

ROSEBURG SB 859 BIOMASS PROJECT

BUYERS JOINT PROJECT AGREEMENT

BY AND AMONG

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY,

AND

SACRAMENTO MUNICIPAL UTILITY DISTRICT

AND

MODESTO IRRIGATION DISTRICT

AND

TURLOCK IRRIGATION DISTRICT

AND

CITY OF RIVERSIDE, CALIFORNIA

Dated as of November 25, 2019

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ROSEBURG SB 859 BIOMASS PROJECT BUYERS JOINT PROJECT AGREEMENT

PARTIES

This Buyers Joint Project Agreement (this “*Agreement*”) dated as of the 25th day of November, 2019, by and among the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California (“*SCPPA*”), the SACRAMENTO MUNICIPAL UTILITY DISTRICT, a California municipal utility district (“*SMUD*”), the MODESTO IRRIGATION DISTRICT, an irrigation district organized and existing under the laws of the State of California (“*MID*”), the TURLOCK IRRIGATION DISTRICT, an irrigation district organized and existing under the laws of the State of California (“*TID*”), and the CITY OF RIVERSIDE, a California charter city and municipal corporation existing under the laws of the State of California (“Riverside”). SCPPA, SMUD, MID, TID and Riverside are each sometimes referred to as a “*Buyer*” or a “*Party*,” and collectively as “*Buyers*” or “*Parties*.”

RECITALS

In response to the mandate imposed on them by the State of California in 2016 by passage of Senate Bill 859 (Stats.2016, c. 368, eff. Sept. 14, 2016, hereinafter “*SB 859*”) to procure a specified amount of electric generation capacity from biomass-fueled resources, the Buyers, following a Request for Proposals issued by SCPPA on April 11, 2018, have identified a potential biomass generation resource owned and operated by Roseburg Forest Products Co. (“*Seller*”).

The Buyers have participated in negotiations for and are entering into an SB 859 Purchase Agreement, dated November 25, 2019 with Seller (the “*Purchase Agreement*”) for the purchase and sale of 11 MW of SB 859 Capacity (as such term is defined in the Purchase Agreement), SB 859 Attributes and other products from Seller’s biomass facility located in Weed, California (the “*Project*”).

The Purchase Agreement includes provisions for a Buyers’ Agent to receive notifications from Seller and to administer the Purchase Agreement and take action on behalf of the Buyers in certain circumstances, and each of the Buyers intends by this Agreement to provide the manner and means to coordinate the exercise of certain of the Buyers’ rights and activities with respect to the Project and to authorize Buyers’ Agent to provide such approvals, determinations, responses and other actions under the Purchase Agreement on behalf of the Buyers in order to carry out the applicable terms thereof and realize the related benefits thereunder.

The Purchase Agreement provides that, as of its Effective Date, SCPPA shall be the Buyers’ Agent, and each of the Parties intends by this Agreement to acknowledge and confirm that appointment. Where the context requires, the term “Buyers’ Agent” as used in this Agreement shall be deemed to refer to SCPPA acting in that capacity.

1. AGREEMENT

For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, it is agreed by and among the Parties as hereinafter set forth. This Agreement shall take effect on the date when all Buyers and Seller have executed Purchase Agreements.

2. DEFINITIONS

The meaning of capitalized terms in this Agreement not otherwise defined in context shall be as defined in Section 1.1 of the Purchase Agreement, which is incorporated herein by this reference.

3. APPOINTMENT OF SCPPA AS BUYERS' AGENT

- 3.1 In accordance with the terms and conditions of this Agreement, SMUD, MID, TID and Riverside hereby appoint and authorize SCPPA to act as the Buyers' Agent for the limited purpose of carrying out the duties and responsibilities of the Buyers' Agent under the Purchase Agreement, as provided in Section 5 and pursuant to Section 7 of this Agreement, and SCPPA hereby accepts such appointment. In so doing, the Parties acknowledge and agree that SCPPA, as a Buyer under the Purchase Agreement on behalf of certain of its Members (namely, the Los Angeles Department of Water and Power, the Imperial Irrigation District, and the City of Anaheim, each hereinafter a "***SCPPA Participating Member***"), shall act for its own account as well as on behalf of SMUD, MID, TID and Riverside. Unless replaced by unanimous agreement among the Buyers, SCPPA shall serve as Buyers' Agent under the Purchase Agreement as provided in this Agreement throughout the Agreement Term.
- 3.2 In carrying out its responsibilities under the Purchase Agreement pursuant to the terms of this Agreement, SCPPA, as Buyers' Agent, shall observe all applicable laws, rules and regulations.

4. ESTABLISHMENT AND AUTHORIZATION OF BUYERS' JOINT PROJECT COMMITTEE

4.1 The Buyers' Joint Project Committee is hereby established and authorized to act on behalf of each of the Buyers for the purposes of (a) providing coordination among the Buyers in carrying out certain collective actions as set forth in this Section 4, and (b) providing the manner and means for achieving agreement among the Buyers with respect to such collective actions.

4.2 The Buyers' Joint Project Committee shall consist of representatives (each a "***Joint Committee Representative***") as follows: (a) a Joint Committee Representative from SMUD, (b) a Joint Committee Representative from MID, (c) a Joint Committee Representative from TID, (d) a Joint Committee Representative from Riverside, (e) a Joint Committee Representative from each SCPPA Participating Member, and (f) a non-voting Joint Committee Representative from SCPPA. Each such Joint Committee Representative shall be entitled to cast a vote (a "***Joint Committee Vote***") as follows:

- (i) The Joint Committee Representative from SMUD shall be entitled to cast its Joint Committee Vote equal to the Buyers' Percentage of SB 859 Capacity for SMUD as set forth in Appendix A;
- (ii) The Joint Committee Representative from MID shall be entitled to cast its Joint Committee Vote equal to the Buyers' Percentage of SB 859 Capacity for MID as set forth in Appendix A;

- (iii) The Joint Committee Representative from TID shall be entitled to cast its Joint Committee Vote equal to the Buyers' Percentage of SB 859 Capacity for TID as set forth in Appendix A;
- (iv) The Joint Committee Representative from Riverside shall be entitled to cast its Joint Committee Vote equal to the Buyers' Percentage of SB 859 Capacity for Riverside as set forth in Appendix A; and
- (v) Each SCPPA Participating Member shall be entitled to cast a Joint Committee Vote which shall be equal to the Percentage of Total Capacity for such SCPPA Participating Member as set forth in Appendix A.

4.3 SCPPA's non-voting Joint Committee Representative shall be the chairperson ("*Chairperson*") of the Buyers' Joint Project Committee.

4.4 Each of the Buyers and each of the SCPPA Participating Members (through SCPPA) shall, within 30 days after the Parties have entered into this Agreement, give notice, each to the other, of its Joint Committee Representative on the Buyers' Joint Project Committee. An alternate Joint Committee Representative may be appointed to act on behalf of any Joint Committee Representative by similar written notice in the absence of the regular Joint Committee Representative. An alternate Joint Committee Representative may attend all meetings of the Buyers' Joint Project Committee but may vote only if the Joint Committee Representative entitled to vote and for whom she/he serves as an alternate is absent. Upon any SCPPA Participating Member providing its written proxy to SCPPA,

SCPPA's Joint Committee Representative serving as Chairperson shall be authorized in the absence of such SCPPA Participating Member to vote by proxy for such SCPPA Participating Member on the Buyers' Joint Project Committee. Such a proxy shall be valid only for the meeting or meetings for which it is given.

4.5 The Chairperson shall be responsible for calling and presiding over meetings of the Buyers' Joint Project Committee. The Chairperson shall promptly call a meeting of the Buyers' Joint Project Committee at the request of any Joint Committee Representative in a manner and to the extent permitted by law, and upon not less than three (3) days' written notice to the Buyers unless otherwise agreed among all Joint Committee Representatives. For the purpose of conducting meetings, a quorum shall exist so long as the Chairperson, together with the Joint Committee Representatives entitled to cast Joint Committee Votes (including any SCPPA vote by proxy) aggregating at least 70% of the of Joint Committee Votes shall be present. The conducting of Buyers' Joint Project Committee meetings, including voting at such meetings, may be by assembled meeting or by telephone or video conferencing, or by any combination thereof, to the extent permitted by law.

4.6 Unless all of the Buyers shall determine otherwise, the actions of the Buyers' Joint Project Committee shall require the votes by or on behalf of at least five (5) Joint Committee Representatives having Joint Committee

Votes (including any SCPPA vote by proxy), aggregating at least seventy per cent (70 %) of the total of the Joint Committee Votes.

5. RESPONSIBILITIES OF BUYERS' JOINT PROJECT COMMITTEE

5.1 The Buyers' Joint Project Committee shall be responsible for determining and directing by a vote of its Joint Committee Votes as provided in Section 4.6 of this Agreement the action to be taken or not taken by the Buyers' Agent with respect to the following matters under the Purchase Agreement:

- (i) Approval of any Lien (other than Permitted Encumbrances) on any portion of the Facility or any related property or assets under Section 5.5 of the Purchase Agreement.
- (ii) Consenting to any Change in Control pursuant to Section 13.7(a) of the Purchase Agreement.
- (iii) Providing administrative services relating to Buyers' rights or obligations under the Purchase Agreement.
- (iv) Any issue involving Seller's performance under the Purchase Agreement, including without limitation whether such performance is consistent with the requirements of SB 859.
- (v) Any claim of Force Majeure asserted by Seller or Buyers under section 13.6 of the Purchase Agreement, including direction to assert such a claim on behalf of Buyers.
- (vi) [Omitted.]
- (vii) [Omitted.]

(viii) Any other matter or matters with respect to which action is to be taken or not taken by Buyers' Agent pursuant to the Purchase Agreement or that the Buyers and the SCPPA Participating Members determine should be considered by the Buyers' Joint Project Committee for purposes of giving direction to Buyers' Agent.

5.2 Each of the Buyers agrees that the decision of the Buyers' Joint Project Committee with respect to each of the matters under Section 5.1 of this Agreement shall be determinative as to such matter and shall constitute the decision of the Buyers as to such matter for purposes of the Purchase Agreement.

6. BUYERS JOINT ACTION

6.1 Except as otherwise provided in Section 5.1 of this Agreement, any action provided for under the Purchase Agreement or this Agreement to be taken or agreed to by the Buyers collectively, including without limitation, the termination of the Purchase Agreement, shall be agreed to by each Buyer pursuant to a separate authorization for such action by each Buyer.

7. RESPONSIBILITIES OF BUYERS' AGENT; PAYMENT OF COSTS

7.1 Buyers' Agent shall have and carry out the following duties and responsibilities under this Agreement:

(i) Buyers' Agent shall comply with the decision of the Buyers' Joint Project Committee with respect to each matter as provided under Section 5 of this Agreement and shall take or not take such action,

as applicable, under the Purchase Agreement with respect to such matter in accordance with such decision of the Buyers' Joint Project Committee.

- (ii) Except as provided otherwise under Section 7.1(i) of this Agreement, Buyers' Agent shall, in order to comply with Prudent Utility Practices, take (or not take) such actions as are reposed in Buyers' Agent pursuant to the Purchase Agreement.
- (iii) Buyers' Agent shall promptly provide the Buyers' Joint Project Committee and each of the Joint Committee Representatives and its designated alternates with any information that may materially affect or which shall have materially affected the matters referred to in Section 5 or in this Section 7 of this Agreement, and shall provide the Parties with copies of material notices, studies, reports, and other materials received by Buyers' Agent from the Seller pursuant to the Purchase Agreement. Buyers' Agent shall provide the Parties with copies of all such notices, studies, reports, and other materials upon reasonable request of a Party.
- (iv) Buyers' Agent shall arrange for and provide to the Buyers' Joint Project Committee any available studies, supplies or services as requested by the Buyers' Joint Project Committee in connection with its consideration of any of the matters referred to in Section 5 of this Agreement.

- (v) Buyers' Agent, in performing its activities under this Agreement and the Purchase Agreement may use its own employees, equipment and facilities or arrange and reasonably contract for the performance thereof by other entities; provided that Buyer's Agent shall inform any contractor so engaged of the existence of this Agreement and the limitations of the scope of Buyers' Agent's, and consequently contractor's, authority under this Agreement and under the Purchase Agreement.
- (vi) Buyers' Agent shall prepare and submit to the Buyers' Joint Project Committee its estimates of costs to be incurred in connection with its performance of activities as Buyers' Agent as provided in Section 5 or pursuant to this Section 7 of this Agreement and under the Purchase Agreement.
- (vii) Buyers' Agent shall furnish upon request by the Buyers' Joint Project Committee or any Joint Committee Representative any other reasonable assistance or services and any information reasonably available pertaining to the matters to be considered by the Buyers' Joint Project Committee.
- (viii) In performing its activities and responsibilities as provided in Section 5 or pursuant to this Section 7 of this Agreement and under the Purchase Agreement, Buyers' Agent shall comply with any and all applicable laws and regulations.

- 7.2 From time to time, Buyers' Agent may submit to each Buyer a bill for payment by such Buyer of its proportionate share equal to its Percentage of SB 859 Capacity of costs and expenses incurred, by the Buyers' Agent. Buyer's Agent shall bill each Buyer by the fifth (5th) day of a month for any costs and expenses that may have been incurred in the preceding month, but may include other costs and expenses incurred within the preceding ninety (90) days that have not previously been billed to Buyers. Each Buyer shall pay or cause to be paid the amount of such bill within 30 days after receipt thereof.
- 7.3 Buyer's Agent shall, within 30 days after Buyer's Agent's receipt thereof, pay each Buyer such Buyer's proportionate share, equal to its Percentage of SB 859 Capacity, of all revenues actually received by Buyer's Agent acting on behalf of the Buyers under the Purchase Agreement and hereunder.
- 7.4 If a Party fails to pay any amount when due hereunder, interest shall accrue, to the extent permitted by law, at a rate equal to the Interest Rate as defined in the Purchase Agreement until payment is made.
- 7.5 At such reasonable times as shall be requested by a Buyer or Buyers, the books and records of the Buyers' Agent relevant to the costs and expenses incurred by Buyer's Agent and the revenues received by Buyer's Agent, in each case acting on Buyers' behalf under the Purchase Agreement and hereunder, shall be subject to audit by or on behalf of such Buyer or Buyers, at such Buyer or Buyers' sole cost and expense.

7.6 Buyers' Agent shall not receive any compensation for performance of activities under this Agreement or the Purchase Agreement, except that Buyers' Agent shall be permitted to recoup any reasonable costs and expenses associated with the performance of such activities under the Purchase Agreement or hereunder, without markup unless approved in writing by the Buyers Joint Project Committee.

8. LIABILITY

8.1 The Parties agree that Buyer and Buyers' Agent, and any of their respective past, present or future directors, officers, employees, board members, agents, attorneys or advisors (collectively, the "***Released Parties***"), shall be not liable to any other of the Released Parties for any claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, fines, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity, under this Agreement, the Purchase Agreement or otherwise (hereinafter "***Claim***" or "***Claims***") suffered by any Released Party as a result of the action or inaction, or performance or non-performance, by any of the other Released Parties under this Agreement or the Purchase Agreement, except to the extent a Claim is attributable to the gross negligence or willful misconduct of a Released Party, to be determined and established by a court of competent jurisdiction in a final, nonappealable order (except as may otherwise be agreed by all of the Parties, in writing). Notwithstanding

anything in the foregoing to the contrary, nothing contained in this Agreement shall be deemed to release any Party from its respective obligations under this Agreement or the Purchase Agreement, including such Party's obligation to make payments required under this Agreement or the Purchase Agreement. In no event shall the provisions of this Section 8.1 be construed so as to relieve SCPPA, as the Buyers' Agent, from any obligation it may have as a Buyer under this Agreement or the Purchase Agreement. It is also hereby recognized and agreed that no officers, employees, board members, agents, attorneys or advisors of any of the Released Parties shall be individually liable in respect of any undertakings by any of the Released Parties under this Agreement or the Purchase Agreement.

- 8.2 The exculpation provision set forth in Section 8.1 hereof shall apply to all types of Claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, a Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligation or duty of any other Party, and Buyers' Agent may enforce by any legal means its right to payment for its costs in accordance with the terms of this Agreement.

9. RELATIONSHIP OF THE PARTIES

- 9.1 The covenants, obligations and liabilities of the Parties are intended to be several and not joint or collective and nothing herein contained shall ever be construed to create an association, joint venture, trust, partnership or

other legal entity, or to impose a trust or partnership covenant, obligation or liability on or with regard to any of the Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities under this Agreement.

- 9.2 This Agreement is for the benefit of the Parties and the SCPPA Participating Members. Each SCPPA Participating Member is an express and intended third-party beneficiary of this Agreement and may enforce its provisions as if the SCPPA Participating Member were a Party to the Agreement.

10. INDEMNITY AND RELATED MATTERS

- 10.1 SCPPA in its capacity as Buyers' Agent under this Agreement shall be entitled to indemnification from the Buyers as set forth herein. To the extent permitted by law, each Buyer shall, proportionately in accordance with its Buyers' Percentage of SB 859 Capacity, defend, indemnify and hold harmless the Buyers' Agent and its officers, employees, agents, attorneys and advisors, past, present or future, when acting for the Buyers' Agent (collectively, "***Buyers' Agent Indemnitees***"), from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (collectively, "***Claims***") arising by reason of any actions, inactions, errors or omissions of Buyers' Agent incident to the performance of this Agreement, except to the extent any Claim is attributable to the gross

negligence or willful misconduct of Buyers' Agent or any of the Buyers' Agent Indemnitees, as determined and established by a court of competent jurisdiction in a final, nonappealable order (except as may otherwise be agreed by all of the Parties, in writing). If one or more Buyers, with the Buyers' Agent's consent, shall defend any Buyers' Agent Indemnitee, the Buyers' Agent shall approve the selection of counsel, and the Buyers' Agent shall further approve any settlement or disposition, such approval not to be unreasonably withheld. For the avoidance of doubt, all payments as and for indemnification by the Buyers under this Section 10.1, together with any other amount payable by the Buyers under this Section 10.1, shall constitute the individual costs of the Buyers under this Agreement.

10.2 For purposes of this Agreement, the rights, entitlements, obligations and liabilities of SCPPA, as Buyers' Agent under this Agreement, shall not apply to or otherwise be affected by, and shall be deemed and interpreted to be legally separate from, the rights, entitlements, obligations, and liabilities of SCPPA as a Buyer under this Agreement and the Purchase Agreement.

11. DISPUTES

11.1 Dispute or Claim. Any action, claim or dispute which any Party may have against another Party or Parties arising out of or relating to this Agreement or the transactions contemplated hereunder, or the breach, termination or validity thereof (a "Dispute") shall be submitted in writing to the other Parties. The written submission of any Dispute shall include a concise

statement of the question or issue in dispute together with a statement listing the relevant facts and documentation that support the claim.

- 11.2 Good Faith Resolution. The Parties agree to cooperate in good faith to attempt to achieve an expeditious resolution of a Dispute. Pending resolution of a Dispute, unless otherwise provided for under this Agreement, the Parties shall proceed diligently with the performance of their respective obligations pursuant to the terms of this Agreement.
- 11.3 Informal Negotiation. The disputing Parties shall first attempt in good faith to resolve any Dispute through informal negotiations by the Joint Committee Representatives.
- 11.4 Arbitration. In the event the disputing Parties are unable to resolve the Dispute through informal negotiations as described above, the disputing Parties may elect to pursue the mediation of the Dispute by a mutually agreeable mediator. If the disputing Parties so choose the Parties may elect to voluntarily pursue arbitration pursuant to the rules of the Judicial Arbitration and Mediation Service (JAMS) or American Arbitration Association (AAA), or any other method chosen by the disputing Parties, subject to the express prior written agreement of each of the disputing Parties. Such written agreement may include the guidelines agreed upon by the disputing Parties to be followed by such Parties in such arbitration or dispute resolution prior to the commencement of such arbitration. No Party shall be obligated to pursue arbitration over any other method of dispute resolution.

11.5 Litigation Rights. In the event the disputing Parties are unable to satisfactorily resolve the Dispute within 30 days from the receipt of notice of the Dispute, subject to any extensions of time as may be mutually agreed upon in writing, or any arbitration or other agreement, any Party to the Dispute may initiate litigation in a court of law with jurisdiction located in Los Angeles County, California, which shall be the exclusive venue to litigate Disputes.

11.6 No Attorneys Fees. In the event any action is brought at law or in equity in any court or through any alternative dispute resolution process to enforce any provision of this Agreement, or for damages by reason of any alleged breach of this Agreement, the Parties mutually agree that each Party to this Agreement shall bear its own attorneys fees and costs.

12. GOVERNING LAW

This Agreement was made and entered into in the State of California and shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

13. REPRESENTATION AND NOTICES

13.1 The Parties acknowledge that each Party was represented by counsel in the negotiation and execution of this Agreement, and any uncertainty or ambiguity in this Agreement shall not be interpreted against a Party on the basis that the Party drafted the language, but shall be interpreted according to the application of the rules on interpretation of contracts.

- 13.2 Any notice, demand, requisition or request shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by overnight delivery service, by registered or certified mail, postage prepaid, or by electronic mail, to the persons specified below:

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

Sacramento Municipal Utility District
Attention: Power Contracts Administration
P.O. Box 15830
Sacramento, CA 95852-1830
Telephone: (916) 732-6244
Email: PowerContractsAdmin@smud.org

Modesto Irrigation District
Attn: Power Scheduling Supervisor
Street: 1231 11th Street
City: Modesto, CA 95354
Phone: 209-557-1544
Email: amyb@mid.org

Turlock Irrigation District
If via USPS:
Turlock Irrigation District
Attention: Willie Manuel
P.O. Box 949
Turlock, CA 95381-0949

If via non-USPS:
Turlock Irrigation District
Attention: Willie Manuel
333 East Canal Drive
Turlock, CA 95380
Telephone: (209) 883-8348
Email: wgmanuel@tid.org

City of Riverside
Public Utilities General Manager
3901 Orange Street

Riverside, CA 92501
Phone: 951-826-5504
Facsimile: 951-826-2450

14. SEVERABILITY.

In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the Parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein unless a court holds that the provisions are not separable from all other provisions of this Agreement.

15. AMENDMENTS

The Parties acknowledge and agree that any amendment to this Agreement shall be in writing and duly executed by the Parties.

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed on their respective behalves by their duly authorized representatives.

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

Dated: _____ By: _____

SACRAMENTO MUNICIPAL UTILITY DISTRICT

Dated: _____ By: _____

MODESTO IRRIGATION DISTRICT

Dated: _____

By: _____

TURLOCK IRRIGATION DISTRICT

Dated: _____

By: _____

CITY OF RIVERSIDE

Dated: _____

By: _____

APPROVED AS TO FORM:

BY: *Susan Wilson*
ASSISTANT CITY ATTORNEY

Dated: _____

By: _____

TURLOCK IRRIGATION DISTRICT

Dated: _____

By: _____

CITY OF RIVERSIDE

Dated: _____

By: _____

APPROVED AS TO FORM:

BY: *Susan Ulloa*
ASSISTANT CITY ATTORNEY

Dated: _____

By: _____

TURLOCK IRRIGATION DISTRICT

Dated: _____

By: _____

CITY OF RIVERSIDE

Dated: _____

By: _____

APPROVED AS TO FORM:

BY: *Susan Wilson*
ASSISTANT CITY ATTORNEY

Dated: _____

By: _____

TURLOCK IRRIGATION DISTRICT

Dated: _____

By: _____

CITY OF RIVERSIDE

Dated: _____

By: _____

APPROVED AS TO FORM:

BY: Susan Wilson
ASSISTANT CITY ATTORNEY

Dated: _____

By: _____

TURLOCK IRRIGATION DISTRICT

Dated: _____

By: _____

CITY OF RIVERSIDE

Dated: _____

By: _____

APPROVED AS TO FORM:

BY: Susan Nelson
ASSISTANT CITY ATTORNEY

Dated: _____

By: _____

TURLOCK IRRIGATION DISTRICT

Dated: _____

By: _____

CITY OF RIVERSIDE

Dated: _____

By: _____

APPROVED AS TO FORM:

BY: *Susan Wilson*

ASSISTANT CITY ATTORNEY

Dated: _____

By: _____

TURLOCK IRRIGATION DISTRICT

Dated: _____

By: _____

CITY OF RIVERSIDE

Dated: _____

By: _____

APPROVED AS TO FORM:

BY: *Susan Wilson*

ASSISTANT CITY ATTORNEY

Dated: _____

By: _____

TURLOCK IRRIGATION DISTRICT

Dated: _____

By: _____

CITY OF RIVERSIDE

Dated: _____

By: _____

APPROVED AS TO FORM:

BY: *Susan Wilson*
ASSISTANT CITY ATTORNEY

Dated: _____

By: _____

TURLOCK IRRIGATION DISTRICT

Dated: _____

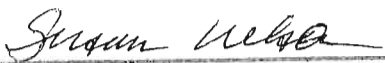
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CITY OF RIVERSIDE

Dated: _____

By: _____

APPROVED AS TO FORM:

BY: 
ASSISTANT CITY ATTORNEY

Appendix A*
Joint Committee Vote Percentages

BUYERS' PERCENTAGE OF SB 859 CAPACITY;
APPLICABLE MW SHARE

Percentage of SB 859 Capacity

Buyer	Capacity (MW)	Percentage of SB 859 Capacity
SCPPA	6.8277 MW	62.07%
SMUD	2.5795 MW	23.45%
MID	0.6072 MW	5.52%
Riverside	0.4928 MW	4.48%
TID	0.4928 MW	4.48%
Total	11 MW	100.00%

Applicable MW Share

	Capacity (MW)	% of Total Capacity
City of Anaheim	0.4928 MW	4.48%
Imperial Irrigation District	0.9108 MW	8.28%
LADWP	5.4241 MW	49.31%
SMUD	2.5795 MW	23.45%
MID	0.6072 MW	5.52%
Riverside	0.4928 MW	4.48%
TID	0.4928 MW	4.48%
Total	11 MW	100.00%

SB 859 PURCHASE AGREEMENT

AMONG

**ROSEBURG FOREST PRODUCTS CO.
(as “Seller”)**

AND

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

SACRAMENTO MUNICIPAL UTILITY DISTRICT

AND

MODESTO IRRIGATION DISTRICT

AND

THE CITY OF RIVERSIDE

AND

**TURLOCK IRRIGATION DISTRICT
(together, as “Buyers”)**

Dated as of November 25, 2019

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

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or, as is appropriate given the context, is a director or officer of such Person or of an Affiliate of such Person. As used in this Agreement, “control” means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies or activities of such Person, whether through ownership of voting securities, its capacity as a sole or managing member, its capacity as a general partner, by contract or otherwise.

“Agreement” has the meaning set forth in the preamble of this Agreement, and includes the Appendices and Schedules attached hereto.

“Agreement Term” has the meaning set forth in Section 2.1(a).

“Ancillary Documents” means the Site Control Documents and all material agreements entered into by and between Seller and any of its Affiliates or between Seller or any Seller Affiliate and any Buyer, in each case, related to the Facility or the Site.

“Applicable MW Share” means the amount, measured in MW, of SB 859 Capacity allocated to SCPPA’s Participating Members, SMUD, MID, Riverside, and TID, as set forth in Appendix F, as may be adjusted pursuant to Section 2.3(h).

“ASME” means American Society of Mechanical Engineers.

“ASTM” means American Society for Testing and Materials.

“Authorized Auditors” means representatives of any Buyer or a Buyer’s Authorized Representative who are authorized to conduct audits on behalf such Buyer.

“Authorized Representative” has the meaning set forth in Section 13.1.

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

“Brown Act” has the meaning set forth in Section 13.21(c).

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

“Buyer” or **“Buyers”** has the meaning set forth in the preamble of this Agreement.

including the adoption of any new law, resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval.

“Change in SB 859 Statute” means a change to the provisions of the SB 859 Statute, which is adopted by the California State Legislature and becomes law after the Effective Date and is applicable to local publicly owned electric utilities, the Facility, the Agreement and/or the transactions contemplated hereby.

“Commercial Operation” means all of the following have occurred:

(a) Any servicing of the Facility required to recommence operation of the Facility has been completed in accordance with the terms and conditions of this Agreement, and the Facility (including the Facility Energy) is EPS Compliant and possesses all of the characteristics and satisfies all of the requirements set forth for the Facility in this Agreement and for delivery of Facility Energy to the Point of Delivery;

(b) The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to recommence operation of the Facility and has demonstrated the sustained operation of the Facility and the delivery of Facility Energy equal to at least ninety percent (90%) of the SB 859 Capacity during a period of 24 consecutive hours;

(c) Seller has obtained all Permits required for (i) the operation and maintenance of the Facility in accordance with this Agreement, including the Permits identified on Appendix A-1, and (ii) the transactions contemplated by this Agreement, and all such Permits are final and non-appealable;

(d) Each Buyer has received the Performance Security as provided in Section 5.6 in a form reasonably acceptable to Buyers;

(e) The Facility is both authorized and able to operate and deliver Facility Energy at the SB 859 Capacity to the Point of Delivery in accordance with Prudent Utility Practices, the Requirements, and all Requirements of Law;

(f) Seller has entered into all necessary agreements with Transmission Providers pursuant to which it has obtained the rights necessary to deliver Energy generated by the Facility to and from the delivery point specified in the Generator Interconnection Agreement;

(g) Seller has obtained Insurance coverage for the Facility as required by Appendix D, and Seller has provided reasonable evidence to Buyers that the Insurance is in full force and effect;

(h) Seller has delivered to Buyer, and Buyer has approved, the Quality Assurance Program;

(i) Seller has obtained certification from the CEC that the Facility is CEC Certified as a Facility with at least 11 MW of generating capacity and has delivered to Buyers evidence that the Facility has been so CEC Certified; and

“Early Termination Date” has the meaning set forth in Section 12.3(a).

“EBO” has the meaning set forth in Section 13.25(f).

“EEI” means Edison Electric Institute.

“Effective Date” means the date on which the last Party to execute this Agreement executed this Agreement, as specified on the signature pages hereto. If any Buyer or Seller fails to set forth a date of execution with its signature, such Buyer or Seller hereby authorizes SCPPA, as Buyer’s Agent, to insert, as the date of execution, the date on which such signature was received by SCPPA.

“Electric Metering Devices” means all meters, metering equipment, and data processing equipment conforming to the requirements set forth in Section 10.6 and used to measure, record, or transmit data relating to the generation and delivery of Facility Energy. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

“Energy” means electrical energy.

“EPA” means the United States Environmental Protection Agency.

“EPS Compliance” or **“EPS Compliant”** when used with respect to the Facility, means that the Facility complies with EPS Law and satisfies the CEC Performance Standard in effect at the time.

“EPS Law” means Sections 8340 and 8341 of the California Public Utilities Code.

“Exiting Buyer” has the meaning set forth in Section 2.3(h).

“Facility” means the 13.4 MW biomass power generating facility located at Weed, California, as further described in Appendix A-1 and depicted on Appendix A-2, including all property interests and related transmission and other facilities.

“Facility Capacity” means the 13.4 MW nameplate capacity of the Facility.

“Facility Cost” means Thirty-Five Million Dollars (\$35,000,000).

“Facility Debt” means, measured as of any date, the payment obligations of Seller in connection with borrowed money, including (a) principal of and premium and interest on indebtedness, (b) fees, charges, penalties, and expenses related to indebtedness, (c) amounts due upon acceleration or in connection with prepayment or restructuring of indebtedness, and (d) swap or interest rate hedging breakage costs.

“Facility Energy” means all Energy generated by the Facility, as measured by Electric Metering Devices installed at the Point of Delivery, including such Energy that is used to serve Station Use and Site Host Load.

“**IEEE**” means the Institute of Electrical and Electronics Engineers.

“**Indemnitees**” has the meaning set forth in Section 13.19(a).

“**Initial Security Amount**” has the meaning set forth in Section 5.6(a).

“**Insurance**” means the policies of insurance as set forth in Appendix D.

“**Interest Rate**” has the meaning set forth in Section 10.3.

“**ISA**” means the Instrument Society of America.

“**Joint Powers Agreement**” means the “Southern California Public Power Authority Joint Powers Agreement” entered into pursuant to the provisions of the Act among SCPPA and SCPPA’s members, dated as of November 1, 1980, as amended or modified from time to time.

“**LAAC**” has the meaning set forth in Section 13.25(b)(i).

“**LADWP**” means the City of Los Angeles, acting by and through the Department of Water and Power.

“**LGBTBE**” has the meaning set forth in Section 13.25(c)(i).

“**Licensed Professional Engineer**” means an independent, professional engineer reasonably acceptable to Buyers’ Agent, licensed in the State of California, and otherwise qualified to perform the work required hereunder.

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

“**Losses**” has the meaning set forth in Section 12.3(g)(ii).

“**MBE**” has the meaning set forth in Section 13.25(c)(i).

“**MID**” has the meaning set forth in the preamble of this Agreement.

“**Moody’s**” means Moody’s Investor Services, Inc.

“**Month**” means a calendar month commencing at 00:00 Pacific Prevailing Time on the first day of such month and ending at 24:00 Pacific Prevailing Time on the last day of such month.

“**MW**” means megawatt in alternating current, or ac.

“**MWh**” means megawatt-hours.

business for work or service performed or materials furnished in connection with the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings, (C) Liens of any judgment, if such judgment shall not have remained undischarged or unstayed on appeal for more than three (3) months, (D) encumbrances consisting of zoning restrictions, licenses, easements, restrictions on the use of the Site and minor defects and irregularities in title which do not materially impair the use of the Site, the Facility or any portion thereof by Seller or materially impact the value of the Site, the Facility or any portion thereof, (E) rights arising under the Site Control Documents, or (F) other Liens incidental to the conduct of Seller's business or the ownership of its property that were not incurred in connection with the borrowing of money or obtaining advances of credit and do not materially detract from the value of the Facility, or any portion thereof, or its use. Notwithstanding anything to the contrary contained herein, a "Permitted Encumbrance" shall not be construed as a waiver of any condition or requirement contained in Section 11.4 or Section 13.7 of this Agreement.

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

"Point of Delivery" means the generator meter, as indicated on the line diagram attached hereto as Appendix A-3, that is immediately adjacent to the generator.

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

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

"Products" means any and all SB 859 Capacity, SB 859 Attributes, and ancillary products, services or attributes similar to the foregoing that are or can be produced by, or are associated with, the SB 859 Capacity of the Facility, whether now attainable or established in the future.

"Prudent Utility Practices" means those practices, methods, and acts, that are commonly used by a significant portion of the biomass-powered electric generation industry in prudent engineering and operations to design and operate electric equipment (including biomass-powered facilities) lawfully and with safety, dependability, reliability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of FERC, NERC, WECC, as each may be amended from time to time, and all applicable Requirements of Law. Prudent Utility Practices are not intended to be limited to the optimum practice, method, or

ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements.

“**RFP**” has the meaning set forth in the recitals to this Agreement.

“**Riverside**” has the meaning set forth in the preamble of this Agreement.

“**SB 859**” has the meaning set forth in the recitals to this Agreement.

“**SB 859 Attributes**” means any and all benefits, credits, or attributes, howsoever entitled, named, registered, created, measured, allocated or validated that are associated with the obligation of Seller to generate Energy from the Facility using the fuel sources that meet the SB 859 Feedstock Requirements pursuant to this Agreement.

“**SB 859 Capacity**” means 11 MW of Facility Capacity, as adjusted pursuant to Section 2.3(h).

“**SB 859 Capacity Ratio**” means the ratio, rounded to four significant figures, obtained by dividing the SB 859 Capacity by the Facility Capacity.

“**SB 859 Capacity Rights**” has the meaning set forth in Section 9.1.

“**SB 859 Compliance**” or “**SB 859 Compliant**” means (a) when used with respect to the Facility, that the Facility qualifies as a biomass resource from which Buyers are required to purchase capacity under the SB 859 Law, (b) when used with respect to this Agreement and/or the transactions contemplated hereby, that the Agreement and/or the transactions hereunder are in compliance with and satisfy the requirements of the SB 859 Law applicable to local publicly owned electric utilities, and (c) when used with respect to the Products, that the Facility Energy included in such Products met the SB 859 Feedstock Requirements or, in the case of a Change in SB 859 Statute that modifies the feedstock requirements, such modified feedstock requirements.

“**SB 859 Energy**” means Facility Energy that is generated using fuel complying with the SB 859 Feedstock Requirements.

“**SB 859 Energy Cap**” means the aggregate quantity of Facility Energy that the Facility is capable of producing when operating at the SB 859 Capacity for an hour.

“**SB 859 Feedstock Requirements**” has the meaning set forth in Section 11.3.

“**SB 859 Law**” means the SB 859 Statute and SB 859 Regulations.

“**SB 859 Noncompliance Determination**” means a determination by the CEC or any Governmental Authority having jurisdiction over the matter that the Facility, this Agreement and/or the transactions contemplated hereby fail to be SB 859 Compliant.

“**SB 859 Noncompliance Reimbursement**” has the meaning set forth in Section 7.7(d).

“Subcontract” means any agreement or contract entered into on or after the Effective Date by Seller and a Person other than any Buyer or Buyers’ Agent, which Person is providing goods or services to Seller that are related to the performance of Seller’s obligations under this Agreement. Subcontracts specifically include any agreement or contract that is referred to or defined as a “subcontract” in the policies, ordinances, codes or laws with which Seller must comply pursuant to this Agreement, or that is made with a “subcontractor” as such term is used or defined in such policies, ordinances, codes, or laws.

“Subcontractor” means any party to a Subcontract with Seller.

“Sustainable Forest Management Requirement” has the meaning set forth in Section 11.3.

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

“Termination Notice” has the meaning set forth in Section 12.3(a).

“Termination Payment” means a payment in an amount equal to the Non-Defaulting Party’s (a) Losses, plus (b) Costs, minus (c) Gains; *provided, however*, that if such amount is a negative number, the Termination Payment shall be equal to zero.

“TID” has the meaning set forth in the preamble of this Agreement.

“Transmission and Roadway Site” means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix A-1 and Appendix A-2 where any transmission lines and roadways servicing the Facility are or will be located.

“Transmission Providers” means Persons operating the Transmission System to and from the delivery point specified in the Generator Interconnection Agreement.

“Transmission Services” means the transmission and other services required to transmit Energy generated by the Facility to or from the delivery point specified in the Generator Interconnection Agreement.

“Transmission System” means the facilities utilized to provide Transmission Services.

“Ultimate Parent Entity” of Seller means, (a) as of the Effective Date, RLC Industries Co., and (b) from and after any Change in Control where the Ultimate Parent Entity changes, the entity specified by the Parties on Schedule 11.2(h) as being the “Ultimate Parent Entity”.

“WBE” has the meaning set forth in Section 13.25(c)(i).

“WECC” means the Western Electricity Coordinating Council.

ARTICLE II.
EFFECTIVE DATE, TERM, AND EARLY TERMINATION

Section 2.1 Term.

(a) **Agreement Term.** The term of this Agreement (the “*Agreement Term*”) shall commence on the Effective Date and end on the last day of the Delivery Term or upon the earlier termination of this Agreement in accordance with the terms hereof.

(b) **Delivery Term.** This Agreement shall have a delivery term (the “*Delivery Term*”) commencing on the Commercial Operation Date and ending at 11:59 pm on the day before the fifth (5th) anniversary of the Commercial Operation Date, unless sooner terminated in accordance with the terms of this Agreement.

Section 2.2 Survivability. The provisions of this Article II, Section 5.6, Section 10.3, Article XI (except Section 11.2(j), Section 11.2(n), Section 11.2(o), Section 11.2(p), Section 11.4 and Section 11.5), Article XII (except Section 12.1(d) and Section 12.1(f)-(h)), Section 13.2 and Section 13.8-Section 13.19 (except with respect to Section 13.19(d)), shall survive for a period of one year following the termination of this Agreement. The provisions of Article X (other than Section 10.3 and Section 10.6) shall survive for a period of four (4) years following final payment made by Buyers hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, and Article VIII shall continue in effect after termination to the extent necessary to provide for final billing and adjustments related to any period prior to termination of this Agreement.

Section 2.3 Early Termination.

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

(b) **Early Termination for Failure to Provide Performance Security.** Any Buyer may, in its sole discretion, without penalty to such Buyer, withdraw from this Agreement, and Buyers may collectively, in their sole discretion, terminate this Agreement, in either case, effective upon notice to Seller, if Seller fails to deliver the Performance Security within ten (10) days after the Effective Date.

(c) **Early Termination for Default.** Upon the occurrence of a Default, the Non-Defaulting Party, or Non-Defaulting Parties, as the case may be, may terminate this Agreement as set forth in Section 12.3.

(d) **Early Termination for Failure to Achieve Commercial Operation Date.** Any Buyer may, in its sole discretion and without penalty to such Buyer, withdraw from this Agreement, and Buyers may collectively, in their sole discretion and without penalty to Buyers, terminate this Agreement, in either case, effective upon notice to Seller, if Seller fails to achieve the Commercial Operation Date on or before the Outside Commercial Operation Date, except as set forth in Section 3.3.

Buyer's Applicable MW Share (or, in the case of SCPPA, the sum of the Applicable MW Shares of all of SCPPA's Participating Members), as adjusted pursuant to Section 2.3(h)(iii)(1) (if applicable), and the denominator of which is equal to the SB 859 Capacity, as adjusted pursuant to Section 2.3(h)(iii)(1).

(iv) If there is a reduction in the SB 859 Capacity as the result of a Buyer's withdrawal from, or early termination of, this Agreement under this Section 2.3, the Initial Security Amount portion of the Performance Security shall be reduced proportionately.

(v) In the event that the SB 859 Capacity, as the result of a Buyer's or Buyers' withdrawal from, or early termination of, this Agreement under this Section 2.3, is reduced to five (5) MW or less, then Seller may terminate this Agreement without penalty and shall have no liability or obligation to any other Parties as a result of such termination.

ARTICLE III. PREPARATION OF THE FACILITY

Section 3.1 General.

(a) **Permitting.** Seller, at its expense, shall timely take all steps necessary to obtain all Permits required to maintain and operate the Facility in accordance with the Requirements and for the performance of Seller's obligations hereunder. Seller shall provide to any Buyer any information requested by such Buyer related to such Permits, including information concerning any conditions or requirements set forth in such Permits or any mitigation plans or monitoring programs required by such Permits.

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

(c) **Other Information.** In addition to the reports required to be delivered under this Agreement, Seller shall provide to Buyers' Agent such other information regarding the operations of Seller, its Subcontractors or the Facility, financial or otherwise, and other data concerning the Seller, its Subcontractors or the Facility as Buyers' Agent may, from time to time, reasonably request.

Section 3.2 Subcontracts. Seller shall cause provisions to be included in each Subcontract that provide: (a) Buyers' Agent with rights of access to the Facility and the work performed under such Subcontract at all reasonable times (but subject to Site safety protocols) and the right to inspect, make notes about, and review all documents and information as Buyers' Agent may reasonably request, subject to redaction of confidential or proprietary information; and (b) that the personnel of, and consultants to, the applicable contractor and Seller shall be available to Buyers' Agent and its agents, representatives and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility or the exercise of Buyers' rights under Section 5.2.

Section 3.3 Certification of Commercial Operation Date. Seller shall provide Buyers' Agent with notice in accordance with Section 13.2 when Seller believes that all conditions precedent to achieving Commercial Operation of the Facility as specified in the

(d) The damages that Buyers would incur due to Seller's failure to timely achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and it is impractical or difficult to assess actual damages in those circumstances, but the Daily Delay Damages are a fair and reasonable calculation of such damages, and shall be Seller's sole liability and obligation, and Buyers' sole right and remedy, other than withdrawal without penalty from, or termination of, this Agreement, for Seller's failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date therefor. Notwithstanding the foregoing, the Daily Delay Damages shall not limit any Buyer's right to exercise any right or remedy available under this Agreement or at law or in equity for any Default occurring concurrently with, before or after Seller's delay in achievement of the Commercial Operation Date, or in connection with any termination for failure to achieve the Commercial Operation by the Outside Commercial Operation Date.

Section 3.5 Decommissioning and Other Costs. No Buyer shall be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility without regard to the timing or cause of the decommissioning or demolition.

ARTICLE IV. OPERATION AND MAINTENANCE OF THE FACILITY

Section 4.1 General Operational Requirements. Seller shall, at all times:

(a) At its sole expense, operate and maintain the Facility (i) in accordance with the Requirements and (ii) in a manner that is reasonably likely to result in a useful life for the Facility of not less than the Delivery Term;

(b) At its sole expense, operate and maintain the Facility in accordance with the Requirements and with due regard for the safety, security and reliability of the interconnected facilities and Transmission System;

(c) Use qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyers' Agent, and ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term;

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

Section 4.2 Environmental Credits. Seller shall, if applicable, obtain in its own name and at its own expense all pollution or environmental credits or offsets necessary to operate the Facility in compliance with any Requirement of Law.

Section 4.3 Outages.

(a) On the Effective Date and, no later than January 1, April 1, July 1 and October 1 of each calendar year thereafter, Seller shall provide Buyers' Agent with its non-binding written projection of all Scheduled Outages for the succeeding calendar year (the "***Scheduled Outage Projection***"). The Scheduled Outage Projection shall include information concerning all

Section 5.3 Effect of Review by Buyers. Any review by a Buyer or a Buyer's Authorized Representative of the operation or maintenance of the Facility, or observation of any testing, is solely for the information of such Buyer. Buyers shall have no obligation to share the results of any such review or observations with Seller, nor shall any such review or the results thereof (whether or not the results are shared with Seller), nor any failure to conduct any such review, nor any observation of testing or failure to observe testing, relieve Seller from any of its obligations under this Agreement. By making any such review or observing any such testing, no Buyer makes any representation as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller shall in no way represent to any third party that any such review by a Buyer or a Buyer's Authorized Representative of the Facility thereof, including, but not limited to, any review of the operation or maintenance, is a representation by any Buyer as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability thereof.

Section 5.4 Quality Assurance Program. Seller agrees to maintain and comply with a written quality assurance policy ("**Quality Assurance Program**") to be delivered by Seller and approved by Buyers prior to the Commercial Operation Date, and Seller shall cause all work performed on or in connection with the Facility to materially comply with said Quality Assurance Program.

Section 5.5 No Liens. Except as otherwise permitted by this Agreement, the Facility shall be owned by Seller during the Agreement Term. Seller shall not sell or otherwise dispose of or create, incur, assume or permit to exist any Lien (other than Permitted Encumbrances) on any portion of the Facility or any other property or assets that are related to the operation, maintenance and use of the Facility without the prior written approval of Buyers' Agent.

Section 5.6 Performance Security.

(a) Within ten (10) days after the Effective Date and no later than thirty (30) days after the end of each Contract Year during the Agreement Term thereafter, Seller shall furnish to each Buyer one or more letters of credit issued by Qualified Issuers in the form attached hereto as Appendix C, in the aggregate amount of the sum of (1) Two Million Four Hundred and Seventy-Five Thousand Dollars (\$2,475,000) (the "**Initial Security Amount**") and (2) the total of the payments made by Buyers to Seller during the Delivery Term up to the end of the immediately preceding Contract Year, and delivered to each Buyer in an amount equal to such Buyer's proportionate share of such aggregate amount based on such Buyer's Percentage of SB 859 Capacity, which, in each case, shall guarantee Seller's obligations under this Agreement ("**Performance Security**"), and which Seller shall maintain in full force and effect until the end of the Agreement Term or until Buyers are required to return the Performance Security to Seller as set forth in Section 5.6(b) below. The following table illustrates the annual increases in the Performance Security that are intended to result from the operation of this subclause (a) of Section 5.6 (with the figures and sums in the second and third columns being illustrative only):

and each Buyer shall retain such amount in order to secure Seller's obligations under this Agreement; *provided* that if and to the extent such amount exceeds payment and performance in full of all of Seller's obligations under this Agreement, each Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement have been paid or performed in full.

(e) If any Performance Security is in the form of a letter of credit, then Seller shall provide, or cause to be provided, a replacement letter of credit from a Qualified Issuer or cash (to be held in an Escrow Account), such form of replacement security to be determined by each Buyer in its sole determination, in the amount required under this Section 5.6 within five (5) days of notice from any Buyer to Seller requesting such replacement Performance Security after the occurrence of any one of the following events: (i) the failure of the issuer of the letter of credit, by at least 60 days prior to the expiration of the letter credit, to extend such letter of credit; (ii) the failure of the issuer of the letter of credit to immediately honor any Buyer's properly documented request to draw on such letter of credit; or (iii) the issuer of the letter of credit becomes bankrupt. If the replacement Performance Security is not delivered in accordance with this Section 5.6(e), each Buyer shall have the right to demand payment of its proportionate share of such Performance Security, and each Buyer shall retain such amount in order to secure Seller's obligations under this Agreement; *provided* that, if and to the extent such retained amount exceeds payment and performance in full of all of Seller's obligations under this Agreement, each Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement shall have been paid or performed in full.

(f) Seller shall, from time to time as requested by any Buyer or Buyers' Agent, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all Requirements of Law the Performance Security (including any Ancillary Documents required therefor) and the rights, Liens and priorities of Buyers with respect to such Performance Security.

(g) Notwithstanding the other provisions of this Agreement, the Performance Security: (i) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (ii) shall not be Buyers' exclusive remedy against Seller for Seller's failure to perform in accordance with this Agreement.

ARTICLE VI. PURCHASE AND SALE OF PRODUCT

Section 6.1 Purchase and Sale. On and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and each Buyer shall purchase its Percentage of SB 859 Capacity and the other associated Products by paying the Contract Price multiplied by such Buyer's Percentage of SB 859 Capacity multiplied by the Required SB 859 Energy Quantity, provided that in no event shall (a) Buyers be obligated to purchase Products associated with more than the SB 859 Energy Cap in any hour or more than the SB 859 Capacity in any instant, nor (b) any individual Buyer be obligated to purchase, (i) in any hour, Products associated with more than the product of the SB 859 Energy Cap multiplied by a Buyer's corresponding Percentage of SB 859 Capacity or, (ii) in any instant, Products associated with

(b) No Buyer shall be obligated to pay Seller for any Products to the extent that Facility Energy is not or cannot be recorded by the Electric Metering Devices installed at the Point of Delivery for any reason (including Force Majeure).

Section 7.6 Title; Risk of Loss. As between the Parties, Seller shall be deemed to be in exclusive control, and have title to and risk of loss (and responsible for any damages or injury caused thereby), of all Energy prior to, at, and from the Point of Delivery. Seller warrants that the Product shall be sold to Buyers free and clear of all Liens created by any Person other than Buyers subject to the Requirements of Law.

Section 7.7 EPS, SB 859 Compliance and SB 859 Feedstock Requirements.

(a) Seller warrants and guarantees that, throughout the Delivery Term, the Facility shall be CEC Certified and EPS Compliant, and the Facility, this Agreement and the transactions contemplated hereby shall be SB 859 Compliant.

(b) Notwithstanding Section 7.7(a), if a Change in Law occurs that causes the Facility to cease to be CEC Certified or EPS Compliant Seller shall use commercially reasonable efforts to comply with such Change in Law, and cause the Facility to be CEC Certified and EPS Compliant.

(c) From time to time and at any time requested by any Buyer or any of its Authorized Representatives, Seller will furnish to each Buyer, Governmental Authorities, or other Persons designated by any Buyer, all certificates and other documentation reasonably requested by any Buyer or such Authorized Representatives in order to demonstrate that the Facility and the Products were or are EPS Compliant and SB 859 Compliant.

(d) Seller shall include in each Monthly invoice delivered pursuant to Section 10.2(a) a monthly report in substantially the form attached hereto as Appendix B showing, among other things, the quantity of SB 859 Energy generated during the invoice Month as compared to the Required SB 859 Energy Quantity during such Month. Contemporaneously with Seller's delivery to each Buyer of such Monthly invoice, Seller shall deliver to each Buyer evidence satisfactory to such Buyer, and attest in writing with respect thereto, that, for the applicable Contract Year considered as a whole, the Facility will be SB 859 Compliant and that Seller will be able to deliver Products associated with SB 859 Energy in an amount no less than the Required SB 859 Energy Quantity for such Contract Year. If Seller does not deliver such satisfactory evidence and attestation to a Buyer, then Seller shall promptly reimburse such Buyer, or deliver to such Buyer a revised invoice reducing Buyer's payment obligation for the preceding Month by, an amount equal to the total amount that such Buyer paid Seller for Products delivered to such Buyer during the preceding Month (such Products, "***Non-SB 859 Compliant Products***" and such reimbursement or invoice adjustment, an "***SB 859 Noncompliance Reimbursement***"). Any Buyer that receives an SB 859 Noncompliance Reimbursement for any Month during a Contract Year with respect to which the CEC or any Governmental Authority having jurisdiction over the matter pursuant to the SB 859 Law determines, or Seller otherwise demonstrates to Buyer's satisfaction and delivers an attestation in writing as described above, that the SB 859 Feedstock Requirements were met shall, within 60 days after such determination or demonstration is made, deliver to Seller payment in the amount

SB 859 Noncompliance Determination, were not SB 859 Compliant (such amount, “***SB 859 Noncompliance Damages***”).

(i) In no event shall any Buyer that exercises its rights under Section 7.7(g) or (h) be entitled to a Termination Payment.

ARTICLE VIII. SB 859 ATTRIBUTES

Section 8.1 Transfer of SB 859 Attributes. For and in consideration of payment of the Contract Price pursuant to Section 6.1, Seller shall transfer to each Buyer, and each Buyer shall receive from Seller, proportionately in accordance with such Buyer’s Percentage of SB 859 Capacity, all right, title, and interest in and to all SB 859 Attributes. Seller shall transfer and make the SB 859 Attributes available to Buyers upon payment by Buyers of the Contract Price in accordance with Section 6.1. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold, or otherwise disposed of and shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such SB 859 Attributes to any Person other than Buyers or attempt to do any of the foregoing with respect to any of the SB 859 Attributes.

Section 8.2 Reporting of Ownership of SB 859 Attributes. During the Agreement Term, Seller shall not report to any Person that the SB 859 Attributes granted hereunder to Buyers belong to any Person other than Buyers, and Buyers may report under any program that such SB 859 Attributes purchased hereunder belong to them.

Section 8.3 SB 859 Attributes. Upon request by any Buyer’s Authorized Representative, Seller shall take all actions and execute all documents or instruments necessary under applicable law, bilateral arrangements or other voluntary programs of any kind, as applicable, to maximize the attribution, accrual, realization, generation, production, recognition and validation of SB 859 Attributes throughout the Agreement Term.

ARTICLE IX. SB 859 CAPACITY RIGHTS

Section 9.1 SB 859 Capacity Rights. For and in consideration of payment of the Contract Price pursuant to Section 6.1, Seller hereby sells to each Buyer, and each Buyer hereby purchases from Seller, all of Seller’s rights, title and interest in and to the SB 859 Capacity (“***SB 859 Capacity Rights***”), proportionately in accordance with such Buyer’s Percentage of SB 859 Capacity. No Buyer shall have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of any Buyer’s ownership of the SB 859 Capacity Rights or otherwise.

Section 9.2 Representation Regarding Ownership of SB 859 Capacity Rights. Seller represents and warrants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of all or any portion of the SB 859 Capacity and covenants that it shall not assign, transfer, convey, encumber, sell or otherwise dispose of the SB 859 Capacity to any Person other than Buyers or attempt to do any of the foregoing with respect to the SB 859 Capacity. During the Agreement Term, Seller shall not report to any Person that any of the SB 859 Capacity belong to any Person other than Buyers. Each Buyer may, at each Buyer’s own

(e) No Buyer shall be required to make invoice payments if the invoice is received more than six (6) Months after the applicable Monthly billing period except with respect to any disputed amounts for which an invoice was provided within six (6) Months after the applicable Monthly billing period and for which such Buyer's liability is established and for any corrections or adjustments resulting in amounts owing by such Buyer pursuant to Section 10.6(c).

Section 10.3 Disputed Invoices. If any portion of any invoice is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Parties of the basis for the dispute, setting forth the details of such dispute in reasonable specificity. Disputes shall be discussed directly by the Parties' Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve such Disputes, and any failure to agree shall be subject to resolution in accordance with Section 13.3. Upon resolution of any Dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 10.3, "**Interest Rate**" shall mean the lesser of (i) two percent (2%) above the per annum Prime Rate reported daily in *The Wall Street Journal*, or (ii) the maximum rate permitted by applicable Requirements of Law.

Section 10.4 Buyers' Right of Setoff. In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, each Buyer shall have the right at any time or from time to time without notice to Seller or to any other Person, any such notice being hereby expressly waived, to set off against any amount due Seller from such Buyer under this Agreement or otherwise any amount due such Buyer from Seller under this Agreement or otherwise, including any amounts due as a result of any breach of this Agreement or any other obligation if and to the extent paid in the first instance by such Buyer.

Section 10.5 Records and Audits. Seller shall maintain, and the Authorized Auditors shall have access to, all records and data pertaining to the performance and management of this Agreement (including SB 859 Compliance, compliance with the SB 859 Feedstock Requirements, and any other compliance with the Requirements) and related Subcontracts, and as necessary to properly reflect all costs claimed to have been incurred hereunder and thereunder, including (a) in their original form, all (i) documents provided to Seller in the ordinary course of business for the Facility, (ii) documents for billing, costs, metering, and Environmental Attributes, (iii) books, records, documents, reports, deliverables, employee time sheets, accounting procedures and practices, and (iv) records of financial transactions, and (b) other evidence, regardless of form (for example, machine readable media such as disk or tape, etc.) or type (for example, databases, applications software, database management software, or utilities). If Seller is required to submit cost or pricing data in connection with this Agreement, Seller shall maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. In the event of a Dispute, records that relate to the Agreement, Dispute, litigation or costs, or items to which an audit exception has been taken, shall be maintained. Buyers' Agent and the Authorized Auditors may discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested. All such records shall be retained, and shall be subject to examination and audit by the Authorized Auditors, for a period of not less than six (6)

(b) Seller or its Authorized Representative, at no expense to Buyers, shall inspect and test all Electric Metering Devices prior to the Effective Date and at least annually thereafter. Seller or its Affiliates shall provide Buyer annual certified test reports for each Electric Metering Device thereafter throughout the duration of the Delivery Term. Seller shall provide Buyers' Agent with reasonable advance notice of, and permit representatives of Buyers and Buyers' Agent to witness and verify, such inspections and tests. Upon request by Buyers' Agent, Seller or its Authorized Representative shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of any Buyer to inspect or witness the testing of any Electric Metering Device. The actual expense of any such requested additional inspection or testing shall be borne by Seller. Seller shall provide copies of any inspection or testing reports to Buyers' Agent.

(c) If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than plus or minus one percent (+/- 1.0%), an adjustment shall be made to correct all measurements made by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined by reference to Seller's check-meters, if any, or as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyers. If the period of the inaccuracy cannot be reasonably ascertained, any such adjustment shall be for a period equal to one-third of the time elapsed since the preceding test of the applicable Electric Metering Devices. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyers, Buyers' Agent shall use the corrected measurements as determined in accordance with this Section 10.6 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyers for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Buyers to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyers, or at the direction of Buyers' Agent, may take the form of an offset to payments due to Seller from Buyers. Payment of such difference by the owing Party or Parties, as applicable, shall be made not later than thirty (30) days after the owing Party or Parties, as applicable, receives notice of the amount due, unless Buyers elect payment via an offset. Seller shall work with Buyers to establish direct access by the Buyers to interval meter data for purposes of Buyer reconciliation of invoices.

Section 10.7 Taxes. Seller shall be responsible for and shall pay, before the due date therefor, any and all federal, state, and local Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to the Facility, the Site, or any other assets of Seller, the Products or the transaction arising before, at or after the Point of Delivery. If any Buyer is required by Requirement of Law to remit or pay Taxes that are Seller's responsibility hereunder, such Buyer may deduct such amounts from payments to Seller hereunder; if such Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse such Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under law. A Party that is exempt at any time and for any reason from one or more Taxes shall bear the risk that such exemption shall be lost or the benefit of such execution be reduced.

and to carry out the transactions contemplated hereby and thereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and any Ancillary Documents to which it is a party.

(b) Each Seller Party has taken all corporate or limited liability company action required to authorize the execution, delivery, and performance of this Agreement and all Ancillary Documents requiring execution by such Seller Party, and such Seller Party has delivered to Buyers (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of such Seller Party as being true, correct, and complete, and (ii) an incumbency certificate signed by the secretary of such Seller Party certifying as to the names and signatures of the authorized representatives of such Seller Party.

(c) The execution, delivery and performance by each Seller Party of this Agreement and any Ancillary Documents to which it is a party have been duly authorized by all necessary organizational action, and do not require any consent or approval other than those which have already been obtained.

(d) The execution and delivery of this Agreement and all Ancillary Documents to which any Seller Party is a party, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and any Ancillary Documents to which any Seller Party is a party, do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which any Seller Party is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of any Seller Party (except as contemplated hereby), and each Seller Party has obtained or shall use commercially reasonable efforts to timely obtain (and expects to obtain in due course) all Permits required for the performance of its obligations hereunder and operation of the Facility in accordance with the Requirements. Each Seller Party represents and warrants that it has disclosed this Agreement and the nature of the transactions contemplated by such Agreement to PacifiCorp.

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

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

(g) None of the Seller Parties is in violation of any Requirement of Law, which violations, individually or in the aggregate, would reasonably be expected to result in a material

pursuant to this Agreement, including roads, utilities, air and water quality conditions. Seller is familiar with all local and other conditions that may be material to Seller's performance of its obligations under this Agreement (including transportation, seasons and climate, access, weather, handling and storage of materials and equipment, and availability and quality of labor and utilities). Seller has determined that the Site constitutes an acceptable and suitable site for operation of the Facility in accordance herewith. At all times after the Effective Date, Seller shall have Site Control. Seller shall provide Buyer with prompt notice of any change in the status of Seller's Site Control. Seller shall not take any action or permit any action to be taken at or with respect to the Site that has a material adverse effect upon the Facility or the generating capability of the Facility.

(p) Seller is (i) an "eligible contract participant" as defined in the Commodity Exchange Act, as amended, 7 U.S.C. Section 1a(18); (ii) a producer, processor, or commercial user of, or a merchant handling, the commodity that is the subject of this Agreement, or the products or byproducts thereof; and (iii) entering into this Agreement solely for purposes related to its business as such.

Section 11.3 Covenants Related to Fuel Sources. Seller shall ensure that, during each Contract Year, Facility Energy in an amount equal to the Required SB 859 Energy Quantity meets the following requirements: (a) at least 80% of the feedstock used to generate such Facility Energy shall be a byproduct of sustainable forest management, which includes removal of dead and dying trees from Tier 1 high hazard zones and Tier 2 high hazard zones (as defined in SB 859) and is not from lands that have been clear-cut (the "***Sustainable Forest Management Requirement***"), and (b) at least 60% of the feedstock used to generate such Facility Energy shall be from Tier 1 high hazard zones and Tier 2 high hazard zones (as defined in SB 859) (the "***High Hazard Fuel Requirement***," and together with the Sustainable Forest Management Requirement, the "***SB 859 Feedstock Requirements***").

Section 11.4 Covenants of Seller Related to Site Control Documents.

(a) Seller shall (i) maintain Site Control at all times, and (iii) provide Buyers' Agent with prompt notice of any change in the status of Seller's Site Control.

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

(c) Seller shall use commercially reasonable efforts to enforce the provisions of the Site Control Documents short of termination thereof such that Seller may enjoy all of the rights granted to Seller thereunder.

(d) Seller shall give Buyers' Agent immediate notice of (i) any default or of any event which, with the giving of notice or passage of time, or both, would become a default under any

Section 11.7 Covenants of Seller Related to Intellectual Property. Seller shall timely obtain all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by Seller of its obligations under this Agreement.

Section 11.8 Covenants of Seller Related to Facility Debt. Seller shall not permit Facility Debt in an amount that, in the aggregate exceeds fifty percent (50%) of the Facility Cost. On January 1, April 1, July 1, and October 1 of each year commencing on the Effective Date, Seller shall provide to Buyer a certificate of an officer, director or member of Seller attesting to Facility Debt as being equal to or less than fifty percent (50%) of the Facility Cost as of such date, which certificate shall be accompanied by supporting documentation in reasonable detail, including a statement of the Facility's then-current Facility Debt value.

ARTICLE XII.

DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

Section 12.1 Default. Each of the following events or circumstances shall constitute a “*Default*” by the responsible Party (the “*Defaulting Party*”):

(a) **Payment Default.** Failure by a Party to make any payment under this Agreement when and as due (other than payments disputed in good faith) that is not cured within thirty (30) days after receipt of notice thereof from the other Party (which amount shall include payment of interest from the due date at the Interest Rate);

(b) **Performance Default.** Failure by a Party to perform any of its duties or obligations under this Agreement (other than any failure for which a sole remedy is provided in this Agreement and any failure which is separately listed as a Default of Seller under this Section 12.1) that is not cured within thirty (30) days after receipt of notice thereof from the other Party; *provided* that if such failure cannot be cured within such thirty (30) day period despite reasonable commercial efforts and is not a failure to make a payment when due, and such Party expeditiously commences to cure such breach following its receipt of notice and continues to diligently proceed with such cure within such longer period of time, then such Party shall have up to sixty (60) additional days to cure.

(c) **Breach of Representation and Warranty.** Any representation, warranty, certification, or other statement made by a Party or Seller Party in this Agreement or any Ancillary Document, or in the case of Seller, made in a quarterly certification delivered pursuant to Section 11.6, is false or inaccurate at the time made; *provided* that no Default shall exist if such falsity or inaccuracy is remedied within thirty (30) days after receipt of notice thereof from another Party, and further provided that if such falsity or inaccuracy cannot be cured within such thirty (30) day period despite reasonable commercial efforts, and such Party expeditiously commences to cure such breach following its receipt of notice and continues to diligently proceed with such cure within such longer period of time, then such Party shall have up to sixty (60) additional days to cure.

(d) **Bankruptcy.** Bankruptcy of any Buyer (which shall only be a Default with respect to such Bankrupt Buyer) or Seller.

such Buyer, including a partial termination of this Agreement with respect to the Defaulting Buyer pursuant to Section 12.3; *provided* that the non-Defaulting Buyer (or Buyers, as applicable), shall have the opportunity, upon the termination of this Agreement with respect to such Defaulting Buyer or Buyers, to take over such Defaulting Buyer's or Buyers' Percentage of SB 859 Capacity as provided in Section 2.3(h). No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Seller is the Defaulting Party, each Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Performance Security against any amounts then payable by Seller to Buyers under this Agreement, and (ii) withdrawal from or termination of this Agreement pursuant to Section 12.3. No failure of any Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by any Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power by such Buyer.

Section 12.3 Termination for Default.

(a) In the event of a Default by any Buyer, each Party that is not a Defaulting Party, as the context requires (each, a "***Non-Defaulting Party***") may, for so long as the Default is continuing and, to the extent permitted by applicable law, without limiting any other rights or remedies available to each Non-Defaulting Party under this Agreement, by notice from any Non-Defaulting Party to the Defaulting Party (a "***Termination Notice***") (i) establish a date, which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such notice ("***Early Termination Date***") on which this Agreement shall terminate with respect to such Buyer, and (ii) Seller may withhold any payments due to such Defaulting Buyer in respect of this Agreement.

(b) In the event of a Default by Seller, each Buyer, as a Non-Defaulting Party may, for so long as the Default is continuing and, to the extent permitted by applicable law, without limiting any other rights or remedies available to each Non-Defaulting Party under this Agreement, (i) establish by delivery of a Termination Notice an Early Termination Date (which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such Termination Notice) on which such Non-Defaulting Buyer may withdraw, without penalty to such Non-Defaulting Buyer, from this Agreement or, upon the mutual agreement of Buyers, this Agreement shall terminate, and (ii) withhold any payments due Seller in respect of this Agreement; *provided*, that upon the occurrence of any Default of the type described in Section 12.1(h) (but only arising due to a breach under Section 11.4(c)), this Agreement shall automatically terminate, without notice or other action by any Party as if an Early Termination Date had been declared immediately prior to such event.

(c) If an Early Termination Date has been designated under Section 12.3(b), each Non-Defaulting Party shall calculate in a commercially reasonable manner its Gains, Losses and Costs resulting from the termination of this Agreement and the resulting Termination Payment.

(ii) **“Losses”** means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss, if any (exclusive of Costs), resulting from the termination of its rights and obligations under this Agreement, determined in a commercially reasonable manner. Factors used in determining economic loss may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, or settlement prices for a comparable transaction at liquid trading platforms, all of which should be calculated for the remaining Delivery Term to determine the present value of the Products; if the Non-Defaulting Party is the Seller, then “Losses” shall exclude any federal or state tax credits, grants, or benefits related to the Facility or generation therefrom.

(iii) **“Costs”** means, with respect to the Non-Defaulting Party, (A) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace this Agreement, and (B) all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement. Each Party shall use reasonable efforts to mitigate or eliminate its Costs.

(iv) In no event shall a Party’s Gains, Losses or Costs include any penalties or similar charges imposed by any Non-Defaulting Party.

(v) The Present Value Rate shall be used as the discount rate in all present value calculations required to determine Gains, Losses and Costs.

(h) At the time for payment of any amount due under this Section 12.3, each Party shall pay to any other Party, as applicable, all additional amounts, if any, payable by it under this Agreement (including any amounts withheld pursuant to Section 12.3(a)(ii) above).

ARTICLE XIII. MISCELLANEOUS

Section 13.1 Authorized Representative. Each Party shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an **“Authorized Representative”**), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternates if designated, and such Party shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement. To the extent that an Authorized Representative’s contact information is not provided in Appendix E, at the time a Party designates such Authorized Representative, such Party shall concurrently provide written notice to the other Party of such Authorized Representative’s contact information.

Section 13.5 No Dedication of Facilities. Any undertaking by one Party to the other Parties under any provisions of this Agreement shall not constitute the dedication of the Facility or any portion thereof of any Party to the public or to the other Party or any other Person, and it is understood and agreed that any such undertaking by any Party shall cease upon the termination of such Party's obligations under this Agreement.

Section 13.6 Force Majeure.

(a) A Party shall not be considered to be in Default in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate, *provided* the Party has given a written detailed description of the full particulars of the Force Majeure to the other Party reasonably promptly after becoming aware thereof (and in any event within fourteen (14) days after the initial occurrence of the claimed Force Majeure event) (the "**Force Majeure Notice**"), which notice shall include information with respect to the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay. The Party providing such Force Majeure Notice shall be excused from fulfilling its obligations under this Agreement until such time as the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time such Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. If Seller is unable to deliver Facility Energy to the Point of Delivery or the Electric Metering Devices are unable to measure Facility Energy due to a Force Majeure, then such Buyer shall have no obligation to pay Seller for Products associated with SB 859 Energy not delivered or measured by reason thereof. Notwithstanding anything to the contrary herein, if (i) Seller fails to satisfy the SB 859 Feedstock Requirements in any given 12 month period or (ii) there is a SB 859 Noncompliance Determination, in either case as a result of an event of Force Majeure, the Buyers shall have no obligation to pay Seller any Contract Price to the extent of the noncompliance. In no event shall any Buyer be obligated to compensate Seller or any other Person for any losses, expenses or liabilities that Seller or such other Person may sustain as a consequence of any Force Majeure.

(b) The term "**Force Majeure**" means any act of God (including fire, flood, earthquake, extremely severe storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor disturbance, strike or lockout of a national scope, act of the public enemy, war, insurrection, riot, explosion, terrorist activities or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the date of this Agreement, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; *provided*, nothing in clause (iv) above shall be construed so as to require a Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from

with not less than ninety (90) days' prior written notice, but shall in no event provide less than forty five (45) days' prior written notice (other than a Change in Control that is involuntary or by operation of law, for which Seller shall provide as much advance notice as possible, but for which no advance notice is required hereunder), of (x) any proposed transaction which would constitute a Change in Control, and (y) Bankruptcy of any Seller Party, and (ii) provide written notice to Buyers' Agent of any other transaction or series of transactions with respect to the sale, transfer or disposition of Ultimate Parent Entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or the power to control the management and policies of any Upstream Equity Owner.

(b) Any Buyer may assign this Agreement without the consent of Seller or the other Buyers to a Qualified Buyer Assignee. Notwithstanding the foregoing, in connection with any such assignment, such Qualified Buyer Assignee shall execute a written assumption agreement in favor of Seller pursuant to which any such Qualified Buyer Assignee shall assume all the obligations of such Buyer under this Agreement and agree to be bound by all the terms and conditions of this Agreement, thereby relieving the assignor Buyer from its duties and obligations hereunder. Any modifications or amendments to this Agreement to accommodate the technical requirements of such Qualified Buyer Assignee (including as they relate to transmission and scheduling) shall require the consent of Seller, which consent shall not be unreasonably withheld.

(c) Except for a sale or transfer of the Facility by a Facility Lender to a Qualified Transferee as contemplated by Section 13.7(d), Seller shall not sell or transfer the Facility to any Person other than a Person to whom Seller assigns this Agreement in accordance with this Section 13.7(d), without the prior written consent of Buyers. Any purported sale or transfer in violation of this Section 13.7(c) shall be null and void and of no force or effect.

(d) Buyers' consent shall not be required in connection with the collateral assignment of this Agreement or a pledge of the membership interests in Seller to any Facility Lender for the sole purpose of financing exclusively this Facility; provided, however, that the terms of such financing and the documentation relating thereto shall not conflict with the applicable terms and conditions of this Agreement. Seller shall provide Buyers with ninety (90) days' prior notice of any such collateral assignment or pledge. If a Facility Lender, any designee of the Facility Lender, or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance in lieu of foreclosure takes possession of or title to the Facility, such Facility Lender, designee, purchaser or grantee shall agree to be bound by the covenants and agreements of Seller in this Agreement; provided, however, that until the Person who acquires title to the Facility executes and delivers to Buyers a written assumption of Seller's obligations under this Agreement in form and substance acceptable to Buyers, such Person shall not be entitled to any of the benefits of this Agreement. Any sale or transfer of the Facility by any Facility Lender in connection with any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage or Lien on the Facility shall be made only to an entity that is a Qualified Transferee. In connection with any financing or refinancing of the Facility, each Buyer shall execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Appendix H, except that Buyers shall have no obligation to amend the terms and conditions of this Agreement (such consent, the "**Facility Lender Consent**").

Section 13.13 Venue. All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

Section 13.14 Execution in Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

Section 13.15 Effect of Section Headings. Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

Section 13.16 Waiver; Available Remedies. The failure of any Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Except to the extent this Agreement provides an exclusive remedy for a breach, nothing contained herein shall preclude any Party from seeking and obtaining any available remedies hereunder, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief, or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise as a court of competent jurisdiction may deem just and proper to enforce this Agreement or to prevent any violation hereof. The rights granted herein are cumulative.

Section 13.17 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership among the Parties hereto or to impose any partnership obligation or liability upon such Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Parties.

Section 13.18 Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, this Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

Section 13.19 Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability.

(a) **Indemnification.** Seller undertakes and agrees to indemnify and hold harmless each Buyer, SCPPA's Participating Members, and each Buyer's respective commissioners, officers, agents, employees, advisors, members, and Authorized Representatives and assigns and successors in interest (collectively, "**Indemnitees**") and, at the option of Buyers' Agent, to defend such Indemnitees from and against any and all suits and causes of action (including

(INCLUDING SUCH PARTY'S OWN NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY AT LAW OR IN EQUITY. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES OF SUCH DAMAGES, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE JOINT, CONTRIBUTORY, CONCURRENT, OR ACTIVE OR PASSIVE.

(f) To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, and that the liquidated damages constitute a reasonable approximation of the anticipated harm or loss.

(g) The obligations of Buyers hereunder are several and not joint, and no Buyer shall be liable for the acts or omissions of any other Buyer. If any Participating Member withdraws from participation in this Agreement, then: (i) neither the other Participating Members nor the other Buyers shall have any obligation to take over the withdrawing Participating Member's Applicable MW Share; (ii) effective upon such withdrawal, the SB 859 Capacity shall be reduced by the withdrawing Participating Member's Applicable MW Share; and (iii) each Buyer's Percentage of SB 859 Capacity shall be adjusted to equal the percentage equivalent of a fraction, the numerator of which is equal to such Buyer's Applicable MW Share (or, in the case of SCPA, the sum of the Applicable MW Shares of all remaining Participating Members), and the denominator of which is equal to the SB 859 Capacity, as adjusted by clause (ii) of this Section 13.19(g).

Section 13.20 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

Section 13.21 Confidentiality.

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by law, all documents, data (including operating data provided in connection with the scheduling of energy pursuant to Article VII or otherwise pursuant to this Agreement), drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, any Party under this Agreement, and with respect to documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("**Confidential Information**"). The provisions of this Section 13.21 shall survive and shall continue to be binding upon the Parties for a period of one (1) year following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party

Information is subject to disclosure under the CPRA, then such Buyer shall notify the other Buyers and Seller of the request and its intent to disclose the documents. Such Buyer, as required by the CPRA, may release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless such Buyer and the Indemnitees from and against all suits, claims, and causes of action brought against such Buyer or any Indemnitees for such Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to the CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by such Buyer and any Indemnitees, and specifically including costs of attorneys, experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against such Buyer or any Indemnitees, through and including any appellate proceedings. Seller's obligations to Buyers and all Indemnitees under this indemnification provision shall be due and payable on a Monthly, on-going basis within thirty (30) days after each submission to Seller of Buyers' invoices for all fees and costs incurred by any Buyer and all Indemnitees, as well as all damages or liability of any nature.

(f) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party or their Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity, subject to the limitations set forth in Section 13.19(e).

Section 13.22 Mobile-Sierra. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arm's-length negotiations between the Parties. Further, the Parties believe that, to the extent the sale of the Products under this Agreement is subject to Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e, the rates, terms and conditions of this Agreement are just and reasonable within the meanings of Sections 205 and 206 of the Federal Power Act, and that the rates, terms and conditions of this Agreement will remain so during the Agreement Term. Notwithstanding any provision of this Agreement, the Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the Agreement Term, under Sections 205 and 206 of the Federal Power Act, and to request the FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree not to seek, nor support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of this Agreement through application or complaint to FERC or any other state or federal agency, board, court or tribunal, related in any manner as to whether such rates, terms or conditions are just and reasonable or in the public interest under the Federal Power Act, absent prior written agreement of the Parties. The Parties also agree that, absent prior agreement in writing by the Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any provision of this Section is unenforceable or ineffective as to such Party), a non-party or the FERC acting *sua*

(iii) Seller agrees to adhere to the Equal Employment Practices and Affirmative Action provisions set forth in the Los Angeles Administrative Code Sections 10.8.3 and 10.8.4, respectively.

(c) Small Business Enterprise (“SBE”) and Disabled Veteran Business Enterprise (“DVBE”) Opportunity Program.

(i) It is the policy of SCPA to provide SBEs, DVBEs, Disadvantaged Business Enterprises (“DBEs”), Women Business Enterprises (“WBEs”), Minority Business Enterprises (“MBEs”), Lesbian, Gay, Bisexual, or Transgender Business Enterprise (“LGBTBE’s”), and all Other Business Enterprises (“OBEs”) an equal opportunity to participate in the performance of all SCPA contracts. SCPA’s goals for SBE/DVBE participation in performance of its contracts are twenty percent (25%) for SBEs and three percent (3%) for DVBEs. Seller shall assist SCPA in implementing this policy by taking all commercially reasonable steps to ensure that all available business enterprises, including SBEs and DVBEs, have an equal opportunity to compete for and participate in the work being requested by this Agreement.

(ii) Seller shall notify SCPA if Seller is a certified SBE, DVBE, DBE, WBE, MBE, or LGBTBE. Seller shall provide to SCPA (A) the company name, contact person, address, and telephone number of each proposed Subcontractor that qualifies as an SBE, DVBE, DBE, WBE, MBE, or LGBTBE and (B) copies of all certifications of such Subcontractor as an SBE, DVBE, DBE, WBE, MBE, or LGBTBE as applicable.

(d) **Child Support Policy.** Seller and any of its Subcontractors shall fully comply with all applicable state and federal employment reporting requirements for Seller’s and any Seller’s Subcontractors’ employees. Seller and any of its Subcontractor(s) shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with the California Family Code, to the extent applicable. Seller and any of its Subcontractors shall certify that the principal owners thereof (which shall include any person who owns an interest of ten percent (10%) or more) are in compliance with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally. Seller and any of its Subcontractors shall certify that such compliance will be maintained throughout the term of this Agreement. Failure of Seller and/or any of its Subcontractors to fully comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owners to comply with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute a Default under this Agreement. Failure of Seller and/or any of its Subcontractors or principal owners thereof to cure the Default within ninety (90) days of notice of such Default by a Buyer shall subject this Agreement to termination. Seller agrees to complete the forms attached to Appendix G related to the Child Support Policy and any certifications attached thereto.

(e) **Current Los Angeles City Business Tax Registration Certificate Required.** Seller shall obtain and keep in full force and effect during the term of this Agreement all Business Tax Registration Certificates required by the City of Los Angeles Business Tax Ordinance, Article 1, Chapter II, Section 21.00 and following, of the Los Angeles Municipal Code. Seller’s Vendor Registration Number must be shown on all invoices submitted for

Each Buyer and Seller were represented by legal counsel during the negotiation and execution of this Agreement and the Parties have executed this Agreement as of the dates set forth below, effective as of the Effective Date.

BUYERS:

SOUTHERN CALIFORNIA
PUBLIC POWER AUTHORITY

By: _____
Its: President
Date: _____

Attest: _____
Its: Assistant Secretary

Approved as to legal form and
content:

By: _____
Its: Senior Assistant General Counsel

SACRAMENTO MUNICIPAL UTILITY
DISTRICT

By: _____
Its: Chief Grid Strategy &
Operations Officer

Date: _____
Attest: _____

MODESTO IRRIGATION DISTRICT

By: _____
Its: _____

Date: _____
Attest: _____

THE CITY OF RIVERSIDE

By: _____
Its: City Manager
Date: _____

Approved as to legal form:

By: Susan Wilson
Its: Assistant City Attorney

Certified as to availability of funds:

By: [Signature]
Its: Chief Financial Officer

TURLOCK IRRIGATION DISTRICT

By: _____
Its: _____

Date: _____
Attest: _____

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Date: _____
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MODESTO IRRIGATION DISTRICT

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Its: _____

Date: _____
Attest: _____

THE CITY OF RIVERSIDE

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Its: City Manager
Date: _____

Approved as to legal form:

By: *Jessan Wilson*
Its: Assistant City Attorney

Certified as to availability of funds:

By: *[Signature]*
Its: Chief Financial Officer

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Its: Assistant City Attorney

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Its: Chief Financial Officer

TURLOCK IRRIGATION DISTRICT

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Its: Assistant City Attorney

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By: [Signature]
Its: Chief Financial Officer

TURLOCK IRRIGATION DISTRICT

By: _____
Its: _____

Date: _____
Attest: _____

SELLER:

ROSEBURG FOREST PRODUCTS CO.

By: Stanley W. Gray
Its: SVP, General Counsel & Secretary
Date: December 19, 2019

APPENDIX A-1
TO SB 859 PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 25, 2019
BETWEEN BUYERS
AND
ROSEBURG FOREST PRODUCTS CO.
FACILITY, PERMITS AND OPERATOR

1. Name of Facility: Weed Cogeneration Plant
2. Owner: Roseburg Forest Products Co.
3. Type of Facility: Biomass
4. SB 859 Capacity: 11 MW
5. Site address: 98 Mill Street, Weed, CA 96094
6. Location, design and configuration of Facility: *See* map attached on page Appendix A-2.
7. Permits:
 - a. County of Siskiyou, Title V Operational Permit TVOP030912, dated 3/20/2019, expiring 3/20/2024.
 - b. County of Siskiyou, Land Use Permit for 15MW Cogen System, APN021-080-130 & APN021-100-150, approved 9/30/2008.
 - c. NPDES Storm Water Discharge Permit, Order NPDES No. CAS000001, Order 2014-0057-DWQ, effective 7/1/2015.
 - d. Pressure Vessel Registration, State Number B024160-96, issued based on an inspection date of 7/30/2019, expiring 7/3/2020.

Section 4: Contract Year to Date (CtYTD) Required SB 859 Energy Quantity, SB 859 Feedstock use, SB 859 Energy generated

CtYTD Item (Green Tons or as indicated)	Prior Month CtYTD	Reporting Month	CtYTD
Required SB 859 Energy Quantity (MWh)			
(a) SB 859 Feedstock Benchmark ³			
(b) Sustainable and HHZ feedstock used			
(c) Sustainable not HHZ feedstock used			
(d) HHZ not Sustainable feedstock used			
CtYTD % Sustainable feedstock used $[(b + c) / a] * 100$		XX	
CtYTD % HHZ feedstock used $[(b + d) / a] * 100$		XX	
CtYTD SB 859 Energy generated (MWh) ⁵		XX	

Section 5: Compliance Attestation

The Facility is SB 859 Compliant and is expected to remain SB 859 Compliant throughout the current Contract Year	Y/N ⁷
Seller expects to deliver Products associated with SB 859 Energy in an amount equal to the Required SB 859 Energy Quantity during the current Contract Year considered as a whole	Y/N ⁷

Section 6: Remarks

**APPENDIX C
TO SB 859 PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 25, 2019
BETWEEN BUYERS
AND
ROSEBURG FOREST PRODUCTS CO.**

FORM OF LETTER OF CREDIT

**IRREVOCABLE, UNCONDITIONAL, AND CLEAN STANDBY LETTER OF CREDIT
NO. _____**

Applicant:

[_____]

Beneficiary:

[INSERT]

Amount:

Expiration Date:

Expiration Place:

Ladies and Gentlemen:

We hereby issue our Irrevocable, Unconditional and Clean Standby Letter of Credit in favor of the beneficiary by order and for the account of the applicant which is available at sight for USD \$XX,XXX,XXX by sight payment upon presentation to us at our office at **[bank's address]**,¹ of: (i) your written demand for payment containing the text of Exhibit I, (ii) your signed statement containing the text of Exhibit II and, (iii) the original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings) (the "Documents"). Drawings may be presented via fax to _____. If you present a fax drawing under this letter of credit, you do not need to present the original of any drawing documents, and if we receive any such original drawing, the drawing documents will not be examined by us. In the event of a full or final drawing, the original Letter of Credit and documents are to be sent via overnight courier to our address indicated above.

A presentation under this Letter of Credit may be made only on a day, and during hours, in which such office is open for business, and payments can be effected via wire transfer (a "Business Day"). Partial drawing of funds shall be permitted under this Letter of Credit, and this

¹ **Note to Issuer:** The Letter of Credit must be payable in U.S. dollars within the continental U.S.

Note to Seller: Bank to have office for presentment in California to allow for in person presentment by Buyers

We may, in our sole discretion, increase or decrease the stated amount of this Letter of Credit, and the Expiration Date may be extended, by an amendment to this Letter of Credit in the form of Exhibit III signed by us. Any such amendment for decrease shall become effective only upon acceptance by your signature on a hard copy amendment.

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

We hereby engage with you that your 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 the Applicant. All of the rights of the Beneficiary set forth above shall inure to the benefit of your successors by operation of law. In this connection, in the event of a drawing made by a party other than the Beneficiary, such drawing must be accompanied by the following signed certification and copy of document proving such successorship:

“The undersigned does hereby certify that [drawer] is the successor by operation of law to [the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY][the SACRAMENTO MUNICIPAL UTILITY DISTRICT][the MODESTO IRRIGATION DISTRICT][the CITY OF RIVERSIDE][the TURLOCK IRRIGATION DISTRICT], as beneficiary named in [name of bank] Letter of Credit No. _____.”

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the Uniform Customs. As to matters not governed by the Uniform Customs, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of 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 [_____] 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*.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Exhibit I, II, III and IV hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at the address referred to above, and shall specifically refer to this Letter of Credit no. _____.

EXHIBIT I

DEMAND FOR PAYMENT

Re: Irrevocable, Unconditional and Clean Standby Letter of Credit

No. _____ Dated _____, 20__

[Insert Bank Address]

To Whom It May Concern:

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

DATED: _____, 20__.

[_____]

By_____

Title_____

EXHIBIT III

AMENDMENT

Re: Irrevocable, Unconditional and Clean Documentary Letter of Credit
No. _____ Dated _____, 20__

Beneficiary:

Applicant:

Southern California Public Power Authority
225 S. Lake Avenue, Suite 1250
Pasadena, CA 91101

To Whom It May Concern:

The above referenced Irrevocable, Unconditional and Clean Standby Letter of Credit is hereby amended as follows: by [increasing][decreasing] the stated amount by \$ _____ to a new stated amount of \$ _____ [and][by extending the expiration date to _____ from _____. All other terms and conditions of the Letter of Credit remain unchanged.

This amendment is effective only when accepted by [the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY][the SACRAMENTO MUNICIPAL UTILITY DISTRICT][the MODESTO IRRIGATION DISTRICT][the CITY OF RIVERSIDE][the TURLOCK IRRIGATION DISTRICT], which acceptance may only be valid by a signature of an authorized representative.

Dated: _____

Yours faithfully,

(name of issuing bank)

By _____
Title _____

ACCEPTED

[_____]

By _____
Title _____
Date _____

**APPENDIX D
TO SB 859 PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 25, 2019
BETWEEN BUYERS
AND
ROSEBURG FOREST PRODUCTS CO.**

INSURANCE

I. GENERAL REQUIREMENTS

As a condition to the Effective Date, Seller shall furnish Buyers' Agent evidence of coverage from insurers acceptable to Buyers' Agent and in a form acceptable to the risk management section of the project manager for each Buyer or acceptable to Buyers' Agent for this purpose. Such insurance shall be maintained by Seller at Seller's sole cost and expense throughout the Agreement Term.

Such insurance shall not limit or qualify the liabilities and obligations of Seller assumed under this Agreement. Buyers 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 any 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.

Such insurance shall not 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 pre-paid first-class mail to Buyers' Agent: Executive Director, Southern California Public Power Authority, 1160 Nicole Court, Glendora, CA 91740.

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 the same limits, terms and conditions of the expiring policy, or that an extended discovery period has been purchased on the expiring policy at least for the contract under which the work was performed.

acceptable to each Buyer's risk management agent. Such policy shall include, as appropriate, coverage for Commercial General Liability, Commercial Automobile Liability, Employer's Liability, or other applicable insurance coverages.

D. Workers' Compensation/Employer's Liability Insurance

Seller shall provide Workers' Compensation insurance covering all of Seller's employees in accordance with the laws of any state in which the work is to be performed and including Employer's Liability insurance and a Waiver of Subrogation in favor of each Buyer. The limit for Employer's Liability coverage shall be not less than \$1,000,000.00 each accident and shall be a separate policy if not included with Workers' Compensation coverage. Evidence of such insurance shall be a form of Buyer Special Endorsement of insurance or on an endorsement to the policy acceptable to Buyer's risk management agent. Workers' Compensation/Employer's Liability exposure may be self-insured *provided* that Buyers' Agent is furnished with a copy of the certificate issued by the state authorizing Seller to self-insure. Seller shall notify Buyers' Agent by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

Email: NXu@riversideca.gov

Turlock Irrigation District

If via USPS:

Turlock Irrigation District

P.O. Box 949

Turlock, CA 95381-0949

Attention: Willie Manuel

If via non-USPS:

Turlock Irrigation District

333 East Canal Drive

Turlock, CA 95380

Attention: Willie Manuel

Telephone: (209) 883-8348

Facsimile: (209) 656-2147

Email: wgmanuel@tid.org

If to Seller:

Roseburg Forest Products

PO Box 1088

Roseburg, OR 97470

Attention: Lance Elam, Energy Manager

Telephone: 541-679-2157

Email: LanceE@rfpco.com

Roseburg Forest Products

98 Mill Street

Weed, CA 96094

Attention: Kent Hubbard, Superintendent

Telephone: 530-938-5731

Email: Kenth@rfpco.com

Roseburg Forest Products

98 Mill Street

Weed, CA 96094

Attention: Paul Hamann, Plant Manager – Weed Veneer

Telephone: 530-938-5728

Email: Paulham@rfpco.com

2. **Billings.** Billings and payments pursuant to Article X and Appendix A shall be transmitted to the following addresses:

- 2.1 If Billing to Buyers:

Southern California Public Power Authority

1160 Nicole Court

2.2 If Payment to Buyers:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Attention: Accounts Payable
Telephone: (626) 793-9364
Facsimile: (626) 704-9461
Email: projectinvoices@scppa.org

Sacramento Municipal Utility District
P.O. Box 15830
Sacramento, CA 95852-1830
Attention: Power Contracts Administration
Telephone: (916) 732-6244
Facsimile: (916) 732-6002
Email: PowerContractsAdmin@smud.org

Modesto Irrigation District
1231 11th Street
Modesto, CA 95354
Attention: Accounts Payable
Telephone: 209-526-7489 or 209-526-7479
Facsimile: 209-526-7574
Reconciliation Email: atf@mid.org
Payment Email: accounting@mid.org

City of Riverside
3435 Fourteenth Street
Riverside, CA 92501
Attention: Public Utilities Department, Power Settlements
Telephone: 951-826-8515/8516
Facsimile: 951-715-3563
Email: Settlements@riversideca.gov

Email: stuartg@rfpco.com

Roseburg Forest Products
98 Mill Street
Weed, CA 96094
Attention: Controller
Telephone: 530-938-5728
Facsimile: 530-938-2678
Email: Jenniferh@rfpco.com

6. **Buyers' Agent.** Buyers' Agent is:

Southern California Public Power Authority
c/o Executive Director
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Facsimile: 626-793-9461
Email: rkrager@scppa.org, kellis@scppa.org, mwebster@scppa.org

**APPENDIX G
TO SB 859 PURCHASE AGREEMENT,
DATED AS OF NOVEMBER 25, 2019
BETWEEN BUYERS
AND
ROSEBURG FOREST PRODUCTS CO.
BUSINESS POLICY FORMS**

See attached.

**City of Los Angeles
Department of Water and Power**

**CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT
OBLIGATIONS**

This document must be returned with the Proposal/Bid Response

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 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).

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: _____

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."

NOTICE: Responses to this Questionnaire will not be made available to the public for review.
This is not a public document. [CPCC §20101(a)]

**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

Zip

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)*

- ☐ An initial submission of a completed Questionnaire.
- ☐ An update of a prior Questionnaire dated ____/____/____. A copy of the prior Questionnaire **and** newly updated information are attached.
- ☐ No change. There has been no change to any of the responses since the last Responsibility Questionnaire dated ____/____/____ was submitted. A copy of the last Responsibility Questionnaire is attached.

Print Name, Title

Signature

Date

TOTAL NUMBER OF PAGES SUBMITTED, INCLUDING ALL ATTACHMENTS: _____

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.

☐ 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.

SERVICE

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.

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 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.

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 bidders 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 bidder who "engages in investment activities in Iran" is defined as either:

1. A bidder 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 bidder 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 bidder shall certify that at the time of submitting a bid 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 bidder 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 bidder 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 bidder or financial institution identified below, and that the bidder 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 DGS list of persons engaged in investment activities in Iran.

Name of Bidder/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 bidder 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 bidder or financial institution identified below has obtained an exemption from the certification requirement under the Iran Contracting Act of 2010, the bidder or financial institution shall complete and sign below and attach documentation demonstrating the exemption approval.

Name of Bidder/Financial Institution (Printed): _____

Signed by: _____ (Authorized Signature)

_____ (Printed Name)

_____ (Title of Person Signing)

D. WHEREAS, pursuant to Section 13.7 of the SB 859 Purchase Agreement, Seller has requested Buyers' consent to the collateral assignment, pursuant to the Financing Documents, by Seller to Agent of Seller's interest in the SB 859 Purchase Agreement.

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

AGREEMENT

1. Assignment and Agreement.

1.1 Consent to Assignment. Buyers hereby consent to the collateral assignment to Agent pursuant to the Financing Documents, of **[(a) Seller's rights to and under the SB 859 Purchase Agreement and in the Project and (b) Parent's membership interests in Seller (the "Assigned Interests") as security for Seller's obligations under the Financing Agreement].** *[To be updated based on final structure of financing.]* Subject to the terms and conditions of this Consent, Buyers agree that in exercising its remedies, Agent may exercise Seller's rights under the SB 859 Purchase Agreement. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, (i) neither Seller, Agent, nor any Subsequent Owner (as defined below) shall assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Energy, Capacity Rights or Environmental Attributes (not including the proceeds thereof) to any Person other than Buyers, including any Facility Lender, and (ii) Agent agrees that its exercise of remedies under the Financing Documents shall be consistent with the terms and conditions of the SB 859 Purchase Agreement and this Consent.

1.2 Notices; Right to Cure by Agent. Upon the occurrence of a Default by Seller under the SB 859 Purchase Agreement, Buyers shall not terminate or suspend their performance under the SB 859 Purchase Agreement until a Buyer first gives a written notice of such Default to Agent. Such notice shall provide Agent and the Facility Lenders with rights to cure such Default, provided that such cure rights shall be performed consistent with the requirements and within any applicable cure period or periods for such cure that are applicable to Seller under the SB 859 Purchase Agreement. Failure to provide such notice to Agent shall not constitute a breach of the SB 859 Purchase Agreement or this Consent by Buyers, and Agent and Seller agree that Buyers shall have no liability to Agent or Seller for such failure whatsoever; provided that no claim of rescission or termination of the SB 859 Purchase Agreement by Buyers shall be binding without such notice and the lapsing of any applicable cure period. If Agent and the Facility Lenders fail to cure such a Default under the SB 859 Purchase Agreement within any applicable cure period, Buyers shall have all its rights and remedies with respect to such Default, including their rights of withdrawal or termination, as set forth in the SB 859 Purchase Agreement.

1.3 Notices; Right to Cure by Buyers. Seller and Agent agree that Buyers shall have the right to cure a default by Seller under the Financing Documents. Agent, on behalf of the Facility Lenders, shall provide Buyers with written notice of any default of Seller under the Financing Documents concurrently with the notice provided to Seller under the Financing Documents and Buyers shall have the right to cure such default, provided such cure shall be consistent with the requirements of the Financing Documents and shall be completed within ninety (90) days after the expiration of all cure periods available to Seller under the Financing Documents. The effect of any such cure by Buyers shall be as if Seller had cured the applicable

Agreement, the recourse of Buyers in seeking the enforcement of such obligations shall include all rights and remedies available to Buyers pursuant to the SB 859 Purchase Agreement and the value (taking into account indebtedness secured by the Facility, including indebtedness arising in connection with the Performance Security) of Agent's or Subsequent Owner's, as applicable, interest in the Facility.

2. Payments under the SB 859 Purchase Agreement.

2.1 Without limiting the rights of Buyers under the SB 859 Purchase Agreement, upon sixty (60) days' prior written notice (in the form of Exhibit A hereto) delivered by Agent to Buyers, Buyers shall pay all amounts that they are obligated to pay to Seller under the SB 859 Purchase Agreement to Agent for deposit into the account specified below or otherwise designated by Agent to Buyers in writing no later than sixty (60) days prior to the date any such payments are due, in the manner and when required under the SB 859 Purchase Agreement directly, and all such payments to such accounts shall be deemed to satisfy the payment obligations of Buyers under the SB 859 Purchase Agreement.

Bank Name:	[_____]
Account Number:	[_____]
ABA Number:	[_____]
For Credit to:	[_____]
Attn:	[_____]

2.2 From and after such time as an entity qualifies as a Subsequent Owner, Buyers shall pay all such amounts owed directly to or at the written direction of such Subsequent Owner in the form of Exhibit A hereto. Seller acknowledges and consents to Buyers making such payments directly to Agent and Subsequent Owner, as applicable, and acknowledges and agrees that performance by Buyers under this Section shall not release Seller from any of its obligations under the SB 859 Purchase Agreement. Agent and Seller agree that any further change in payment notification shall become effective within sixty (60) days after receipt by Buyers of written notice thereof in accordance with this Consent. Buyers shall have no liability to Seller or Agent (or their successors or permitted assigns) for making payments due or to become due under the SB 859 Purchase Agreement to Agent or for failure to direct such payments to Agent rather than Seller.

3. Representations and Warranties.

3.1 Buyers. Each Buyer hereby represents and warrants to Agent as of the date of this Consent as follows:

(a) Such Buyer is a validly existing (i) California joint powers authority (in the case of SCPPA), (ii) California municipal district (in the case of SMUD), (iii) California irrigation district (in the case of MID), (iv) California charter city and municipal corporation (in the case of Riverside), and (iv) California irrigation district (in the case of TID).

(b) Such Buyer has the legal power and authority to own its properties, to carry on its business as now being conducted, to enter into the SB 859 Purchase Agreement and to carry out the covenants and obligations on its part to be performed under and pursuant to the SB 859 Purchase Agreement.

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 hereto irrevocably agree to submit to the exclusive jurisdiction of such courts and waive any defense of forum non conveniens.

4.2 Counterparts. This Consent may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Consent may be detached from any counterpart of this Consent without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Consent identical in form hereto by having attached to it one or more signature pages.

4.3 Amendment Waiver. This Consent may be amended or modified only by an instrument in writing signed by each Party.

4.4 Successors and Assigns. This Consent shall bind and benefit Buyers, Agent, Seller and their respective successors and permitted assigns.

4.5 Attorneys' Fees. Seller shall reimburse Buyers for all reasonable costs and expenses incurred by Buyers in connection with the facilitation of Seller's collateral assignment or pledge of the SB 859 Purchase Agreement, or any other action taken in connection with the transactions contemplated in this Consent, or otherwise pursuant to any request made by Seller, Agent or any Facility Lender.

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

4.7 Notices. Any communications between the Parties hereto or notices provided herein to be given may be given to the following addresses:

If to Buyers: Southern California Public Power Authority
 Attention: Executive Director
 1160 Nicole Court
 Glendora, CA 91740
 Telephone: (626) 793-9364
 Fax: (626) 793-9461
 Email: [_____]@[_____]

 Sacramento Municipal Utility District
 Attention: [_____]
 [_____]
 [_____]
 Telephone: [() -]
 Facsimile: [() -]
 Email: [_____]@[_____]

All notices or other communications required or permitted to be given hereunder shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing), (b) deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the applicable Party, and (c) deemed delivered, given and received on the date of delivery, in the case of facsimile transmission, or on the date of receipt or rejection in the case of delivery in person, by reliable overnight courier, or by registered or certified mail. Any Party may change its address for notice hereunder by giving of notice to the other Parties.

SELLER:

[_____]

By: _____

Its: _____

Date: _____

Exhibit A
to
Consent and Agreement
dated [_____], 20[__]
between
Buyers,
[_____]
and
Agent

Payment Instructions

(see attached)

Very truly yours,

[Subsequent Owner]

Principals of Seller:

Board Chair – Allyn C. Ford

President & CEO – B. Grady Mulbery

SVP, Operations – Jake Elston

SVP, General Counsel & Secretary – Stuart W. Gray (authorized by Seller to represent Seller before the City of Los Angeles)

Principals of Ultimate Parent Entity:

Allyn C. Ford

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