

FEED-IN TARIFF STANDARD FORM
POWER PURCHASE AGREEMENT
BETWEEN
SACRAMENTO MUNICIPAL UTILITY DISTRICT
AND

This POWER PURCHASE AGREEMENT (the “Agreement”) for

- an Eligible Renewable Energy Resource (“Facility”)
- a qualifying Combined Heat and Power Generating Facility (“Facility”)

is made and entered into this ____ day of _____ 20__ (“Effective Date”), by and between the Sacramento Municipal Utility District (“SMUD”), and _____ (“SELLER”). SMUD and SELLER are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

A. SMUD’s Feed-In Tariff allows customers to sell SMUD the power output from an eligible small-scale distributed generation resource with capacity of no more than 5 MW, provided that certain conditions are met.

B. SELLER desires to interconnect and operate a distributed generation Facility in parallel with the SMUD Distribution System and sell the Energy produced by the Facility, net of Station Service Load, directly to SMUD under its Feed-In Tariff.

C. This Agreement requires the SELLER to be a retail customer and to obtain retail electrical service from SMUD to serve all the electrical loads at the premises identified in Exhibit A, except as otherwise permitted under SMUD’s tariffs. This Agreement does not constitute an agreement by SMUD to provide retail electrical service to SELLER. Such arrangements must be made separately between SMUD and SELLER.

D. The Parties wish to enter into a power purchase agreement for the sale and purchase of Energy, Contract Capacity, Capacity Attributes, and if this Agreement is for an Eligible Renewable Energy Resource, the Green Attributes from the Facility.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, and of other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

“Business Day” means any Monday through Friday, inclusive, but excluding Days that are observed as business holidays by either Party or days that are NERC-designated holidays.

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

“CAISO Tariff” means the CAISO FERC Electric Tariff as amended from time to time.

“Capacity” means the ability of a generator at any given time to produce energy at a specified rate (“Real Power”) as measured in megawatts (“MW”) or kilowatts (“kW”) (and any reporting rights associated with such).

“California Renewable Portfolio Standard” or “Renewable Portfolio Standard” means the standard adopted by the State of California pursuant to Senate Bill 1038 (SB 1038, Chapter 515, Statutes 2002, Sher), Senate Bill 1078 (SB1078, Chapter 516, Statutes of 2002, Sher), codified in Public Utilities Code (PUC) Sections 399.11 through 399.20, and Public Resources Code (PRC) Sections 25740 through 25751, as may be amended from time to time, setting minimum Renewable Energy targets for entities under the legal jurisdiction of the California Public Utilities Commission.

“Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Facility, intended to value any aspect of the Contract Capacity of the Facility to produce energy or ancillary services, including, but not limited to, any accounting construct so that the full output of the Facility may be counted toward a Resource Adequacy requirement or any other measure by an entity invested with the authority under federal or state law, to require SMUD to procure, or to procure at SMUD’s expense, Resource Adequacy or other such products.

“CEC” means the California Energy Resources Conservation and Development Commission, also known as the California Energy Commission, or its successor agency.

“Combined Heat and Power Facility” or “CHP Facility” means an electric generation facility that produces both electricity and thermal energy from a single fuel input.

“Commercial Operation” means the period of operation of the Facility once the Commercial Operation Date has occurred.

“Commercial Operation Date” means the date specified in the Commercial Operation Date Confirmation Letter which the Parties execute and exchange in accordance with Section 2.3 of this Agreement.

“Contract Capacity” means the installed electrical Capacity available upon Commercial Operation of the Facility in the amount shown in Exhibit A. Contract Capacity is measured at the SMUD Revenue Meter at the Delivery Point and is net of any Station

Service Loads, any applicable Facility step-up transformer losses, and distribution losses on the SMUD Distribution System up to the Delivery Point.

“Contract Price” means the price paid by SMUD to SELLER from the Facility for Energy, Capacity, Capacity Attributes, and if Facility is an Eligible Renewable Energy Resource, Green Attributes from the Facility. The Contract Price is shown in Exhibit B.

“Contract Year” means any of the one-year periods during the Delivery Term that begins on the first day of the calendar month following the date upon which SELLER commences Commercial Operation.

“Delivery Point” means the point of interconnection to the SMUD Distribution System where SMUD accepts title to the Facility power and associated attributes as described herein.

“Delivery Term” means the period of Agreement from the Commercial Operation Date through the full term of the Agreement as defined in Section 2.3.

“Eligible Renewable Energy Resource” or “ERR” means a generating resource that qualifies as an Eligible Renewable Energy Resource set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25471, as either code may be amended or supplemented from time to time and which receives RPS Certification as such.

“Energy” means electrical energy delivered to the SMUD Distribution System with the voltage and quality required by SMUD, and measured in megawatt-hours (“MWh”) or kilowatt-hours (“kWh”).

“Expected Annual Output” means the Energy that the Facility can be expected to produce during a typical year of operation, factoring in typical weather patterns, expected fuel availability, etc. The Expected Annual Output is shown in Exhibit A.

“Feed-In Tariff” means the tariff established by SMUD Board of Directors Resolution 09-06-05 under which SMUD will purchase the output of Eligible Renewable Energy Resources and qualifying Combined Heat and Power Facilities that meet specified criteria as such tariff may be modified from time to time.

“Feed-In Tariff Reservation Deposit” means the monetary deposit submitted by SELLER (or the Facility sponsor on behalf of the SELLER) to secure a reservation of the Feed-In Tariff rates. The Feed-In Tariff Reservation Deposit is set forth in Exhibit A.

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

“Forced Outage” means an unplanned outage of one or more of the Facility’s components that results in a reduction of the ability of the Facility to produce Capacity.

“Force Majeure” means an event or circumstance which prevents one Party from performing obligations under this Agreement, and which is not in the reasonable control of, or the result of negligence of, the Party claiming Force Majeure, and which by the exercise of due diligence is unable to overcome or cause to be avoided. Force Majeure shall include, but not be limited to: (a) An act of nature, riot, insurrection, war, explosion, labor dispute, fire, flood, earthquake, storm, lightning, tsunami, backwater caused by flood, act of the public enemy, terrorism, or epidemic; (b) Interruption of transmission or generation services as a result of a physical emergency condition (and not congestion-related or economic curtailment) not caused by the fault or negligence of the Party claiming Force Majeure and reasonably relied upon and without a reasonable source of substitution to make or receive deliveries hereunder, civil disturbances, strike, labor disturbances, labor or material shortage, national emergency, restraint by court order or other public authority or governmental agency, actions taken to limit the extent of disturbances on the electrical grid; (c) Or other similar causes beyond the control of the Party affected which causes such Party could not have avoided by the exercise of due diligence and reasonable care. Under no circumstances shall either Party's financial incapacity, SELLER's ability to sell electric Energy, Capacity, Capacity Attributes, or Green Attributes at a more favorable price or under more favorable conditions or SMUD's ability to acquire electric Energy, Capacity, Capacity Attributes, or Green Attributes at a more favorable price or under more favorable conditions or other economic reasons constitute an event of Force Majeure. The term “Force Majeure” does not include Forced Outages to the extent such are not caused or exacerbated by an event of Force Majeure as described above, nor does it include SELLER's inability to obtain financing, permits, or other equipment and instruments necessary to plan for, construct, or operate the Facility.

“Good Utility Practice” shall mean those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the Western United States, similar to the Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability, and safety. SELLER acknowledges that the use of Good Utility Practice by SELLER does not exempt SELLER from any obligations set forth in this Agreement.

Good Utility Practice include, at a minimum, those professionally responsible practices, methods and acts described in the preceding paragraph that comply with manufacturers' warranties, restrictions in this Agreement, the interconnection requirements of SMUD, the requirements of Governmental Authorities, and WECC and NERC standards.

Good Utility Practice also includes taking reasonable steps to ensure that:

- a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Facility's needs;

- b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Facility and emergencies whether caused by events on or off the Facility site;
- c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation of the Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
- e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the connecting utility's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Facility site and under both normal and emergency conditions.

"Green Attributes" means any and all credits, benefits, emissions reductions, environmental air quality credits, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation, whether existing now or arising in the future. Green Attributes include but are not limited to: Renewable Energy Credits, as well as (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides ("SO_x"), nitrogen oxides ("NO_x"), 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; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights and Renewable Energy Credits. 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 kWh basis and one Green Tag represents the Green Attributes associated with one (1)

MWh of Energy. Green Attributes do not include (i) any Energy, Contract Capacity, Capacity Attributes, reliability or other power attributes from the Facility, (ii) production or investment tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, grants, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to SELLER to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered, used or created by the Facility for compliance with or sale under local, state, or federal operating and/or air quality permits or programs. If the Facility is a biomass or landfill facility and SELLER receives any tradable Green Attributes based on the Facility’s greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide SMUD with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility. The term Green Attributes includes any other environmental credits or benefits recognized in the future and attributable to Energy generated by the Facility during the Term that may not be represented by Green Tag Reporting Rights or RECs, unless otherwise excluded herein. Any Green Attributes provided under this Agreement shall be documented by Renewable Energy Credits, or any other representation of the environmental benefits of the Facility output, the monthly cumulative total of which shall be provided to SMUD as specified herein.

“Green Tag Reporting Rights(s)” means 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. Said rights are transferred and delivered to SMUD each month as part of the REC transfers.

“Interconnection Agreement” refers to the agreement with SMUD specific to the interconnection of the Facility to the SMUD Distribution System.

“NERC” means the North American Electric Reliability Corporation, or any successor organization.

“NERC Holidays” means days that NERC establishes as holidays for electric energy trading as further specified in Exhibit B.

“NP-15 EZ Gen Hub Price” means the real-time hourly locational marginal price as published by the CAISO for generator transactions in the NP-15 zone of the CAISO.

“Planned Outage” means an outage that has been scheduled in advance of one or more of the Facility’s components that results in a reduction of the ability of the Facility to produce Capacity.

“Pre-Commercial Energy” means any Energy delivered to SMUD from the Facility prior to the Commercial Operation Date.

“Renewable Energy Credit” or “REC” means a certificate of proof that one unit of electricity was generated by an Eligible Renewable Energy Resource. Currently RECs are used to convey all Green Attributes associated with electricity production by a renewable energy resource. RECs are accumulated on a kWh basis and one REC represents the Green Attributes associated with the generation of 1 MWh (1,000 kWhs) from the Facility. For purposes of the Agreement, the term REC shall be synonymous with the term Green Tag, green ticket, bundled or unbundled renewable energy credit, tradable renewable energy certificates, or any other term used to describe the documentation that evidences the renewable and Green Attributes associated with electricity production by an Eligible Renewable Energy Resource.

“Resource Adequacy” means a requirement by a governmental authority or in accordance with its FERC-approved tariff, or a policy approved by a local regulatory authority, that is binding upon either Party and that requires such Party procure a certain amount of electric generating capacity.

“RPS Certification” means a finding by the CEC that the Facility qualifies as an Eligible Renewable Energy Resource for the purposes of the California Renewable Portfolio Standard, and that all Energy produced by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

“Scheduled Commercial Operation Date” means the planned Commercial Operation Date of the Facility declared by SELLER at the time of execution of this Agreement, as shown in Exhibit A and as may be revised herein.

“SMUD Distribution System” means the wires, transformers, and related equipment used by SMUD to deliver electric power to SMUD’s retail customers typically at sub-transmission level voltages or lower.

“Station Service Load” means the electrical loads associated with the operation and maintenance of the Facility which may at times be supplied from the Facility Energy.

“Term” has the meaning set forth in Section 14.1.

“WECC” means the Western Electricity Coordinating Council, which is the regional entity responsible for coordinating and promoting bulk electric system reliability in western Canada and the western United States, or any successor organization.

2. SELLER’S GENERATING FACILITY, PURCHASE PRICE AND PAYMENT

2.1 Facility. This Agreement governs SMUD’s purchase of Energy, Contract Capacity, Capacity Attributes, and if this Agreement is for an Eligible

Renewable Energy Resource, Green Attributes from the Facility as described in Exhibit A. SELLER shall not modify the Facility to increase the Contract Capacity.

2.2 Products Purchased. During the Delivery Term, SELLER shall sell and deliver, or cause to be delivered, and SMUD shall purchase and receive, or cause to be received, Energy, Contract Capacity, Capacity Attributes, and if this Agreement is for an Eligible Renewable Energy Resource, the Green Attributes from the Facility. SELLER agrees to sell to SMUD the Facility's gross output in kilowatt-hours, net of Station Service Load and transformation and transmission losses to the Delivery Point (which shall be provided from Facility output). Whenever Facility output is not enough to supply Station Service Load and transformation and transmission losses to the Delivery Point SELLER shall purchase energy required to serve the Facility's on-site load from SMUD pursuant to SMUD's applicable retail rate schedule. In no event shall SELLER have the right to procure Energy, Contract Capacity, Capacity Attributes, or Green Attributes from sources other than the Facility for sale or delivery to SMUD under this Agreement or to substitute such Energy, Contract Capacity, Capacity Attributes, or Green Attributes. The Parties agree that the execution and performance of the Parties under this Agreement shall satisfy SMUD's obligations, if any, under the California Public Utilities Code Section 387.6 as may be amended or supplemented from time to time.

2.3 Delivery Term. The Delivery Term shall commence on the Commercial Operation Date under this Agreement and continue until

- ten (10) years
- fifteen (15) years
- twenty (20) years

following the first day of the calendar month after the Commercial Operation Date. As evidence of the Commercial Operation Date, the Parties shall execute and exchange the "Commercial Operation Date Confirmation Letter" attached hereto as Exhibit C. The Commercial Operation Date shall occur on the latest date on which the following conditions have been satisfied, with the exception that in no event shall the Commercial Operation Date be prior to January 1 of the year of the Scheduled Commercial Operation Date:

- (i) Facility is operating and is in compliance with applicable interconnection and system protection requirements; and

- (ii) The first day, retroactively determined at the conclusion of a successful 168-hour continuous operation test, that SELLER has demonstrated that the Facility is capable of delivering the Contract Capacity at the Delivery Point on a reliable and continuous basis as evidenced by such 168-hour continuous operation test, during which all Facility components operate and are fully available during the 168-hour period. SELLER shall provide test results certified by a California registered electrical engineer as evidence of satisfactory completion of the 168-hour continuous operation test; and,
- (iii) If this Agreement is for an Eligible Renewable Energy Resource, the Facility's status as an Eligible Renewable Energy Resource is demonstrated by SELLER's receipt of certification from the CEC and is registered with the appropriate entity for the tracking of Green Attributes as specified in Exhibit E; and
- (iv) If this Agreement is for a Combined Heat and Power Facility, the Facility's status as a qualifying Combined Heat and Power Facility is demonstrated by SELLER's receipt of certification from the CEC.

2.4 Payment for Products Purchased.

- 2.4.1 Pre-Commercial Energy. Prior to the Commercial Operation Date, SMUD will pay for Energy and Green Attributes produced by the Facility by multiplying the applicable hourly NP-15 EZ Gen Hub Price by the applicable hourly Energy quantity as metered at the Delivery Point.
- 2.4.2 Deliveries After Commercial Operation Date. Once the Facility has achieved Commercial Operation, SMUD shall pay SELLER for the products identified in Section 2.2 by multiplying the applicable hourly Contract Price as shown in Exhibit B, by the applicable hourly Energy quantity as metered at the Delivery Point.
- 2.4.3 Energy in Excess of Contract Capacity. SELLER shall not receive payment for any Energy and Green Attributes delivered in any hour to SMUD in excess of the maximum hourly energy delivery quantity, as specified in Exhibit A.

- 2.5 Billing. SMUD shall pay SELLER by check or Automated Clearing House transfer, on a monthly basis, within 30 days of the meter reading

date if the value of the purchased Energy in a month is at least fifty dollars (\$50); if less, SMUD may pay SELLER quarterly. SMUD shall have the right, but not the obligation, to read the Facility's meter on a daily basis.

- 2.6 Title and Risk of Loss. Title to and risk of loss related to the Energy produced from and capacity provided by the Facility shall transfer from SELLER to SMUD at the Delivery Point. SELLER warrants that it will deliver to SMUD all Energy, Contract Capacity, Capacity Attributes and Green Attributes from the Facility free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.
- 2.7 No Additional Incentives. SELLER warrants that it has not received any other incentives and it further agrees that during the Term of this Agreement, SELLER shall not seek additional compensation or other benefits from SMUD pursuant to the SMUD's net metering tariff, the California Solar Initiative, or other similar California ratepayer subsidized program relating to energy production with respect to the Facility.

3. CERTIFICATION AS AN ELIGIBLE RENEWABLE ENERGY RESOURCE; GREEN ATTRIBUTES

- 3.1 This section 3 does not apply if the Facility is not an Eligible Renewable Energy Resource.
- 3.2 California Energy Commission Certification. At its own expense, SELLER shall obtain RPS Certification of the Facility with the California Energy Commission. SELLER shall maintain such RPS Certification throughout the Delivery Term. Notwithstanding the foregoing, Seller shall not be in breach of this Agreement and SMUD shall not have the right to terminate the Agreement if Seller's failure to obtain or maintain RPS Certification is due to a change in California law occurring after the Commercial Operation Date, so long as Seller has used commercially reasonable efforts to obtain and maintain RPS Certification, and Seller's actions did not contribute to its inability to obtain or maintain RPS Certification.
- 3.3 Green Attribute Delivery Obligation. SELLER shall sell and deliver, and SMUD shall receive and purchase from SELLER, all rights, title, and interest in all Green Attributes associated with Energy produced by the Project and delivered to SMUD at the Delivery Point whether now existing or that hereafter come into existence during the Term, except as otherwise excluded herein, provided that SMUD shall not be obligated to purchase and pay SELLER for any Green Attributes associated with any

amount of Project Energy that is generated by any fuel which is not renewable and which cannot be counted for the purpose of the production of Green Attributes. SELLER agrees to sell and make all such Green Attributes available to SMUD to the fullest extent allowed by applicable law, in accordance with the terms of this Agreement. SELLER warrants that all Green Attributes provided under this Agreement to SMUD shall be free and clear of all liens, security interests, claims and encumbrances.

- 3.4 Conveyance of Green Attributes. SELLER shall provide all Green Attributes associated with the Facility which shall be documented and conveyed to SMUD in accordance with the procedure in Exhibit F.
- 3.5 Additional Evidence of Green Attribute Conveyance. At SMUD's request, SELLER shall provide additional reasonable evidence to SMUD or to third parties of SMUD's right, title, and interest in Green Attributes and information with respect to Green Attributes.
- 3.6 Modification of Green Attribute Conveyance Procedure. SMUD may unilaterally modify Exhibit F to reflect changes necessary in the Green Attribute conveyance procedure for SMUD to be able to receive and report the Green Attributes purchased under the Agreement as belonging to SMUD.
- 3.7 Reporting of Ownership of Green Attributes. SELLER shall not report to any person or entity that the Green Attributes sold and conveyed hereunder to SMUD belong to anyone other than SMUD, and SMUD may report under any such program that such Green Attributes purchased hereunder belong to it.
- 3.8 Greenhouse Gas (GHG) Emissions. SELLER shall comply with any laws or regulations regarding the need to offset emissions of GHGs such that SELLER delivers SMUD energy from the Facility with net zero GHG impact.

4. COMBINED HEAT AND POWER FACILITY ELIGIBILITY AND CERTIFICATION

- 4.1 This section 3 does not apply if the Facility is not Combined Heat and Power Facility.
- 4.2 SELLER shall operate and maintain the Facility such that it meets the following operating criteria:
 - 4.2.1 Energy Conversion Efficiency. The Facility must have a fuel utilization efficiency no less 60 percent. The fuel utilization efficiency is calculated by dividing annual useful energy output

(net electrical output plus useful heat output plus mechanical output) divided by total annual fuel input measured on the higher heating value of the fuel.

- 4.2.2 Thermal Energy Output. If the Facility is a topping cycle system (input energy is first used for electricity production and the reject heat from energy production is used for thermal energy needs) the useful thermal energy output shall not be greater than the maximum one-hour thermal load served by the Facility.
- 4.2.3 NO_x Emissions. The Facility oxides of nitrogen (NO_x) emissions rate shall not exceed 0.07 pounds per MWh, with a credit of 1MWh per 1,341 horsepower-hour of useful mechanical energy produced. If the fuel utilization efficiency of the Facility is greater than 60 percent, the emission rate calculation may be credited at a rate of 1MWh per 3.412 million Btu of useful thermal energy.
- 4.2.4 Greenhouse Gas Emissions. The Facility shall not have CO₂ emissions greater than 1,100 pounds of CO₂ equivalent emissions per MWh, calculated with a credit of 1MWh per 1,341 horsepower-hour of useful mechanical energy plus 1MWh for each 3.4121 MMBtu of useful thermal energy. CO₂ equivalent emission shall be calculated according to Title 17, California Code of Regulations, Section 95125. A bottoming cycle system (input energy is first used for useful thermal energy for a process and some of the thermal energy is then used for electricity production) that does not use supplementary firing is exempt from the greenhouse gas emissions criteria.
- 4.2.5 Thermal energy utilization. If the Facility is a topping cycle system, the annual amount of useful thermal energy shall be at least 15 percent of the total annual fuel input measured on the higher heating value of the fuel. If the Facility is a bottoming cycle system, the waste heat from processes (which is the thermal energy input to the electricity generator) must have little or no value for the processes at the host location of the Facility.
- 4.2.6 Date of Operation. The Facility (either new construction or as an eligible retrofit for the electric generation portion of the Facility) was not in operation prior to January 1, 2008.
- 4.3 Certification of Facility as a qualifying Combined Heat and Power Facility. SELLER shall provide certification to SMUD that the Facility meets the eligibility criteria herein in accordance with the certification requirements in Exhibit E.

- 4.4 Decertification. Should the Facility be decertified by the CEC as a qualifying CHP facility in accordance with CEC criteria, SMUD shall have the right to terminate the Agreement in accordance with Section 14.
- 4.5 Modification of CHP Certification Procedure. SMUD may unilaterally modify Exhibit E to reflect changes necessary in certification procedure for Combined Heat and Power Facilities.

5. CONVEYANCE OF CAPACITY ATTRIBUTES

- 5.1 Conveyance of Capacity Attributes. SELLER shall provide to SMUD any attestation SMUD requires in order for SMUD to show evidence that it has procured the Capacity Attributes associated with the Facility in accordance with the procedure in Exhibit G. At SMUD's request, SELLER shall execute such documents and instruments as may be reasonably required to affect recognition and transfer of the Capacity Attributes, if any, to SMUD.
- 5.2 Reporting of Ownership of Capacity Attributes. SELLER shall not report to any person or entity that the Capacity Attributes sold and conveyed hereunder to SMUD belong to anyone other than SMUD, and SMUD may report under any such program that such Capacity Attributes purchased hereunder belong to it.
- 5.3 Modification of Capacity Attribute Conveyance Procedure. SMUD may unilaterally modify Exhibit G to reflect changes necessary in the Capacity Attribute conveyance procedure for SMUD to be able to receive and report the Capacity Attributes purchased under the Agreement as belonging to SMUD.

6. CO₂ REPORTING

- 6.1 CO₂ Reporting. If the Facility combusts fuel in the production of Energy, SELLER shall provide SMUD with reporting on the Facility CO₂ production in accordance with Exhibit H.
- 6.2 Modification of CO₂ Reporting Procedure. SMUD may unilaterally modify Exhibit H to reflect changes necessary in the CO₂ reporting procedure for SMUD to be able to account for CO₂ production related to serving load.

7. COMMERCIAL OPERATION DATE AND REFUND OF RESERVATION DEPOSIT

- 7.1 Scheduled Commercial Operation Date. The Scheduled Commercial Operation Date of the Facility is shown in Exhibit A.
- 7.2 Revision of Scheduled Commercial Operation Date. SELLER may change the Scheduled Commercial Operation Date of the Facility by providing notice to SMUD that SELLER wishes to revise the Scheduled Commercial Operation Date subject to the following conditions:
- 7.2.1 SELLER may only submit one revision of the Scheduled Commercial Operation Date.
- 7.2.2 SELLER must provide notice of the revised Scheduled Commercial Operation Date at least 90 days prior to the initial Scheduled Commercial Operation Date.
- 7.2.3 The revised Scheduled Commercial Operation Date cannot be earlier than January 1 of the same calendar year as the initial Scheduled Commercial Operation Date.
- 7.2.4 The revised Scheduled Commercial Operation Date cannot not be later than 90 days after the initial Scheduled Commercial Operation Date.
- 7.3 Feed-In Tariff Reservation Deposit. The Parties acknowledge that SELLER has provided SMUD the Feed-In Tariff Reservation Deposit shown in Exhibit A.
- 7.3.1 If the Facility achieves Commercial Operation within ninety (90) days following the Scheduled Commercial Operation Date, as it may be revised, SMUD shall refund the entire Feed-In Tariff Reservation Deposit.
- 7.3.2 If the Facility has not achieved Commercial Operation within ninety (90) days following the Scheduled Commercial Operation Date, as it may be revised, SELLER shall forfeit the entire Feed-In Tariff Reservation Deposit and SMUD shall terminate the Agreement in accordance with the terms of Section 14.
- 7.3.3 If the Agreement otherwise terminates under its own terms, and the Facility has not achieved Commercial Operation, SELLER shall forfeit the entire Feed-In Tariff Reservation Deposit.
- 7.3.4 Should SELLER terminate the Agreement prior to achieving Commercial Operation, SMUD shall refund a portion of the Feed-In Tariff Reservation Deposit by multiplying the Feed-In Tariff Reservation Deposit by the following refund factor:

$$1 - \left(\frac{\text{Date of Notice of Termination} - \text{Effective Date}}{\text{Initial Scheduled Commercial Operation Date} - \text{Effective Date}} \right)$$

Where:

The term, “Initial Scheduled Commercial Operation Date - Effective Date” is the number of days from and including the Effective Date to the Initial Scheduled Commercial Operation Date.

The term, “Date of Notice of Termination - Effective Date” is the number of days from and including the Effective Date to the date the Termination Notice is received by SMUD.

The refund factor is not greater than 1 and not less than 0.

8. REPRESENTATION AND WARRANTIES; COVENANTS

8.1 Representations and Warranties. On the Effective Date, each Party represents and warrants to the other Party that:

8.1.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

8.1.2 The execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

8.1.3 This Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;

8.1.4 It is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;

8.1.5 There is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement; and

8.1.6 It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this

Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement.

8.2 General Covenants. Each Party covenants that throughout the Term of this Agreement:

8.2.1 It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

8.2.2 It shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

8.2.3 It shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it.

9. GENERAL CONDITIONS

9.1 Facility Care and Interconnection. SELLER shall execute an Interconnection Agreement with SMUD and shall pay and be responsible for designing, installing, operating, and maintaining the Facility in accordance with all applicable laws and regulations and shall comply with all applicable SMUD, WECC, FERC, and NERC provisions, including applicable interconnection and metering requirements. SELLER shall also comply with any modifications, amendments or additions to the applicable tariff and protocols. During the Delivery Term, SELLER shall arrange and pay independently for any and all necessary costs under any Interconnection Agreement with SMUD. To make deliveries to SMUD, SELLER must maintain an Interconnection Agreement with SMUD in full force and effect.

9.2 Standard of Care. SELLER shall: (a) operate and maintain the Facility in a safe manner in accordance with its existing applicable interconnection agreements, manufacturer's guidelines, warranty requirements, Good Utility Practice, industry norms (including standards of the National Electrical Code(NEC), Institute of Electrical and Electronic Engineers, American National Standards, and the Underwriters Laboratories (UL)), and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code, as such laws and code norms may be amended from time to time; (b) obtain any governmental authorizations and permits required for the construction

and operation thereof. SELLER shall make any necessary and commercially reasonable repairs with the intent of optimizing the availability of electricity to SMUD. SELLER shall reimburse SMUD for any and all losses, damages, claims, penalties, or liability SMUD incurs as a result of SELLER's failure to obtain or maintain any governmental authorizations and permits required for construction and operation of the Facility throughout the Term of this Agreement.

9.3 Access Rights. SMUD, its authorized agents, employees and inspectors shall have the right to inspect the Facility on reasonable advance notice during normal business hours and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to SMUD by law, or its tariff schedules. SMUD shall make reasonable efforts to coordinate its emergency activities with the safety and security departments, if any, of the Facility operator. SELLER shall keep SMUD advised of current procedures for communicating with the Facility operator's safety and security departments.

9.4 Protection of Property. Each Party shall be responsible for protecting its own facilities from possible damage resulting from electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the other Party's facilities and such other Party shall not be liable for any such damages so caused.

9.5 Insurance. Seller shall comply with the insurance requirements of the attached Exhibit I.

9.6 SMUD Performance Excuse; SELLER Curtailment.

9.6.1 SMUD Performance Excuse. SMUD shall not be obligated to accept or pay for Energy produced by or Capacity provided from the Facility during a Force Majeure that affects SMUD's ability to accept Energy from the Facility.

9.6.2 SELLER Curtailment. SMUD may require SELLER to interrupt or reduce deliveries of Energy: (a) when necessary to construct, install, maintain, repair, replace, remove, or investigate any of its equipment or part of SMUD's transmission system or distribution system or facilities; or (b) if SMUD determines that curtailment, interruption, or reduction is necessary because of a system emergency. For curtailments under this section 9.6.2 that exceed 60 hours of Facility production time in any Contract Year, SMUD will compensate SELLER for the Energy that SELLER would have been able to produce but for SMUD's event of curtailment, as calculated by SMUD in a commercially reasonable manner; provided, however, that at the end of the Delivery Term SELLER shall deliver to SMUD, at no additional cost, the cumulative

amount of Energy and all associated Green Attributes from the Facility not delivered by SELLER but for which SMUD compensated SELLER under this section 9.6.2 during the Delivery Term.

9.7 Notices of Outages. Whenever possible, SMUD shall give SELLER reasonable notice of the possibility that interruption or reduction of deliveries may be required.

9.8 No Additional Loads. In the event that Facility is an Eligible Renewable Energy Resource, SELLER shall not connect any loads not associated with Station Service Loads at the location of the Facility in a manner that would reduce the Energy provided from the Facility to SMUD hereunder. SELLER shall obtain separate retail electric service under existing SMUD tariffs for the service of such additional loads.

10. FORCE MAJEURE

10.1 Effect of Force Majeure. SMUD or SELLER, as the case may be, shall be excused from performance under this Agreement to the extent, but only to the extent, that performance hereunder is prevented by an act or event of Force Majeure. SMUD or Seller, as the case may be, shall exercise due diligence to overcome or mitigate the effects of such an act or event of Force Majeure; *provided, however,* that nothing in this Agreement shall be deemed to obligate the Party affected by an act or event of Force Majeure (a) to forestall or settle any strike, lock-out or other labor dispute against its will; or (b) for Force Majeure affecting Seller only, to purchase electric power to cure the event of Force Majeure.

10.2 Notice of Force Majeure. In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party suffering the Force Majeure shall, as soon as practicable under the circumstances, notify the other Party in writing of the nature, cause, date of commencement thereof and the anticipated extent of any delay or interruption in performance.

10.3 Termination Due to Force Majeure Event. If a Party is prevented from performing its material obligations under this Agreement for a period of twelve (12) consecutive months or longer, the unaffected Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) Days written notice at any time during the Force Majeure event.

11. INDEMNITY

11.1 Indemnity by SELLER. SELLER shall defend, release, indemnify and hold harmless SMUD, its directors, officers, employees, agents, and representatives against and from any and all losses, claims, demands, liabilities and expenses, actions or suits, including reasonable costs and attorney's fees, resulting from, or arising out of or in any way connected with claims by third parties associated with (A) (i) the Energy delivered at the Delivery Point; (ii) SELLER's operation and/or maintenance of the Facility; or (iii) SELLER's actions or inactions with respect to this Agreement, and (B) any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction of property belonging to SMUD, SELLER, or others, excepting only such loss, claim, action or suit as may be caused solely by the willful misconduct or gross negligence of SMUD, its agents, employees, directors or officers.

11.2 Indemnity by SMUD. SMUD shall defend, release, indemnify and hold harmless SELLER, its directors, officers, employees, agents, and representatives against and from any and all losses, claims, demands, liabilities and expenses, actions or suits, including reasonable costs and attorney's fees resulting from, or arising out of or in any way connected with claims by third parties associated with acts of SMUD, its directors, officers, employees, agents, and representatives, relating to: (A) the Energy delivered by SELLER under this Agreement after the Delivery Point, and (B) any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction of property belonging to SMUD, SELLER, or others, excepting only such loss, claim, action or suit as may be caused solely by the willful misconduct or gross negligence of SELLER, its agents, employees, directors or officers.

12. LIMITATION OF DAMAGES

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 11 (INDEMNITY), 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.

13. NOTICES

Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). Whenever this Agreement requires or permits delivery of a “notice” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified below. A notice sent by facsimile transmission or email will be recognized and shall be deemed received on the Business Day on which such notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior oral communication, in which case any such notice shall be deemed received on the day sent. A Party may change its addresses by providing notice of same in accordance with this provision. All written notices shall be directed as shown in Exhibit J. Either Party may request a change to Exhibit J as necessary to keep the Exhibit J information current.

14. TERM, TERMINATION EVENT AND TERMINATION

14.1 Term. The term of this Agreement (the “Term”) shall commence upon the execution by the duly authorized representatives of each of SMUD and SELLER, and shall remain in effect until the conclusion of the Delivery Term, or if applicable, until SELLER has fulfilled its obligation to deliver true-up Energy and Green Attributes pursuant to Section 9.6.2, unless terminated sooner pursuant to the terms of this Agreement. All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

14.2 Termination Event. SMUD shall have the right but not the obligation to terminate the Agreement upon the occurrence of any of the following, each of which is a “Termination Event”: (a) The Facility has not achieved Commercial Operation within ninety (90) days of the Scheduled Commercial Operation Date, as it may be revised hereunder; (b) After the Commercial Operation Date SELLER has not sold or delivered energy from the Facility to SMUD for a period of twelve (12) consecutive months; (c) If the Facility is an Eligible Renewable Energy Resource, the Facility does not maintain RPS Certification as required by Section 3.2; (d) if Facility is a Combined Heat and Power Facility and SELLER fails to maintain certification of the Facility as qualifying with the CEC in accordance with the requirements of Section 4 or if the CEC decertifies the Facility as qualifying and SELLER is unable to recertify Facility within ninety (90) day of decertification; or (e) if applicable law prevents SMUD from fulfilling its obligations under this Agreement.

14.3 Termination.

14.3.1 Declaration of a Termination Event. If a Termination Event has occurred and is continuing, SMUD shall have the right to: (a) send notice, designating a day, no earlier than five days after such notice is deemed to be received (as provided in Section 13) and no later than 20 days after such notice is deemed to be received (as provided in Section 13), as an early termination date of this Agreement (“Early Termination Date”) unless SELLER has timely communicated with SMUD and the Parties have agreed to resolve the circumstances giving rise to the Termination Event; (b) accelerate all amounts owing between the Parties; and (c) terminate this Agreement and end the Delivery Term effective as of the Early Termination Date.

14.3.2 Release of Liability for Termination Event. Upon termination of this Agreement pursuant to this section neither Party shall be under any further obligation or subject to liability hereunder, except with respect to the indemnity provision in Section 11 hereof, which shall remain in effect for a period of 12 months following the Early Termination Date.

15. SCHEDULING AND OUTAGES

15.1 Scheduling Procedure. SMUD may require SELLER to provide SMUD with Facility Energy forecasts on a period basis as necessary for SMUD to account for expected Facility generation in our daily power scheduling process. The requirements are detailed in Exhibit D.

15.2 Planned Outages. For the purposes of this Agreement a maintenance outage shall constitute a Planned Outage. Planned Outages may only be taken upon thirty (30) days written notice to SMUD. SELLER may not schedule or take any Planned Outages from 6:00 a.m. through 10:00 p.m. Pacific Prevailing Time during the months of May through October. SELLER shall provide Planned Outage notifications in accordance with the Scheduling and Outage Procedure detailed in Exhibit D.

15.3 Forced Outages. SELLER shall notify SMUD of any Forced Outage of the Facility that will reduce the Facility Capacity for more than 24 hours duration or will reduce the Facility Capacity during any super peak period during the months of May through October. SELLER shall provide Forced Outage notifications in accordance with the Scheduling and Outage Procedure detailed in Exhibit D.

15.4 Modification of Scheduling and Outage Notification Procedure. SMUD may unilaterally modify Exhibit D to reflect changes necessary in the scheduling and outage notification procedure.

16. RELEASE OF DATA

SELLER authorizes SMUD to release to any regulatory authority having jurisdiction information regarding the Facility, including but not limited to the SELLER's name and location, operational characteristics, the Term of Agreement, the Facility resource type, the Scheduled Commercial Operation Date, the actual Commercial Operation Date, the Contract Capacity, and Energy production information. SELLER acknowledges that this information may be made publicly available.

17. ASSIGNMENT

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however;

17.1 Upon written request of SELLER, SMUD will execute a Consent and Agreement between SELLER and SELLER's lender in the form attached as Exhibit K.

17.2 Notwithstanding the foregoing, no consent shall be required for:

17.2.1 Any assignment or transfer of this Agreement by SELLER to an affiliate of SELLER, provided that such affiliate's creditworthiness is equal to or better than that of SELLER; or

17.2.2 Any assignment or transfer of this Agreement by SELLER or SMUD to a person succeeding to all or substantially all of the assets of such Party, provided that such person's creditworthiness is equal to or greater than that of such Party, as reasonably determined by the non-assigning or non-transferring Party.

18. APPLICABLE LAW

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

19. SEVERABILITY

If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make

unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

20. COUNTERPARTS

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or PDF transmission will be deemed as effective as delivery of an originally executed counterpart. Each Party delivering an executed counterpart of this Agreement by facsimile or PDF transmission will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

21. GENERAL

No amendment to or modification of this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below.

**SACRAMENTO MUNICIPAL
UTILITY DISTRICT**

SELLER

By: _____

By: _____

Name: John DiStasio

Name: _____

Title: General Manager and Chief
Executive Officer

Title: _____

Date: _____

Date: _____

SAMPLE

EXHIBITS

Exhibit A - Description and Location of Facility

Exhibit B - Contract Price

Exhibit C - Commercial Operation Date Confirmation Letter

Exhibit D - Scheduling and Outage Notification Procedure

Exhibit E – CHP Facility Certification Requirements

Exhibit F - Green Attribute Reporting and Conveyance Procedures

Exhibit G - Capacity Attribute Reporting and Conveyance Procedures

Exhibit H - CO² Reporting Requirements

Exhibit I - Insurance Requirements

Exhibit J – Notices

Exhibit K – Form of Lender Consent and Agreement

SAMPLE

Exhibit A

DESCRIPTION AND LOCATION OF FACILITY

A.1 SELLER's Feed-In Tariff Record Number: _____

A.2 The Facility is described as _____

A.3 The Facility is located at _____
in Sacramento County, California.

A.4 The Facility's primary fuel is _____

A.5 The Contract Capacity is _____ kilowatts ("kW" - the AC rating at unity power factor, ambient conditions of 60 Fahrenheit at sea level).

A.6 The maximum hourly energy delivery quantity is _____ kWh (Contract Capacity x 1 hour).

A.7 The Expected Annual Energy Output of the Facility is _____ kWh

A.8 The initial Scheduled Commercial Operation Date is _____.

The revised Scheduled Commercial Operation Date is ____ (initially blank) ____.

A.9 The Feed-In Tariff Reservation Deposit is \$_____.

A.10 The Facility is connected to the SMUD's Distribution System at _____ kV.

A.11 SMUD shall revise this Exhibit A as appropriate, give written notice to Facility Owner regarding the revision, and issue a new Exhibit A which shall then become part of the Agreement, in the event of changes to the information contained within Exhibit A.

Exhibit B

CONTRACT PRICE

Renewable FIT Rates per kWh

Time of Use Period	20__ Start Year; (\$20__) __ Year Contract Term
Winter Off-Peak	\$
Winter On-Peak	\$
Winter Super-Peak	\$
Spring off-Peak	\$
Spring On-Peak	\$
Spring Super-Peak	\$
Summer Off-Peak	\$
Summer On-Peak	\$
Summer Super Peak	\$

Time of Delivery Periods are as follows:

Time of Delivery Periods

Period	Months	Super Peak	On Peak	Off Peak
Summer	June – Sept	2-8 PM Mon – Sat except NERC Holidays	6 AM – 2 PM & 8 PM – 10 PM Mon-Sat except NERC Holidays	All other hours
Fall & Winter	Oct – Feb			
Spring	Mar – May			

NERC Holidays are treated as Off Peak delivery days for Contract Pricing purposes. NERC (Additional Off-Peak) Holidays include: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September, and Thanksgiving Day is the 4th Thursday in November. New Year’s Day, Independence Day, and Christmas Day, by definition, are predetermined dates each year. However, in the event they occur on a Sunday, the “NERC Additional Off-Peak Holiday” is celebrated on the Monday immediately following that Sunday. However, if any of these days occur on a Saturday, the “NERC Additional Off-Peak Holiday” remains on that Saturday.

Exhibit C

COMMERCIAL OPERATION DATE CONFIRMATION LETTER

In accordance with the terms of that certain Feed-In Tariff Standard Form Power Purchase Agreement dated _____ (“Agreement”) by and between the Sacramento Municipal Utility District (“SMUD”) and _____ (“SELLER”), this letter serves to document the parties further agreement that (i) the conditions precedent to the occurrence of the Commercial Date have been satisfied, and (ii) SMUD has received the energy, as specified in the Agreement, as of this ____ day of _____, _____.

This letter shall confirm the Commercial Operation Date, as defined in the Agreement, as the date referenced in the preceding sentence.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below:

By SELLER

By: Sacramento Municipal Utility District

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

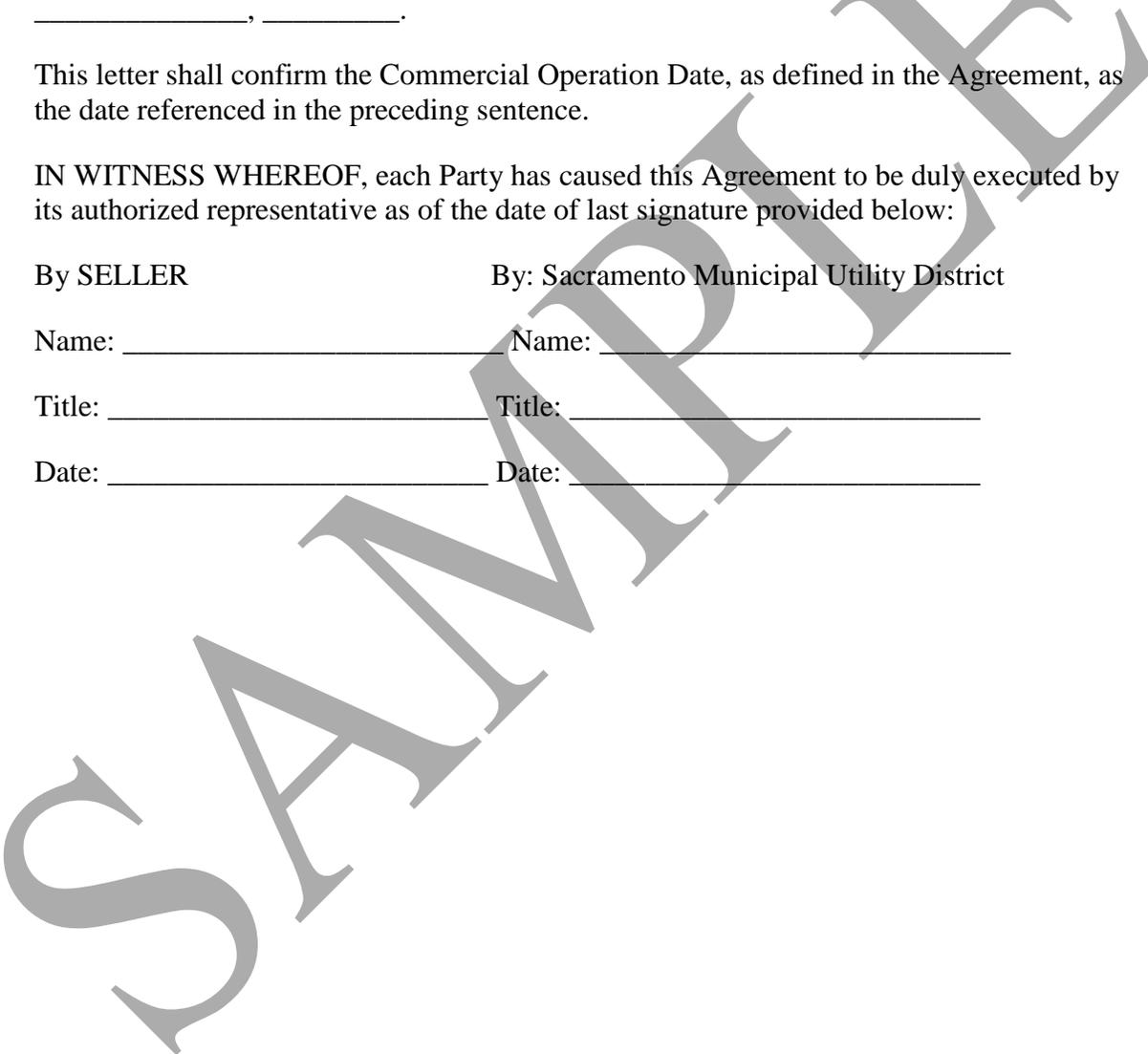


Exhibit D**SCHEDULING AND OUTAGE NOTIFICATION PROCEDURE****D.1 Additional Definitions for the Scheduling and Outage Procedure:**

None.

D.2 No Scheduling Requirements. SMUD will make its own forecasts of Facility Energy production for use in its power scheduling process.

D.3 Planned Outage Notifications. SELLER shall notify SMUD at least 72 hours in advance of Planned Outages that result in a reduction in the effective output of the Facility during period over which the Planned Outage is scheduled. Notification should be by email to the addresses shown in the Outages section of the Notices Exhibit J.

D.4 Notification of PV Array Cleaning. If SELLER has scheduled cleaning for PV arrays, SELLER shall notify SMUD at least 72 hours in advance of scheduled cleaning, and should include details of the cleaning plan. SELLER shall also follow-up with SMUD after cleaning of the Facility in order to verify the actual cleaning dates and times. Notification should be made by email to the addresses shown in the Outages section of the Notices Exhibit J.

D.5 Forced Outage Notifications. Within 24 hours of a Forced Outage of the Facility that impacts the ability of the Facility to produce Energy, SELLER shall notify SMUD of the Forced Outage, including the Capacity of the Facility that is impacted, and the expected duration of the Forced Outage. Within 24 hours of the return of the Facility to service following the Forced Outage SELLER shall notify SMUD of the return to service details. Notification shall be made by email to the addresses shown in the Outages section of the Notices Exhibit J.

D.6 Changes in Scheduling and Outage Procedure. SMUD shall revise this Exhibit D as appropriate, give written notice SELLER regarding the revision, and issue a new Exhibit D which shall then become part of the Agreement to reflect changes in the scheduling and outage notification procedure.

Exhibit E**CHP FACILITY CERTIFICATION REQUIREMENTS**

E.1 Additional Definitions for the CHP Certification Requirements:

None.

E.2. Initial Certification. SELLER shall make application to and receive certification from the CEC using form CEC-2843, Application for Certification as a Qualifying Combined Heat and Power System

E.3. Annual Performance Reporting. SELLER shall insure that it complies with any eligibility requirements that may be published by the CEC.

E.4. Periodic Reporting of Facility operation in compliance with CHP Facility criteria. During the Term of the Agreement, within ninety (90) days after the end of each Contract Year SELLER shall provide to SMUD an engineering analysis of the Facility operation for that Contract Year that demonstrates that the Facility operated within the criteria in Section 4 of the Agreement.

E.5. Changes in CHP Certification Requirements. SMUD shall revise this Exhibit E as appropriate, give written notice SELLER regarding the revision, and issue a new Exhibit E which shall then become part of the Agreement in the event that changes in CHP certification requirements necessitate a change in this Exhibit E.

Exhibit F**GREEN ATTRIBUTE REPORTING AND CONVEYANCE PROCEDURES****F.1 Additional Definitions for the Conveyance of Green Attributes:**

“Certificate Transfers” means the process, as described in the WREGIS Operating Rules whereby a WREGIS account holder may request that WREGIS Certificates from a specific generating unit be directly deposited into another WREGIS account.

“WREGIS” means the Western Renewable Energy Generation Information System, sponsored by the WECC and utilized by the CEC for tracking the generation and transfer of RECs. The URL for WREGIS is www.WREGIS.org.

“WREGIS Certificates” means a certificate created within the WREGIS system that represents all Renewable and Environmental Attributes from one MWh of electricity generation from an Eligible Renewable Energy Resource that is registered with WREGIS.

“WREGIS Operating Rules” means the document published by WREGIS that govern the operation of the WREGIS system for registering, tracking, conveying, etc. Renewable Energy Credits produced from Eligible Renewable Energy Resources that are registered with WREGIS.

F.2 Renewable Energy Credits. Green Attributes shall be conveyed by SELLER to SMUD through Renewable Energy Credits (“RECs”) which shall be registered tracked and conveyed to SMUD using WREGIS.

F.3 WREGIS Registration. Prior to the Commercial Operation Date, SMUD will register the Facility in SMUD’s WREGIS account on behalf of SELLER. SMUD shall charge back to SELLER any costs of registering and maintaining the registration of the Facility with WREGIS.

F.4 SMUD’s WREGIS Account. SMUD shall, at its sole expense, establish and maintain SMUD’s WREGIS account sufficient to accommodate the WREGIS Certificates produced by the output of the Facility. SMUD shall be responsible for all expenses associated with (A) establishing and maintaining SMUD’s WREGIS Account, and (B) subsequently transferring or retiring WREGIS Certificates.

F.5 Qualified Reporting Entity. SMUD shall be the Qualified Reporting Entity for Facility, and shall be responsible for providing metered Facility output data to WREGIS.

F.6 Reporting of Green Attributes. In lieu of SELLER transferring the WREGIS Certificates using Certificate Transfers from SELLER’s WREGIS account to the WREGIS account of SMUD, SMUD shall report the Facility as being directly in

its WREGIS account, which will preclude SELLER from reporting the Facility in its own WREGIS account.

F.6.1 By avoiding the use of Certificate Transfers, there will be no transaction costs to SELLER or SMUD for the Certificate Transfers that would otherwise be used.

F.6.2 WREGIS Certificates for the Facility will be created on a calendar month basis in accordance with the certification procedure established by the WREGIS Operating Rules in an amount equal to the Energy generated by the Project and delivered to SMUD in the same calendar month.

F.6.3 WREGIS Certificates will only be created for whole MWh amounts of energy generated. Any fractional MWh amounts (*i.e.*, kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate and all such accumulated MWh of Green Attributes will then be available to SMUD.

F.6.4 Should a WREGIS Certificate Modification be required to reflect any errors or omissions regarding the Green Attributes from the Facility SMUD will manage the submission of the WREGIS Certificate Modification.

F.6.5 Due to the expected delay in the creation of WREGIS Certificates relative to the timing of invoice payments under Section 2, SMUD shall make an invoice payment for a given month in accordance with Section 2 before the WREGIS Certificates for such month may be created in SMUD's WREGIS account. Notwithstanding this delay, SMUD shall have all right and title to all such WREGIS Certificates upon payment to SELLER in accordance with Section 2.

F.7 Changes in Green Attributes Reporting and Conveyance Procedure. SMUD shall revise this Exhibit F as appropriate, give written notice SELLER regarding the revision, and issue a new Exhibit F which shall then become part of the Agreement in the event that:

F.7.1 WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Exhibit F after the Effective Date; or,

F.7.2 WREGIS is replaced as the primary method that SMUD uses for conveyance of Green Attributes, or additional methods to convey all Green Attributes are required.

Exhibit G**CAPACITY ATTRIBUTE REPORTING AND CONVEYANCE PROCEDURES**

G.1 Additional Definitions for the Conveyance of Capacity Attributes:

None

G.2 Reporting of Capacity Attributes. SMUD will report the Capacity Attributes acquired herein in any regulatory filing that SMUD is required to make in order to declare the Capacity of the Facility (or any portion thereof) as meeting SMUD's Capacity planning requirements (also known as Resource Adequacy).

G.3 Changes in Capacity Attributes Conveyance Procedure. SMUD shall revise this Exhibit G as appropriate, give written notice SELLER regarding the revision, and issue a new Exhibit G which shall then become part of the Agreement in the event that the method for reporting and conveying Capacity Attributes changes from the process described herein.

SAMPLE

Exhibit H**CO² REPORTING REQUIREMENTS****H.1 Additional Definitions for CO² Reporting Requirements:**

“The Climate Registry” means the nonprofit collaboration among North American states, provinces, territories and Native Sovereign Nations that sets consistent and transparent standards to calculate, verify and publicly report greenhouse gas emissions into a single registry.

H.2 CO² Reporting. If the Facility combusts fuel in the production of Energy, SELLER shall provide SMUD with the annual CO² production from the Facility, determined in accordance with the protocols of The Climate Registry.**H.3 Changes in CO² Reporting.** SMUD shall revise this Exhibit H as appropriate, give written notice SELLER regarding the revision, and issue a new Exhibit H which shall then become part of the Agreement in the event SMUD requires a change in the form of CO² emissions that it reports for its own account.

Exhibit I

INSURANCE REQUIREMENTS

TYPE OF COVERAGE		MINIMUM COVERAGE LIMITS	
<input checked="" type="checkbox"/>	Commercial General Liability (CGL)	Occurrence	Aggregate
	ISO form CG 0001 10 93, or other acceptable to District. <input checked="" type="checkbox"/> Additional Insured Endorsement <input type="checkbox"/> Delete Railroad Exclusion <input type="checkbox"/> Delete Exclusion J "Damage to Property"	Bodily Inj.(BI), Prop Damage (PD) Or Combined Single Limit (CSL)	\$5M \$5M
<input checked="" type="checkbox"/>	Business Automobile Liability (BAL)	Individual	Accident
	Covering claims arising from ownership, operation, loading, unloading owned, hired, leased, non-owned, and /or borrowed private passenger and commercial vehicles. <input checked="" type="checkbox"/> Additional Insured (Note coverage on certificate)	Bodily Inj (BI), Prop Damage (PD) Or Combined Single Limit (CSL)	\$ 1 M \$ 1 M
<input type="checkbox"/>	Environmental Impairment Liability (EIL) / Contractor's Pollution Liability (CPL)	Occurrence	Aggregate
	Covering claims arising from handling, abatement, and transport of pollutants including asbestos and lead paint <input type="checkbox"/> Additional Insured (Coverage noted on certificate)	Bodily Injury, Property Damage	N/A N/A
<input type="checkbox"/>	Aircraft Liability (Air)	Per Seat	
	Covering claims from passengers and other third parties <input type="checkbox"/> Additional Insured (Cover noted on certificate)	Bodily Injury, Property Damage Or Combined Single Limit (CSL)	N/A N/A
	Profess'l Errors & Omissions Liability (E&O)	Each Claim	Aggregate
	Covering claims for financial, BI and PD losses.	Bodily Injury, Property Damage Or Combined Single Limit (CSL)	NA NA
<input checked="" type="checkbox"/>	CA Statutory Workers' Compensation (WC)	Employee	Aggregate
	Including Employer's Liability (EL) and United States Longshoremen & Harborworkers, where applicable	Bodily Injury and Illness Or Combined Single Limit (CSL)	\$ 1 M \$ 1 M
<input type="checkbox"/>	Crime or Fidelity Coverage	Each Claim	Aggregate
	Including fraud, theft, dishonesty and disappearance	Financial Loss	N/A N/A
<input type="checkbox"/>	Fiduciary	Each Claim	Aggregate
	For funds managed or held in trust	Financial Loss	N/A N/A
<input checked="" type="checkbox"/>	Other	Each Claim	Aggregate
	<input checked="" type="checkbox"/> Property <input type="checkbox"/> Cargo/Transit <input type="checkbox"/> Add'l Insured <input checked="" type="checkbox"/> Bus Interruption <input type="checkbox"/> Garage <input type="checkbox"/> Loss Payee	Replacement Cost of Plant Basis for Property Damage; One Year Revenue for Business Interruption	N/A N/A

Insurance required above shall be primary as respects the District (SMUD), its directors, officers, representatives, agents and employees, respectively, (hereinafter referred to as "The Parties") and any other insurance effected or procured by SMUD shall be excess of and shall not contribute with the required insurance. These policies, with the exception of WC, EL and E&O coverages, shall name the Parties as additional insureds as respects work performed pursuant to or incidental to this contract (including coverage for products and completed operations hazards) except for active negligence of District in public works construction contracts (Cal Ins Code §11580.04). ISO forms CG 2010 (ongoing operations) and CG 2037 (completed operations), or other forms acceptable to District, shall be used. CGL severability of interests (cross liability), and CGL and WC waiver of subrogation clauses shall be included. Pursuant to the terms of this contract, insurance effected or procured by Contractor shall not reduce or limit Contractor's obligation to indemnify and defend SMUD for claims made or suits brought which result from, or in connection with, the performance of this contract. These coverages, when written on an occurrence form, shall be maintained during the entire term of the contract. Coverages written on a claims-made form, and E&O, EIL, and additional insured endorsements providing products/completed operations coverage shall be maintained during the entire term of the contract and further until one year following completion and acceptance of all work under the contract. Insurers shall be rated A- / VII or better by A.M. Best, or shall be otherwise acceptable to SMUD. Insurers need not be Admitted by the State of California.

Before commencing work on this contract, Contractor's broker or agent shall provide copies of policies and endorsements upon request, and provide a certificate of insurance verifying that at least the minimum insurance coverages required above are in effect. Certificate must disclose any self-insured retention of \$250,000 or more. Certificate must specify whether the liability coverages are written on an occurrence form or a claims-made form, and that the coverages will not be canceled or changed without thirty (30) days advance written notice to the District

SACRAMENTO MUNICIPAL UTILITY DISTRICT
P. O. BOX 15830, SACRAMENTO, CA 95852-1830
ATTENTION: Power Contracts Department

SAMPLE

Exhibit J

NOTICES

For Contract Administration:

To SMUD:

Sacramento Municipal Utility District
Power Contracts Administration

6301 S Street
Sacramento, CA 95817-1899

Or,

P.O. Box 15830
Sacramento, CA 95852-1830

Phone: (916) 732-6244

Email: PowerContractsAdmin@smud.org

To SELLER:

For Billing and Settlements:

To SMUD:

Energy Settlements

Phone: (916) 732-6312

Email: EnergySettlements@smud.org

To SELLER:

For Scheduling:

To SMUD:

Day Ahead Trading Desk

Phone: (916) 732-5669

Email: dayaheadtrading@smud.org

To SELLER:

For Planned Outages:

To SMUD:

Day Ahead Trading Desk

Phone: (916) 732-5669

Email: dayaheadtrading@smud.org, JHender@smud.org, and DLeahy@smud.org

To SELLER:

For Forced Outages:

To SMUD:

Real Time Scheduling Desks

Phone: (916) 732-5177

Email: rtt1@smud.org, rtt2@smud.org, dayaheadtrading@smud.org,
EGuerre@smud.org, JCalla1@smud.org, and CGonzal@smud.org

To SELLER:

Exhibit K**FORM OF LENDER CONSENT AND AGREEMENT**

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 20__, is entered into by and among the Sacramento Municipal Utility District, a California Municipal Utility District formed and existing under the laws of the State of California (together with its permitted successors and assigns, “SMUD”), _____, in its capacity as [**Administrative Agent**] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, “Administrative Agent”), and _____, a _____ formed and existing under the laws of the State of _____ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

RECITALS

A. Borrower intends to develop, construct, install, test, own, operate and use an approximately ____ MW electric generating facility located in _____ County in the State of California, known as the _____ Project (the “Project”).

B. In order to partially finance the development, construction, installation, testing, operation and use of the Project, Borrower has entered into that certain [**Financing Agreement,**] dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

C. SMUD and Borrower have entered into that certain Power Purchase Agreement, dated as of _____ (attached hereto and incorporated herein by reference, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Power Purchase Agreement”).

D. SMUD and Borrower have entered into that certain Interconnection Agreement, dated as of _____ (attached hereto and incorporated herein by reference, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof,

the “Interconnection Agreement”).

E. Pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the Power Purchase Agreement and Interconnection Agreement to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

F. It is a requirement under the Financing Agreement that SMUD and the other parties hereto execute this Consent.

AGREEMENT

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

1. CONSENT TO ASSIGNMENT. SMUD acknowledges the assignment referred to in Recital E above, consents to an assignment of the Power Purchase Agreement and Interconnection Agreement pursuant thereto, and agrees with Administrative Agent as follows:

(a) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the Power Purchase Agreement or Interconnection Agreement, as the case may be, subject to applicable notice and cure periods provided in the Power Purchase Agreement and Interconnection Agreement. Upon receipt of notice from Administrative Agent, SMUD agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the Power Purchase Agreement or Interconnection Agreement, as the case may be, and this Consent. Upon receipt of Administrative Agent's written instructions and to the extent allowed by law, SMUD agrees to make directly to such account as Administrative Agent may direct SMUD in writing from time to time, all payments to be made by SMUD to Borrower under the Power Purchase Agreement or Interconnection Agreement, as the case may be, from and after SMUD's receipt of such instructions, and Borrower consents to any such action. SMUD shall have no liability to Borrower under the Power Purchase Agreement,

Interconnection Agreement, or this Consent for directing such payments to Administrative Agent in accordance with this subsection (a).

(b) SMUD will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the Power Purchase Agreement or Interconnection Agreement, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the Power Purchase Agreement or Interconnection Agreement and in accordance with subparagraph 1(c) hereof, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the Power Purchase Agreement or Interconnection Agreement, except as provided in the Power Purchase Agreement or Interconnection Agreement, or (iii) amend or modify the Power Purchase Agreement or Interconnection Agreement in any manner materially adverse to the interest of the Lenders in the Power Purchase Agreement and Interconnection Agreement as collateral security under the Security Agreement.

(c) SMUD agrees to deliver duplicates or copies of all notices of default delivered by SMUD under or pursuant to the Power Purchase Agreement or Interconnection Agreement to Administrative Agent in accordance with the notice provisions of this Consent. SMUD shall deliver any such notices concurrently with delivery of the notice to Borrower under the Power Purchase Agreement or Interconnection Agreement. To the extent that a cure period is provided under the Power Purchase Agreement or Interconnection Agreement, Administrative Agent shall have the same period of time to cure the breach or default that Borrower is entitled to under the Power Purchase Agreement or Interconnection Agreement, except that if SMUD does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the Power Purchase Agreement or Interconnection Agreement, then as to Administrative Agent, the applicable cure period under the Power Purchase Agreement or Interconnection Agreement shall begin on the date on which the notice is given to Administrative Agent. If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designee(s) or assignee(s) declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designee(s) or assignee(s) will be allowed a reasonable period to complete such proceedings so long as Administrative Agent or its designee(s) continue to perform any monetary obligations under the Power Purchase Agreement or Interconnection Agreement, as the case may be. SMUD consents to the transfer of Borrower's interest under the Power Purchase Agreement and Interconnection Agreement to the Lenders or Administrative Agent or their designee(s) or assignee(s) or any of them or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, SMUD shall recognize the Lenders or Administrative Agent or their designee(s) or assignee(s) or any of them or other purchaser or grantee as the applicable party under the Power Purchase Agreement and Interconnection Agreement (provided that such Lenders or Administrative Agent or their designee(s) or assignee(s) or purchaser or grantee assume the obligations of Borrower under the Power Purchase Agreement and Interconnection Agreement, including, without limitation, satisfaction and compliance with all credit provisions of the Power Purchase Agreement and Interconnection

Agreement, if any, and provided further that such Lenders or Administrative Agent or their designee(s) or assignee(s) or purchaser or grantee has a creditworthiness equal to or better than Borrower, as reasonably determined by SMUD).

(d) In the event that either the Power Purchase Agreement or Interconnection Agreement, or both is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, and if, within forty-five (45) days after such rejection, the Administrative Agent shall so request, SMUD will execute and deliver to Administrative Agent a new power purchase agreement or interconnection agreement, as the case may be, which power purchase agreement or interconnection agreement shall be on the same terms and conditions as the original Power Purchase Agreement or Interconnection Agreement for the remaining term of the original Power Purchase Agreement or Interconnection Agreement before giving effect to such rejection, and which shall require Administrative Agent to cure any defaults then existing under the original Power Purchase Agreement or Interconnection Agreement. Notwithstanding the foregoing, any new renewable power purchase agreement or interconnection agreement will be subject to all regulatory approvals required by law. SMUD will use good faith efforts to promptly obtain any necessary regulatory approvals.

(e) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) elect to perform Borrower's obligations under the Power Purchase Agreement and Interconnection Agreement, succeed to Borrower's interest under the Power Purchase Agreement and Interconnection Agreement, or enter into a new power purchase agreement or interconnection agreement as provided in subparagraph 1(d) above, the recourse of SMUD against Administrative Agent, Lenders or their designee(s) and assignee(s) shall be limited to such parties' interests in the Project, and the credit support required under the Power Purchase Agreement and Interconnection Agreement, if any.

(f) In the event Administrative Agent, the Lenders or their designee(s) or assignee(s) succeed to Borrower's interest under the Power Purchase Agreement and Interconnection Agreement, Administrative Agent, the Lenders or their designee(s) or assignee(s) shall cure any then-existing payment and performance defaults under the Power Purchase Agreement or Interconnection Agreement, except any performance defaults of Borrower itself, which by their nature are not susceptible of being cured. Administrative Agent, the Lenders and their designee(s) or assignee(s) shall have the right to assign all or a pro rata interest in the Power Purchase Agreement and Interconnection Agreement to a person or entity to whom Borrower's interest in the Project is transferred, provided such transferee assumes the obligations of Borrower under the Power Purchase Agreement and Interconnection Agreement and has a creditworthiness equal to or better than Borrower, as reasonably determined by SMUD. Upon such assignment, Administrative Agent and the Lenders and their designee(s) or assignee(s) (including their agents and employees) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

2. REPRESENTATIONS AND WARRANTIES. SMUD hereby represents and warrants that as of the date of this Consent:

(a) It (i) is duly formed and validly existing under the laws of the State of California, and (ii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Power Purchase Agreement and Interconnection Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(b) the execution, delivery and performance of this Consent, the Power Purchase Agreement and the Interconnection Agreement have been duly authorized by all necessary action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(c) each of this Consent, the Power Purchase Agreement, and the Interconnection Agreement is in full force and effect;

(d) each of this Consent, the Power Purchase Agreement, and the Interconnection Agreement has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

(e) there is no litigation, arbitration, investigation or other proceeding pending for which SMUD has received service of process or, to SMUD's actual knowledge, threatened against SMUD relating solely to this Consent, the Power Purchase Agreement, or the Interconnection Agreement and the transactions contemplated hereby and thereby;

(f) the execution, delivery and performance by it of this Consent, the Power Purchase Agreement, and the Interconnection Agreement, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material requirements of law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(g) neither SMUD nor, to SMUD's actual knowledge, any other party to the Power Purchase Agreement or Interconnection Agreement, is in default of any of its obligations thereunder; and

(h) to SMUD's actual knowledge, (i) no Force Majeure Event exists under, and as defined in, the Power Purchase Agreement or Interconnection Agreement and

(ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SMUD or Borrower to terminate or suspend its obligations under the Power Purchase Agreement or the Interconnection Agreement.

Each of the representations and warranties set forth herein shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby.

3. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to SMUD:

[_____]

[_____]

[_____]

Telephone No.: [_____]

Telecopy No.: [_____]

Attn: [_____]

If to Administrative Agent:

[_____]

[_____]

[_____]

Telephone No.: [_____]

Telecopy No.: [_____]

Attn: [_____]

If to Borrower:

[_____]

[_____]

[_____]

Telephone No.: [_____]

Telecopy No.: [_____]

Attn: [_____]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above.

4. ASSIGNMENT, TERMINATION, AMENDMENT. This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). SMUD agrees (a) to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to SMUD with respect to its interest in the Power Purchase Agreement or Interconnection Agreement to assume, in writing in form and substance reasonably satisfactory to Administrative Agent, the obligations of SMUD hereunder. Any purported assignment or transfer of the Power Purchase Agreement or Interconnection Agreement not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, or variation of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto. No waiver of any provisions of this

Consent shall be effective unless in writing and signed by the party waiving any of its rights hereunder.

5. GOVERNING LAW. This Consent shall be governed by the laws of the State of California applicable to contracts made and to be performed in such State. THE STATE COURTS SITUATED IN THE STATE OF CALIFORNIA SHALL HAVE EXCLUSIVE JURISDICTION TO RESOLVE ANY DISPUTES WITH RESPECT TO THIS CONSENT AND AGREEMENT WITH SMUD, ASSIGNOR, AND LENDER IRREVOCABLY CONSENTING TO THE JURISDICTION THEREOF FOR ANY ACTIONS, SUITS, OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CONSENT AND AGREEMENT.

6. COUNTERPARTS. This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

7. SEVERABILITY. In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

8. ACKNOWLEDGMENTS BY BORROWER. Borrower, by its execution hereof, acknowledges and agrees that neither the execution of this Consent, the performance by SMUD of any of the obligations of SMUD hereunder, the exercise of any of the rights of SMUD hereunder, or the acceptance by SMUD of performance of the Power Purchase Agreement by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the Power Purchase Agreement or Interconnection Agreement, (2) constitute a consent by SMUD to, or impute knowledge to SMUD of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) except as expressly set forth in this Consent, constitute a waiver by SMUD of any of its rights under the Power Purchase Agreement or Interconnection Agreement. Borrower and Administrative Agent acknowledge hereby for the benefit of SMUD that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the Power Purchase Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

SAMPLE

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

By: _____

Name: _____

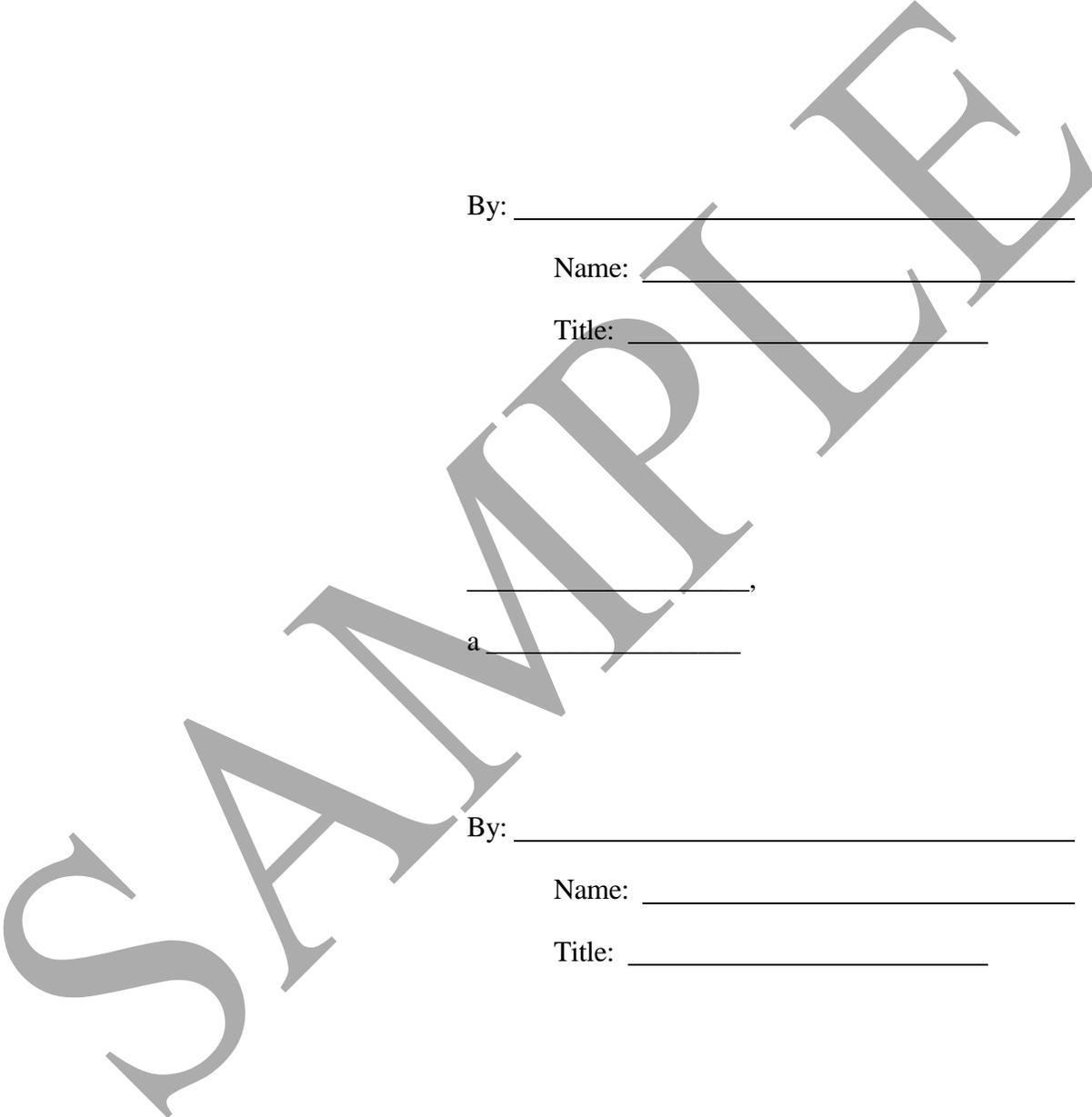
Title: _____

a _____

By: _____

Name: _____

Title: _____



_____,

as Administrative Agent for the Lenders

By: _____

Name: _____

Title: _____

SAMPLE