

APPENDIX A
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
CONTRACT PRICES

General Contract Prices. Subject to all of the terms and conditions of this Agreement:

- 1. Startup and Test Energy:** Buyer shall, subject to the limitations in Section 6.8 of the Agreement, purchase and pay for all Startup and Test Energy (along with all associated Environmental Attributes and Capacity Rights) for an aggregate price equal to \$XX.XX per MWh.
- 2. Payment for Delivered Energy After Commercial Operation Date:** Commencing on the Commercial Operation Date, Buyer shall purchase and pay for all Delivered Energy (along with all associated Environmental Attributes and Capacity Rights but excluding Excess Energy and its associated Environmental Attributes and Capacity Rights) for an aggregate price equal to \$XX.XX per MWh.
- 3. Payment for Excess Energy:** During the Initial Stub Year, each Contract Year thereafter, and the Final Stub Year, Buyer shall purchase and pay for all (a) Delivered Energy comprising Excess Energy that is [110%-120]% of the Expected Annual Generation (along with all associated Environmental Attributes and Capacity Rights) for an aggregate price equal to \$XX.XX per MWh and (b) for all Delivered Energy comprising Excess Energy > [120]% of the Expected Annual Generation (along with all associated Environmental Attributes and Capacity Rights) for an aggregate price equal to \$XX.XX.

APPENDIX B
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
FACILITY DESCRIPTION

1. Name of Facility: [Solar photovoltaic powered electric generating facility, known as the “XXXXXX”]
2. Facility Site: [XXXX]

The Project site is located at Latitude: [XX]°;
Longitude: [XX]°.
3. Generator Owner: [XXXXXX, LLC]
4. Generator Operator: [XXXXXX, LLC, or a Qualified Operator]
5. Transmission Services Coordinator: [XXX]
6. Point of Delivery: [[INSERT] located at approximately [XX] Latitude and [XX] ° Longitude.]
7. Equipment:
 - (a) Type of Facility: [Photovoltaic solar generation]
 - (b) Contract Capacity: [XXX MW-ac]
8. Target Commercial Operation Date: [XX], 20[]
9. Other included facilities: N/A

APPENDIX C

**TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
PERMITS**

Agency/Office	Permit, Clearance, Approval, or Authorization	Permit Trigger

APPENDIX D

**TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]**

**BUYER AND SELLER BILLING, NOTIFICATION AND
SCHEDULING CONTACT INFORMATION**

1. Authorized Representative. Correspondence pursuant to Section 14.1 shall be transmitted to the following addresses:

1.1 If to Buyer:

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

With a copy to:

Los Angeles Department of Water and Power
RE: [Project name]
111 N. Hope Street, Room 1263
Los Angeles, California 90012
Attention: External Resources Management Group

Or, if sent electronically, under Section 4.9, Section 4.10, or Section 4.11, send to all the emails listed below:

RPSOPS@ladwp.com
Attention: External Energy Resources Group

1.2 If to Seller:

[Seller name]

Address:

[Attention: Asset Management]

2. Billings and payments pursuant to Section 6.1 and Appendix A shall be transmitted to the following addresses:

2.1 If Billing to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Attention: Finance and Accounting
Email: projectinvoices@scppa.org
and to: projects@scppa.org

With a copy to:

Los Angeles Department of Water and Power
SCPPA Accounting Section
Re: [Project name]
[LADWP utility accountant name]
111 N. Hope St., Room 462
Los Angeles, California 90012

Or, if sent electronically, under Section 4.9, Section 4.10, or Section 4.11, send to all the emails listed below:

[LADWP utility accountant name]

2.2 If Payment to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Attention: Finance and Accounting, projectinvoices@scppa.org

With a copy to:

Los Angeles Department of Water and Power
SCPPA Accounting Section
Re: [Project name]
[LADWP utility accountant name]
111 N. Hope St., Room 462
Los Angeles, California 90012

Or, if sent electronically, under Section 4.9, Section 4.10, or Section 4.11, send to all the emails listed below:

[LADWP utility accountant email]

2.3 If Billing to Seller:

[Seller information]

2.4 If Payment to Seller:

[Seller information]

3. All notices (other than scheduling notices) required under the Agreement shall be sent pursuant to Section 14.2, postage prepaid, to the address specified below:

If to Buyer:

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

With a copy to:

Los Angeles Department of Water and Power
RE: [Project name]
111 N. Hope Street, Room 1263
Los Angeles, California 90012
Attention: External Resources Management Group

Or, if sent electronically, under Section 4.9, Section 4.10, or Section 4.11, send to all the emails listed below:

RPSOPS@ladwp.com

Attention: External Energy Resources Group

And, if prior to the achievement of Commercial Operation, with a copy to:

Southern California Public Power Authority

1160 Nicole Court

Glendora, CA 91740

Telephone: 626-793-9364

Attention: [Randy Krager, rkrager@scppa.org]

Email: projects@scppa.org

If to Seller:

[Seller information]

4. Throughout the Delivery Term, all notices related to scheduling, forecasts, availability, real-time access to data, or an Access Failure related to the Facility shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority

1160 Nicole Court

Glendora, CA 91740

Telephone: 626-793-9364

Facsimile: 626-793-9461

Attention: Director of Asset Management

Email: projects@scppa.org

With a copy to:

Los Angeles Department of Water and Power

RE: [Project name]

111 N. Hope Street, Room 1263

Los Angeles, California 90012

Attention: External Resources Management Group

Telephone: 213-367-2382

And electronically to the emails listed below:

RPSOPS@ladwp.com; lawmarketing@ladwp.com

Attention: External Energy Resources Group

If to Seller:

[Seller information]

APPENDIX E
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY AND
[SELLER]
FORM OF ATTESTATION

Project Name: _____
Environmental Attributes Attestation

Gross Energy Generated (MWh)		
Year-to-Date		0
RECs Delivered (MWh)		
Year-to-Date		0

Environmental Attribute Attestation and Bill of Sale

[Seller] ("**Seller**") hereby sells, transfers and delivers to the Southern California Public Power Authority ("**Buyer**") the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below. Seller also confirms that Seller has uploaded the WREGIS Certificates as shown below.

Facility Information:		Section 11.2(c) WREGIS Withholding		
Facility Name:		Buyer shall have the right to withhold from any payment to Seller, for each MWh delivered under Section 6.1 of the Agreement, a WREGIS Withhold Amount equal to thirty-five dollars (\$35) per MWh until such time as the WREGIS Certificate associated with such MWh has been credited to Buyer's WREGIS account as set forth in Section 8.4, and Buyer shall pay the WREGIS Withhold Amount previously withheld by Buyer for each MWh for which a WREGIS Certificate was credited to Buyer's WREGIS account in such month. If at any time during the Agreement Term, Buyer does not receive in Buyer's WREGIS account a WREGIS Certificate that corresponds to Delivered Energy delivered ninety (90) days or more prior to the date of the invoice, Buyer may offset an amount equal to the WREGIS Withhold Amount for each WREGIS Certificate not received against future payments for Delivered Energy.		
Generation Type:				
GPS Coordinates:				
Capacity (MW):				
Commercial Operation Date:				
CEC Reg. No.				
EIA ID No.				
REC (in MWh) Transferred or To-Be-Transferred below:				
Period (Month-Year)	REC (in MWh)	WREGIS Withhold Enforced? (YES/NO)	Withhold Amount (REC*\$35)	Withhold Released To Seller? (YES/NO)
Jan-YY	-			
Feb-YY	-			
Mar-YY	-			
Apr-YY	-			
May-YY	-			
Jun-YY	-			
Jul-YY	-			
Aug-YY	-			
Sep-YY	-			
Oct-YY	-			
Nov-YY	-			
Dec-YY	-			
TOTAL FOR YYYY	0			
			Unreleased Withholding (\$) YTD:	

** REC is calculated per "Gross Energy", generated at plant's bus-bar.

Seller further attests, warrants and represents as follows:
 i) the information provided herein is true and correct;
 ii) its sale to Buyer is its one and only sale of the Environmental Attributes and all of the associated Environmental Attribute Reporting Rights referenced herein;
 iii) the Facility generated and delivered to the grid the Energy in the amount indicated as undifferentiated Energy; and
 iv) Seller owns the Facility and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from the Seller to Buyer all of Seller's right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the Energy for delivery to the grid.

APPENDIX F
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
FORM OF LETTER OF CREDIT

DATE:

IRREVOCABLE STANDBY LETTER OF CREDIT NO.

<p>BENEFICIARY:</p> <p>Southern California Public Power Authority 1160 Nicole Court Glendora, California 91740 Telephone: (626) 793-9364 Facsimile: (626) 793-9461</p>	<p>APPLICANT:</p>
<p>ADVISING BANK:</p>	<p>AMOUNT: USD (FIGURES)</p> <p>(AMOUNT IN WORDS)</p>
<p>EXPIRATION DATE:</p> <p>AT COUNTER OF ISSUING BANK</p>	

Ladies and Gentlemen:

We hereby issue our Irrevocable Unconditional Standby Letter of Credit (“Letter of Credit”) in favor of Beneficiary by order and for the account of Applicant, and on behalf of [Seller], which is available at sight for USD \$[XX,XXX,XXX] by sight payment:

- (a) upon presentation to us at our office at [*insert address*], of: (i) Beneficiary’s written demand for payment containing the text of Exhibit I and (ii) Beneficiary’s signed statement containing the text of Exhibit II (collectively, the “Documents”); or
- (b) upon Beneficiary’s telephone or fax advice of demand to the attention of transaction services at [telephone and/or fax number] and presentation to us by fax or email to [fax or email address] of the Documents.

Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the amount specified above.

Upon presentation to us of your Documents in conformity with the foregoing, on the next Business Day after such presentation (unless such presentation occurs after 1:00 p.m. Pacific Prevailing Time on the day of such presentation, in which event payment will be made on the second Business Day), but without any other delay whatsoever, irrevocably and without reserve or condition, we will make payment to your order in the account at the bank designated by you in the demand in immediately available funds. “Business Day” means a day other than a Saturday, Sunday or any other day on which banking institutions in the State of California are authorized or required by law to close.

Provided that the presentation of this Letter of Credit is made on or prior to the Expiration Date and the applicable Documents as set forth above conform to the requirements of this Letter of Credit, payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from Applicant or any other person except Beneficiary, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the Documents presented by you, but excluding solely a valid written order issued by a court of competent jurisdiction that is legally binding upon us and specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment.

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

The stated amount of this Letter of Credit may be increased or decreased, and the Expiration Date of this Letter of Credit may be extended, by an amendment to this Letter of Credit and as otherwise provided in this Letter of Credit. Any such amendment shall become effective only upon

acceptance by your signature on a hard copy amendment. The Expiration Date shall also be amended as provided in the following paragraph.

This Letter of Credit shall expire on the earliest to occur of (1) the Expiration Date or (2) our receipt of written confirmation from Beneficiary authorizing us to cancel this Letter of Credit accompanied by the original of this Letter of Credit. This Letter of Credit shall automatically renew, without amendment, for a term of one (1) year (and the Expiration Date shall automatically be extended for such period) upon the Expiration Date unless we provide Beneficiary with a written notice of non-renewal (each such notice a “Notice of Non-Renewal”) in a customary form on our letterhead, by overnight courier, at least one hundred twenty (120) days prior to the then existing Expiration Date. To the extent a Notice of Non-Renewal has been provided to Beneficiary in accordance herewith, Beneficiary is authorized to draw on us up to the stated amount of this Letter of Credit, by presentation to us, in the manner specified herein of the Documents.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Southern California Public Power Authority, 1160 Nicole Court, Glendora, CA 91740 with a copy via email to projects@scppa.org. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid.

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

If this Letter of Credit expires during an interruption of business as described in Article 36 of the Uniform Customs & Practice for Documentary Credits 600, we hereby specifically agree to effect payment if this credit is drawn against within thirty (30) days after the resumption of business.

We hereby engage with Beneficiary that Beneficiary’s demand(s) for payment in conformity with the terms of this Letter of Credit will be duly honored as set forth above. All fees and other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of Applicant. All of the rights of Beneficiary set forth above shall inure to the benefit of its successors by operation of law. In this connection, in the event of a drawing made by a party other than Beneficiary, such drawing must be accompanied by the following signed certification:

“The undersigned does hereby certify that [drawer] is the successor by operation of law to Southern California Public Power Authority, the Beneficiary named in [name of banks] Letter of Credit No. _____.”

THIS LETTER OF CREDIT IS TRANSFERABLE IN FULL, BUT NOT IN PART BY BENEFICIARY, AND MAY BE TRANSFERRED SUCCESSIVELY. WE SHALL NOT RECOGNIZE ANY TRANSFER OF THIS CREDIT UNTIL A TRANSFER APPLICATION IN THE FORM OF EXHIBIT III ATTACHED HERETO IS FILED WITH US, AND OUR TRANSFER CHARGES HAVE BEEN PAID BY THE APPLICANT. OUR TRANSFER FEE IS [____]. THE ORIGINAL LETTER OF CREDIT AND ANY ORIGINAL AMENDMENTS MUST ACCOMPANY THE TRANSFER APPLICATION. THE SIGNATURE AND THE TITLE OF THE PERSON SIGNING THE TRANSFER APPLICATION MUST BE VERIFIED BY YOUR BANK OR NOTARIZED BY A NOTARY PUBLIC.

Except so far as otherwise expressly stated herein, this Letter of Credit is governed by International Standby Practices 98 (“ISP98”). As to matters not governed by ISP98, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of California. Any litigation arising out of, or relating to this Letter of Credit, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California.

Please send all claims and drawings as per the terms and conditions herein to the following address:

[_____]

For queries, if any, contact our client services team at: [_____] or [_____]

[_____] AUTHORIZED SIGNATURE

[_____] AUTHORIZED SIGNATURE

Exhibit I
Demand for Payment

TO: [_____]
[_____]

Re: Irrevocable and Unconditional, Standby Letter of Credit

No. _____ Dated _____, 20__

To Whom It May Concern:

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

DATED: _____, 20 __

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By: _____

Name:

Title:

Date:

Attest: _____

Name:

Title:

Exhibit II
Statement

TO: [_____]
[_____]

Re: Irrevocable and Unconditional, Standby Letter of Credit

No. _____ Dated _____, 20__

To Whom It May Concern:

Reference is hereby made to your Irrevocable and Unconditional, Standby Letter of Credit No. [_____] dated [_____] in the amount of \$ [_____] established by you in our favor for the account of _____, on behalf of [Seller].

We hereby certify to you that \$ _____ is payable to us [as provided in our agreement with [Seller] and that we are entitled to draw on this Irrevocable and Unconditional, Standby Letter of Credit No. [_____] pursuant to the terms of such agreement.] [because you have provided us a Notice of Non-Renewal.]

DATED: _____, 20__

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By: _____
Name:
Title:

Date:

Attest: _____
Name:
Title:

Exhibit III
Application

APPLICATION TO TRANSFER A STANDBY CREDIT

DATE: _____

TO

[_____]

[_____]

STANDBY LETTER OF CREDIT REFERENCE NO. _____

LADIES AND GENTLEMEN,

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY HEREBY IRREVOCABLY TRANSFERS TO:

(NAME OF TRANSFEREE)

(ADDRESS)

REASON FOR TRANSFER OF STANDBY LETTER OF CREDIT:

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE ABOVE STANDBY LETTER OF CREDIT IN ITS ENTIRETY.

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN SUCH STANDBY LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE AND THE TRANSFEREE SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS, OR OTHER AMENDMENTS AND WHETHER NOW EXISTING OR HEREAFTER MADE.

ALL AMENDMENTS ARE TO BE ADVISED DIRECTLY TO THE TRANSFEREE WITHOUT NECESSITY OF CONSENT OR NOTICE TO THE UNDERSIGNED BENEFICIARY.

THE ORIGINAL OF SUCH STANDBY LETTER OF CREDIT IS RETURNED HERewith AND WE ASK YOU TO ENDORSE THE TRANSFER ON THE REVERSE THEREOF, AND FORWARD IT DIRECTLY TO THE TRANSFEREE WITH YOUR CUSTOMARY NOTICE OF TRANSFER.

AUTHORIZED SIGNATORIES

NAME OF BENEFICIARY: _____

BY: _____

PRINT NAME: _____

TITLE: _____

TELEPHONE NUMBER: _____ E-MAIL ADDRESS: _____

THE ABOVE SIGNATURE, WITH TITLE AS STATED, CONFORMS TO THAT ON FILE WITH US, AND IS AUTHORIZED FOR THE EXECUTION OF THIS DOCUMENT.

NAME OF BANK/ NOTARY: _____

BANK / NOTARY ADDRESS: _____

BY: _____
AUTHORIZED SIGNATURE

NAME: _____

TITLE: _____

TELEPHONE NUMBER: _____ E-MAIL ADDRESS: _____

Exhibit IV
Surrender

Re: Irrevocable and Unconditional Documentary Letter of Credit

No. _____ Dated _____, 20

Notice of Surrender of Letter of Credit

Date: _____

Attention: Letter of Credit Department

To Whom It May Concern:

Reference is made to your above-mentioned Irrevocable and Unconditional Documentary Letter of Credit. The undersigned, an authorized signer of the Southern California Public Power Authority, hereby surrenders this Letter of Credit to you for cancellation as of the date set forth above. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Southern California Public Power Authority

By _____

Title _____

APPENDIX G
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
INSURANCE

I. GENERAL REQUIREMENTS

As a condition to the Effective Date, Seller shall furnish Buyer evidence of coverage from insurers acceptable to Buyer and in a form reasonably acceptable to Buyer's Risk Management Section (LADWP Risk Management Section). Such insurance shall be maintained by Seller at Seller's sole cost and expense. Such insurance shall not limit or qualify the liabilities and obligations of Seller assumed under this Agreement. Buyer shall not, by reason of its inclusion under these policies, incur liability to the insurance carrier for payment of premium for these policies.

Any insurance carried by Buyer which may be applicable shall be deemed to be excess insurance, and Seller's insurance is primary for purposes under this Agreement despite any conflicting provision in Seller's policies to the contrary.

Said evidence of insurance shall contain a provision that the policy cannot be canceled or reduced in coverage or amount without first giving thirty (30) days' prior notice thereof (ten (10) days for non-payment of premium) by registered mail to Buyer, with a copy to Buyer's Risk Manager addressed or emailed as follows: Department of Water and Power of the City of Los Angeles, Attention: Risk Management, Room 465, 111 North Hope Street, Los Angeles, CA 90012. Email: RiskManagement@ladwp.com.

Should any portion of the required insurance be on a "Claims Made" policy, Seller shall, at the policy expiration date, following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with a retroactive date or extended discovery period back to the policy in effect as of the Effective Date with the same limits, terms and conditions of the expiring policy.

Buyer reserves the right to request at any time during the term or during any extension of this Agreement, applying generally accepted risk management principles, to adjust the amounts and/or types of insurance required hereunder to ensure such coverage remains adequate and relevant throughout the term and any extension of this Agreement, which Seller shall take commercially reasonable efforts to obtain. Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which Buyer may immediately terminate or suspend the Agreement.

Seller shall be responsible for all subcontractors' compliance with the insurance requirements with limits applicable to the scope of work/services being performed and in accordance with Seller's standard agreements with such subcontractors.

In the event that any insurance (including the limits or deductibles thereof) described in Section II, other than insurance required by law to be maintained, is not available on commercially reasonable terms in the global commercial insurance market, Buyer shall not unreasonably withhold its agreement to modify Seller's obligation to obtain such insurance to the extent of such unavailability; *provided, however*, that as a condition of agreeing to such modification, (i) Seller shall first request any such modification in writing, which request shall be accompanied by written reports prepared by Seller and its insurance broker, in a form reasonably acceptable to Buyer, certifying that such insurance is not available on commercially reasonable terms in the global commercial insurance market for similar facilities (and, in any case where the required amount is not so available, certifying as to the maximum amount which is available), and explaining in detail the basis for such conclusions; (ii) at any time after the granting of such modification (but no more frequently than once per year unless Buyer has reason to believe, in good faith, that the applicable insurance has become available on commercially reasonable terms), Buyer may reasonably request supplemental reports updating the reports and reaffirming the certifications described in (i), and Seller shall, within sixty (60) days after such reasonable request, provide to Buyer such supplemental reports in a form reasonably acceptable to Buyer; and (iii) any such modification shall be effective only so long as such insurance shall not be available on commercially reasonable terms in the global commercial insurance market (including re-insurers and specialty markets) and Seller shall promptly notify Buyer if such insurance becomes available, it being understood that the failure of Seller to timely furnish any supplemental report described in (ii) shall be considered conclusive evidence that such modification is no longer effective because such condition no longer exists.

II. SPECIFIC COVERAGES REQUIRED

A. Commercial Automobile Liability

Seller shall provide Commercial Automobile Liability insurance, which shall include coverage for liability arising out of the use of owned, non-owned and hired vehicles for performance of the work as required to be licensed under the California Vehicle Code, or the vehicle code of any other applicable state. The Commercial Automobile Liability insurance shall have not less than one million dollars (\$1,000,000.00) combined single limit per occurrence and shall apply to all operations of Seller.

The Commercial Automobile Liability policy shall include Buyer, Buyer's Members, and their officers, agents, and employees as additional insureds with Seller and shall insure against liability for death, bodily injury or property damage resulting from the performance of this Agreement. The form of evidence of insurance shall be an Acord certificate of insurance including any required scheduled endorsements, or a Buyer Additional Insured Endorsement form or other equivalent written evidence of insurance (i.e., self-insurance) acceptable to Buyer's Risk Management Section.

B. Commercial General Liability

Seller shall provide Commercial General Liability insurance with Blanket Contractual Liability, Independent Contractors, Liability for Bodily Injury and Property Damage, Premises and Operations, Products and Completed Operations, fire Legal Liability and

Personal Injury coverages included. Such insurance shall provide coverage for total limits actually arranged by Seller, but not less than twenty-five million dollars (\$25,000,000.00) combined single limit per occurrence. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be an Acord certificate of insurance along with any required scheduled endorsements, or on Buyer's Additional Insured Endorsement form or equivalent or on an endorsement to the policy acceptable to Buyer's Risk Management Section and shall provide for the following:

1. Include Buyer, Buyer's Members, and their officers, agents, and employees as additional insureds for the activities and operations under this Agreement.
2. Include Severability-of-Interest or Cross-Liability Clause such as: "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company's liability."
3. Include a description of the coverage included under the policy.

C. Excess Liability

Seller may use an Umbrella or Excess Liability Coverage with "follow form" to meet coverage limits specified in this Agreement. Seller shall require the carrier for Excess Liability to properly schedule and identify the underlying policies as provided for Buyer on the Acord or Buyer Additional Insured Endorsement Form, or equivalent, or on an endorsement to the policy acceptable to Buyer's Risk Management Section. An excess liability blanket additional insured endorsement shall be deemed acceptable to Buyer's Risk Management Section, provided, such policy shall include, as appropriate, follow form coverage for Commercial General Liability, Hired & Non-Owned Commercial Automobile Liability or other applicable insurance coverages.

D. Workers' Compensation/Employer's Liability Insurance

Seller shall provide Workers' Compensation insurance covering all of Seller's employees in accordance with the laws of any state in which the work of the Agreement is to be performed and including Employer's Liability insurance, where possible, and a Waiver of Subrogation in favor of Buyer. The limit for Employer's Liability coverage shall be not less than one million dollars (\$1,000,000.00) for each accident or illness and shall be a separate policy if not included with Workers' Compensation coverage. Umbrella or Excess Liability coverage may be used to supplement primary coverage to meet the required limits. Workers' Compensation/Employer's Liability exposure may be self-insured, *provided* that Buyer is furnished with a copy of the certificate issued by the state authorizing Seller to self-insure. Seller shall notify Buyer's Risk Management Section by receipted delivery as soon as possible of the state withdrawing authority to self-insure and Seller shall obtain replacement commercial coverage prior to expiration of the self insurance.

E. Builders' Risk

Builder's Risk insurance shall be of the "all risk" type, shall be written in full replacement value and shall protect the Seller and Buyer against risks of damage to buildings, structures and materials and equipment whether on site or in transit from any location worldwide. The amount of such insurance shall be not less than the insurable value of the work at completion. Buyer shall be named an additional insured on the policy. The Builder's Risk insurance shall provide for losses to be payable to Seller and the aforementioned named additional insured, as their interests may appear, unless required otherwise by a Facility Lender. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against Buyer. The Builder's Risk policy shall insure against all risks of direct physical loss or damage to property from any cause, including testing, ensuing loss, commissioning, and a sub-limit for earthquake and flood acceptable to Buyer's Risk Manager. Seller shall maintain such Builder's Risk insurance policy in full force and effect from the earlier of the Construction Commencement Milestone and the date of commencement of construction of the Facility through the Commercial Operation Date. Evidence of this coverage shall be provided by Seller to Buyer by the earlier of the Construction Commencement Milestone and the date of commencement of construction of the Facility.

F. Property All Risk Insurance

Seller shall procure and maintain or cause to be procured and maintained an All Risk Physical Damage policy to insure the full replacement value of the property located at the Facility as described in this Agreement. The policy shall include coverage for expediting expense, extra expense, Business Interruption, ensuing loss from faulty workmanship, faulty materials or faulty design. This policy need not be in full force and effect until the date of expiration of the Builder's Risk policy described in Paragraph II.E. This policy shall have the same insureds, and all losses shall be payable in the same manner, as provided for the Builders' Risk policy in Paragraph II.E.

G. Cyber Security Insurance

Seller shall procure and maintain cyber liability and financial loss, intellectual property infringement, network privacy and data protection liability insurance. Seller shall procure and maintain coverage for cyber liabilities and financial loss resulting or arising from acts, errors, or omissions, in connection with data maintenance, hosting, software development and other information technology services incident to this Agreement by Seller, Seller contractors, or vendors. Coverage shall include protection for liability arising from:

1. intellectual property infringement arising out of software and/or content (excluding patent infringement and misappropriation of trade secrets);
2. breaches of security;
3. violation or infringement of any right, privacy, breach of federal, state, or foreign security and/or privacy laws or regulations; and

4. data theft, damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information, transmission of a computer virus or other type of malicious code; and participation in a denial-of-service attack on a third party.

The minimum limits shall be three million dollars (\$3,000,000) for each claim and in the aggregate.

H. Pollution Liability Insurance

Seller shall procure and maintain for the duration of the Agreement Term Third Party Pollution Liability insurance that provides coverage for liability caused by pollution conditions arising out of the operations of the Facility. Coverage must be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed “by or on behalf” of the insured. Coverage may be satisfied through a standalone third party pollution liability policy or via endorsement under the Commercial General Liability policy.

The policy limit must provide coverage of no less than five million dollars (\$5,000,000) per occurrence and in the aggregate. Coverage must apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically incurred; cleanup costs; and costs of defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

Buyer, Buyer’s Members, their officers, agents, employees, and representatives must be added to the policy as additional insureds by endorsement.

The insurance requirements must address all of the foregoing without limitation if caused by an employee of the Seller or an independent contractor working on behalf of the Seller in performing services under this Agreement. The insurance policy must provide coverage for wrongful acts, claims, and lawsuits anywhere in the world. The policy must be kept in force during the life of the Agreement and conform to the survivability and indemnification provisions in the Agreement.

**CONTRACT INSURANCE REQUIREMENTS -- SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
For Contractors, Service Providers, Vendors, and Tenants**

Agreement/Activity/Operation: _____
 Reference/Agreement: PO 47962 - CERTIFICATE ACCEPTABLE (w/scheduled endorsements)
 Term of Agreement: _____
 Contract Administrator: SCPPA Project
 Buyer and Phone Number: _____

- o Contract-required types and amounts of insurance as indicated below by checkmark are the minimum which must be maintained. All limits are Combined Single Limit (Bodily Injury/Property Damage) unless otherwise indicated.
- o Firm 30 day Notice of Cancellation required.
- o All required scheduled endorsements must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

PER OCCURRENCE LIMITS

WORKERS' COMPENSATION(Stat. Limits)/Employer's Liability: (\$1,000,000.00)
 CA / All States Endorsement () US L&H (Longshore and Harbor Workers)
 () Jones Act (Maritime Employment) () Outer Continental Shelf
 Waiver of Subrogation () Black Lung (Coal Mine Health and Safety)
 () Other: _____ () Other: _____

AUTOMOBILE LIABILITY: (\$1,000,000.00)
 Owned Autos () Any Auto
 Hired Autos Non-Owned Auto
 () Contractual Liability Additional Insured
 () MCS-90 (US DOT) () Trucker's Form
 () Waiver of Subrogation () Other: _____

GENERAL LIABILITY: () Limit Specific to Project () Per Project Aggregate (\$25,000,000.00)
 Property Damage Contractual Liability Personal Injury
 Premises and Operations Products/Completed Ops. Independent Contractors
 () Fire Legal Liability () Garagekeepers Legal Liab. () Child Abuse/Molestation
 () Corporal Punishment () Collapse/Underground () Explosion Hazard
 () Watercraft Liability Pollution Additional Insured Status
 Waiver of Subrogation () Airport Premises () Hangarkeepers Legal Liab.
 () Marine Contractors Liability Other: Cyber Liability Other: Excess/Umbrella Acceptable

PROFESSIONAL LIABILITY: (\$1,000,000.00)
 () Contractual Liability () Vicarious Liability Endt. 3 Year Discovery Tail
 () Additional Insured () Waiver of Subrogation Other: E & O

() **AIRCRAFT LIABILITY:**
 () Passenger Per Seat Liability () Pollution () Hull Waiver of Subrogation
 () Contractual Liability () Additional Insured () Other:

PROPERTY DAMAGE: () Loss Payable Status (AOIMA) () (\$)
 () Replacement Value () Actual Cash Value () Agreed Amount
 All Risk Form () Named Perils Form Earthquake: SUBLIMIT
 Builder's Risk: \$ FULL VALUE () Boiler and Machinery Flood: SUBLIMIT
 Transportation Floater: \$ _____ Contractors Equipment: \$ _____
 () Scheduled Locations/Propt. () Other: _____ () Loss of Rental Income:
 () Other: _____

() **WATERCRAFT:**
 () Protection and Indemnity () Pollution () Additional Insured
 () Waiver of Subrogation () Other: _____ () Other: _____

POLLUTION: (\$5,000,000.00)
 () Incipient/Long Term () Sudden and Accidental Additional Insured
 () Waiver of Subrogation () Contractor's Pollution () Other:

() **CRIME:** () Joint Loss Payable Status
 () Fidelity Bond () Financial Institution Bond () Additional Insured
 () Employee Dishonesty () In Transit Coverage () Loss of Monies/Securities
 () Computer Fraud () Commercial Crime () Wire Transfer Fraud
 () Other: () Other: () Forgery/Alteration of Doc

() **ASBESTOS LIABILITY:** () Additional Insured ()

APPENDIX H
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
LIST OF SUBCONTRACTORS

APPENDIX I
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
QUALITY ASSURANCE PROGRAM

Seller shall implement a Quality Assurance (“*Q/A*”) Program to ensure that the performance of the development, design and construction of the Facility fulfills the Requirements. The Q/A Program shall provide assurance that design, purchasing, manufacturing, shipping, storage, construction, testing and examination of all equipment, materials, services and maintenance of the Facility will comply with the Requirements and the manufacturers’ and/or suppliers’ requirements for successful operation of the Facility.

Quality at Seller

What is quality? Seller believes that quality is the unit of measure for assessing fulfillment of project goals. A quality project meets or exceeds the contract requirements and accepted standards of professional and industry practice. Furthermore, high quality projects are those that address client and societal needs more successfully than “low” quality projects. While this may seem like a straightforward definition, the process to ensure quality is much more involved and includes quality management, quality planning, quality control, quality assurance, a quality system, and total quality management.

“Quality assurance” refers to a process that reduces the potential for error throughout the phases of a project. On projects with a Q/A Program, the chances of producing a poor quality deliverable are substantially reduced. Quality control procedures are an integral part of quality assurance. Historically, industry has used the term “quality control” to indicate a checking procedure for verifying the quality of deliverables. This checking commonly occurs at the end of the process, long after an error may have been made and compounded by subsequent work. While quality control checks at the end of a project are an essential exercise, scheduled periodic reviews at each phase of project conceptual and final design are integral to Seller’s Q/A Program. In addition, quality maintenance which meet or exceed manufacturers’ and/or suppliers’ requirements and best industry practices must be an integral part of Seller’s Q/A Program.

The Quality Management Process

The surest way to achieve satisfactory quality is to adhere to a proven quality process. The term “quality” most accurately refers to a project’s ability to satisfy needs when considered as a whole and each part of the process meets or exceeds the standards of Prudent Utility Practices.

Seller’s project management team is responsible for proactively planning and directing the quality of the work process, services, and deliverables. Seller’s project management team will target six (6) areas to monitor quality:

- 1) A written work plan with accompanying Q/A Manual (as defined below).
- 2) A detailed review of the Facility design at the planning and conceptual design phase.
- 3) A detailed review of the Facility's final design prior to construction.
- 4) A quality control program during construction to verify implementation is in compliance with design documents and documents any changes.
- 5) Independent engineering review of the entire process, from design review through Commercial Operation.
- 6) A written maintenance manual for the Facility for the duration of Commercial Operation that complies with the maintenance manuals of the manufacturers and suppliers from whom Seller has purchased equipment and/or material and best industry practices.

Written Work Plan and Q/A Manual

The idea of a written work plan and Q/A Manual is to incorporate quality assurance in all areas of project execution. Seller has found that quality needs to be institutionalized into the project process, not only in the budgeting process, but everywhere. For example, specific tasks and duties need to be allocated to specific individuals; roles and interface points need to be clearly defined; individual assignments need to be realistic; special attention needs to be paid to complex areas within projects; schedules need to be realistic and achievable; and, lastly, the work culture needs to be enjoyable and open so that employees are empowered to react quickly to symptoms of quality problems before they actually manifest.

Seller's quality program shall be documented in a written work plan and Quality Assurance manual (the "*Q/A Manual*"). The form and the format of the Q/A Manual shall be developed by Seller, but must comply with Prudent Utility Practices and follow manufacturers' and suppliers' recommendations without deviation. The content of the Q/A Manual shall provide written descriptions of policies, procedures and methodology to accomplish a quality project. Seller shall submit one (1) electronic copy of the Q/A Manual at least sixty (60) days prior to the Facility construction commencement milestone to Buyer or Buyer's Representative. The Q/A Manual shall be kept current by Seller throughout the Agreement Term through the submittal of revisions, as appropriate, by Seller to Buyer or Buyer's Authorized Representative.

The Q/A Manual shall describe the authority and the responsibility of the Persons in charge of the Q/A Program and inspection activities. It shall also provide the plan for detailed review of Facility conceptual design and final design, hold points, and methodology for document control and comment. Furthermore, it shall provide the plan and strategy for quality control and review during the construction of the Facility and for maintenance and operations during Commercial Operation. The Q/A Manual shall strive, at a minimum, to define control procedures or methods that ensure the following:

- (a) The design documents, drawings, specifications, Q/A procedures, records, inspection procedures and purchase documents are maintained to be current, accurate and in compliance with all applicable law.
- (b) The purchased materials, equipment and services comply with the Requirements.
- (c) The materials received at the site are inspected for compliance with specifications.
- (d) The subcontracted work is adequately inspected by third parties or qualified internal personnel.
- (e) Proper methods are employed for the qualification of personnel who are performing work for the development, design and construction of the Facility.
- (f) Proper documentation, control and disposition of nonconforming equipment and materials is maintained.
- (g) Proper records are kept and available following project completion to ensure accurate documentation of as-built conditions.
- (h) There is a detailed and complete plan for maintenance and operation during Commercial Operation consistent with manufacturers' and suppliers' recommendations and best industry practices.

Conceptual Design Review

Seller shall have a team of professionals who develop and review the Facility layout and Facility conceptual design. The team shall consist of specialists in land-use and planning, permitting, meteorology, engineering, construction, project management, and finance. The team shall develop a preliminary site plan and hold meetings to assess optimization of the resource, constructability, minimization of cultural and biological impacts, land use restrictions, and landowner requirements. The team shall also initiate preliminary road design and review access to the Site in detail. When this plan is ready for review, the team shall create a formal plan and map and conduct a final internal review. Following that, there shall be detailed studies for biological, cultural and other types of impacts completed by various third parties. The site plan will be reviewed, modified as necessary, and then used to begin the permitting and public review process. The site plan shall be further modified based on comments in that process. At that point, the site plan can be issued for construction, and final engineering can commence.

In parallel with this process, Seller will begin preliminary conceptual designs for the major areas of the Facility, including the substation, transmission line, racking systems, and communications system; and complete road and grading to develop construction estimates as well as materials specifications. All of these areas of conceptual designs shall be used to check and verify the assumptions used for development of the site plan.

Seller shall provide Buyer the foregoing designs and any related documents at (i) 60% through the conceptual design review process (as measured in Seller's sole discretion) and (ii) final completion

of the conceptual design review process. Buyer may request interim designs throughout the conceptual design review process.

Final Engineering Design

Following finalization of the site plan, third party engineering firms licensed to practice in the State of [California] shall complete detailed designs for the roads and grading, transmission line, and substation. Each firm shall have its own quality assurance and checking procedures, however, Seller shall review the final work products in detail to check with conformance with this Agreement and provide comments as a second round of quality assurance. When Seller's comments have been incorporated, the design of each area will be considered final, and that design will then be submitted to the Independent Engineer for review and comment. This ensures that another entity, in addition to Seller, has conducted a comprehensive review of all areas of the Facility and its details to ensure conformance with this Agreement.

In parallel with final design and checking activities, final geotechnical studies will be conducted at the Site, and a final resource assessment will be performed with the issued-for-construction Facility layout. If existing subsurface conditions are different from what is expected, the racking locations could be slightly modified. Any changes of this nature would be documented in as-built design drawings and approved of in advance by Seller.

Seller shall provide Buyer the foregoing designs and any related documents at (a) 60% through the final engineering design process (as measured in Seller's sole discretion) and (b) final completion of the final engineering design process. Buyer may request interim designs throughout the final engineering design process.

Quality Assurance at the Construction Site

Seller will engage a proven construction contractor to perform the construction activities. A Construction Quality Assurance Plan will be agreed upon between Seller and such contractor for all construction activity at the construction site. This Construction Quality Assurance Plan will be consistent with industry standards and norms and will ensure all activities receive appropriate attention. Seller will perform active construction management oversight of the contractor during the construction of the Facility to further ensure quality performance.

Quality Assurance and Quality Control ("Q/C") Activities After Commercial Operation

Throughout the Agreement Term, Seller shall perform Q/A and Q/C activities on all materials and equipment associated with the Facility, including all photovoltaic solar power generation equipment, on a periodic basis. Seller shall provide Buyer a detailed report identifying all areas of inspections performed, reports provided by the O&M contractor, results found, remedial actions taken, if any, and follow up for any corrective actions.

Seller shall provide Buyer with a schedule for performance actions needed as result of Q/A and Q/C activities. Buyer shall review the schedule and provide comments to Seller.

QUALITY ASSURANCE (Q/A) AND QUALITY CONTROL (Q/C) CHECKLIST

[To be provided by Seller by the Construction Commencement Milestone.]

APPENDIX J
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
MILESTONE SCHEDULE

Note - a “” designates a Key Milestone.*

Guaranteed Date	Milestone Description	Daily Liquidated Damages for Delay	Other Remedies for Delay
Prior to the Effective Date	Execute and deliver the Generator Interconnection Agreement		
50% within 5 Business Days after the Effective Date and 50% within 10 Business Days after the Approvals Date	Provision of Development Security		
Commercial Operation Date	Provision of Performance Security		
	Provide evidence of Site Control		Mitigation Plan to complete
	Execute Facility financing documents		Mitigation Plan to complete
[] (or an earlier date upon notice from Seller)	*Construction Commencement Milestone achieved following issuance of NTP.	\$XXXX for up to 180 days of delay (up to amount of Development Security)	

	Target Commercial Operation Date		
12 months prior to start of Test Energy Period	Notify Buyer regarding expected Test Energy Period		
[] (or an earlier date upon notice from the Seller)	*Guaranteed Commercial Operation Date	\$XXXX for up to 180 days of delay (up to amount of Development Security)	
Within one hundred eighty (180) days of the Commercial Operation Date	Seller shall furnish proof reasonably acceptable to Buyer that the Facility is CEC Certified.		

APPENDIX K
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
OPTION AGREEMENT

[To be attached.]

APPENDIX L
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
NON-CONSOLIDATION OPINION

OPINION LETTER

Southern California Public Power Authority
1160 Nicole Court
Glendora, California 91740

Re: Power Purchase Agreement between Southern California Public Power Authority and []

Dear Sir or Madam:

We have acted as counsel to [], a [] limited liability company (the “Company”), in connection with Power Purchase Agreement dated as of _____, 202[] (the “PPA”), by and between the Company, as seller, and Southern California Public Power Authority, a California joint powers agency and public entity (“Buyer”), as buyer. In our capacity as counsel to the Company, we have been asked to render an opinion as to whether, in a case where any upstream equity owner of the Company at any level at or below the ultimate parent entity, [], a [] corporation (an “Upstream Equity Owner”) is a debtor under Title 11 of the United States Code (the “Bankruptcy Code”), a court of competent jurisdiction (the “Bankruptcy Court”) would disregard the separate legal existence of the Company and consolidate its assets and liabilities with those of the Upstream Equity Owner. Capitalized terms used herein and not defined herein shall have the meaning assigned to such term in the PPA.

In rendering the opinions expressed below, we have examined and relied upon copies or forms of the following documents, each dated as of the date hereof except as otherwise noted:

1. (1) Those documents itemized and described on Schedule 1 attached hereto and incorporated herein (collectively, the “Operative Agreements”);
2. (2) Those documents itemized and described on Schedule 2 attached hereto and incorporated herein (collectively, the “Entity Documents”); and
3. (3) The Certificates attached hereto as Exhibits A, B, and C and incorporated herein (collectively, the “Certificates”).

The Operative Agreements, the Entity Documents and the Certificates are collectively referred to herein as the “Documents.”

FACTUAL BACKGROUND

Pursuant to the PPA, the Company will construct and develop a [].

The Company’s obligations under the PPA are secured by [] as described in [] of the PPA. The Company’s Operating Agreement (as described in Schedule 2) limits the Company’s purpose to [].

Based upon our review of the Entity Documents, on the Effective Date, [SELLER TO INSERT DESCRIPTION OF ENTITY DOCUMENTS].

ASSUMPTIONS

Our opinions herein are expressly predicated on each of the material assumptions discussed herein, all of which we have assumed to the extent material to our opinions, and which we have made with your approval and without any independent investigation or inquiry other than examination of the instruments and other documents explicitly referenced herein. We have assumed with your approval that the Buyer would, within any and all applicable time periods under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and any applicable local or court rules, file a written objection to any motion or other proceeding seeking to substantively consolidate the Company with an Upstream Equity Owner, and that such objection would be competently briefed and argued by the Buyer to a final judicial resolution. We have assumed (i) no fraudulent or bad faith activity on the part of the Company or the Upstream Equity Owners; (ii) that each Upstream Equity Owner will not (A) hold itself out as being obligated to pay, and will not pay, the debts of the Company, or (B) commingle its assets with those of the Company; (iii) that the Buyer has relied on the separate existence, credit and assets of the Company in entering into the Operative Agreements with the Company; (iv) substantive consolidation of the Company with an Upstream Equity Owner would be materially prejudicial to the Buyer or the Company’s unsecured creditors; and (v) that the only Upstream Equity Owners are [].

As to matters of fact, we have reviewed and, with your approval and without any independent inquiry, have relied exclusively upon the statements, representations, warranties, and covenants contained in the Documents. We have further assumed, to the extent material to the opinion set forth herein, that such statements, representations, and warranties are now, and will remain, accurate, and that such covenants will be kept, observed and otherwise performed until all obligations of the Company under the PPA are fulfilled and discharged in full.

Additionally, to the extent material to our opinion, we have assumed, without independent inquiry, the authenticity of all documents submitted to us as originals, the genuineness of all signatures, the legal capacity of natural persons, and the conformity to the originals of all documents submitted to us as copies and the authenticity of the originals thereof. We have also assumed, to the extent material to our opinion and without independent inquiry, that the Company is duly formed, that it has since its formation been validly existing as a separate entity, that it has at all relevant times complied with the separateness covenants set forth in its Entity Documents, that the Company has the limited liability company power and authority to enter into and perform all of its obligations

under all of the Documents to which it is a party, and that each Upstream Equity Owner has the limited liability company or corporate power and authority to enter into and perform all of its obligations under all of the Documents to which it is a party, and we have also assumed as to each of the Company and each Upstream Equity Owner the due authorization by all requisite limited liability company or corporate action, the due execution and delivery, and the validity, binding effect and enforceability of all such Documents in accordance with their terms.

We assume that, to the extent material to the Company's separateness, that the Company has complied in all material respects, is in compliance in all material respects, and at all times in the future will continue to comply in all material respects, with the provisions set forth in its Entity Documents. Notwithstanding anything else in this opinion or the Documents, we do not assume that the Company or each Upstream Equity Owner will remain solvent, contribute additional capital, not become a debtor under the Bankruptcy Code or have the ability to pay its debts in the future.

LEGAL BACKGROUND

Substantive consolidation (for convenience, sometimes referred to herein as a "consolidation") is an equitable doctrine that permits a Bankruptcy Court, in appropriate circumstances, to disregard the legal separateness of a debtor and a related but distinct legal entity, which may or may not itself be a debtor in bankruptcy, and to combine their respective assets and liabilities for bankruptcy purposes. Substantive consolidation typically results in the pooling of liabilities and assets of the entities to be consolidated, the satisfaction of liabilities from the resultant common fund of assets, and the elimination of duplicate and inter- entity claims. E.g., *United Savings Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.)*, 860 F.2d 515, 518 (2d Cir. 1988) (citing 5 *Collier on Bankruptcy* § 1100.06, at 1100.32 n.1 (L. King ed.15th ed. 1988)); *In re Standard Brands Paint Co.*, 154 B.R. 563, 569 (Bankr. C.D. Cal. 1993). The doctrine is distinct from the "administrative" consolidation, more properly referred to as joint administration, of multiple cases by a single Bankruptcy Court, which does not dictate a combination of assets and liabilities, and accordingly is not considered herein.

Because the entities sought to be consolidated may have different debt-to-asset ratios, substantive consolidation may redistribute wealth among the entities' creditors. See *Eastgroup Properties v. Southern Motel Assoc., Ltd.*, 935 F.2d 245, 248 (11th Cir. 1991) (quoting *Drabkin v. Midland-Ross Co. (In re Auto-Train Corp.)*, 810 F.2d 270, 276 (D.C. Cir. 1987)). Thus, substantive consolidation can vitally affect parties' substantive rights, and courts have stated that it should be used only sparingly after careful scrutiny of the evidence. E.g., *In re Adelpia Commc'ns Corp.*, 544 F.3d 420, 426, n. 4 (2d Cir. 2008); *In re Owens Corning*, 419 F.3d 195, 215 (3d Cir. 2005); *FDIC v. Colonial Realty Co.*, 966 F.2d 57, 61 (2d Cir. 1992) (quoting *Chemical Bank v. Kheel*, 369 F.2d 845, 847 (2d Cir. 1966)).

Substantive consolidation is somewhat analogous to the non-bankruptcy remedy of "piercing the corporate veil," which may permit a plaintiff to disregard the corporate entity and its separateness under appropriate circumstances. See, e.g., *Consolidated Rock Products Co. v. Du Bois*, 312 U.S. 510 (U.S. 1941). Applied as a bankruptcy doctrine, substantive consolidation addresses the special interest of a Bankruptcy Court in ensuring the equitable treatment of all creditors, rather than a particular plaintiff alleging fraud or other improprieties in the conduct of the affiliated entities.

E.g., *FDIC v. Colonial Realty*, 966 F.2d at 61; *Augie/Restivo*, 860 F.2d at 518; *In re Cooper*, 147 B.R. 678, 683-84 (Bankr. D.N.J. 1992). Consequently, the determination in a substantive consolidation proceeding is less likely to be based solely on specific allegations of fraud or intent to hinder a particular creditor or group of creditors, and will instead center on the Bankruptcy Court's analysis of whether consolidation would be more equitable to all parties under the circumstances. See, e.g., *In re Munford, Inc.*, 115 B.R. 390 (Bankr. N.D. Ga. 1990).

In addition, Bankruptcy Courts may be asked to impose consolidation as part of a proposed reorganization plan, where the argument is based not on wrongdoing or reliance but on the assertion that consolidation of the assets and liabilities of two or more affiliated debtors would permit confirmation of a plan in a case that would otherwise require liquidation. E.g., *In re Piece Goods Shops Co., L.P.*, 188 B.R. 778, 786 (Bankr. M.D.N.C. 1995); *Bruce Energy Centre Ltd. v. Orfa Corp. of America (In re Orfa Corp. of Philadelphia)*, 129 B.R. 404, 414-15 (Bankr. E.D. Pa. 1991) (citing *In re F.A. Potts & Co.*, 23 B.R. 569, 572 (Bankr. E.D. Pa. 1982)).

Authority to Grant Substantive Consolidation

The authority of a Bankruptcy Court to substantively consolidate a debtor with another entity that is a debtor in bankruptcy is well established. That authority to order substantive consolidation stems both from section 105 of the Bankruptcy Code, which authorizes Bankruptcy Courts to issue any order, process or judgment necessary or appropriate to carry out the provisions of the Bankruptcy Code, and more generally from the Bankruptcy Court's general equitable powers. E.g., *Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 763 (9th Cir. 2000); *Standard Brands*, 154 B.R. at 567 (citing cases); *FDIC v. Colonial Realty*, 966 F.2d at 60 (citing *Pepper v. Litton*, 308 U.S. 295, 304 (1939)).

While most of the federal circuit courts have held that a Bankruptcy Court has the power to order substantive consolidation, the Fifth Circuit noted in passing that this issue remains undecided in that Circuit. In *Wells Fargo Bank of Texas N.A., v. Ronald J. Sommers, Trustee (In re Amco Insurance)*, 444 F.3d 690 (5th Cir. 2006), cert. denied, 127 S. Ct. 389 (2006), the Bankruptcy Court had granted a retroactive or “nunc pro tunc” substantive consolidation of a corporate debtor and its individual owner, who had filed bankruptcy approximately eleven months after the corporation. In an opinion that is replete with cautionary instructions to lower courts regarding the use of substantive consolidation, including consolidation of a debtor with a non-debtor affiliate, the Fifth Circuit concluded the Bankruptcy Court erred in granting consolidation on such “nunc pro tunc” basis. In response to the bank’s alternative argument that the Bankruptcy Court lacks the power to grant substantive consolidation by reason of the Supreme Court’s holding in *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bank Fund, Inc.*, 527 U.S. 308 (1999), the Fifth Circuit exercised its discretion to decide that question another day. See *Amco Insurance*, supra at 696, footnote 5. This issue is further developed in several articles: (i) J. Maxwell Tucker, *Grupo Mexicano and the Death of Substantive Consolidation*, 8 *Am Bankr. Inst. L. Rev.* 427 (Winter 2000), (ii) Douglas G. Baird, *Substantive Consolidation Today*, Vol. XLVII *Boston College Law Review* 1, 15 (December 2005), and (iii) Sabin Willett, *The Doctrine of Robin Hood, A Note on “Substantive Consolidation,”* 4 *DePaul Business & Commercial Law Journal* 87 (Fall 2005).

Some courts have extended the foregoing power to permit the consolidation of a debtor with a second entity that is not a debtor in bankruptcy. E.g., *Munford*, 115 B.R. at 396-97 (citing *Sampsell*

v. Imperial Paper Corp., 313 U.S. 215, reh'g denied, 313 U.S. 600 (1941) and *Soviero v. Franklin National Bank*, 328 F.2d 446 (2d Cir. 1964)); *In re New Center Hosp.*, 187 B.R. 560, 567 (E.D. Mich. 1995). However, other courts have concluded that the imposition of bankruptcy law upon a non-debtor, through substantive consolidation, exceeds the jurisdictional reach of the Bankruptcy Code and is procedurally deficient in its failure to deal fairly with creditors of the non-debtor. *Peoples State Bank v. Gen. Elec. Capital Corp. (In re Ark-La-Tex Timber Co., Inc.)*, 482 F.3d 319, 327, n.7 (5th Cir. 2007) (“Under these facts, a substantive consolidation would have been impossible to effect, because Alba and Pearl were not in bankruptcy”); *In re Alpha & Omega Realty, Inc.*, 36 B.R. 416, 417 (Bankr. D. Idaho 1984); *In re DRW Property Co.*, 54 B.R. 489, 497 (Bankr. N.D. Tex. 1985). Even some of the cases which permit the inclusion of a non-bankrupt party note that only extraordinary circumstances should permit such a remedy. E.g., *Morse Operations, Inc. v. Robins Le-Cocq, Inc. (In re Lease-A-Fleet Inc.)*, 141 B.R. 869, 873, 877-78 (Bankr. E.D. Pa. 1992). The *Lease-A-Fleet* court noted that the inclusion of a solvent non-debtor in a bankruptcy case without its voluntary filing circumvents the requirements of 11 U.S.C. § 303. 141 B.R. at 873.

Bankruptcy Courts that have permitted substantive consolidation of a non-debtor with a debtor in a bankruptcy proceeding have often involved a pattern of fraud, see, e.g., *Sampsell*, 313 U.S. 215, 220-21, a flagrant disregard for corporate formalities, extensive commingling of assets, or other facts that render the segregation of the entities' respective assets and liabilities virtually impossible and, under the circumstances, inequitable. E.g., *In re United Stairs Corp.*, 176 B.R. 359 (Bankr. D.N.J. 1995); *Soviero*, 328 F.2d 446; *New Center Hosp.*, 187 B.R. at 568.

Factors Supporting Substantive Consolidation

The doctrine of substantive consolidation has been shaped by courts as a continuing and developing body of case law, without the benefit of bright-line statutory rules or definitive standards. In determining whether consolidation is appropriate, courts have instead identified and developed various factors to be considered, which are (consistent with the nature of an equitable remedy) weighed on a case-by-case basis. The principal factors which have been considered by courts ruling on substantive consolidation include the following:

(a) **Common Ownership or Control.** Common ownership or control of the debtor, and the entities sought to be consolidated with the debtor, can increase the likelihood of consolidation. *Orfa*, 129 B.R. at 415 (citing cases).

(b) **Identical or Overlapping Officers or Directors.** When the debtor and the entities sought to be consolidated have identical or overlapping officers or directors, this is a factor that can increase the likelihood of consolidation. See, e.g., *Lease-A-Fleet*, 141 B.R. at 871, 877 (refusing to consolidate independent entities that had overlapping directors).

(c) **Consolidated Tax Returns or Financial Reporting.** When the debtor and its affiliates file consolidated tax returns or report their assets and liabilities on a consolidated basis in financial statements or Securities and Exchange Commission documents, consolidation may be more likely. Compare *Saccurato v. Shawmut Bank, N.A. (In re Mars Stores, Inc.)*, 150 B.R. 869, 880 (Bankr. D. Mass. 1993) (consolidated financial statements in 10-Q weighed in favor of consolidation) with

Auto-Train, 810 F.2d at 278 (S-1 registration statement supported creditor's claim of reliance on separate credit of entity sought to be consolidated).

(d) Inter-Affiliate Debts or Guarantees. The presence of numerous inter-affiliate debts or guarantees is a factor that typically weighs in favor of consolidation, particularly if such debts or guarantees would be difficult or costly to untangle. See, e.g., *Standard Brands*, 154 B.R. at 568, 572. A court might also rely on a creditor's acceptance of an inter-corporate guarantee as evidence that the creditor knew of the consolidated nature of the debtor's business and did not rely on the separate credit of any entity sought to be consolidated in extending credit. E.g., *In re Snider Bros. Inc.*, 18 B.R. 230, 238 n.5 (Bankr. D. Mass. 1982); *In re Commercial Envelope Mfg. Co., Inc.*, 3 B.C.D. 647, 650 (Bankr. S.D.N.Y. 1977). On the other hand, a creditor's decision to bargain separately for a specific guarantee from an affiliate suggests that creditor's awareness of the corporate distinction. E.g., *In re Donut Queen, Ltd.*, 41 B.R. 706, 710 (Bankr. E.D.N.Y. 1984).

(e) Undercapitalization. When the debtor or the entity sought to be consolidated is grossly undercapitalized for its business undertakings, the likelihood of consolidation with its affiliates increases. See e.g., *In re 1438 Meridian Place, N.W., Inc.*, 15 B.R. 89, 96 (Bankr. D.C. 1981).

(f) Commingling of Assets or Business Functions. The debtor's commingling of assets or business functions with its affiliates is a factor weighing in favor of consolidation. See, e.g., *Soviero*, 328 F.2d at 448; *F.A. Potts*, 23 B.R. at 571 (evidence showed that the two companies were “essentially one operation”); *In re Stop & Go of America, Inc.*, 49 Bankr. 743, 748 (Bankr. D. Mass. 1985) (the court consolidated a shell company which had no separate stationery, telephone, office, bank account, employees, expenses or income, and as a result remained invisible from creditors, who were led to believe that the party they were dealing with owned the asset, which in fact was held by the shell). One such indicator may be if one company is held out generally as an internal division or department of the other. *Fish v. East*, 114 F.2d 177, 191 (10th Cir. 1940). Consolidation may also be appropriate where the debtor and its affiliates are merely functionally integrated, if other factors favoring consolidation are present. See, e.g., *Standard Brands*, 154 B.R. at 572.

(g) Failure to Maintain Corporate and Other Formalities. The failure of an entity to maintain corporate formalities is a probative factor arguing in favor of substantive consolidation. E.g., *In re Snider Bros. Inc.*, 18 B.R. at 234; see also *Soviero*, 368 F.2d at 448 (flagrant disregard of corporate forms).

(h) Fraudulent or Preferential Transfers. When significant fraudulent or preferential transfers exist between the debtor and the entity sought to be consolidated, courts sometimes may grant consolidation in part in order to obviate the cost of avoiding or recapturing such transfers. See, e.g., *Walter E. Heller & Co. v. Langenkamp (In re Tureaud)*, 59 B.R. 973, 977 (N.D. Okla. 1986); *Standard Brands*, 154 B.R. at 571. Other courts, however, have noted that the more conventional methods for recovering such transfers expressly provided in the Bankruptcy Code are preferable to the more radical remedy of substantive consolidation. See, e.g., *Lease-A-Fleet*, 141 B.R. at 875-76.

(i) Fraudulent or Inequitable Use of an Affiliate. When the debtor uses an affiliate to shield fraud, hinder creditors, or otherwise advance an inequitable result, consolidation is more likely. E.g.,

Sampsell, 313 U.S. at 216; *Maule Indus. v. Gerstel*, 232 F.2d 294 (5th Cir. 1956); *Walter E. Heller & Co. v. Langenkamp (In re Tureaud)*, 45 B.R. 658 (Bankr. N.D. Okla. 1985).

(j) Degree of Difficulty in Segregating Assets and Liabilities. An important factor in consolidation decisions is the degree of difficulty in segregating the various entities' respective assets and liabilities. Consolidation is more likely to be granted if the entities' assets and liabilities are so entangled that their segregation is impossible or can only be achieved at great expense. See, e.g., *Augie/Restivo*, 860 F.2d at 519. But see *DRW Property*, 54 B.R. at 496 (refusing to grant consolidation even though it would cost over \$2 million to disentangle the various entities).

(k) Reliance on separate credit. In order to uphold commercial expectations, courts frequently refuse consolidation where objecting creditors demonstrate their reasonable reliance on the separate credit of one of the entities sought to be consolidated. E.g., *Auto-Train*, 810 F.2d at 277-78; *Augie/Restivo*, 860 F.2d at 518-519. Some courts have held, however, that a creditor may be estopped from asserting such reliance, if it knew or should have known of a sufficiently close association among the entities sought to be consolidated. *Eastgroup*, 935 F.2d at 249 n. 11 (citing *Snider Bros.*, 18 B.R. at 235, 237, 238). Alternatively, if creditors dealt with the debtor and its related entities as a single integrated entity, that fact weighs in favor of consolidation, but is not controlling. Compare *Munford*, 115 B.R. at 395-96 (granting consolidation) with *In re Crown Machine & Welding, Inc.*, 100 B.R. 25, 28 (Bankr. D. Mont. 1989) (consolidation refused even though creditors believed they were dealing with one entity).

(l) Prejudice or Benefit to Creditors. Similarly, substantive consolidation may be refused if it inequitably prejudices specific creditors. See, e.g., *Augie/Restivo*, 860 F.2d at 517-19 (consolidation refused when it would have subordinated secured lender's unsecured deficiency claim). However, that some creditors will be affected adversely by consolidation may not be controlling, at least where conflicting interests can be balanced in a way to provide rough justice. *In re Murray Indus., Inc.*, 119 B.R. 820, 828 (Bankr. M.D. Fla. 1990) (citing *In re Commercial Envelope Mfg. Co.*, 3 B.C.D. 647 (S.D.N.Y. 1977)). Thus, if consolidation would benefit certain creditors directly, it could be granted notwithstanding other creditors' objections. E.g., *Eastgroup*, 935 F.2d at 251 (permitting consolidation in part because it would increase the pro rata distribution to priority creditors, and where creditors claiming prejudice did not show they relied solely on separate credit of entity to be consolidated).

(m) Non-Debtor Status of Entities to be Consolidated. As discussed above, a number of courts have expressed reluctance to consolidate a debtor with entities that are not themselves debtors in bankruptcy. Accordingly, in such cases consolidation may be denied or granted only on a showing of extraordinary circumstances.

(n) Economic Benefits of Consolidation. A factor frequently considered by courts is the potential "benefit to creditors or the bankruptcy estate" of consolidating the debtor and its entities, e.g., *In re Vecco Construction Indus. Inc.*, 4 B.R. 407, 410 (Bankr. E.D. Va. 1980). As discussed above, consolidation has been granted in some cases in part because it improved a debtor's chances for a successful financial reorganization.

Application of the Factors

Courts generally agree that the central inquiry in evaluating a motion for substantive consolidation should be whether the economic prejudice resulting from continued recognition of the entities' separateness outweighs the economic prejudice that would be caused by the entities' consolidation. E.g., *Eastgroup*, 935 F.2d at 249 (quoting *Snider Bros.*, 18 B.R. at 234). No single factor is likely to be determinative, nor is a particular combination always decisive. Not all of the factors favoring consolidation need be present in order to justify consolidation. E.g., *Orfa*, 129 B.R. at 415. Implicit in substantive consolidation analysis is the general assumption that creditors will deal with apparently separate entities as separate, and therefore should be entitled to rely on their separateness.

The standards upon which substantive consolidation is determined varies among the circuit courts. A number of reported cases have relied on a recitation of some subset of the foregoing factors, and performed a case-by-case application to the relevant facts. See, e.g., *Vecco Construction*, 4 B.R. at 410. Generally in these cases consolidation has been regarded as an extraordinary remedy, putting the burden on the proponent of consolidation to prove that the benefits would outweigh any resulting prejudice. *Augie/Restivo*, 860 F.2d at 518; *Snider Bros.*, 18 B.R. at 238.

Three circuits have articulated similar, but not identical, standards of proof for substantive consolidation analysis; no single approach has been embraced as the determinative test. See William Blasses, *Redefining into Reality: Substantive Consolidation of Parent Corporations and Subsidiaries*, 24 *Emory Bankr. Developments J.* 469, 486 (Spring 2008).

The Second Circuit in 1988 described the foregoing factor test as variants on two critical criteria: (1) whether creditors dealt with the subject entities as separate, or a single economic unit, in extending credit, and (2) whether the affairs of the subject entities are so entangled that consolidation will benefit all creditors, because segregating the entities' respective affairs is impossible or so costly as to threaten the realization of any net assets for creditors. *Augie/Restivo*, 860 F.2d at 518-19; see also *FDIC v. Colonial Realty*, 966 F.2d at 61 (affirming the *Augie/Restivo* standard). This standard was adopted by the Ninth Circuit in *Alexander v. Compton*, 229 F.3d at 765, although the Ninth Circuit placed the burden on the objecting creditor "to overcome the presumption that they did not rely on the separate credit" of the entities to be considered. *Alexander v. Compton*, 229 F.3d at 766-767. If the proponent of consolidation establishes that either of these criteria is satisfied, consolidation may be granted. Thus, for example, in *Lease-A-Fleet*, the court concluded that common ownership, overlapping directorships, common use of space, and the existence of a "substantial, yet informal" debtor-creditor relationship (as opposed to an intermingling of assets) between a debtor and a non-debtor entity, while arguably satisfying several of the common factors for substantive consolidation, are "patently insufficient" to establish the degree of entanglement necessary to render consolidation an appropriate remedy. *Lease-A-Fleet*, 141 B.R. at 877. Conversely, where a sufficiently substantial pattern of entanglement exists between two entities, the presence of a handful of factors which distinguish them will not preclude their consolidation. E.g., *In re Creditors Service Corporation*, 195 B.R. 680, 687 (Bankr. S.D. Ohio 1996) (separate office leases by two companies were rejected as sufficient evidence to preclude consolidation); *F.A. Potts*, 23 B.R. at 573 n. 3 (the presence of appropriately distinct and complete financial records for two companies does not rebut an otherwise valid case for their consolidation).

The D.C. Circuit requires the proponent of consolidation to demonstrate (1) a “substantial identity” between the entities sought to be consolidated (based on the foregoing factors or some subset), and (2) that consolidation is necessary to avoid some harm or realize some benefit. *Auto-Train*, 810 F.2d at 276. The Eighth Circuit and Eleventh Circuit have substantially adopted the *Auto-Train* test. *In re Giller*, 962 F.2d 796, 799 (8th Cir. 1992); *Eastgroup*, 935 F.2d at 249. However, the Eleventh Circuit adopts a more permissive standard. Upon the proponent's establishment of a *prima facie* case of “substantial identity” and harm or benefit, the burden shifts to objecting creditors to prove that they reasonably relied on the separate credit of one of the entities sought to be consolidated in extending credit and that they would be prejudiced by consolidation. If a creditor proves reasonable reliance and prejudice, consolidation may be granted only if its benefits “heavily outweigh” its detriments. *Id.* The foregoing analysis implies that if an objecting creditor fails to prove either reasonable reliance or prejudice, however, consolidation may be granted even if its benefits do not “heavily outweigh” its detriments.

The Third Circuit more recently adopted its own standards for substantive consolidation in *In re Owens Corning*, 419 F.3d 195 (3d Cir. 2005). While generally supporting the more stringent standards for substantive consolidation set forth in *Augie/Restivo*, and criticizing the less stringent standards of *Auto-Train*, the *Owens Corning* court articulated the following as its test:

In our Court what must be proven (absent consent) concerning the entities for whom substantive consolidation is sought is that (i) pre-petition they disregarded separateness so significantly their creditors relied on the breakdown of entity borders and treated them as one entity, or (ii) post-petition their assets and liabilities are so scrambled that separating them is prohibitive and hurts all creditors. *In re Owens Corning*, 419 F.3d at 211.

The Third Circuit clarified that a *prima facie* case for the first prong exists generally when, “based on the parties' prepetition dealings, a proponent proves corporate disregard creating contractual expectations of creditors that they are dealing with debtors as one indistinguishable entity.” *Owens Corning*, 419 F.3d at 212. In addition, creditor proponents must demonstrate that they actually relied on the debtors' unity and that this reliance was reasonable. *Id.* Assuming a *prima facie* case is established, opponents may still defeat a motion for substantive consolidation under the first rationale by showing that they would be adversely affected and that they actually relied on the debtor's separate existence. *Id.*

ANALYSIS

The Company's Operating Agreement requires that the Company (i) hold out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person, (ii) maintain its own separate books and records and bank accounts, (iii) maintain accounting records and other Company documents separate from any other Person, (iv) conduct business in its own name, and (v) hold assets in its own name. Based on the assumptions that underlie this opinion, there are no significant inter-affiliate debts or obligations involving the Company on the one hand and any of its Upstream Equity Owners on the other.

With respect to potential harm to the Buyer, there exists at least some authority for permitting substantive consolidation over the objection of a fully secured creditor (i.e., the Buyer) on the ground that such a creditor is not harmed by substantive consolidation. E.g., *F.A. Potts*, 23 B.R. at

573; see also *In re Mortgage Investment Co., of El Paso, Texas*, 111 B.R. 604, 610 (Bankr. W.D. Tex. 1990) (overruling secured creditor's objection to reorganization plan calling for substantive consolidation of affiliates where secured creditor failed to demonstrate harm from consolidation and arguably received "indubitable equivalent" of its secured claim). However, we believe that the F.A. Potts decision is distinguishable on its facts because the secured creditor in that case conceded that it would not be prejudiced by substantive consolidation if its claims were fully secured. In contrast, we have assumed here that the Buyer, or other creditors of the Company holding in the aggregate a material amount of unsecured claims, would actively prosecute an objection to substantive consolidation on the grounds that it would inflict inequitable prejudice on the Buyer or such unsecured creditors regardless of whether the Buyer's claims are fully secured.

Based on the assumed facts, a few of the factors commonly recited as supporting consolidation can be shown to exist at this time, [such as common ownership and control, consolidated financial reporting, and overlapping officers and directors.] Most of the assumed facts, however, affirmatively establish the absence of other, arguably more important, factors whose presence would weigh in favor of substantive consolidation, including: (i) commingling of assets, (ii) undercapitalization of the Company, (iii) fraudulent or preferential transfers between the Company and its Upstream Equity Owners, and (iv) difficulty in segregating the assets and liabilities of the Company from those of its Upstream Equity Owners. The assumed facts also do not establish that the benefit to any creditor group resulting from substantive consolidation would outweigh the detriment to other creditors from such consolidation. Moreover, the facts do not indicate the presence of any of the flagrant or egregious factors that would support application of the extraordinary remedy of substantive consolidation of the Company, as a non-debtor, with one or more of its Upstream Equity Owners, should it or they become a debtor. Under the assumptions on which we have relied with your approval, we have assumed that the Buyer would seek to establish that it relied on the separate credit and existence of the Company, and the Company's obligations to (i) operate in such a way as to maintain its entity existence separate and apart from any other entity, and (ii) maintain its assets and liabilities separate from those of any other person or entity, except as permitted by the terms of the Documents. The efforts of an additional creditor group's endeavoring to establish prejudice would be an additional factor militating against substantive consolidation.

OPINION

Based on the foregoing facts and the discussion set forth herein, and on a reasoned analysis of analogous case law, it is our opinion that if one or more of the Upstream Equity Owners becomes a debtor in a case under the Bankruptcy Code, a Bankruptcy Court, exercising reasonable judgment after full consideration of all relevant circumstances, in a properly presented and argued case in which a party-in-interest makes a timely objection to substantive consolidation, would not disregard the separate existence of the Company so as to order substantive consolidation of the assets and liabilities of the Company with those of the Upstream Equity Owner(s). Our opinion is subject to the assumptions, limitations and qualifications set forth in this opinion letter and made in reliance of the accuracy of, and compliance with, the representations, warranties and covenants set forth in the Documents, all of which we have assumed to the extent material to the opinion set forth herein.

QUALIFICATIONS

Our opinion is limited to the matters expressly set forth in this opinion letter, and no opinion is to be implied or may be inferred beyond the matters expressly so stated. We do not purport to express an opinion on any laws other than the federal bankruptcy laws of the United States of America in effect as of the date this opinion is given. These opinions are given as of the date hereof, and we assume no obligation to inform you of changes in the facts or law bearing on these opinions even if such changes are brought to our attention. We are not, by issuing this opinion, undertaking to provide you with any legal advice in connection with the transactions at issue.

This opinion is rendered as of the date first written above solely for the Buyer's benefit in connection with the Operative Agreements, and may not be quoted to, relied on by, nor may copies be delivered to, any other person or entity without our prior written consent, other than delivery of a copy to the National Association of Insurance Commissioners or other regulatory body having jurisdiction over the Buyer, or in response to a subpoena or court order. In addition, at your request, we hereby consent to delivery of a copy to, and reliance hereon by, any Participating Member and any future assignee of, or participant or other holder of a beneficial interest in, an interest in the Operative Agreements pursuant to an assignment or participation or trust agreement that is made and consented to in accordance with the express provisions of the applicable Operative Agreement, or to any future successor of the Buyer or to any national statistical rating agency, on the condition and understanding that (i) this letter speaks only as of the date hereof, and (ii) we have no responsibility or obligation to update this letter, to consider its applicability or correctness to any party other than its addressees, or to take into account changes in law, facts or any other developments of which we may later become aware, and (iii) any such reliance by a future assignee or participant or other holder must be actual and reasonable under the circumstances existing at the time of assignment or participation, including any changes in law, facts or any other developments known to or reasonably knowable by the assignee or participant at such time.

Very truly yours,

APPENDIX M
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
REAL PROPERTY AGREEMENTS

1. *[List agreements]*

APPENDIX N
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
BUSINESS POLICIES FORMS

City of Los Angeles
Department of Public Works
Bureau of Contract Administration
Office of Contract Compliance
1149 S. Broadway, Suite 300, Los Angeles, CA 90015
Phone: (213) 847-2625 E-mail: bca.eeoe@lacity.org

EQUAL BENEFITS ORDINANCE COMPLIANCE AFFIDAVIT

Prime contractors must certify compliance with Los Angeles Administrative Code (LAAC) Section 10.8.2.1 et seq. prior to the execution of a City agreement subject to the Equal Benefits Ordinance (EBO).

1. SECTION 1. CONTACT INFORMATION

Company Name: _____

Company Address: _____

City: _____ State: _____ Zip: _____

Contact Person: _____ Phone: _____ E-mail: _____

Approximate Number of Employees in the United States: _____

Approximate Number of Employees in the City of Los Angeles: _____

2. SECTION 2. EBO REQUIREMENTS

The EBO requires City Contractors who provide benefits to employees with spouses to provide the same benefits to employees with domestic partners. Domestic Partner means any two adults, of the same or different sex, who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing this registration, or with an internal registry maintained by the employer of at least one of the domestic partners.

Unless otherwise exempt, the contractor is subject to and shall comply with the EBO as follows:

- A. The contractor’s operations located within the City limits, regardless of whether there are employees at those locations performing work on the City Contract; and
- B. The contractor’s operations located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the contractor’s presence at or on the property is connected to a Contract with the City; and
- C. The Contractor’s employees located elsewhere in the United States, but outside of the City Limits, if those employees are performing work on the City Contract.

A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment:

“During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners.”

3. SECTION 3. COMPLIANCE OPTIONS

I have read and understand the provisions of the Equal Benefits Ordinance and have determined that this company will comply as indicated below:

- I have no employees.
- I provide no benefits.
- I provide benefits to employees only. Employees are prohibited from enrolling their spouse or domestic partner.
- I provide equal benefits as required by the City of Los Angeles EBO.
- I provide employees with a "Cash Equivalent." Note: The "Cash Equivalent" is the amount of money equivalent to what your company pays for spousal benefits that are unavailable for domestic partners, or vice versa.
- All or some employees are covered by a collective bargaining agreement (CBA) or union trust fund. Consequently, I will provide Equal Benefits to all non-union represented employees, subject to the EBO, and will propose to the affected unions that they incorporate the requirements of the EBO into their CBA upon amendment, extension, or other modification of the CBA.
- Health benefits currently provided do not comply with the EBO. However, I will make the necessary changes to provide Equal Benefits upon my next Open Enrollment period which begins on (Date) _____.
- Our current company policies, i.e., family leave, bereavement leave, etc., do not comply with the provisions of the EBO. However, I will make the necessary modifications within three (3) months from the date of this affidavit.

4. SECTION 4. DECLARATION UNDER PENALTY OF PERJURY

I understand that I am required to permit the City of Los Angeles access to and upon request, must provide certified copies of all company records pertaining to benefits, policies and practices for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance. I will notify the City's Designated Administrative Agency if any changes are made that will affect our compliance with the Equal Benefits Ordinance. Furthermore, I understand that failure to comply with LAAC Section 10.8.2.1 et seq., Equal Benefits Ordinance may be deemed a material breach of any City contract by the Awarding Authority. The Awarding Authority may cancel, terminate or suspend in whole or in part, the contract; monies due or to become due under a contract may be retained by the City until compliance is achieved. The City may also pursue any and all other remedies at law or in equity for any breach. The City may use the failure to comply with the Equal Benefits Ordinance as evidence against the Contractor in actions taken pursuant to the provisions of the LAAC Section 10.40, et seq., Contractor Responsibility Ordinance.

_____ will comply with the Equal Benefits Ordinance requirements
Company Name
 as indicated above prior to executing a contract with the City of Los Angeles and will comply for the entire duration of the contract(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, in the year 20____, at _____, _____
(City) (State)

 Signature

 Name of Signatory (please print)

 Title

 Mailing Address

 City, State, Zip Code

 EIN/TIN

CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT OBLIGATIONS

The Undersigned hereby agrees that _____ will:
Name of Business

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

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

City/County/State

Date

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

Name of Business Address

Signature of Authorized Officer or Representative Print Name

Title Telephone Number

Rev. April 2025

IRAN CONTRACTING ACT OF 2010 COMPLIANCE AFFIDAVIT
(California Public Contract Code Sections 2200-2208)

The California Legislature adopted the Iran Contracting Act of 2010 to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The Iran Contracting Act prohibits proposers engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A proposer who “engages in investment activities in Iran” is defined as either:

1. A proposer providing goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including provision of oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; **or**
2. A proposer that is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2203(b) as a person engaging in the investment activities in Iran.

The proposer shall certify that at the time of submitting a proposal for new contract or renewal of an existing contract, he or she is **not** identified on the DGS list of ineligible businesses or persons and that the proposer is **not** engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts (PCC § 2205).

To comply with the Iran Contracting Act of 2010, the proposer shall complete and sign **ONE** of the options shown below.

OPTION #1: CERTIFICATION

I, the official named below, certify that I am duly authorized to execute this certification on behalf of the proposer or financial institution identified below, and that the proposer or financial institution identified below is **not** on the current DGS list of persons engaged in investment activities in Iran and is **not** a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person or vendor, for 45 days or more, if that other person or vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current DSG list of persons engaged in investment activities in Iran.

Name of Proposer/Financial Institution (Printed): _____

Signed by: _____ (Authorized Signature)

_____ (Printed Name)

_____ (Title of Person Signing)

OPTION #2: EXEMPTION

Pursuant to PCC § 2203(c) and (d), a public entity may permit a proposer or financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enter into, or renew, a contract for goods and services. If the proposer or financial institution identified below has obtained an exemption from the certification requirement under the Iran Contracting

Act of 2010, the proposer or financial institution shall complete and sign below and attach documentation demonstrating the exemption approval.

Name of Proposer/Financial Institution (Printed): _____

Signed by: _____ (Authorized Signature)

_____ (Printed Name)

_____ (Title of Person Signing)

CITY OF LOS ANGELES
PLEDGE OF COMPLIANCE WITH CONTRACTOR RESPONSIBILITY ORDINANCE

Los Angeles Administrative Code (LAAC) Section 10.40 et seq. (Contractor Responsibility Ordinance) provides that, unless specifically exempt, City contractors working under service contracts of at least \$25,000 and three months, contracts for services and for purchasing goods and products that involve a value in excess of twenty-five thousand dollars (\$25,000) and a term in excess of three months are covered by this Article; and construction contracts of any amount; public lessees; public licensees; and certain recipients of City financial assistance or City grant funds, shall comply with all applicable provisions of the Ordinance. Upon award of a City contract, public lease, public license, financial assistance or grant, the contractor, public lessee, public licensee, City financial assistance recipient, or grant recipient, and any of its subcontractor(s), shall submit this Pledge of Compliance to the awarding authority.

The contractor agrees to comply with the Contractor Responsibility Ordinance and the following provisions:

- (a) To comply with all federal, state, and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
- (b) To notify the awarding authority within 30 calendar days after receiving notification that any governmental agency has initiated an investigation which may result in a finding that the contractor did not comply with any federal, state, or local law in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
- (c) To notify the awarding authority within 30 calendar days of all findings by a governmental agency or court of competent jurisdiction that the contractor has violated any federal, state, or local law in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees.
- (d) If applicable, to provide the awarding authority, within 30 calendar days, updated responses to the Responsibility Questionnaire if any change occurs which would change any response contained within the Responsibility Questionnaire and such change would affect the contractor's fitness and ability to continue the contract.
- (e) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, or sublicensee that perform or assist in performing services on the leased or licensed premises) shall comply with all federal, state, and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
- (f) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, or sublicensee that perform or assist in performing services on the leased or licensed premises) submit a Pledge of Compliance.
- (g) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, or sublicensee that perform or assist in performing services on the leased or licensed premises) shall comply with paragraphs (b) and (c).

Failure to complete and submit this form to the Awarding Authority may result

in withholding of payments by the City Controller, or contract termination.

Company Name, Address and Phone Number

Signature of Officer or Authorized Representative Date

Print Name and Title of Officer or Authorized Representative

Awarding City Department Contract
Number

SRIS/CRO-3, Pledge of Compliance (Rev. 5/07/2014)

NOTICE: Responses to this Questionnaire will not be made available to the public for review.

**CITY OF LOS
ANGELES
RESPONSIBILITY
QUESTIONNAIRE**

**RESPONSES TO THE QUESTIONS CONTAINED IN THIS QUESTIONNAIRE MUST BE SUBMITTED
ON THIS**

FORM. In responding to the Questionnaire, neither the City form, nor any of the questions contained therein, may be retyped, recreated, modified, altered, or changed in any way, in whole or in part. Bidders or Proposers that submit responses on a form that has been retyped, recreated, modified, altered, or changed in any way shall be deemed non-responsive.

The signatory of this Questionnaire guarantees the truth and accuracy of all statements and answers to the questions herein. Failure to complete and return this questionnaire, any false statements, or failure to answer (a) question(s) when required, may render the bid/proposal non-responsive. All responses must be typewritten or printed in ink. Where an explanation is required or where additional space is needed to explain an answer, use the Responsibility Questionnaire Attachments. Submit the completed form and all attachments to the awarding authority. Retain a copy of this completed form for future reference. Contractors must submit updated information to the awarding authority if changes have occurred that would render any of the responses inaccurate in any way. Updates must be submitted to the awarding authority within 30 days of the change(s).

A. INFORMATION

Bid Number and Project Title

BIDDER/CONTRACTOR INFORMATION

Bidder/Proposer Business Name

Contractor's License Number

Street Address

City

State

Contact Person, Title

Phone

Fax

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury under the laws of the State of California that I have read and understand the questions contained in this questionnaire and the responses contained herein and on all Attachments. I further certify that I have provided full and complete answers to each question, and that all information provided in response to this Questionnaire is true and accurate to the best of my knowledge and belief.

The Questionnaire being submitted is: *(check one)*

initial submission of a completed Questionnaire.

update of a prior Questionnaire dated _____ / _____ / _____. A copy of the prior Questionnaire **and** newly updated information are attached.

Print Name, Title

Signature

Date

TOTAL NUMBER OF PAGES SUBMITTED, INCLUDING ALL ATTACHMENTS:

B. BUSINESS ORGANIZATION/STRUCTURE

Indicate the organizational structure of your firm. "Firm" includes a sole proprietorship, corporation, joint venture, consortium, association, or any combination thereof.

Corporation: Date incorporated: _____ / _____ / _____. State of incorporation: _____

List the corporation's current officers.

President:

Vice President:

Secretary:

Treasurer:

Check the box only if your firm is a publicly traded corporation.

List those who own 5% or more of the corporation's stocks. Use Attachment A if more space is needed. Publicly traded corporations need not list the owners of 5% or more of the corporation's stocks.

Limited Liability Company: Date of formation: _____ / _____ / _____ State of formation: _____ List members who own 5% or more of the company. Use Attachment A if more space is needed.

Partnership: Date formed: _____ / _____ / _____ State of formation: _____ List all partners in your firm. Use Attachment A if more space is needed.

Sole Proprietorship: Date started: _____ / _____ / _____ List any firm(s) that you have been associated with as an owner, partner, or officer for the last five years. Use Attachment A if more space is needed. Do not include ownership of stock in a publicly traded company in your response to this question.

Joint Venture: Date formed: _____ / _____ / _____ List: (1) each firm that is a member of the joint venture and (2) the percentage of ownership the firm will have in the joint venture. Use Attachment A if more space is needed. **Each member of the Joint Venture must complete a separate Questionnaire for the Joint Venture's submission to be considered as responsive to the invitation.**

C. OWNERSHIP AND NAME CHANGES

1. Is your firm a subsidiary, parent, holding company, or affiliate of another firm?

Yes **No**

If **Yes**, explain on Attachment A the relationship between your firm and the associated firms. Include information about an affiliated firm only if one firm owns 50% or more of another firm, or if an owner, partner or officer of your firm holds a similar position in another firm.

2. Has any of the firm's owners, partners, or officers operated a similar business in the past five years?

Yes **No**

If **Yes**, list on Attachment A the names and addresses of all such businesses, and the person who operated the business. Include information about a similar business only if an owner, partner or officer of your firm holds a similar position in another firm.

3. Has the firm changed names in the past five years?

Yes **No**

If **Yes**, list on Attachment A all prior names, addresses, and the dates they were used. Explain the reason for each name change in the last five years.

4. Are any of your firm's licenses held in the name of a corporation or partnership?

Yes **No**

If Yes, list on Attachment A the name of the corporation or partnership that actually holds the license.

Bidders/Contractors must continue on to Section D and answer all remaining questions contained in this Questionnaire.

D. FINANCIAL RESOURCES AND RESPONSIBILITY

5. Is your firm now, or has it ever been at any time in the last five years, the debtor in a bankruptcy case?

Yes **No**

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

6. Is your company in the process of, or in negotiations toward, being sold?

Yes **No**

If **Yes**, explain the circumstances on Attachment B.

E. PERFORMANCE HISTORY

7. How many years has your firm been in business? _____ Years.

8. Has your firm ever held any contracts with the City of Los Angeles or any of its departments?

Yes **No**

If, **Yes**, list on an Attachment B all contracts your firm has had with the City of Los Angeles for the last 10 years. For each contract listed in response to this question, include: (a) entity name; (b) purpose of contract; (c) total cost; (d) starting date; and (e) ending date.

9. List on Attachment B all contracts your firm has had with any private or governmental entity (other than the City of Los Angeles) over the last five years that are similar to the work to be performed on the contract for which you are bidding or proposing. For each contract listed in response to this question, include: (a) entity name; (b) purpose of contract; (c) total cost; (d) starting date; and (e) ending date.

Check the box if you have not had any similar contracts in the last five years

10. In the past five years, has a governmental or private entity or individual terminated your firm's contract prior to completion of the contract?

Yes **No**

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

11. In the past five years, has your firm used any subcontractor to perform work on a government contract when you knew that the subcontractor had been debarred by a governmental entity?

Yes **No**

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

12. In the past five years, has your firm been debarred or determined to be a non-responsible bidder or contractor?

Yes **No**

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

F. DISPUTES

13. In the past five years, has your firm been the defendant in court on a matter related to any of the following issues? For parts (a) and (b) below, check **Yes** even if the matter proceeded to arbitration without court litigation. For part (c), check **Yes** only if the matter proceeded to court litigation. If you answer **Yes** to any of the questions below, explain the circumstances surrounding each instance on Attachment B. You must include the following in your response: the name of the plaintiffs in each court case, the specific causes of action in each case; the date each case was filed; and the disposition/current status of each case.

(a) Payment to subcontractors?

Yes **No**

(b) Work performance on a contract?

Yes **No**

(c) Employment-related litigation brought by an employee?

Yes **No**

14. Does your firm have any outstanding judgements pending against it?

Yes **No**

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

15. In the past five years, has your firm been assessed liquidated damages on a contract?
 Yes **No**

If **Yes**, explain on Attachment B the circumstances surrounding each instance and identify all such projects, the amount assessed and paid, and the name and address of the project owner.

G. COMPLIANCE

16. In the past five years, has your firm or any of its owners, partners or officers, ever been investigated, cited, assessed any penalties, or been found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed on Attachment C (Page 9)? For this question, the term "owner" does not include owners of stock in your firm if your firm is a publicly traded corporation.

Yes **No**

If **Yes**, explain on Attachment B the circumstances surrounding each instance, including the entity that was involved, the dates of such instances, and the outcome.

17. If a license is required to perform any services provided by your firm, in the past five years, has your firm, or any person employed by your firm, been investigated, cited, assessed any penalties, subject to any disciplinary action by a licensing agency, or found to have violated any licensing laws?

Yes **No**

If **Yes**, explain on Attachment B the circumstances surrounding each instance in the last five years.

18. In the past five years, has your firm, any of its owners, partners, or officers, ever been penalized or given a letter of warning by the City of Los Angeles for failing to obtain authorization from the City for the substitution of a Minority-owned (MBE), Women-owned (WBE), or Other (OBE) business enterprise?

Yes **No**

If **Yes**, explain on Attachment B the circumstances surrounding each instance in the last five years.

H. BUSINESS INTEGRITY

19. For questions (a), (b), and (c) below, check **Yes** if the situation applies to your firm. For these questions, the term "firm" includes any owners, partners, or officers in the firm. The term "owner" does not include owners of stock in your firm if the firm is a publicly traded corporation. If you check **Yes** to any of the questions below, explain on Attachment B the circumstances surrounding each instance.

- (a) Is a governmental entity or public utility currently investigating your firm for making (a) false claim(s) or material misrepresentation(s)?

Yes **No**

- (b) In the past five years, has a governmental entity or public utility alleged or determined that your firm made (a) false claim(s) or material misrepresentation(s)?

Yes **No**

- (c) In the past five years, has your firm been convicted or found liable in a civil suit for, making (a) false claim(s) or material misrepresentation(s) to any governmental entity or public utility?

Yes **No**

20. In the past five years, has your firm or any of its owners or officers been convicted of a crime

involving the bidding of a government contract, the awarding of a government contract, the performance of a government contract, or the crime of fraud, theft, embezzlement, perjury, bribery? For this question, the term "owner" does not include those who own stock in a publicly traded corporation.

Yes **No**

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

ATTACHMENT A FOR SECTIONS A THROUGH C

Where additional information or an explanation is required, use the space below to provide the information or explanation. Information submitted on this sheet must be typewritten or printed in ink. Include the number of the question for which you are submitting additional information. Make copies of this Attachment if additional pages are needed.

Page



ATTACHMENT B FOR SECTIONS D THROUGH H

Where additional information or an explanation is required, use the space below to provide the information or explanation. Information submitted on this sheet must be typewritten or printed in ink. Include the number of the question for which you are submitting additional information. Make copies of this Attachment if additional pages are needed.

Page

A large, empty rectangular box with a thin black border, occupying most of the page below the instructions. It is intended for the user to provide additional information or explanations for questions D through H.

ATTACHMENT C: GOVERNMENTAL ENTITIES FOR QUESTION NO. 16

Check **Yes** in response to Question No. 16 if your firm or any of its owners, partners or officers, have ever been cited, assessed any penalties, or found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed below (or any of its subdivisions), including but not limited to those examples specified below. The term “owner” does not include owners of stock in your firm if your firm is a publicly traded corporation. If you answered **Yes**, provide an explanation on Attachment B of the circumstances surrounding each instance, including the entity involved, the dates of such instances, and the outcome.

FEDERAL ENTITIES

Federal Department of Labor

- American with Disabilities Act
- Immigration Reform and Control Act
- Family Medical Leave Act
- Fair Labor Standards Act
- Davis-Bacon and laws covering wage requirements for federal government contract workers
- Migrant and Seasonal Agricultural Workers Protection Act
- Immigration and Naturalization Act
- Occupational Safety and Health Act
- anti-discrimination provisions applicable to government contractors and subcontractors
- whistleblower protection laws

Federal Department of Justice

- Civil Rights Act
- American with Disabilities Act
- Immigration Reform and Control Act of 1986
- bankruptcy fraud and abuse

Federal Department of Housing and Urban Development (HUD)

- anti-discrimination provisions in federally subsidized/assisted/sponsored housing programs
- prevailing wage requirements applicable to HUD related programs

Federal Environmental Protection Agency

- Environmental Protection Act

National Labor Relations Board

- National Labor Relations Act

Federal Equal Employment Opportunity Commission

- Civil Rights Act
- Equal Pay Act
- Age Discrimination in Employment Act
- Rehabilitation Act
- Americans with Disabilities Act

STATE ENTITIES

California's Department of Industrial Relations

- wage and labor standards, and licensing and registration
- occupational safety and health standards
- workers' compensation self insurance plans
- Workers' Compensation Act
- wage, hour, and working standards for apprentices
- any provision of the California Labor Code

California's Department of Fair Employment and Housing

- California Fair Employment and Housing Act
- Unruh Civil Rights Act
- Ralph Civil Rights Act

California Department of Consumer Affairs

- licensing, registration, and certification requirements
- occupational licensing requirements administered and/or enforced by any of the Department's boards, including the Contractors' State Licensing Board

California's Department of Justice

LOCAL ENTITIES

City of Los Angeles or any of its subdivisions for violations of any law, ordinance, code, rule, or regulation administered and/or enforced by the City, including any letters of warning or sanctions issued by the City of Los Angeles for an unauthorized substitution of subcontractors, or unauthorized reductions in dollar amounts subcontracted.

OTHERS

Any other federal, state, local governmental entity for violation of any other federal, state, or local law or regulation relating to wages, labor, or other terms and conditions of employment.

CITY OF LOS ANGELES
Department of General Services
Office of the Purchasing Agent
(213) 928-9525

CONTRACTOR CODE OF CONDUCT

The City of Los Angeles has long supported the premise that employers should fairly compensate employees, that the health and safety of workers should be protected, and that no form of discrimination or abuse should be tolerated. Experience indicates that laws and regulations designed to safeguard basic tenets of ethical business practices are disregarded in some workplaces, commonly referred to as "sweatshops."

In its role as a market participant that procures equipment, goods, materials and supplies, the City seeks to protect its interests by assuring that the integrity of the City's procurement process is not undermined by contractors who engage in sweatshop practices and other employment practices abhorrent to the City. When the City inadvertently contracts with these contractors, the City's ethical contractors are placed at a distinct competitive disadvantage. Many times ethical contractors are underbid by unscrupulous contractors in competition for City contracts. These ethical contractors may be dissuaded from participating in future procurement contracts.

The City's proprietary contracting interests are served by doing business with contractors who make a good faith effort to ensure that they and their subcontractors shun sweatshop practices and adhere to workplace and wage laws. Seeking to protect these municipal interests, the City requires that all contractors subject to the Sweat-free Procurement Ordinance certify that they and, to the best of their knowledge, their subcontractors will comply with the City's Contractor Code of Conduct and to promise the following:

- (a) To comply with all applicable wage, health, labor, environmental and safety laws, legal guarantees of freedom of association, building and fire codes, and laws and ordinances relating to workplace and employment discrimination.
- (b) To comply with all human and labor rights and labor obligations that are imposed by treaty or law on the country in which the equipment, supplies, goods or materials are made or assembled, including but not limited to abusive forms of child labor, slave labor, convict or forced labor, or sweatshop labor.
- (c) To take good faith measures to ensure, to the best of the contractor's knowledge, that the contractor's subcontractors also comply with the City's Contractor Code of Conduct.
- (d) To pay employees working on contracts for garments, uniforms, foot apparel, and related accessories a procurement living wage, meaning for domestic manufacturers a base hourly wage adjusted annually to the amount required to produce, for 2,080 hours worked, an annual income equal to or greater than the U.S. Department of Health and Human Services most recent poverty guideline for a family of three plus an additional 20 percent of the wage level paid either as hourly wages or health benefits. For manufacturing operations in countries other than the United States, a procurement living wage which is comparable to the wage for domestic manufacturers as defined above, adjusted to reflect the country's level of economic development by using the World Bank's Gross National Income Per Capita Purchasing Power index.

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury under the laws of the State of California that I have read and understood the City's Contractor Code of Conduct and agree to comply with its requirements.

Signature of Officer or Authorized Representative

Date

Print Name and Title of Authorized Representative

Print Company Name, Address and Phone Number

APPENDIX O
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]

CERTIFICATE FOR COMMERCIAL OPERATION

In order to determine achievement of Commercial Operation of the Facility, Seller shall demonstrate to Buyer that the Facility is operating and able to produce and deliver Facility Energy to Buyer in accordance with the terms of the Agreement by delivery of a Certificate of Commercial Operation (the “*Certificate*”), signed by Seller’s Authorized Representative as to all of the items below, and which shall include a signed certificate in the form attached in Appendix P of an Independent Engineer, licensed in the State of [California], regarding the Facility’s ability to deliver Facility Energy and confirming the items set forth therein. Any term used but not defined in the Certificate shall have the meaning set forth in the Agreement.

Seller’s Authorized Representative shall attest to the following:

In accordance with the terms of that certain Power Purchase Agreement dated as of [____], 20[] (“*Agreement*”), by and between the Southern California Public Power Authority (“*Buyer*”) and [____] (“*Seller*”), in order determine achievement of Commercial Operation of the Facility, I, [Seller's Authorized Representative], certify the following regarding the Facility’s ability to deliver Delivered Energy:

1. [_____] and all other equipment comprising the Facility have been installed in accordance with the manufacturer’s specifications.
2. The electrical collection system related to the [_____] referenced in (1) above is complete, functional, and energized for the Facility.
3. Seller’s collector substation is complete and capable of delivering an as-available product.
4. The Facility is operational and interconnected with the Point of Delivery and capable of delivering the Facility Energy and Contract Capacity.
5. Copies of any documentation provided by the manufacturer of the [_____] referenced in paragraph (1) with respect to the warranties provided in connection therewith have been provided to Buyer.
6. Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement, and the Facility possesses all of the characteristics required by, and satisfies all of, the Requirements.

7. The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to be completed prior to Commercial Operation. Testing shall include but not be limited to operating the Facility for a period of not less than twenty (20) consecutive days and delivering Delivered Energy in an amount equal to Contract Capacity during such period in accordance with the Requirements. The Facility shall demonstrate it has delivered Facility Energy to the Point of Delivery at a rate, volume, and time of day in a manner equivalent to a facility with similar specifications and under similar profiles during such period.

8. Seller has obtained all of the Permits required for the development, construction, operation and maintenance of the Facility (other than ministerial Permits that can reasonably be expected to be obtained in the ordinary course of business), including those identified in Appendix C of the Agreement, and all such Permits are final and effective.

9. Seller has obtained the Operating Insurance.

10. Seller shall have entered into, and delivered to Buyer, an agreement providing for the operation and maintenance of the Facility with a Qualified Operator (which may be redacted for confidential or proprietary information), in form and substance reasonably satisfactory to Buyer, unless Seller provides the operation and maintenance of the Facility.

11. Seller provided the Performance Security in accordance with Section 5.6 of the Agreement.

12. Seller has fully performed and discharged any liabilities, indebtedness, guarantees or other obligations in compliance with the definition of “Special Purpose Entity.” [Subject to final determination of Special Purpose Entity definition.]

13. Buyer has received a bring-down of the Non-Consolidation Opinion.

14. Buyer has received a true and complete copy of each Interconnection Agreement.

15. Buyer has accepted (which acceptance shall not be unreasonably withheld, conditioned or delayed) Seller’s proof of registration with NERC for all applicable Function Types in the NERC Compliance Registry in accordance with the currently effective NERC Rules of Procedure, including [Seller’s registration as both Generator Owner and Generator Operator].

16. Buyer has accepted Seller’s mapping of NERC registered Function Types in accordance with the currently-effective WECC Entity Function Mapping procedures.

17. Buyer has received and found reasonably acceptable the applicable Q/A Program documentation in accordance with Appendix I.

18. Buyer has approved the Transmission Line Loss Factor.

Upon reasonable notice and during regular business hours, Buyer's representative(s) may inspect the Facility and observe the testing associated with achievement of Commercial Operation, *provided* that such representative(s) of Buyer shall at all times comply with Seller's written instructions regarding safety and security while on the Site.

Signed,

NAME:

TITLE:

DATE:

[Attach the signed Independent Engineer Certificate in the form attached to Appendix P]

APPENDIX P
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]

FORM OF CERTIFICATE OF INDEPENDENT ENGINEER

INDEPENDENT ENGINEER CERTIFICATE

In accordance with the terms of that certain Power Purchase Agreement dated as of [____], 20[__] (“**Agreement**”), by and between the Southern California Public Power Authority (“**Buyer**”) and [Seller] (“**Seller**”), in order determine achievement of Commercial Operation of the Facility, I, _____, an Independent Engineer, licensed in the State of [California], certify the following regarding the Facility’s ability to deliver Delivered Energy:

1. [_____] and all other equipment comprising the Facility have been installed in accordance with the manufacturer’s specifications.
2. The electrical collection system related to the [_____] referenced in (1) above is complete, functional, and energized for the Facility.
3. Seller’s collector substation is complete and capable of delivering an as-available product.
4. Copies of any documentation provided by the manufacturer of the solar panels referenced in paragraph (1) with respect to the warranties provided in connection therewith have been provided to Buyer.
5. The Facility is operational and interconnected with the Point of Delivery and capable of delivering the Facility Energy and Contract Capacity.
6. Construction of the Facility has been completed in accordance with Prudent Utility Practices.
7. The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to be completed prior to Commercial Operation. Testing shall include but not be limited to operating the Facility for a period of not less than twenty (20) consecutive days and delivering Delivered Energy in an amount equal to Contract Capacity during such period in accordance with the Requirements. The Facility shall demonstrate it has delivered Facility Energy to the Point of Delivery at a rate, volume, and time of day in a manner equivalent to a facility with similar specifications and under similar profiles during such period.

[Signature Page to Follow]

Signed,

Name:

Title:

Date:

APPENDIX Q
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]

[Intentionally omitted]

APPENDIX R
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]

ORGANIZATIONAL STRUCTURE AND OWNERSHIP OF SELLER AND
UPSTREAM EQUITY OWNER

This Appendix R may be updated from time to time by agreement of Buyer and Seller to account for a Change in Control that has been consented to by Buyer in accordance with this Agreement.

Section 1. Specified Ultimate Upstream Equity Owner.

[]

Section 2. Organizational and Ownership Structure of Seller and Upstream Equity Owners.

See attached.

Section 3. Principals:

[]

APPENDIX S
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]

METEOROLOGICAL AND PYRANOMETER MEASUREMENTS

Monitored Meteorological Data Points:

1. Irradiance (horizontal and plane of array)
2. Ambient air temperature
3. Back of module temperature
4. Rainfall quantity (rate and running thirty (30) day total)
5. Wind speed
6. Wind direction
7. Relative humidity
8. Barometric pressure
9. Insolation

APPENDIX T
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]

FORM OF QUARTERLY CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES THAT:

(1) I am the duly elected [Officer's title] of [Seller name], [description]
 (“Seller”);

(2) I have reviewed the terms of that certain Power Purchase Agreement dated as of [Power Purchase Agreement Date] (the “*Agreement*”, the terms defined therein and not otherwise defined in this Quarterly Certificate (including Attachment No. 1 annexed hereto and made a part hereof) being used in this Quarterly Certificate as therein defined), by and between Seller and THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers authority, duly organized, and validly existing under the laws of the State of California, and the terms of the other Ancillary Documents, and I have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and condition of Seller and Seller Parties during the accounting period covered by the attached financial statements; and

(3) The examination described in paragraph (2) above did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes a Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Quarterly Certificate[, except as set forth below].

[Set forth below are all exceptions to paragraph (3) above listing, in detail, the nature of the condition or event, the period during which it has existed and the action which Seller has taken, is taking or proposes to take with respect to each such condition or event:

_____.]

The foregoing certifications, together with the computations set forth in Attachment No. 1 annexed hereto and made a part hereof and the financial statements delivered with this Quarterly Certificate in support hereof, are made and delivered this [_____] day of [_____, ____] pursuant to the Agreement.

[Seller Name]

By: _____

Title: _____

**ATTACHMENT NO. 1
TO QUARTERLY CERTIFICATE**

This Attachment No. 1 is attached to and made a part of a Quarterly Certificate dated as of [_____, ____] and pertains to the period from [_____, ____] to [_____, ____].

A. Facility Debt:

1. Principal of and premium on indebtedness: \$ [_____]
2. Fees, charges, expenses and penalties related to indebtedness: \$ [_____]
3. Amounts due upon acceleration or in connection with prepayment or restructuring of indebtedness: \$ [_____]
4. Swap or interest rate hedging breakage costs: \$ [_____]
5. Any claims or interest due with respect to any of the foregoing: \$ [_____]
6. Other payment obligations of Seller in connection with borrowed money:
\$ [_____]
7. Total Facility Debt (Add A.1-6): \$ [_____]

B. Facility Cost:

1. Cost of all labor, services, materials, supplies, equipment, tools, transportation, supervision, storage, training, demolition, site preparation, civil works, and remediation in connection with the development, design, engineering, equipping, procuring, constructing, installing, starting up and testing the Facility: \$ [_____]
2. Cost of acquiring the leasehold interest and any other property, easement or other interest in the Site: \$ [_____]
3. Cost of acquiring the Permits for the Facility: \$ [_____]
4. Cost of establishing a spare parts inventory for the Facility: \$ [_____]
5. Other costs and expenses incurred by Seller for the development, design, engineering, equipping, procuring, constructing, installing, starting up and testing the Facility: \$ [_____]
6. Total Facility Cost (Add B.1-5): \$ [_____]

C. Facility Debt to Facility Cost Ratio:

1. Facility Debt (A.8 above): \$ [_____]
2. Facility Cost (B.6 above): \$ [_____]
3. Facility Debt to Facility Cost Ratio: C(1):(2): [____]:1.00
4. Maximum Facility Debt to Facility Cost Ratio permitted: 70%

APPENDIX U
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
ENERGY GENERATION AND PRODUCTION

TABLE 1
EXPECTED ANNUAL GENERATION; GUARANTEED DELIVERED ENERGY

Contract Year	Expected Annual Generation, MWh	Guaranteed Delivered Energy, MWh
Initial Stub Year	See note (1)	[80% of Expected Annual Generation]
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		

18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		
Final Stub Year	See note (2)	80% of Expected Annual Generation

- (1) The “*Expected Annual Generation*” for the Initial Stub Year equals XXXX MWh, multiplied by the sum of the percentages (from the Expected Monthly Production Table below) of Energy generated by the Facility during the months between the Commercial Operation Date (prorated for the month in which the Commercial Operation Date occurs if the same does not occur on the first day of such month) and the end of the Initial Stub Year. For example, if the Commercial Operation Date is achieved on XXXX, 2026, the Expected Annual Generation in the Initial Stub Year would be XXXX MWh x XX.XX% (June through December) (which is XXXX MWh), and the Guaranteed Delivered Energy would be 80% of this number (which is XXXX MWh).
- (2) The Expected Annual Generation for the Final Stub Year equals XXXXX MWh multiplied by the sum of the percentages (from the Expected Monthly Production Table below) of Energy generated by the Facility during the months from January 1 of the Final Stub Year to the end of the Final Stub Year (prorated for final month in the Final Stub Year if not a full month). For example, if the Commercial Operation Date is achieved on XXXX, 2026, the Expected Annual Generation in the Final Stub Year would be XXXXX MWh x XXX% (January through May) (which is XXXXX MWh), and the Guaranteed Delivered Energy would be 80% of this number (which is XXXX MWh).

TABLE 2

EXPECTED ENERGY MONTHLY PRODUCTION TABLE

The following table shows the percentage of generation by the Facility per calendar month for purposes of calculating the Guaranteed Delivered Energy for the Initial Stub Year and the Final Stub Year.

Month	Percent	Month	Percent
Jan		Jul	
Feb		Aug	
Mar		Sep	
Apr		Oct	
May		Nov	
Jun		Dec	
		Total	100.0%

APPENDIX V
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
SINGLE-LINE DIAGRAM

[To be attached.]

APPENDIX W
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]
METERING DIAGRAM

[To be attached.]

APPENDIX X
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]

PRELIMINARY DRAFT FORM OF INVOICE

In accordance with Section 11.2(a), below is a non-binding preliminary draft form of invoice to be used by the Parties for monthly financial settlements under Article XI and the Parties shall finalize a single final form for use in accordance with Section 11.2(a). All information in the form invoice below is preliminary and indicative and for form only. Other provisions of the Agreement shall control in the event of any conflict or inconsistency with this preliminary draft form of invoice.

Project Name: []

Energy Invoice

From:

Seller Name:

C/O (Blank)

Address:

To:

Southern California Public Power Authority

Address:

Invoice Information:

Invoice Number:	
Invoice Issue Date:	
Billing Period Begin:	
Billing Period End:	
Payment Due Date (45 days after receipt by Buyer) :	
COD Date:	
Generating Facility:	
SCPPA Contracts:	
Participant Contracts:	

Current Month Billing Calculation

Description	(A) Energy (MWh)	(B) Rate (\$/MWh)	(A*B) Amount (\$)
GROSS Energy Generated			
Energy Loss (ancillary/line loss etc.)			
NET Delivered Energy			
Deemed Delivered (Compensable Curtailment)			
Deemed Delivered (Non-Compensable Curtailment)			
Section 11.2(c) WREGIS Withholding Release			
Total Due: \$			-

Delivered Energy (MWh)	
Current Month	
Year-to-Date	

Energy Participant Breakdown (%)	
Glendale:	
Burbank:	
LADWP:	
SCPPA (Total)	100.00%

Deemed Delivered (Compensable Curtailment)	
Current Month	
Year-to-Date	

Deemed Delivered (Non-Compensable Curtailment)	
Current Month	
Year-to-Date	

Payments Information:

Due 45 days after receipt of invoice by wire transfer to the following account:	
Bank:	
ABA Number:	
Account Number:	
Account Name:	
Project Contact:	
Title:	
Email:	
Phone:	

APPENDIX Y

**TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]**

SALE LEASEBACK REQUIREMENTS

If Seller enters into a Sale Leaseback Financing transaction, then, with respect to the Lease arising thereunder, Seller and the Lessor thereunder shall agree in writing with Buyer to the following:

(a) Seller shall at all times keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all material covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by or on behalf of Seller from time to time pursuant to the Lease, and Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, would reasonably be expected to impair the rights of Seller under the Lease, or could be grounds for the Lessor to terminate the Lease.

(b) Seller shall promptly, but in any case no later than two (2) Business Days after learning of the occurrence of any of the following, give Buyer notice of (i) any default or of any event which, with the giving of notice or passage of time, or both, would become a default under the Lease or of the receipt by Seller of any notice from the Lessor thereof, or (ii) the commencement or threat of any action or proceeding or arbitration pertaining to the Lease. Buyer, at its option, may take any action (but shall not be obligated to take any action) from time to time deemed necessary or desirable by Buyer to prevent or cure, in whole or in part, any default by Seller under the Lease. Seller shall deliver to Buyer, promptly following service or delivery thereof on, to or by Seller, a copy of each petition, summons, complaint, notice of motion, order to show cause and other pleading or paper, however designated, which shall be served or delivered in connection with any such action, proceeding or arbitration.

(c) In the event of the termination, rejection, or disaffirmance by Lessor (or by any receiver, trustee, custodian, or other party that succeeds to the rights of the Lessor) under the Lease pursuant to the Bankruptcy Code, Seller hereby presently, absolutely, irrevocably and unconditionally grants and assigns to Buyer the sole and exclusive right to make or refrain from making any election available to lessees under the Bankruptcy Code (including, without limitation, the election available pursuant to Section 365(h) of the Bankruptcy Code, 11 U.S.C. § 365(h), and any successor provision), and Seller agrees that any such election, if made by Seller without the prior written consent of Buyer (which Buyer would not anticipate granting due to the importance of the Lease as security), shall be void at inception and of no force or effect. Without limiting the generality of the foregoing sentence, Seller shall not, without Buyer's prior written consent, elect to treat the Lease or the leasehold estate created thereby as terminated under Section 365 of the Bankruptcy Code, after rejection or disaffirmance of the Lease by the Lessor (whether as debtor

in possession or otherwise) or by any trustee of the Lessor, and any such election made without such consent shall be void at inception and of no force or effect. At the request of Buyer, Seller will join in any election made by Buyer under the Bankruptcy Code and will take no action in contravention of the rights granted to Buyer pursuant to this Appendix Y, Section (c).

(d) In the event there is a termination, rejection, or disaffirmance by the Lessor (whether as debtor in possession or otherwise) or by any trustee of the Lessor pursuant to the Bankruptcy Code and Buyer elects to have Seller remain in possession under any legal right Seller may have to occupy the property pursuant to the Lease, then Seller shall remain in such possession and shall perform all acts necessary for Seller to retain its right to remain in such possession, whether such acts are required under the then existing terms and provisions of the Lease or otherwise.

(e) In the event that a petition under the Bankruptcy Code shall be filed by or against Seller and Seller or any trustee of Seller shall decide to reject or disaffirm the Lease pursuant to the Bankruptcy Code (or allow the same), Seller shall give Buyer at least ten (10) days prior notice of the date on which application shall be made to the court for authority to reject or disaffirm the Lease or the Lease will be otherwise rejected. Buyer shall have the right, but not the obligation, to serve upon Seller or such trustee within such ten (10) day period a notice stating that (i) Buyer demands that Seller (whether as debtor in possession or otherwise) or such trustee assume and assign the Lease to Buyer pursuant to the Bankruptcy Code, and (ii) Buyer covenants to cure, or to provide adequate assurance of prompt cure of, all defaults (except defaults of the type specified in Section 365(b)(2) of the Bankruptcy Code) and to provide adequate assurance of future performance under the Lease. In the event that Buyer serves any such notice as provided above, neither Seller (whether as debtor in possession or otherwise) nor such trustee shall seek to reject or disaffirm the Lease and Seller (whether as debtor in possession or otherwise) and such trustee shall comply with such demand within thirty (30) days after such notice shall have been given, subject to Buyer's performance of such covenant.

(f) Upon any payment by Buyer to cure any default of Seller, as lessee thereunder, and thereby to prevent termination of the Lease or the exercise of any other remedy of the Lessor thereunder arising out of such default, Seller, within ten (10) days following receipt of notice from Buyer that it made such payment, shall pay the amount of such payment to Buyer plus interest accruing thereon at the Interest Rate, from and including the date of the payment by Buyer to cure such default to but excluding the date of such payment by the Seller.

(g) A memorandum of the Lease shall be recorded in the applicable county.

APPENDIX Z

**TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]**

FORM OF CONSENT AND ESTOPPEL AGREEMENT

CONSENT AND ESTOPPEL AGREEMENT

This CONSENT AND ESTOPPEL AGREEMENT (this “*Consent*”), dated as of _____, 20__, by and among Southern California Public Power Authority (“*Buyer*”), [_____] (in its capacity as collateral agent for the Facility Lenders under the Financing Agreement, as defined below, “*Collateral Agent*”) and [Seller] (“*Seller*”). Each of Buyer, Seller and Collateral Agent is referred to under this Agreement as a “Party” and together they are referred to as the “Parties”; *provided*, that in no event shall the term “Buyer” refer to any of Buyer’s Members. Capitalized terms used but not defined herein shall have the meanings set forth in the Agreement (as defined below).

RECITALS¹

A. [_____] (“*Borrower*”), an indirect owner of Seller, entered into a Financing Agreement with Collateral Agent, as administrative agent and collateral agent and certain other lenders party thereto, dated as of _____, 20__ (the “*Financing Agreement*”), under which Seller will finance the construction of an up to [_____] MW solar-powered electric generating facility (the “*Facility*” as further described in the Agreement). Seller and Collateral Agent have also entered into a Guarantee and Security Agreement (the “*Security Agreement*”) under which Seller collaterally assigned its interest under the Agreement to Collateral Agent as collateral for the credit facilities under the Financing Agreement and a deed of trust or mortgage under which Seller has granted to Collateral Agent a lien on the Facility to be recorded in [_____] (the “*Financing Deed of Trust*”). Additionally, [_____] (“*Pledgor*”) has entered into a Guarantee, Pledge and Security Agreement pursuant to which it has pledged to Collateral Agent all of the membership interests in Seller, to secure Borrower’s obligations under the Financing Agreement (the “*Pledge Agreement*” and, together with the Security Agreement and Financing Deed of Trust, the “*Lender Collateral Documents*”). [On the “*Term Conversion Date*” (which for purposes of this Consent shall mean the date upon which the construction period security is released, the construction loan is converted to a term loan, the Lender Collateral Documents are terminated, and the remaining collateral security in the Project is as described by Collateral Agent in Section 4.10 hereof), the only remaining collateral security of Collateral Agent

¹ *NTD: Conforming changes to be made throughout this Consent (including the Recitals) to reflect the structure of the applicable financing arrangement and the final form of consent is subject to the actual financing structure.*

securing the obligations of the Borrower under the Financing Agreement will be the membership interests in and any assets of the Pledgor and the Borrower, and there will be no remaining collateral security of Collateral Agent in the Seller or its assets that secures the obligations of the Borrower under the Financing Agreement. A true and correct copy of each of the Lender Collateral Documents has been furnished to Buyer.]²

B. Buyer and Seller entered into that certain Power Purchase Agreement, dated as of [___], 20[], (as may be amended, supplemented, or modified from time to time, the “Agreement”), pursuant to which Seller will develop, finance, construct, own, and operate the Facility, and will, except as otherwise provided in the Agreement, sell the Energy to Buyer.

C. Pursuant to Section 13.4 of the Agreement, Seller is assigning, pursuant to the Security Agreement, to Collateral Agent Seller’s interest under the Agreement. In addition, this Consent is entered into in compliance with Section 14.7(d) of the Agreement.

AGREEMENT

1. Assignment and Agreement.

1.1 Consent to Assignment. Buyer hereby consents to the collateral assignment to Collateral Agent pursuant to the Security Agreement of Seller’s rights to and under the Agreement, pursuant to the Financing Deed of Trust of Seller’s interests in the Facility and pursuant to the Pledge Agreement of Pledgor’s membership interests in Seller (together, the “*Assigned Interests*”) as security for Borrower’s obligations under the Financing Agreement. Subject to the terms and conditions of this Consent, Buyer agrees that in exercising its remedies, Collateral Agent may exercise Seller’s rights under the Agreement.

1.2 Notices: Right to Cure by Collateral Agent. Upon the occurrence of a Default (as defined under the Agreement) by Seller under the Agreement, Buyer shall give concurrent notice of such Default to Seller and Collateral Agent. Buyer shall not terminate or suspend its performance under the Agreement until Collateral Agent has been given, (a) if such Default is a monetary Default, thirty (30) days after the later of (i) the expiration of all cure periods available to Seller under the Agreement and (ii) receipt of such notice to cure a monetary Default or, (b) if such Default is a nonmonetary Default, sixty (60) days after the later of (i) the expiration of all cure periods available to Seller under the Agreement and (ii) receipt of such notice (or up to sixty (60) additional days, so long as Collateral Agent reasonably demonstrates to Buyer that it is diligently pursuing appropriate action to cure and is making sufficient progress toward curing such Default); *provided*, that if Collateral Agent is prohibited from curing any such Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Seller, then the time periods specified herein for curing a Default shall be extended for the period of such prohibition, so long

² ***NTD: It is anticipated that the Facility level liens would terminate on the Term Conversion Date. However, it is possible that they will not depending upon how the monetization of the anticipated tax credits from the Facility are structured. Conforming changes to be made to this Consent and Agreement to reflect the final financing structure.***

as Collateral Agent has diligently pursued removal of such process, stay or injunction, but in no event more than one hundred twenty (120) days. Failure of Buyer to provide such notice to Collateral Agent shall not constitute a breach of the Agreement or this Consent by Buyer and Collateral Agent agrees that Buyer shall have no liability to Collateral Agent for such failure whatsoever; *provided*, that no claim of Default or termination of the Agreement by Buyer shall be binding without such notice and the lapsing of the applicable periods set forth above. If Collateral Agent fails to cure a Default within the applicable period, Buyer shall have all its rights and remedies with respect to such Default as set forth in the Agreement.

1.3 Subsequent Owner or Replacement Agreement.

(a) Subsequent Owner. Subject to the terms and conditions of this Consent, the Parties agree that Collateral Agent shall, in accordance with Section 1.5, notify Buyer of the pendency of such foreclosure or transfer and, in addition, Collateral Agent shall subsequently notify Buyer following the occurrence of such foreclosure or transfer. If Collateral Agent notifies Buyer in writing that it has foreclosed on the Facility or the Assigned Interests pursuant to the Lender Collateral Documents, or taken a “deed in lieu of foreclosure”, Collateral Agent or its permitted successor or assigns, or any other purchaser of the Assigned Interests shall be recognized as a party substituting for Seller under the Agreement and the Option Agreement so long as Collateral Agent or its permitted successor or assigns, or any other purchaser of the Assigned Interests meets the qualifications for a Qualified Transferee and expressly assumes in writing Seller’s obligations under the Agreement and the Option Agreement and agrees to comply with the terms of the Agreement and the Option Agreement in connection with such foreclosure or the “deed in lieu of foreclosure” (*provided*, that if Collateral Agent or an Affiliate of Collateral Agent would be deemed as the Subsequent Owner, then it shall not be obligated to meet the requirement set forth in clause (a)(ii)(B) of the definition of Qualified Transferee so long as Collateral Agent or its applicable Affiliate transfers the Facility or the Assigned Interests to a Qualified Transferee within six (6) months following the foreclosure) (each such permitted and qualified successor or assign or other purchaser of the Assigned Interests, a “***Subsequent Owner***”) and the terms and conditions of the Agreement and the Option Agreement as in effect on such date of assignment or foreclosure shall continue to apply to such Subsequent Owner. For purposes of the definition of Qualified Transferee contained in the Agreement, any Person that meets the definition of Qualified Operator or is identified on Exhibit E hereof or an Affiliate of such Person shall be a Qualified Operator, so long as such Person is not in active litigation adverse to Buyer or any Participating Member.

(b) Replacement Agreement. If the Agreement is terminated or rejected in connection with a bankruptcy, insolvency, winding up or similar occurrence with respect to Seller, then, Collateral Agent or a Subsequent Owner shall certify in writing to Buyer, not more than ninety (90) days after the date of such termination or rejection, as applicable, occurs, that it meets the requirements of a Subsequent Owner and will perform the obligations of Seller as and to the extent required under the Agreement. Following receipt of such certification and at the request of Collateral Agent, Buyer will execute and deliver to Collateral Agent or Subsequent Owner a new agreement for the balance of the remaining term under the Agreement containing the same conditions, agreements, terms, provisions and limitations as the Agreement.

1.4 Buyer Cure Rights under the Financing Agreement. Under the Financing Agreement, Collateral Agent shall agree not to exercise remedies under the Financing Agreement or any related collateral documents that could preclude Buyer from exercising its purchase option pursuant to Section 1.5 below until Buyer has been given: (a) if such default thereunder is a monetary default, thirty (30) days after the expiration of all cure periods available to Seller under the Financing Agreement, or (b) if such default thereunder is a nonmonetary default, sixty (60) days after the expiration of all cure periods available to Seller under the Financing Agreement, so long as, in the case of this clause (b), Buyer reasonably demonstrates that it is diligently pursuing appropriate action to cure and is making sufficient progress toward curing such default; and the effect of any such cure by Buyer shall be as if Seller had cured the applicable default within the cure period afforded Seller under the Financing Agreement, including cessation of exercise of remedies by Collateral Agent; *provided*, that Buyer shall not have any cure rights pursuant to this Section 1.4 to the extent that Seller's default under the Financing Agreement is caused by Buyer's payment default under the Agreement. Upon any payment or cure by Buyer relating to such a default by Seller, the amounts expended by Buyer to provide such cure, including any defaulted payment and interest thereon at the Interest Rate, and all other payments made and expenses incurred by Buyer in providing such cure shall be applied either (i) in reduction of the price for the Delivered Energy payable by Buyer as provided under Section 6.1 and Appendix A of the Agreement, *provided* that the reduction of the price for the Delivered Energy shall not result in an inability of Seller to pay required debt service in connection with the Facility Debt (as defined below), or (ii) in the event of the purchase of the Facility by Buyer under Section 1.5 hereof, the purchase price shall be reduced by such amounts expended to provide such cure, *provided* that the purchase price shall not be less than the Facility Debt (as defined below). For purposes of this Consent, "**Facility Debt**" shall have the meaning set forth in the Agreement, except that (i) the reference to the obligations of "Seller" thereunder shall be deemed to refer to the obligations of "Borrower," as the counterparty under the Financing Agreement and (ii) any debt of Borrower to the lenders under the Financing Agreement shall be deemed "Facility Debt". Upon the request of Buyer, Collateral Agent can send a written notice of the amount of Facility Debt that is needed to be received by Collateral Agent pursuant to the Financing Agreement.

1.5 Buyer's Purchase in Lieu of Foreclosure. In the event of any default by Seller under the Financing Agreement that has not been cured as provided hereunder or thereunder, prior to taking any action, whether judicial or non-judicial, to foreclose upon and sell the Facility or the Assigned Interests (in either case, a "**Foreclosure Sale**") pursuant to the Lender Collateral Documents, or prior to taking a deed in lieu of foreclosure, Collateral Agent shall, concurrent with any statutory notice required to be delivered to Seller, give notice in writing to Buyer not less than ninety (90) days prior to the date of such Foreclosure Sale or taking of a deed in lieu of foreclosure in the form of Exhibit A hereto containing the information specified therein (the "**Foreclosure Notice**").

(a) Upon receipt by Buyer of a Foreclosure Notice, Buyer shall have the right, at its option, to purchase the Facility from Seller in lieu of foreclosure as set forth in this Section 1.5. In the event that, within thirty (30) days following Buyer's receipt of such Foreclosure Notice, Buyer furnishes written notice to Collateral Agent that it will (concurrent with and subject to the closing of a bond financing by Buyer) exercise its option to purchase the Facility, which notice shall be in the form of, and containing the information specified in, Exhibit B hereto (the "**Purchase Notice**"), including setting forth the date of such purchase (which shall be within ninety (90) days

following the date of Buyer's notice to Collateral Agent in the form of Exhibit B, which date may be reasonably extended by Buyer for up to an additional fifteen (15) days in order to close the bond financing), Buyer shall purchase the Facility from Seller as hereinafter provided. The purchase price of the Facility shall be paid by the Buyer to the account designated by Collateral Agent and shall be equal to the amount, measured as of the date of such payment, of the Facility Debt. In consideration of such payment, Collateral Agent shall, upon the closing therefor, release of record all of the liens and security interests under the Lender Collateral Documents.

(b) If Buyer believes that the purchase of the Facility will not take place within such ninety (90) day period, and, prior to the end of such ninety (90) day period provides notice to Collateral Agent in the form of Exhibit C, then the Foreclosure Sale (or, as applicable, the taking of a deed in lieu of foreclosure) shall not be held and Buyer shall, within ten (10) days after the end of such ninety (90) day period, purchase from Collateral Agent all of their right, title and interest in, to and under the Financing Agreement and the Lender Collateral Documents, free and clear of all Collateral Agent liens, claims and encumbrances. Upon such a purchase by Buyer, Collateral Agent agrees to cause the transfer, sale and assignment of all of the right, title and interest of Collateral Agent in, to and under the Financing Agreement, related promissory notes, and the Lender Collateral Documents to be made to Buyer (or, if and to the extent designated by Buyer, to a member of Buyer that is a purchaser from Buyer of Energy produced by the Facility (a "**Member**")) upon the payment by Buyer or such Member to Collateral Agent of the amount of the Facility Debt measured as of the date of such purchase.

(c) If Buyer has not provided Collateral Agent a notice in the form of Exhibit C prior to the end of such ninety (90) day period after the Foreclosure Notice, then Collateral Agent may effect the Foreclosure Sale or take a deed in lieu of foreclosure at any time after the end of such ninety (90) day period.].

1.6 Foreclosure Sale. In the event a Foreclosure Sale under the Lender Collateral Documents shall take place, Collateral Agent may sell the Assigned Interests pursuant to such Foreclosure Sale to any Person, free of any rights of Buyer under this Section 1.6, and Seller waives, to the extent permitted by law, all rights of redemption, stay or appraisal; *provided, however*, Buyer or any Member shall have the right to bid at such Foreclosure Sale.

1.7 Third Party Beneficiary. No action of Buyer taken pursuant to the exercise of its rights as provided in this Consent shall be deemed to be a waiver of any right accruing to Buyer on account of the occurrence of any matter which constitutes a default or a breach of Seller's obligations under the Financing Agreement.

1.8 No Assignment. Buyer agrees that it shall not, without the prior written joint consent of Seller and Collateral Agent (such consent to not be unreasonably withheld, conditioned or delayed) sell, assign or transfer any of its rights under the Agreement other than in accordance with Section 14.6 of the Agreement. Collateral Agent shall be deemed to have consented to such sale, assignment or transfer should it fail to respond within ninety (90) days after the date of the notice from Buyer.

1.9 Limitation of Liability.

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

(b) Collateral Agent or any Subsequent Owner shall expressly assume in writing Seller's obligations under the Agreement and the Option Agreement and agree to comply with the terms of the Agreement and the Option Agreement if Collateral Agent forecloses on the Facility or the Assigned Interests or takes a "deed in lieu of foreclosure", and shall not have any liability under the Agreement unless and until such assumption. Collateral Agent agrees that, except to the extent expressly provided hereunder, in no event shall Buyer be liable to Collateral Agent or any Subsequent Owner for any claims, losses, expenses or damages whatsoever under the Agreement other than liability Buyer may have to Seller under the Agreement. In the event a Subsequent Owner elects to perform Seller's obligations under the Agreement, Buyer's rights under the Option Agreement shall survive any Foreclosure Sale. A Subsequent Owner shall assume both the Agreement and the Option Agreement, or neither, and may not assume only the Agreement without assuming the Option Agreement.

1.10. Assignment of Agreement by Collateral Agent. In connection with an exercise of remedies under the Financing Agreement or any related security documents, Collateral Agent shall not assign the Agreement without also assigning the Option Agreement therewith.

2. Payments under the Agreement. Without limiting the rights of Buyer under the Agreement, Buyer shall pay any amounts owed in the manner and when required under the Agreement directly to the accounts specified below or otherwise designated by Collateral Agent to Buyer in writing. From and after such time as an entity qualifies as a Subsequent Owner, Buyer shall pay all such amounts owed directly to or at the written direction of such Subsequent Owner. Seller hereby directs Buyer, and Buyer agrees, to make all payments and amounts Buyer is obligated to pay to Seller under the Agreement, which payments shall satisfy any such payment obligations of Buyer to Seller in full and complete satisfaction of Buyer's obligations to Seller under the Agreement, to the following account:

Bank Name: _____
Account Number: _____
ABA Number: _____
Account Name: [_____]

Collateral Agent and Seller agree that any change in payment notification shall become effective within thirty (30) days after receipt by Buyer of written notice thereof in accordance with this Consent. Buyer shall have no liability to Seller or Collateral Agent (or their successors and assigns) for making payments due or to become due under the Agreement to Lender or for failure to direct such payments to Collateral Agent rather than Seller.

3. Acknowledgements; Representations and Warranties.

(a) Seller and Collateral Agent acknowledge that Buyer has not made and hereby makes no representation or warranty, expressed or implied, that Seller has any right, title or interest in the collateral secured by the Lender Collateral Documents (the “*Collateral*”) and Collateral Agent acknowledges that it has not relied upon any such representations of Buyer. Collateral Agent acknowledges that it is responsible for satisfying itself as to the existence and extent of Seller’s right, title, and interest in the Collateral.

(b) Except as otherwise expressly provided herein, Collateral Agent acknowledges that Buyer shall not have any contractual obligations to Collateral Agent, and Collateral Agent acknowledges that it has not relied upon any representations of Buyer in connection with its lending arrangements with Seller, other than the representations of Buyer set forth in this Consent and the representations of Buyer set forth in the estoppel certificate that Buyer will deliver pursuant to this Consent.

(c) Except in the event of Buyer’s breach of this Consent, Seller and Collateral Agent acknowledge that Buyer shall have no liability to Seller or Collateral Agent resulting from or related to this Consent, or for consenting to any future assignments of the Collateral or any interest of Seller or Collateral Agent therein.

(d) Seller and Collateral Agent each agree that Buyer shall at all times have (and Buyer hereby expressly reserves) the right to set off or deduct from payments due to Seller under the Agreement amounts owing to Buyer by Seller under the Agreement in accordance with Section 11.4 of the Agreement.

(e) Each of Buyer, Seller and Collateral Agent represents and warrants that it is duly authorized to enter into and perform its obligations under this Consent.

(f) Seller represents and warrants to Buyer that the rights of Buyer to exercise its cure rights and other rights and remedies hereunder, including to purchase the Facility in accordance with the provisions of Section 1.5 of this Consent, do not and will not conflict with the Financing Agreement, and are permitted by the Financing Agreement, the Lender Collateral Documents, and any related agreements and documents securing Seller’s performance under the Financing Agreement.

(g) Buyer agrees that any foreclosure by Collateral Agent on the membership interests in Borrower or Pledgor upon the occurrence of a default by Borrower under the Financing Agreement shall not constitute a breach under the Agreement if the Facility is operated and maintained by a Qualified Operator (as defined in the Agreement) following any such foreclosure. Collateral Agent shall obtain Buyer’s consent (such consent not to be unreasonably withheld) prior to any transfer by Collateral Agent of the membership interests in Borrower or Pledgor upon the occurrence of a default by Borrower under the Financing Agreement to an entity other than a Qualified Transferee (*provided*, that if Collateral Agent or an Affiliate of Collateral Agent is the Subsequent Owner, then it shall not be obligated to meet the requirement set forth in clause (a)(ii)(B) of the definition of Qualified Transferee so long as Collateral Agent or its applicable

Affiliate transfers the Facility or the Assigned Interests to a Qualified Transferee within six (6) months following any foreclosure).

4. Miscellaneous.

4.1 Governing Law; Submission to Jurisdiction.

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

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

4.2 No Amendment of Agreement. This Consent (in the form attached to the Agreement as of the Effective Date) shall not be deemed to be an amendment to the Agreement.

4.3 Counterparts. This Consent may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which, when so executed and delivered, shall be an original, but all of which shall together constitute one and the same instrument.

4.4 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by Buyer and Collateral Agent and after the initial funding by any Tax Equity Investor, such Tax Equity Investor.

4.5 Successors and Assigns. This Consent shall bind and benefit Buyer, Seller and Collateral Agent, and their respective successors and permitted assigns.

4.6 Attorney's Fees. Seller shall reimburse Buyer for all actual and documented reasonable costs and expenses incurred by Buyer in connection with the facilitation of Seller's collateral assignment or pledge of the Agreement, or any other action taken in connection with the transactions contemplated in this Consent, or otherwise pursuant to any request made by Seller or any Collateral Agent.

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

4.8 Estoppel Certificate. Buyer agrees to deliver to the Tax Equity Investors and Collateral Agent a customary estoppel certificate substantially in the form of Exhibit D from time to time, including on the date of delivery of this Consent, in connection with the fundings by the Tax Equity Investors and in connection with the achievement of Commercial Operation of the Facility following receipt of a written request therefor from Seller.

4.9 Notices. Any communications between the Parties or notices provided herein to be given shall be given to the following addresses:

If to Seller:

[Seller]
c/o [_____]

If to Buyer:

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

If to Collateral Agent:

[_____]

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, or (d) if sent by prepaid telegram or by facsimile. Any Party may change its address for notice hereunder by giving written notice of such change to the other Parties.

4.10 [Termination of Collateral Documents and Consent]. Seller and Collateral Agent agree that upon the termination of the Lender Collateral Documents on the Term Conversion Date (as defined in the Recitals), the only remaining collateral security of Collateral Agent securing the obligations of the Borrower under the Financing Agreement will be the membership interests in and any assets of the Pledgor and the Borrower, and there will be no remaining collateral security of Collateral Agent in the Seller or its assets that secures the obligations of the Borrower under the Financing Agreement. Seller agrees to deliver notice of the occurrence of the Term Conversion Date to Buyer (with a copy to Collateral Agent) promptly but in no event more than ten (10) days after such Term Conversion Date. The Parties agree that, as of such date, any rights, duties or obligations arising hereunder shall terminate and no longer be applicable; *provided*, that Sections 1.9(a), 3, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.8, 4.9, and 4.10 and the definition of "Facility Debt" in Section 1.4 shall survive the termination of this Consent.]

4.11 [Tax Equity Investor Accession]. Each of Buyer, Collateral Agent, Seller and the Tax Equity Investors hereby agree as follows:

(a) Effective as of (i) the date of the initial funding by any Tax Equity Investor, (ii) the execution by the Tax Equity Investor of an accession agreement to this Consent reasonably acceptable to the other Parties hereto and (iii) the earlier to occur of (1) the date that the obligations under the Financing Agreement are repaid in full; and (2) the Term Conversion Date:

I. The rights of Collateral Agent under Section 1 hereof and the payment direction in Section 2 hereof will terminate.

II. Buyer will not terminate the Agreement or suspend performance of its services under the Agreement on account of any Default (as defined under the Agreement) of Seller thereunder, without written notice to the Tax Equity Investors and

first providing to the Tax Equity Investors (i) thirty (30) days from the date notice of Default is delivered to the Tax Equity Investors to cure such Default if such Default is the failure to pay amounts to Buyer which are due and payable by Seller under the Agreement, or (ii) forty-five (45) days from receipt of such notice, to cure such Default if the Default cannot be cured by the payment of money to Buyer.

(b) The address of the Tax Equity Investors for purposes of all notices and other communications shall be as set forth in the applicable accession agreement.]

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Consent and Estoppel Agreement to be duly executed and delivered as of the date first above written.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
[]
President

Date: _____

Attest: _____
[]
Assistant Secretary

[SELLER]

By: _____
Name: []
Title: []

[Collateral Agent]

By: _____
Name: []
Title: []

EXHIBIT A
to Consent and Estoppel Agreement

FORM OF FORECLOSURE NOTICE
[Letterhead of Collateral Agent]

[Insert date]

Via Certified Mail, Return Receipt Requested

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

Re: ||

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement (“**Consent**”) dated as of _____, 20__, among Southern California Public Power Authority (“**Buyer**”), _____, as collateral agent (“**Collateral Agent**”) and [Seller] (“**Seller**”). This is a Foreclosure Notice, as defined in the Consent. Capitalized terms used herein and not defined herein have the respective meanings given in the Consent.

As of the date hereof, the following amounts are due and owing by Seller under the Financing Agreement:

Principal amount of loans:
Accrued Interest:
Reimbursable Amounts
Fees:

As of the date hereof, interest is accruing at the rate of ____% per annum *[Insert if applicable: and fees are accruing at the rate of ____% per annum]*. This interest rate will apply until *[insert date which is end of current interest period]*, from which time the interest rate may be higher or lower. A default rate of interest equal to [2³]% above the otherwise applicable rate *[does/does not] currently apply [If does not currently apply, add: but may be applied at any time]. [If applicable, state: The principal amount of loans shown above does not reflect the entire loan commitment under the Financing Agreement. Additional loans may be made, with or without the Seller’s consent, and such additional loans will accrue interest as provided in the Financing Agreement.]*

³ **NTD:** Subject to applicable Financing Agreement.

An Event of Default, as defined in the Financing Agreement, has occurred and is continuing. Collateral Agent anticipates that it may foreclose upon the Assigned Interests or take a deed in lieu of foreclosure on a date estimated to be *[insert day no less than ninety (90) days from the date of notice]*. Such date may be modified as permitted by law, but will in no event be prior to ninety (90) days after the date hereof.

Very truly yours,

[_____]

EXHIBIT B
to Consent and Estoppel Agreement

FORM OF PURCHASE NOTICE

[Letterhead of SCSPPA]

[Insert date]

Via Certified Mail, Return Receipt Requested

[_____]

[Address]

[City, State ZIP]

Attn: [_____]

Re:

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement (“**Consent**”), dated as of _____, 20__, among Southern California Public Power Authority (“**Buyer**”), _____, as collateral agent (“**Collateral Agent**”) and [Seller] (“**Seller**”). This is a Purchase Notice, as defined in the Consent. Capitalized terms used and not defined herein have the respective meanings given in the Consent.

We have received your foreclosure Notice, dated [insert date of Foreclosure Notice]. By this Purchase Notice, we hereby notify Collateral Agent that we will exercise our option and purchase the Facility pursuant to our rights under Section 1.5(a) of the Consent no later than ninety (90) days from the date of the Foreclosure Notice, and upon consummation of such purchase, pay to Collateral Agent, for the account of Collateral Agent, the Facility Debt.

Very truly yours,

SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY

By: _____
[_____] President

Date: _____

Attest: _____
[_____] Assistant Secretary

EXHIBIT C
to Consent and Estoppel Agreement

FORM OF PURCHASE NOTICE

[Letterhead of SCPPA]

[Insert date]

Via Certified Mail, Return Receipt Requested

[_____]

[Address]

[City, State ZIP]

Attn: [_____]

Re:

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement (“**Consent**”), dated as of _____, 20__, among Southern California Public Power Authority (“**Buyer**”), _____, as collateral agent (“**Collateral Agent**”) and [Seller] (“**Seller**”). Capitalized terms used herein and not defined herein have the respective meanings given in the Consent.

We have received your Foreclosure Notice, dated *[insert date of Foreclosure Notice]*. By this notice, we hereby notify Collateral Agent that we believe that the purchase of the Facility pursuant to Section 1.5(b) of the Consent will not take place within the ninety (90) day period following our receipt of such Foreclosure Notice. We will, within ten (10) days after the end of such ninety (90) day period, purchase from Collateral Agent all of their right, title and interest in, to and under the Financing Agreement, related promissory notes, and Lender Collateral Documents, for a price equal to the Facility Debt.

Very truly yours,

SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY

By: _____

[_____]

President

Date: _____

Attest: _____

[_____]

Assistant Secretary

EXHIBIT D
to Consent and Estoppel Agreement

[FORM OF] PPA ESTOPPEL CERTIFICATE

[Date⁴]

Reference is made to that certain Power Purchase Agreement dated as of [___], 20[] (the “**Agreement**”), by and between the Southern California Public Power Authority, a public entity and joint powers agency formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Code Section 6500, *et seq.*) (“**Buyer**”; *provided*, that in no event shall the term “Buyer” refer to any of the members of Buyer, and the term “**Buyer’s knowledge**” as used herein shall refer only to the knowledge of persons at SCPPA, and not to the knowledge of anyone at any of the members of Buyer) and [Seller, a limited liability company] (“**Seller**”). Terms used herein but not defined herein have the same meanings as in the Agreement.

Buyer hereby confirms and agrees as of the date hereof as follows:

1. The copy of the Agreement, as amended, attached as [Exhibit A], constitutes a true and complete copy of the PPA.

2. The Agreement is in full force and effect and has not been modified or amended in any way [since [_____, 20[]], and constitutes the only agreement between Buyer and Seller other than that certain Consent and Estoppel Agreement dated as of [_____, 20__] and that certain Option Agreement dated as of [___], 20[].

3. Buyer has not transferred or assigned its interest in the Agreement.

4. Buyer is not in default under the Agreement nor has Buyer breached any of its representations, warranties, agreements or covenants under the Agreement and, to Buyer’s knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Buyer under the Agreement or that would give Seller the right to terminate the Agreement. To Buyer’s knowledge, Seller is not in default under the Agreement nor, to Buyer’s knowledge, has Seller breached any of its representations, warranties, agreements or covenants under the Agreement and, to Buyer’s knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Seller under the Agreement or that would allow Buyer to terminate the Agreement.

5. All representations made by Buyer in the Agreement were true and correct as of the Effective Date of the Agreement and continue to be true and correct.

⁴ To be delivered on the date of delivery of the Consent and, upon the initial funding and upon the final funding under the Tax Equity transaction commensurate with COD.

6. To Buyer's knowledge, no event, act, circumstance or condition constituting an event of Force Majeure under the Agreement has occurred and is continuing.

7. Seller has not claimed any amounts under the indemnification obligation of Buyer set forth in the Agreement.

8. To Buyer's knowledge, Buyer has no existing counterclaims, offsets or defenses against Seller under the Agreement. Buyer has no present knowledge of any facts entitling Buyer to any material claim, counterclaim or offset against Seller in respect of the PPA.

9. All payments due and owing[, except for those under dispute as described in Schedule I hereto⁵], under the Agreement by Buyer have been paid in full through the period ending on the date hereof.

10. [The Commercial Operation Date of the Facility occurred on [____], 20[____].

11. The Contract Capacity of the Project as of the Commercial Operation Date is [] MW.⁶]

IN WITNESS WHEREOF, Buyer has caused this Certificate to be duly executed by its officer thereunto duly authorized as of the date first set forth above.

SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY

By: _____
Name:
Title:

⁵ To include if applicable.

⁶ Bracketed language in 10 and 11 to be included in the Estoppel Certificate delivered at the final funding under the Tax Equity Transaction commensurate with COD.

[Schedule I

SCHEDULE I TO [FORM OF] AGREEMENT ESTOPPEL CERTIFICATE⁷]]

⁷ To include if applicable.

EXHIBIT E
to Consent and Estoppel Agreement

[*Seller to provide*]
Qualified Operators

[_____]

provided, however, that no Person listed above shall be a Qualified Operator if at the relevant time such Person is in active litigation adverse to Buyer or any Participating Member. Moreover, this list is not exclusive and, subject to the foregoing provisions, other entities that meet the definition of Qualified Operator in the PPA shall be deemed to be Qualified Operators hereunder.

APPENDIX AA
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]

FORM OF TAX EQUITY CONSENT AND ESTOPPEL

[Date⁸]

Reference is made to that certain Power Purchase Agreement (dated as of [____], 20[] (the “*Agreement*”), by and between the Southern California Public Power Authority, a public entity and joint powers agency formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Code Section 6500, *et seq.*) (“*Buyer*”; *provided*, that in no event shall the term “Buyer” refer to any of the members of Buyer, and the term “*Buyer’s knowledge*” as used herein shall refer only to the knowledge of persons at SCPPA, and not to the knowledge of anyone at any of the members of Buyer) and [Seller a limited liability company] (“*Seller*”). Terms used herein but not defined herein have the same meanings as in the PPA.

Buyer hereby confirms and agrees as of the date hereof as follows:

1. The copy of the Agreement, as amended, attached as [Exhibit A], constitutes a true and complete copy of the Agreement.
2. The Agreement is in full force and effect and has not been modified or amended in any way [since [_____, 20__], and constitutes the only agreement between Buyer and Seller other than that certain Consent and Estoppel Agreement dated as of [_____, 20__] and that certain Option Agreement dated as of [____], 20[]].
3. Buyer has not transferred or assigned its interest in the Agreement.
4. Buyer is not in default under the Agreement nor has Buyer breached any of its representations, warranties, agreements or covenants under the Agreement and, to Buyer’s knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Buyer under the Agreement or that would give Seller the right to terminate the Agreement. To Buyer’s knowledge, Seller is not in default under the Agreement nor, to Buyer’s knowledge, has Seller breached any of its representations, warranties, agreements or covenants under the Agreement and, to Buyer’s knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would

⁸ To be delivered on the date of delivery of the Consent and, upon the initial funding and upon the final funding under the Tax Equity transaction commensurate with COD.

constitute a default or breach by Seller under the Agreement or that would allow Buyer to terminate the Agreement.

5. All representations made by Buyer in the Agreement were true and correct as of the Effective Date of the Agreement and continue to be true and correct.

6. To Buyer's knowledge, no event, act, circumstance or condition constituting an event of Force Majeure under the Agreement has occurred and is continuing.

7. Seller has not claimed any amounts under the indemnification obligation of Buyer set forth in the Agreement.

8. To Buyer's knowledge, Buyer has no existing counterclaims, offsets or defenses against Seller under the Agreement. Buyer has no present knowledge of any facts entitling Buyer to any material claim, counterclaim or offset against Seller in respect of the Agreement.

9. All payments due and owing[, except for those under dispute as described in Schedule I hereto⁹], under the Agreement by Buyer have been paid in full through the period ending on the date hereof.

10. [The Commercial Operation Date of the Facility occurred on [____], 20[____].

11. The Contract Capacity of the Project as of the Commercial Operation Date is [] MW.

[12. Upon the occurrence of a Default) by Seller under the Agreement, Buyer shall give concurrent notice of such Default to Seller and Tax Equity Investor. Buyer will not terminate the Agreement or suspend performance of its services under the Agreement on account of any Default) of Seller thereunder, without written notice to the Tax Equity Investors and first providing to the Tax Equity Investors (i) thirty (30) days from the date notice of Default is delivered to the Tax Equity Investors to cure such Default if such Default is the failure to pay amounts to Buyer which are due and payable by Seller under the Agreement, or (ii) forty-five (45) days from receipt of such notice, to cure such Default if the Default cannot be cured by the payment of money to Buyer (or up to sixty (60) additional days, so long as the Tax Equity Investors reasonably demonstrate to Buyer that they are diligently pursuing appropriate action to cure and are making sufficient progress toward curing such Default); *provided*, that if the Tax Equity Investors are prohibited from curing any such Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Seller, then the time periods specified herein for curing a Default shall be extended for the period of such prohibition, so long as the Tax Equity Investors have diligently pursued removal of such process, stay or injunction, but in no event more than one hundred twenty (120) days. Failure of Buyer to provide such notice to Tax Equity Investor shall not constitute a breach of the Agreement or this Tax Equity Consent and Estoppel and Tax Equity Investor agrees that Buyer shall have no liability to Tax Equity Investor for such failure whatsoever; *provided* that no claim of Default or termination of the

⁹ To include if applicable.

Agreement by Buyer shall be binding without such notice and the lapsing of the applicable periods set forth above. If Tax Equity Investor fails to cure a Default within the applicable period, Buyer shall have all its rights and remedies with respect to such Default as set forth in the Agreement.^{10]}

IN WITNESS WHEREOF, Buyer has caused this Certificate to be duly executed by its officer thereunto duly authorized as of the date first set forth above.

SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY

By: _____

Name:

Title:

¹⁰ Bracketed language in 10, 11 and 12 to be included in the Estoppel Certificate delivered at the final funding under the Tax Equity Transaction commensurate with COD.

Schedule I

SCHEDULE I TO FORM OF TAX EQUITY CONSENT AND ESTOPPEL^{11]}

¹¹ To include if applicable.

APPENDIX AB
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]

INVERTER/DCS PERFORMANCE CRITERIA

The Facility shall be equipped with a DCS that will be able to throttle, ramp, turn-on, turn-off, and telemeter the total MW output. The DCS will use the DNP 3.0 and International Electrotechnical Commission (“*IEC*”) 61850 communication protocols to interface with LADWP’s SCADA RTU. All control, metering, and relay systems shall be provided with DNP 3.0 and IEC 61850, as may be updated from time to time.

Seller shall provide weather stations including data storage with automatic archiving of data files necessary to validate irradiance calculations at the Facility Site. Data storage capacity shall be sufficient to store 360 days of weather data.

Inverter/DCS Performance Criteria

A. Distributed Control System – The Facility Site shall have one master DCS at the 34.5 kV level controlling the inverters. The master DCS shall provide the capability of controlling the entire Facility’s output, and shall provide to the operators the ability to control the active power output of the Facility through a single setpoint. The DCS shall allow LADWP’s ECC to issue commands (single setpoint) for the options listed below.

B. Normal Startup – The master DCS shall provide the capability of starting the entire Facility to partial or full output (“*Normal Startup*”), and shall provide to the operators the ability to control Normal Startup of the entire Facility through a single command.

C. Normal Shutdown – The master DCS shall provide the capability of stopping the entire Facility from partial or full output (“*Normal Shutdown*”), and shall provide to the operators the ability to control Normal Shutdown of the entire Facility through a single command.

D. Emergency Stop – The DCS shall be capable of operating in two stop modes (each, an “*Emergency Stop*”), as necessary (automatic Emergency Stop and directed Emergency Stop). In automatic Emergency Stop mode, the master DCS shall meet any shutdown requirements specified in applicable NERC Reliability Standards, including as of the Effective Date NERC Reliability Standard PRC-024, and shall be capable of shutting down in full compliance with UL1741, and with applicable NERC Reliability Standards, in either mode as necessary for LADWP operations. In directed Emergency Stop mode, the master DCS shall provide the capability of stopping the entire Facility from partial or full output through a single command.

E. Black Start – The master DCS’s capability of starting the entire Facility from a black start condition[, even when sufficient solar irradiance is available to the solar collectors, is NOT

required]. However, the Facility shall maintain communication and control power and capability with LADWP's ECC[whether solar irradiance is available or not].

F. [Solar Curtailment] – The master DCS shall provide the capability to curtail [solar photovoltaic] power generation to a specified percentage of the nominal power rating. Such curtailment of a Participating Member shall be effected by the control of the solar photovoltaic inverters of such Participating Member.

G. Voltage Ride Through – All systems supplied shall meet the Low Voltage Fault Ride Through (“*LVRT*”) requirements and any over or under voltage capabilities specified in the applicable NERC Reliability Standards, including as of the Effective Date NERC Reliability Standard PRC-024, and shall be capable of operating in full compliance with UL1741, and with applicable NERC Reliability Standards applicable to LVRT requirements, in either mode as necessary for LADWP operations.

H. Fault Ride Through - All systems supplied under this Agreement shall meet any fault ride through requirements specified in applicable NERC Reliability Standards, including as of the Effective Date NERC Reliability Standard PRC-024, and shall be capable of operating in full compliance with UL1741, and with applicable NERC Reliability Standards relating to fault ride through requirements, in either mode as necessary for LADWP operations.

I. Frequency Ride Through - All systems supplied shall meet the over and under frequency capabilities specified in applicable NERC Reliability Standards, including as of the Effective Date NERC Reliability Standard PRC-024, and shall be capable of operating in full compliance with UL1741, and with applicable NERC Reliability Standards relating to over and under frequency capabilities, in either mode as necessary for LADWP operations.

J. Reactive Power - The inverters shall have the capability to supply and absorb reactive power over the complete real power range. The DCS shall be able to control inverter reactive power dispatch through a single setpoint in each of the following three modes: Power Factor Control Mode, Voltage Control Mode, and Reactive Power Control Mode. In Power Factor Control Mode, the DCS shall provide the operators the ability to control the Facility's reactive power dispatch within the power factor range of 0.95 lead/lag at the point of interconnection (as specified in the Generator Interconnection Agreement). In Reactive Power Control mode, the DCS shall provide the operators the ability to control the Facility's reactive power dispatch at the point of interconnection independently of active power production. In Voltage Control Mode, the DCS shall provide the operators the ability to control the voltage at the point of interconnection within a specified range by automatically controlling reactive power dispatch dependent on active power production.

APPENDIX AC
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]

PMU REQUIREMENTS

I. LADWP Compliance Responsibilities

As Planning Coordinator and Transmission Operator registered with NERC, LADWP shall demonstrate compliance with NERC Reliability Standard MOD-033-2, and any successor NERC Reliability Standard. As Seller's Planning Coordinator, LADWP does not expect Seller to submit any compliance documentation for MOD-033-2 to NERC or WECC, however, Seller shall cooperate to enable LADWP to demonstrate compliance with MOD-033-2. In particular, as Seller's Planning Coordinator, LADWP requires the phasor measurement unit ("*PMU*") data specified below in order to continue planning for the Site and to perform data validation in accordance with NERC Reliability Standard MOD-033-2 requirement R1, as such requirement may be amended from time to time subject to FERC approval.

II. Compliance under Agreement

LADWP's Transmission Analysis and Regional Planning ("*Transmission Planning*") has deemed necessary the collection of PMU data, both from sources at LADWP sites and at sites of projects for which LADWP has power purchase agreements, to adequately perform data validation per NERC Reliability Standard MOD-033-2 requirement R1, as such requirement may be amended from time to time subject to FERC approval. LADWP's Transmission Planning has identified the Site as a site required to have PMU data.

a. PMU Location

To ensure the availability of needed PMU data for LADWP's Transmission Planning to perform adequate data validation per NERC Reliability Standard MOD-033-2 requirement R1, as such requirement may be amended from time to time subject to FERC approval, Seller shall take the necessary steps to ensure that adequate PMU data is available for the location specified by LADWP's Transmission Planning. This includes the installation of PMU equipment if there is no PMU currently installed at the specified location. This also includes modifying existing PMUs to satisfy LADWP's Transmission Planning's validation requirements. If adequate PMU data exists for the location specified by LADWP's Transmission Planning, then Seller does not need to install additional PMUs.

b. PMU Technical Requirements

The provided PMU data shall, at minimum, be time-synchronized and include 30 samples per second of the positive sequence data (including voltage, real and reactive power flow, frequency, phase angle).

c. Communications

Seller shall coordinate with LADWP to ensure the needed communications infrastructure exists to continuously provide PMU data to LADWP's designated server. So long as PMU communications with LADWP functions correctly, Seller shall not be required to archive PMU data on-site. Rather, Seller shall continuously provide PMU data to LADWP's designated server. However, if the PMU fails to send data to LADWP's designated server, Seller shall archive the PMU data for the duration of the failure and provide the data to LADWP.

d. Maintenance Requirements

Seller shall perform the necessary maintenance, within reason, to ensure that PMU data is continuously provided to LADWP. In the event of a failure of PMU recording or communications capability, Seller shall complete the following steps:

1. Within one (1) Business Day following discovery of failure, notify LADWP's Transmission Planning of the failure.
2. Within four (4) Business Days following discovery of failure:
 - a. Provide LADWP's Transmission Planning with a corrective action plan ("**CAP**") to restore the PMU's recording and communications capability within the timeframes for proposed CAP completion determined in items (i)-(v) below:
 - i. For CAPs consisting of PMU replacement for which a spare is available: within seven (7) Business Days following discovery of failure;
 - ii. For CAPs consisting of PMU replacement for which a spare is not available: within ten (10) Business Days of discovery of failure;
 - iii. For CAPs consisting of CVT replacement: within ten (10) calendar days following discovery of failure;

- iv. For CAPs addressing communications failure: within five (5) Business Days following discovery of failure;
 - v. For CAPs addressing other issues not addressed above: within ten (10) Business Days following discovery of failure.
3. Within the timeframe for initial proposed CAP completion date determined in Step 2.a.:
- a. Restore the PMU's recording and communications capability.
 - b. If, within reasonable effort, it is not possible to restore the PMU's recording and communications capability within the timeframe specified above, then Seller shall provide an updated CAP within three (3) Business Days following the initial proposed CAP completion date and obtain LADWP's agreement on the updated plan.

e. Compliance Documentation

Seller shall maintain the necessary information to provide, upon request by LADWP, the following:

- 1. Confirmation of whether the PMU equipment has been running and providing data for the timeframe in question.
- 2. If there have been outages, a list of the outage dates within the timeframe in question, as well as: cause of outages, duration of outages, and corrective actions taken.

f. Financial Liability for a Compliance Violation

Seller shall be financially liable for any failure to provide regulatory data, per Prudent Utility Practices, to the extent such failure (i) causes LADWP to pay penalties to FERC, NERC, or WECC and (ii) was due to Seller's act or omission.

g. LADWP Points of Contact

Transmission Planning and Contacts:

Manager
Sunaja Lakshman
(213) 367-3281
Sunaja.Lakshman@LADWP.com

Regulatory, Standards and Compliance Group:

Assistant Supervisor
Sangeetha Losari
(213) 367-2315
Sangeetha.losari@ladwp.com

APPENDIX AD
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]

LADWP METERING POLICIES

[To be attached.]

APPENDIX AE
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
[SELLER]

FORM OF MONTHLY REPORT

[To be attached.]