

**Power & Water Resources Pooling Authority  
Resolution 23-06-09**

**RENEWABLE ENERGY PURCHASE AGREEMENT**

The Power and Water Resources Pooling Authority (“PWRPA”) provides electric service to its customers, known as “Project Participants,” under terms and conditions specified in the Aggregation Services Agreement (“ASA”); and

WHEREAS, Lower Tule River Irrigation District (“LTRID”) is a Project Participant and owns a small hydroelectric facility that is a CEC-certified eligible renewable energy resource; and

WHEREAS, PWRPA desires to enter into a short-term power purchase agreement with LTRID for the full output; and


WHEREAS, the agreement includes a provision to extend the term by written agreement of the parties.


NOW, THEREFORE, BE IT RESOLVED that the Pooling Authority Board of Directors hereby:

1. Authorizes the Chair, or his designee, to execute and implement a Renewable Energy Purchase Agreement with LTRID according to the rates, terms, and conditions substantially similar to those set forth in Attachment A, subject to the prior approval of General Counsel as to the form of the final, executable version.

PASSED AND ADOPTED by the PWRPA Board of Directors this 7<sup>th</sup> day of June 2023, by the following vote on roll call:

AYES	Arvin-Edison WSD, Banta Carbona ID, Byron Bethany ID, Cawelo Water District, Glenn-Colusa ID, James ID, Lower Tule River ID, Princeton / Provident ID, RD 108, Santa Clara Valley WD, Sonoma County Water Agency, West Stanislaus ID, Westlands Water District, Zone 7 WA (100.0% Voting Shares)
NOES	None
ABSENT	None

  
\_\_\_\_\_  
David Weisenberger  
Chairman

  
\_\_\_\_\_  
Attest by: Bruce McLaughlin  
Secretary

**ATTACHMENT A**  
**to**  
**RESOLUTION 23-06-09**

**RENEWABLE ENERGY PURCHASE AGREEMENT**  
between  
**LOWER TULE RIVER IRRIGATION DISTRICT**  
and  
**POWER AND WATER RESOURCES POOLING AUTHORITY**

This **RENEWABLE ENERGY PURCHASE AGREEMENT** (“Agreement”), dated May XX, 2023 (“Effective Date”), is entered into by and between the **LOWER TULE RIVER IRRIGATION DISTRICT**, a California Irrigation District (“Lower Tule River”), and the **POWER AND WATER RESOURCES POOLING AUTHORITY**, a California joint powers authority (“PWRPA”). Capitalized terms contained herein shall have the meanings specified in Exhibit A.

**- RECITALS -**

A. Lower Tule River owns and operates the Success Power Project (“Project”) located at 29332 Highway 190, Porterville, CA, as described more fully in Exhibit B. The Project consists of a nominal, instantaneous net electrical output of approximately 1.4 MW.

B. PWRPA is a public agency duly organized and existing pursuant to the California Government Code relating to the joint exercise of powers, and possesses those powers that are common among the parties to a Joint Powers Agreement, dated January 22, 2004, including the authority to provide wholesale and retail electric service.

C. The Project has been certified by the California Energy Commission (“CEC”) (CEC Plant ID H0503) as being an Eligible Renewable Energy Resource, as such term is defined in California Public Utilities Code Section 399.12(e), and energy generated from the Project qualifies under the requirements of the California Renewables Portfolio Standard.

D. The Parties wish to enter into this Agreement for the sale and documentation of Capacity, Energy, Environmental Attributes, and Resource Adequacy Benefits associated with the Project.

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

**ARTICLE 1**  
**CONTRACT DOCUMENTS**

**1.1 Documents Included.** This Agreement consists of this document and the following exhibits which are specifically incorporated herein and made a part hereof by this reference:

Exhibit A -	Definitions
Exhibit B -	Description of the Project
Exhibit C -	Rate Agreement

**1.2 Definitions.** Terms in this Agreement that are initially capitalized and included in Exhibit A shall have the meaning stated in Exhibit A.

**1.3 Conflict with Exhibits.** In the event of a conflict between the terms of this document and the terms of one or more of the exhibits, the terms of this document shall control. In the event of any conflict among the exhibits, the exhibit of latest date mutually agreed upon by the Parties shall control.

**1.4 Entire Agreement.** This Agreement, together with all exhibits attached hereto, contains all representations and the entire understanding between the Parties with respect to the purchase and sale of the Electrical Output. No other representations are intended or shall be implied. Any prior contemporaneous correspondence, memoranda, or agreements, whether oral or written, which are in conflict with this Agreement are intended to be replaced in total by this Agreement and the exhibits to this Agreement. The Parties warrant and represent that there are no oral promises, representations, or agreements not contained in this Agreement.

## **ARTICLE 2 TERM AND DELIVERY DATE**

**2.1 Effective Date; Delivery Term.** This Agreement shall be effective on the Effective Date and the Delivery Term shall commence on the Delivery Date and continue for 8 months **after the Delivery Date** unless terminated earlier pursuant to Article 8.

**2.2 Delivery Date.** Lower Tule River shall give PWRPA not less than fifteen (15) Business Days prior written notice that the Project will be available to produce Electrical Output on the date indicated in such notice (“Delivery Date”).

**2.3 Modification or Extension.** This Agreement may be amended, modified or extended by a written agreement signed by both Lower Tule River and PWRPA.

## **ARTICLE 3 PURCHASE AND SALE OF ELECTRICAL OUTPUT**

### **3.1 Purchase and Sale of Electrical Output.**

**3.1.1 General.** In accordance with the terms and conditions of this Agreement, Lower Tule River shall sell and deliver at the Delivery Point, and PWRPA shall purchase and accept from Lower Tule River at the Delivery Point the Electrical Output of the Project produced during the Delivery Term, including Capacity, Energy, Environmental Attributes and Resource Adequacy Benefits associated with the Project. Except as specifically stated otherwise, Electrical Output shall mean the net amount of electrical output delivered at the Delivery Point as measured in megawatt hours (“MWh”), net of all losses, including but not necessarily limited to any transformation or electric system losses from the Project to the Delivery Point. Lower Tule River has represented and disclosed to PWRPA that the project produces Electrical Output only when sufficient water resources are available to operate the Project, and that sufficient water resources are frequently not available or are available in reduced quantities such that maximum Electrical Output is not regularly achieved. Lower Tule makes no warranty or guarantee as to the frequency or quantity of Electrical Output, other than the maximums and capacities as stated herein.

**3.1.2 Delivery Point.** The Electrical Output sold to PWRPA under this Agreement shall be delivered to PWRPA at the Delivery Point which is the meter as provided in Section 4.1 (“ISO Meter”). Title to and risk of loss associated with the Electrical Output shall pass from Lower Tule River to PWRPA at the Delivery Point.

3.1.3 Capacity; Resource Adequacy. Lower Tule River hereby grants, pledges, assigns and otherwise commits to PWRPA the full Capacity of the Project during the Delivery Term for the purpose, among other things, (a) of satisfying any Resource Adequacy Requirement that may be applicable to PWRPA or (b) of obtaining Congestion Hedging Rights from any applicable authority for use during the Delivery Term; provided, however, Lower Tule River shall not be required to provide PWRPA with any ancillary services that may be associated with the sale of Capacity, including but not necessarily limited to black start capability, reactive power, spinning reserves or regulation. Lower Tule River represents, warrants and covenants to PWRPA that Lower Tule River will not, during the Delivery Term, use, grant, pledge assign or otherwise commit, any portion of the Project to meet the Resource Adequacy Requirements of, or to confer Resource Adequacy Benefits upon, any entity other than PWRPA. The Parties shall take all actions (including, without limitation, amending this Agreement) and execute all documents or instruments as may be reasonably necessary or advisable to effectuate the use of the Resource Adequacy Benefits of the Project for PWRPA's sole benefit throughout the Delivery Term.

### **3.2 Purchase and Sale of Environmental Attributes.**

3.2.1 General. Lower Tule River shall deliver and PWRPA shall receive all rights, title, and interest in and to all Environmental Attributes associated with the Electrical Output.

3.2.1.1 Environmental Attributes Exceptions. If the Project receives any tradable interest based on the greenhouse gas reduction benefits attributed to the use of hydroelectric generation in the production of Energy from the Project, those benefits shall accrue to Lower Tule River, for the exclusive use by Lower Tule River, if and only to the extent that PWRPA does not have to demonstrate or otherwise offset, reduce or eliminate greenhouse gas emissions from the project its self. Lower Tule River shall provide PWRPA, at no expense to PWRPA, sufficient rights to such tradable interest so as to ensure that there are zero net emissions of greenhouse gas associated with the production of Energy from the Project. Lower Tule River agrees to deliver to PWRPA all such Environmental Attributes to the fullest extent allowed by applicable law. Lower Tule River warrants that all Environmental Attributes delivered under this Agreement to PWRPA shall be free and clear of all liens, security interests, claims and encumbrances.

3.2.2 Reporting of Ownership of Environmental Attributes. PWRPA will perform all duties to report generation to WREGIS. During the Delivery Term, Lower Tule River shall not report to any person or entity that the Environmental Attributes delivered to PWRPA under this Agreement belong to anyone other than PWRPA, and PWRPA may report under any applicable program that all such Environmental Attributes received under this Agreement belong to PWRPA except as explicitly provided above in Section 3.2.1.

3.2.3 Evidence of Environmental Attributes. Lower Tule River agrees to submit to PWRPA, or an entity designated by PWRPA, documentation, in a form acceptable to PWRPA, evidencing Lower Tule River's delivery to PWRPA of title to Environmental Attributes associated with the Electrical Output. Without limiting the generality of the foregoing and only as may be reasonably necessary or advisable, Lower Tule River shall be responsible for complying, at its own expense, with requests for information associated with WREGIS and/or any other entity, if any, that PWRPA uses to verify its renewable energy purchases and that requires registration, inspections, certification or other evidence of the capability of the Project to produce Environmental Attributes or evidence of the quality and/or quantity of such Environmental Attributes produced.

3.2.4 Cooperation; Further Assurances. Lower Tule River agrees to cooperate with PWRPA to the fullest extent reasonably necessary, and agrees to take all actions as may be reasonably

necessary or advisable to effectuate the use of the Environmental Attributes of the Project for PWRPA's benefit throughout the Delivery Term.

**3.3 Sales to Third Parties.** During the Delivery Term, Lower Tule River shall not assign, transfer, convey, encumber, sell, or otherwise dispose of all or any portion of the Energy, Capacity, Environmental Attributes, or Resource Adequacy Benefits to any person other than PWRPA except as provided in Section 3.2.1.

## **ARTICLE 4 METERING, SCHEDULING AND DELIVERIES**

**4.1 Metering.** Lower Tule River shall, at its own expense, provide, own, maintain, test, read and replace all meters and equipment required by the ISO or SCE in order to meter the Electrical Output ("ISO Meter"). Lower Tule River shall comply with all ISO and SCE tariffs and standards applicable to metering. Lower Tule River agrees to cooperate with PWRPA as may be reasonably necessary or advisable in the communication of meter data, including but not necessarily limited to authorizing PWRPA and PWRPA's Scheduling Coordinator to view the Project's ISO on-line meter data and to view all inspection, testing and calibration data and reports. At least once per year or upon reasonable request from PWRPA, Lower Tule River shall test its meters and equipment in accordance with generally accepted electrical practices and the ISO tariff. If Lower Tule River's meters and/or equipment is determined to be inaccurate or if the ISO makes any adjustment to any ISO meter data for a given time period, Lower Tule River agrees that it shall submit revised monthly invoices covering the applicable time period in order to conform fully such revised monthly invoices to the adjusted meter data; provided, however, if the period of inaccuracy cannot be determined, any such adjustment shall be for a period equal to one-half of the time elapsed since the preceding test.

### **4.2 Scheduling.**

**4.2.1 Scheduling Coordinator Services.** The Parties mutually agree that PWRPA will act as Scheduling Coordinator for the Project and scheduled under PWRPA's Scheduling Coordinator ID (SCID). Lower Tule River shall be responsible for all ISO charges assessed by the ISO pursuant to the then current ISO settlement charge matrix, including instructed and uninstructed deviations from Schedule and for all costs and charges associated with Lower Tule River's failure to deliver Electrical Output as scheduled or Lower Tule River's failure to abide by the ISO Tariff and associated protocols, as further described in Section 4.3.

**4.2.2 Contract Capacity; Scheduled Amount.** Lower Tule River represents that, under maximum operating conditions, subject to the limitations described in Section 3.1.1, the Project can deliver 1.4 MW, as measured at the Delivery Point ("Contract Capacity"). Consistent with the protocol established in accordance with Section 4.2.3, Lower Tule River shall specify the amount of Electrical Output that may be scheduled by PWRPA, after taking into consideration any derating of Contract Capacity due to Scheduled Outages.

**4.2.2.1 Annual Capacity Report.** For the purpose of forecasting Resource Adequacy Benefits, Lower Tule River shall submit to PWRPA a forecast of the maximum available capacity for the project by month.

**4.2.2.2 Prudent Utility Practice.** Lower Tule River shall operate, maintain, and repair the Facility in accordance with this Agreement, all requirements of law applicable to Lower Tule River or the Facility, contractual obligations, permits and in accordance with Prudent Utility Practice, including with respect to efforts to maintain availability of the Contract Capacity. Prudent Utility Practice means

those practices, methods, and equipment, as changed from time to time, that: (i) when engaged in are commonly used in the United States of America in prudent electrical engineering and operations to operate hydroelectric generation equipment and related electrical equipment lawfully and with safety, reliability, efficiency and expedition; or (ii) in the exercise of reasonable judgment considering the facts known, when engaged in could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency and expedition.

4.2.3 Scheduling Protocol. In consultation with LTRID Operations staff and PWRPA's Scheduling Coordinator, the Parties shall establish and deliver to day-ahead and hour-ahead scheduling protocols. The scheduling protocols shall generally conform to regional scheduling practices and applicable requirements of the ISO or PG&E.

4.2.4 Scheduled Outages. Lower Tule River shall submit to PWRPA Lower Tule River's schedule for the remaining year of outages that are reasonably required or advisable in order to adhere to the manufacturers' recommendation for service and overhaul of the Project's equipment, including electrical transformation ("Scheduled Outage"). Lower Tule River shall notify PWRPA of any outage not previously scheduled as soon as reasonably practicable after the condition becomes known to Lower Tule River, and shall comply with all outage coordination protocols established by the ISO.

4.2.5 Forced Outages. Lower Tule River shall promptly notify PWRPA of any Forced Outage of the Project, which such notice shall include, at a minimum, the amount of generation capability that will not be available because of the Forced Outage, the time at which the Forced Outage began, and the expected return date and time of such generation capability.

4.2.6 Ordered Curtailments. Lower Tule River shall reduce the Project's Electrical Output if notified to do so by the ISO or, as applicable, PWRPA's Scheduling Coordinator for system emergencies or other system conditions requiring the curtailment of deliveries.

4.3 Delivery, Imbalance and Other Charges. Lower Tule River shall be responsible for all costs and charges associated with Lower Tule River's failure to deliver Electrical Output as scheduled or Lower Tule River's failure to abide by the ISO Tariff and associated protocols, including charges PWRPA's Scheduling Coordinator receives from the ISO due to negative imbalance energy associated with scheduling Electrical Output, regardless of the cause thereof; provided, however, Lower Tule River may offset against its negative imbalance energy payment obligation any positive imbalance energy payments occurring within the same billing period.

## ARTICLE 5 PRICING AND PAYMENT

5.1 Contract Rate. The contract price for all Electrical Output actually delivered to PWRPA under this Agreement at the Delivery Point, net of all applicable losses and adjustments, shall be \$20.00 per MWh ("Contract Rate"). Other rates terms for ISO adjustments, scheduling costs and delivery expenses, as agreed to by Lower Tule River and PWRPA, are described in Exhibit C.

5.2 Billing Period and Invoices. The accounting and billing period for transactions under this Agreement shall be 1 calendar month. On a monthly basis, Lower Tule River shall deliver a Power Invoice to PWRPA, either manually or through ACH. Such monthly Power Invoice shall state (i) the amount of Energy produced by the System and delivered to the Delivery Point, (ii) the Contract Rate under this Agreement, (iii) all ISO settlement amounts, (iv) PWRPA's admin fee and (v) and the total amount due.

**5.3 Payment.** As soon as practicable after receipt of the Power Invoice from Lower Tule River, PWRPA shall prepare a Reconciliation Invoice internal to the PWRPA billing systems that will be used to augment or offset the total amount shown in the Power Invoice. PWRPA shall pay Lower Tule River the reconciled amount on or before the 20th day following receipt of the Power Invoice (“Due Date”).

**5.4 Offset for Scheduling Coordination Charges.** In addition to other payment offsets that PWRPA may be entitled to under this Agreement, PWRPA may, with accompanying written documentation and description, offset against payments owing under this Agreement all costs imposed upon PWRPA in connection with charges for which Lower Tule River is responsible, as described in Sections 4.2.1 and 4.3.

**5.6 Late Payments.** Any amounts not paid by the due date shall be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the Due Date to but excluding the date the delinquent amount is paid in full.

**5.7 Disputes and Adjustments of Invoices.** Either Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for the arithmetic or computational error. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the disputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within 5 business days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid.

## **ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS**

**6.1 General.** As of the Effective Date, each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing under the laws of the State of California;

(b) it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof;

(c) it has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein;

(d) the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on the Party or any valid order of any court, or any regulatory agency or other body having authority to which the Party is subject; and

(e) this Agreement is a valid and legally binding obligation of the Party, enforceable against the Party in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors’ rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may



be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

**6.2 Renewable Energy.** Lower Tule River represents, warrants and covenants that as of the Effective Date and continuing through the Delivery Term:

(a) the Project qualifies and is certified by the California Energy Commission (CEC-RPS-ID H0503) as being an “Eligible Renewable Energy Resource” as defined in Section 399.12(e) of the California Public Utilities Code and is otherwise eligible to be counted towards meeting applicable Renewables Portfolio Standard procurement requirements; and

(b) the Electrical Output of the Project, including the Environmental Attributes, will be available for PWRPA’s exclusive use.

**6.3** PWRPA recognizes and acknowledges Lower Tule River’s representations regarding availability of Electrical Output as described in section 3.1.1 above, and accepts Lower Tule River’s disclaimer of warranty or guarantee regarding such Electrical Output as stated in that section.

## **ARTICLE 7 FORCE MAJEURE**

**7.1 General.** As used in this Agreement, “Force Majeure Event” means any event that was not anticipated to occur during the contract term as of the Effective Date that (a) in whole or in part, delays a Party’s performance under this Agreement, causes a Party to be unable to perform its obligations, or prevents a Party from complying with or satisfying the conditions of this Agreement; (b) is not within the control of that Party; and (c) the Party has been unable to overcome by the exercise of due diligence. “Force Majeure Event” may include, but is not limited to, an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, or sabotage. Without limiting the generality of the foregoing, a Force Majeure Event shall specifically include a reduction in the Project’s Electrical Output if Lower Tule River is notified to do so by the ISO or, as applicable, PWRPA’s Scheduling Coordinator for system emergencies or other system conditions requiring the curtailment of deliveries, as described in Section 4.2.6. A Force Majeure Event shall not be based on: (i) PWRPA’s inability economically to use or resell the Electrical Output purchased under this Agreement; (ii) Lower Tule River’s ability to sell the Electrical Output at a price greater than the price set forth in this Agreement, or (iii) any equipment failure not caused by a Force Majeure Event.

**7.2 Notice.** As soon as reasonably practicable following the commencement of a Force Majeure Event, the non-performing Party shall provide the other Party oral notice of the Force Majeure Event. The non-performing Party shall also provide written notice to the other Party as soon as reasonably practicable following the commencement of a Force Majeure Event, but in no event later than 2 weeks after the commencement of a Force Majeure Event, which written notice shall be in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely notice constitutes a waiver of a Force Majeure claim.

**7.3 Suspension of Performance.** If either Party is prevented by a Force Majeure Event from carrying out, in whole or part, its obligation under this Agreement and such Party (the “Claiming Party”) gives notice and details of the Force Majeure Event to the other Party as soon as reasonably practicable, then the Claiming Party shall be excused from the performance of its obligations (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force

Majeure Event). The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

## **ARTICLE 8 TERMINATION**

**8.1 Termination for Convenience.** Either Party may terminate this Agreement for any reason or no reason by providing the other Party a minimum of 1 month's advance written notice.

**8.2 Termination for Cause.** The non-defaulting Party may terminate this Agreement for an uncured Event of Default, as described in Article 9.

**8.3 Notice of Termination; Close-out.** Any termination under this Agreement shall be effected by delivery of a written notice of termination specifying the basis for termination and the date upon which the termination shall become effective. Following termination of this Agreement, each Party shall (a) as applicable, render to the other Party a final invoice for the payment obligations of the other Party, if any, incurred up to the termination date and (b) in good faith and to the best of its ability, do all things necessary and proper to ensure the efficient, proper close-out of this Agreement.

## **ARTICLE 9 EVENTS OF DEFAULT**

**9.1 Events of Default.** Each of the following shall constitute an "Event of Default" under this Agreement:

(a) Failure of a Party to perform any material duty imposed upon that Party by this Agreement in any material respect;

(b) Failure to achieve the Delivery Date within six months of the Effective Date, in which case PWRPA shall be considered the non-defaulting Party for purposes of this Article 9;

(c) Filing of a petition in bankruptcy by or against a Party if such petition is not withdrawn or dismissed within 60 days after it is filed;

(d) Assignment by a Party for the benefit of creditors; and

(e) Allowance by a Party of the appointment of a receiver or trustee of all or any part of its property if such receiver or trustee is not discharged within 60 days after his appointment;

**9.2 Notice of Default.** The non-defaulting Party shall have the right to give the defaulting Party a written notice of default, which shall describe the default in reasonable detail and state the date by which the default must be cured ("Notice of Default").

**9.3 Opportunity to Cure.** Except in the case of a default described in Section 9.1(a), there will be no cure period and no opportunity to cure. In the case of a default described in Section 9.1(a), the default must be cured (except to the extent provided below) within 30 days after receipt of the Notice of Default. If within the thirty 30-day period described in the preceding sentence, the defaulting Party cures the default, or if the failure is one (other than the failure to make payments or to post credit support) that cannot in good faith be corrected within such period and the defaulting Party begins to correct the default within the applicable period and continues corrective efforts with reasonable diligence until a cure is

effected, the Notice of Default shall be inoperative, and the defaulting Party shall lose no rights under this Agreement; provided, however, that such extended cure period shall not exceed 120 days after receipt of the Notice of Default. If, within the specified applicable periods, the defaulting Party does not cure the default as provided above, the non-defaulting Party may exercise the remedies contemplated by Section 9.4.

**9.4 Rights Upon Default.** Upon providing notice, and upon expiration of any applicable cure period provided in Section 9.3 without a cure of the default, the non-defaulting Party shall have the right (but not the duty) to terminate this Agreement by giving written notice to the defaulting Party. Each and every power and remedy given to the non-defaulting Party (a) shall be in addition to every other power and remedy now or hereafter available to the non-defaulting Party at law or in equity (including the right to specific performance), (b) may be exercised from time to time and as often and in such order as may be deemed expedient, and (c) shall be cumulative, so that the exercise of one power or remedy shall not waive the right to exercise any other or others. No delay or omission in the exercise of any power or remedy and no renewal or extension of any performance due under this Agreement shall impair any such power or remedy or waive any default. Notwithstanding any termination of this Agreement, all financial obligations that have accrued under this Agreement shall remain until paid.

## **ARTICLE 10 LIMITS OF LIABILITY AND INDEMNITY**

**10.1 LIMITATION OF LIABILITY.** NEITHER PARTY HEREUNDER SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT OR TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE) AND INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF PURCHASED POWER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS OF LOWER TULE RIVER OR OF PWRPA FOR SUCH DAMAGES. THIS PROVISION IS NOT INTENDED TO LIMIT THE RIGHT OF EITHER PARTY TO OBTAIN COVER DAMAGES FOR BREACH OF THIS AGREEMENT.

**10.2 Indemnity.** Lower Tule River and PWRPA, respectively, as indemnitor will indemnify the other as indemnitee, and save it harmless from any and all loss, damage, expense and liability resulting from injuries to or death of persons, including but not limited to employees of either Party hereto, and damage, to or destruction of property, including but not limited to the property of either Party hereto, arising out of or in any way connected with the performance of this Agreement or of any operations or activities provided for hereunder by indemnitor, its agents or employees, excepting only such injury, death, damage or destruction as may be caused by the sole negligence or willful misconduct of the indemnitee, its agents or employees. Indemnitor shall, upon indemnitee's request, defend at its sole cost and expense any suit asserting a claim covered by this indemnity. It is the intent of the Parties hereto that, where negligence is determined to have been contributory, principles of comparative negligence will be followed and each Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that Party's negligence.

## **ARTICLE 11 NOTICES**

Any and all notices, demands or other communications required or permitted to be given to a Party under this Agreement (any of which, for purposes of this provision, a "Notice") shall be validly given if served in writing either personally, by facsimile, by deposit in the United States mail, first class postage prepaid, or by a recognized courier service to any address in the United States or Canada. Notices given (i) personally or by courier service shall be conclusively deemed received at the time of

delivery and receipt; (ii) by mail shall be conclusively deemed given forty-eight (48) hours after the deposit thereof; and (iii) by facsimile, upon receipt by sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety and received at the recipient's facsimile number. All Notices shall be addressed as follows:

If delivered to **Lower Tule River:** Lower Tule River Irrigation District  
357 E. Olive Avenue  
Tipton CA 93272  
**Attention: General Manager**  
  
**Tel:** (559) 686-4716

With a copy to: Alex M. Peltzer  
General Counsel  
3746 W. Mineral King Ave  
Visalia, CA 932912  
  
Tel: (559) 372-2400

If delivered to **PWRPA:** Power and Water Resources Pooling Authority  
3514 West Lehman Road  
Tracy, CA 95304  
Attention: General Manager  
  
Tel: (916) 531-5566  
Fax: (209) 835-2009

With a copy to: Cori Bradley  
Robertson-Bryan, Inc.  
3100 Zinfandel Drive, Suite 300  
Rancho Cordova, CA 95670  
  
Tel: (916) 600-3443

Any party may change its Notice address or may designate additional parties to receive Notices by written notice given in the manner provided herein.

## **ARTICLE 12 MISCELLANEOUS**

**12.1 Applicable Law.** This Agreement and any disputes relating to this Agreement shall be construed in accordance with the laws of the State of California.

**12.2 Modifications.** This Agreement may not be altered in whole or in part except by a written modification executed by all the Parties to this Agreement.

**12.3 Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective purchasers, successors, heirs, and assigns.

**12.4 Unenforceable Provisions.** The terms, conditions, and covenants of this Agreement shall be construed whenever possible as consistent with all applicable laws and regulations. To the extent that any provision of this Agreement is held to violate any applicable law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and shall remain enforceable.

**12.5 Construction and Interpretation.** It is acknowledged and agreed that this Agreement has been arrived at through negotiation, and that each Party has had a full and fair opportunity to revise the proposed terms of this Agreement. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing and interpreting this Agreement.

**12.6 Audit and Access Rights.** Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary or advisable to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. PWRPA, its authorized agents, employees and inspectors, has the right of ingress to and egress from the Facility on reasonable advance notice for any purpose reasonably connected with this Agreement, including but not necessarily limited to inspection of the Project in connection with any outage.

**12.7 No Partnerships or Joint Ventures.** Nothing herein contained shall be construed to make the Parties partners or joint venturers or to make PWRPA liable for any obligations incurred by Lower Tule River in the conduct of its business.

**12.8 No Third-Party Beneficiaries.** This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

**12.9 Legal Costs.** In the event that a Party exercises any right or remedy provided for in this Agreement with respect to this Agreement, the performance of their respective obligations hereunder or the effect of a termination under this Agreement, the losing Party shall pay all costs and expenses incurred by the prevailing Party in connection with such action, including, but not limited to, reasonable attorneys' fees of counsel selected by the prevailing Party. Notwithstanding any provision of this Agreement to the contrary, the obligations of the Parties under this Section 12.7 shall survive termination of this Agreement.

**12.10 No Waiver.** Any failure of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement, shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce each and every such provision. Any consent or approval given pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of the Party receiving such consent or approval.

**12.11 Further Assurances.** Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.

**12.12 Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

## ARTICLE 13 SIGNATURES

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized representatives as of the Effective Date.

**“PWRPA”**

Power and Water Resources Pooling Authority,  
a California joint powers authority

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**“Lower Tule River”**

Lower Tule River Irrigation District,

a California public agency

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM FOR LOWER TULE  
RIVER:

\_\_\_\_\_  
General Counsel

**Exhibit A  
to the  
Renewable Energy Purchase Agreement**

**- DEFINITIONS -**

“Admin Fee” PWRPA’s monthly charges for performing scheduling, settlement, and reporting related to the Electrical Output.

“Agreement” means this Renewable Energy Purchase Agreement between Lower Tule River and PWRPA.

“Annual Capacity Factor” means the factor having as its numerator (a) the Electrical Output, measured in MWh, metered and delivered to PWRPA at the Delivery Point (including deemed MWh associated with any failure by PWRPA to receive Electrical Output as scheduled) and having as its denominator (b) the product of (i) Contract Capacity and (ii) the number of hours in the year (excluding any hours associated with Force Majeure Events).

“Capacity” means the ability of a generator at any given time to produce Energy at a specified rate as measured in megawatts or kilowatts.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of Energy that the Facility can generate and deliver to the Delivery Point at a particular moment, or any other Facility electric generating capability, that can be purchased and sold under ISO market rules, including Resource Adequacy Benefits. Capacity Attributes shall also include all rights to provide, and all benefits related to, the provision of Ancillary Services (as defined in the ISO Tariff) and, subject to Section 3.8(c), reactive power.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is up to 180 days after the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard, meeting all applicable requirements for certified facilities set forth in the RPS Eligibility Guidebook, Ninth Edition (or its successor), and that all Energy generated by the Facility and delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“Congestion Hedging Rights” means rights, or rights to revenues, allocated for the purpose of hedging congestion risk or compensating for congestion costs or for congestion relief, such as congestion revenue rights, firm transmission rights, financial transmission rights, auction revenue rights or any other similar term.

“Delivery Date” has the meaning given in Section 2.2.1.

“Delivery Point” means the ISO Meter as provided in Section 4.1.

“Delivery Term” means the period time commencing on the Delivery Date and continuing for 8 months unless terminated earlier pursuant to Article 8.

“Effective Date” means the date of last execution of this Agreement by the Parties, and as shown for convenience in the preamble to this Agreement.

“Electrical Output” means Capacity, Energy, Environmental Attributes and Resource Adequacy Benefits associated with the Project.

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

“Energy” means metered electrical energy, measured in MWh, that is generated by the Project.

“Environmental Attributes” means RECs, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated that are (a) at any time recognized or deemed of value (or both) by any Buyer, applicable law, or any voluntary or mandatory program of any Governmental Authority or other Person, and (b) attributable to (i) generation by the Facility of Energy during the Delivery Term or any Replacement Product required to be delivered by Seller to Buyers during the Delivery Term, and (ii) the emissions or other environmental characteristics of such generation or such Replacement Product or its displacement of conventional or other types of Energy generation. Environmental Attributes include any of the aforementioned arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the “UNFCCC”), the Kyoto Protocol to the UNFCCC, California’s greenhouse gas legislation (including California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to that act, including without limitation any compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations of the California Air Resources Board or any successor regulations thereto), or any similar international, federal, state or local program or crediting “early action” with a view thereto, or laws or regulations involving or administered by the CAMD, and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as renewable Energy certificates of any kind. Environmental Attributes for purposes of this definition are separate from the Facility Energy.

“Event of Default” has the meaning given in Section 9.1.

“Force Majeure Event” has the meaning given in Article 7.

“Forced Outage” means any outage or reduction in the Capacity of the Project that is not a Scheduled Outage.

“Interest Rate” means the prime rate as published by the Wall Street Journal on the first business day of the month.

“ISO” means the California Independent System Operator Corporation or its successor.

“ISO Tariff” means the ISO operating agreement and tariff, dated December 17, 2013, as modified from time to time.

“ISO Meter” means the meter used by the ISO to determine the amount of Energy produced by the Project for which the ISO shall give credit toward the delivery of any generation schedules from the Project.

“MWh” means megawatt hours.



“Notice” has the meaning given in Article 11.

“Notice of Default” has the meaning given in Section 9.2.

“SCE” means Southern California Edison Company or its successor.

“Portfolio Content Category 1” or “PCC1” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Project” has the meaning given in Recital A, and is described in Exhibit B.

“REC” or “Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

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

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any other existing or subsequent CPUC ruling or decision or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority including the ISO, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term, and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” means resource adequacy obligations established by the ISO or another entity and made applicable to PWRPA.

“Scheduled Outage” has the meaning given in Section 4.2.4.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the ISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the ISO Tariff, as amended from time to time.

“WREGIS” means the Western Renewable Energy Generation Information System, or any successor renewable energy tracking system for implementing California’s Renewables Portfolio Standard.

**Exhibit B  
to the  
Renewable Energy Purchase Agreement**

**- DESCRIPTION OF THE FACILITY -**

<b>Plant Name</b>	<b>Success Power Plant</b>
<b>CEC Plant ID</b>	<b>H0503</b>
<b>EIA Plant ID</b>	<b>10222</b>
<b>Qualifying Facility ID</b>	<b>4208</b>
<b>Plant Location</b>	
<b>Street Address</b>	<b>29332 HWY 190</b>
<b>City</b>	<b>Porterville</b>
<b>County</b>	<b>Tulare</b>
<b>State</b>	<b>California</b>
<b>Zip</b>	<b>93257</b>
<b>Latitude</b>	<b>36 03 36N</b>
<b>Longitude</b>	<b>118 55 15W</b>
<b>Operating Mode</b>	
<b>Interconnection Agreement</b>	
<b>Plant Operator</b>	
<b>Full Legal Name</b>	<b>Lower Tule River Irrigation District</b>
<b>Street Address</b>	<b>357 E Olive Avenue</b>
<b>City</b>	<b>Tipton</b>
<b>State</b>	<b>California</b>
<b>Zip</b>	<b>93272</b>
<b>Nameplate Capacity (MW)</b>	<b>1.4</b>
<b>Number of Generators</b>	<b>1</b>

**Exhibit C  
to the  
Renewable Energy Purchase Agreement**

**- RATE AGREEMENT -**