

Power & Water Resources Pooling Authority
Resolution 23-12-20

RENEWABLE ENERGY CERTIFICATE 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, Cawelo Water District (“CWD”) is a Project Participant and owns Renewable Energy Credits (“RECs”) from a solar generation facility that is, or will be, a CEC-certified eligible renewable energy resource; and

WHEREAS, in Resolution 20-12-26, PWRPA approved a model agreement for the purchase of “RECs” from CEC-certified eligible renewable energy resources; and


WHEREAS, PWRPA desires to enter into a REC purchase agreement with CWD.

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


1. Approves the model Renewable Energy Credits Agreement, attached hereto as Attachment A.
2. Authorizes the Chair, or his designee, to execute and implement a Renewable Energy Certificate Purchase Agreement with Cawelo Water District 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 6th day of December 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, Princeton / Provident ID, RD 108, Santa Clara Valley WD, Sonoma County Water Agency, West Stanislaus ID, Westlands Water District, Zone 7 WA (95.3% <i>Voting Shares</i>)
NOES	None
ABSENT	Lower Tule River ID (4.7% <i>Voting Shares</i>)



David Weisenberger
Chairman



Attest by: Bruce McLaughlin
Secretary

ATTACHMENT A
to
RESOLUTION 23-12-20

**RENEWABLE ENERGY CREDIT PURCHASE AND SALE AGREEMENT
BY AND BETWEEN CAWELO WATER DISTRICT AND THE POWER & WATER
RESOURCES POOLING AUTHORITY**

This Renewable Energy Credit (“REC”) Purchase and Sale Agreement (“Agreement”) is entered into by and between the Cawelo Water District, a California public agency (“Seller”), and the Power & Water Resources Pooling Authority, a California joint powers agency (“Purchaser” or “PWRPA”). Each of Seller and Purchaser shall be referred to herein as a “Party” and together, as the “Parties.”

This Agreement sets forth the terms and conditions of the purchase and sale of RECs from the Designated Facility (as defined hereunder).

RECITALS

WHEREAS, PWRPA is a local publicly owned electric utility, as defined in California Public Utilities Code Section 224.3, and provides retail electric service to Project Participants pursuant to the Aggregation Services Agreement (“ASA”) and policies, rates, terms and conditions adopted by PWRPA’s Board of Directors (“Board”), which administers the ASA and serves as the local regulatory authority for PWRPA.

WHEREAS, Project Participants are users of electric power and water resources for purposes such as providing irrigation and municipal and industrial water, and in order to serve their Participants utilize such electrical and water resources through, among other things, pumping water, water transfers, storing water, and distributing and exchanging electrical power. The Participants utilize electric power to convey water and recognize that water delivery and electric power consumption are directly related and that exchange of water and electric power resources is a viable means of managing both electric power consumption and water supplies.

WHEREAS, Cawelo Water District (“CWD”) is a PWRPA Project Participant.

WHEREAS, PWRPA must procure specified percentages of its retail sales from eligible renewable electricity resources according to the California Renewable Portfolio Standard (“RPS”).

WHEREAS, PWRPA adopted Resolution 13-11-13 *Renewable Energy Resources Procurement Plan* in conformance with the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* adopted by the California Energy Commission (“CEC”).

WHEREAS, PWRPA adopted Resolution 14-04-04 *Renewable Portfolio Standard Cost of Compliance Rule* in conformance with Appendix 2 of Exhibit E to the ASA which authorizes allocating PWRPA’s RPS compliance obligation costs to all Project Participants.

WHEREAS, CWD has an assigned responsibility for its share of PWRPA’s RPS compliance obligation costs using the rules adopted in Resolution 14-04-04.

WHEREAS, PWRPA and Seller desire to enter into this Agreement in order to specify such terms and conditions under which: (a) Seller has a power purchase agreement for the full output of electricity and Environmental Attributes from the Designated Facility; (b) all Environmental Attributes associated with the Designated Facility shall be distributed per this Agreement; and (c) the RPS compliance value from such RECs credited to PWRPA shall be attributed exclusively to CWD’s assigned responsibility under the rules adopted by Resolution 14-04-04 for its direct benefit or for others as CWD may determine in its sole discretion.

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

1. Definitions; Rules of Interpretation.

The following terms shall have the following meanings:

- a. "Business Day" means any day other than Saturday, Sunday, or a day on which the Federal Reserve Bank is authorized or required to be closed.
- b. "CEC" means California's State Energy Resources Conservation and Development Commission, also known as the California Energy Commission.
- c. "CEC Certification" means that the CEC has certified that the Designated Facility is an eligible renewable energy resource in accordance with Public Utilities Code Section 399.12(e) and the guidelines adopted by the CEC, as amended from time to time, and any successor statute.
- d. "Designated Facility" means the Scooby Solar project which is a ground-mounted 3,477 kW DC solar generation facility located on 12 acres in Kern County, CA, Latitude 35.5880°, Longitude -119.1936°, APN: 073-050-19-7.
- e. "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 Purchaser, applicable law, or any voluntary or mandatory program of any Governmental Authority or other Person, and (b) attributable to (i) generation by the Designated Facility of Energy during the Delivery Term, and (ii) the emissions or other environmental characteristics of such generation or its displacement of conventional or other types of Energy generation.

Environmental Attributes include any of the aforementioned arising out of legislation or regulation pertaining to 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 System Energy. Environmental Attributes do not include Tax Credits. Seller and, to the extent required, Purchaser, shall file all federal and state of California tax returns in a manner consistent with Section 4.

- f. “Environmental Attribute Reporting Rights” means all rights to report ownership of the Environmental Attributes to any Person, including under Section 1605(b) of the Energy Policy Act of 1992 (Title 42, United States Code § 13385) or any other current or future international, federal, state or local law, regulation or bill, or otherwise.
- g. “Governmental Authority” means any national, state, or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission, or the California Public Utilities Commission), or any arbitrator with authority to bind a Party at law.
- h. “Product” means the California RPS Program-eligible RECs and Environmental Attributes associated with generation from the Designated Facility during the Delivery Term, as evidenced by WREGIS Certificates.
- i. “REC” or “Renewable Energy Credit” means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, which certificate is issued through the accounting system established by the CEC pursuant to the RPS Law, evidencing that one (1) MWh of Energy was generated and delivered from such eligible renewable energy resource. Such certificate is a tradable environmental commodity (also known as a “green tag”) for which the owner of the REC can prove that it has purchased renewable energy.
- j. “RPS Program” means the California Renewable Energy Resources Act, including the California Renewables Portfolio Standard Program, Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code, California Public Resources Code § 25740 through 25751, any related regulations or guidebooks promulgated by the CEC or, as applicable, the California Public Utilities Commission, as these may be amended from time to time.
- k. “RPS Compliant” means, when used with respect to the Designated Facility, that all electricity products generated by such facility at all times shall, together with all of the associated Environmental Attributes, qualify as a “portfolio content category 3” eligible renewable resources under the RPS Program and meet the requirements of Public Utilities Code Section 399.16(b)(1).
- l. “Tax Benefits” means all federal, state and local tax deductions, tax credits, tax grants, and other tax benefits available to taxpayers, including grants under Section 1603 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, as well as any replacements or modifications to such tax deductions, credits, grants or benefits.
- m. “Tax Credits” means any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of Energy from the System.
- n. “WREGIS” means the Western Renewable Energy Generation Information System.

2. **Purchase and Sale of Product; Scheduling; Interconnection; Obligation to Deliver.**
 - a. **Purchase and Sale of Product.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser the Product generated by or associated with the Designated Facility during the Delivery Term.
 - b. **Sale Only to Purchaser.** In no event shall Seller sell, or be deemed to have sold, Product from the System other than to Purchaser during the Delivery Term.
3. **Term and Termination.**
 - a. **Effective Date.** The Effective Date shall be the date on which both Parties have executed the Agreement.
 - b. **Delivery Term.** The Parties intend this Agreement to be a long-term contract consistent with Public Utilities Code Section 399.13(b). The initial term (“Initial Term”) of this Agreement shall commence on the Effective Date and continue for ten (10) years, unless terminated earlier as provided for in this Agreement. Either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein, or such other terms and conditions as may be requested, for the number and length of additional periods as determined by the Parties (each an “Additional Term”). The Delivery Term comprises the Initial Term and any Additional Term.
 - c. **Termination.** Either Party may terminate this Agreement: (1) after Default by the other Party pursuant to this Agreement; or (2) at any time by giving the other Party twenty (20) Business Days written notice.
4. **Billing and Payment.**
 - a. **Contract Amount and Purchase Price.** Seller shall sell and Purchaser shall purchase the Product at the Purchase Price of \$0.05 per one (1) REC.
 - b. **Title.** Title to the Product shall pass from Seller to Purchaser upon generation of the associated energy from the Designated Facility, and the Product shall be held in trust by Seller for Purchaser until the transfer of the RECs to Purchaser’s WREGIS Account.
 - c. **Delivery.** No less often than annually, Seller shall cause delivery of the Product in accordance with the applicable rules and procedures relating to WREGIS and the California RPS Program.
 - d. **Billing Statement.** As soon as practicable after the Product has been delivered to Purchaser, as evidenced by a WREGIS Certificate delivered to Purchaser’s WREGIS Account, Seller shall deliver to Purchaser an invoice for that portion delivered.
 - e. **Payment Terms.** Subject to its contest rights set forth in Section 4(f), Purchaser shall pay the full amount of each invoice on or before the 45th day following receipt

thereof (the "Due Date"). All payments made by Purchaser under this Agreement shall be by electronic funds transfer or by check payable to Cawelo Water District or its designee (unless otherwise directed in writing by Seller) at the address for notices set forth in Section 15. If the Due Date is not a Business Day, payment will be due the next following Business Day. Late payments shall accrue interest at a per annum rate equal to the lower of 6%, or the maximum rate allowed by law.

- f. **Disputes and Adjustments of Invoices.** Purchaser may, in good faith, dispute the correctness of any invoice, or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within sixty (60) Business Days of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to Seller. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid.
- g. **Taxes.** Each Party shall pay any taxes lawfully levied upon it by a Governmental Authority.
- h. **Administrative Costs.** Purchaser is responsible for all costs associated with this Agreement required for establishing and administering any WREGIS account.

5. **Environmental Attributes and Tax Credits/Benefits.**

Purchaser is the owner of all Environmental Attributes and Seller is entitled to the benefit of all Tax Credits and Tax Benefits. Purchaser's purchase of the Product under this Agreement does not include the right to Tax Credits, Tax Benefits, or any other attributes of ownership and operation of the Designated Facility, all of which shall be retained by Seller, except for all Environmental Attributes as may otherwise be expressly provided in this Agreement. Seller shall cooperate with Purchaser in obtaining, securing and transferring all Environmental Attributes, including Purchaser's registration of the Designated Facility and its generation with WREGIS. Seller shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Purchaser.

6. **Conditions to Obligations.**

- a. **Conditions Precedent.** Purchaser shall have no obligation whatsoever to purchase the Product from the Designated Facility under this Agreement until Seller completes to Purchaser's reasonable satisfaction each of the following conditions:
 - i. Seller has received the requisite CEC Certification and verification for the Designated Facility; and

- ii. Seller shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and other appropriate documentation required to effect Designated Facility registration with WREGIS and to enable REC transfers related to the Facility within the WREGIS system or have completed any other similar requirements applicable to Seller to enable Purchaser to fulfill its RPS requirements.
- b. Purchaser shall provide, at its sole expense, the reasonable and necessary assistance for Seller to satisfy the above conditions in this Section 6.a.
- c. **Failure to Satisfy Conditions Precedent.** If Seller fails to complete the conditions precedent set forth in Section 6.a within six (6) months of the Effective Date, then either Party shall have the right to terminate this Agreement, and neither Party shall have any further liability hereunder.

7. **Change in Law.**

- a. **“Change in Law”** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the Designated Facility, or other performance of the Seller’s obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.
- b. If any Change in Law occurs that has a material adverse effect on either Party’s ability to perform its obligations described in this Agreement, then the Parties shall, within thirty (30) days following receipt by either Party of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, or such other period of time the Parties deem necessary and appropriate, then either Party has the right to terminate this Agreement

8. **Continuing Representations and Warranties.** In addition to the foregoing, Seller, and, if applicable, its successor(s), represents and warrants that:

- a. The Designated Facility is RPS Compliant;
- b. Seller has the sole and exclusive legal right to sell and deliver the Product, and upon the delivery of the Product to Purchaser, all right, title and interest in and to the Product shall be conveyed to Purchaser free and clear of any liens or other encumbrances or title defects; and

- c. the RECs associated with the Product will, upon delivery of the Product to Purchaser, vest in Purchaser, and Purchaser will (i) have the exclusive rights to make all claims as to such RECs and (ii) have the right to report with WREGIS Purchaser's exclusive ownership of such RECs all for benefit of CWD.

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

- a. it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation; it has the legal capacity, authority and power to execute this Agreement and to perform its obligations under this Agreement; it has taken all necessary action to authorize such execution and performance; the execution and performance of this Agreement are within its powers and do not violate or conflict with its governing documents, any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it, or any contract to which it is a party;
- b. its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law);
- c. no Event of Default (as defined in Article 12) with respect to it, or event which with notice and/or lapse of time would constitute such an Event of Default, has occurred and is continuing and no such event or circumstance would occur because of its entering into or performing its obligations under this Agreement;
- d. there are no proceedings by or before any court or other agency of government now pending or, to the knowledge of such Party, threatened, that if adversely determined could have a material adverse effect on such Party's ability to perform the Party's obligations under this Agreement;
- e. it is not relying upon any representations of the other Party other than those expressly set forth in this Agreement, and it has entered into this Agreement with a full understanding of, and the ability to assume, the material terms and risks of this Agreement, and has made its decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the other Party.

10. **Records.** Seller shall maintain or cause to be maintained adequate records of the Product, including but not necessarily limited to records to assist Purchaser in meeting any reporting or registration requirements associated with the Product, including metering records. Seller shall provide such records upon reasonable notice from Purchaser. Seller hereby consents to Purchaser's use of any such information for the purpose of documenting Purchaser's interest in the Product. Without limiting the generality of the foregoing, each Party agrees to provide copies of its records to the extent reasonably necessary for WREGIS to perform its functions and to verify the

accuracy of any fact, statement, charge or computation made in documents submitted to WREGIS.

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

12. **Events of Default.**

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

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

13. **Remedies.**

- a. **General.** If either Party is in Default as set forth in Article 12 at any time during the Term ("Affected Party"), the other Party ("Notifying Party") may (a) upon two (2) Business Days' prior written notice to the Affected Party terminate this Agreement, (b) withhold any payments due in respect of this Agreement to the extent of its damages, and (c) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement, including an action

for damages (except as limited below); provided, however, upon the occurrence of any Default listed in Section 12(c) (bankruptcy) as it may apply to any Party, this Agreement shall automatically terminate, without notice, immediately prior to such default.

- b. **Breach of California RPS Program Warranty.** Notwithstanding anything to the contrary herein, if the representation and warranty set forth in Section 8 is false such that the Product, in whole or in part, does not conform to the California RPS Program requirements and as a result Purchaser is unable to use the Product, in whole or in part, for compliance with the California RPS Program, then, Seller shall be in Default. Seller hereby acknowledges that, under Public Utilities Code Section 399.21(a)(6), Purchaser may retire the RECs in WREGIS within thirty-six (36) months of the initial date of generation of the associated energy, and therefore the representations and warranties with respect to conformance to the California RPS Program and the associated remedies for an Event of Default shall continue in effect during such period of time.

14. **Limitation of Liability.**

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

15. **Miscellaneous.**

- a. **Indemnification.** Each Party ("Indemnifying Party") shall indemnify and hold harmless the other Party, its shareholders, officers, directors, employees and agents, from and against any and all third party claims, costs, suits, liabilities, damages, losses, demands and expenses of every kind including, without limitation, reasonable attorney fees and disbursements, known or unknown, contingent or otherwise, resulting from or arising out of any event, circumstance, act or incident first occurring or existing during the period when control and title to the Product is vested in such Party, as further described in Section 4(b). The Indemnified Party shall notify the other Party promptly of any claim under this Section 15(a). The other Party shall afford the Indemnified Party the opportunity to defend or participate in the defense of the claim. The other Party shall make

no settlement of an indemnified claim specifically naming or directly affecting the Indemnified Party without the Indemnified Party's prior written approval.

- b. **Force Majeure.** Neither Party shall be considered to be in default in the performance of any obligations under this Agreement when a failure of performance shall be due to any Force Majeure. The term "Force Majeure" shall mean an event that prevents a Party from performing its obligations under this Agreement, which is not within the Party's reasonable control and which by exercise of due diligence, such Party is unable to avoid, cause to be avoided or overcome. Such causes may include, without limitation, the following and other causes of similar nature: flood, earthquake, tornado, storm, fire, explosion, public emergency, civil disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority (whether valid or invalid), and action or non-action by, or failure to obtain the necessary authorizations or approvals from any government agency or authority. Force Majeure may include the failure or disruption in deliveries of RECs and Green Attributes by WREGIS that is not the fault of the Party asserting the Force Majeure. No Party shall, however, be relieved of liability for failure of performance if such nonperformance is due to its own negligence or to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Force Majeure may not be based on (a) an inability to pay, (b) Seller's ability to sell the RECs to another entity at a greater price than the Purchase Price or (c) Purchaser's inability to economically use or resell the RECs (provided such inability does not arise from Seller's breach of the warranties and representations set forth in Article 4 of this Agreement). Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of Force Majeure shall give prompt written notice of such fact to the other Party, and shall continue to exercise due diligence to remove or remedy such inability with all reasonable dispatch.
- c. **Time is of the Essence.** Time is of the essence of each and every obligation set forth in this Agreement.
- d. **Headings.** The Parties have inserted the headings used in this Agreement for convenience only and each heading shall not be construed to limit, add to or otherwise affect the interpretation of the provision in which it appears.
- e. **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with, the laws of the State of California, without regard to principles of conflicts of law.
- f. **Assignment.** Neither Party shall assign or transfer this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent may be not be unreasonably withheld.
- g. **Waiver.** No delay or omission in the exercise of any power or remedy and no renewal or extension of any performance due under this Agreement shall impair any such power or remedy or waive any Default.

- h. **Unenforceability.** Should any portion of this Agreement be ruled unenforceable or invalid, such ruling shall not affect the enforceability or validity of the remaining portions of this Agreement.
- i. **Joint Drafting.** This Agreement has been drafted and negotiated by both Parties and shall not be strictly construed against either Party.
- j. **Dispute Resolution.** Any dispute arising from or relating to this Agreement shall be resolved by a procedure agreed to by the Parties.
- k. **Notices.** Any written notice, direction, instruction, request or other communication required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt, and shall be delivered to the Party to whom notice is to be given (i) personally, (ii) by electronic mail (receipt acknowledgment), (iii) by a recognized overnight delivery service or (iv) by first class registered or certified mail, return receipt requested, postage prepaid (with additional notice by regular mail), and addressed to the Party to whom notice is to be given at the address stated below its name below, or at the most recent address specified by written notice given to the other Party in the manner provided in this Section 15.

TO SELLER:

Cawelo Water District
17207 Industrial farm Road
Bakersfield, CA 93308
Attn: David Ansolabehere
Email: dansolabehere@cawelowd.org
Tel: (661) 393-6072

TO PURCHASER:

Power & Water Resources Pooling Authority
3504 W. Lehman Road
Tracy, CA 95304
Attn: General Counsel
Email: bcm@cameron-daniel.com
Tel: (916) 531-5566

With a copy to:

Arvin-Edison Water Storage District
P.O. Box 175
Attn: David Nixon
Email: dan@aewsd.org
Tel: (661) 854-5573

- i. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this

Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

- m. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- n. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Purchaser shall not knowingly take any action that would subject Seller, or Seller's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Purchaser shall not assert in any proceeding before a court or regulatory body that Seller is a public utility by virtue of Seller's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement.
- o. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) Business Days after receipt of a written request by the other Party hereto, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party.
- p. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701 (e)(3) of the Internal Revenue Code of 1986,

Special rules for contracts or arrangements involving solid waste disposal, energy, and clean water facilities. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of the Product from the Designated Facility.

- q. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.

- r. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

- s. **Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

SIGNATURES

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

"Purchaser"

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

By:  _____

Name: Bruce McLaughlin

Title: General Manager

Date: December 6, 2023

"Seller"

Cawelo Water District, a California public agency

By:  _____

Name: DAVID ANSO LABEHERE

Title: GENERAL MANAGER

Date: DEC. 6, 2023