment - Seller.** Upon an Event of a Default by Seller, and if Buyer elects to terminate this Agreement (or an automatic termination occurs pursuant to Section 8.1(d)), with Buyer not having received full delivery of the RECs, then Seller shall pay Buyer termination

damages equal to: (a) the positive difference, if any, between (i) the aggregate market price as of the date of termination by Buyer to be determined based upon the average of price quotes by two independent third party brokerage services, dealers or industry participants reasonably selected by Buyer, for the RECs not received by Buyer minus (ii) the Purchase Price Buyer would have had to pay Seller for the same number of RECs, plus (b) any brokerage fees and other costs reasonably incurred by Buyer in entering into any replacement transactions. The Parties acknowledge that these damages constitute a reasonable approximation of the actual harm or loss caused by the termination of this Agreement due to a Default, and are not a penalty. The provisions of Article 6 shall apply to the issuance, payment and resolution of disputes with respect to the termination amount described in this section.

- 9.5. Limitation of Liability. THE PARTIES AGREE THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSE HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS MEASURE OF DAMAGE IS PROVIDED SUCH REMEDY OR MEASURE SHALL BE THE SOLE AND EXCLUSIVE REMEDY THEREFOR. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AS THE SOLE AND EXCLUSIVE REMEDY. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT, OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS, AND ARE NOT A PENALTY.**

ARTICLE 10 – NOTICES

All notices, payments and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or, with respect to communications other than payments, by facsimile transmission, if the original communication is delivered by reputable overnight courier. The communications shall be sent to the following addresses, and shall be effective when received:

If to Seller: Sonoma County Water Agency

Attn: Dale Roberts
Sonoma County Water Agency
404 Aviation Blvd.
Santa Rosa, CA 95403

Tel: 707-547-1979
Email: Dale.Roberts@scwa.ca.gov

With a copy to:

Attn: Hannah Camp
Sonoma County Water Agency
404 Aviation Blvd.
Santa Rosa, CA 95403

Tel.: 707-524-6435
Email: hannah.camp@scwa.ca.gov

If to Buyer: Power & Water Resources Pooling Authority

Attn: PWRPA General Manager
3514 W. Lehman Road, Tracy, CA 95304-9336
Tel: (209) 835-4670
Email: bcm@cameron-daniel.com

With a copy to:

Attn: David Nixon
Arvin Edison Water Storage District
P.O. Box 175
Tel: (661) 854-5573
Email: danaewsd@aol.com

With a copy to:

Attn: Cori Bradley
Robertson-Bryan, Inc.
3100 Zinfandel Drive, Suite 300, Rancho Cordova, CA 95670
Tel: (916) 405-8923
Email: cori@robertson-bryan.com

ARTICLE 11 – MISCELLANEOUS

- 11.1. **Confidentiality.** Neither Party shall disclose the terms or conditions under this Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law (including the Ralph M. Brown Act and/or the California Public Records Act, as further described below), regulation, or in connection with an order or ruling in any court or regulatory proceeding; provided, however, in such instances in which disclosure is required the Party disclosing information shall, to the extent practicable, use reasonable efforts to prevent or limit the extent of the disclosure and, in any event, the Party disclosing information shall, prior to disclosure, provide notice to the other Party of the

impending disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties acknowledge Buyer is a public entity and that nothing contained in this confidentiality obligation shall be construed or interpreted to prevent or restrain Buyer's compliance with the provisions of the California Public Records Act (California Government Code Sections 6250 *et seq.*) or the Ralph M. Brown Act (California Government Code Sections 54950 *et seq.*). The Parties acknowledge and agree that this Agreement is not considered a confidential or non-disclosable document.

- 11.2. Indemnification.** Each Party ("Indemnifying Party") shall indemnify and hold harmless the other Party, its shareholders, officers, directors, employees and agents, from and against any and all third party claims, costs, suits, liabilities, damages, losses, demands and expenses of every kind including, without limitation, reasonable attorney fees and disbursements, known or unknown, contingent or otherwise, resulting from or arising out of any event, circumstance, act or incident first occurring or existing during the period when control and title to the Product is vested in such Party, as further described in Section 3.3 (and possibly extended pursuant to Section 9.2). The Indemnified Party shall notify the other Party promptly of any claim under this Section 11.2. The other Party shall afford the Indemnified Party the opportunity to defend or participate in the defense of the claim. The other Party shall make no settlement of an indemnified claim specifically naming or directly affecting the Indemnified Party without the Indemnified Party's prior written approval.
- 11.3. Force Majeure.** Neither Party shall be considered to be in default in the performance of any obligations under this Agreement when a failure of performance shall be due to any Force Majeure. The term "Force Majeure" shall mean an event that prevents a Party from performing its obligations under this Agreement, which is not within the Party's reasonable control and which by exercise of due diligence, such Party is unable to avoid, cause to be avoided or overcome. Such causes may include, without limitation, the following and other causes of similar nature: flood, earthquake, tornado, storm, fire, explosion, public emergency, civil disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority (whether valid or invalid), and action or non-action by, or failure to obtain the necessary authorizations or approvals from any government agency or authority. Force Majeure may include the failure or disruption in deliveries of RECs and Green Attributes by WREGIS that is not the fault of the Party asserting the Force Majeure. No Party shall, however, be relieved of liability for failure of performance if such nonperformance is due to its own negligence or to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Force Majeure may not be based on (a) an inability to pay, (b) Seller's ability to sell the RECs to another entity at a greater price than the Purchase Price or (c) Buyer's inability to economically use or resell the RECs (provided such inability does not arise from Seller's breach of the warranties and representations set forth in Article 4 of this Agreement). Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of Force Majeure shall give prompt written notice of such fact to the other Party, and shall continue to exercise due diligence to remove or remedy such inability with all reasonable dispatch.
- 11.4. Time is of the Essence.** Time is of the essence of each and every obligation set forth in this Agreement.

- 11.5. **Counterparts.** This Agreement may be executed in counterparts, each of which taken together shall constitute a single agreement. Facsimile signatures shall have the same effect as original signatures.
- 11.6. **Headings.** The Parties have inserted the headings used in this Agreement for convenience only and each heading shall not be construed to limit, add to or otherwise affect the interpretation of the provision in which it appears.
- 11.7. **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with, the laws of the State of California, without regard to principles of conflicts of law.
- 11.8. **Assignment.** Neither Party shall assign or transfer this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent may be not be unreasonably withheld, so long as, among other things (a) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (b) the assignee agrees in writing to be bound by the terms and conditions hereof, (c) the transferring Party delivers evidence satisfactory to the non-transferring party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder and (d) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request. Notwithstanding the foregoing, either Party may assign this Agreement, without the consent of the other Party, to an entity succeeding to all or substantially all of the business or assets of the assigning Party; provided, however, in each case, the creditworthiness of such entity is equal to or greater than that of such assigning Party as of the Effective Date, and such entity's credit rating is at least Investment Grade, where Investment Grade is BBB- with S&P or Baa3 with Moody's; and provided further, in each case, the assignee agrees in writing to be bound by the terms and conditions of this Agreement and to assume all of assigning Party's obligations hereunder.
- 11.9. **No Partnership or Joint Venture.** This Agreement does not in any way create an association, joint venture, or partnership between the Parties or impose any partnership obligation or liability upon either Party. Neither Buyer nor Seller shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- 11.10. **No Rights of Third-Parties.** This Agreement is intended for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any person not a party to this Agreement.
- 11.11. **Entire Agreement.** This Agreement states the Parties' entire agreement with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements and other communications between the Parties, oral or written, regarding that subject matter.

- 11.12. **Waiver.** No delay or omission in the exercise of any power or remedy and no renewal or extension of any performance due under this Agreement shall impair any such power or remedy or waive any Default.
- 11.13. **Unenforceability.** Should any portion of this Agreement be ruled unenforceable or invalid, such ruling shall not affect the enforceability or validity of the remaining portions of this Agreement.
- 11.14. **Joint Drafting.** This Agreement has been drafted and negotiated by both Parties and shall not be strictly construed against either Party.

IN WITNESS WHEREOF, the Parties have each caused this Renewable Energy Credits Agreement to be executed by their duly authorized representatives as of the date set forth below.

Seller

By: 

Authorized Signatory

Name:

Grant Davis

Title:

General Manager

Date:

7.22.21

Power & Water Resources Pooling Authority

By: 

Name: Bruce McLaughlin

Title: General Manager

Date: July 21, 2021

